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Original Proceeding Pursuant to COLO. CONST., art. IV, §3	
In re Interrogatory as submitted by the Colorado General Assembly	▲ COURT USE ONLY ▲
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BRIEF OF THE COLORADO GENERAL ASSEMBLY

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g) as it contains 5,259 words.

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/s/John F. Walsh

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ISSUE PRESENTED

The Court has accepted this interrogatory propounded by the Colorado General Assembly:

Does the provision of section 7 of article V of the state constitution that limits the length of the regular legislative session to "one hundred twenty calendar days" require that those days be counted consecutively and continuously beginning with the first day on which the regular legislative session convenes, or may the General Assembly, for purposes of operating during a declared disaster emergency, interpret the limitation as applying only to calendar days on which the Senate or the House of Representatives, or both, convene in regular legislative session?

STATEMENT OF THE CASE

A global pandemic without parallel in recent history grips Colorado, the nation, and indeed the world. This interrogatory arises from the General Assembly's effort to do its part to combat the spread of that pandemic and to save lives, while fulfilling its constitutional obligations to the people of Colorado.

On March 16, consistent with the emergency directives of both the governor and the state judiciary, the General Assembly passed a joint resolution suspending the 2020 general legislative session for two weeks. This decision is without precedent in Colorado history, but so is the ongoing risk to public health and safety. And, as described further below, the intensifying epidemic is making a much longer suspension—even past the originally scheduled legislative-adjournment date of May 6—increasingly likely.

The General Assembly therefore asks this Court to hold that, in light of this unprecedented health emergency, the Assembly may properly construe the length of its term under the state constitution to permit the Assembly, once it is safe to reconvene, to resume its work from the date of the suspension on March 16, and to complete its regular session in the ordinary course.

A. The Public Health Emergency

First detected in China in December 2019, the highly communicable respiratory disease known as COVID-19 has now spread

to 195 countries and territories across six continents.[1] Over 375,000 people worldwide have been infected, and more than 16,000 have died.[2]

Colorado, unfortunately, has not been spared. The first case of COVID-19 in our state was detected on March 5, 2020.[3] Today, less than three weeks later, there are 912 confirmed cases—including at least one member of the General Assembly—in 35 counties in the state, and 11 deaths.[4] The number of confirmed cases, moreover, continues to grow steeply.[5]

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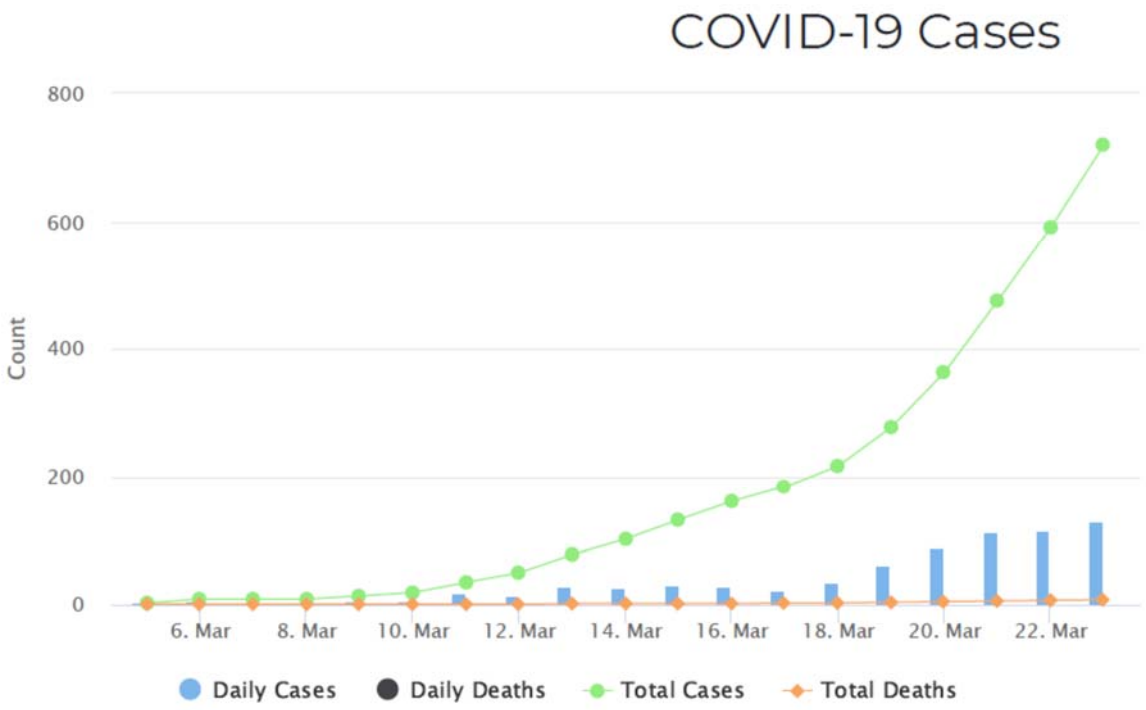
[1] World Health Organization, Novel Coronavirus (COVID-19) Situation, https://experience.arcgis.com/experience/685d0ace521648f8a5beeeee1b9125cd (as of Mar. 24, 2020).
[2] *Id.*
[3] Executive Order D-2020-003 (Mar. 11, 2020), https://drive.google.com/file/d/1szJfU9WF36-lCVgRhXMAnJdlQyTSG83e/view.
[4] covid19.colorado.gov/case-data (data as of Mar. 23, 2020).
[5] Colorado Public Radio Staff, *Colorado Coronavirus Updates For March 20: Closures, Testing, Cases and More,* CPR NEWS (Mar. 20, 2020), https://www.cpr.org/2020/03/20/colorado-coronavirus-updates-closures-testing-cases-and-more-6/; *see also* COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT, CASE DATA, https://covid19.colorado.gov/data (Last updated Mar. 23, 2020, 4:00 p.m.).



