

Amendment D: New 23rd Judicial District Judges

Placed on the ballot by the legislature • Passes with 55 percent of the vote

1 **Amendment D proposes amending the Colorado Constitution to:**

- 2 • require the Governor to reassign judges from the existing 18th Judicial District
3 to the new 23rd Judicial District on a one-time basis.

4 **What Your Vote Means**

YES

5 A “yes” vote on
6 Amendment D directs the
7 Governor to reassign
8 judges from the existing 18th Judicial
9 District to the new 23rd Judicial District
10 by November 30, 2024.

NO

A “no” vote on Amendment D
means that judges will be
appointed or assigned to the new 23rd
Judicial District under provisions in current
law.

1 **Summary and Analysis for Amendment D**

2 In 2020, the state legislature passed a law to create the 23rd Judicial District out of the
3 existing 18th Judicial District. The law specified that judges who currently live within the
4 new district boundaries will be reassigned to the new district. Amendment D addresses
5 this same judicial transfer by adding constitutional provisions for the seating of 23rd
6 district judges and ensures court services continue without interruption or uncertainty.
7 Specifically, Amendment D amends the state constitution to require the Governor to
8 reassign judges from the 18th Judicial District to the newly formed 23rd Judicial District.

9 **What is the difference between the Colorado Constitution and state statutes?**

10 The Colorado Constitution is the highest legal authority in the state, establishes
11 government duties and functions, and tends to be broad in scope. It can only be
12 changed if approved by a statewide vote. The state legislature has the authority to enact
13 statutes that impact many aspects of daily life and are generally more detailed and
14 specific. State statutes must not violate the state constitution.

15 **What are judicial districts?**

16 Under the state constitution, the state is divided into judicial districts consisting of one or
17 more counties. District courts in these judicial districts hear both civil and criminal court
18 cases, including felony criminal cases, family law matters, settling of wills after death,
19 and behavioral health cases. The state legislature may change the boundaries of a
20 judicial district, or increase or reduce the number of judicial districts.

21 There have been 22 judicial districts in Colorado since 1964. In 2020, the state
22 legislature created a new 23rd Judicial District out of the existing 18th Judicial District.
23 Beginning in 2025, the 18th Judicial District will consist of Arapahoe County, and the
24 23rd will include Douglas, Elbert, and Lincoln Counties.

25 **How are judges selected in Colorado?**

26 The constitution requires judges to be nominated by a judicial nominating commission
27 and then appointed by the Governor. Thereafter, judges must periodically go before
28 voters in retention elections if they wish to serve additional terms. Reassigning judges
29 from one district to another is not covered in this process.

30 **What happens if Amendment D passes?**

31 Amendment D directs the Governor to reassign judges from the 18th Judicial District to
32 the newly created 23rd Judicial District. Reassigned judges must live in the new 23rd
33 Judicial District, and may run in retention elections to serve additional terms in the new
34 district once their initial terms are complete.

35 **What happens if Amendment D fails?**

36 If Amendment D fails, it is uncertain how the transition of judges to the new district will
37 be resolved. The constitution provides that judicial vacancies are filled by a Governor's
38 appointment through the nominating process, regardless of how the vacancy occurred.
39 However, the statute that created the 23rd Judicial District requires any judges who were
40 appointed or retained to a term in the old 18th district and who now live in the new 23rd

Legislative Council Draft

1 district to complete their terms in the 23rd district. Once that term is complete, the
2 statute also allows them to run in retention elections to serve additional terms in the 23rd
3 district. Casework and court proceedings in the new 23rd Judicial District also may be
4 reassigned as determined by the Judicial Department.

For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2022, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

5 **Argument For Amendment D**

6 1) Amendment D establishes a smooth transition for the new judicial district and helps
7 avoid the cost of potential litigation. Because it is unclear if current state law will
8 ensure the proper seating of judges in the new district, the amendment provides a
9 definitive legal mechanism for the transition. This will prevent the invalidation of
10 rulings resulting from allegations of improper seating of judges, as well as offset
11 costs and address other logistical concerns. Requiring the Governor to assign
12 judges to the new district in a timely and efficient way also prevents disruptions and
13 delays in casework and court proceedings.

