

Communicating About Our Ideal Justice

In 2016, People For the American Way Foundation and its allies began a process to understand and define the ideal Supreme Court justice. Absent a specific nomination fight, the intent of this research project was to identify the language and approach that best connects with voters, advocates, and legal scholars to make our messaging stronger, more consistent, and thus, more powerful.

This messaging does not alter any of our underlying values or ideas. Rather, it enables us to access and amplify those values with language we know resonates among moderate and liberal voters. By using this messaging, we can demonstrate that our progressive organizations stand together, united in our fight for an ideal justice, so that our individual voices become louder and more forceful. In addition, a new lexicon to define the judges we want and don't want will provide progressives the same tools the right has wielded to push Republican politicians to nominate judges in line with their ideological views — something we on the left desperately need.

Our Ideal Justice

The ideal progressive justice is a fair-minded constitutionalist. While this is not a term widely used today, it is a term that, based on research, will resonate and can be assigned further meaning through supporting messaging.

- **Target voters say it is descriptive of their ideal justice.** 86 percent of voters surveyed say that fair-minded constitutionalist describes their ideal justice well. 36% of liberals and 34% of moderates say it describes their ideal justice “very well” — a strong starting pace for an unknown brand.
- **Voters also find this title appealing. Notably,** it is considered the most appealing title among moderates — 56 percent ranked it as the top choice. This is important as organizations work to rally this group of voters in support of progressive issues.
- **Most importantly, fair-minded constitutionalist is distinct and memorable.** Using an open-ended question without any prompts, we asked respondents to tell us which titles or parts of titles they remembered. “Constitutionalist” was cited most often. When we removed the nouns, which had been repeated throughout several titles, “fair-minded” was the most remembered adjective.

Methodology

This messaging is the result of a multi-phase, iterative research project led by People For the American Way Foundation and Global Strategy Group over the course of 2016 and 2017. Our process included:

- Six in-depth group interviews with 20 legal experts and coalition stakeholders from progressive organizations and institutions.
- Strategy session with over a dozen progressive organizations to discuss the results of the in-depth interviews and brainstorm ideas for the project.
- Four two-hour focus groups with liberal, moderate, African-American, Hispanic, college and non-college voters in North Carolina and Nevada.
- Online survey of liberal and moderate 2016 voters who don't approve of the job Donald Trump is doing as President, including an 800-person base — 400 liberals, 400 moderates with an oversample to achieve samples of 319 African Americans and 282 Latinos. Care was taken to ensure that the partisan, geographic, and demographic divisions of these populations were properly represented by the survey's respondents.

Talking about Fair-Minded Constitutionalists

Fair-minded constitutionalists embody two key principles:

Value equality and justice for all:

“Respects the values of justice and equality for all” was the top-testing trait of the 16 traits tested with 60% of liberal and moderate voters selecting it as one of their five most-important traits. Similar equality-focused traits such as “thinks the law should provide a level playing field for everyone,” and “believes everybody should have an equal voice in our democracy” also performed well.

Understand the impact of the law on all Americans:

The strongest messages tested focus on impact. One of our best-testing messages (75% strongly agree) is that the president should appoint a justice who understands how the law impacts real people and works to protect all Americans.

When talking about fair-minded constitutionalists, emphasize that they:

- Respect the values of equality and justice for all
- Believe everyone should have an equal voice in our democracy
- Understand the real world and how the law impacts all Americans
- Interpret and apply the Constitution with today’s world in mind

The Opposition’s Justice

The justice that liberal and moderate voters don’t want on the court is a narrow-minded elitist.

Among voters, there is broad concern that the opposition’s justice won’t stand for everyone. Our research found that “elitist” is a strong term to describe a justice who will only stand for a small group of people. The term is broadly understood by our target audience and appears in three of the top six titles describing the justice they don’t want on the court.

“Narrow-minded” was the second-most selected term to describe the opposition’s justice, behind only “biased.” While voters are concerned about bias when it comes to the justice they don’t want, the title “biased partisan” does not identify the underlying values connected to those biased or partisan views – making this title easily used by our opposition as well. Therefore, it is more effective to describe them as “narrow-minded” both in terms of their world view and their constitutional interpretation.

Voters are deeply concerned about what the opposition’s justice will do on the court and the strongest messaging highlights what they will do, rather than what they won’t do.

Narrow-minded elitists will:

- Protect corporations, the wealthy, and the powerful over all Americans
- Roll back the clock on rulings that protect historically disadvantaged groups such as the LGBTQ community, women, and racial and ethnic minorities
- Be a rubber stamp for the President

These messages rated extremely high on intensity (high 70s and low 80s) and demonstrate strong concern among liberal and moderate voters.