

Justice Not Politics:

Effective Messaging to Protect State Courts



About Us



Piper Fund, an initiative of the Proteus Fund, connects and resources grassroots organizations dedicated to protecting our democracy and envisioning reforms to make it more inclusive and representative. We break down silos to support community-led coalitions and help build dynamic movements that produce powerful change.



Goodwin Simon Strategic Research (GSSR) is a national public opinion research firm with special expertise in conducting research on emotionally and socially complex issues. GSSR's cutting-edge approach is built on decades of experience in polling, social and political marketing, and policy analysis and communications, and rooted in the latest research on neuroscience, emotion, psychology, cognitive linguistics, and narrative theory. This unique methodology is used to unpack underlying attitudes and emotional reactions that impact behavior and decision-making, and to develop effective message frameworks that enable deep attitudinal change. Amy Simon, John Whaley, Naser Javaid, and Yule Kim of GSSR conducted the research components of this project and along with Justin Adams contributed their thought leadership to the development of this messaging guide.

Is This Guide For You?

This messaging guide was developed to assist advocates working to protect the independence of state courts—including state supreme courts—and to advance reforms designed to protect that independence. We also believe this guide will be useful for many others, including strategists, communicators, and organizers who are trying to engage in more effective conversations about the court system and fight back against power grabs by other branches of government.

With this messaging guide, we hope to give everyone working passionately on this issue the tools to effectively communicate with potential supporters in ways that will engage them and help to expand our collective networks of activism. While this guide offers research-based recommendations on communications and messaging, the intent is not to tell people exactly what to say. The ultimate goal is to help advocates and allies build a deeper understanding of what will most effectively engage and move potential supporters. This way we can continue to develop and evolve messaging that is authentic to ourselves and our own goals.

It is important to remember that as human beings, we are all persuaded by emotions, values, moral arguments, and personal motivations. As we identify and engage with people that we know will be critical to reach with our messages, it can be easy to lose sight of a simple fact: they are human beings too. That is why it is important for us to use the value-based messaging we recommend in this guide as often as possible—when communicating with both potential supporters and with people outside of that group. This includes with the media, at events, during legislative testimony, and in many other places. Doing so will strengthen our ability to engage with a broad range of audiences—and increase the likelihood that they and others will adopt and use language we know is effective in building support.



What You Can Expect in this Guide:

- **Guide at a Glance** section to get quick information on key findings and recommendations.
- **Research-based messaging recommendations** to increase support for protecting the independence of state courts and reforms designed to help protect that independence.
- **Suggestions for creating effective messages** that are authentic and connect with our audiences on an emotional level.
- **Guidance on which messages are most effective** with different audiences.
- **Strategies to weave in facts, statistics, and policies** that are important for persuasion.
- **Messaging strategies** for effectively rebutting opposition messages.

Welcome

Welcome and thank you for your interest in our work and this messaging guide.

Today, we find American democracy is in a precarious position. People's trust in the systems that serve as the foundation of our governance—one of the most important indicators of a healthy democracy—is at a dangerously low level. Meanwhile, we find that bad or misguided actors relentlessly seek to erode the trust that remains, telling us we shouldn't put our faith in systems that are 'broken' or 'rigged.'

The complicated reality for those of us advocating to secure the independence of the court system is that we recognize that parts of the system are, in fact, in desperate need of reform. At the same time, we also recognize having broken windows doesn't mean you burn down your entire house—you fix the windows. That said, communicating this concept—that protecting the independence of courts and improving the court system are not mutually exclusive ideas—can be extremely challenging when faced with opponents who easily lean into fear and uncertainty to sow doubt and distrust.

So, how can we effectively build support for an independent judiciary while also communicating about ways we need to improve the system? The findings and research-based recommendations in this guide shine some promising light on effective messaging that resonates with our audience. The guide also highlights messaging that does not work or, importantly, may inadvertently place us within our opponents' frame—giving them a strategic advantage in the conversation.

What I find encouraging from the research is that while people's trust in our foundational systems may shift, the core values they hold—values such as equal access to justice, fairness, impartiality, the ability to have a fair hearing in court and resolve disputes, and the ability to decide cases objectively based on the evidence—have not shifted. This research shows us that our ability to tap into this shared set of values can serve as a powerful point of connection, providing opportunities to calm our audience's anxieties and fill their information gaps. Also, while this issue may be complex and esoteric in many ways, once our audience engages on the important role of state courts—and the importance and value of judicial independence, separation of powers, and checks and balances—they do want to do something to protect them. The research shows that when messaging is effective and addresses our audience's concerns, it enables them to be open to considering reforms that improve the courts, rather than measures that would cede their independence and control to other branches of government.

The opposition has spent decades and a tremendous level of resources to research, develop, and hone their communications. It has worked, and because of that we have a lot of catching up to do. I hope this research and this guide help to show that while behind, we are not out—that effective messages, delivered by a mix of messengers representing a wide variety of backgrounds and experiences, can engage our audience in an aspirational vision of what the courts should be, and can be—with their support.

A sincere thank you to our advisory group who provided input and feedback throughout each stage of the research. Their expertise and experience in the field helped to strengthen our research process and to develop this guide to be practical and useful for a broad range of advocates.



Kathy Bonnifield
Senior Program Officer, Piper Fund

Contents

Guide at a Glance	2
Introduction	4
Findings: Understanding Our Audience’s Mindset	7
Messaging Recommendations	10
Create an emotional connection by elevating shared values—before weaving in facts and policies	11
Utilize a mix of messengers with different backgrounds and life experiences	15
Show—don’t tell—our audience about the threats and harms facing state courts	18
Offer solutions for improving state courts	19
Tie the role of state courts to the important issues of our time	24
Emphasize how independent courts differentiate the U.S. from other nations	25
Sprinkle in key American ideals that resonate with our audience	26
Navigating the messaging landscape: Rebutting opposition messages	28
Looking Forward	31
Appendices	32
Why We Use Certain Words and Phrases in This Guide	32
Detailed Methodology	33

GUIDE AT A GLANCE

Guide at a Glance: Key Findings

People’s knowledge of state courts is typically quite limited. When our audience is asked to think about state courts, their responses are frequently shaped by their understanding of the federal court system.

That said, there is broad support among our audience for state courts to be independent and representative. At the same time, people do not always have clear ideas of what these concepts mean in relation to state courts—for example, what courts should be independent from, or whom they should be representative of.

Our audience believes it is important for state court judges to be accountable. That said, for some, accountable means facing the will of the people via elections. This belief makes these people more susceptible to opposition messaging arguments that prioritize accountability over independence.

There is broad support for state courts to reflect the communities they serve. However, the term diversity can trigger perceptions that diversity comes at the cost of qualifications, especially among conservatives.

Some people feel that state courts (and courts in general) do not always produce fair and just outcomes, and oftentimes make decisions that negatively impact people, their families, and their communities—especially communities of color. This feeling is especially prevalent among participants who are Black and participants who are Hispanic.

Support for judicial independence—and for reforms designed to protect judicial independence—is often contingent on people having an expectation that more independence will produce outcomes that are in line with their political and ideological leanings. Support for reforms to protect or advance judicial independence actually drops when participants perceive them to go against their ideological orientation.

Opposition messaging that undermines judicial independence is often persuasive—across race, gender, party, and political ideology. Fortunately, the research identifies a series of rebuttal messages that can effectively counter these opposition attacks on the judiciary.

GUIDE AT A GLANCE

Guide at a Glance: Key Messaging Recommendations



Create an emotional connection by elevating shared values—before weaving in facts and policies. An effective way to find common ground with our audience is by elevating the values that we share with them. When our messaging elevates these shared values—values that include equal access to justice, fairness, impartiality, the ability to have a fair hearing in court, as well as resolving disputes or deciding cases objectively based on the evidence—it allows us to create an emotional connection with our audience.



Utilize a mix of messengers with different backgrounds and life experiences. For our audience, diversity is multi-faceted. They want to hear from a wide range of messengers with different racial or ethnic backgrounds, of different genders and ages, with different life experiences, and with different professional backgrounds related to state courts.



Show—don't tell—our audience about the threat and harms that state courts face. When we show—rather than tell—about the threat and harms state courts face, we can activate a sense of urgency in our audience to protect or correct what they perceive to be an important institution before it is too late.



Offer solutions for improving state courts. Our audience can become anxious after they learn about the threats state courts face. Offering solutions, and showing how they address the problem and help achieve an aspirational vision of state courts, can calm their anxiety.



Tie the role of state courts to the most important issues of our time, including threats to our democracy and extreme political gerrymandering. Many people do not fully understand the role that state courts can play in helping to stop efforts by extremist politicians to take away people's rights and freedoms.



When possible, emphasize how independent courts help make the U.S. different from other nations. One important way we can tap into values around justice, fairness, and impartiality is by emphasizing how having independent courts sets the U.S. apart from many other nations.



