

Voters, Ballot Measures, and Reforming State Courts of Last Resort, 1792–2024

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Research Article

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Abstract

Americans have never had any direct say over the way their federal courts are structured or operate. As a result, we know little about their preferences on such matters. In contrast, through ballot measures, they have had many opportunities to weigh in on the way state courts function. I analyze 364 measures targeting state courts of last resort that appeared on ballots between 1792 and 2024. These propositions asked voters to make concrete choices about court structures and operations. By examining the debates that preceded votes on these measures, election results reveal the public's preferences by showing which arguments voters found persuasive, which they rejected, and how their views evolved over time. I find that until the mid-twentieth century, voters grappled with questions about how many justices should sit on their courts of last resort and how much those justices should be paid. Voters slowly and grudgingly agreed to increase court sizes and to raise judicial pay. From the mid-twentieth century on, voter attention was redirected primarily toward judicial ethics rules and regulations and the methods used to put people on the bench. Ethics measures proved popular, but no consensus emerged on selection schemes.

Americans have never exercised any direct say over the way the federal courts are structured or operate. As a result, we know little about their preferences on such matters. In contrast, through voting on ballot measures, they have had many opportunities to shape the way state courts function. To gain insight into how Americans have viewed courts historically, I analyze votes on 364 measures targeting state courts of last resort that appeared on ballots between 1792 and 2024. By examining the debates that preceded votes on these measures, election results reveal the public's preferences regarding court structures and operations by showing which arguments they found persuasive, which they rejected, and how their views changed over time.

I find that until the mid-twentieth century, voters grappled mainly with questions on the size of their courts of last resort and how much the justices should be paid. Debates on these topics balanced state budget considerations against concerns about court efficiency and effectiveness. Voters slowly and grudgingly agreed to add justices and to raise their pay. From the mid-twentieth century on, voter attention was redirected toward judicial ethics rules and regulations and the methods to be used to put people on the bench. Ethics measures proved popular with the public, but no consensus emerged on preferred selection schemes.

1. Data on ballot measures targeting state courts of last resort

Assembling the ballot measure data analyzed here involved gathering information from state websites, state statistical abstracts and manuals, official state election reports, annotated state constitutions, state session laws, state legislative journals, government and academic studies, and newspaper reports. Measures were included when their provisions affected the state court of last resort and would, if adopted, have a substantive impact on the way it was structured or operated. A few related propositions were excluded. Those to restructure state judicial systems by creating intermediate appellate courts or redesigning local courts were omitted because the court of last resort was not their primary focus. Measures dealing with the drawing of judicial districts were not included because they centered on partisan and regional considerations rather than court reform. Votes on new state constitutions were left out because it would be impossible to isolate the public's stance on any specific changes proposed for the court of last resort.

The measures studied here appeared on ballots in forty-nine states. The exception was Delaware, which always permitted its legislature to amend the constitution without putting proposed changes to the voters. California and Nevada had the most measures, with eighteen, while Indiana, Kentucky, New Jersey, Tennessee, and Virginia each only had a single one. The median state had seven ballot measures.

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Just under 90 percent of the measures were constitutional amendments placed on the ballot by the state legislature.¹ State constitutional conventions (and a Florida commission that spawned one measure) proposed 5 percent of them. Over half of the convention measures were concentrated in New Hampshire and Rhode Island.² The final 5 percent were direct democracy products, with most being constitutional amendments proposed by initiatives.

It matters that almost all the measures were generated by state legislatures. They reflected lawmakers' presumably informed preferences regarding court reforms, and many voters may have deferred to the legislature because they thought lawmakers better understood the impact of the proposals than the general public did. Such an assumption is supported by an experimental study that found a legislature's imprimatur on a ballot measure enhanced its electoral prospects, even when voters held the legislature itself in low esteem.³ As a Georgian lamented about such measures, "The legislators vote for their passage because they say 'its [sic] up to the people' and the people who vote for their adoption say 'the Legislators in their wisdom passed it.'"⁴

Over 85 percent of the measures in the data set contained only a single major provision targeting court reform. This is expected because many states operated under rules that precluded offering proposals containing more than one major provision. Having only a single provision is analytically advantageous for this study because it makes isolating the public's views on a proposal clear-cut. Multiple provisions complicate the analysis because it is problematic to parse how each provision played into voter decisions. The more provisions a measure contained, the more resistance it potentially encountered. In this study, those who had one major provision received a median vote of 60.5 percent, while those with two major provisions got 57.9 percent, and those with three or more earned 57.4 percent. Though the differences are slight, this relationship's ordering makes sense. Commenting on an 1890 Colorado proposal, an editorial stressed that "Had the legislative assembly contented itself with passing a simple amendment permitting an increase of the supreme court judges, the CHIEFTAIN is confident there would have been no opposition, but they went so far as to provide not only should the supreme court judges be increased in number, but that their term of office and their emoluments of office might also be increased."⁵ Coloradans rejected the measure. Such outcomes often compelled legislatures to split up complex proposals into separate propositions.⁶ To be sure, on occasion, legislatures successfully tacked on an additional provision as a sweetener to entice voters to swallow a more controversial reform.⁷ But that tactic did not guarantee success.

¹ Legislatures did not propose any relevant statutory or advisory measures.

² On constitutional conventions and the development of state constitutions, see John Dinan, "Explaining the Prevalence of State Constitutional Conventions in the Nineteenth and Twentieth Centuries," *Journal of Policy History* 34 (2022): 297–335; and Albert L. Sturm, "The Development of American State Constitutions," *Publius* 12 (1982): 57–98.

³ Craig Burnett and Janine A. Parry, "The Inconsequence of Negative Statehouse Evaluations on Ballot Measures: Evidence from Survey Experiments," *Electoral Studies* 71 (June 2021): 1–8, <https://www.sciencedirect.com/science/article/abs/pii/S0263179421000366>.

⁴ *Summerville News* (GA), "The Constitutional Amendments," Oct. 31, 1918.

⁵ *Pueblo Chieftain* (CO), "Oppose the Amendment," Oct. 26, 1890.

⁶ For example, see *Reno Evening Gazette* (NV), "Recreation, Judicial Reform, Pay Questions on Nevada Ballot," Oct. 29, 1976.

⁷ For example, see *Morning News* (Savannah, GA), "To Weed Out Illegal Voters," Sept. 28, 1896.

I contend that how voters arrived at their ballot measure decisions can be gauged by looking at the arguments for and against the proposals made in the period prior to election day. These were gathered from two sources. One was state voter pamphlets, a well-spring of ballot information found mostly in western states. They usually provided arguments for and against measures and can be assumed to have reached every household. Newspapers were the second source. I consulted only those published in the state where the measure appeared on the ballot. Editorials gave reasons for a paper's stance on a measure. News stories often distilled the arguments offered by each side. Opinion columns, letters to the editor, and appraisals by civic and business organizations all furnished rationales for backing or opposing propositions.

2. The public's preferences on state courts of last resort

Not much is known about attitudes regarding the way state courts of last resort are structured and operate. There have been occasional assessments of public support for them.⁸ And attention has been given to the impact of public opinion on the justices' decision-making.⁹ But there has been little work examining what Americans think about matters involving state court structures and operations.¹⁰

Some might question whether the arguments made for or against state ballot measures in voter pamphlets and newspapers should be used to gauge public preferences on such matters. Ballot measures asked voters to make concrete choices about court structures and operations. Their decisions had direct consequences for the institution. It is conceivable that there were some issues on which the public held prior stances, perhaps on judicial pay or ethics rules. But voters were unlikely to have established positions on most of the issues presented in ballot measures. The information provided in voter pamphlets and newspapers was likely advised by commentaries from the legal community and political figures. But the pamphlets and news items were the sources easily accessed by people, and the analyses they provided were presumably the basis on which voters made their ballot decisions. The votes they cast in support or opposition indicate which arguments they found persuasive and which failed to reflect their preferences. It seems

⁸ See Damon M. Cann, and Jeff Yates, "Homegrown Institutional Legitimacy: Assessing Citizens' Diffuse Support for State Courts," *American Politics Research* 36 (2008): 297–329; James L. Gibson, *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy* (Chicago: University of Chicago Press, 2012); James P. Wenzel, Shaun Bowler, and David J. Lanoue, "The Sources of Public Confidence in State Courts: Experience and Institutions," *American Politics Research* 31 (2003): 191–211; Benjamin Woodson, "The Two Opposing Effects of Judicial Elections on Legitimacy Perceptions," *State Politics and Policy Quarterly* 17 (2017), 24–46. For recent relevant survey data, see National Center for State Courts, "State of the State Courts: 2025 Public Opinion Poll Findings," December 10, 2025.

⁹ See Neal Devins, and Nicole Mansker, "Public Opinion and State Supreme Courts," *University of Pennsylvania Journal of Constitutional Law* 13 (2010): 455–509; Melinda Gann Hall, "Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study," *Journal of Politics* 49 (1987): 1117–1124; Melinda Gann Hall, "Electoral Politics and Strategic Voting in State Supreme Courts," *Journal of Politics* 54 (1992): 427–446.

¹⁰ For recent overviews of the public's preferences on proposed US Supreme Court reforms, see Brandon L. Bartels, "Public Opinion on Term Limits and Other Supreme Court Reforms," Brennan Center for Justice, March 24, 2026; Anna McCaghren Fleming, Matthew D. Montgomery, and Natalie C. Rogol, "Reforming the Bench: Public Support for Supreme Court Institutional Change," *Political Science Quarterly* 139 (2024): 225–248; and Christopher N. Krewson, and Jean Reith Schroedel, "Going Beyond *Dobbs*: An Exploration of Support for Court Reform," *Politics, Groups, and Identities* 13 (2025): 704–726.

reasonable to conclude that they revealed the rationales behind the voters' decisions.¹¹

3. Court of last resort reform ballot measures, 1792–2024

The 364 court reform measures that appeared on state ballots between 1792 and 2024 contained a total of 432 major provisions. I sorted the provisions into three broad subject categories, each of which in turn was subdivided. The first broad category involves court structures and incorporates measures on how many members the court should have (64 provisions), the method by which justices should be put on the bench (67 provisions), and how vacancies were to be filled (18 provisions). The second broad category captures court service, including the term of office the justices were to serve (72 provisions), their compensation (74 provisions), and the ethics rules and procedures under which they were to operate (101 provisions). The final broad category centers on court operations, capturing how chief justices were selected and the powers accorded them (22 provisions), and how court clerks and administrators were picked (14 provisions).¹²

Over time, the proportion of provisions that fell into each category and subcategory shifted. The period from 1792 to 1860 saw by far the fewest court reform ballot measures. That is expected because there were few measures of any sort during this time, largely because most state constitutions were left untouched. When amendments were needed, some states allowed the legislature to adopt them without giving the voters any say. If major revisions were required, the constitution was replaced.¹³

Of the twelve ballot provisions targeting state courts of last resort during this period, four were put to New Hampshire voters in 1792. They were a small slice of the seventy-two amendments proposed by a state constitutional convention that New Hampshire voters voted on in town meetings. They adopted all four.¹⁴ Alabamians were confronted by two provisions on terms of office; they passed the first one in 1828, only to have the results tossed out because of voting irregularities in a few counties. They adopted a

revised version the following year.¹⁵ Overall, nine of the twelve provisions put to the voters concerned court service: seven affected the term of office granted to justices, and two involved judicial ethics rules and procedures.

Between 1861 and 1940, there was a sizeable increase in the number of ballot measures and provisions. Court structures became a central concern, in particular the number of justices. Court service also proved important, with multiple provisions targeting judicial pay. By far the most active period for court reform was between 1941 and 1980, with court service the dominant focus. Pay and term lengths got some attention, but they were eclipsed by provisions on ethics rules and procedures. Among court structures, selection methods were widely contested.

The final period from 1981 to 2024 saw the number of measures and provisions revert to levels seen during the twentieth century's first decades. The mix of measures changed yet again. While court service provisions on judicial ethics and term lengths continued to dominate, judicial pay was largely a settled matter. Court structure measures mostly targeted selection methods and how vacancies got filled; court size questions virtually disappeared from ballots.

The overall rise and retreat in the number of court reform ballot measures tracks that seen with state legislative reform measures.¹⁶ More noteworthy is the shift in judicial issues addressed. Through the first half of the twentieth century, provisions on court structures were the most numerous. After that, those on court service took prominence. Court operations provisions were always few in number and scattered over the time frame studied here.

4. Ballot measures on court structures

Over 80 percent of all the measures to increase the size of state courts of last resort appeared on ballots between 1862, when the first such proposition appeared, and 1940. The number of justices proposed to be added varied, but the arguments made in favor of doing so were always the same. Supporters emphasized a need for additional personnel to handle heavier workloads.¹⁷ This assertion had two angles. The first was that courts were tardy in handing

¹⁵Malcolm Cook McMillan, *Constitutional Development in Alabama, 1798–1901: A Study in Politics, the Negro and Sectionalism* (Chapel Hill: University of North Carolina Press, 1955), 47–51.

¹⁶Peverill Squire, *Reforming Legislatures: American Voters and State Ballot Measures, 1792–2020* (Columbia: University of Missouri Press, 2024), 17–18.

