

To: Interested Parties

From: Kellyanne Conway, President & CEO  
the polling company™, inc.

Date: March 2007

Re: Key Findings from a Survey of 500 High Propensity Voters in Missouri

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*On behalf of The Federalist Society, the polling company™, inc. conducted a statewide telephone survey of 500 high-propensity voters in Missouri to assess their knowledge, opinions, and expectations of the state's Supreme Court. The survey findings revealed that Missourians know little about the system of selection for Supreme Court Justices that originated in and was named for their state. However, once informed of the process, they rejected it and demanded a larger role in seating the members of their state's highest bench. Specifically, they prefer a more democratic process that would allow for the selection of restrained Justices who check their personal viewpoints at the courthouse door.*

### [For Most Likely Voters, the Missouri State Supreme Court is a Mystery.](#)

There is a shocking knowledge gap between Missouri voters and their Highest Court. Basic inquiries to test the public's understanding about the selection process for the Missouri Supreme Court Justices revealed that most people know precious little about how these seven men and women are chosen to serve on the state's high court.

Nearly six-in-ten of them revealed they were mostly or wholly unfamiliar with the Court and its rulings, and a paltry 3% claimed to be well-versed in such matters. Furthermore, just 34% knew (or correctly guessed) that Justices are “nominated by a judicial commission and appointed by the governor” – a process that originated in and is named for Missouri (“Missouri Plan”). **A stunning 87% admitted they were unaware of the make-up of the judicial commission (i.e., that it includes three members of the State Bar Association).**

### [Missouri Voters Naturally Assume the Best About their Justice System.](#)

Despite their admitted lack of knowledge about the basic composition and selection process of their State Supreme Court, **these high-propensity voters across Missouri placed considerable confidence in the Justices' ability to elevate the letter of the law over the persuasiveness of their own political beliefs** (20% had “a great deal” of trust and another 48% had “some”). Voters are putting faith in their Supreme Court Justices to do the right thing, though they have little or no information about what it is the Supreme Court does.

### [When Presented with the Evidence, Missouri Voters Deem the “Missouri Plan” of Selecting Justices Unacceptable and Call for a Larger Role.](#)

Once informed of the process by which Missouri's Supreme Court Justices are chosen, those voters surveyed declared the system in need of a major overhaul. Though many were able to see the benefit of having so many lawyers on the selection committee, **the strong majority supported changing the “Missouri Plan” to a more democratic configuration that allows for greater input from non-state bar association members.**

In a similar vein, voters judged *themselves* most capable of selecting Supreme Court Justices, and by significant margins. In fact, a majority (57%) thought that “we the people” should have an amplified voice in the debate, some four to five times the number who thought the same of the state legislature (14%), state bar association (12%), and governor (10%). A slim majority also rejected the current practice of retention elections, suggesting they want to have more than a “rubberstamp role” with respect to the chosen few whom serve on their state’s highest court.

### Voters Want a Restrained Supreme Court that Eschews Personal Opinions in Legal Decisions.

**According to the Missourians surveyed, the single most important quality in a Supreme Court Justice is strict interpretation of the law – chosen by 51% of respondents from a list of five possible attributes.** Still, there was still notable affinity for a Justice that would carry out the “will of the people,” as 26% advocated a judge who would consider the moral and political views of voters. “Judicial activism” and “judicial restraint” were little known by voters at the start of the survey, but, once defined, by a margin of more than 2-to-1, restraint was preferred to activism (56%-26%).

#### METHODOLOGY

On behalf of **The Federalist Society, the polling company™, inc.** conducted a statewide telephone survey of 500 high-propensity voters in Missouri.

Interviews were conducted February 14-18, 2007 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn utilizing a Random Digit Dialing (RDD) method where phone numbers are generated by a computer to ensure that every voter in Missouri had an equal chance to be surveyed. Respondents were then screened to ensure that they were registered to vote in Missouri and that they had participated in at least half of all the elections in which they had been eligible to vote (defined as “high propensity voters”).

