

Colorado Bar Association President's Message to Members

Protect Colorado Courts

by Elizabeth A. Starrs



Next month, several initiatives to change the Colorado Constitution will be on the ballot in the General Election. One such proposal, Amendment 40, is of particular importance to lawyers because it provides for a constitutional amendment imposing term limits for all Colorado appellate judges and retention elections every four years.¹ This is a terrible idea for our state.

The Colorado Bar Association's ("CBA") mission includes a long-standing commitment to defend Colorado's judicial system from political attacks, to protect judicial independence, and to improve the administration of justice.² The CBA was involved in the twenty-plus-year struggle to adopt the Merit Selection System for choosing judges in this state.³ Colorado voters approved the Merit Selection System for choosing judges in November 1966 and it has served Colorado well. Now, forty years later, disgruntled politicians are seeking retribution against our judges for unpopular decisions. This proposed constitutional amendment would result in a serious step backward for the administration of justice in Colorado and, thus, for all Colorado citizens.

Vote No 40

In May 2006, the CBA Board of Governors voted unanimously to oppose this judicial term limit initiative if it made it on the ballot in November. I understand that not everyone in the CBA agrees with this position. However, given a clear direction to go forward, we have proceeded apace.

In June 2006, an Issue Committee,⁴ called Citizens to Protect Colorado Courts ("CPCC"), was formed and registered with the Office of the Secretary of State to coordinate efforts and raise money to defeat this amendment to Colorado's Constitution. A bipartisan coalition has developed to support these efforts.⁵ The CPCC participants may not always agree on policy matters affecting the state, but they do agree on this: term limits for appellate judges is a bad idea for Colorado. In late August 2006, a campaign began in full swing and "CPCC" became "Vote No 40."

Reasons Amendment 40 is Wrong For Colorado

The proposed initiative reflects a fundamental misunderstanding of the differences in our three branches of government and the need for independent courts, free from this kind of political tinkering. Here are five reasons the initiative is a bad idea for Colorado.

- 1. We must keep partisan politics away from our courts.** This initiative gives politicians more power "automatically" to remove judges, no matter how hard they have worked, no matter how well they have performed their duties, and no matter how productive they still may be. It gives future governors, regardless of political affiliation, the power to appoint nearly half of Colorado's highest court judges *every ten years*. The proposed ballot initiative limits the voters' choices and the public's control of the process. Just because a judicial decision is unpopular does not mean it is wrong. Judges must make decisions based on precedent and the laws.
- 2. This is an extreme measure.** It would result in the immediate removal of seven current Court of Appeals judges, as well as five Supreme Court justices all on the same day, by not allowing them to stand for retention in the next general election. Colorado would be the first state to enact this radical concept, which would allow the sitting governor to appoint more than 50 percent of our appellate judges every ten years.
- 3. Accountability already exists and this measure would push out good judges for no reason.** Colorado's system of selecting judges has worked for forty years. This initiative, therefore, is a solution in search of a problem. Unlike federal judges, state court judges do not have lifetime tenure and are subject to substantial accountability, including review of alleged improper conduct by the Commission on Judicial Discipline and retention elections, with review by judicial performance committees. For specifics on how Colorado's Merit Selection System works, visit <http://www.courts.state.co.us/40>.
- 4. Just because term limits are in place for the executive and legislative branches of government does not automatically mean that term limits are required in the judicial branch of government, as well.** An interesting fact to consider is that some who supported legislative term limits now recognize the resulting loss of institutional memory, the decrease in the general assembly's effectiveness, and a polarization of the parties. More important, judges and justices garner experience and increased knowledge through years on the Bench. When facing a difficult medical decision, for example, no one would opt to be treated by the least experienced doctor available. So, too, with the legal system, neither you nor your client would choose an inexperienced judge to resolve it.

5. Many of the best candidates would be discouraged from applying for judgeships. Non-Denver metro candidates likely would think twice before applying for a judgeship and uprooting their families for guaranteed job insecurity. Why leave a thriving law practice one has spent years to develop for a new career that has a maximum lifespan of only ten years? This "ten years and you're out" rule, the essence of the initiative, is inappropriate and unnecessary.