¹⁷*Abilene Daily Reporter* (TX), "Champions Judiciary Amendment," July 29, 1927; *Batesville Guard* (AR), "Constitutional Amendment No. 15," Oct. 29, 1920; *Casper Tribune-Herald* (WY), "Four Ballots," Nov. 2, 1958; *Clarksburg Telegram* (WV), "Constitutional Amendments," Oct. 24, 1902; *Cleveland Leader* (OH), "The Judicial Amendment," Oct. 6, 1883; *Clipper-Citizen* (Lexington, NE), "The Constitutional Amendments," Oct. 30, 1896; *Grant County Witness* (Platteville, WI), "How to Vote Next Tuesday," Nov. 1, 1877; *Graphic* (Nashville, NC), "Five Proposed Amendments," Oct. 29, 1936; *Jamestown Weekly Alert* (ND), "Campaign Closes," Oct. 29, 1908; *Janesville Daily Gazette* (WI), "More Judges Needed," April 2, 1903; *Kansas City Times* (MO), "The Proposed Amendments to the State Constitution," Nov. 1, 1872; *Madison County Record* (Huntsville, AR), "Interest in State Election Centers in Constitutional Amendments," Oct. 2, 1924; *Oglethorpe Echo* (Crawford, GA), "Increasing the Judges," Sept. 4, 1896; *Omaha Daily Bee* (NE), "Judicial Amendments," Nov. 2, 1890; *Stone County Enterprise* (Wiggins, MS), "Vote Tuesday," Nov. 2, 1950; *Sun* (Baltimore, MD), "Enlarge the Court," Nov. 1, 1960; *Thomasville Times* (GA), "Increase of the Supreme Court," Sept. 29, 1888; *Topeka Daily Capital* (KS), "Why Vote for the Constitutional Amendment?" Nov. 4, 1900; *Winona Republican-Herald* (MN), "Webber Strongly Urges Adopting Amendment No. 4," Oct. 28, 1916; *Winston-Salem Journal* (NC), "Constitutional Amendments," Oct. 31, 1930; *Wisconsin State Journal* (Madison, WI), "Increase of the Judges of the Supreme Court," Oct. 31, 1872. Similar reasoning has been advanced for expanding Minnesota's Supreme Court in recent years. See Marshall H. Tanick, "Enlarging the State Supreme Court," *Bench & Bar of Minnesota* 64 (December 2007): 26–27. Most of contemporary debate, however, has focused on the partisan calculations in filling any new seats. See Tom Harton, "Addressing Attacks on Judicial

¹¹The sources and quotes I cite to document the debates are representative of the larger commentary surrounding each of the measures. To a surprising degree, arguments for and against particular court reform proposals were similar within states, across the nation, and over time. Rarely were there state-specific issues or state-specific arguments in fights over measures.

¹²There have been a few data-centered examinations of the way various aspects of state courts of last resort evolved. See Lawrence M. Friedman, Robert A. Kagan, Bliss Cartwright, and Stanton Wheeler, "State Supreme Courts: A Century of Style and Citation," *Stanford Law Review* 33 (1981): 773–818; Kermit L. Hall, "Progressive Reform and the Decline of Democratic Accountability: The Popular Election of State Supreme Court Judges, 1850–1920," *American Bar Foundation Research Journal* 9 (1984): 345–369; Robert A. Kagan, Bliss Cartwright, Lawrence M. Friedman, and Stanton Wheeler, "The Business of State Supreme Courts, 1870–1970," *Stanford Law Review* 30 (1977): 121–156; Robert A. Kagan, Bliss Cartwright, Lawrence M. Friedman, and Stanton Wheeler, "The Evolution of State Supreme Courts," *Michigan Law Review* 76 (1978): 961–1005; Robert A. Kagan, Bobby D. Infelise, and Robert R. Detlefsen, "American State Supreme Court Justices, 1900–1970," *American Bar Foundation Research Journal* 9 (1984): 371–408; Herbert M. Kritzer, Paul Brace, Melinda Gann Hall, and Brent T. Boyea, "The Business of State Supreme Courts, Revisited," *Journal of Empirical Legal Studies* 4 (2007): 427–439; and Stanton Wheeler, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman, "Do the 'Haves' Come Out Ahead? Winning and Losing in State Supreme Courts, 1870–1970," *Law and Society Review* 21 (1987): 403–445.

¹³Sturm, "The Development of American State Constitutions," 58.

¹⁴James Fairbanks Colby, *Manual of the Constitution of the State of New Hampshire* (Concord, NH: Thomas W. Cragg, 1912), 126–27, 131–49.

down decisions. Endorsing a 1915 Texas amendment, the *Houston Post* reckoned that “the court is practically three years behind with its docket ... Three men cannot perform the task of five men.”¹⁸ Nationally, long delays were routinely cited as a reason to support adding justices.¹⁹

The second angle was that with more members, the quality of court decisions would improve. In 1862, San Francisco’s *Daily Alta California* contended that, “Three Justices of the Supreme Court are not enough to properly attend to the business before that tribunal. By increasing that number to five we shall have opinions more carefully prepared, and more consistency and steadiness in the tone of the decisions.”²⁰ Such a benefit was mentioned in other places at other times.²¹

Enlargement advocates occasionally offered comparisons to court sizes elsewhere. Georgia’s *Rome Tribune* reported in 1894 that “The only Southern States, besides Georgia, having only three Supreme Court Judges each are South Carolina, Florida and Mississippi. But Georgia’s Supreme Court decides as many cases per annum [as] the Supreme Courts of these three other States combined.”²² Others pointed out similarly sized states had larger courts.²³

Independence,” *Res Gestae* 61 (September 2017): 10–13; and Marin K. Levy, “Packing and Unpacking State Courts,” *William & Mary Law Review* 61 (2020): 1121–1158.

¹⁸*Houston Post* (TX), “THE SUPREME COURT Must Have the Relief Proposed in the Amendment,” July 19, 1915.

¹⁹*Arkansas Gazette* (Little Rock, AR), “Democrats Meet in Great Rally,” Oct. 31, 1920; *Austin Daily Herald* (MN), “Delays of Justice,” Oct. 31, 1914; *Austin Statesman* (TX), “Letters to the Editor,” July 15, 1929; *Burley Herald* (ID), “Why Supreme Court Judges Should Be Increased From Three to Five,” Oct. 30, 1920; *Clarksburg Telegram* (WV), “Constitutional Amendments,” Oct. 24, 1902; *Cleveland Leader* (OH), “The Judicial Amendment,” Oct. 6, 1883; *Columbia Evening Missourian* (MO), “For Speedy Justice,” Oct. 30, 1920; *Dalton Argus* (GA), “The Constitutional Amendments,” Oct. 3, 1896; *Evening Times* (Clay Center, KS), “Vote For the Amendment,” Nov. 1, 1886; *Fort Lauderdale Daily News* (FL), “Constitutional Amendment,” Oct. 15, 1952; *Fort Myers News-Press* (FL), “The Court Amendment,” Nov. 7, 1932; *Fort Worth Weekly Gazette* (TX), “The Judiciary Amendment,” July 8, 1887; *Grand Island Daily Independent* (NE), “The Constitutional Amendments,” Oct. 31, 1896; *Grenada Sentinel* (MS), “Voters Called Upon to Make Three More Offices,” Oct. 30, 1914; *Herald Democrat* (Leadville, CO), “Constitutional Amendments,” Nov. 8, 1904; *Jefferson City Tribune* (MO), “Constitutional Amendment Number Four,” Oct. 25, 1908; *Joplin Sunday Herald* (MO), “Vote for Constitutional Amendment,” Nov. 2, 1890; *Kansas City Times* (MO), “The Proposed Amendments to the State Constitution,” Nov. 1, 1872; *Lincoln Evening News* (NE), “Relating to Supreme and District Judges,” Nov. 3, 1890; *Minneapolis Journal* (MN), “Voters Urged to Back Up Amendments,” Oct. 26, 1930; *Meeker Herald* (CO), “The Constitutional Amendments,” Oct. 30, 1886; *New York Times* (NY), “To Be Voted Upon,” Oct. 24, 1910; *Osceola Times* (AR), “Vote ‘Yes’ on Amendments,” Oct. 3, 1924; *Racine Journal* (WI), “The Proposed Amendments to the State Constitution,” Oct. 31, 1877; *Republican* (Hay City, KS), “Vote For the Constitutional Amendment to the Constitution,” Nov. 3, 1900; *Short Creek Republican* (Galena, KS), “The Constitutional Amendment,” Nov. 1, 1890; *Sunday Oregonian* (Portland, OR), “Would Abolish County Judge,” March 29, 1908; *Tyler Morning Telegraph* (TX), “Texas Supreme Court,” Aug. 23, 1945; *Wisconsin State Journal* (Madison, WI), “Increase of the Judges of the Supreme Court,” Oct. 31, 1872.

²⁰*Daily Alta California* (San Francisco, CA), “The Constitutional Amendments Once More,” Sept. 1, 1862.

²¹*Arkansas Gazette* (Little Rock, AR), “The Three Proposed Amendments—Especially One of Them,” Nov. 3, 1918; *Carthage Evening Press* (MO), “The Proposed Amendments,” Nov. 1, 1924; *Miami Daily News* (FL), “Needed: A Seventh,” Nov. 3, 1940; *Watertown Republican* (WI), “The Constitutional Amendment,” April 4, 1903; *Weekly Register-Call* (Central City, CO), “At the Election Next Month,” Oct. 31, 1890.

²²*Rome Tribune* (GA), “The Supreme Court,” Sept. 13, 1894.

²³*Daily Courier-Gazette* (McKinney, TX), “Constitutional Amendments,” July 23, 1915; *Grant County Witness* (Platteville, WI), “How to Vote Next Tuesday,” Nov. 1, 1877; *Lexington Advertiser* (MS), “All the Amendments Are Good and Should Be Voted For,” Oct. 30, 1914; *Madison County Record* (Huntsville, AR), “Interest in State Election Centers in Constitutional Amendments,” Oct. 2, 1924; *Watertown Republican* (WI), “The Constitutional Amendment,” April 4, 1903.

Occasionally, there was a pragmatic reason given for adding members. Some courts had an even number of justices, prompting proposals to shift to an odd number. The rationale was obvious; as the *West Virginia Argus* explained, “The third amendment proposes to have five Judges of the Supreme Court instead of four, so that they can decide questions without hanging them up and no decision at all, as at present.”²⁴ While agreeing on a need for an odd number, some observers suggested that a cut rather than an addition would do the trick and save money.²⁵

Opponents of adding seats argued that laziness caused delayed decisions. The *Ocala Banner* fumed that “the supreme court of Florida is the slowest court on earth ... it is congested purely for lack of industry on the part of its members ... The remedy seems to lie in the members of the court being made somewhat acquainted with the ‘strenuous life’ and getting down to solid work, and not in the appointment of additional judges.”²⁶ Nebraska’s justices were admonished to work harder: “From the best information we can get, our present court holds not to exceed 100 days in a year. Now by putting in 200 days time and 10 hours in the day, instead of four they would clean up the docket in one year without any extra judges.”²⁷ North Carolina’s *News and Observer* prodded its court to work more efficiently, complaining that “The amendment to increase the number of Supreme court judges is entirely unnecessary. If the present five Supreme Court justices will only refrain in future from writing such long winded opinions and cultivate the virtue of brevity they will have ample time to consider all matters of importance that may be brought before them.”²⁸

At times, lawyers were accused of self-interest in advocating for more justices. “An Open Letter to the Tax-Payers of Nebraska” griped that “There exists no good reason for this ... except to make fat places for more lawyers, of which the state is overrun.”²⁹ A proposed increase in West Virginia was labeled “a ‘lawyer scheme’ to ... create more offices to fill.”³⁰ A Kansas editor warned that any additions “would bring a horde of lawyers, aspiring to be judges, to lobby laws through the legislature making places for themselves.”³¹

The most common objection to adding justices, however, was the cost. Florida’s *Tampa Daily Times* urged its readers to “Defeat the amendment. Its ratification will accomplish no good purpose, but will increase the state’s annual expenses—and increase them indefinitely.”³² Other detractors said the current number of justices

²⁴*West Virginia Argus* (Kingwood, WV), “Vote For All Five,” Sept. 11, 1902. See also *Casper Star-Tribune* (WY), “Watch the Amendments,” Nov. 7, 1972; *Miami Herald* (FL), “Changing Organic Law,” Nov. 3, 1940; *State* (Columbia, SC), “Hold Election In This State,” Nov. 7, 1910.

²⁵*Tampa Daily Times* (FL), “Taxpayer Unit Would Retain ‘Ad Valorem,’” Oct. 31, 1940; *Weekly Register* (Point Pleasant, WV), “Constitutional Amendments,” Oct. 15, 1902.

²⁶*Ocala Banner* (FL), “Frank Harris Speaks Plainly,” Oct. 10, 1902. See also *Buena Vista Democrat* (CO), “C. S. Thomas of Denver,” Oct. 13, 1886; *Herald Democrat* (Leadville, CO), “The Proposed Constitutional Amendment,” Oct. 24, 1890; *Mineral Point Tribune* (WI), “Proposed Constitutional Amendment,” March 26, 1903; *Sharp County Record* (Evening Shade, AR), “Number 15,” Oct. 29, 1920.

²⁷*Neligh Leader* (NE), “Supreme Court Judges,” Oct. 31, 1890. See also *Fort Lauderdale Daily News* (FL), “Since Bad Points Outweigh Good Ones, Amendment No. 2 Should Be Rejected,” Oct. 29, 1952; *Knob Noster Gem* (MO), “We Have Received a Hand-Bill,” Oct. 31, 1900.

²⁸*News and Observer* (Raleigh, NC), “The People’s Forum,” Nov. 3, 1930.

²⁹*Friend Free Press* (NE), “An Open Letter to the Tax-Payers of Nebraska,” Oct. 31, 1890.

³⁰*Weekly Register* (Point Pleasant, WV), “Constitutional Amendments,” Oct. 15, 1902. See also *Americus Times-Recorder* (GA), “Georgia Don’t Need,” Sept. 30, 1894; *Oregonian* (Portland, OR), “Vote No, Urges Burnett,” May 26, 1908.

³¹*Interior Herald* (Hutchinson, KS), “The Judicial Amendment,” Oct. 30, 1886.

³²*Tampa Daily Times* (FL), “This Vote a Test,” Nov. 7, 1932. See also *Altoona Journal* (KS), “Every Ballot,” Oct. 31, 1890; *Emmett Index* (ID), “The Constitutional Amendments,” Oct. 29, 1914; *Fort Mill Times* (SC), “Another Justice Unnecessary,” Nov. 3, 1910; *Galveston*

Table 1. Ballot Measure Outcomes on Court Membership Size

Year span	Ballot measures on court membership size	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1862–1976	Increase court size	61	38 (62.3)	56.0
	Sole provision	35	19 (54.3)	53.7
1894–1995	Decrease court size	3	2 (66.7)	57.9
	Sole provision	2	1 (50.0)	38.9

sufficed.³³ Texas's governor even sniped, "I think three judges can dispatch business and come to a decision quicker than five."³⁴

Voters split almost evenly on the issue, as Table 1 reveals. Only 54 percent of the measures where increasing the number of seats was the sole provision got a majority of the vote. States responded to rejections in two ways. Some supplemented their courts by appointing commissioners who were empowered to hear cases and draft opinions, but not vote on them.³⁵ Voters were later asked to convert some commissioners into justices.³⁶ States also persisted in pushing measures to add members. Colorado, Georgia, and Kansas succeeded on their third tries; Arkansas, Minnesota, and Nebraska on their fourth, and Texas on its sixth. Although reluctant to increase court sizes, voters eventually conceded the need to respond to swollen workloads.