The margin of error for the survey is  $\pm 4.38\%$  at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.38 percentage points in either direction had the entire population of high-propensity voters in Missouri been surveyed. Margins of error for subgroups are higher.

For additional inquiries, please contact Kellyanne Conway, President & CEO of **the polling company™, inc.**, at 202-667-6557 or [Kellyanne@pollingcompany.com](mailto:Kellyanne@pollingcompany.com).

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**Topline Data**  
**Statewide Survey of 500 High-Propensity Voters in Missouri**

*prepared for*  
**The Federalist Society**  
*by the polling company™, inc.*

**February 2007**

Field Dates: February 14-18, 2007

Margin of Error: +/-4.38%

- A. Are you 18 years of age or older and currently registered to vote here in Missouri, registered in a different state, or not registered at all?

100% REGISTERED IN MISSOURI

- B. Thinking for a moment about past elections that you have been eligible to vote or participate in, would you say that you have voted in...(READ CHOICES)

70% ALL OR ALMOST ALL ELECTIONS

22% MOST ELECTIONS

7% ABOUT HALF OF ALL ELECTIONS

- ONLY LOCAL ELECTIONS BUT NOT CONGRESSIONAL AND  
PRESIDENTIAL ELECTIONS

**IMPRESSION OF MISSOURI COURTS**

1. How familiar would you say you are with the Missouri State Supreme Court and its rulings and decisions? Are you... (READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP)

**40% FAMILIAR (NET)**

3% VERY FAMILIAR

37% SOMEWHAT FAMILIAR

**59% NOT FAMILIAR (NET)**

33% JUST A LITTLE BIT FAMILIAR

26% NOT AT ALL FAMILIAR

1% DO NOT KNOW (VOLUNTEERED)

- REFUSED (VOLUNTEERED)

2. Which of the following do you think best describes how Justices are **first** chosen to serve on the Missouri Supreme Court? [READ AND ROTATED]

39% JUSTICES ARE APPOINTED BY THE GOVERNOR OF MISSOURI AND CONFIRMED BY THE LEGISLATURE  
34% JUSTICES ARE NOMINATED BY A JUDICIAL COMMISSION AND APPOINTED BY THE GOVERNOR  
2% OTHER (VOLUNTEERED)  
25% DO NOT KNOW (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

3. Who do you think **should** have the greatest input on who is selected to serve as a Justice on the Missouri State Supreme Court? (READ AND ROTATED, ACCEPTED ONLY ONE RESPONSE)

57% MISSOURI VOTERS  
14% MISSOURI STATE LEGISLATURE  
12% MISSOURI STATE BAR LAWYERS  
10% MISSOURI GOVERNOR  
1% OTHER (VOLUNTEERED)  
1% ALL OF THE ABOVE (VOLUNTEERED)  
- NONE OF THE ABOVE (VOLUNTEERED)  
4% DO NOT KNOW (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

4. How much trust and confidence do you have in the Missouri State Supreme Court to make decisions based on law and not on political beliefs? (READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP)

**68% TOTAL TRUST (NET)**

20% A GREAT DEAL  
48% SOME

**29% TOTAL LACK OF TRUST (NET)**

20% JUST A LITTLE BIT  
9% NONE AT ALL

3% DO NOT KNOW (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

**MISSOURI SUPREME COURT APPOINTMENT/ RETENTION & MAKE-UP OF THE APPELLATE JUDICIAL COMMISSION**

As you may know, there are seven Justices on the Missouri Supreme Court who are appointed by a process known as the “Missouri Plan.” Under this plan, the Appellate Judicial Commission selects all the judicial nominees for the Supreme Court. The Commission is a seven-member group comprised of one member of the Supreme Court, three members of the general public selected by the Governor, and three members of the state bar association, an association of lawyers in Missouri. Each member of the Commission serves a six-year term. The Commission selects three applicants from which the Governor must nominate a candidate when there is an opening on the Supreme Court.