The disruption to daily life caused in Colorado and around the country by COVID-19 is unprecedented. Even prior to state government action, businesses, schools, and community, non-profit, and professional groups were canceling concerts, conferences, sporting events, and other community and social activities. Hundreds of thousands of people have been sent to work from home, and thousands of others have lost their jobs. Educational institutions, from pre-school through university, have closed and sent their students home. "Social distancing" is the new norm.

The extent and duration of the disease's long-term impacts to public health, the economy, social institutions, and government services are impossible to fully estimate.

B. Colorado's Executive And Judicial Branches Respond.

As in other states, Colorado state government has responded proactively to the crisis. Governor Polis declared a state of emergency on March 10, and the next day, exercising his authority under the Colorado constitution and the Colorado Disaster Emergency Act, C.R.S. §24-33-5-701 *et seq.*, he issued an executive order declaring "a state of disaster emergency."[6] The executive-branch response to the rapidly intensifying epidemic has only accelerated since that declaration. On March 15, the Colorado Department of Public Health and Environment (CDPHE) recommended that Coloradans follow federal guidance postponing or canceling any event larger than 50 people. On March 16, CDPHE issued an order closing all bars, restaurants, gyms, theaters,

[6] Executive Order D-2020-003 (Mar. 11, 2020), https://drive.google.com/file/d/1szJfU9WF36-lCVgRhXMAnJdlQyTSG83e/view.

and casinos for thirty days.[7] On March 18, Governor Polis issued a further executive order closing all Colorado schools until at least April 17,[8] and CDPHE issued a 30-day ban on all gatherings of more than *ten* people.[9] On March 19, another executive order canceled all optional medical procedures,[10] and CDPHE ordered the closure of all non-essential personal-services businesses (*e.g.*, hair and nail salons, spas, tattoo or massage parlors) that require close human contact.[11] On March 22, the governor required that all employers operating in Colorado (with some exceptions) reduce their in-person workforce by 50%.[12]

