Amendment W
Election Ballot Format for Judicial Retention Elections

1 **Amendment W proposes amending the <u>Colorado Constitution</u> to:**

2 ♦ change the ballot format for judicial retention elections to remove the requirement
3 that a retention question be asked for each justice and judge.

4 **Summary and Analysis**

5 ***Background***. In 1966, Colorado voters approved a constitutional amendment that
6 repealed the partisan election of justices and judges and enacted the current process.
7 This process requires justices and judges to be nominated by a judicial nominating
8 commission and then appointed by the Governor. Thereafter, justices and judges must
9 go before voters in a retention election to maintain their seat on the bench. Colorado
10 justices serve on the Supreme Court, and judges serve in all other courts.

11 ***Judicial retention elections.*** A retention election asks voters whether incumbent
12 justices or judges should remain in office for another term. In Colorado, justices and
13 judges stand for retention at the end of their judicial terms, and elections are held during
14 the November general election in even-numbered years. Justices or judges do not face
15 an opponent and retain their position if the majority of voters cast a "yes" vote.

16 ***Colorado state court types.*** Colorado law requires judicial retention elections for
17 all levels of state courts, including the Supreme Court, district courts, county courts, City
18 and County of Denver Probate Court, Denver Juvenile Court, and any other state court
19 created by the state legislature, such as the Court of Appeals.

20 ***Current ballot format.*** Under current law, ballots must be formatted according to
21 the type of office up for election. Federal offices are required to be first on the ballot,
22 followed by state, county, and local offices. The judicial retention candidates are listed
23 after the county or local officers, but before the introduction of ballot measures.

24 For judicial retention elections, the Colorado Constitution requires that a separate
25 question be placed on the ballot for each justice or judge up for retention as follows:

26 "Shall Justice (Judge) ... of the Supreme (or other) Court be retained in office?"
27 YES/NO

28 ***Judicial retention ballot format under Amendment W.*** Amendment W requires
29 the county clerk and recorder to display the retention question once for each court type
30 followed by a list of each individual justice or judge seeking retention on that court with
31 the "yes" or "no" option next to each name.

32 "Shall the following Justices (Judges) of the Supreme (or other) Court be retained in
33 office?" YES/NO

1   Figure 1 provides a mock-up of a judicial retention ballot both under current law and
2   Amendment W.

3   **Figure 1. Sample Judicial Retention Ballot***

Sample Ballot Under Current Law   Potential Ballot Under Amendment W

Judicial
Colorado Supreme Court (Vote Yes or No)
Shall Justice **Robert Smith** of the Colorado Supreme Court be retained in office?   Yes ◯   No ◯
Shall Justice **Maria Rodriguez** of the Colorado Supreme Court be retained in office?   Yes ◯   No ◯
Colorado Court of Appeals (Vote Yes or No)
Shall Judge **James Johnson** of the Colorado Court of Appeals be retained in office?   Yes ◯   No ◯
Shall Judge **Mary Adams** of the Colorado Court of Appeals be retained in office?   Yes ◯   No ◯
Shall Judge **John Franklin** of the Colorado Court of Appeals be retained in office?   Yes ◯   No ◯

Judicial				
Shall the following justices of the **Colorado Supreme Court** be retained in office? (Vote Yes or No for each justice)				
Robert Smith	Yes	◯	No	◯
Maria Rodriguez	Yes	◯	No	◯
Shall the following judges of the **Colorado Court of Appeals** be retained in office? (Vote Yes or No for each judge)				
James Johnson	Yes	◯	No	◯
Mary Adams	Yes	◯	No	◯
John Franklin	Yes	◯	No	◯

*These sample ballots were prepared by Legislative Council Staff. Should Amendment W be adopted by the voters, actual ballots will vary based on county clerk and recorder ballot designs.