5. Were you aware that the Missouri Bar Association, the statewide association of lawyers, selects three out of the seven people that serve on the Appellate Judicial Commission which selects all of the Missouri Supreme Court nominees?

10% YES  
87% NO  
  
2% DON'T KNOW (VOLUNTEERED)  
- REFUSED (VOLUNTEERED)

6. I am now going to read you the opinions of two people regarding this process. Please tell me which one comes closest to your view. (ROTATED)

PERSON 1: It is appropriate that the seven-member judicial nominating commission include a significant number of lawyers picked by the state bar association because lawyers know more than most voters, legislators or the Governor about what qualities a good judge should possess.

PERSON 2: It is not appropriate that the seven-member judicial nominating commission include a significant number of lawyers picked by the state bar association because voters, legislators and the Governor are as qualified as lawyers to decide what qualities a good judge should possess.

**42% AGREE PERSON 1 (NET)**  
18% STRONGLY AGREE PERSON 1  
24% SOMEWHAT AGREE PERSON 1

**50% AGREE PERSON 2 (NET)**  
20% SOMEWHAT AGREE PERSON 2  
30% STRONGLY AGREE PERSON 2

7% DON'T KNOW (VOLUNTEERED)  
1% REFUSED (VOLUNTEERED)

7. After a Justice serves on the Missouri Supreme Court for one year, voters take part in an up or down/yes or no vote to decide whether or not to “retain” or keep the Justice for a term of 12 years. This is called a “retention election.” No appellate or supreme court judge has ever lost a retention election in Missouri. Based on this information, do you agree or disagree that this system of judicial review is serving its intended purpose of accountability for our judges? And would that be strongly or somewhat agree/disagree?

**37% AGREE (NET)**

11% STRONGLY AGREE  
26% SOMEWHAT AGREE

**54% DISAGREE (NET)**

22% SOMEWHAT DISAGREE  
32% STRONGLY DISAGREE

4% NEED MORE INFORMATION/ NO BASIS TO JUDGE  
(VOLUNTEERED)

5% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

8. Which of the following do you think should be most important in selecting whom to nominate to the Missouri State Supreme Court? (READ AND ROTATED, ACCEPTED ONE RESPONSE)

51% CANDIDATE WHO WILL INTERPRET THE LAW AS IT IS WRITTEN

26% CANDIDATE WHO SHARES THE MORAL AND POLITICAL VALUES OF VOTERS

10% CANDIDATE'S PAST RULINGS AND LEGAL DECISIONS AS A JUDGE

5% CANDIDATE WHO WILL TAKE INTO ACCOUNT HIS OR HER PERSONAL VIEWS AND EXPERIENCES

3% CANDIDATE WHO IS ENDORSED BY THE MISSOURI STATE BAR ASSOCIATION (AN ASSOCIATION OF LAWYERS)

1% OTHER (VOLUNTEERED)

5% DO NOT KNOW (VOLUNTEERED)

\* REFUSED (VOLUNTEERED)

9. A number of states have adopted the same process of selecting judicial nominees as Missouri; however, most of them have a judicial nominating commission that includes more input from the Governor, legislature, voters, and other interested parties and less input from lawyers in the State Bar Association. Do you support or oppose changing the way Missouri selects the members of its Commission as other states have? And would that be strongly or somewhat support/oppose?

**65% SUPPORT (NET)**

33% STRONGLY SUPPORT  
32% SOMEWHAT SUPPORT

**23% OPPOSE (NET)**

14% SOMEWHAT OPPOSE  
9% STRONGLY OPPOSE

3% NEED MORE INFORMATION/ NO BASIS TO JUDGE  
(VOLUNTEERED)

8% DON'T KNOW/UNSURE (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

**ROLE OF PERSONAL VIEWPOINTS**

10. I am again going to read you the opinions of two people. Please tell me which one comes closest to your view.

PERSON 1: Judges should interpret and apply the law as it is written and not take into account their own viewpoints and experiences.

