

To: Interested Parties

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

Date: September 6, 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 and opinions of the Missouri Plan – the process by which judges are chosen to serve on the Show-Me-State’s Supreme Court. The survey revealed that most Missourians know little about the way the justices on their highest court are selected. However, after being given a few facts and figures about the Missouri Plan, **voters rejected the status quo and demanded a more open, transparent process and a transfer of power away from the State Bar and into the hands of elected (and therefore accountable) officials.***

### **Veto Power: Missourians Declare Governor Should NOT be Restricted to AJC’s First Three Nominees.**

By a margin of nearly two-to-one, **voters imbued their chief executive with the power to decline the three Supreme Court applicants presented by the Appellate Judicial Commission and “ask for new nominees.”** Sixty percent of voters felt the governor should have this authority while only 33% believed he or she should be “required to select from the three names provided.” Furthermore, no less than 56% of members of all political parties agreed that the AJC should not be able to dictate to the governor who sits on the State Supreme Court.

### **Chief Justice’s Role In Selecting New Justices Viewed Skeptically by Voters.**

After learning that the sitting Chief Justice of the Missouri Supreme Court played an active role in selecting incoming judges, a majority (54%) of voters deemed this “improper” because “*the Chief Justice will be the new judge’s colleague and that might cause or appear to cause the new judge to feel pressure to vote the same was as the Chief Justice in future cases.*” This agreement was shared equally by Republicans, Independents, and Democrats (all 54%).

### **Show-Me-State Voters Forcibly Reject Current Culture of Secrecy in Selection Process**

In a series of three questions relating to the “closed-door” nature of the judicial selection process, voters made clear their distaste for the current system and called for more openness and free-flowing information. First, 72% of voters declared that “everyone, including the governor and the public” should have access to the facts and figures about all Supreme Court applicants – not just the three passed along to the governor by the AJC. In a second question, 70% deemed it “not appropriate” for the judicial commission to meet in secret when interviewing and discussing judicial nominees. Finally, in the strongest show of force, **80% of Missourians agreed that interviews of Supreme Court judicial candidates should be bound by the state’s comprehensive Sunshine Laws and open to the public.** In all three instances, sizeable majorities of Republicans, Independents, and Democrats concurred.

## By More Than Two-to-One, Voters Advocate a More Diverse Supreme Court Selection Committee.

Sixty-five percent of voters surveyed supported changing the balance of power of the Appellate Judicial Commission as other states have done to include “*more input from the Governor, state legislature, citizens and other interested parties and less input from lawyers and state bar associations.*” Once again, there was tri-partisan agreement as at least 61% of all members of all three parties took this position. Just one-quarter of respondents (25%) opposed such a shift.

### 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 August 29-September 4, 2007 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn from a list of registered voters in Missouri and potential respondents were screened to ensure 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.

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

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

**September 2007**

Field Dates: August 29-September 4, 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)

67% ALL OR ALMOST ALL ELECTIONS

24% MOST ELECTIONS

7% ABOUT HALF OF ALL ELECTIONS

2% ONLY LOCAL ELECTIONS BUT NOT CONGRESSIONAL AND  
PRESIDENTIAL ELECTIONS

1% I HAVE NEVER VOTED IN AN ELECTION (IF "NEVER VOTED" ASKED,  
"IS THE REASON YOU HAVE NEVER VOTED IN AN ELECTION DUE TO  
THE FACT THAT YOU WERE NOT OLD ENOUGH TO VOTE IN A PRIOR  
ELECTION?" IF "YES," CONTINUED.)

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

47% JUDGES ARE APPOINTED BY THE GOVERNOR OF MISSOURI  
AND CONFIRMED BY THE LEGISLATURE

39% JUDGES ARE NOMINATED BY A JUDICIAL COMMISSION AND  
APPOINTED BY THE GOVERNOR

1% OTHER (VOLUNTEERED)

12% DO NOT KNOW (VOLUNTEERED)

\* REFUSED (VOLUNTEERED)

**MISSOURI SUPREME COURT APPOINTMENT & MAKE-UP OF THE AJC**

As you may know, there are seven Judges 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 the Chief Justice of the Missouri Supreme Court, three members of the general public selected by a past or the present Governor, and three lawyers selected by the Missouri Bar, 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 choose when there is an opening on the Supreme Court.

- 2. Were you aware that the Missouri Bar, 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?

15% YES  
83% NO  
  
2% DON’T KNOW (VOLUNTEERED)  
- REFUSED (VOLUNTEERED)

- 3. 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 says it is proper for the Chief Justice of the Missouri Supreme Court to be one of the people picking the other judges on the Supreme Court because the Chief Justice knows what it takes to be a good judge based on years of experience and the new judge will be independent once seated on the Court and will not be pressured to rule the same way as the Chief Justice in future cases.

Person 2 says that it is improper for the Chief Justice of the Missouri Supreme Court to be one of the people picking the other judges on the Supreme Court because the Chief Justice will be the new judge’s colleague and that might cause or appear to cause the new judge to feel pressure to vote the same way as the Chief Justice in future cases.

(AND WOULD THAT BE STRONGLY OR SOMEWHAT AGREE WITH PERSON 1/2?)

**41% TOTAL PERSON 1 (NET)**  
18% STRONGLY AGREE PERSON 1  
23% SOMEWHAT AGREE PERSON 1  
  
**54% TOTAL PERSON 2 (NET)**  
27% SOMEWHAT AGREE PERSON 2  
27% STRONGLY AGREE PERSON 2  
  
4% DON’T KNOW (VOLUNTEERED)  
- REFUSED (VOLUNTEERED)

4. 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, state legislature, citizens, and other interested parties and less input from lawyers and state bar associations. 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 change?