14 **Argument Against Amendment D**

15 1) Amendment D is not the only way to assign judges to the 23rd Judicial District. The
16 constitution and state statute allow for judges to be appointed through a vacancy
17 process or to serve in other districts under certain circumstances. Additionally, a law
18 passed by the legislature in 2020 already specifies that 18th Judicial District judges
19 living in the new district as of 2025 must complete their terms as judges for the new
20 district.

21 **Fiscal Impact for Amendment D**

22 Amendment D will increase workload in the Governor's office to reassign judges to the
23 new 23rd Judicial District. In addition, by resolving the constitutionality of seating judges
24 in the new 23rd district in advance, the state may avoid potential costs for litigation in the
25 courts to determine how the judges should be assigned.

HCR 22-1005: New 23rd Judicial District Judges

Placed on the ballot by the legislature • Passes with 55 percent of the vote

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2 • require the Governor to reassign judges from the existing 18th Judicial District
- 3 to the new 23rd Judicial District on a one-time basis.

4 **What Your Vote Means**

YES 5 A “yes” vote on
 6 Amendment ? directs the
 7 Governor to reassign
 8 judges from the existing 18th Judicial
 9 District to the new 23rd Judicial District
 10 by November 30, 2024.

NO A “no” vote on Amendment ?
 means that the Governor would
 not appoint existing judges to the new 23rd
 Judicial District, and judges may be
 appointed or assigned under different
 processes.

1 **Summary and Analysis for Amendment ?**

2 In 2020, the state legislature passed a law to create the 23rd Judicial District. The law
3 specified that judges who currently live within the new district boundaries will be
4 reassigned to the new district. Amendment ? addresses this same judicial transfer by
5 adding constitutional provisions for the seating of 23rd District judges and ensures court
6 services continue without interruption or uncertainty. Specifically, Amendment ? amends
7 the state constitution to require the Governor to reassign judges from the 18th Judicial
8 District to the newly formed 23rd Judicial District.

9 **What is the difference between the Colorado Constitution and state statutes?**

10 The Colorado Constitution is the highest legal authority in the state and establishes
11 government duties and functions. The state constitution is broad in scope and does not
12 cover all areas of the law. The state legislature has the authority to enact statutes that
13 impact many aspects of daily life and are generally more detailed and specific. State
14 statutes must not violate the state constitution.

15 **What are judicial districts?**

16 Under the state constitution, the state is divided into judicial districts consisting of one or
17 more counties. District courts in these judicial districts hear both civil and criminal court
18 cases, including felony criminal cases, family law matters, settling of wills after death,
19 and behavioral health cases. The state legislature may change the boundaries of a
20 judicial district, or increase or reduce the number of judicial districts.

21 There have been 22 judicial districts in Colorado since 1964. In 2020, the Colorado
22 legislature created a new 23rd Judicial District out of the existing 18th Judicial District.
23 Beginning in 2025, the 18th Judicial District will consist of Arapahoe County, and the
24 23rd will include Douglas, Elbert, and Lincoln Counties.

25 **How are judges selected in Colorado?**

26 The constitution requires judges to be nominated by a judicial nominating commission
27 and then appointed by the Governor. Thereafter, judges must periodically go before
28 voters in retention elections if they wish to serve additional terms. Reassigning judges
29 from one district to another is not covered in this process.

What happens if Amendment ? passes?

30 Amendment ? directs the Governor to reassign judges from the 18th Judicial District to
31 the newly created 23rd Judicial District. Reassigned judges must live in the new 23rd
32 Judicial District, and may run in retention elections to serve additional terms in the new
33 district once their initial terms are complete.

34 **What happens if Amendment ? fails?**

35 If Amendment ? fails, it is uncertain how the transition of judges to the new district will be
36 resolved. The statute that created the 23rd Judicial District requires any judges who
37 were appointed or retained to a term in the old 18th district and who now live in the new
38 23rd district to complete their terms in the 23rd district. Once that term is complete, the
39 statute also allows them to run in retention elections to serve additional terms in the 23rd

1 district. Casework and court proceedings in the new 23rd Judicial District also may be
2 reassigned as determined by the Judicial Department. However, existing constitutional
3 provisions that address judicial vacancies may conflict with the process laid out in this
4 statute.