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[7] CDPHE, Notice of Public Health Order No. 20-22 (Mar. 16, 2020), https://www.colorado.gov/pacific/sites/default/files/atoms/files/Bars%20Restaurants%20PH%20order.pdf.
[8] Executive Order D-2020-007 (Mar. 18, 2020), https://drive.google.com/file/d/1ecMEQj3F3qeEl3qNMtLkAlk3ya3FbVH3/view.
[9] CDPHE, Notice of Public Health Order No. 20-23 (Mar. 18, 2020), https://drive.google.com/file/d/1J_08m6k4x6oibandldDz6U1qBpf9Dg0b/view.
[10] Executive Order D-2020-009 (Mar. 19, 2020), https://drive.google.com/file/d/1Sp3le5zUavA3GKM_omeDXpm7FNfL-wSt/view.
[11] CDPHE, Amended Notice of Public Health Order 20-22 (Mar. 18, 2020), https://drive.google.com/file/d/1wgJWhkovUe4wuOODnK65yZPb-h104b-X/view.
[12] Executive Order D-2020-013 (Mar. 22, 2020), https://drive.google.com/file/d/1mCoHuNCFbxNNvPy9r2eUbavuMs0D-bi0/view.

The Colorado courts have responded as well. In a March 16 order, this Court announced that, due to the COVID-19 pandemic, "the courts of this state can no longer continue normal operations and must for the immediately ensuing period operate on an emergency basis."[13] The suspension of certain court operations, including jury trials in all but criminal cases with imminent speedy-trial deadlines, was deemed necessary "in consideration of the obligation of the courts both to protect the constitutional rights and ensure the safety of the citizenry."[14]

C. The General Assembly Suspends Its Session And Propounds This Interrogatory.

On March 16, recognizing that the continuation of its legislative session could worsen the public-health crisis, the General Assembly suspended its session until March 30, 2020. But much legislative work remains to be done: Over 350 bills are pending in one chamber or the other, and many significant pieces of legislation—including the state's annual budget—have not yet been introduced. The suspension was

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[13] Order Regarding COVID-19 and Operation of the Colorado State Courts, C. J. Nathan Coats (March 16, 2020).
[14] *Id.*

unanimous in the House and passed by an overwhelming majority of 26 to 3 in the Senate. To resolve any constitutional question regarding the effect of that suspension on the duration of the regular session, the General Assembly also propounded this interrogatory to the Court.

March 16 was the 69th day of the legislative session. The Colorado constitution provides that "[r]egular sessions of the general assembly shall not exceed one hundred twenty calendar days." Colo. Const. art. V, §7. This language is the result of two amendments passed by voters in the 1980s. In 1982, voters approved an amendment that eliminated the governor's authority to set the legislative agenda for sessions in even-numbered years (known as the governor's "call" or "agenda"). That amendment also limited the length of those sessions to "one hundred forty calendar days." In 1988, voters approved another referred amendment that removed the distinction between odd-year and even-year legislative sessions, and set a term for both of 120 calendar days.

By legislative rule, the General Assembly ordinarily deems the 120-calendar-day constitutional limit to mean "one hundred twenty *consecutive* calendar days." General Assembly Joint Rule 23(d)

(emphasis added). However, by Rule passed without opposition over a decade ago in response to the H1N1 viral pandemic, the General Assembly construes this provision to be "one hundred twenty separate *working* calendar days" when "the Governor has declared a state of disaster emergency due to a public health emergency." General Assembly Joint Rule 44(g) (emphasis added); Colo. S. J. Jan. 8, 2009 at 26; Colo. H. J. Jan. 9, 2009 at 58.[15] Since 2009, Republican- and Democratic-controlled chambers of the General Assembly alike have readopted Rule 44 without opposition at the beginning of every General Assembly. Members of the current General Assembly readopted Rule 44 in January 2019 without opposition in either house. Colo. S. J. Jan. 4, 2019 at 10; Colo. H. J. Jan. 4, 2019 at 19-20.

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[15] Data suggests that, absent control measures, infection rates in Colorado will peak on May 1, 2020 (and even later *with* adequate control measures). *See* Glanz et al., *Coronavirus Could Overwhelm U.S. Without Urgent Action, Estimates Say,* N.Y. TIMES (Mar. 20, 2020), https://www.nytimes.com/interactive/2020/03/20/us/coronavirus-model-us-outbreak.html. At that time, the state could see infection rates as high as 80% in some counties (*e.g.* Pitkin, Gunnison). Denver alone could see as many as 190,000 infections by May 1, 2020. *Id.* Thus, while the General Assembly is eager to resume legislating as soon as possible, whether it will be safe to do so before May 6, 2020, is at best uncertain.