PERSON 2: Judges should go beyond interpreting and applying the law and take into account their own viewpoints and experiences.

**81% AGREE PERSON 1 (NET)**

63% STRONGLY AGREE PERSON 1  
18% SOMEWHAT AGREE PERSON 1

**13% AGREE PERSON 2 (NET)**

7% SOMEWHAT AGREE PERSON 2  
6% STRONGLY AGREE PERSON 2

4% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

## **JUDICIAL ACTIVISM/ RESTRAINT**

[ROTATED QUESTION SETS 11-12 and 13-14 SO THAT HALF OF ALL VOTERS SURVEYED WERE ASKED ABOUT “JUDICIAL ACTIVISM” FIRST AND HALF WERE ASKED ABOUT “JUDICIAL RESTRAINT” FIRST.]

11. How familiar are you with the concept of “judicial activism”? Would you say you are...  
[READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP]

**24% FAMILIAR (NET)**

7% VERY FAMILIAR  
17% SOMEWHAT FAMILIAR

**74% NOT FAMILIAR**

16% JUST A LITTLE BIT FAMILIAR  
58% NOT AT ALL FAMILIAR

2% DO NOT KNOW (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

“Judicial activism” is a term used to describe when a judge feels that his or her role is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over time.

12. Do you think judicial activism is a (ROTATED) mostly positive or mostly negative thing for the Missouri State Supreme Court?

34% MOSTLY POSITIVE  
47% MOSTLY NEGATIVE  
  
18% DO NOT KNOW (VOLUNTEERED)  
1% REFUSED (VOLUNTEERED)

13. And how familiar are you with the concept of “judicial restraint”? Would you say you are...  
[READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP]

**26% FAMILIAR (NET)**

4% VERY FAMILIAR  
22% SOMEWHAT FAMILIAR

**70% NOT FAMILIAR (NET)**

19% JUST A LITTLE BIT FAMILIAR  
51% NOT AT ALL FAMILIAR

3% DO NOT KNOW (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

“Judicial restraint” is a term used to describe when a judge views his or her role solely as an evaluator of whether a law or lower court ruling is in line with the state constitution.

14. Do you think judicial restraint is a (ROTATED) mostly positive or mostly negative thing for the Missouri State Supreme Court?

64%	MOSTLY POSITIVE
17%	MOSTLY NEGATIVE
17%	DO NOT KNOW (VOLUNTEERED)
2%	REFUSED (VOLUNTEERED)

15. Based on the definitions I gave you, would you rather the Missouri Supreme Court practice (ROTATED) judicial activism or judicial restraint?

56%	JUDICIAL RESTRAINT
26%	JUDICIAL ACTIVISM
3%	BOTH (VOLUNTEERED)
1%	NEITHER (VOLUNTEERED)
12%	DO NOT KNOW (VOLUNTEERED)
1%	REFUSED (VOLUNTEERED)

## **DEMOGRAPHICS**

And now some questions for statistical purposes...

16. Which of the following categories best describes your age?

10%	18-24
15%	25-34
17%	35-44
21%	45-54
17%	55-64
17%	65+
3%	REFUSED (VOLUNTEERED)

17. Would you describe your racial or ethnic background as...(READ LIST)?

80% WHITE/CAUCASIAN  
12% BLACK/AFRICAN-AMERICAN  
3% HISPANIC/LATINO  
\* ASIAN  
\* MIDDLE EASTERN  
  
1% OTHER (VOLUNTEERED)  
1% DON'T KNOW (VOLUNTEERED)  
2% REFUSED (VOLUNTEERED)