5

For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2022, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

6 **Argument For Amendment ?**

7 1) Amendment ? ensures a smooth transition for the new judicial district and likely
8 saves taxpayers money. It is unclear if current state law will ensure the proper
9 seating of judges in the new district, and the amendment provides a definitive legal
10 mechanism for the transition, avoiding invalidation of rulings resulting from
11 allegations of improper seating of judges. Requiring the Governor to assign judges
12 to the new district in a timely and efficient way also avoids disruptions and delays in
13 casework and court proceedings.

14 **Argument Against Amendment ?**

15 1) Amendment ? is not the only way to assign judges to the 23rd judicial district. A law
16 passed by the Colorado legislature in 2020 already specifies that 18th Judicial
17 District judges living in the new district as of 2025 must complete their terms as
18 judges for the new district. Additionally, the constitution and state law allows for
19 judges to be appointed through a vacancy process or to serve in other districts under
20 certain circumstances.

21 **Estimate of Fiscal Impact for Amendment ?**

22 Amendment ? will increase workload in the Governor's office to reassign judges to the
23 new 23rd Judicial District. The measure will not increase state government revenue or
24 spending.

Last Draft Comments from Interested Parties

Amendment D 23rd Judicial District Judges

Chris Forsyth, representing The Judicial Integrity Project:

My previously submitted comments are still below. In the meantime, however, I received the draft proposal for the Blue Book. So I'm adding some comments to the draft.

On page 1, I disagree with the "no" result. The constitution trumps any statute. The constitution requires a judge to be appointed by the governor from a list of nominees provided by a nominating commission. Colo. Const. Art. VI, Sec. 20. A statute cannot change that. When the 23rd Judicial District is created, judicial vacancies are created and they must be filled pursuant to the constitution. Furthermore, judges must be retained by voters of a judicial district. Colo. Const. Art. VI, Sec. 25. Because the 23rd Judicial District doesn't exist yet, voters of that judicial district have not retained any judges. I believe the "no" result means that the vacancies will be filled pursuant to Section 20 of Article VI of the Colorado Constitution. In other words, x amount of vacancies will occur for which the judicial nominating commission for the 23rd Judicial District must accept applications. Then the nominating commission will provide nominees for the x amount of positions and the governor will select the judges. The statute provides confusion on the issue, but the statute should be determined to be unconstitutional because it conflicts with current provisions in the constitution.

On page 2, lines 30-33 are questionable. If it passes, it creates a conflict with other provisions in the constitution which could be challenged and then need to be resolved in the courts.

On page 2, line 34 to page 3 line 2, I disagree with what happens if it fails. As stated above, the constitution would require the vacancies be filled by the nominating commission for the 23rd Judicial District which would accept applications and nominate candidates from which the governor will select the judges. The statute should be determined to be unconstitutional because it conflicts with current provisions in the state constitution.

On page 3, lines 5-6, I disagree with the statement. It reads that "It is unclear if current state law will ensure the proper seating of judges in the new district." The newly created judicial district creates judicial vacancies that are covered under the state constitution. Vacancies are covered under Section 20 of Article VI of the constitution. What is unclear about that?

On page 3, lines 11-17, I agree the amendment is needless. But I disagree that the statute will govern as stated in these lines. The newly created judicial district creates vacancies that are to be filled pursuant to Section 20 of Article VI of the Colorado Constitution. Also see comments below.

Previous comments delivered 7-1-22:

This proposed constitutional amendment conflicts with Section 11 of Article VI of the Colorado Constitution which provides that judges must be "a qualified elector of the judicial district at the time of his election or selection...." In contradiction to that section, this proposal would allow judges to be selected for the new judicial district without requiring residency at the time of the

Last Draft Comments from Interested Parties

selection. Judges appointed under this proposal would have to “establish residence in the twenty-third judicial district” by January 7, 2025. So this proposal would allow judges to be selected for the new judicial district on November 30, 2024, without being residents of the district at the time of their selection.