Only three measures to reduce the number of justices ever appeared on ballots. They were a disparate lot and revealed little about voter preferences. The first was an unconventional 1894 measure proposed by Nevada's legislature as a way to save money. A newspaper explained that, "if adopted ... there will be but one Justice of the Supreme Court ... and he will have the power to complete the court by selecting two of the four District Judges ... This is practically a *one man power*."³⁷ Another paper counseled that "The question of economy should not influence the people of Nevada to place themselves in the hands of a designing Chief Justice."³⁸ Nevadans agreed; only 13.5 percent of them backed the proposal. The second measure was a 1944 Maryland plan to restructure the state judicial system, technically reducing the size of their court in the process.³⁹ Marylanders approved it by an overwhelming margin. The third measure was a 1995 Washington proposal that included a provision allowing the legislature to slash the court's size

if it chose to do so. Proponents maintained it would "save tax dollars" while opponents warned that with any reduction "the supreme court's efficiency will decrease—the court will become more backlogged and its decisions less thorough."⁴⁰ Washingtonians passed it, but the legislature never availed itself of the power to cut the number of justices.

Voters had plenty of chances to choose among different methods to place justices on the court. Over time, the menu of options offered changed, as shown in Table 2; but they almost always pit judicial independence against judicial accountability.⁴¹ Between 1850 and 1914, five measures asked voters if they wished to switch to electing justices or to continue allowing the governor to appoint them. They opted for elections in four cases, all of which posed the question as the sole provision and all of which carried by large margins. Only New Hampshire voters opted to keep gubernatorial appointment, but that particular amendment included another provision that would have significantly altered the justices' term of office.

The notion that elections would liberate courts from gubernatorial influence was widely hyped.⁴² In Pennsylvania in 1850, Philadelphia's *Public Ledger* proclaimed that "this important Constitutional Reform, [would] render the Bench truly independent, and effectually prevent the elevation of pettifoggers and jockeys through corrupt Executive patronage."⁴³ That measure's opponents leaned on a belief that the courts should be untainted by any hint of partisanship, with one editorial fretting that voting on judges would inevitably "drag the ermine of justice into the contests of party politics—will endanger the purity of the judiciary, and will fill with demagogues and intriguing politicians the places which should only be filled with men distinguished for professional ability

Daily News (TX), "State Press," Aug 24, 1881; *Mason Valley News* (Yerington, NV), "No on Those Ballot Questions," Oct. 29, 1976; *Rathdrum Tribune* (ID), "Those Amendments," Oct. 30, 1914; *Seward Independent-Democrat* (NE), "It Will Be a Safe Proposition," Oct. 29, 1908; *Winston-Salem Journal* (NC), "Constitutional Amendments," Oct. 31, 1930.

³³ *Burlington Nonpareil* (KS), "The Supreme Court Amendment," Oct. 29, 1886; *Dallas Daily Herald* (TX), "Constitutional Amendments," Aug. 31, 1881; *Graphic* (Nashville, NC), "Five Proposed Amendments," Oct. 29, 1936; *Green Forest Tribune* (AR), "Oppose the Amendments," Sept. 3, 1904; *Morning News* (Savannah, GA), "Georgia and Florida," Sept. 29, 1888; *Progressive Farmer* (Raleigh, NC), "Opposed to the Amendment," Oct. 23, 1888.

³⁴ *Corsicana Semi-Weekly Light* (TX), "The Governor's Position," July 13, 1915.

³⁵ William Wirt Blume, "California Courts in Historical Perspective," *Hastings Law Journal* 22 (1970): 169–72; Albert T. Franz, "Colorado Appellate Courts—The First Hundred Years," *Dicta* 36 (1959): 104; Kagan, Cartwright, Friedman, and Wheeler, "The Evolution of State Supreme Courts," 975–976; Lenore L. Prather, "A Century of Judicial History," *Mississippi Law Journal* 69 (2000): 1025–1026; Randall T. Shepard, "Indiana Supreme Court: Its History Is Still Unfolding," *Res Gestae* 40 (September 1996): 37; Albert J. Schweppe, "Possible Methods of Relieving the Supreme Court of Washington," *Washington Law Review* 4 (1929): 3–6.

³⁶ For a conversion case, see *Kiester Courier* (MN), "Vote 'Yes,'" Oct. 30, 1930.

³⁷ *Daily Independent* (Elko, NV), "The Supreme Court," Oct. 2, 1894.

³⁸ *Morning Appeal* (Carson City, NV), "Vote It Down," Oct. 5, 1894.

³⁹ *Sun* (Baltimore, MD), "As We Consider the 13 Ballot Questions," Nov. 4, 1944.

⁴⁰ "Washington State Voters Pamphlet" (WA voter pamphlet, 1995), 12, 13.

⁴¹ On the centrality of the independence versus accountability debate in how state courts were shaped in both popular and elite discourse, see Kelley Armitage, "Denial Ain't Just a River in Egypt: A Thorough Review of Judicial Elections, Merit Selection and the Role of State Judges in Society," *Capital University Law Review* 29 (2002): 625–658; William D. Blake, "Judicial Independence on Unelected State Supreme Courts," *Justice System Journal* 39 (2018): 21–38; Paul D. Carrington, "Judicial Independence and Democratic Accountability in Highest State Courts," *Law and Contemporary Problems* 61 (1998): 79–126; Charles Gardner Geyh, "Judicial Selection Reconsidered: A Plea for Radical Moderation," *Harvard Journal of Law & Public Policy* 35 (2012): 623–642; Charles Gardner Geyh, "Methods of Judicial Selection & Their Impact on Judicial Independence," *Daedalus* 137 (2008): 86–101; Kermit L. Hall, "The Judiciary on Trial: State Constitutional Reform and the Rise of an Elected Judiciary, 1846–1860," *The Historian* 45 (1983): 337–354; Jed Handelsman Shugart, *The People's Courts: Pursuing Judicial Independence in America* (Cambridge: Harvard University Press, 2012); and G. Alan Tarr, *Without Fear or Favor: Judicial Independence and Judicial Accountability in the States* (Stanford, CA: Stanford University Press, 2012).

⁴² *Issue* (Jackson, MS), "The Supreme Court Amendments," Oct. 22, 1914; *Jeffersonian* (Stroudsburg, PA), "Elective Judiciary," Sept. 26, 1850; *New Hampshire Gazette and Republican Union* (Portsmouth, NH), "Election of Judges By the People," March 5, 1851; *St. Tammany Farmer* (Covington, LA), "The Election Tuesday," Nov. 5, 1904.

⁴³ *Public Ledger* (Philadelphia, PA), "Election of Judges By the People," Oct. 5, 1850.

Table 2. Ballot Measure Outcomes on Court Membership Selection Method

Year span	Ballot measures on court membership selection method	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1850–1914	Popular election from governor appointment	5	4 (80.0)	63.7
	Sole provision	4	4 (100.0)	65.2
1873	Governor appointment from popular election	1	0 (0.0)	26.5
	Sole provision	1		
1896	Popular election from legislature election	1	1 (100.0)	62.6
	Sole provision	1		
1914–1939	Nonpartisan election from partisan election	5	3 (60.0)	60.9
	Sole provision	5		
1924	Partisan election from nonpartisan election	1	0 (0.0)	34.9
	Sole provision	1		
1934–2010	Adopt merit system variant	40	24 (60.0)	53.6
	Sole provision	27	14 (51.9)	52.1
1972–2024	Adopt merit system enhancement	7	7 (100.0)	58.7
	Sole provision	6	6 (100.0)	58.3
1942–2014	Adopt merit system diminution	4	1 (25.0)	36.4
	Sole provision	3	1 (33.3)	35.8

Note: Four miscellaneous selection method measures were not included in this table. One established a process where the governor nominated justices with the legislature retaining the power to accept or reject the nomination (Connecticut, 1880). Two involved the use of judicial districts in court of last resort elections (Nebraska, 1920 and 1998). The other was to allow cumulative voting in elections for the court of last resort judges (Ohio, 1874).

and conscientious uprightness.”⁴⁴ But judicial elections eventually proved so popular that by 1914, Mississippi’s *Vicksburg Evening Post* could write that “in nearly all the states, north and south, [justices] are elected by the people, and it is futile to attempt to stop this reform in the fact of almost universal concurrence in the view that the judges ... should be elected by the people.”⁴⁵ Valuing accountability over independence, voters opted to choose the justices themselves.

That conclusion is reinforced by the results of two related measures. In 1873, New Yorkers were asked whether they wished to switch to gubernatorial appointment in place of elections. The *Brooklyn Daily Union* wrote “The fundamental question which underlies this proposition, is whether the judiciary shall represent the popular will, and the judges be dependent upon the majority of the electors for their office, so that failure or success in satisfying the majority determines their reelection, or whether judges shall be as independent as far removed from the changing favor of political parties, the reach of partisan influences, and sudden popular impulse, as the nature of humanities under the condition of our civil organization will allow.”⁴⁶ The *Brooklyn Daily Eagle* took the opposite stance, asserting that “a democratic-republican form of government presupposes a government by the people. If Judges can or should be appointed, why not apply the principle to every position within the gift of the people ... The appointment of Judges is dangerous in that it leads to ... centralization of power.”⁴⁷ Almost

three-quarters of New Yorkers voted against turning over the selection of justices to the governor. The second measure was an 1896 Georgia proposal to take away the legislature’s power to pick the justices and give it to the voters, which the *Atlanta Constitution* predicted was apt to be so popular that it would “receive the support of a large majority.”⁴⁸ That forecast proved accurate.

With any election of justices, another question had to be answered: should they be partisan or nonpartisan contests. Between 1914 and 1944, there were five measures to turn partisan judicial elections into nonpartisan ones. Voters supported doing so in three cases, and in one of the losses, Michiganders later reversed their decision. Debates on the question were familiar. In 1944, a *Salt Lake Tribune* editorial asserted that it was important to “release all judges of the supreme court ... from every obligation, either actual or imaginary, to any political party or faction, and to make characters and reputations, as well as qualifications and experience, the test of fitness to sit in judgment upon the rights and wrongs of litigants or defendants.”⁴⁹ The other side worried that judicial candidates would find it hard to run without party assistance. In Idaho, “the argument was advanced that the cost of campaigning for a judge on his own was prohibitive.”⁵⁰ A view that voters preferred nonpartisan contests was bolstered when, in 1924, South Dakotans

⁴⁴ *Atlanta Constitution* (GA), “Two Now Pending,” Sept. 28, 1896.

⁴⁹ *Salt Lake Tribune* (UT), “Release and Relieve Judges From All Partisan Obligations,” Nov. 6, 1944. See also *Detroit Free Press* (MI), “Take Courts Out of Politics,” March 28, 1939; *Idaho Statesman* (Boise, ID), “Six Amendments Are Clarified For Benefit of Idaho Voters,” Nov. 4, 1934; *Livingston County Republican-Press* (Howell, MI), “Open Discussion of Proposed Amendments to Be Voted on November 6th,” Oct. 24, 1934. *Oregon Daily Journal* (Portland, OR), “The Journal Urges Passage of 8 and Defeat of 4 Bills,” Nov. 2, 1914.

⁵⁰ *Idaho Statesman* (Boise, ID), “Six Amendments Are Clarified For Benefit of Idaho Voters,” Nov. 4, 1934. See also *Morning Oregonian* (Portland, OR), “Women Cry ‘Let Primary Law Alone,’” Oct. 24, 1914.

⁴⁴ *Mountain Sentinel* (Ebensburg, PA), “Northampton County,” Aug. 29, 1850. See also *Contoocook Transcript* (Peterborough, NH), “An Elective Judiciary,” Feb. 5, 1851; *Macon Beacon* (MS), “Amending the Constitution,” Oct. 30, 1914.

⁴⁵ *Vicksburg Evening Post* (MS), “Constitutional Amendments,” Oct. 24, 1914.

⁴⁶ *Brooklyn Daily Union* (NY), “The Judiciary,” Nov. 3, 1873.

⁴⁷ *Brooklyn Daily Eagle* (NY), “The Judiciary,” Oct. 31, 1873.

were given a chance to turn their nonpartisan elections into partisan ones. A strong majority concurred with the *Dakota Republican* in the belief that “The state is cursed with too much politics now without making the selection of judges a part of the game.”⁵¹

The most extensive debate on judicial selection methods took place during the mid-twentieth century with the advent of the merit plan. As proposed by a Northwestern University law professor, the basic idea involved a nonpartisan commission empowered to select a small number of qualified applicants to be considered for appointment by the governor. After serving for a brief time, a newly appointed justice would then face a retention election, where voters would decide whether he or she should continue to serve on the bench.⁵²

The first four measures proposing a merit plan variant were put on ballots through the initiative process. In 1934, California voters passed a proposition allowing the governor to appoint justices subject to their confirmation by a “commission on qualifications.” Once confirmed, a retention election would follow within 2 years.⁵³ Ohio and Michigan voters rejected merit plans in 1938. In 1940, Missourians approved an amendment to create a commission to solicit applications and select a small pool of qualified candidates from which the governor would make an appointment. A new justice would subsequently face a retention election. This sequencing became the national model, referred to as the “Missouri Plan.”

Attempts to follow in Missouri’s footsteps languished for more than a decade. In the 1950s, state legislatures began placing merit plans on the ballot, with most appearing from the 1960s through the 1980s.⁵⁴ As revealed in Table 2, when they were the sole provision put to the voters, just 51.9 percent earned majority support.