Sprinkle in key words and phrases that resonate with our audience. Examples of top-performing phrases include *equal justice under the law* and *justice, not politics*.



Counter opposition messages by showing that state courts represent core concepts of American government. Rebuttal messages perform especially well when they illustrate how state courts exemplify checks and balances or the separation of powers—concepts that our audience often identify as being core to American government.

Introduction

Project Overview and Goals of This Research

Our goal in conducting this research was to better understand the importance of judicial independence among our audience, as well as their attitudes and beliefs related to holding courts accountable and reimagining justice in general. Equipped with this more in-depth understanding of how our audience thinks through these issues, we then sought to develop, test, and refine effective messaging and messenger strategies to build support for advocacy efforts, including reforms, that strengthen the independence of state courts.

Importantly—and distressingly—we have seen how some new opposition claims and messaging have been very effective across party, ideology, race, gender, and other key demographic subgroups. While our previous research indicates we have effective messaging about the importance of judicial independence in general, we recognized a critical need in this research to develop and test messaging that could effectively rebut our opposition’s new claims directly and explicitly—before they take hold among our audience.

The good news: our research finds that when our audience receives effective messaging, delivered by trusted messengers—especially when that messaging successfully fills knowledge gaps and corrects misinformation—we can increase our audience’s support for strengthening the independence of state courts. This messaging can also help to defang the power of our opponents’ messaging.



Creating Change: Slow Lane? Fast Lane? Tear Down the Freeway?

Advocates often wonder whether pursuing a specific near-term win undermines long-term goals. When it comes to social change, working for an incremental reform can feel like being stuck behind an overly-cautious driver going 10 miles per hour below the speed limit. Some advocates understandably want to move into the fast lane. Others may feel like the system is so broken that it’s time to tear down the freeway altogether.

Those are legitimate debates to have within the movement. Specifically, it’s important to ask which short-term changes lay the groundwork for longer-term change, and which ones are not worth all the hard work and resources they’d require to enact—or may even cause harm. Those discussions can lead to a do-no-harm bottom line that guides your strategic decisions about which changes to pursue and how best to pursue them.

There are times, however, when short-term success can lay the foundation for long-term change. An important question to ask when it comes to our work securing and strengthening the independence of state courts is this: Where do we want to be in 10 to 20 years? What do we want to show for all of our blood, sweat, and tears? If a short-term/long-term approach will allow us to make much-needed progress without causing harm, it’s worth considering as a pathway forward to accelerate the larger change we seek.

Who is Our Audience for This Messaging?

When we use the term “our audience” in this guide, we are referring to people in the United States who, at their core, believe in the fundamental elements of the U.S. system of government (e.g., the rule of law, separation of powers, and checks and balances) and who, at the same time, are largely unaware of threats to the judiciary or of issues more broadly related to judicial independence.

Unlike many other issues that are highly polarized, our audience does not perceive efforts to strengthen the independence of the judiciary as being driven by one party or another. For them, the messaging landscape on judicial independence remains generally undefined. This means that a large segment of people in the United States—across ideology, political party, race, ethnicity, and location—are very much available to us and our messaging. However, this also means that our audience is susceptible to opposition efforts to subvert judicial independence—especially as the opposition frequently co-opts fundamental language around checks and balances and accountability for their own political ends.

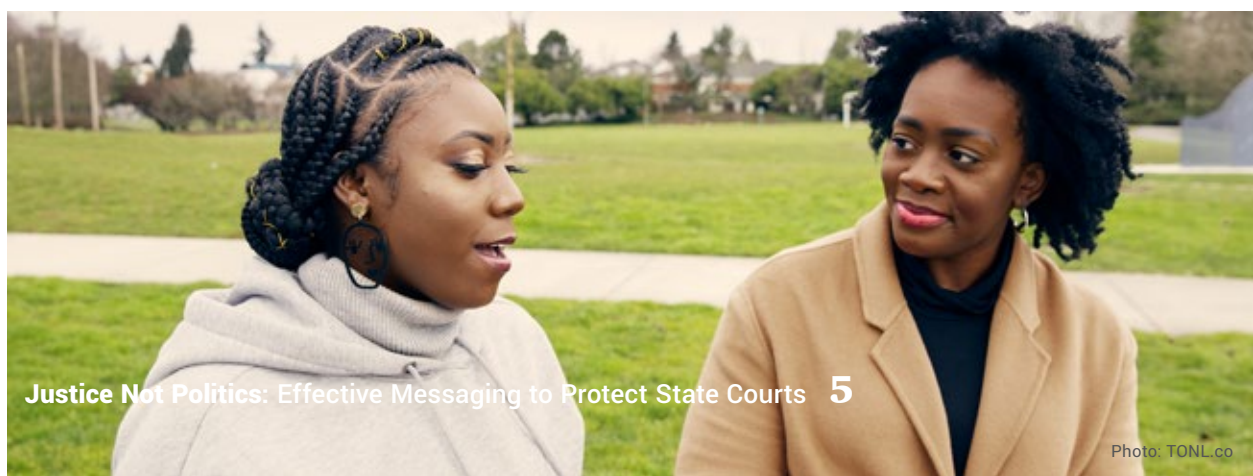
There is significant opportunity for us to help define this issue for our audience—and to force the opposition to debate on our terms. If we fail to do so, however, the opposition will no doubt step in and shape the public’s understanding of concepts like judicial independence or recusal for us, pushing us into a defensive messaging position.

Brief Research Methodology

The findings and evidence-based recommendations presented in this messaging guide are developed from in-depth qualitative and quantitative research, conducted from March to October 2021. This research methodology was intentionally designed to explore our audience’s mindset on judicial independence while also developing and testing messaging strategies in an iterative way to strengthen their effectiveness. The research components included:

- An asynchronous online focus group (sometimes called a ‘qual board’) among 30 civically-engaged voters from Arkansas, Ohio, Texas, West Virginia, and Wisconsin in March 2021.
- Three synchronous (‘live’) online focus groups among Black, Hispanic, and white women and men in June 2021.
- An initial online dial-test survey in the summer of 2021 among 1,625 registered voters from key segments across the country, including oversamples of Black, Hispanic and Asian Pacific Islander voters, to test video messengers and other messages in support of judicial independence.
- An additional online survey of 1,186 voters across the same key voter segments to specifically test the effectiveness of messages intended to rebut opposition messaging.

For a more in-depth look at our research methodology, see the appendix on page 33.