For information on those issue committees that support or oppose the measures on the ballot at the November 6, 2018, 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

4   **Argument For**

5   1)   Amendment W helps make the ballot more concise and reader-friendly. A
6   well-designed and shorter ballot will allow voters to complete it more efficiently,
7   which may encourage voter participation. A more compact ballot may also save
8   counties printing and mailing costs, particularly in more populous counties that
9   elect multiple justices or judges and counties that are required to print ballots in
10   both English and Spanish.

Argument Against

1) Amendment W is unnecessary and risks confusing voters. Under the changes proposed in Amendment W, voters may be uncertain whether they are casting votes in a multi-candidate election or for each individual justice or judge. This potential confusion may increase the likelihood that voters will skip judicial retention questions.

Estimate of Fiscal Impact

Local government impact. Amendment W decreases county clerk and recorder workload by a minimal amount and may reduce ballot printing and mailing costs.

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3   that a retention question be asked for each justice and judge.

4   **Summary and Analysis**

5   ***Background***. In 1966, Colorado voters approved a constitutional amendment that
6   repealed the partisan election of justices and judges and enacted the current process.
7   The process requires justices and judges to be nominated by a judicial nominating
8   commission and then appointed by the Governor. Thereafter, justices and judges must
9   go before voters in a retention election to maintain their seat on the bench. Justices and
10 judges are not allowed to campaign or fundraise in these elections. . Colorado justices
11 serve on the Supreme Court, and judges serve in all other courts.

12 ***Judicial retention elections.*** A retention election asks voters whether incumbent
13 justices or judges should remain in office for another term. In Colorado, justices and
14 judges stand for retention at the end of their judicial terms, and elections are held during
15 the November general election in even-numbered years. Justices or judges do not face
16 an opponent and retain their position if the majority of voters cast a "yes" vote.

17 ***Colorado state court types.*** Colorado law requires judicial retention elections for
18 all levels of state courts, including the Supreme Court, district courts, county courts, City
19 and County of Denver Probate Court, Denver Juvenile Court, and any other state court
20 created by the state legislature, such as the Court of Appeals.

21 ***Current ballot format.*** Under current law, ballots must be formatted according to
22 the type of office up for election. Federal offices are required to be first on the ballot,
23 followed by state, county, and local offices. The judicial retention candidates are listed
24 after the county or local officers, but before the introduction of ballot measures.

25 For judicial retention elections, the Colorado Constitution requires that a separate
26 question be placed on the ballot for each justice or judge up for retention as follows:

27 "Shall Justice (or Judge) ... of the Supreme Court (or other court) be retained in
28 office?" YES/NO

29 ***Judicial retention ballot format under Amendment W.*** Amendment W requires
30 the county clerk and recorder to display the retention question once for each court type
31 and then list each individual justice or judge on that court with the "yes" or "no" option
32 next to each name.

33 "Shall the following Justices (or Judges) of the Supreme (or other court) be retained
34 in office?" YES/NO

1 Figure 1 shows a sample judicial retention ballot both under current law and
2 Amendment W.

Figure 1. Sample Judicial Retention Ballot

Sample Ballot Under Current Law | Sample Ballot Under Amendment W

Judicial
Colorado Supreme Court (Vote Yes or No)
Shall Justice **Robert Smith** of the Colorado Supreme Court be retained in office? Yes ◯ No ◯
Shall Judge **Maria Rodriguez** of the Colorado Supreme Court be retained in office? Yes ◯ No ◯
Colorado Court of Appeals (Vote Yes or No)
Shall Judge **James Johnson** of the Colorado Court of Appeals be retained in office? Yes ◯ No ◯
Shall Judge **Mary Adams** of the Colorado Court of Appeals be retained in office? Yes ◯ No ◯
Shall Judge **John Franklin** of the Colorado Court of Appeals be retained in office? Yes ◯ No ◯

Judicial
Shall the following justices of the **Colorado Supreme Court** be retained in office? (Vote Yes or No)
Robert Smith Yes ◯ No ◯
Maria Rodriguez Yes ◯ No ◯
Shall the following judges of the **Colorado Court of Appeals** be retained in office? (Vote Yes or No)
James Johnson Yes ◯ No ◯
Mary Adams Yes ◯ No ◯
John Franklin Yes ◯ No ◯

*This sample was prepared by Legislative Council Staff. Should Amendment W be adopted by the voters, actual ballots may differ due to county clerk and recorder ballot design discretion.