Uphill Battle Against Amendment 40

Some may believe this is such an extreme ballot initiative that it could not possibly pass. Unfortunately, polls indicate that the majority of the public does not understand the roles of our separate branches of government and how this will negatively impact Colorado's judicial system. If members of the legal profession do not organize and speak with one voice in opposition, this ballot initiative has a good chance of passing.

In recent polls conducted on behalf of the U.S. Chamber of Commerce, Colorado's judicial system was named as one of the top ten in the nation in impartiality and competence. The serious consequences of this ballot initiative will result in the denigration and marginalization of our courts.

I encourage you to support the fight against the ballot initiative for appellate judicial term limits, and hope you will share the information with friends, relatives, and community members. For more information about how you can help, visit the CBA website, <http://www.cobar.org>, and click on "Vote No 40."

Whatever the outcome in November, we must not take the third branch of government for granted. We must continue our efforts to educate ourselves and the general public about the separation of powers, judicial review, and the independence of the judiciary. We expect fair and impartial courts. We have them now. Let's not lose them.

NOTES

1. Complete Colorado Ballot Initiative information is available at <http://www.voteno40.org/repository/documents/amendment40.pdf>.

2. See, e.g., Article 1.2 of the Colorado Bar Association ("CBA") By-laws:

The objects of the CBA are to advance the science of jurisprudence, to secure the more efficient administration of justice, to encourage the adoption of proper legislation, to advocate thorough and continuing legal education, to uphold the honor and integrity of the bar, to cultivate cordial relations among the lawyers of Colorado, and to perpetuate the history of the profession and the memory of its members.

The CBA Bylaws are available at the CBA website, <http://www.cobar.org>, by clicking on "About the CBA," then "Governance," then "Policy & Procedure Manual."

3. Hobbs, "Colorado Judicial Merit Selection—A Well-Deserved 40th Anniversary Celebration," 35 *The Colorado Lawyer* 13 (April 2006).

4. According to Article 28, § 2, of the Constitution of the State of Colorado, an Issue Committee is defined as a group whose major purpose is to support or oppose a ballot issue or has accepted or made financial contributions to support or oppose a ballot issue.

5. Visit <http://www.voteno40.org> for complete information about the Vote No 40 campaign.

6. The first comprehensive multi-state study of the effects of term limits was conducted by the Joint Project on Term Limits, a cooperative effort among the National Conference of State Legislatures, the Council on State Governments, the State Legislative Leaders Foundation, and a group of political scientists. The report, entitled "Coping With Term Limits," is available at <http://www.ncls.org/programs/legman/about/jtproject.htm>. It will be included in a forthcoming book, "Institutional Change in American Politics: The Case of Term Limits," published in 2007 by the University of Michigan Press.

4. The U.S. Chamber of Commerce Institute for Legal Reform/Harris Poll ranks the fifty states every year on how their court systems are perceived by their citizens. The rankings are available at <http://www.instituteforlegalreform.com/harris/index.html>. ■

Upcoming DBA YLD Events

Young Professionals for an Independent Judiciary

On Wednesday, October 11, from 5:30 to 7:30 P.M., members of the Denver Bar Association Young Lawyers Division ("DBA YLD") will meet to discuss the consequences for Colorado if Amendment 40 passes and how to get involved in the "Vote No 40" campaign. Everyone is invited to attend. The event will be held at the Palomino restaurant, 515 Arapahoe St., in Denver. The Palomino will provide happy hour rates throughout the event. The DBA YLD also will be providing light hors d'oeuvres and two drink tickets.

To RSVP, please call (303) 860-1115, ext. 727, or e-mail lunches@cobar.org. For more information, contact Doug Stevens at (303) 991-4701 or dastevens@gnlaw.net; or Meghan Pound at (303) 443-8010 or mpound@claw.com.

Law Suit Days

Law Suit Days are October 12–13. Members of the DBA YLD will be taking donations on the steps of the City and County Building, 1437 Bannock St., from 10:00 A.M. to 2:00 P.M. each day. Donate gently used professional clothing to help low-income and unemployed community members dress-to-impress for job interviews. Questions? Contact David Uhlig at uhligd@ballardspahr.com.