

## **AN IMPORTANT MESSAGE FROM THE CBA**

### **Colorado Bar Association votes to oppose Amendment 40 – Bad Idea. Serious Consequences.**

#### **I. What is it? – An overview of Amendment 40**

Amendment 40 is a proposed constitutional amendment that would cut short the time that Colorado Supreme Court justices and Court of Appeals judges can serve.

It is a bad idea with serious consequences for individuals, businesses and the judiciary in Colorado.

As a result of its retroactive provision, Amendment 40 will apply to judges presently serving. Five of seven Supreme Court justices and seven of 19 Court of Appeals judges will be removed after the next general election and all at the same time — regardless of quality of service or voter preference. What that means is Colorado's next governor — and future governors — will have the power to fill the large-scale void created by such extreme vacancies, accounting for 71% of Supreme Court justices and 37% of Court of Appeals judges.

Even worse, the measure fails to include a plan to keep our courts operating efficiently after nearly half the judges from Colorado's highest courts are indiscriminately swept out for no reason. Approval by voters on November 7 means Colorado will be the first state in the nation to enact judicial term-limits.

#### **II. Backers of Amendment 40:**

On August 2, 2006, former State Senator John Andrews submitted the necessary signatures to Colorado's Secretary of State to place Amendment 40 on the 2006 ballot. As a state senator, Andrews failed to pass similar measures in the legislature in 1999 and 2004. Despite being president of the Republican-controlled Senate, he failed to gain the support of his own colleagues to move his measure forward.

According to *The Denver Post*: "all of the donations (supporting Amendment 40) have come from a nonprofit group, Colorado At Its Best, based out of the Golden home of Dennis Polhill, a retired engineer and leader of the movement that brought legislative term limits to Colorado. Polhill says it isn't his money. He says most of the \$203,000 that ended up with Limit the Judges came from Chicago-based Americans for Limited Government, which supports free enterprise and choice in education. Neither Polhill nor the president of Americans for Limited Government would say precisely how much the group donated."

#### **III. Amendment 40 – Read it for yourself – Ballot Title of the Amendment:**

Shall there be an amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, reducing the terms of office for justices of the supreme court and judges of the court of appeals to four years, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, if eligible for another term, prohibiting an appellate judge from serving more than three terms, specifying that a provisional term constitutes a full term, and making any appellate judge who has served ten or more years at one court level ineligible for another term at that level?

#### **IV. The Consequences:**

For Colorado voters, the serious consequences of voting “yes” on this measure include:

- Forcing five of the seven Colorado Supreme Court justices and seven of the 19 Court of Appeals judges off the bench at the same time.
- Creating a backlog in our judicial system. The measure fails to provide a plan to keep our courts running efficiently during the time it takes to fill the drastic void created by sweeping out nearly half of judges serving on Colorado’s highest courts.
- Pushing out good judges for no reason.
- Bringing partisan politics into the courtroom by giving future governors of Colorado the power to appoint nearly half of the appellate judiciary every 10 years.

#### **V. Get Involved**

The easiest way to get involved is to visit the campaign’s website:

[www.VoteNo40.org](http://www.VoteNo40.org)

#### **Additional Information:**

##### ***History and Judicial Merit System:***

In 1966, Coloradans voted in merit selection and retention for judges, replacing a system based on partisan political elections.

Today, this 40-year-old, voter-approved measure protects the Colorado justice system from the influence of partisan politics and keeps Colorado’s judiciary independent. Judges are selected based on skills and experience instead of political connections or popularity.

Further, in 1988, the Colorado General Assembly created commissions on judicial performance to provide fair, responsible evaluations of judges seeking retention.

Amendment 40 is a giant step backward. It is a bad idea with serious consequences for individuals and businesses across our state.

Here is how Colorado appellate judges are selected:

- Judicial candidates are reviewed by a non-partisan nominating committee made up of diverse individuals from across the state.
- This commission provides the governor of Colorado with judicial recommendations.
- From this reviewed list of recommendations, the governor selects a judge.
- The judge serves a two-year term, and then he or she must be retained by voters during the state's next general election.
- Upon voter approval, judges serve a full term on the bench. Supreme Court justice terms last 10 years and Court of Appeals judge terms last eight.
- Judges can stand for multiple terms, but must be retained by a vote of the people and must retire by age 72.

Here's how Colorado judges are held accountable to the people:

- Colorado judges are evaluated prior to each election by the Commission on Judicial Performance, made up of non-partisan citizens from across the state.
- Reviews from this commission provide voters with fair, responsible evaluations of judges and justices seeking retention. The commission also provides judges with constructive information to improve their professional skills as judicial officers for the state of Colorado.
- Through this commission thousands of surveys (more than 75,000 in 2006) are sent to people who have appeared before the judge, interacted with his/her court, or work in the court.
- Once the evaluation process is completed, recommendations are developed and made available to the public at

[www.cojudicialperformance.com](http://www.cojudicialperformance.com). They also are published in the “Blue Book” sent to every Colorado voter.