For information on those issue committees that support or oppose the measures on the ballot at the November 6, 2018, 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

4 **Argument For**

5 1) Amendment W helps make the ballot more concise and reader-friendly.
6   Additionally, having less language on the ballot provides county clerks and
7   recorders more flexibility to make design adjustments. A well laid-out and shorter
8   ballot will allow voters to complete it more efficiently, which may encourage voter
9   participation. A more compact ballot may also save counties printing and mailing
10   costs, particularly in more populous counties that elect multiple justices or judges
11   and counties that are required to print ballots in both English and Spanish.

1 **Argument Against**

2   1) Amendment W is unnecessary, risks confusing voters, and minimizes the
3   importance of the judicial retention election. The changes proposed in
4   Amendment W are inconsistent with previous sections of the ballot, and voters
5   may be unclear if they are casting votes in a multi-candidate election or for each
6   individual justice or judge. The potential confusion increases the likelihood that
7   voters will skip judicial retention questions. The current ballot design is efficient,
8   reader-friendly, and does not need to be changed.

9 **Estimate of Fiscal Impact**

10   ***Local government impact.*** Amendment W decreases county clerk and recorder
11 workload by a minimal amount and may reduce ballot printing and mailing costs.

Last Draft Comments from Interested Parties

Amendment W
Election Ballot Format for Judicial Retention Elections

Chris Forsyth, The Judicial Integrity Project

This draft is much stronger. Thank you again for listening and making changes.

The first page, lines 1-27 read well now. And more importantly, they are accurate. Good job.

Lines 28-31 on the first page muddy things up a bit. I think they're just not clear enough. I would propose changing those lines to read as follows:

"**Amendment W proposes to change the ballot format for judicial retention elections.** Amendment W would remove the constitutional requirement that a separate retention question be asked for each individual justice or judge. Amendment W would require that one retention question be asked for each court type followed by a list containing the names of each individual justice or judge up for retention with "yes" or "no" options next to each name."

I think the above is a little more straightforward. And also the current version makes it sound like every judge on the court will be listed even if he or she is not up for retention. I think the above is more accurate.

The sample ballots on page 2 look great. Thank you for listening and making changes.

Now that you have an excellent sample ballot comparison, it would be nice to add one word and comma to the argument against on page 3. The difference shown by the ballot samples is that the current design is more clear than the proposed design. On page 3, line 7, the word "clear" should be added so line 7 would read as follows: "current ballot design is clear, efficient and reader-friendly."

As for the fiscal impact, page 3, lines 9 and 10 don't appear to be in line with state law. C.R.S. 1-40-124.5 (1)(b) provides that the fiscal impact statement include:

(I) An estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if such measure is enacted;

(II) An estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if such measure is enacted; and

(III) For any initiated or referred measure that modifies the state tax laws, an estimate of the impact to the average taxpayer, if feasible, if such measure is enacted.

"County clerk and recorder workload," as stated in lines 9-10 on page 3 is not a revenue, expenditure or fiscal liability as referenced above. The county clerk and recorder will still have to count the same number of elections. Amendment W does not

change the number of elections on the ballot. The phrase that "Amendment W decreases county clerk and recorder workload by a minimal amount" should be removed. It's inaccurate to say workload will be reduced at all, and reducing workload is not a fiscal impact.

The fiscal impact section should read: "There is no fiscal impact if Amendment W is adopted." C.R.S. § 1-40-124.5 (1)(b) does not allow the speculative proposition that printing and mailing costs may be reduced.

Thank you to legislative council staff for working diligently on this ballot analysis for the voters.

