

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

1 **Amendment 40 proposes a change to Section 1 of Article VI of the**
2 **Colorado Constitution that:**

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

11 **Summary and Analysis**

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

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

23 ***How are Supreme Court justices and Court of Appeals judges evaluated?***
24 Appellate judges who are standing for retention are evaluated by a state commission on
25 judicial performance. The commission reviews opinions authored by the justice or judge,
26 conducts an interview with the justice or judge, and reviews surveys completed by trial
27 court judges and attorneys. The commission's evaluation includes a recommendation
28 stated as "retain," "do not retain," or "no opinion." This evaluation is printed in the ballot
29 information booklet that is mailed to every Colorado voter household before a general
30 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. Appellate judges who, as of the November 2008 election, have
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) Amendment 40 limits the number of years that a judge can influence the
9 decisions of the state's two highest courts. By creating more turnover in office, it provides
10 new perspectives and more opportunity for other judges to serve on the state's two highest
11 courts. Voters have already limited the number of terms that elected officials in the
12 legislative and executive branches may serve; Amendment 40 applies term limits to the
13 highest officials in the judicial branch as well.

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

21 3) Judges on Colorado's two highest courts should be held accountable more
22 frequently than every eight to ten years. Requiring appellate judges to stand for retention
23 every four years allows the public to evaluate the performance and decisions of these
24 judges more often. All other judges in Colorado stand for retention every four to six years;
25 Amendment 40 will make the terms of appellate judges more similar to the other courts.

26 **Arguments Against**

27 1) Amendment 40 will force five current Supreme Court justices and seven Court
28 of Appeals judges from office in January 2009. Some of these judges will be forced to
29 leave office before serving the full term that voters previously approved. In 2009, the
30 governor will appoint new judges to the Supreme Court and Court of Appeals, including
31 a majority of the justices of the Supreme Court. This means that in 2009, one political
32 party will have disproportionate influence over the membership of the state's two highest
33 courts. Further, every ten years thereafter, the governor may have the ability to appoint a
34 large number of judges to the Court of Appeals and a super-majority to the Supreme Court.

35 2) Limiting the terms of Supreme Court and Court of Appeals judges is
36 unnecessary. Judges are already held accountable through performance evaluations,
37 retention elections, oversight by a state judicial discipline commission, possible

1 impeachment, and mandatory retirement at age 72. Further, Amendment 40 may
2 discourage the best candidates from pursuing judgeships on the Supreme Court and Court
3 of Appeals. Qualified lawyers will have to choose between continuing an established
4 career or accepting a short-term position on the bench.

5 3) Amendment 40 removes judges regardless of their skills, accomplishments, or
6 experience. It is essential for judges to understand particular areas of legal theory and how
7 laws develop over time. This knowledge comes from years of serving on the court. With
8 the limit on terms, judges will be required to step down when their experience is most
9 beneficial to the court.

10 **Estimate of Fiscal Impact**

11 Based on current terms, at least five of seven Supreme Court justices and seven of
12 nineteen Court of Appeals judges will leave office on January 13, 2009. Replacement
13 justices and judges may need time to receive training in judicial procedure and to review
14 pending cases, which could create a case backlog and increase workload for agencies
15 working in the court system. Any case backlog will depend on the number of appeals filed
16 and the number of cases resolved during the next two years. It is estimated that if
17 additional resources are needed, they will be requested during the annual budget process.