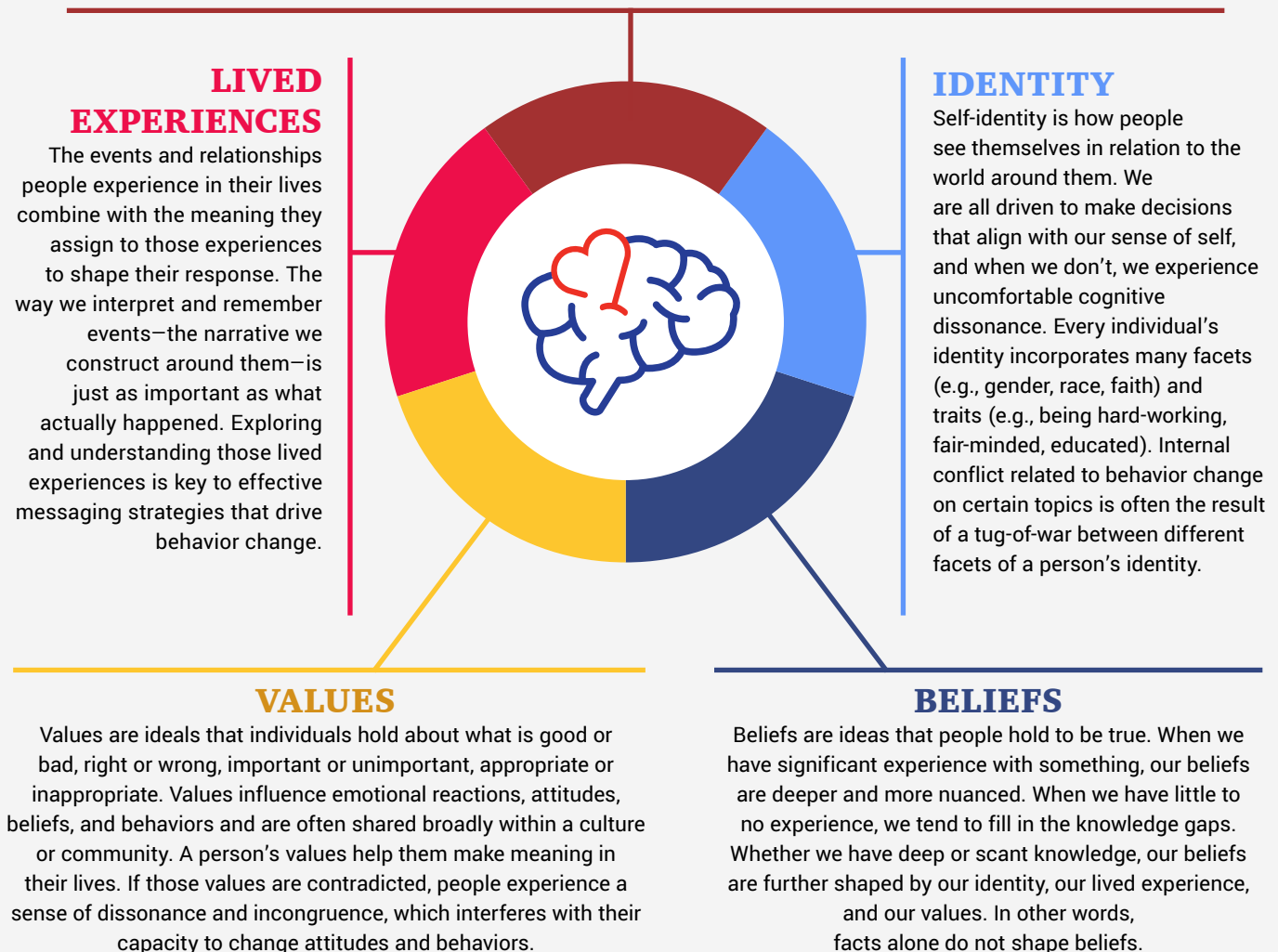
The Five Heartwired Factors

In 2017, with support from the David and Lucile Packard Foundation, Goodwin Simon Strategic Research and Wonder: Strategies for Good released a strategy guide called **Heartwired** that outlined a new, integrated approach to audience research, storytelling, and persuasion communication. We used this approach in conducting the research for this project.

In short, this research approach is based on the fact that human decision-making is influenced by how people are “heartwired”—the mind circuits and connections that tie together their emotions, identity, values, beliefs, and lived experiences. The heartwired research approach investigates these five factors and how they combine, and often collide, to shape people’s attitudes and behaviors. Before you jump into the research insights and recommendations, it may be useful to familiarize yourself with the five heartwired factors—each of which influence people’s thinking and decision-making.

EMOTIONS

The feelings that human beings have in response to the stimuli within and around us are complex. Our emotions typically drive our behavior and lead us to prioritize certain concerns. Given how we are neurobiologically wired, we tend to make decisions based on emotions and back them up with logic, especially when we feel urgency and need to make a split-second decision, and this all happens on a largely unconscious level.





Findings: Understanding Our Audience's Mindset

Mindset research provides a window into the life experiences, identity, beliefs, emotions, and values of the people we are trying to reach. It reveals the most powerful points of connection—those that begin with what is fundamentally true for our audience, rather than the worldview that we hold as advocates and allies who already understand and believe in our issues. By better understanding our audience's mindset, we can effectively meet people where they are by making emotional connections that help change hearts and minds. It allows us to develop messages that fit into our audience's already deeply held values, rather than trying to change their core values. Simply put, it means that our audience can come to the change themselves, rather than advocates trying to impose change upon them.

The following insights provide information crucial to understanding our audience's mindset—what they hold in their mind as they think about, discuss, and learn more about state courts, why having independent state courts is important, and how efforts to protect judicial independence can coexist with efforts to improve the state court system to ensure fair and impartial outcomes for everyone.

1. People's knowledge of state courts is typically quite limited. When discussing the courts, our civically-engaged audience is more likely to recall information they have seen, heard, or read about federal courts—especially the U.S. Supreme Court—than they are about state courts. In reality, state courts are seldom top of mind, and it was rare for participants in the research to accurately articulate or recall what is happening with courts in their states. For many participants, when they come to realize they

“

My assumption is that state courts are very important to the state's operation. In what way, I'm not sure.”

—White female, Somewhat Liberal Independent, WV

do not know as much about their state courts as they thought they did, they often express feeling embarrassed that they are not more informed.

2. There is broad support among our audience for state courts to be independent and representative.

Our audience finds the concepts of courts being independent and representative to be compelling. At the same time, our research found that participants do not always have clear ideas of what these concepts mean in relation to state courts—for example, what courts should be independent from, or whom they should be representative of.

3. Our audience believes it is important for state court judges to be accountable.

The idea that state court judges should be held accountable for poor or incorrect judicial decisions is one that most among our audience agree with. That said, for some participants in our research, being accountable means facing the will of the people via elections. Elections, rather than measures to increase accountability such as a judicial ethics review board, are the first—and often only—mechanism that comes to mind when research participants are asked to think about accountability. In addition, they want to be able to remove judges whose decisions they perceive to be egregious. This belief makes these people more susceptible to opposition messaging arguments that prioritize accountability over independence.

“

Representation is important to marginalized people.”

—Black female,
Moderate Democrat, AR

“

The court should be accountable to the people. Without accountable courts, they could do whatever they want to whoever they want. They would not be fair.”

—Black female, Moderate
Independent, WI



4. While there is broad support for state courts to reflect the communities they serve, the term *diversity* can be a trigger word, especially for conservatives.

Eighty-nine percent (89%) of respondents in our dial-test survey say it is important to them that their state courts, including the state Supreme Court, are made up of judges who are representative of the communities they serve. However, we see this broad agreement around the concept of diversity on the bench diminish when the actual word diversity is introduced. This is because some among our audience, especially those who identify as conservative, have pre-existing associations with the term. They associate diversity with quotas or other methods that would require judges to be a certain race or gender. In addition, some believe that increasing diversity on the bench would come at the expense of having judges who are highly qualified. In other words, some people believe that requiring diversity on the bench means unqualified people will become judges.

5. Some people feel that state courts (and courts in general) do not always produce fair and just outcomes, and oftentimes make decisions that negatively impact people, their families, and their communities—especially communities of color.

This feeling is especially prevalent among participants who are Black and participants who are Hispanic. They point to the racial disparities in criminal sentencing as an example of how courts do not treat everybody equally. Importantly, many participants—across race—also express concerns that efforts to increase judicial independence may reduce accountability and further exacerbate an already unfair situation.

6. Support for judicial independence—and for reforms designed to protect judicial independence—is often contingent on people having an expectation that more independence will produce outcomes that are in line with their political and ideological leanings. Our research found that support for reforms to protect or advance judicial independence drops when participants perceive them to go against their ideological orientation—for example, when liberal participants perceive more independence would allow state courts to produce more conservative outcomes.

“

I worry that people that are not qualified will try to apply and then claim that they are not being considered due to discrimination.”

–API female, Somewhat Conservative Republican, WI

“

While I do agree that they need the best people for the job, I would still like to see diversity.”

–Hispanic female, Moderate Independent, TX

“

What’s the ratio of Black men in prison for things white men get let go on? There is no equality in the court system.”

–White female, Somewhat Liberal Democrat, OH



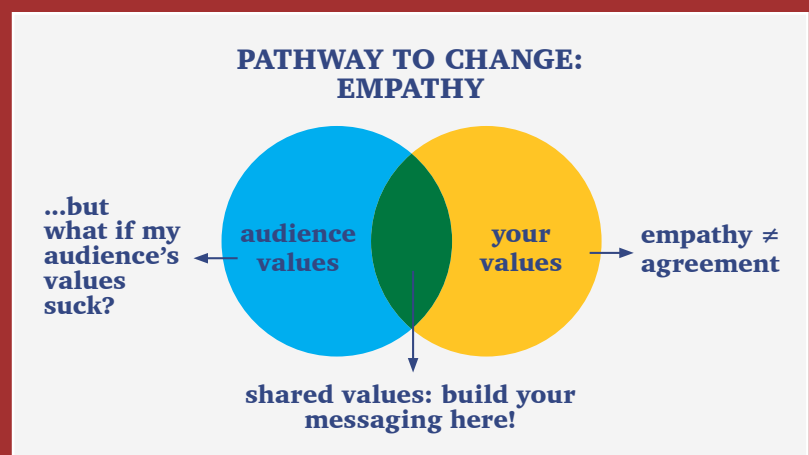
► Messaging Recommendations

The results of our research are promising: when our messaging is constructed to meet the needs of our audience, and when it is delivered by credible and compelling messengers, we can effectively bolster support for judicial independence. At the same time, we can also bolster support for important reforms that improve accountability and protect—or even strengthen—judicial independence.

* Finding the Venn Diagram of Shared Values

It's not uncommon for advocates to strongly disagree with some of the deeply-held values and beliefs of target audiences. This can lead advocates to explicitly and implicitly dismiss, argue with, or even ridicule perspectives that are different from their own. It can also lead both audiences and advocates to see themselves as having values that are fundamentally and irreconcilably at odds with one another. In some cases, that may be true. However, we cannot—at least in the short term—change our audience's core values any more than they can change ours.

