

PROPOSITION 137
[SCR 1044 - 2024]

judicial retention elections

ANALYSIS BY LEGISLATIVE COUNCIL

Legislative Council Staff Draft

1 The Arizona Constitution currently sets out a merit selection and retention system for
2 justices of the Arizona Supreme Court, judges of the Arizona Court of Appeals, and judges of the
3 Superior Court in counties with a population of 250,000 or more persons. Those appellate and
4 trial court judges and justices are appointed by the Governor from lists of nominees selected by
5 nonpartisan commissions, and serve terms (four years for trial court judges and six years for
6 appellate court judges), subject to a vote of the people to determine whether the judge or justice
7 should be retained or removed from office.

8 The Commission on Judicial Performance Review (JPR Commission), composed of 34
9 members appointed by the Arizona Supreme Court, evaluates the performance of judges and
10 justices who are up for a retention vote. The Arizona Constitution requires that this judicial
11 performance evaluation process include the opportunity for input from the public and that judicial
12 performance reports be given to the voters before the state's general election.

13 The Arizona Constitution also provides for the removal of judges and justices pursuant to
14 Article VI.I (a state commission regulating judicial conduct) and Article VIII (recall and
15 impeachment). The Arizona Constitution also establishes a mandatory retirement age of 70 years
16 for judges and justices.

17 Proposition 137 would amend the Arizona Constitution to provide that judges and justices
18 appointed through the merit selection process would no longer be subject to a set four-year or
19 six-year term of office and an automatic retention vote. Rather, Proposition 137 provides that
20 those judges and justices who have not reached the mandatory retirement age would hold office
21 during good behavior and could only be removed from office through the procedures set out in
22 Article VI.I or VIII or pursuant to a retention election if the judge or justice:

- 23 1. Is convicted of a felony offense.
- 24 2. Is convicted of a crime involving fraud or dishonesty.
- 25 3. Initiates a personal bankruptcy proceeding in which the justice or judge is a debtor.
- 26 4. Is a mortgagor of a mortgage that is foreclosed.
- 27 5. Is determined to not meet judicial performance standards by a majority of the JPR

28 Commission.

29 Under Proposition 137, the JPR Commission would evaluate each judge and justice at least
30 once every four years. Membership on the JPR Commission would be expanded to include one
31 member appointed by a majority of the Arizona House of Representatives and one member
32 appointed by a majority of the Arizona State Senate. On the written request of a state legislator,
33 the commission would be required to investigate an allegation that a judge or justice engaged in a
34 pattern of malfeasance in office, and if the commission found that the pattern of malfeasance had

1 occurred, the commission must determine that the judge or justice did not meet judicial
2 performance standards.

3 Proposition 137 would require the Chief Justice of the Supreme Court to make the
4 determination whether a judge or justice is subject to a retention vote (the Vice Chief Justice would
5 make the determination whether the Chief Justice is subject to a retention vote), and the Chief
6 Justice would provide to the Secretary of State a list of the judges and justices who are subject to
7 a retention vote at each upcoming general election. Proposition 137 also specifies that the retention
8 vote for a judge of the Court of Appeals would occur on a statewide, rather than regional, basis.

9 If Proposition 137 is approved by the voters at the November 5, 2024 general election, the
10 results of the retention vote for each judge and justice on the November 5, 2024 ballot will not be
11 included in the official vote count and will not result in the retention or rejection of any judge or
12 justice.

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