The proposed amendment limits the judges who can be selected for the new district to judges currently serving in the 18th Judicial District (Arapahoe, Douglas, Elbert, and Lincoln counties). Given the residency exception in the proposed amendment, one question raised is: Why can't judges from any other judicial district apply and be selected? Another question raised is: Why isn't the normal application and appointment process going to be followed for the appointment of the new judges in the new district? In other words, why can't anyone who wants to be a judge apply for the new positions in the new district?

Although Section 11 of Article VI contains a residency requirement at the time of selection, the judicial branch and the governor have regularly not enforced the requirement. Instead, they have allowed judges to be selected as long as the judges are qualified electors by the time of their investiture or swearing in. In other words, judges in Colorado have already been appointed in violation of Section 11 of Article VI. The language, however, remains in the Colorado Constitution.

There is a philosophical difference between requiring judges to be residents of a district at the time they are selected or at the time they are sworn in. The Colorado Constitution requires a judge to be selected from the residents, or qualified electors, of a judicial district. This concept focuses on the fact that a judge is a servant to serve his or her established community. By allowing individuals to apply and be selected for judge jobs in districts outside of their residence, the focus changes from service to the community to the right of the individual to be in a judging capacity anywhere he or she can get a job.

The impetus for this proposed constitutional amendment appears to be to allow individual judges in the 18th Judicial District to remain in judge jobs after the district is split into two districts. Is that worth a constitutional amendment? Is that worth a constitutional amendment that conflicts with an established provision in the state constitution?

I recommend addition of the following paragraph with this sentence: "The state reimburses counties for these exemptions."

Terry Scanlon, representing the Judicial Branch:

Juliann, Bo and Will,

Thanks for the prompt response. I misread, or misremembered, the deadline previously. I thought I had a couple more days. So I'm asking you to please consider this submission despite my failure to meet the deadline that you had previously made me aware of. I'm trying to say, missing the deadline is my fault and my fault alone.

Second, I'm asking below that you consider providing more space to the “for” arguments. I understand and appreciate the desire to provide roughly equal space for the two sides. I'll read the attachments to see if the equal space effort is a non-negotiable requirement. But if it's more akin to a goal outlined by Legislative Council, then I'm asking for a little more space for the pro side. The challenge is that we have more arguments for this than against this. And there really

Last Draft Comments from Interested Parties

has been almost no one arguing against this. So the insistence on equal space limits the ability to make the case for it, which helps the non-existent opposition. And the insistence on equal space creates a sense that the two arguments carry equal value or have equal support.

That said, below I provide four suggested changes to the second draft.

1. Re-write language on the Yes portion on the first page:

A “yes” vote creates a one-time process for reassigning judges serving in the 18th JD to the new 23rd JD by November 30, 2024.

Comment: adding the word “governor” to the yes summary injects unnecessary partisanship into the issue. This amendment is not about the authority of the governor and how many judges he will get to select. It’s about a smooth transition in the creation of a new district. Not to mention, on line 2 of the first page it mentions the governor’s role in this proposed process.

2. Re-write the language on the No portion on the first page:

A “no” vote means that the new district will be created with uncertainty about whether the judges in the 23rd Judicial District are properly appointed to serve.

Comment: there is no process in the law for appointing judges to the 23rd Judicial District. The 2020 law just says the judges who live in the 23rd will serve in the 23rd. I guess that could be interpreted as “assigning” judges, but it certainly isn’t an appointment, which is what the constitution requires. Also, the second draft in this section says a “no” vote will default to the current appointment or assignment process.

Also, if my first suggestion is not adopted and the word “governor” remains in the “yes” section, then this section should be amended to include that a “no” vote probably means the governor will have the authority to appoint 8 new judges in the 23rd in early 2025.

3. Page 3 in add a second bullet point in the arguments “for” the amendment:

If the amendment fails it is possible that too many judges will live in either the 18th or 23rd and that the state will for the first time in history face a situation where it has more judges serving in a district than the statute allows. That would create a new constitutional crisis. Neither the constitution nor the statute provide any mechanism, other than impeachment, for reducing the number of judges in a district.