To effectively engage our audience, we need to tap into the Venn diagram of values—the places where the values of our audience overlap with those of advocates. When we build our messaging on pre-existing shared values, we can foster familiarity and help our audience to put more weight on things that lead them to be supportive, rather than on the values or beliefs that interfere with support. This approach can also help our audience come to see the action we want them to take as being in line with who they already aspire to be and what they already believe and value.





Create an emotional connection by elevating shared values—before weaving in facts and policies

Why This Matters

For decades, the work of many social change makers centered around the idea that if you just got the “right” information in front of your audience it would lead them to consider an issue differently. In this model for change, the new information generates new attitudes on the issue, and these new attitudes ultimately lead to positive changes in people’s behavior.

Over time, brain science and audience research has revealed that this is not how human beings actually change. While many of us pride ourselves on being rational thinkers, human beings are driven primarily by emotion. Our emotional reactions happen first, instinctively, and then our brains work to quickly provide us with a rationale—the reasoning for feeling how we feel.

For us to generate positive change in our audience, we must first help to generate a new, different emotional reaction than the one they may currently experience when they think about our issue. Then, provide them with new information that supports the new reasoning. This ‘emotion first, reasoning second’ dynamic enables our audience to develop and hold on to new beliefs or attitudes—ones that are more supportive of our issue. Over time, these new, supportive attitudes equip them to behave differently, including taking positive action.

When it comes to strengthening the independence of state courts, our research found that an effective way to find common ground with our audience is by elevating the values that we share with them. When our messaging elevates these shared values—values

that include equal access to justice, fairness, impartiality, the ability to have a fair hearing in court, as well as resolving disputes or deciding cases objectively based on the evidence—it allows us to create an important emotional connection with our audience. This connection creates an opportunity because it enables our audience to be more open to what comes next in our messaging.

The core pillars of American democratic government, such as checks and balances and separation of powers, provide another important set of shared values that help to create an emotional connection with our audience. As we discuss later (see page 28), leaning into these values is particularly important when rebutting opposition messaging that tries to undermine the independence of state courts.



HOW HUMANS CHANGE THEIR BEHAVIOR

Emotions



Information



Attitudes



Behavior



What This Looks Like in Practice

One way to create an emotional connection is to provide an overarching and aspirational vision that is rooted in shared values and that situates state courts within a larger narrative about how the United States should continually strive to live up to its core values and ideals. The vision statement below provides a useful example. In our survey, the vast majority (88%) of survey respondents find this statement compelling. Importantly, we see positive reactions across key subgroups, including across race, gender, political ideology, and party identification.

Note that the statement elevates shared values such as fairness and objectivity early on, which helps to connect with and engage our audience. The aspirational vision also closes with shared values such as equal rights and access to justice—which helps to reconnect with our audience on an emotional level.



Although many people are unaware of the role state courts play in people's lives, state courts are where most of the legal business of American society is actually conducted. In all, approximately 95 percent of all the legal cases in the U.S. are decided in state courts.

The Founding Fathers designed America's court system to ensure the United States would be a nation based on the rule of law, and that courts at the federal and state level would be one of three co-equal branches of government to ensure there are checks and balances on power. People rely on their state courts to give everyone a fair hearing and resolve disputes objectively based on the evidence presented.

While it's true that America's state courts have not always lived up to this standard, it is imperative that we continually strive to improve and reform state courts so that everyone can rely on them to apply the law fairly and impartially and to protect people's rights and liberties.

For example, there should be systems in place to ensure state courts are free from outside influences from special interests and politicians, so they can deliver equal justice, and every person can receive a ruling that is independent, impartial, and fair.

America's democracy has evolved over time, expanding political participation to ensure every U.S. citizen can vote and enjoy the same rights, liberties, and protections. Courts have also evolved over time, and they need to continue to do so to ensure everyone has equal access to justice.

We tested another version of this message in the research using "The goal of America's court system is..." in place of the language on the Founding Fathers. Significantly fewer Republicans found the alternative message to be extremely compelling, while the difference among Democrats was minimal between the two versions.

This is a good reminder of how including language that may appeal to one segment of our audience can be helpful in making our messaging more effective with that segment, while at the same time not alienating others.



A Note on Evoking Aspirational American Values and Ideals:

Some advocates may feel uncomfortable using language that they perceive as glorifying or promoting American exceptionalism and “American values,” given the United States’ long history of systemic racism and its problematic actions both at home and abroad. At the same time, our audience believes deeply in what they see as core American values—values such as fairness, opportunity, justice, and freedom.

It is important to remember that as advocates we also believe in these values. We share a belief with our audience that our country should live by these values, even as we recognize that these ideals are not yet fully realized. That is what makes them aspirational American values.

Our research shows it is, in fact, possible for us to weave these aspirational shared values into our messaging and connect broadly with our audience—and to do so without alienating people within our audience who differ from each other in terms of their identity, lived experience, and beliefs. We invite you to think about how you might integrate some of these core American values into your communications.

Harnessing our audience’s emotional response is critical when we are trying to change their attitudes and behavior. So, while the aspirational vision statement can include references to specific policies, it should also paint a broad values-based future to help create an emotional connection with our audience.

Here is another messaging example that invokes shared values. Note how the statement not only opens with shared values—personal freedom and liberty—but also closes with the shared value that the law applies to everyone equally.



Independent state courts are often the only thing stopping state politicians and unelected bureaucrats from abusing their power and taking away our rights, property, and freedom. That’s why politicians and bureaucrats in states across the country are trying to interfere with state courts and put their own cronies on the bench. It is up to us to stand up against this lawless power grab and ensure that with a system of independent state courts, no one is above the law.



Acknowledging Our Audience's Concerns About State Courts

On the surface, acknowledging there are issues with the judicial system may feel like we are ceding ground to our opponents—or may even be making their case for them. However, during our research it became apparent that issues we know exist—like racial disparity in sentencing—loom large for many in our audience, and that they have deep concerns about them.

When we ignore problems with the current system, or use language like keep or maintain judicial independence, it can come across to these audiences that we are advocating for the status quo—including all the problems that exist within it—which decreases support. Using acknowledgment structures helps affirm our audiences' existing concerns and then helps them manage those concerns while also expressing support for judicial independence.

Here is an example from the aspirational vision on page 12: *While it's true that America's state courts have not always lived up to this standard, it is imperative that we continually strive to improve and reform state courts so that everyone can rely on them to apply the law fairly and impartially and to protect people's rights and liberties.*

In the table that follows, we outline a number of shared values and provide examples of how these have been expressed effectively in messaging. It is important to note that when we fail to include shared values such as these in our messaging, we cut off a critical pathway for connecting with potential supporters. It also means we leave these powerful values uncontested for the opposition to wield.

There are many ways to express these values effectively—and finding a way to do so that is both effective and authentic to your voice or a messenger's voice is important.

Shared Value	Examples of These Values Used Effectively in Messaging
Equal access to justice	<i>And that's what the courts strive for every day. To be nonpolitical, fair and impartial, and to administer justice equally for all citizens.</i>
Fairness, impartiality, the ability to have a fair hearing in court	<i>People need to feel that their court system is working properly, is working independently, is working impartially, and should be unaffected by personal biases for or against any party.</i>
Core pillars of American democratic government, such as checks and balances and separation of powers	<i>The Founders intentionally separated the judicial branch from the executive and legislative branches because they believed only an independent judiciary could prevent the other branches from overstepping and threatening our constitutionally-protected freedoms.</i>



Utilize a mix of messengers with different backgrounds and life experiences

Why This Matters

For our audience, diversity is multi-faceted. Many among our audience want to hear from people who have direct experience with state courts. This includes legal practitioners, such as judges or lawyers, but also advocates, legal scholars, and others who can credibly speak to how state courts impact everyday people, and how judicial independence is under threat in many states.

Unexpected messengers can be especially impactful and help to break through a crowded media landscape. For example, some members of our audience may connect more with messengers who are not legal experts—people who are more like them. These kinds of ‘familiar’ messengers help to calm any anxieties or concerns our audience may feel as they begin to consider our messaging—and this creates opportunities to engage them in deeper reflection on our issue. Our research also finds that it is important to feature messengers with different racial or ethnic backgrounds, of different genders and ages, and with different life experiences around state courts.

In our survey, Black and Hispanic respondents generally respond more favorably to video messengers of their race than messengers of other races. That said, overall, we find that reactions to messengers are very similar across racial subgroups. This suggests it is not always necessary to match the racial or ethnic identity of our messengers with the identity of our audience.

The results from the survey also suggest that while messenger characteristics are important, the message they are delivering is equally important.