Arguments in favor of merit plans remained consistent over time. The *Los Angeles Times* encapsulated their main thrust during the 1934 California campaign: “This is an initiative proposal designed to lift the judiciary out of politics [promising a] positive guarantee of the integrity, professional training and experience and temperamental fitness of those selected for judicial service.”⁵⁵ Purging partisan politics from the selection process was always a

prime selling point.⁵⁶ Placing qualified people on the bench was also repeatedly plugged.⁵⁷

Opponents countered that merit plans violated a fundamental democratic principle, with the *San Francisco Examiner* declaring that they “would take from the voters the right to select judges of the State Supreme [Court] ... Selection of judges should rest with the people.”⁵⁸ Two other reservations were later added. One was

⁵⁶ *Burlington Free Press* (VT), “Proposed Judiciary System Amendment is Complex Affair,” March 4, 1974; *Des Moines Register* (IA), “Better Way to Pick Judges,” June 2, 1962; *Evening Independent* (Massillon, OH), “Judge By Appointment?” Oct. 19, 1938; *Fort Collins Coloradoan* (CO), “Amendment 3 Provides For Appointment of Judges,” Oct. 6, 1966; *Grand Forks Herald* (ND), “All Judges Back Measure,” Nov. 4, 1966; *Grand Rapids Press* (MI), “The Special Issues,” Oct. 28, 1938; *Greenville News* (SC), “Judicial Reform,” Oct. 24, 1996; *Jacksonville Daily Journal* (IL), “Con Con Discussed at Monday Meeting,” Dec. 1, 1970; *Kentucky New Era* (Hopkinsville, KY), “In Favor,” Nov. 1, 1975; *Las Cruces Sun-News* (NM), “Proposed Constitutional Amendments Discussed in Impartial Survey,” Sept. 16, 1951; “Nevada Ballot Question 1988” (NV voter pamphlet, 1988), 7; *New York Times* (New York, NY), “Issues on the New York Ballot,” Nov. 4, 1977; *Public Opinion* (Chambersburg, PA), “Remove State Judges From Politics,” May 16, 1969; *Salina Journal* (KS), “John Schmiedeler Says ... I Change My Stand on Amendment No. 1,” Nov. 2, 1958; “Statewide Ballot Questions 2010” (NV voter pamphlet, 2010), SJR 2, Page 2; *St. Louis Globe-Democrat* (MO), “The Constitutional Amendments,” Nov. 1, 1940; *Sun* (Baltimore, MD), “Boggling Array of State ???s,” Oct. 26, 1976; *Sunday Star-Bulletin & Advertiser* (Honolulu, HI), “Con Con Amendments: For or Against?” Nov. 5, 1978; *Sunday Times* (Salisbury, MD), “Chamber Here Backs 2 & 3 Amendments,” Nov. 1, 1970; “Supplement Publicity Pamphlet” (AZ voter pamphlet, 1974), 29; *Tampa Times* (FL), “Consider Ballot Issues Carefully,” Oct. 27, 1976; *Taos News* (NM), “Judicial Reform Would Take Politics Out of Courtroom,” Oct. 27, 1988; *Telegraph-Forum* (Bucyrus, OH), “Voters to Face Three Statewide Issues; 236 Tax Levies on Ballot,” Nov. 2, 1987; *Times* (Hammond, IN), “Amendment No. 2,” Oct. 30, 1970; *Tulsa Daily World* (OK), “Tulsa Lawyer Strongly Supports Judicial Reform,” June 30, 1967; “Voters’ Pamphlet” (OR voter pamphlet, 1978), 5.

⁵⁷ *Arizona Republic* (AZ), “Eight YES, Two NO,” Nov. 3, 1974; *Casper Star-Tribune* (WY), “Watch the Amendments,” Nov. 7, 1972; *Daily Pantagraph* (Bloomington-Normal, IL), “Appointing Judges Wouldn’t Fall on Governor Alone,” Nov. 30, 1970; *Deming Headlight* (NM), “Amendment No. 1,” Oct. 19, 1982; *Des Moines Tribune* (IA), “The Key Questions on Court Plan,” June 1, 1962; *Evening Sun* (Baltimore, MD), “Ballot Questions,” Oct. 29, 1976; *Forum* (Fargo, ND), “Amendment No. 3 Gets Support,” Oct. 30, 1966; *Franklin Favorite* (KY), “Urges ‘Yes’ Vote,” Oct. 27, 1975; *Gazette-Telegraph* (Colorado Spring, CO), “AAUW Board Takes Vote,” Oct. 27, 1966; *Grand Forks Herald* (ND), “2nd District Judges Favor Amendment 5,” Aug. 28, 1968; *Hartford Courant* (CT), “Questions the Voters Face on Nov. 4,” Oct. 30, 1986; *Iola Register* (KS), “Those Amendments,” Oct. 31, 1958; *Las Vegas Daily Optic* (NM), “For Non-Partisan Courts,” Sept. 10, 1951; *Naples Daily News* (FL), “Very Important Amendments on Ballot,” Nov. 1, 1976; *Nevada State Journal* (Reno, NV), “Seven Ballot Questions: Two Are ‘Controversial,’” Nov. 1, 1972; *Omaha World-Herald* (NE), “Judicial Merit Plan,” Oct. 20, 1962; *Pittsburgh Post-Gazette* (PA), “Vote ‘Yes’ on Plan to Select Judges,” May 17, 1969; *Poughkeepsie Journal* (NY), “Tuesday Ballot Lists 10 Statewide Issues,” Nov. 6, 1977; *Rapid City Journal* (SD), “Judicial Selection Method Should Be Changed,” Oct. 21, 1980; *Reno Evening Gazette* (NV), “Gazette Offers Recommendations on Ballot Questions,” Oct. 26, 1976; *Republic* (Columbus, IN), “Pros and Cons of Judge Selection Change,” Oct. 26, 1970; *Salina Sun* (UT), “For Prop. ‘3,’” Oct. 31, 1984; *Sun* (Baltimore, MD), “Court Questions,” Oct. 26, 1970; *Sun News* (Myrtle Beach, SC), “Our Suggestion ... on Ballot Issues,” Oct. 30, 1996; *Union County Journal* (Marysville, OH), “Judicial Appointment Favored By Justice,” Oct. 10, 1938.

⁵⁸ *San Francisco Examiner* (CA), “Important Measures,” Nov. 5, 1934. See also *Albany Democrat-Herald* (OR), “Measures 1 and 2 Would Fix No Grave Problems,” Oct. 19, 1978; *Albuquerque Tribune* (NM), “Bad Endorsement,” Oct. 26, 1982; *Bismarck Tribune* (ND), “The Amendments,” Oct. 15, 1966; *Casper Star-Tribune* (WY), “Defeat Amendment 4,” Nov. 7, 1972; *Cleveland Plain Dealer* (OH), “Election of Judges Held Safeguard Against Tyranny From Bench,” Oct. 30, 1938; *Daily Advocate* (Greenville, OH), “Issue 3 Isn’t Necessary,” Nov. 2, 1987; *Daily Mail* (Hagerstown, MD), “Those Amendments,” Nov. 1, 1976; *Fort Collins Coloradoan* (CO), “Amendment 3 Provides For Appointment of Judges,” Oct. 6, 1966; *Humboldt Republican* (IA), “The Proposed Judicial Constitutional Amendment Disenfranchises Voters,” May 30, 1962; *Jefferson City Post-Tribune* (MO), “Lauf Attacks Proposed Court Revision in St. Thomas Speech,” Oct. 28, 1940; *Keith County News* (Ogallala, NE), “Vote ‘No’ on Amendment 6,” Nov. 1, 1962; *Mason Valley News* (Yerington, NV), “Two Cents Worth,” Oct. 13, 1972; *Morning Herald* (Hagerstown, MD), “Lawyers For No. 2, Against No. 3,” Nov. 2, 1970; *Reno Gazette-Journal* (NV), “Nevadans Must Retain the Right to Elect Judges,” Oct. 28, 1988; *Republic* (Columbus, IN), “Pros and Cons of Judge Selection Change,” Oct. 26, 1970; *Salina Journal* (KS), “No on No. 1,” Nov. 2, 1958; *Scranton Tribune* (PA), “Vote ‘No,’” May 15, 1969; *State Journal* (Lansing, MI), “Supreme Court Proposal Alters Selection Method,” Oct. 25, 1938; “Statewide Ballot

⁵¹ *Dakota Republican* (Vermillion, SD), “The Republican,” Oct. 30, 1924. In 2000, the National Summit on Improving Judicial Selection recommended that “All judicial elections, whether direct or retention, should be conducted in a nonpartisan manner.” See “Call to Action: Statement of the National Summit on Improving Judicial Selection,” *Loyola of Los Angeles Law Review* 34 (2001): 1355. Studies reveal that the assumed differential impacts of the two electoral options are exaggerated in practice. See Melinda Gann Hall, “State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform,” *American Political Science Review* 95 (2001): 315–330; and Peverill Squire, and Eric R. A. N. Smith, “The Effect of Partisan Information on Voters in Nonpartisan Elections,” *Journal of Politics* 50 (1988): 169–179.

⁵² Albert M. Kales, *Unpopular Government in the United States* (Chicago: University of Chicago Press, 1914), 225–51; and Glenn R. Winters, “The Merit Plan for Judicial Selection and Tenure—Its Historical Development,” *Duquesne Law Review* 7 (1968): 61–78. For analyses on whether merit plans succeeded in achieving their goals relative to other selection procedures, see Michael R. Dimino, “The Futile Quest for a System of Judicial ‘Merit’ Selection,” *Albany Law Review* 67 (2004): 803–819; Brian T. Fitzpatrick, “The Politics of Merit Selection,” *Missouri Law Review* 74 (2009): 675–709; Henry R. Glick, “The Promise and the Performance of the Missouri Plan: Judicial Selection in the Fifty States,” *University of Miami Law Review* 32 (1978): 509–541; and Greg Goelzhauser, *Choosing State Supreme Court Justices: Merit Selection and the Consequences of Institutional Reform* (Philadelphia: Temple University Press, 2016).

⁵³ “Proposed Amendments to Constitution, Propositions and Proposed Laws” (CA voter pamphlet, 1934), 8.

⁵⁴ On the timing, see Jona Goldschmidt, “Merit Selection: Current Status, Procedures, and Issues,” *University of Miami Law Review* 49 (1994): 1–126; and G. Alan Tarr, “Rethinking the Selection of State Supreme Court Justices,” *Willamette Law Review* 39 (2003): 1445–1470.

⁵⁵ *Los Angeles Times* (CA), “Twenty-Three Proposals on State-Wide Ballot,” Nov. 4, 1934.

that merit plans made it onerous to remove bad judges.⁵⁹ The other was a widely circulated complaint that, as asserted in Nevada, such a process would “give the lawyers of the state an absolute lock on the state’s judicial system.”⁶⁰

Election outcomes document that neither merit plan proponents nor their opponents managed to persuade more than half of the electorate to embrace their positions. Once such plans were in place, however, voters supported measures that were marketed as enhancing them. Supporters promised that their proposals would further improve the quality of candidate pools, promote greater public participation in the process, and increase transparency.⁶¹ Those against the proposed augmentations were unsuccessful in convincing voters that the current system was satisfactory and that the changes might actually weaken the merit system by making it harder to attract top applicants.⁶²

Voters rebuffed three of the four overt attempts to weaken merit plans. Missouri accounted for two of the rejections. The first was a 1942 measure the legislature placed on the ballot seeking to overturn the plan voters had adopted through an initiative 2 years earlier. Repeal backers wrapped their reasoning in wartime rhetoric: “Amendment No. 4 seeks to throw away this Nazi ‘Ja’ or ‘Nein’ business in the discard and restore the good old American plan of nominating and electing judges the regular democratic way, so that when election day rolls around the people will have their choice.”⁶³ Almost two-thirds of Missourians rejected that stance; instead they preferred “keeping the courts out of politics.”⁶⁴ Their fondness for the “Missouri Plan” held well into the future. In 2012, 76 percent cast ballots against giving the governor greater input in

selecting the candidate pool.⁶⁵ The only successful effort to enervate a merit plan occurred in Tennessee in 2014. A majority of Tennesseans voted for a proposed change that “incorporates new checks and balances by having our elected representatives in the Legislature confirm or reject the governor’s appointees.”⁶⁶

As documented in Table 3, measures targeting procedures used to fill judicial vacancies began appearing on ballots in the twentieth century. There were six proposing to grant the governor the power to appoint people to fill openings. Most received the majority of votes. Arguments for them emphasized that allowing the governor to do so promoted efficiency and reduced costs. In Michigan, it was said that “Vacancies have created a serious problem. Under the present system vacancies must be filled at a general or special election. This has frequently resulted in inoperative courts over long periods of time.”⁶⁷ Supporters added they were confident that any governor would make suitable selections because “his appointments are subject to sufficient public scrutiny that he must take pains to name well qualified people.”⁶⁸ Opponents doubted such would be the case.⁶⁹

Other vacancy measures proposed extending the terms that appointees could serve. Voters usually agreed to them. Some of these measures aimed at doing away with inefficiencies associated with “short term” appointments. As explained in Ohio, “Under the present arrangement a judicial vacancy is filled by appointment that extends only until the next election, which results in the expense and confusion of having ‘short term’ candidates of questionable qualifications.”⁷⁰ Other measures were marketed as a means to save the state money.⁷¹ It was noted too that extended terms gave voters a more substantial record on which to evaluate judicial performance, which in turn would likely entice better candidates to seek appointments.⁷²

A desire to force appointees to face voters sooner rather than later drove resistance to extension proposals. Pennsylvania’s *Pottsville Republican* maintained that “The principle that an appointee to an unexpired term must stand for election in the year the term expires has been accepted by voters in all other classes of

Questions 2010” (NV voter pamphlet, 2010), SJR 2, Page 3; “Supplement Publicity Pamphlet” (AZ voter pamphlet, 1974), 30; *Today* (Cocoa, FL), “Vote No on Amendment 2,” Oct. 28, 1976; “Utah Voter Information Pamphlet” (UT voter pamphlet, 1984), 17; *Westville Reporter* (OK), “Speaking Personally,” July 7, 1967.

⁵⁹ *Dayton Daily News* (OH), “Opposition to Appointive Judiciary Amendment,” Oct. 30, 1938; *Humboldt Republican* (IA), “The Proposed Judicial Constitutional Amendment Disenfranchises Voters,” May 30, 1962; *Las Cruces Sun-News* (NM), “Proposed Constitutional Amendments Discussed in Impartial Survey,” Sept. 16, 1951.