Comment: if the amendment fails we could have too many judges in one district. There is no process for reducing judges. The GA would have to pay judges for the remainder of their terms. But when the terms end, who decides which judges are eligible to run for retention which judges are not eligible? There is no statutory, constitutional or case law guidance for this. There might be some concern about providing the “for” and “con” equal space in the analysis. No person testified against this amendment in the legislative process.

4. Strike the argument “against” in the second draft and replace it with a new argument “against”:

Some people say the amendment is not necessary because it would circumvent the current process for filing judicial vacancies. In the absence of this amendment judicial vacancies are likely to occur in either the 18th Judicial District, the 23rd Judicial District, or both. This amendment would circumvent the process for filing those vacancies, which requires the governor to appoint judges from a list of two or three nominees selected by a non-partisan nominating commission.

Last Draft Comments from Interested Parties

Comment: This a more fair argument against the amendment – people who might want to see vacancies occur, which, of course, we think would be disruptive – than what is currently in the second draft. The “against” argument in the second draft is off base. The constitutionality of the process created in the 2020 bill is highly uncertain. All four sponsors of the resolution that refers this measure were also the sponsors of the original 2020 bill that created the need for this amendment. None of those four legislators are making the case that the current statutory framework is sufficient. In fact, no one has said that at all. The only person to submit comment in this process against the amendment said the problem with the measure is that it changes how vacancies are filled. The one person who argued against this amendment is making the point that there will likely be vacancies, which infers that this person agrees that the current statutory process created in 2020 is not sufficient.

Thank you for taking time to consider my feedback. I look forward to hearing more from you on this as we go forward.

Terry

Terry Scanlon
Legislative Liaison
Colorado Courts and Probation
1300 Broadway, Suite 1200
Denver, Colo. 80203

Amendment D
New 23rd Judicial District Judges
Contact List

Interested Party	Organization Name	Email Address
		yuraochrimenko1@gmail.com
Geoffrey Alexander	OSPB	geoff.alexander@state.co.us
William Alsdorf	Brighton Elks Home Inc	brightonelks1586@gmail.com
Amy Attwood	Attwood Public Affairs	amy@amyattwood.com
Steve Balcerovich		Steve@balcerovich.com
Jerry Barry	OLLS	jerry.barry@state.co.us
Natasha Berwick	New Era Colorado	natasha@neweracolorado.org
Carla Blanc		cablanc@mix.wvu.edu
James Coleman	Office of Sen. James Coleman	colemanforcolorado@gmail.com
Nick Coltrain	Denver Post	ncoltrain@denverpost.com
Kendra Davis	Arapahoe County	kdavis2@arapahoe.gov
Kyra deGruy Kennedy	Young Invincibles	kyra.degruy@younginvincibles.org
Debby Dover	Self	cogirl5419@gmail.com
Amber Egbert		amber.egbert@state.co.us
Cathy Eslinger		Cathy.eslinger@state.co.us catherinedeslinger@gmail.com
Rhonda Fields		rhonda.fields.senate@state.co.us
Bob Gardner		bob.gardner.senate@state.co.us
Tristan Gorman	Colorado Criminal Defense Bar	tristan@themeyerlawoffice.com
Josette Jaramillo	CO AFLCIO	jjaramillo@coaficio.org
Cathy Kipp	Colorado House of Representatives	cathy.kipp.house@state.co.us
Andrea Kuwik		kuwik@bellpolicy.org
Meghan Lopez	KMGH	meghan.lopez@thedenverchannel.com
John Magnino	Colorado Secretary of State's Office	john.magnino@coloradosos.gov
Kayla McCarnes		kmdenver@msn.com
N. Menten	Self on some issues (also a board director for the Taxpayer's Bill of Rights Foundation)	coloradoengaged@gmail.com
Dylan Mitchell	Michael Best Strategies	dsmitchell@michaelbeststrategies.com
Meredith Moon	OSPB	meredith.moon@state.co.us
Nellie Moran	Colorado State Senate	nellie.moran.senate@gmail.com
Natalie Mullis		natalie.mullis@state.co.us natmullis@gmail.com
Amber Paris	Colorado Technical University	ent.para.util@gmail.com
Hanni Raley	The Arc of Aurora	hraleay@thearcofaurora.org
Erin Reynolds		erin.reynolds@state.co.us
Christopher Richardson	Elbert County	chris.richardson@elbertcounty-co.gov
Corrine Rivera Fowler	The Ballot Initiative Strategy Center	corrine@ballot.org
Julia Scanlan	Aponte & Busam Public Affairs	jscanlan@aponte-busam.com
Terry Scanlon		scanlonterry@msn.com