Utilizing Diverse Messengers: Deconstructing Content from Our Research

One of the most effective messenger videos that we tested in our research is of an advocate who describes attempts by the legislature in her state to grab power away from the judiciary. The following is a transcript of that video. Along the side of the transcript, we have deconstructed the content of the video, noting a number of important insights, details, and references to parts of this guide where you can learn more.



Rosa Velázquez

I came to the U.S. when I was three years old. I was born in Mexico City. We made home in Southwest Arkansas, a little-bitty town of 6,000 people. I love it here. It's always been very family oriented where I'm at. As a Hispanic family, family unity is a big deal. It's just, it's been a great place to live.

Rosa leads with shared values, including community and family.

When I graduated college, I became a schoolteacher. It was the best experience of my life. And that's where I found what advocacy was. I had a student come up to me and say, "Ms. Rosa, I really want to go to college. I want to become a pediatrician." She was undocumented, but I knew that I needed to help her. I took it upon myself to go to the board of one of the colleges in Texas, and I told them how brilliant this girl was.

Here Rosa establishes herself as part of her community. Her job as a schoolteacher helps to establish her as a "regular person"—someone our audience can relate to and connect with.

We were told to step outside while they made the decision. It was the longest 15 minutes of waiting that I had ever had. But, then the secretary came out and she said, "We're going to give her the full ride." And that's when I knew the power of advocacy and the power of love and uplifting your community. Daniela is now on her way to become a pediatrician.

Once again, Rosa is lifting up the shared value of community. Her story of advocacy also demonstrates values of caring and love. All of these help further strengthen the emotional connection with the audience.

So, in my 10 years of advocacy, we know that state courts are really important because they play a huge role in the lives of everyday people.

It is important to show people the large role state courts play in everyday lives—especially given their limited knowledge of state courts.

[ON-SCREEN TEXT: State courts account for approximately 95% of all legal cases in the U.S. Most criminal trials, civil lawsuits, and family law cases (such as adoptions and divorces) take place in state courts.]

When I was working in the legislature here in the state of Arkansas, I saw a lot of legislators that were wanting to take power from every branch of government in the state and allow for the legislature to be the ultimate power holder. And that just shouldn't be. I know that even in conversations with some of these legislators, one of them said that they're doing this, or they're trying to strip the courts of their power, because they can. It's really dangerous.

While specifically about Arkansas, this anecdote helps paint a picture of what is happening in state legislatures around state courts, and also helps to make the issue more tangible and less abstract or theoretical.

I think people that are in front of the judges should have their fair day in court. I don't think special interests, politics, or money should be influencing the lives of these people.

In addition to lifting up the shared value of fairness, Rosa shows the harm that can happen, namely that people will lose the ability to have fairness in the courtroom.

I think my vision for courts here in Arkansas is just, it's justice and allowing for individuals and families to provide the judges with facts, and the judges can take on making those fair decisions with the facts that they're presented. It shouldn't be that special interests are coming in and influencing the judge's decision.

By talking about her vision for the courts, Rosa continues to lift up shared values and also shows hope, not just harm. Showing hope can be an effective method to increase support and move our audiences towards taking action.

I'm looking for fairness. I'm looking for equity when it comes to the courts here in the state of Arkansas.

Note how Rosa closes her aspirational vision by once again lifting up core values our audience share about state courts.

✦ Key Concept: Upstairs Brain/Downstairs Brain

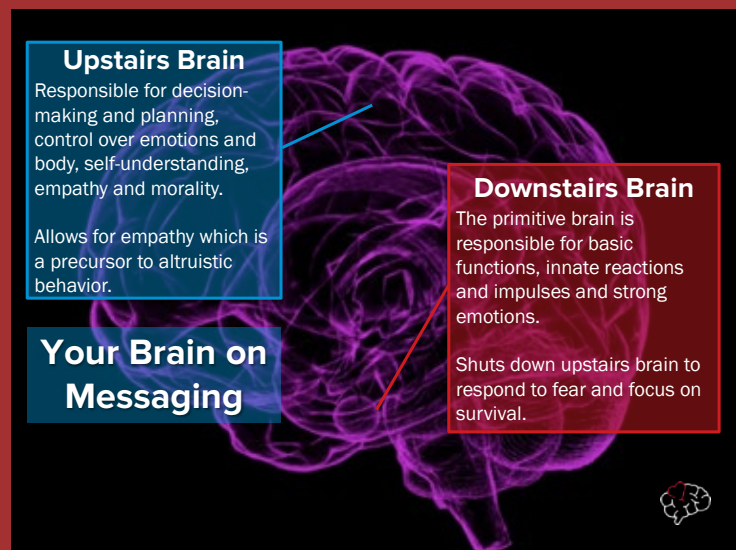
UPSTAIRS BRAIN

When human beings feel relaxed and comfortable, we tend to rely on our “Upstairs Brain”—the part of the brain that is responsible for our higher-order thinking, reflection, and empathy.

DOWNSTAIRS BRAIN

When something is unfamiliar or uncomfortable for us or when we feel conflicted, the amygdala—sometimes called the “Downstairs Brain”—kicks into high gear.

This is the part of our brain that regulates big negative emotions like fear, anxiety, and anger. Those emotions are like noise that can shut down our ability to hear thoughts from our thinking brain. As long as the amygdala is overly triggered, the brain is unable to process the messages we want our audiences to consider, which interferes with their ability to reflect, reconsider, and ultimately to change behavior. The audience remains emotionally stuck and conflicted.





Show—don't tell—our audience about the threats and harms facing state courts

Why This Matters

Many of our participants have little knowledge about the large role state courts play in everyday life. As such, when we say things like judicial independence or politicizing the courts, many people have little or no idea what that means. Their minds may go to something they already believe or have heard before—for example, that courts already are independent or that they already are politicized—or they may fill in the gaps on their own in ways that are not helpful to us.

Similarly, many among our audience are not very familiar with how courts work in their state—including how judges are selected or retained. For example, some participants do not realize they live in a state where state court judges are elected by popular vote, while others are not aware that their state supreme court justices are appointed.



When we show—rather than tell—about the threats and harms state courts face, we can activate a sense of urgency in our audience to protect or correct what they perceive to be an important institution before it is too late. Showing, not telling, means describing for people the concrete threats and harms courts face, and describing these harms in a vivid and evocative manner. Using descriptions that allow people to paint a picture of the harm in their own minds is far more effective than relying on a label or declarative statement merely asserting that these policies are bad or harmful.

What This Looks Like in Practice

Below is a short excerpt from a messenger video of a former state Supreme Court justice. This excerpt, which focuses on showing the harms, strongly resonates with our audience:



"One way in which politicians and special interests are attacking the fairness and impartiality of our court system is by threatening the jobs of judges and justices who work for you. You've all seen the political attack ads during election season. They can be intimidating, but judges are sworn to uphold the constitution and the rule of law, regardless of any ads. I'm speaking out because I'm increasingly concerned about the efforts of politicians and special interests to control your court system."

better
TRANSPAR(ENCY)

better
RECUSAL
RULES

PROTECT
SEPARATION
of POWERS

stronger
JUDICIAL
ETHICS



Offer solutions for improving state courts

Why This Matters

Effectively raising awareness about a significant problem inevitably produces anxiety in our audience. We therefore need to pivot quickly and be explicit in our communications about what the solutions should be, as well as how specific policies or reform proposals will help achieve our aspirational vision of state courts.

What This Looks Like in Practice

Throughout our research, we tested a series of proposals to ensure state courts are protected from political influence and special interests. These reforms resonate strongly with our audience, with a solid majority of survey respondents favoring **each** of the proposals tested in our survey. For example, over 80 percent of respondents favor establishing an independent ethics commission, adopting stronger recusal rules, and finding ways to help people easily and adequately evaluate state court judges. In addition, over 70 percent of respondents favor requiring state court judges to publicly disclose their financial assets, improving the judicial pipeline for underrepresented communities, and publishing information about the diverse experience, backgrounds, and characteristics of state court judges.