⁶⁰ *Reno Evening Gazette* (NV), “No’ Vote Urged on Question No. 4,” Oct. 26, 1972. See also *Albuquerque Journal* (NM), “Con,” Nov. 2, 1988; *Argus Leader* (Sioux Falls, SD), “Supreme Court Justices: Appoint or Elect Them?” Oct. 12, 1980; *Baxter Bulletin* (Mountain Home, AR), “Highlights of Proposed Constitution,” Oct. 23, 1980; *Forum* (Fargo, ND), “N.D. Judge Opposes Jurist Amendment,” Aug. 27, 1968; *Grand Haven Daily Tribune* (MI), “Communications,” Nov. 7, 1938; *Lincoln Evening Journal* (NE), “Surrender?” Oct. 23, 1962; *Telegraph-Forum* (Bucyrus, OH), “Voters to Face Three Statewide Issues; 236 Tax Levies on Ballot,” Nov. 2, 1987; *Tucson Daily Citizen* (AZ), “Selection of Judges Touchiest Election Issue,” Nov. 1, 1974; “Voters’ Pamphlet” (OR voter pamphlet, 1978), 6. Concerns about bar association capture of the process may have been warranted. See Fitzpatrick, “The Politics of Merit Selection;” F. Andrew Hanssen, “On the Politics of Judicial Selection: Lawyers and State Campaigns for the Merit Plan,” *Public Choice* 110 (2002): 79–97; and Richard A. Watson, and Rondal G. Downing, *The Politics of the Bench and the Bar: Judicial Selection under the Missouri Nonpartisan Court Plan* (New York: Wiley, 1969).

⁶¹ *Bradenton Herald* (FL), “In Summary,” Nov. 3, 1996; *Fremont Tribune* (NE), “Amendments,” Nov. 3, 1972; *Lincoln Star* (NE), “Constitutional Amendments,” Oct. 27, 1972; “Publicity Pamphlet 1976” (AZ voter pamphlet, 1976), 6; *News-Press* (Fort Myers, FL), “Rewrite With Care,” Nov. 1, 1996; *St. Petersburg Times* (FL), “Public Screening of Judges,” Oct. 18, 1984.

⁶² *Beatrice Daily Sun* (NE), “The Upper Room,” Nov. 2, 1972; *Naples Daily News* (FL), “One ‘No’ Plus Three ‘Yes’ Votes Required to Pass Sugar Tax,” Nov. 3, 1996; *News Tribune* (Fort Pierce/Port St. Lucie, FL), “Arguments For and Against Changes in Constitution,” Nov. 4, 1984; “Voters: Check This Out!” (AZ voter pamphlet, 1992), 59.

⁶³ *Tri-County News* (King City, MO), “Here’s the Tri-County News’ Free Advice on How to Vote Your Constitutional Amendment Ballot,” Oct. 30, 1942.

⁶⁴ *St. Louis Post-Dispatch* (MO), “Amendment No. 4: A Move to Throw Courts Back Into Corrupt Machine Politics,” Oct. 19, 1942.

⁶⁵ *Kansas City Star* (MO), “Protect Nonpartisan Judge Selection in Missouri,” Oct. 8, 2012.

⁶⁶ *News Sentinel* (Knoxville, TN), “Amendment 2 Would Strengthen Voices,” Nov. 2, 2014.

⁶⁷ *Saginaw News* (MI), “Primary Here Has Own Place in the Sun,” Aug. 5, 1968. See also *Sunday Oregonian* (Portland, OR), “Bench These Judicial Measures,” Sept. 29, 2002.

⁶⁸ *State Journal* (Lansing, MI), “Election Reflects ‘Living’ Constitution,” Aug. 4, 1968. See also *Sunday Oregonian* (Portland, OR), “Bench These Judicial Measures,” Sept. 29, 2002.

⁶⁹ *Winston-Salem Journal* (NC), “Constitutional Amendments on the Ballot,” Nov. 4, 2018.

⁷⁰ *Mansfield News-Journal* (OH), “Don’t Neglect the Small Ballot,” Oct. 31, 1942. See also “Amendments to Constitution and Referendum Measures with Arguments Respecting the Same” (CA voter pamphlet, 1915), 42; *Cincinnati Post* (OH), “A Useful Amendment,” Oct. 26, 1942.

⁷¹ *La Crosse Sunday Tribune* (WI), “Significant Election Decisions,” April 5, 1953. See also *Bismarck Tribune* (ND), “8 Measures on Ballot Garner Mixed Reviews,” Oct. 31, 1990; *Bossier Tribune* (LA), “Yes, No, No,” Oct. 21, 1983.

⁷² *Bismarck Tribune* (ND), “Measure Could Reduce Judicial Contests,” June 5, 1998; *Grand Forks Herald* (ND), “Endorsements End; It’s the Voters Turn,” Nov. 4, 1990; *Forum* (Fargo, ND), “Measure Makes It Easier to Get Qualified Judges,” June 6, 1998; *Las Cruces Sun-News* (NM), “Constitutional Amendment 3 Could Change Judicial Elections,” Oct. 29, 2022; *Reno Gazette-Journal* (NV), “Vote ‘Yes’ on State Question 6,” Oct. 30, 2002; “Statewide Ballot Questions 2002” (NV voter pamphlet, 2002), Question 6, Page 1; *Twin City News-Record* (Neenah, Menasha, WI), “Judge Should Run for Full Term—‘Yes’ to Judicial Referendum,” April 2, 1953.

Table 3. Ballot Measure Outcomes on Procedures for Filling Court Vacancies

Year span	Ballot measures on filling court vacancies	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1914–2018	Increase governor power to fill court vacancies	6	4 (66.7)	58.6
	Sole provision	5	3 (60.0)	55.9
1915–2022	Extend term served by appointed judges	12	7 (58.3)	58.9
	Sole provision	12		

Table 4. Ballot Measure Outcomes on Judicial Terms of Office

Year span	Ballot measures on judicial terms of office	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1828–1856	Change life appointment to fixed term	5	4 (80.0)	59.3
	Sole provision	4	4 (100)	65.3
1792–2024	Change fixed term to life appointment	2	1 (50.0)	50.0
	Sole provision	2		
1792–1986	Impose age limit	17	14 (82.4)	70.3
	Sole provision	8	8 (100.0)	74.1
1936–2023	Raise age limit	12	6 (50.0)	45.1
	Sole provision	12		
1932–1970	Lower age limit	4	3 (75.0)	60.8
	Sole provision	2	2 (100.0)	69.0
1994–2016	Repeal age limit	4	1 (25.0)	39.7
	Sole provision	3	0 (0.0)	37.6
1928–2013	Enforce age limit only at convenient time	8	7 (87.5)	75.5
	Sole provision	8		
1862–1974	Increase length of judicial term	15	11 (73.3)	57.2
	Sole provision	3	2 (66.7)	53.3
1883–1914	Decrease length of judicial term	4	4 (100.0)	70.1
	Sole provision	2	2 (100.0)	73.2
1996–2006	Impose term limits	2	0 (0.0)	42.0
	Sole provision	2		

public office. There is no reason why a ... judge should be an exception to that custom.”⁷³ Voters usually opted for greater efficiencies and lower costs.

5. Ballot measures on court service

Judicial terms of office measures featured frequently on state ballots. As Table 4 details, between 1828 and 1856, there were five proposals to replace life tenures of the sort enjoyed by federal judges with fixed terms. When offered as the measure’s only provision, they secured strong majorities. The one that fell short was a New Hampshire amendment saddled with a second provision to institute a controversial change in the way justices were to be selected.

Debates over these proposals again set judicial accountability (through fixed terms and elections) against judicial independence (through life terms).⁷⁴ Arguing in favor of fixed terms, Connecticut supporters stressed that “A Judge who holds the office for eight years, and proves himself competent and faithful, will be morally certain of a re-appointment; the incompetent or the indolent Judge will be dropped.”⁷⁵ Opponents in Maine forecasted that “The natural consequences will be, that our Courts of Law, will no longer have to decide, what is the Law?—what is Equity?—or Justice?—but only, ‘What is the will or caprice of the MAJORITY, or of the

⁷⁴For an example, see McMillan, *Constitutional Development in Alabama*, 47–51.

⁷⁵*Hartford Courant* (CT), “The Constitutional Amendment,” Oct. 3, 1856. See also *New Hampshire Gazette and Republican Union* (Portsmouth, NH), “Election of Judges By the People,” March 5, 1851; *Republican Journal* (Belfast, ME), “The Ninth of September,” Aug. 15, 1839.

⁷³*Pottsville Republican* (PA), “The Other Amendment,” April 19, 1978. See also *Forum* (Fargo, ND), “‘Yes’ on 1 and 3, ‘No’ on 2 and 4,” Oct. 27, 1990.

constituency by which the Judge is placed on the bench?”⁷⁶ Most nineteenth-century voters picked judicial accountability (and fixed terms) over judicial independence (and life terms).

Only two measures ever proposed replacing fixed terms with life appointments. They bookend the time frame here. In 1792, 78 percent of New Hampshire voters backed moving to life appointments, though another amendment adopted at the same time negated its full impact by imposing a retirement age of 70. In 2024, fixed-term advocates held that, “We Arizonans value our freedom and power to hold accountable those in government who do the wrong thing in our view. So why would we want to grant what are essentially LIFETIME APPOINTMENTS to judges who rule over us?”⁷⁷ At the polls, only 22 percent approved of lifetime tenures.

New Hampshire’s 1792 vote on a mandatory retirement age had put such a question to voters far in advance of the rest of the states. Other efforts to impose one through the ballot box occurred between 1951 and 1986. Oregon enthusiasts argued that “Not all judges who reach an advanced age slacken off in their capacity for work. Most of them do, however. Experience in this state’s court system and experience in business and government generally demonstrate beyond doubt that a voluntary retirement system simply will not work.”⁷⁸ More bluntly, Salem’s *Capital Journal* grouched that “Oregon has been plagued with court problems because of senility.”⁷⁹ Worries that elderly justices could no longer manage the job were widespread.⁸⁰

That concern received pushback. It was routinely noted, as in a Massachusetts editorial, that “Mandatory retirement would remove able and experienced judges from the bench.”⁸¹ Voters, however, were untroubled by any potential negative consequences and passed mandatory retirement ages by wide margins.⁸²

Subsequent measures proposed altering a mandatory age limit, some to raise the age, others to lower it, and a few to repeal it. The arguments surrounding each reprised those made during campaigns to impose limits. Voters split on whether to raise retirement ages. Supporters favored “allowing seasoned and experienced judges to remain on the bench and avoid forced retirement.”⁸³

Opponents expressed fears about those who could no longer do the job, adding that “the age limit helps bring in younger justices and with them, fresh ideas.”⁸⁴ Voters almost always backed measures to lower retirement ages, again stirred by qualms about “judges of manifestly frail ability.”⁸⁵ Only a 1948 Louisiana amendment aimed at the governor’s political rival failed to earn majority support.⁸⁶ Voters also opposed measures to abolish mandatory retirement ages, rejecting appeals that “The length of judges’ terms should be based on performance, not age” in favor of addressing angsts that “old judges too often misjudge their ability to serve.”⁸⁷

While voters approved of mandatory retirement ages, they demonstrated a pragmatic streak when confronted by measures to allow justices hitting age limits to continue serving until a convenient time to select their replacements. Short extensions found favor with three-quarters of the voters. Louisianans backed stretching terms, “thus preventing a sudden vacancy on the bench ... and obviating the necessity of an inopportune irregular election when any judge becomes 75 years old.”⁸⁸ Only a 2013 New York postponement lost; there were worries that it could prolong a justice’s term as much as 10 years past the retirement age of 70.⁸⁹

As detailed in Table 4, voters always supported decreasing judicial term lengths while in most instances also backing increases in them. This behavior might appear inconsistent. But there is a mundane explanation for the contradictory verdicts. All of the measures to reduce term lengths and many of those to stretch them were alterations to accommodate changes in court membership sizes and election cycles. Advocates of a 1914 Mississippi amendment noted that “The term is made eight years because elections are held in this state every four years, and if the term should remain nine years the tenure of office could not be made to begin in all instances at a time after the election.”⁹⁰ When a need for such adjustment was absent, supporters of lengthier terms argued that, “The security of judges and the stability of the judiciary would be increased through longer terms and without turning to the lifetime tenure system used at the federal level.”⁹¹ They noted too that the reform would

⁷⁶ *Lincoln Telegraph* (Bath, ME), “Judicial Tenure,” Aug. 8, 1839. See also *Exeter News-Letter* (NH), “Fifteen Questions,” March 3, 1851; *Hartford Courant* (CT), “It Will Be Remembered,” Sept. 29, 1856.

⁷⁷ “Arizona 2024 General Election Publicity Pamphlet” (AZ voter pamphlet, 2024), 120.

⁷⁸ “Voters’ Pamphlet” (OR voter pamphlet, 1960), 29.

⁷⁹ *Capital Journal* (Salem, OR), “Yes on Measure 9,” Oct. 26, 1960.

⁸⁰ *Austin American-Statesman* (TX), “Garwood Suggests Vote ‘For’ Amendment No. 8,” Oct. 31, 1965; *Berkshire Eagle* (Pittsfield, MA), “Reviewing the Ballot Questions,” Nov. 6, 1972; *Cincinnati Enquirer* (OH), “Cuyahoga Judge Supports Proposed Modern Courts Act,” April 29, 1968; *Deseret News* (Salt Lake, UT), “Utahns Should Okay All Five Amendments,” Nov. 4, 1968; *Fort Collins Coloradoan* (CO), “Amendment 3 Provides For Appointment of Judges,” Oct. 6, 1966; *News and Observer* (Raleigh, NC), “Accountability Holds No Threat,” Oct. 30, 1972; *Niles Daily Star* (MI), “Election Changes on April Ballot,” March 31, 1955; *Tri-City Herald* (Pasco, WA), “Vote HJR No. 6, HJR 13 ‘Yes,’” Oct. 30, 1952; *Wisconsin Rapids Daily Tribune* (WI), “Two Referendum Questions on Spring Ballot Merit ‘Yes’ Vote,” April 2, 1955.

⁸¹ *Transcript* (North Adams, MA), “Question 7,” Nov. 1, 1972. See also *Hickory Daily Record* (NC), “Amendment Views Aired,” Oct. 27, 1972; *Kalamazoo Gazette* (MI), “Four Amendments Due on April 4 State Ballot,” April 1, 1955; *Longview Daily News* (WA), “Recommendations to Voters on Nine Proposition on Ballot,” Nov. 1, 1952; *McKinney Courier-Gazette* (TX), “Amendment Asks to Retire Judges,” Oct. 31, 1965; *Oregon Statesman* (Salem, OR), “Measure No. 9,” Oct. 29, 1960; *Sunday Herald* (Provo, UT), “Opposes Proposition 5 on Retirement of Utah Judges,” Nov. 3, 1968.

