Amendment W
Election Ballot Format for Judicial Retention Elections
(This measure requires at least 55 percent of the vote to pass.)

ANALYSIS

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

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

Summary and Analysis

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 In 1966, Colorado voters approved a constitutional amendment that repealed the partisan election of justices and judges and enacted the current process.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

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

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

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

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

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

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

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

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

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

Argument For

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