**These reforms
resonate
strongly with
our audience,
with a solid
majority
of survey
respondents
favoring each of
the proposals
tested in our
survey.**

Shared Value	Strongly Favor	Total Favor
<p>[ETHICS] States should establish an independent ethics commission that can hold state court judges accountable when they break the law, violate their oaths of office, or otherwise behave inappropriately. According to a recent report, many state court judges go unpunished for misconduct—including unlawfully jailing people, trying to influence jury deliberations, and having sexual relationships with attorneys who are arguing cases before them.</p>	57%	83%
<p>[RECUSAL] States should adopt stronger rules for when state court judges must recuse themselves from a case. Recusal is when a judge steps away from a specific case because they have a real or perceived conflict of interest in the outcome of the case. This would prevent, for example, judges being influenced by campaign contributions they receive from lawyers, companies, and other groups who appear in their courtroom.</p>	54%	84%
<p>[EVALUATIONS] States should implement ways to help people easily and adequately evaluate state court judges. These evaluations—which would be written in plain English and include things like judges’ rulings and their standing in the legal community—would help people as they are considering who to vote for in judicial elections.</p>	48%	82%
<p>[DISCLOSURE] States should require state court judges to publicly disclose their financial assets and activities—including campaign contributions they receive and campaign spending on their behalf. This information would make it easier to identify a judge’s potential conflict of interest in a case.</p>	47%	78%
<p>[PIPELINE] States should work to make sure more state court judges have diverse experiences, backgrounds, and characteristics to ensure state court judges are representative of the communities they serve. One way to do this is to develop programs for qualified but currently underrepresented attorneys and law students to learn about the process to become a judge.</p>	43%	76%
<p>[DIVERSITY] States should be required to collect and publish information about the diverse experiences, backgrounds, and characteristics of state court judges. This would help people evaluate how well state courts are made up of judges who are representative of the communities they serve.</p>	40%	76%

Note how each proposal describes the specific problem being addressed, proposes a concrete solution, and illustrates how the proposed reform will address that particular problem. The statements also use plain language that people will be able to easily understand, regardless of how familiar they are with state courts.

We recognize that different dynamics exist around state courts in each state: Advocates are dealing with different landscapes, different balances of power, and are often tackling different issues. While the reforms you are working on will likely be specific to your state's context, the messaging around those reforms should:

1. Identify the problem using plain language;
2. Illustrate how your proposal will address that problem; and
3. Connect your proposal to a larger aspirational view of state courts.





Show—Don't Tell—About Problems and Solutions

Another incredibly effective messenger video features an attorney and former judge who describes how campaign contributions pose a threat to fair and impartial courts. The following is a transcript of that video. Along the side of the transcript, we have deconstructed the content of the video, noting a number of important insights, details, and references to parts of this guide where you can learn more.



Fanon Rucker

My name is Fanon Rucker. I have two children. I'm a lawyer at the Cochran Firm, and I spent almost 13 years as a trial judge, presiding over several hundred thousand cases, every day. So, I grew up in Gary, Indiana in what is commonly referred to as, as the hood, the cut, the ghetto. My parents were very active in the civil rights movement, and they implanted in me to recognize that the world isn't fair, but it will treat everyone fair if they make sure that it does.

I handled the types of cases that helped to shape people's image of the court system—of whether it was fair. I loved it because it was truly the people's court, and it was the one where most often one of us could appear as a witness, as the defendant, or be there to support a family member or a friend or a coworker.

The judicial branch is under threat because of the influence that money has in our elections. At least in Ohio and in some other locales, in most other states, judges are elected to their positions. The other thing that, that can, and probably should be done, to help eliminate it, is that there is automatic recusal. That means that those who practice in the courts would either be prohibited from donating money, which could make it more difficult for those who are running, or that those who are then still donating money, simply can't practice in front of the judges who they give money to.

So, let me first say that in a life, or a professional life of trial practice, I appeared in front of a lot of judges before I became one. And the best judges that I saw, and I've reflected on this over the years, the best judges I saw were those whose professional and personal backgrounds reflected a broad array of experiences.

Throughout the entire opening, Fanon is lifting up shared values, situating himself in his community, and also is establishing himself as a real person our audience can connect with.

Here, Fanon helps to contextualize state courts in people's lives by lifting up various ways someone may be involved in a court case. Note how he also lifts up shared values of family, friendship, and caring when he discusses how someone may be in a courtroom to support other people in their lives.

Fanon clearly identifies a problem impacting state courts.

Few people fully understand terms such as "recusal." As such, it is important to explain concepts in ways that are accessible and easy for lay people to understand. Fanon does an excellent job of explaining what recusal is and the ways in which automatic recusal can help ensure courts are fair and impartial.

By expanding on his life experiences with state courts, Fanon is helping to further establish his credibility with the audience.

And so, what can we do? We can be more deliberate about seeking, recruiting, individuals whose professional and personal experiences are diverse, are more diverse than linear. But we have to be deliberate about making sure that those who we reach out to when we recruit are, in fact, those individuals who, by life experience and professional experience, reflect that, that qualification, reflect the fact that they are in fact highly qualified because they try cases and they, and they've been outspoken in the community, and they've demonstrated the highest commitment to our ethical principles.

Fanon has a specific idea about how to improve the diversity of state court judges and emphasizes the need for judges to be qualified, which helps make the issue more concrete for our audience. Note too how he lifts up shared values when discussing the things that help make a judge qualified for the bench.

Now I'm in a unique position, because I've served as a prosecutor, because I've served as a civil rights lawyer, because I've actually been on the plaintiff's side of the table and on the defense side of the table in civil cases, and represented public officials and municipalities, and then served for 13 years in an unbiased position where it wasn't just aspirational, but it was everyday intentional—and deliberate. And so now I think it's important that others look at what we're doing, how we're doing it, and how we can possibly do it much better.

After reaffirming his lived experiences with state courts, Fanon shifts towards an aspirational future. While this implicitly acknowledges shortcomings of state courts, it ends on a hopeful note with the possibility things can be done better in the future.

The Power of Storytelling

Stories are uniquely human. No other species on the planet is wired for stories in the way that we are. Research has shown us that stories are also uniquely powerful at shaping attitudes and influencing behaviors on tough social issues. In fact, developing the right storytelling strategy is one of the most important strategic tools in a heartwired strategy.

The right story facilitates what social scientists refer to as 'narrative transport,' when people are so caught up in a narrative that they feel they are a part of it or strongly relate to the story's characters or experiences. Being transported into a story means you are deeply immersed in the narrative. It also means you are most likely to empathize with a character in a story—and see the world through their eyes.

In his 2012 book, *The Storytelling Animal: How Stories Make Us Human*, Jonathan Gottschall describes this phenomenon:

When we read nonfiction, we read with our shields up. We are critical and skeptical. But when we are absorbed in a story, we drop our intellectual guard. We are moved emotionally, and this seems to leave us defenseless.

In other words, we will never win on our issues with facts alone.

At the same time, not all stories are effective. What research has shown is that people are most likely to be persuaded by the right story—a heartwired story. Heartwired stories feature familiar and relatable characters and create a shared sense of identity, lived experiences, values, and beliefs. Therefore, developing stories that are most effective as persuasion tools requires first understanding the identity, lived experiences, values, and beliefs of your target audience.



Tie the role of state courts to the important issues of our time

Why This Matters

Many people do not fully understand the role that state courts can play in helping to stop efforts by extremist politicians to take away people's rights and freedoms—including the right to vote and have that vote be counted, the right to fair representation, the right to reproductive freedom, and workers' rights. State courts also can influence public health policies to deal with global pandemics and environmental policies to address the ravaging effects of climate change.

What This Looks Like in Practice

Below is an effective message we tested in our survey. This message highlights the important role state courts play in protecting the pillars of our democracy:



The last few years have demonstrated how fragile our democratic republic can be when confronted with a global pandemic, civil unrest, and extreme political partisanship. Fortunately, state court judges have stepped up during this difficult time to protect the sanctity of our elections and stop radical politicians from taking away our rights and freedoms. Our democratic republic needs independent state courts now more than ever.

Here is another effective message tested in our survey that highlights how courts are a defense against the extreme political gerrymandering that happens in many states:



State courts have become the last line of defense against political gerrymandering and other partisan efforts to undermine our elections. When establishment politicians and their political machines try to manipulate voting districts to win elections, only state courts can stop them from moving forward. We need independent state courts to combat the most extreme excesses in our political parties.

For additional recommendations on how to effectively rebut opposition messages, please see page 28.



Emphasize how independent courts differentiate the U.S. from other nations

Why This Matters

As discussed, it is important for us to connect with our audience through values that we share—values that include justice, fairness, and impartiality. For many, these are seen as fundamental values of being an American—they are part of the fabric of this nation and something our audience is often very proud of.

One important way we can tap into these values is by emphasizing how having independent courts sets the U.S. apart from many other nations.

While we do not suggest romanticizing American exceptionalism (see ‘A Note on Evoking Aspirational American Values and Ideals’ on page 13), leaning into the pride many among our audience feel from living in the United States and being “American” can be powerful—and effective—as a messaging frame.

What This Looks Like in Practice

The message below resonates strongly with a majority of respondents in our survey:



In some countries, courts aren’t independent from the other political branches of government. As a result, those political branches pursue their own self-interest without any oversight or consequence. Having an independent judicial branch—both at the state and federal level—is a cornerstone of America’s government and way of life.

Additional messaging recommendations that are especially effective at rebutting opposition messages are discussed in the following section.