⁸² A recent study of the impact of mandatory retirement ages on judicial performance indicates that the public’s concerns had merit. See Elliott Ash, and W. Bentley MacLeod, “Mandatory Retirement for Judges Improved the Performance of US State Supreme Courts,” *American Economic Journal: Economic Policy* 16 (2024): 518–548.

⁸³ “What’s On My Ballot?” (AZ voter pamphlet, 2012), 24. See also *Caspar Star-Tribune* (WY), “2022 General Election Voter Guide,” Oct. 30, 2022; *Crowley Post-Signal* (LA), “Post

Scripts,” Oct. 19, 1995; *Pittsburgh Post-Gazette* (PA), “Vote ‘Yes,’” Nov. 7, 2016; *Sunday Plain Dealer* (Cleveland, OH), “Yes to State Issue 1,” Oct. 16, 2011; *Sunday Post-Crescent* (Appleton-Neenah-Menasha, WI), “In Favor of Court Reform,” April 3, 1977.

⁸⁴ *Concord Monitor* (NH), “Changes to State Constitution to Be on Ballot,” Oct. 3, 2024. See also *Caspar Star-Tribune* (WY), “2022 General Election Voter Guide,” Oct. 30, 2022; *Chillicothe Gazette* (OH), “No’ Votes Recommended on State Issues,” Nov. 4, 2011; *Republican Herald* (Pottsville, PA), “Vote ‘No’ on Court Question,” Nov. 4, 2016.

⁸⁵ *Daily Standard* (Sikeston, MO), “State Vote on Better Courts,” July 22, 1970.

⁸⁶ See *Daily World* (Opelousas, LA), “Mugwump,” Oct. 27, 1948; *Times-Picayune* (New Orleans, LA), “Bureau Cites Power Grab,” Oct. 16, 1948.

⁸⁷ The first quote is from *Honolulu Star-Advertiser* (HI), “Yes’ on Constitutional Amendments 2, 3 and 5,” Oct. 22, 2006. See also *Times* (Shreveport, LA), “Strike Down Mandatory Retirement for Judges,” Oct. 23, 2014; Voters’ Pamphlet (OR voter pamphlet, 2016), 55. The second quote is from *Statesman Journal* (Salem, OR), “Measure 94 a Bad Idea: Keep Retirement Age for Judges,” Oct. 16, 2016. See also *Hawaii Tribune-Herald* (Hilo, HI), “The Tribune-Herald’s Election Recommendations,” Nov. 5, 2006.

⁸⁸ *Weekly Town Talk* (Alexandria, LA), “Amendments 10 and 4 Endorsed,” Nov. 3, 1928. See also *Fort Worth Star-Telegram* (TX), “Years in Office,” Oct. 14, 2007; *Morning Call* (Allentown, PA), “Two Ballot Questions Deserve ‘Yes’ Votes,” May 7, 2001; *Sanford Tribune* (ME), “Important Issues,” Nov. 1, 1976; *West Carroll Gazette* (Oak Grove, LA), “Judges Favors Amendment 15,” Sept. 17, 2003.

⁸⁹ *Daily News* (New York, NY), “The Age-Old Question,” Oct. 21, 2013; *Staten Island Sunday Advance* (NY), “Is 80 the New 60?” Sept. 29, 2013.

⁹⁰ *Jackson Daily News* (MS), “Committees Explain Proposed Amendments,” July 28, 1914.

⁹¹ *Republic* (Columbus, IN), “Pros and Cons of Judge Selection Change,” Oct. 26, 1970. See also *Garden City Daily Herald* (KS), “Vote for the Amendment,” Oct. 29, 1886; “What’s On My Ballot?” (AZ voter pamphlet, 2012), 25. In 2000, the National Summit on Improving Judicial Selection recommended that “States with relatively short judicial terms of office should consider increasing the length of those terms.” See “Call to Action: Statement of the

"tend to make judicial positions more attractive to men of the highest type."⁹² Opponents responded, as in North Dakota where it was proposed to increase the term to 10 years, that "if the judge be able, faithful and honest he will be re-elected by the people at the end of six years, and if he is not, six years is all the time he should be tolerated on the bench."⁹³ Voters split down the middle on such questions.

At the turn of the twenty-first century, the movement to impose term limits on state legislators spilled over onto judges in Colorado (2006) and Nevada (1996). Proponents offered assurances that "There are many fine legal minds in this community capable of serving on the bench for a given period of time. Knowing that their service is limited ... would insure independent opinion."⁹⁴ But voters aligned with the argument that "Judges get better with experience on the bench. Term limits would remove our best judges just as they are reaching their fullest potential."⁹⁵ In sharp contrast to the easy term limit wins when targeting legislators, measures to impose them on justices were soundly defeated.⁹⁶

Proposals to increase judicial pay were plentiful from the end of the nineteenth century through the middle of the twentieth century. Supporters always stressed that higher salaries were needed to attract and retain the best legal talent.⁹⁷ In 1887, the *Los Angeles Daily Herald* reasoned that "Lawyers, like other people, seek the most advantageous market for what they have to offer. If sufficient inducement is not offered to them on the bench, the best lawyer will not go there."⁹⁸ Backers also produced comparisons showing that their state's justices were paid less than their counterparts elsewhere.⁹⁹ In 1928, the *Aspen Times* reported that, "Forty-two

states pay their judges more than Colorado does and only one pays less."¹⁰⁰ In a few cases, they drew attention to salary inversions. A Missouri newspaper noted that a proposed amendment would fix supreme court justices' "annual salaries at \$5,500, just what is now paid the judges of the St. Louis court of appeals, a court of inferior jurisdiction to the supreme court."¹⁰¹ A similar situation obtained in New York, with the *Brooklyn Daily Eagle* editorializing that "It is absurd that judges sitting in the highest court in the State should receive about \$3,800 less than judges over whose decisions they exercise the power of review."¹⁰² (In both instances, voters proved unsympathetic to their justices' plight.)

Opponents consistently protested that pay raises would increase government costs.¹⁰³ Occasionally, it was observed that an increase would be out of line with what neighboring states paid.¹⁰⁴ Some insisted raises were unnecessary, because, as the *San Jose Mercury* reckoned in 1887, "no difficulty has yet been found in obtaining the best material in the profession for the bench at the present pay."¹⁰⁵ A few even swore they were altogether unmerited, with an 1890 Nebraska letter writer ranting, "The present salary of the supreme judge is three thousand dollars per annum or ten dollars a day for 300 working days in a year and they do not work half the time, and ride on free transportation, and render their decisions in favor of the corporations and against tillers of the soil and laborers who pay their salaries."¹⁰⁶

As Table 5 shows, taken together, measures to increase judicial salaries received a median vote of 47 percent, and under 40 percent of them secured a majority. Justices were not singled out for harsh treatment; measures to increase the pay of state legislators got even less support.¹⁰⁷ But by the middle of the twentieth century, voters became more sympathetic to raising judicial salaries.

National Summit on Improving Judicial Selection," *Loyola of Los Angeles Law Review* 34 (2001): 1355.

⁹² *Grand Forks Herald* (ND), "Longer Judicial Terms," June 21, 1930. See also *Hawaii Tribune-Herald* (Hilo, HI), "Pros and Cons of Constitutional Amendments," Oct. 31, 1968.

⁹³ *Washburn Leader* (ND), "The Proposed Constitutional Amendments," Nov. 1, 1912. See also *Astonisher and Paralyzer* (Carbondale, KS), "Giving the Justices," Oct. 30, 1886; *Dodge County Democrat* (Juneau, WI), "The Fond du Lac Journal," Oct. 31, 1877; *Herald Democrat* (Leadville, CO), "The Proposed Constitutional Amendment," Oct. 24, 1890.

⁹⁴ *Reno Gazette-Journal* (NV), "Vote Yes on Question 9," Oct. 27, 1996. See also *Daily Sentinel* (Grand Junction, CO), "No' on Amendment 40," Sept. 24, 2006.

⁹⁵ *Elko Daily Free Press* (NV), "Imposing Term Limits on Judges a Bad Idea," Oct. 31, 1996. See also *Coloradoan* (Fort Collins, CO), "Reject Amendment 40," Oct. 14, 2006.

⁹⁶ On voter support for legislative term limit measures, see Squire, *Reforming Legislatures*, 80. In 2000, the National Summit on Improving Judicial Selection declared that "Term limits, whatever their merits for representative positions, are not appropriate for judicial office." See "Call to Action: Statement of the National Summit on Improving Judicial Selection," 1355.

⁹⁷ *Atlanta Constitution* (GA), "Let's Be Just to the Judges," Oct. 31, 1950; *Austin Daily Statesman* (TX), "If You Believe," Aug. 7, 1891; *Batesville Guard* (AR), "Constitutional Amendment No. 15," Oct. 29, 1920; *Brooklyn Daily Eagle* (NY), "An Amendment to the Constitution and a Referendum," Nov. 1, 1910; *Daily Argus-Leader* (Sioux Falls, SD), "Two Good Amendments," Oct. 31, 1918; *Daily Journal* (Telluride, CO), "Three Amendments," Oct. 30, 1908; *Fort Collins Express-Courier* (CO), "The Amendments—Vote Yes on Nos. 1, 2, 3 and 8; Vote Against All Others," Nov. 1, 1926; *Fresno Morning Republican* (CA), "Webb Supports 3D Amendment," Oct. 31, 1920; *Hawaii Tribune-Herald* (Hilo, HI), "Pros and Cons of Constitutional Amendments," Oct. 31, 1968; *Lincoln Evening News* (NE), "Relating to Supreme and District Judges," Nov. 3, 1890; *Miami Metropolis* (FL), "Should Vote for the Amendments," Oct. 28, 1908; *Randall Register* (KS), "Speaking of the Proposed Judicial Amendment," Oct. 30, 1886; *Rocky Mountain News* (Denver, CO), "Summary of Ten Measures That Will Appear on Ballot and Digest of Arguments," Oct. 31, 1920; *Tampa Tribune* (FL), "Pass These Amendments," Oct. 19, 1906; *Weekly Register-Call* (Central City, CO), "At the Election Next Month," Oct. 31, 1890.

⁹⁸ *Los Angeles Daily Herald* (CA), "The Amendments," April 4, 1887. Until the legislature was allowed to set their salaries, low pay forced several California Supreme Court justices to step down. See Lucy Salyer, "Progressive Judiciary: The California Supreme Court and Judicial Reform in the Progressive Era," *California Supreme Court Historical Society Yearbook* 3 (1996–1997): 110.

⁹⁹ *Arizona Republic* (AZ), "Justice Stresses Need of Court Amendment," Nov. 3, 1960; *Brooklyn Daily Eagle* (NY), "An Amendment to the Constitution and a Referendum," Nov.

1, 1910; *Courier-Index* (Marianna, AR), "Amendment No. 15," Oct. 22, 1920; *Greeley Daily Tribune* (CO), "Sec. Daniels and Dickerson Are Lions Speakers," Oct. 29, 1924; *Jonesboro Daily Tribune* (AR), "Former Solon Urges All Democrats to Vote October 7th," Sept. 26, 1924; *Lead Daily Call* (SD), "Aside From Candidates," Oct. 30, 1920; *Mitchell Capital* (SD), "State Officers Salaries," Oct. 19, 1916; *New York Tribune* (New York, NY), "The Two Amendments," Nov. 4, 1922; *Omaha Daily News* (NE), "Proposed Changes in Nebraska's Constitution," Sept. 15, 1920; *Poudre Valley* (Windsor, CO), "Purpose of Amendment No. 1 Explained to Voters of Colorado," Oct. 4, 1928; *Rapid City Daily Journal* (SD), "Wages and the Cost of Living," Oct. 31, 1942; *Venice Evening Vanguard* (CA), "Deserve It," Oct. 30, 1920.

¹⁰⁰ *Aspen Times* (CO), "Vote for Amendment No. 1," Nov. 2, 1928.

¹⁰¹ *Jefferson City Tribune* (MO), "Judges Are Not Against Amendment," Oct. 22, 1908.

¹⁰² *Brooklyn Daily Eagle* (NY), "The Constitutional Amendments," Nov. 3, 1919. See also *New York Herald* (New York, NY), "Vote for Both Amendments," Nov. 4, 1922.

¹⁰³ *Clipper-Citizen* (Lexington, NE), "The Constitutional Amendments," Oct. 30, 1896; *Dallas Daily Herald* (TX), "Constitutional Amendments," Aug. 31, 1881; *Journal and Republican* and *Lowville Times* (NY), "Voters of Lewis County," Oct. 27, 1910; *Pueblo Chieftain* (CO), "Oppose the Amendment," Oct. 26, 1890; *Rocky Mountain News* (Denver, CO), "News Gives Recommendations on Amendments in Election," Oct. 31, 1926; *Sutton Register* (NE), "There Are Two Constitutional Amendments," Oct. 22, 1908; *Weekly Courier* (Fort Collins, CO), "The Courier Fully Agrees," Oct. 21, 1908.

¹⁰⁴ *Macon Daily Telegraph* (GA), "Carry Georgia Is Desire of G.O.P." Oct. 31, 1920. See also *Ocala Banner* (FL), "Light Votes No," Oct. 26, 1908.

¹⁰⁵ *San Jose Mercury* (CA), "Supreme Court Amendments," April 10, 1887. See also *Kansas Democrat* (Hiawatha, KS), "The Judicial Amendment," Oct. 30, 1886; *Longmont Ledger* (CO), "Constitutional Amendment," Nov. 3, 1882; *Pitkin Miner* (CO), "Sunday Night Musings," Oct. 22, 1926; *Pueblo Chieftain* (CO), "Oppose the Amendment," Oct. 26, 1890; *Saturday News* (Watertown, SD), "No. 9," Oct. 26, 1916; *Sharp County Record* (Evening Shade, AR), "Number 15," Oct. 29, 1920.

¹⁰⁶ *Friend Free Press* (NE), "An Open Letter to the Tax-Payers of Nebraska," Oct. 31, 1890. See also *Champion* (Arcadia, FL), "It Is Our Humble Opinion," Nov. 1, 1906; *Rocky Mountain News* (Denver, CO), "Vote Them Down," Oct. 29, 1890.

¹⁰⁷ Squire, *Reforming Legislatures*, 124.