SUMMARY OF ARGUMENT

The General Assembly's Rules 23(d) and 44(g), which limit its regular sessions to 120 *consecutive* days unless there is a declared public-health emergency, in which case those sessions are limited to 120 *working* days, validly interpret article V, section 7 of the state constitution.

A. Section 7 limits regular sessions of the General Assembly to "one hundred twenty calendar days." The plain language of this phrase does not necessarily mean 120 *consecutive* calendar days; because neither the word "consecutive" nor anything like it appear in the provision, the language can just as sensibly be construed to mean non-consecutive days. In fact, the language's ambiguity led the General Assembly to enact a clarifying joint rule immediately after the provision took effect that calendar days "shall be deemed" to mean "*consecutive* calendar days," an action that would have been unnecessary if the provision's meaning were self-evident. Similarly, the voters who adopted the provision were expressly informed that the language was susceptible to more than one interpretation, and that "the General

Assembly could define calendar days to mean those days in session and not in recess." Colorado General Assembly, Legislative Council, An Analysis of 1982 Ballot Proposals, at 22 (Aug. 19, 1982) ("1982 Bluebook").

B. The General Assembly's interpretation of section 7 in Rules 23(d) and 44(g) is consistent with the provision's purposes as understood by the voters who approved it. The amendments that added section 7 to the constitution were framed in terms of two primary objectives: (1) ensuring the legislature had sufficient time to complete its critical work, and (2) preserving Colorado's "citizen legislature." The General Assembly's interpretation advances both goals. It guarantees that the legislature will have a full 120 days to complete the people's business even in the face of a declared public-health emergency, while ensuring that absent such an emergency the session will not exceed 120 consecutive days, thus preserving a citizen legislature.

C. Under longstanding precedent, the General Assembly's interpretation of constitutional provisions is entitled to deference. Such deference is particularly warranted here, both given the length of time

that the two rules have been in place and because the constitutional provision at issue concerns the procedures and operation of the General Assembly itself.

D. The General Assembly's interpretation also avoids conflicts with other important constitutional requirements. The constitutional mandates that the Assembly pass an annual budget and consider all bills on the merits (the "GAVEL" amendment), for example, would be frustrated by a narrow interpretation of article V, section 7 that precludes pausing the legislative clock even when a public-health emergency shuts down the Capitol. Rather than adopt an interpretation that places various constitutional provisions at odds with each other, Rules 23(d) and 44(g) effectively harmonize them.

E. Compelling public health and safety considerations during this crisis strongly support upholding the General Assembly's interpretation of article V, section 7. Rules 23(d) and 44(g) enable the General Assembly to fully serve the people and otherwise satisfy its constitutional obligations without jeopardizing the health and safety of the public, as well as its own members and staff.

F. Finally, a "special session" of the General Assembly is no substitute for a full, regular session, for compelling reasons described below. A special session's limited scope would not only fail to permit consideration of the full sweep of legislation currently pending before the Assembly, but in this context, would raise separation-of-powers concerns inconsistent with the voters' intent in enacting article V, section 7.

For all of these reasons, and as elaborated below, the General Assembly asks the Court to uphold Rules 23(d) and 44(g) as a permissible exercise of the legislature's authority to interpret the constitution. In practical terms, this will have the effect of allowing the Assembly, when the COVID-19 crisis abates, to resume its general session on the next day of the legislative calendar, ensuring sufficient time for the Assembly to complete its critical work on behalf of all Coloradans.

ARGUMENT

I. JURISDICTION

The Court has original jurisdiction to give "its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives." Colo. Const. art. VI, §3. The interpretation of a constitutional provision setting the length of the legislative session is a question of general public interest, and within this Court's jurisdiction. *See Lieutenant Governorship*, 129 P. 811, 813 (Colo. 1913). The Court also has the authority to interpret constitutional provisions that relate to the conduct of the General Assembly. *Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 206 (Colo. 1991).

On March 16, 2020, this Court, sitting *en banc*, issued an order accepting the interrogatory propounded by the General Assembly and ordering this briefing.