18. In politics today, do you consider yourself to be a (ROTATED) Republican, Independent, or Democrat?

**36% REPUBLICAN (NET)**  
19% STRONG REPUBLICAN  
10% NOT-SO-STRONG REPUBLICAN  
7% INDEPENDENT LEANING REPUBLICAN  
  
**22% INDEPENDENT**  
  
**33% DEMOCRAT (NET)**  
6% INDEPENDENT LEANING DEMOCRAT  
6% NOT-SO-STRONG DEMOCRAT  
21% STRONG DEMOCRAT  
  
2% OTHER (VOLUNTEERED)  
7% DON'T KNOW/REFUSED (VOLUNTEERED)

19. Thinking for a moment about your political views...Do you consider yourself to be...?

**46% CONSERVATIVE (NET)**  
23% VERY CONSERVATIVE  
23% SOMEWHAT CONSERVATIVE  
  
**29% MODERATE**  
  
**16% LIBERAL (NET)**  
11% SOMEWHAT LIBERAL  
5% VERY LIBERAL  
  
**1% LIBERTARIAN**  
  
7% DON'T KNOW/REFUSED (VOLUNTEERED)

20. And regarding your family's annual income...Please tell me which of the following categories best describes your family's annual income. I don't need a specific amount, a broad range will be fine.

8%	BELOW \$20,000
8%	\$20,000 TO \$24,999
4%	\$25,000 TO \$29,999
12%	\$30,000 TO \$39,999
10%	\$40,000 TO \$49,999
9%	\$50,000 TO \$59,999
8%	\$60,000 TO \$69,999
5%	\$70,000 TO \$79,999
3%	\$80,000 TO \$89,999
12%	\$90,000 AND ABOVE
21%	REFUSED (VOLUNTEERED)

21. Are you...? (READ CATEGORIES)

21%	CATHOLIC
50%	PROTESTANT
1%	JEWISH
3%	AGNOSTIC/ATHEIST
*	MUSLIM
1%	MORMON
11%	OTHER (VOLUNTEERED)
5%	NONE/UNAFFILIATED (VOLUNTEERED)
7%	REFUSED (VOLUNTEERED)

22. How often do you attend religious services?

2%	EVERY DAY
13%	A FEW TIMES PER WEEK
40%	ONCE A WEEK
12%	A FEW TIMES PER MONTH
8%	A FEW TIMES PER YEAR
18%	SELDOM/NEVER
6%	DON'T KNOW/REFUSED (VOLUNTEERED)

23. Gender

47%	MALE
53%	FEMALE

## 24. Region<sup>1</sup>

19%	OZARK
24%	KANSAS CITY AREA
12%	CENTRAL MISSOURI
24%	ST. LOUIS AREA
21%	EASTERN MISSOURI

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<sup>1</sup> **Ozark:** Barry, Barton, Bates, Benton, Camden, Cedar, Christian, Dade, Dallas, Dent, Douglas, Greene, Henry, Hickory, Howell, Jasper, Maclede, Lawrence, McDonald, Newton, Oregon, Ozark, Phelps, Pulaski, Shannon, St. Clair, Stone, Taney, Texas, Vernon, Webster, Wright; **Kansas City Area:** Andrew, Atchison, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Gentry, Grundy, Harrison, Holt, Jackson, Johnson, Lafayette, Livingston, Mercer, Nodaway, Platte, Ray, Worth; **Central:** Adair, Audrain, Boone, Callaway, Chariton, Clark, Cole, Cooper, Gasconade, Howard, Knox, Lewis, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Morgan, Osage, Pettis, Putnam, Ralls, Randolph, Saline, Schuyler, Scotland, Shelby, Sullivan; **St. Louis Area:** St. Louis City, St. Louis County; **Eastern Missouri:** Bollinger, Butler, Cape, Girardeau, Carter, Crawford, Dunklin, Franklin, Iron, Jefferson, Lincoln, Madison, Mississippi, Montgomery, New Madrid, Pemiscot, Perry, Pike, Reynolds, Ripley, Scott, St. Charles, St. Francois, Ste. Genevieve, Stoddard, Warren, Washington, Wayne