Table 5. Ballot Measure Outcomes on Judicial Compensation

Year span	Ballot measures on judicial compensation	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1881–1998	Increase compensation	43	17 (39.5)	46.8
	Sole provision	31	11 (35.5)	46.8
1880–2012	Decrease compensation	9	8 (88.9)	70.3
	Sole provision	9		
1906–1994	Allow compensation increase during term	13	8 (61.5)	58.3
	Sole provision	11	6 (54.5)	50.5
1970–1999	Create compensation commission	5	4 (80.0)	62.1
	Sole provision	3	2 (66.7)	52.3
1926–1948	Create judicial pensions	2	1 (50.0)	42.8
	Sole provision	2		
1912–1968	Make pay periods more frequent	2	2 (100.0)	60.4
	Sole provision	2		

The eight measures put to them from 1942 on received a median vote of 59.4 percent, and five passed (62.5 percent).¹⁰⁸

Nine measures were proposed to reduce judicial compensation. Some were straight bids to slash salaries. Voters almost always backed them. Others involved treating judges like other public employees on such matters as having to pay state income taxes and making required pension contributions. Solid majorities agreed that justices should not receive special treatment.

Voters could also be stingy on narrower compensation matters. One involved bans on allowing justices to accept pay raises during their current term of office. As was pointed out during debate on a 1948 Kansas measure, equity demanded that every justice immediately get any raise the legislature granted because, “If the amendment is not adopted, two justices of the supreme court will be receiving \$8,000 a year starting in 1949, two will get \$7,500 and two \$6,000.”¹⁰⁹ Those who wanted to force justices to wait until their next term to receive a raise took a hard line. Nevada opponents contended that “When a person runs for a public office, he or she is aware of the compensation for that office and should accept that salary for the full term.”¹¹⁰ The *Elko Daily Free Press* even taunted, “We don’t imagine any judges are going to quit midterm should a recently elected or re-elected colleague get a bigger paycheck. So why spend the extra money?”¹¹¹ Once again, voters were divided evenly on the question. But their resistance sometimes

waned; Wisconsin passed the reform on its second try, Ohio on its third.

Toward the twentieth century’s conclusion, a handful of states asked voters to create compensation commissions to set judicial pay. They usually agreed to do so, particularly when it was packaged with other reforms. Proponents thought, as Texas’s *Waco Tribune-Herald* wrote, “judges should be adequately compensated independent of political considerations and commensurate with private attorneys. Only then can the state attract and retain qualified judges.”¹¹² Opponents retorted that “The Legislature levies taxes and decides where the money will be spent. There is no compelling reason to duck that responsibility in the matter of judicial compensation.”¹¹³

Two other compensation issues were put to the voters to resolve. In 1926, Californians rejected a measure to establish a judicial pension system; in 1948, Texans passed one. Each was marketed as “a measure designed to encourage able and experienced men to seek judicial office and devote themselves to a judicial career.”¹¹⁴ Those who disagreed disparaged the idea, saying that, “The salaries of these jobs are better than the salaries paid to other state ... officials. The lawyers who run for these jobs are not sacrificing anything.”¹¹⁵ The other measures involved the schedules on which judges received their salaries. In both cases (Wisconsin in 1912 and Nevada in 1968), voters agreed to alter the timetables to allow for more frequent payments.

The biggest category of court service measures revolved around judicial ethics rules and procedures. Although they spanned the entire time frame examined here, they were primarily pursued from the mid-twentieth century on—eighty of the ninety ethics

¹⁰⁸ On the mid-century change in attitude, see “Judicial Salaries and Retirement Plans in the United States,” *Judicature* 54 (1970): 184.

¹⁰⁹ *Manhattan Mercury-Chronicle* (KS), “Salaries for Judges,” Oct. 26, 1948. See also *Casper Tribune-Herald* (WY), “Reminder on the Measures,” Oct. 31, 1954; *Cincinnati Enquirer* (OH), “Be Just to Jurists,” Nov. 2, 1928; *Coshocton Tribune* (OH), “Issues in Coming Election,” Nov. 5, 1955; *Daily Telegram* (Eau Claire, WI), “Chance to Correct Glaring Inequity,” March 23, 1967; *Grand Rapids Press* (MI), “The Statewide Election,” March 30, 1951; *Greeley Daily Tribune* (CO), “Vote ‘Yes’ on Amendment No. 1,” Oct. 18, 1952; *Los Angeles Herald* (CA), “Judicial Salaries,” Oct. 22, 1906; *Missoulian* (Missoula, MT), “Judges’ Pay,” Oct. 26, 1964; “Nevada Ballot Questions 1994” (NV voter pamphlet, 1994), Question 3, Page 1; *Salt Lake Tribune* (UT), “Top-Salaried Judge Asks Yes on No. 7,” Nov. 3, 1946; *Springfield Daily News* (OH), “Issue No. 3,” May 1, 1968; *Wisconsin State Journal* (Madison, WI), “Equal Pay for Equal Work,” March 27, 1963.

¹¹⁰ “Nevada Ballot Questions 1994” (NV voter pamphlet, 1994), Question 3, Page 1. See also *Akron Beacon Journal* (OH), “Kill This Amendment,” Nov. 2, 1928.

¹¹¹ *Elko Daily Free Press* (NV), “Recommendations on Ballot Questions,” Oct. 10, 1994.

¹¹² *Waco Tribune-Herald* (TX), “Ensuring the Quality of Justice,” Oct. 27, 1999. See also “1986 Voters & Candidates Pamphlet” (WA voter pamphlet, 1986), 12; *Tucson Daily Citizen* (AZ), “Voters Can Help Oust Bad Judges,” Oct. 20, 1970.

¹¹³ *San Angelo Standard-Times* (TX), “Legislators Should Set Judicial Compensation,” Oct. 15, 1999. See also *Spokesman-Review* (Spokane, WA), “Lawmakers Shouldn’t Be Let Off the Hook,” Oct. 25, 1986.

¹¹⁴ *Los Angeles Times* (CA), “State Measures Which Will Be Voted On,” Oct. 31, 1926. See also *Waco Times-Herald* (TX), “Texas Today,” Oct. 30, 1948.

¹¹⁵ *Canyon News* (TX), “Editorial Comments,” Oct. 21, 1948. See also *Palo Alto Times* (CA), “Ballot Propositions Summarized,” Oct. 30, 1926.

Table 6. Ballot Measure Outcomes on Judicial Ethics Rules and Procedures

Year span	Ballot measures on judicial ethics	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1792–2024	Establish judicial ethics rules and procedures	90	81 (90.0)	68.5
	Sole provision	67	64 (95.5)	72.1
1988–2020	Weaken judicial ethics rules and procedures	4	1 (25.0)	46.3
	Sole provision	2	1 (50.0)	54.4
1994	Increase ratio of law professionals on judicial ethics commission	1	0 (0.0)	49.2
	Sole provision	1		
1982–2012	Increase or keep equal ratio of lay representation on judicial ethics commission	6	6 (100.0)	62.8
	Sole provision	6		

measures appeared on ballots after 1946. They were well received by the public, as shown in Table 6.

A handful of measures targeted judicial conduct. New Yorkers adopted an 1869 amendment to restructure the state's court system so "that no Judge shall sit ... in the Court of Appeals in review of any decision in the making which he has taken part."¹¹⁶ Several others sought to regulate election-related behavior, as with a 1950 proposal Nevadans adopted to make "justices ... ineligible to any office, other than a judicial office, during the term they shall have been elected or appointed." The thinking behind it was that "those elected to these offices of trust should devote their entire time to the welfare of the people they represent."¹¹⁷

The bulk of the ethics measures proposed creating official bodies empowered to discipline or remove judges when they violated standards.¹¹⁸ An endorsement of a 1947 New York amendment asserted it would provide "an easier method for removal of corrupt or dissolute judges and a system to force retirement of judges physically or mentally disabled. As it is, judges can be removed only by action of the Legislature in impeachment proceedings, which present so many difficulties that the method is seldom employed."¹¹⁹ Comparable rationales circulated in support of other such proposals.¹²⁰

Opposition to ethics measures was sparse. Some complained that a proposed disciplinary process would be too opaque, leaving the public with little information about why a justice had been punished or removed.¹²¹ Others thought the reforms pointless because "Present laws are adequate for removal of judges."¹²² Most voters were unmoved by such objections.

Given the broad backing judicial ethics measures received, it was predictable that the few attempts to weaken them would fare poorly. The only one that received a majority vote was a benign California proposition to allow justices to teach public university courses, on the assumption that it could "help students without hurting the judicial system."¹²³ Although it passed easily, the idea raised some hackles, with one editorial grumbling that "Judges ... are paid handsomely to be judges. If they want to be college or

¹¹⁶ *Sun* (New York, NY), "Vote for the Judiciary Article in the New Constitution," Nov. 1, 1869.

¹¹⁷ *Nevada State Journal* (Reno, NV), "Editors—Speaking," Nov. 4, 1950.

¹¹⁸ On the issues raised by the creation of such disciplinary bodies, see Steven Lubet, "Judicial Discipline and Judicial Independence," *Law and Contemporary Problems* 61 (1998): 59–74. On the operation of these bodies, see Cynthia Gray, "How Judicial Conduct Commissions Work," *Justice System Journal* 28 (2007): 405–418.

¹¹⁹ *Buffalo Evening News* (NY), "Vote on Amendments," Nov. 3, 1947.

¹²⁰ "1980 Voters and Candidates Pamphlet" (WA voter pamphlet, 1980), 12; *Aegis* (Bel Air, MD), "The Questions," Oct. 27, 1966; *Albuquerque Tribune* (NM), "Vote For Amendment No. 6," Nov. 2, 1967; *Austin American-Statesman* (TX), "Garwood Suggests Vote 'For' Amendment No. 8," Oct. 31, 1965; *Boston Post* (MA), "Amendment Explained," Oct. 25, 1918; *Bremerton Sun* (WA), "Judicial Article," Nov. 1, 1975; *Daily Item* (Port Chester, NY), "For Amendments 1, 2, 3," Nov. 6, 1977; *Daily Oklahoman* (Oklahoma City, OK), "Discriminating Voters Needed," Nov. 2, 1964; *Daily World* (Opelousas, LA), "Mugwump," Nov. 3, 1968; *Democrat and Chronicle* (Rochester, NY), "Amendment 2," Nov. 2, 1975; *Emporia Gazette* (KS), "Court Reform Is Proposed For Kansas," Oct. 31, 1972; *Fairbanks Daily News-Miner* (AK), "Amendments Supported," Aug. 26, 1968; *Forum* (Fargo, ND), "Changes in Judicial System Worth Trying," Aug. 30, 1968; *Fort Collins Coloradoan* (CO), "Amendment 3 Provides For Appointment of Judges," Oct. 6, 1966; *Grand Forks Herald* (ND), "In My Book," Oct. 29, 1974; *Idaho Sunday Statesman* (Boise, ID), "Amendments Merit Support," Nov. 3, 1968; *Jackson Hole Guide* (WY), "Vote for Court Selection Reform," Nov. 2, 1972; *Lexington Leader* (KY), "Ballot Question Aims to Improve Kentucky's Courts," Oct. 27, 1975; *Mason Valley News* (Yerington, NV), "Judge Recommends 'Yes' Vote on Judicial Questions," Oct. 29, 1976; *Minneapolis Tribune* (MN),

"Voters to Decide on 4 Amendments," Oct. 30, 1972; *News and Observer* (Raleigh, NC), "Accountability Holds No Threat," Oct. 30, 1972; *Paragould Daily Press* (AR), "Amendment 1 Would Improve Judicial System," Nov. 6, 1988; "Proposed Amendments to Constitution" (CA voter pamphlet, 1960), 14 "Proposed Amendments to Constitution, Propositions and Proposed Laws" (CA voter pamphlet, 1938), 29; *Lawton Constitution* (OK), "5 State Questions," April 29, 1966; *Lincoln Star* (NE), "Amendment 7," Nov. 1, 1966; *Los Angeles Daily Herald* (CA), "The Amendments," April 4, 1887; *Reno Evening Gazette* (NV), "Yes Vote Needed on Judicial Measure," Oct. 31, 1972; *Saginaw News* (MI), "Judicial Article," Aug. 4, 1968; *St. Petersburg Times* (FL), "For All But Four," Oct. 23, 1966; "Voters' Pamphlet" (OR voter pamphlet, 1968), 9; "Voters' Pamphlet" (OR voter pamphlet, primary election, 1976), 7; *Waco Tribune-Herald* (TX), "Constitutional Amendments 6, 7 Explained," Nov. 4, 1977.

¹²¹ *Corpus Christi Caller-Times* (TX), "Seven Other Proposals Deserve Attention," Nov. 4, 1984; *Daily News* (New York, NY), "Vote 'No' on Amendment 4," Oct. 28, 1947; *Lodi News-Sentinel* (CA), "Proposition 10," Oct. 27, 1960; *Mason Valley News* (Yerington, NV), "Two Cents Worth," Oct. 21, 1994; "Utah Voter Information Pamphlet" (UT voter pamphlet, 1984), 17.

¹²² "Proposed Amendments to Constitution, Propositions and Proposed Laws" (CA voter pamphlet, 1938), 30. See also "1980 Voters and Candidates Pamphlet" (WA voter pamphlet, 1980), 13; "1986 Voters & Candidates Pamphlet" (WA voter pamphlet, 1986), 9; *Alliance Times-Herald* (NE), "Amendment 2 Would Make Judge Reprimands Public," Oct. 23, 1984; *Daily Inter Lake* (Kalispell, MT), "Judicial Amendment Unclear, Unneeded," Nov. 2, 1984; *Denham Springs News* (LA), "The Amendments," Oct. 31, 1968; *Great Falls Tribune* (MT), "Voters to Make Decisions on Four Initiatives, an Amendment," Nov. 1, 1980; *Grand Haven Daily Tribune* (MI), "When in Doubt Vote No," Aug. 2, 1968; *Hawaii Tribune-Herald* (Hilo, HI), "Pros and Cons of Constitutional Amendments," Oct. 31, 1968; "Nevada Ballot Questions 1994" (NV voter pamphlet, 1994), Question 1, Page 1; *Newsday* (Hempstead, NY), "The State Issues," Nov. 2, 1975; *Oshkosh Daily Northwestern* (WI), "Discipline," April 1, 1977; *Rio Grande Sun* (Española, NM), "On the Amendments," Nov. 2, 1967; *Spokane Daily Chronicle* (WA), "Against," Oct. 30, 1975; *Sunday News and Leader* (Springfield, MO), "Amendment No. 3 of Little Value," Aug. 2, 1970; *Victoria Advocate* (TX), "League of Women Voters: Proposed Amendments to the Texas Constitution," Oct. 15, 2021; *Waco Tribune-Herald* (TX), "Amendment Proposals: Pro and Con," Oct. 31, 1965.

