

**Amendment 40**  
**Term Limits for Supreme Court and Court of Appeals Judges**

1 **Amendment 40 is a proposed amendment to the Colorado Constitution that:**

- 2           ♦ limits the number of terms that appellate court judges – Colorado Supreme  
3           Court justices and Court of Appeals judges – may serve;
- 4           ♦ reduces the term of Supreme Court justices from ten years to four years, and of  
5           Court of Appeals judges from eight years to four years;
- 6           ♦ requires appellate court judges who have already served ten years or more to  
7           leave their current position in January 2009; and
- 8           ♦ requires appellate court judges who are eligible to serve another term to appear  
9           on the November 2008 ballot for retention.

10 **Summary and Analysis**

11           ***The Supreme Court and Court of Appeals.*** The Colorado Supreme Court consists  
12 of seven justices who serve ten-year terms. The Colorado Court of Appeals consists of  
13 nineteen judges who serve eight-year terms. When a vacancy occurs on either of these  
14 courts, an appointed commission selects three nominees to forward to the Governor. The  
15 Governor then appoints one of the three nominees to fill the vacancy.

16           ***What happens after a judge is appointed?*** After appointment, appellate judges  
17 serve an initial two-year term and then stand for retention at the next general election. At  
18 a retention election, voters vote to either keep a judge in office or to remove a judge from  
19 office. If voters choose to keep the judge in office, he or she serves an additional term  
20 before standing for retention again. There is currently no limit on the number of times a  
21 judge can seek retention, but judges are required to retire at age 72.

22           ***How are Supreme Court justices and Court of Appeals judges evaluated?***  
23 Appellate judges who are standing for retention are evaluated by a state commission on  
24 judicial performance. The commission reviews opinions authored by the justice or judge,  
25 conducts an interview with the justice or judge, and reviews surveys completed by trial  
26 court judges and attorneys. The commission's evaluation includes a recommendation  
27 stated as "retain," "do not retain," or "no opinion." This evaluation is printed in the ballot  
28 information booklet that is mailed to every Colorado voter household before a general  
29 election.

1            *How does Amendment 40 change the current system?* Amendment 40 limits  
2 Supreme Court and Court of Appeals judges to three terms – one initial two-year term plus  
3 two four-year terms. Any appellate judge who, as of the November 2008 election, has  
4 already served ten years will not be eligible to serve another term in their current position.  
5 Judges who are eligible to continue serving will appear on the November 2008 ballot for  
6 retention.

7            **Arguments For**

8            1) Judges on Colorado's two highest courts should be evaluated more frequently  
9 than every eight to ten years. Requiring appellate judges to stand for retention every four  
10 years allows the public to hold these judges accountable for their actions and decisions  
11 more often. All other judges in Colorado stand for retention every four to six years;  
12 Amendment 40 will make the terms of appellate judges more similar to the other courts.

13            2) The current options available to remove a judge from office are inadequate. No  
14 Supreme Court justice or Court of Appeals judge in Colorado has ever been removed by  
15 the voters in a retention election. Further, impeachment of judges is almost never used,  
16 and there is no process to recall a judge. As a result, judges can essentially serve as long  
17 as they want up until the mandatory retirement age. Amendment 40 ensures that after an  
18 appellate judge's initial two-year term, he or she does not remain in office longer than eight  
19 more years.

20            3) Term limits create more turnover in office, and thus provide more opportunities  
21 for other judges to serve on the two highest courts. Voters have already limited the number  
22 of years that elected officials in the legislative and executive branches may serve;  
23 Amendment 40 applies term limits to the highest officials in the judicial branch as well.

24            **Arguments Against**

25            1) Amendment 40 removes judges regardless of their skills, accomplishments, or  
26 experience. It is essential for judges to understand particular areas of legal theory and how  
27 laws develop over time. This knowledge comes from years of serving on the court. With  
28 the limit on terms, judges will not have adequate time to gain this experience.

1           2) Limiting the terms of Supreme Court and Court of Appeals judges is  
2 unnecessary. Judges are already held accountable through performance evaluations,  
3 retention elections, oversight by a state judicial discipline commission, possible  
4 impeachment, and mandatory retirement at age 72. Further, Amendment 40 may  
5 discourage the best candidates from pursuing judgeships on the Supreme Court and Court  
6 of Appeals. Qualified lawyers will have to choose between continuing an established  
7 career or accepting a short-term position on the bench.

8           3) Every ten years, one governor will have the ability to appoint a large number of  
9 judges to the Supreme Court and Court of Appeals. Since this proposal ends the terms of  
10 judges in January 2009 who have served ten years or more, the next governor would  
11 appoint at least five Supreme Court justices and seven Court of Appeals judges. Therefore,  
12 one political party will appoint a substantial number of judges to the state's two highest  
13 courts, including a majority of the justices of the Supreme Court. Further, some judges  
14 will be forced to leave office before completing the full term that the voters previously  
15 gave them.

#### 16   **Estimate of Fiscal Impact**

17           As a result of Amendment 40, at least five of seven Supreme Court justices and  
18 seven of nineteen Court of Appeals judges will leave office on January 13, 2009.  
19 Replacement justices and judges will need time to receive training in judicial procedure  
20 and review pending cases, which could create a case backlog and increase workload for  
21 agencies working in the court system. Any case backlog will depend on the number of  
22 appeals filed and the number of cases resolved during the next two years. It is estimated  
23 that if additional resources are needed, they will be requested during the annual budget  
24 process.