

AMENDMENT W

Ballot Format for Judicial Retention

Summary

Amendment W would require county clerks to list a single ballot question for each level of Colorado court for judicial retention elections. The measure would shorten ballots, as current format dictates a question must be listed for every retained judge or justice on the ballot. Preliminary fiscal analysis done by Colorado's Legislative Council finds a potential decrease in county government costs. [Click here](#) to view the Colorado Legislative Council's analysis, including the estimated fiscal impact.

Research

Colorado voters used to elect judges, however, in 1966, the voters approved a constitutional change to create our current process. Currently, judges are nominated by a judicial-nominating commission and appointed by the governor. This change was supported by the Colorado Bar Association as early as 1947, according to sources cited by [Ballotpedia](#). An appointee must serve a provisional term of at least two years, continuing that term until the next General Election, when the appointee faces a retention election to continue to serve.

As of today, there are [324 justices and judges](#) in Colorado. Justices and court of appeals (COA) judges are retained by a statewide vote; district and county court judges are retained by voters in their respective jurisdictions. Following provisional terms, and if retained, Supreme Court justices serve 10-year terms, COA judges serve eight-year terms, district judges serve six-year terms, and county court judges serve four-year terms. Following each term, they face a retention vote.

In a retention election, the justice or judge doesn't run against another candidate; instead, voters choose whether to retain the justice or judge. A candidate [must receive](#) a simple majority of votes to keep his or her position. If that doesn't happen, a vacancy is created, and the appointment process described above is used to fill the vacancy.

Colorado uses a "[merit selection](#)" process with retention elections for judges and justices, whereby they are nominated by a panel of judges and appointed by the governor. This approach removes judges and justices from the trappings of a traditional election and the campaigning and fundraising that goes along with it. According to sources at the Colorado Judicial Department, this gives us a high-quality judicial system.

Amendment W doesn't change the retention process, but it does change the form of the ballot. Legislative Council [estimates](#) if the measure passes, "ballot costs (would) reduce by between \$500 and \$3,000 in small to medium counties, and between \$40,000 to \$60,000 in large counties, with the City and County of Denver estimating a \$115,000 reduction." (*Denver prints a bilingual ballot, which leads to increased election costs.*) Legislative Council also suggests a shorter ballot length may reduce county clerk ballot mailing costs, though it doesn't estimate a fiscal impact. Best practices issued by the Center for Civic Design [support](#) a "less is more" approach.

Amendment W was referred to the voters by the Colorado legislature via HCR18-1001. The Colorado Judicial Branch suggested amending the bill to clarify the change isn't asking voters to choose between judges, but it failed to garner support. Proponents say they are supportive of addressing these concerns in the rulemaking process, yet they wouldn't be bound to make any of these changes.

Arguments For

- As the Director of the City and County of Denver's Elections Division said during HCR18-001's hearings: "This is about saving space and saving money."
- Simplification may help combat voter fatigue, as Denver reports a decrease between those who vote for the first judicial retention question on a ballot and the last (71 percent to 63 percent) and removing text could allow election officials to increase the font size which may improve rates of ballot completion.
- A shortened ballot will reduce printing costs.

Proponents

Representatives Cole Wist and Mike Lee and Senators Lois Court and Larry Crowder were prime sponsors of HCR18-001. Secretary of State Wayne Williams, City and County of Denver Elections Division, Colorado County Clerks Association, and Colorado League of Women Voters are also in support.

Arguments Against

- The changes may confuse voters. Seeing a list of judges without separate retention questions may cause them to erroneously think they must choose between the justices.
- Because judges are prohibited in their code of conduct from communicating with voters unless they face active opposition, they won't be able to clarify it's a retention election.
- There is no guarantee this change will save money. A county will save money if it uses less paper, prints less, and has less to mail. However, other factors, such as the number of measures up for a vote in any given year, can also lead to a long ballot.

Opponents

No active opposition at this time.

Recommendation: Support

This measure would likely simplify voting, encourage more people to complete their ballot, and save tax money. We know Colorado communities are hurting from a lack of public investment. We support creating common-sense efficiencies in government, particularly if it will free up revenue for other important programs.