Amendment D
New 23rd Judicial District Judges
Contact List (Cont.)

Interested Party	Organization Name	Email Address
Christian Smith	Young Invincibles	christian.smith@younginvincibles.org
Sarah Staron	Young Invincibles	sarah.staron@younginvincibles.org
Kevin Van Winkle		kevin.vanwinkle.senate@state.co.us
Cameron Vigil	Young Invincibles	Cameron.Vigil@younginvincibles.org
Mike Weissman		mike.weissman.house@state.co.us

Amendment D
New 23rd Judicial District Judges

1 **Ballot Title:**

2 Shall there be an amendment to the Colorado constitution concerning judges of the newly created
3 twenty-third judicial district, and, in connection therewith, directing the governor to designate
4 judges from the eighteenth judicial district to serve the remainder of their terms in the twenty-third
5 judicial district and requiring a judge so designated to establish residency within the twenty-third
6 judicial district?

7 **Text of Measure:**

8 *Be It Resolved by the House of Representatives of the Seventy-third General Assembly of the*
9 *State of Colorado, the Senate concurring herein:*

10 **SECTION 1.** At the election held on November 8, 2022; the secretary of state shall submit to the
11 registered electors of the state the ballot title set forth in section 2 for the following amendment to
12 the state constitution:

13 In the constitution of the state of Colorado, section 10 of article VI, **add** (5) as follows:

14 **Section 10. Judicial districts - district judges - repeal.** (5) PURSUANT TO THE CREATION OF THE
15 TWENTY-THIRD JUDICIAL DISTRICT, NO LATER THAN NOVEMBER 30, 2024, THE GOVERNOR SHALL
16 DESIGNATE DISTRICT JUDGES FROM THE EIGHTEENTH JUDICIAL DISTRICT TO SERVE AS DISTRICT
17 JUDGES IN THE TWENTY-THIRD JUDICIAL DISTRICT. NO LATER THAN JANUARY 7, 2025, EACH DISTRICT
18 JUDGE DESIGNATED PURSUANT TO THIS SECTION SHALL ESTABLISH RESIDENCE IN THE TWENTY-THIRD
19 JUDICIAL DISTRICT. EACH DISTRICT JUDGE DESIGNATED PURSUANT TO THIS SECTION, AT THE
20 COMPLETION OF THE LAST TERM FOR WHICH THE JUDGE WAS LAST ELECTED OR APPOINTED, IS ELIGIBLE
21 TO SEEK RETENTION IN THE TWENTY-THIRD JUDICIAL DISTRICT. A VACANCY IN ANY JUDICIAL OFFICE IN
22 THE TWENTY-THIRD JUDICIAL DISTRICT OCCURRING AFTER JANUARY 7, 2025, SHALL BE FILLED AS
23 PROVIDED IN SECTION 20 (1) OF THIS ARTICLE VI.

24 **SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or "No/Against"
25 on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning
26 judges of the newly created twenty-third judicial district, and, in connection therewith, directing
27 the governor to designate judges from the eighteenth judicial district to serve the remainder of
28 their terms in the twenty-third judicial district and requiring a judge so designated to establish
29 residency within the twenty-third judicial district?"

30 **SECTION 3.** Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if at
31 least fifty-five percent of the electors voting on the ballot title vote "Yes/For", then the amendment
32 will become part of the state constitution.