Here’s how Colorado judges are disciplined:

- All judges must comply with the Colorado Code of Judicial Conduct or are subject to discipline or removal from the bench.
- The Colorado Commission on Judicial Discipline investigates allegations when a judge is accused of improper behavior, willful misconduct, or ethics violations.
- The commission is composed of citizens, lawyers and judges from across the state.
- The commission takes various actions to improve bad behavior including meeting with the judge, privately or publicly reprimanding the judge, or recommending that the Supreme Court remove a judge from office.

**Judges Forced Out by Amendment 40:**

All of these judges will not be allowed to stand for retention at the next general election in 2008. They will be removed at the same time in January 2009.

**Supreme Court:**

Chief Justice Mary Mullarkey  
Justice Gregory J. Hobbs, Jr.  
Justice Alex J. Martinez  
Justice Michael L. Bender  
Justice Nancy E. Rice

**Court of Appeals:**

Chief Judge Janice B. Davidson  
Judge José D. L. Márquez  
Judge Sandra I. Rothenberg  
Judge Daniel M. Taubman  
Judge James S. Casebolt  
Judge Arthur P. Roy  
Judge JoAnn L. Vogt

## Tax Section Notes

**WANTED!** Articles and authors for Tax Tips and the Tax Section Newsletter. Please contact Lawrence Nemirow or Rachel James if you are interested in having your article published in The Colorado Lawyer, or Steven Weiser, if you are interested in having your article published in the Tax Section Newsletter.

**THE TAX SECTION IS ACCPETING NOMINATIONS FOR LIFETIME ACHIEVEMENT AWARDS.** If you are interested in nominating someone please contact Tax Section Chair Adam Cohen.

**THE COLORADO DEPT. OF REVENUE** has submitted a draft letter ruling regulation to the Colorado Secretary of State. A public hearing concerning the proposed regulation will be held on November 1, 2006 at 10:00 a.m., at the Dept. of Revenue's main offices at 1375 Sherman St. in Denver.

**THE EMPLOYEE BENEFITS SUBCOMMITTEE** and CLE In Colorado, Inc. will be holding a 1/2 day seminar on the Pension Protection Act of 2006 on November 15, 2006 at the offices of the CBA, 1900 Grant St., Denver, 3<sup>rd</sup> floor.

### COLORADO BAR ASSOCIATION TAXATION SECTION TOPICAL LUNCHEONS (Tentative Schedule)

<u>Date</u>	<u>Speakers</u>	<u>Topic</u>	<u>Location</u>
November 8, 2006	Robert Keatinge and Joseph Thibodeau	<b>Attorney-Client Privilege Waiver</b>	The Warwick Hotel
December 13, 2006	Brooke Wunnicke and James Bye	<b>Ethics</b>	The Warwick Hotel
January 10, 2007	Tax – TBA Real Estate – TBA T & E – TBA Business – TBA	<b>Annual Survey of Colorado Law</b>	The Warwick Hotel

#### Colorado Bar Association Tax Section

Steven Weiser  
Newsletter Editor

**Council Officers**

Chairman	Adam M. Cohen	(303) 295-8372
Vice Chair	Eric Zinn	(303) 223-1191
Treasurer	Rachel James	(303) 892-7214
Secretary	Neil Pomerantz	(303) 991-2501
Past Chair	Lawrence Nemirow	(303) 892-7443

**Council Members**

Andrew Elliott	(303) 223-1100
Rob Keyser	(719) 634-5595
Andrew Kroll	(303) 949-4731
Stuart Sargent	(303) 832-1900
John Warnick	(303) 866-0672
Steven Weiser	(303) 504-4242

**Section Committee Chairs****Representative to the Board of Governors**

John Warnick	(303) 866-0672
--------------	----------------

**Business Law Section Liaison**

Robert Keatinge	(303) 295-8595
-----------------	----------------

**CBA Liaison to IRS**

Adam M. Cohen	(303) 295-8372
---------------	----------------

**Interprofessional Committee**

William Frey	(970) 242-4614
--------------	----------------

**Technology Liaison**

Eric Zinn	(303) 223-1191
-----------	----------------

**Trust and Estates Section Liaison**

Rachel James	(303) 892-7214
--------------	----------------

**Tax Tips Articles**

Lawrence Nemirow	(303) 892-7443
Rachel James	(303) 892-7214

**Topical Lunches**

Stuart Sargent	(303) 832-1900
----------------	----------------

**CBA Staff Liaison**

Gretchen Eoff	(303) 824-5311
---------------	----------------