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6 repealed the partisan election of justices and judges and enacted the current process.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 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. 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 (or Judge) ... of the Supreme Court (or other) Court be retained in
27 office?" 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 and then list each individual justice or judge on that court with the "yes" or "no" option
31 next to each name.

32 "Shall the following Justices (or Judges) of the Supreme (or other) Court be retained
33 in 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 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 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. The changes proposed in Amendment W are inconsistent with previous sections of the ballot, and voters may be unclear 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. The current ballot design is efficient and reader-friendly.

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.