¹²³ "California Ballot Pamphlet" (CA voter pamphlet, 1988), 64. See also *Los Angeles Times* (CA), "Judges: Yes on 94," Oct. 31, 1988.

university instructors, they should take off the robe and join a faculty.”¹²⁴ Elsewhere, Wisconsinites defeated a measure because “judges who are permitted to anticipate resignation and subsequent service in another public capacity might risk a potential conflict of interest,” while Floridians turned down one that would allow “the Legislature to take control over the discipline and oversight of Florida ... justices.”¹²⁵ Alabama voters snubbed an amendment to weaken the state’s Judicial Inquiry Commission’s powers; it was alleged to have resulted from legislative “negotiations with individuals who wanted to do away with the commission entirely.”¹²⁶

Finally, there were measures to reconfigure judicial disciplinary bodies’ memberships. Only one of them proposed increasing the ratio of legal professionals to lay members. It failed with a slim majority of Alabamians agreeing that it “would upset the [existing] balance between lay and professional members.”¹²⁷ The other measures sought to either increase the ratio of lay people or keep their representation level with that of legal professionals. They all passed, usually by wide margins. When the ratio of lay members was to be increased, supporters asserted that “The courts belong to all of us; all of us should be represented ... not just those in the legal profession,” adding that it would make “the group less of an insiders’ club.”¹²⁸ Opponents of more lay members claimed that it would increase costs without any commensurate benefit.¹²⁹

6. Ballot measures on court operations

Court operations measures were lightly sprinkled across the years between 1792 and 2020. As shown in Table 7, there were two categories of measures touching on chief justices: the process by which they were to be selected and the powers they were to be accorded. Most of the selection measures set allowed the justices to pick their chief against a variety of other methods: election by the voters, seniority on the bench, rotation, and by lot. Supporters argued, as in the *San Diego Union* in 1887, that “The Justices of the Supreme Court are better able to judge the ability of one of their number as Chief Justice than are the people who are unfamiliar with legal matters.”¹³⁰ Those who did not want justices making the selection raised several objections. The *Inyo Independent* preferred that the power be put in the people’s hands, figuring “If the voters are capable of selecting the Justices who are to elect from among themselves a Chief Justice, there appears no valid reason why the same

voters are not competent to elect a Chief Justice.”¹³¹ Others worried that the justices might succumb to intramural warfare, with a Wisconsin commentary speculating, “Instead of spending time resolving cases, the court will be bogged down every two years in a battle for chief justice, creating discord and inviting factions to form and grow.”¹³² And some simply saw no reason to change the current arrangement.¹³³ But when selection by the justices was a measure’s only provision, two-thirds of the voters agreed to it.¹³⁴

There were three instances where voters were offered other options for changing the selection process. Wisconsinites overwhelmingly backed an 1889 amendment to take the power to name the chief justice away from the governor in favor of a system rewarding the justice who “by reason of long service on the bench shall have earned it.”¹³⁵ The other two measures sparked no debate. As part of their rout of all the 1894 ballot measures, Nevadans rejected a switch to a statewide election from a seniority system. In 1908, Nebraskans approved an amendment containing, among other provisions, one to replace a rotation rule with a statewide election.

A handful of measures proposed altering the powers conferred on chief justices. The three proposals to increase the position’s authority were promoted as a means to allow the court to operate more efficiently. They encountered no dissent and passed by wide margins.¹³⁶ Reducing the position’s powers proved more problematic. A 1970 amendment stipulating that Alaska’s court administrator served at the pleasure of the full court rather than just the chief justice met little resistance and passed easily.¹³⁷ But a similar 2020 Alabama proposal lost by a narrow margin. In 2002 and 2012, New Hampshire voters voted on amendments to reduce their chief justice’s powers by granting the legislature greater say over court procedures. Both were opposed on separation of powers grounds.¹³⁸ In the wake of the chief justice’s contentious impeachment and acquittal in 2000, the 2002 measure got 63 percent of the vote, an impressive total but one below the state’s two-thirds threshold for adoption. After memories of the court controversy faded, the 2012 measure fell short of a majority.¹³⁹

Some state constitutions dictated how the court’s clerk was to be selected. As a result, between 1792 and 1976, there were ten measures to allow the justices to make the choice. They almost always won a majority. Supporters cited an obvious argument, one

¹³¹*Inyo Independent* (Independence, CA), “The Amendments,” April 9, 1887.

¹³²*Daily Tribune* (Wisconsin Rapids, WI), “How Not to Choose a Chief Justice,” April 3, 2015. See also; *Idaho Statesman* (Boise, ID), “Constitutional Amendments,” Oct. 30, 1982; *Mason Valley News* (Yerington, NV), “Two Cents Worth,” Oct. 23, 1992; *Tampa Daily Times* (FL), “Strange, But No One Has Yet Injected,” Oct. 25, 1926.

¹³³“Nevada Ballot Questions 1992” (NV voter pamphlet, 1992), 4; *Reporter* (Fond du Lac, WI), “Why ‘Fix’ Something That Isn’t Broken?” March 31, 2015; *Sunnyside Sun* (WA), “In the ... Sun Lite,” Oct. 30, 1975; “Washington State Voters Pamphlet” (WA voter pamphlet, 1995), 13.

¹³⁴Different selection procedures produce chief justices holding different judicial ideologies. See Teena Wilhelm, Richard L. Vining, Jr., and David Hughes, “Chief Justice Selection Rules and Judicial Ideology,” *State Politics and Policy Quarterly* 23 (2023): 267–282.

¹³⁵*Vernon County Censor* (Viroqua, WI), “Constitutional Amendment,” March 27, 1889.

¹³⁶*Concord Monitor* (NH), “Reforming the Judiciary,” Oct. 16, 1978; *Durham Sun* (NC), “Those Five Amendments,” Nov. 6, 1950; “Publicity Pamphlet 1960” (AZ voter pamphlet, 1960), 14.

¹³⁷*Anchorage Times* (AK), “Justice Selection Method Is Question,” Aug. 21, 1970.

¹³⁸*Concord Monitor* (NH), “Ballot Initiatives,” Nov. 4, 2002; *Monadnock Ledger-Transcript* (Peterborough, NH), “Question 2 Undermines Court,” Nov. 6, 2012.

¹³⁹David C. Steelman, and John Cerullo, “Judicial Accountability in a Time of Tumult: New Hampshire’s Impeachment Crisis of 2000,” *Rutgers University Law Review* 69 (2017): 1357–1416.

¹²⁴*Chico Enterprise-Record* (CA), “Vote ‘No’ on Proposition 94,” Oct. 30, 1988.

¹²⁵*Orlando Sentinel* (FL), “Ballot Does Not Explain Impact of the Amendments—Vote No,” Nov. 2, 2012; *Representative* (Fox Lake, WI), “More Than Meets the Eye in Tuesday’s Election,” March 30, 1995.

¹²⁶*Montgomery Advertiser* (AL), “A Guide to Alabama’s Constitutional Amendments,” Oct. 25, 2020.

¹²⁷*Birmingham Post-Herald* (AL), “Election Review,” Nov. 7, 1994.

¹²⁸The first quote is from *Birmingham Post-Herald* (AL), “Four Amendments,” May 31, 1996. The second is from *Sun* (Baltimore, MD), “Six Constitutional Questions,” Oct. 25, 1996.

¹²⁹*Albuquerque Journal* (NM), “Constitutional Amendment Choices,” Oct. 22, 1998; *Fort Worth Star-Telegram* (TX), “Bigger Isn’t Better,” Oct. 19, 2005; *Rio Grande Sun* (Española, NM), “Constitutional Amendments,” Oct. 18, 2012.

¹³⁰*San Diego Union* (CA), “Legal Opinions,” April 1, 1887. See also *Columbian* (Vancouver, WA), “Some Good, Some Bad,” Oct. 27, 1975; *Fort Myers Press* (FL), “The Constitutional Amendments,” Nov. 1, 1926; *Journal Times* (Racine, WI), “Worthy Time to Change Constitution,” April 3, 2015; “Nevada Ballot Questions 1992” (NV voter pamphlet, 1992), 4; *News Tribune* (Tacoma, WA), “Referendum 48 Is One of Few Ballot Measures Deserving Approval,” Nov. 1, 1995; *Utah Basin Standard* (Roosevelt, UT), “Revisions Proposed for Utah’s Judiciary,” Oct. 17, 1984.

Table 7. Ballot Measure Outcomes on Chief Justice Position, Court Clerks, and Administrators

Year span	Ballot measures on chief justice position	Number of ballot measures	Number with majority vote (percent)	Median yes vote
1887–2015	Chief justice elected by court	12	8 (66.7)	54.5
	Sole provision	6	5 (83.3)	66.3
1894–1908	Chief justice elected by voters	2	1 (50.0)	52.8
	Sole provision	1	0 (0.0)	12.6
1889	Chief justice selected by seniority	1	1 (100.0)	89.5
	Sole provision	1		
1950–1978	Increase chief justice powers	3	3 (100.0)	69.2
	Sole provision	2	2 (100.0)	69.3
1970–2020	Decrease chief justice powers	4	2 (50.0)	56.0
	Sole provision	3	2 (66.7)	63.1
1792–1976	Allow justices to appoint court clerk	10	8 (80.0)	61.5
	Sole provision	7	5 (71.4)	60.8
1966–1977	Allow justices to name court administrator	3	3 (100.0)	58.0
	Sole provision	2	2 (100.0)	59.8

Note: An 1883 Minnesota measure to make the clerk's term 4 years instead of 3 years in order to fit with a shift to biennial elections from annual elections is not included in this table.

articulated by California's *Berkeley Daily Gazette* in 1911: "only the neighbors of candidates for such an office as that of clerk of the supreme court get any accurate information as to the qualifications of such candidates. The justices of the supreme court are practically the only ones who have an opportunity of observing whether or not the clerk of the court is efficiently carrying out the duties of his office."¹⁴⁰ Opponents protested, as in Oklahoma, that "to take away the right of the people to elect their own Supreme Court clerk ... is undemocratic."¹⁴¹ But voters were usually content to allow the justices to name their court's clerk.

Where state constitutions touched on such details, voters were willing to permit the justices to name a court administrator and to increase that post's powers. All three measures along those lines—Louisiana in 1966, Missouri in 1970, and New York in 1977—passed comfortably. Backers peddled them as means to make courts more efficient.¹⁴² Opponents feared they would vest too much power in the chief justice's hands.¹⁴³ Voters were unfazed by that prospect.¹⁴⁴

¹⁴⁰ *Berkeley Daily Gazette* (CA), "Supreme Clerk Appointive," Aug. 24, 1911. See also *Duluth News-Tribune* (MN), "Minnesota Needs All Three Amendments," Nov. 1, 1956; *Evening Sun* (Baltimore, MD), "Memo for Thoughtful Voters," Oct. 29, 1940; *Mississippi Press* (Pascagoula, MS), "A 'Yes' Vote For Amendment," Oct. 20, 1976; *Muskogee Times-Democrat* (OK), "The Amendments," July 31, 1916; *Pontiac Gazette* (MI), "Constitutional Amendments," March 29, 1878; *Sunday News Tribune* (Duluth, MN), "Constitutional Amendments," Nov. 5, 1916; *True Northerner* (Paw Paw, MI), "Supreme Court Clerk," March 25, 1881.

¹⁴¹ *Antlers News-Record* (OK), "Swat the Amendments," July 28, 1916. See also *Evening Sun* (Baltimore, MD), "For Thoughtful Voters," Oct. 22, 1940; *Saline Observer* (MI), "Our Coming Election," March 31, 1881.

¹⁴² *Franklin Sun* (Winnsboro, LA), "Guide to Amendments of 1966," Oct. 27, 1966; *St. Louis Post-Dispatch* (MO), "A Nod to Amendment No. 3," July 14, 1970; *Star-Gazette* (Elmira, NY), "Voters League: 'Yes' on Amendments 1, 2, 3," Nov. 2, 1977.

¹⁴³ *Hamburg Sun* (NY), "League of Women Voters Outlines Pros and Cons of Ten State Wide Issues on Ballot," Nov. 3, 1977.

¹⁴⁴ By the early 1970s, the legal community recommended that all state courts of last resort have administrators. See "Judicial Salaries and Retirement Plans in the United States," 188.

7. Voters and courts of last resort reform

Through the nineteenth century, Americans typically evaluated proposed court reforms, particularly those to increase the number of justices and their compensation, in terms of their impact on state budgets and taxes. It took decades for voters to discount the budgetary implications in favor of endorsing changes projected to improve how the courts functioned. Enhanced efficiency and effectiveness emerged as one of the twentieth century's two major court reform themes. In addition to larger courts and better-paid justices, voters backed measures to allow governors to quickly fill vacancies, to give those appointees longer terms before facing the voters, and to increase the chief justices' powers. They did so because they thought those reforms would improve the way their courts operated and decided cases.

The twentieth century's other major theme exposed a second side to voters' attitudes on their state courts. Few measures proved as popular as those imposing ethics rules and regulations on the courts. Indeed, opinions registered on a host of issues signaled voters' skepticism about their justices' behavior. They not only voted to create judicial disciplinary commissions, but they also wanted lay persons to, at a minimum, serve in equal numbers with legal professionals, so as to allow the public to keep a close eye on those serving on the bench.

Voters struggled with the trade-offs implicit in the judicial selection options offered them. They appreciated the accountability inherent in electing justices. At the same time, they prized the decision-making independence granted by gubernatorial appointment and longer judicial terms. Merit plans represented an attempt to meld those values, but voters were never fully persuaded by that method. As a result, by the twenty-first century, justices were put on state benches through a range of different mechanisms, though almost none of them mirrored those used for the federal courts.

By the twenty-first century, it was clear from the voters' many ballot decisions that they wanted their courts of last resort to have the capacity necessary to render decisions efficiently and effectively. At the same time, they harbored doubts about the justices'

motives and behavior in office. This was akin to their conflicted attitudes toward state legislators.¹⁴⁵ Americans thought it necessary to be vigilant about the way their courts were structured and operated. Notably, however, the choices they made at the ballot box rarely

reflected any desire for their state courts to resemble the federal courts.

Competing interests. The author declares none.

¹⁴⁵Squire, *Reforming Legislatures*, 217–20.