Photo: @Planetnehemiah/nappy.co



Sprinkle in key American ideals that resonate with our audience

Why This Matters

While many in our audience have a limited knowledge of state courts, they nevertheless hold a deep appreciation for the fundamental ideals of American government captured in phrases such as checks and balances and equal justice under the law. Importantly, the research reveals that these ideals and phrases resonate even more strongly for our audience as they engage on topics related to judicial independence. As such, we encourage you to incorporate these ideals and phrases into your messaging wherever possible.

What This Looks Like in Practice

In our survey, we gauged how favorable respondents feel about some key American ideals—both at the beginning and end of the survey. Across nearly every audience subgroup, respondents' favorability of each ideal increased significantly over the course of the survey as they heard and saw more messaging in favor of judicial independence. The ideals tested in the survey are shown in the table below. At the beginning of the survey, for example, 67 percent of respondents reacted favorably to the phrase equal justice under the law, and 29 percent had a very favorable reaction to that phrase. At the end of the survey, 78 percent of respondents reacted favorably to that phrase. Importantly, the proportion of respondents who feel very favorably towards it jumped from 29 to 50 percent. This pattern was repeated for each of the phrases, with the proportion of respondents who feel very favorably towards each phrase jumping by at least 20-percentage points after being exposed to messaging around judicial independence.

Favorability of Key American Ideals

Ranked by Final Vote— Total Favorable	Total Favorable		Very Favorable	
	Initial Vote	Final Vote	Initial Vote	Final Vote
Equal justice under the law**	67%	78%	29%	50%
Justice, not politics**	71%	78%	27%	50%
Fair, diverse, and independent courts**	69%	77%	27%	47%
Equal justice*	68%	75%	27%	48%
Fair and impartial courts*	66%	74%	23%	46%

*Denotes Split Sample A, **denotes Split Sample B

While the favorability of each phrase increases as respondents are exposed to more of our messaging, some starkly different feelings exist toward specific phrases among different subgroups. For example, more than half (52%) of conservatives feel very favorable about the phrase *fair and impartial courts* at the end of the survey compared to four-in-ten (40%) moderates. Although there are not any phrases that should be avoided outright in your communications based on these results, you may wish to consider using different phrases based on the target audience for your messaging.

Favorability of Select Messaging Terms By Party ID & Ideology

Please say how warmly or coldly you feel about each of the following terms regarding the courts and judicial system in your state. Please use a scale from zero to ten, where zero means you feel very coldly or unfavorably and a 10 means you feel very warmly or favorably. You can choose any number from zero to ten.

Ranked by Overall <u>Initial</u> Vote	Initial Vote: Very Warm/Favorable (9-10)						
	Overall	Democrats	Republicans	Independents	Liberals	Conservatives	Moderates
Equal justice under the law**	29%	29%	36%	21%	32%	28%	27%
Equal justice*	27	29	29	21	29	28	24
Fair, diverse, and independent courts**	27	27	31	22	31	23	25
Justice, not politics**	27	25	35	22	30	26	23
Fair and impartial courts*	23	23	26	19	24	27	18

Ranked by Overall <u>Final</u> Vote	Final Vote: Very Warm/Favorable (9-10)						
	Overall	Democrats	Republicans	Independents	Liberals	Conservatives	Moderates
Justice, not politics**	50%	49%	50%	51%	49%	52%	49%
Equal justice under the law**	50	50	51	50	49	52	50
Equal justice*	48	51	46	42	52	46	45
Fair, diverse, and independent courts**	47	49	46	44	48	46	47
Fair and impartial courts*	46	48	46	39	46	52	40

*Split Sample A, n=809; **Split sample B, n=815

Favorability of Select Messaging Terms By Race & Gender

Please say how warmly or coldly you feel about each of the following terms regarding the courts and judicial system in your state. Please use a scale from zero to ten, where zero means you feel very coldly or unfavorably and a 10 means you feel very warmly or favorably. You can choose any number from zero to ten.

Ranked by Overall <u>Initial</u> Vote	Initial Vote: Very Warm/Favorable (9-10)								
	Overall	White Women	White Men	Black Women	Black Men	Hispanic Women	Hispanic Men	API Women	API Men
Equal justice under the law**	29%	32%	36%	26%	23%	22%	25%	16%	29%
Equal justice*	27	26	34	21	14	19	29	34	16
Fair, diverse, and independent courts**	27	35	29	19	22	22	21	24	17
Justice, not politics**	27	33	32	20	17	14	29	21	21
Fair and impartial courts*	23	24	29	14	10	23	23	30	15

Ranked by Overall <u>Final</u> Vote	Final Vote: Very Warm/Favorable (9-10)								
	Overall	White Women	White Men	Black Women	Black Men	Hispanic Women	Hispanic Men	API Women	API Men
Justice, not politics**	50%	54%	56%	47%	52%	47%	44%	38%	46%
Equal justice under the law**	50	54	54	46	50	53	56	43	50
Equal justice*	48	48	51	38	53	44	50	49	43
Fair, diverse, and independent courts**	47	52	49	48	50	47	49	38	43
Fair and impartial courts*	46	50	47	36	53	39	43	49	47

*Split Sample A, n=809; **Split sample B, n=815



Navigating the messaging landscape: Rebutting opposition messages

Why This Matters

A critical—and concerning—finding from our research is how many among our audience find messaging from opponents to be compelling. In fact, **a majority of survey respondents agree with each of the opposition messages tested**. Importantly, the agreement is seen **across key segments of our audience, including across race, gender, party identification, and political ideology**.

The message that follows is the most-damaging opposition message tested in our survey. This message focuses on so-called activist judges and begins by co-opting the principle of checks and balances—a fundamental value for many among our audience. It then asserts that state court judges often overstep their authority and proposes a straightforward solution rooted in the very concept it begins with—having the state legislature check and balance the judge by disciplining them.

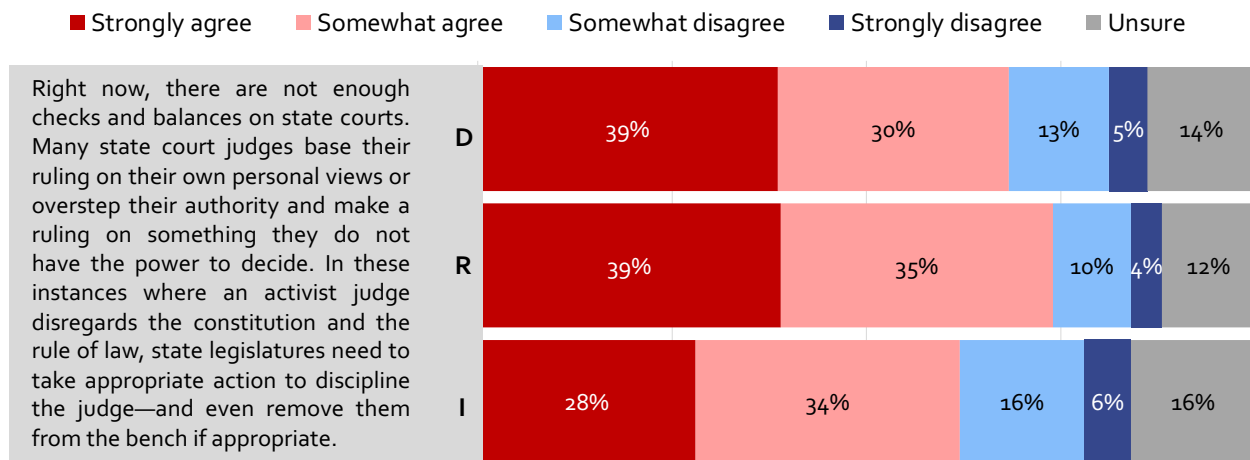


Right now, there are not enough checks and balances on state courts. Many state court judges base their ruling on their own personal views or overstep their authority and make a ruling on something they do not have the power to decide. In these instances where an activist judge disregards the constitution and the rule of law, state legislatures need to take appropriate action to discipline the judge—and even remove them from the bench if appropriate.

Unfortunately, fully two-thirds (68%) of respondents *agree* with this opposition statement, including more than one-third (35%) who *strongly agree*. Notably, both Democrats and Republicans express high levels of agreement.

Opposition Message—Agreement by Party ID

Here is a statement people have made raising concerns about state courts. Please indicate whether you agree or disagree with the statement.



D=Democrats, R=Republicans, I=Independents

Fortunately, our research identifies an effective rebuttal message that can counter this *activist judge* opposition message—as well as effective rebuttal messages for the other three opposition messages that we tested.