Chris Forsyth
The Judicial Integrity Project
303-892-3894

Dan Volkosh, Colorado County Clerks Association:

Thank you very much for the opportunity to comment on the 3rd draft of Amendment W's analysis. First, regarding your mock-up ballots. It's generally a rule of ballot design to left-justify the text so that nothing is centered. Additionally, it may help to put the words "yes" and "no" closer to their respective bubbles. The current draft has them spaced quite a bit apart. The Center for Civic Design has some great publicly-available resources for this.

Regarding the argument against, we disagree that the statement "the changes proposed in Amendment W are inconsistent with previous sections of the ballot . . . ." That statement is also true of the current judicial retention format because no other question format is like it. If anything, we believe that the new format is more closely aligned with the other sections of the ballot. No other part of the ballot currently states "Shall Hillary Clinton be elected President of the United States?" and "Shall Donald Trump be elected President of the United States?" and so on for each candidate in that race. We also disagree that voters may think that this is a multi-candidate election because of the instruction "Vote Yes or No for each judge" and the yes/no option for each judge. That is a feature distinguishable from other races on the ballot.

The current ballot design is not efficient and reader-friendly because the current design floods the ballot with too many words. Voters already skip the judicial retention questions because of their lengthiness.

Amendment W
Election Ballot Format for Judicial Retention Elections
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Amendment W
Election Ballot Format for Judicial Retention Elections

1   **Ballot Title:** Shall there be an amendment to the Colorado constitution concerning a change in
2   the format of the election ballot for judicial retention elections?

3   *Be It Resolved by the House of Representatives of the Seventy-first General Assembly of*
4   *the State of Colorado, the Senate concurring herein:*

5   **SECTION 1.** At the election held on November 6, 2018, the secretary of state shall submit
6   to the registered electors of the state the ballot title set forth in section 2 for the following
7   amendment to the state constitution:

8   In the constitution of the state of Colorado, **amend** section 25 of article VI as follows:

9   **Section 25. Election of justices and judges.** A justice of the supreme court or a judge
10   of any other court of record, who shall desire to retain his OR HER judicial office for another term
11   after the expiration of his OR HER then term of office shall file with the secretary of state, not more
12   than six months nor less than three months prior to the general election next prior to the expiration
13   of his OR HER then term of office, a declaration of his OR HER intent to run for another term. Failure
14   to file such a declaration within the time specified shall create a vacancy in that office at the end
15   of his OR HER then term of office. Upon the filing of such ~~a declaration~~ DECLARATIONS, a question
16   FOR EACH TYPE OF COURT SPECIFIED IN SECTION 1 OF THIS ARTICLE VI shall be placed on the
17   appropriate ballot at such general election, as follows:

18   "Shall ~~Justice (Judge)~~ THE FOLLOWING JUSTICES (JUDGES) .... of the Supreme (or other)
19   Court be retained in office?" THE NAME OF EACH JUSTICE OR JUDGE STANDING FOR RETENTION MUST
20   BE PRINTED OR WRITTEN ON THE BALLOT UNDER THE APPROPRIATE QUESTION. OPPOSITE OR BELOW
21   THE NAME OF EACH JUSTICE OR JUDGE ON THE BALLOT MUST APPEAR THE WORDS: "YES/..../NO/..../."
22   If a majority of those voting on the question vote "Yes", the justice or judge is thereupon elected
23   to a succeeding full term. If a majority of those voting on the question vote "No", this will cause a
24   vacancy to exist in that office at the end of his OR HER then present term of office.

25   In the case of a justice of the supreme court or any intermediate appellate court, the
26   electors of the state at large; in the case of a judge of a district court, the electors of that judicial
27   district; and in the case of a judge of the county court or other court of record, the electors of that
28   county; shall vote on the question of retention in office of the justice or judge.

29   **SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or
30   "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado
31   constitution concerning a change in the format of the election ballot for judicial retention
32   elections?"

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