

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Jon Caldara and Charles Dennis

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** February 20, 2024

**SUBJECT:** Proposed initiative measure 2023-2024 #185, concerning judicial retention elections

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

### Purposes

The major purpose of the proposed amendment to the **Colorado constitution** appears to be:

1. To require a justice or judge who desires to be retained in office for another term to receive 55 percent or more of the votes cast instead of a simple majority of the votes cast, at an election to be retained in office.

## Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. For a justice or judge to retain office, the justice or judge must obtain an affirmative vote of the majority of those voting on the judicial retention election ballot. The proposed initiative appears to increase the affirmative vote requirement to fifty-five percent or more of those voting on the question. If this is the proponents' intent, would the proponents consider striking "a majority of" before the added language of "fifty-five percent or more" to eliminate any confusion regarding the required voter approval percentage? In other words, if a simple majority of voters is no longer the defining threshold, would the proponents consider striking the reference to a majority vote requirement?
3. The proposed initiative states that the act takes effect January 1, 2026. Is it the proponents' intent that it apply only to judicial retention elections occurring on or after that date?

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each section in the Colorado constitution has a headnote that briefly describes the content of the section. Headnotes should be in bold-face type, follow certain rules regarding capitalization, be in regular-capitalized letters, and end in a period. The headnote in the proposed initiative should appear as "**Section 25. Election of justices and judges.**"