The following chart shows the opposition messages included in our survey, along with what was found to be the most effective rebuttal to each. Note how each rebuttal message leans into a principle that many in our audience feel is core to American democracy—e.g., that our government is a system of laws, the importance of checks and balances—and highlights how the opposition message runs counter to those core American principles. In addition, the first rebuttal message begins by implicitly acknowledging the original critique—that judges may overstep their bounds—and clarifies that a system already exists for “checking” this behavior. Then, it lifts up how state legislatures may misuse this greater authority for political purposes—something our audiences are strongly opposed to—and closes with a proposal to make the current system more transparent and accessible for everyday people. For the last opposition message shown, two rebuttal messages perform equally well.

Opposition Message	Most Effective Rebuttal
<i>Right now, there are not enough checks and balances on state courts. Many state court judges base their ruling on their own personal views or overstep their authority and make a ruling on something they do not have the power to decide. In these instances where an activist judge disregards the constitution and the rule of law, state legislatures need to take appropriate action to discipline the judge—and even remove them from the bench if appropriate.</i>	<i>Every state already has a mechanism to hold judges accountable and discipline them when necessary. Instead of giving state legislatures—who might remove judges purely for political reasons—more power over state courts, states should make their systems for disciplining judges more transparent and make it easier for everyday people to find out if a judge has been disciplined for misbehavior.</i>

Opposition Message	Most Effective Rebuttal
<i>Too often, state court judges let their personal bias or political opinions determine their rulings—rather than relying on the rule of law. In these instances, elected officials, such as the governor or state legislators, should be able to reject a decision handed down by a state court.</i>	<i>One of the judiciary’s most important roles in our system of checks and balances is ensuring that elected officials follow the law. If elected officials could pick and choose which court rulings they will or will not follow, they would effectively be above the law.</i>
<i>State courts should not be trusted to reform themselves. State legislatures, which serve as a check and balance on state courts, are the ones who should have oversight of state courts and implement reforms as needed to ensure the courts are functioning properly and within their authority.</i>	<i>Our Constitution establishes a set of checks and balances for a reason: our democracy is strongest when each branch of government—legislative, executive, and judicial—holds about the same amount of power. Trusting politicians in state legislatures to reform the courts would throw the delicate balance of power out of whack. State courts must remain independent from the two political branches in order to play their proper role in our system of checks and balances.</i>
<i>State court judges rarely look like the populations they serve, and therefore are often out of touch. On the other hand, elected officials, like the governor or state legislators, are directly accountable to the voters and communities who elected them. Elected officials should be able to reject state court judges’ decisions when those decisions harm local communities.</i>	<p><i>Our government is a system of laws, and if politicians want to overturn a decision, they need to follow the rule of law and pass new legislation. We can’t allow anyone—especially politicians—to cherry-pick the court rulings they feel like following and ignore the rest. That would completely undermine the rule of law and hurt all of our communities.</i></p> <p>OR</p> <p><i>It’s true that not all state courts are made up of judges who are representative of the communities they serve. However, we cannot solve this problem by allowing politicians to reject state court judges’ decisions. Instead, states should take steps to ensure state courts have qualified judges with a wide array of experiences and backgrounds that allow them to decide a case based on the facts—not the influence of special interests and lobbyists. We need justice, not politics, from our state courts.</i></p>

Although the final rebuttal message shown does not explicitly rely on a frame of checks and balances or separation of powers, it taps into another important component for our audience—namely that facts rather than politics should determine what happens in court proceedings—and incorporates an ideal (*justice, not politics*) that resonates with many in our audience.

In addition, we find that rebuttal messages perform especially well when they illustrate examples of checks and balances or the separation of powers—concepts that our audience often identify as being core to American government (refer back to page 13 for more on incorporating key American ideals that resonate with our audience).

Looking Forward

Thank you for reading this messaging guide. We hope you find the insights and recommendations valuable and helpful in your own work. We are encouraged by the findings from this research, which show that a path forward exists to build support for judicial independence—including support for reforms that would improve state courts—and to push back on opposition messaging we know resonates with our audience.

That said, time is of the essence. The messaging space around state courts is not yet well defined. If we do not invest in robust strategic communications and effective messaging strategies to engage our audience and build support for judicial independence, the opposition absolutely will work to undermine it. If the opposition is successful, it will put us on the defensive instead of forcing the opposition to engage on our terms. Thinking more broadly, failing to adequately compete in this messaging space would assist the opposition in their authoritarian efforts to increase their political power, putting American democracy in even-graver danger.

We look forward to working with our colleagues and other partners to put the learnings from this research into action and to further explore the opportunities it presents. ✱

Appendices

Why We Use Certain Words and Phrases in This Guide

In this guide, the terms used to describe people's race or ethnicity reflect the terms that focus group participants and survey respondents, themselves, use to describe their race and/or ethnicity. How people choose to describe their race or ethnicity can vary from individual to individual based on many factors such as geography, age, education, political perspective, country of origin, history, and culture, as well as social influences from friends, peers, and family. These terms are often different from movement terminology or language that advocates may sometimes use. For example, while many progressive organizations use the gender-neutral "Latinx" to describe people's racial or ethnic identity, strong majorities of participants in surveys and focus groups asking about self-description do not—preferring Hispanic, Latino, or Latina. In fact, a [December 2019 survey by the Pew Research Center](#) found that only three percent of self-identified Hispanic or Latino respondents use "Latinx" to describe themselves. Recent [data from Gallup](#) also shows that while most Black and Hispanic people do not have a preference in how they choose to identify, for those that do, the terms 'Black' and 'Hispanic' are the most preferred, with only five percent choosing Latinx.

You will also note that we choose to capitalize Black as a racial identity, while not doing so for white. This may conflict with some style guides that you are familiar with, which suggest the use of a lowercase alternative. Language, like all living things, evolves. These decisions are reflected in a post from the Columbia Journalism Review, "[Black and white: why capitalization matters](#)." In their post, CJR quotes Luke Visconti of DiversityInc: "[M]any Black people describe themselves simply as being 'Black,' and this reality is reflected in a body of literature, music, and academic study." As you develop content that includes people, families, and communities, consider making it a practice to ask those who are featured how they prefer to describe their race or ethnicity, legal status, etc., and then reflect that preference in communications.

To read and learn more about using inclusive language, check out this helpful resource, [Writing about Race, Ethnicity, Social Class and Disability](#). While it may not answer every question, it offers good guidance—including this important piece of wisdom: "Language is fluid. As a writer, understand and take responsibility for the language choices you make." [The Conscious Style Guide](#) also includes a variety of news stories and blog posts with people weighing in with their opinions about how to communicate thoughtfully about racial and ethnic identity. Another resource is the [Diversity Style Guide](#), a project of the Center for Integration and Improvement of Journalism.

Detailed Methodology

Mindset Research

- Asynchronous online focus group (or “qual board”) among 30 civically-engaged voters, ages 20 - 74, from geographic mix within five states (Arkansas, Ohio, Texas, West Virginia, Wisconsin), over four days (March 24, 25, 26, and 30)
- Participants include:
 - » 16 females, 14 males
 - » 21 white, 4 Black, 4 Hispanic, and 1 API participants
 - » 7 Democrats, 11 Republicans, 12 Independents
 - » 6 somewhat liberal, 11 moderate, and 13 somewhat conservative participants
- Note: very liberal and very conservative participants are intentionally excluded from the focus group

Initial Persuasion Research

- Three synchronous focus groups (via Zoom), one each among Black, Hispanic, and white participants, from six states (Arkansas, Florida, Kansas, North Carolina, Ohio, Texas) in June 2021 to explore more about audience attitudes towards state courts and to test initial persuasion messenger videos.
- Focus-group moderators are of the same race and ethnicity as participants to help ensure cultural competency and reduce social-desirability bias.
- Participants include:
 - » 12 females, 12 males
 - » 8 white, 9 Black, 7 Hispanic participants
 - » 11 Democrats, 5 Republicans, 8 Independents
 - » 9 somewhat liberal, 11 moderate, 4 somewhat conservative participants
- Note: very liberal and very conservative participants are intentionally excluded from the focus group

Dial Test Survey Research

- Online survey of n=1,625 registered voters from key segments across the country conducted between July 30th and August 7th, 2021, including:
 - » n=840 white respondents
 - » n=152 API respondents
 - » n=302 Black respondents
 - » n=30 respondents of mixed/another race
 - » n=301 Hispanic respondents
- Data are weighted slightly to reflect the U.S. electorate; margin of error is +/- 2.4 percentage points for n=1,625; larger for subgroups

Rebuttal Survey Research

- Online survey of n=1,186 registered voters from key segments across the country conducted between October 18th and October 25th, 2021, including:
 - » n=564 white respondents
 - » n=199 API respondents (base + oversample)
 - » n=203 Black respondents (base + oversample)
 - » n=20 respondents of mixed/another race
 - » n=200 Hispanic respondents (base + oversample)
- Data are weighted slightly to reflect the U.S. electorate; margin of error is +/- 2.8 percentage points for n=1,186; larger for subgroups



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