**65% TOTAL SUPPORT (NET)**

25% STRONGLY SUPPORT  
40% SOMEWHAT SUPPORT

**25% TOTAL OPPOSE (NET)**

17% SOMEWHAT OPPOSE  
8% STRONGLY OPPOSE  
  
5% NEED MORE INFORMATION/ NO BASIS TO JUDGE  
(VOLUNTEERED)  
  
6% DON'T KNOW/UNSURE (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

5. As you may know, the Missouri Appellate Judicial Commission is currently considering nominees for a position on the Missouri Supreme Court. There were 30 applicants. The governor and public were only told the names of the three finalists and were not provided any details about the other 27 candidates or what was discussed in the interviews with the three finalists. Based on what I just told you, who should have access to the interview information: (READ AND ROTATED)

72% EVERYONE, INCLUDING THE GOVERNOR AND THE PUBLIC  
14% NO ONE EXCEPT THE APPELLATE JUDICIAL COMMISSION, WHICH  
CONDUCTS THE INTERVIEWS  
11% THE GOVERNOR, BUT NOT THE PUBLIC  
  
2% DO NOT KNOW (VOLUNTEERED)  
- REFUSED (VOLUNTEERED)

6. Please tell me which of the following opinions comes closest to your view. (ROTATED)

PERSON 1: It is appropriate for the judicial commission to meet in secret because the interviews of judicial candidates are like traditional job interviews and everything that is discussed behind closed doors should remain confidential.

PERSON 2: It is not appropriate for the judicial commission to meet in secret because it is in the peoples' interest to know what these potential judges said in their interviews and have that information made publicly available.

(AND WOULD THAT BE STRONGLY OR SOMEWHAT AGREE WITH PERSON 1/2?)

**29% TOTAL PERSON 1 (NET)**

15% STRONGLY AGREE PERSON 1  
14% SOMEWHAT AGREE PERSON 1

**70% TOTAL PERSON 2 (NET)**

17% SOMEWHAT AGREE PERSON 2  
53% STRONGLY AGREE PERSON 2

2% DON'T KNOW (VOLUNTEERED)  
\* REFUSED (VOLUNTEERED)

7. As you may know, the State of Missouri has a "Sunshine Law," which states: QUOTE: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy." ENDQUOTE. Do you think that (ROTATED) the interviews of judicial candidates should be open to the public and be bound by the Sunshine Law OR should the interviews of judicial candidates remain closed to the public and not be bound by the Sunshine Law?

80% OPEN TO THE PUBLIC AND BE BOUND BY THE SUNSHINE LAW  
17% REMAIN CLOSED TO THE PUBLIC AND NOT BE BOUND BY THE SUNSHINE LAW

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

8. If the Governor of Missouri does not think any of the three applicants that the commission selects are qualified, do you think that (ROTATED) he should be able to decline those options and ask for new nominees OR should he be required to select from the three names provided?

60% HE SHOULD DECLINE THOSE OPTIONS AND ASK FOR NEW NOMINEES  
33% HE SHOULD FOLLOW THE COMMISSION'S RECOMMENDATIONS AND BE REQUIRED TO SELECT FROM THE THREE NAMES PROVIDED

6% DO NOT KNOW (VOLUNTEERED)  
1% REFUSED (VOLUNTEERED)

## DEMOGRAPHICS

And now some questions for statistical purposes...

9. Which of the following categories best describes your age? (IF RESPONDENT SAYS DON'T KNOW OR REFUSES TO ANSWER SAY, "I only need a range, not a specific age.")

10%	18-24
15%	25-34
17%	35-44
22%	45-54
18%	55-64
18%	65+
-	REFUSED (VOLUNTEERED)

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

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

11. In politics today, do you consider yourself to be a (ROTATED) Republican, Independent, or Democrat? (If Republican or Democrat, ask: "Are you a strong (Republican/Democrat) or a not-so-strong (Republican/Democrat)?" (If Independent ask: "Which way do you lean towards, the Democratic or the Republican party?")

<b>35%</b>	<b><u>TOTAL REPUBLICAN (NET)</u></b>
16%	STRONG REPUBLICAN
12%	NOT-SO-STRONG REPUBLICAN
7%	INDEPENDENT LEANING REPUBLICAN

**15% INDEPENDENT**

<b>45%</b>	<b><u>TOTAL DEMOCRAT (NET)</u></b>
9%	INDEPENDENT LEANING DEMOCRAT
12%	NOT-SO-STRONG DEMOCRAT
24%	STRONG DEMOCRAT
2%	OTHER (VOLUNTEERED)
2%	DON'T KNOW/REFUSED (VOLUNTEERED)

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

**47% TOTAL CONSERVATIVE (NET)**

18% VERY CONSERVATIVE

29% SOMEWHAT CONSERVATIVE

**24% MODERATE**

**25% TOTAL LIBERAL (NET)**

17% SOMEWHAT LIBERAL

8% VERY LIBERAL

**1% LIBERTARIAN**

3% DON'T KNOW/REFUSED (VOLUNTEERED)

13. Gender

47% MALE

53% FEMALE

14. 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/Eastern:** 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, St. Louis, St. Louis City, Ste. Genevieve, Stoddard, Warren, Washington, Wayne