II. STANDARD OF REVIEW

Although this Court reviews a lower court's interpretation of a state constitutional provision without deference, *Bruce v. City of*

Colorado Springs, 129 P.3d 988, 992 (Colo. 2006), the same is not true regarding the General Assembly's interpretation of such a provision. Rather, in recognition of its status as a co-equal branch of government, the General Assembly is "authorized to resolve ambiguities in constitutional amendments in a manner consistent with the terms and underlying purposes of the constitutional provisions." *In re Great Outdoors Colorado Trust Fund*, 913 P.2d 533, 539 (Colo. 1996). Conversely, a party asserting that a statute—or, in this case, legislative rule—is unconstitutional must "prove unconstitutionality beyond a reasonable doubt." *TABOR Foundation v. Regional Transport. Dist.*, 416 P.3d 101, 104 (Colo. 2018).

Ultimately, "the Constitution … is not a suicide pact." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963) (interpreting the U.S. Constitution). Its provisions must not be construed in a manner that creates "an unjust, absurd or unreasonable result." *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994). In the same vein, the Court cannot interpret a citizen-adopted constitutional provision in a way that "'would unreasonably curtail the everyday functions of government.'"

TABOR Found., 416 P.3d at 105 (quoting *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519, 529 (Colo. 2009)).

III. THE GENERAL ASSEMBLY'S LONGSTANDING INTERPRETATION OF ARTICLE V, SECTION 7 IS VALID.

A. The Plain Language Of Article V, Section 7 Does Not Require That "Calendar Days" Be Counted Consecutively.

Colorado's constitution states that "[r]egular sessions of the general assembly shall not exceed one hundred twenty calendar days." Colo. Const. art. V, §7. By its terms, the phrase "one hundred twenty calendar days" says nothing about whether "calendar days" must be consecutive. Most obviously, neither the word "consecutive" nor any similar term is included in the provision—and this Court is not empowered to add it. *See, e.g.*, *Common Sense Alliance v. Davidson*, 995 P.2d 748, 753 (Colo. 2000). The plain text thus neither mandates nor forecloses reading "calendar days" to mean "consecutive calendar days." Because the language "is susceptible to multiple interpretations," it is ambiguous. *Gessler v. Smith*, 419 P.3d 964, 969 (Colo. 2018).

A claim that the phrase "calendar days" necessarily means *consecutive* calendar days is at odds with this plain language. For

example, several other states define the length of their legislative sessions in terms of "consecutive calendar days." *See* Alaska Const. art. II, §8; Md. Const. art. III, §15; *see also* 48 U.S.C. §1573 (U.S. Virgin Islands pre-1968); Ala. Const. art. IV, §48.01 (limiting post-election special sessions based on "consecutive calendar days"). In fact, the phrase "consecutive calendar days" also appears in some two hundred state and federal statutes—including three in Colorado. *See* C.R.S. §§24-51-1702; 26-20-104.5; 26-20-106. If "calendar days" always meant "consecutive calendar days," the latter phrase would be redundant. But that runs counter to this Court's recognition that "in construing constitutional language, each clause and sentence must be presumed to have purpose and use." *Great Outdoors*, 913 P.2d at 542. Still other states avoid this lack of clarity regarding the length of the legislative session altogether by establishing a specific date of adjournment.[16] Thus, although some states do treat "calendar days" as equivalent to

[16] *See* Cal. Const. art. IV, §3; Conn. Const. art. III, §2; Del. Const. art. II, §4; Mo. Const. art. III, §20(a); Okla. Const. art. V, §26.

"consecutive days," that interpretation, while permissible, is not required by the text itself.[17]

The history of the phrase "calendar days" in article V, section 7 only confirms this inherent ambiguity. In 1982, when the language was presented to the voters for approval, the Bluebook identified the possibility that "the General Assembly could define calendar days to mean those days in session and not in recess." 1982 Bluebook at 22.[18] The ambiguity is further confirmed by the fact that the General Assembly chose, immediately upon the enactment of the 1982 amendment, to adopt a rule (Rule 23(d)) specifying that the provision

[17] Similarly, the U.S. Department of Labor has recognized that the phrase "calendar workweeks" need not mean consecutive workweeks: In adopting regulations to implement the Family and Medical Leave Act, the Labor Department specified that its use of "calendar workweeks" did "not necessarily [mean] consecutive workweeks." 29 C.F.R. §825.105(d).

[18] A copy of the 1982 Bluebook is included as Appendix A.

"shall be deemed" to mean "consecutive calendar days." Colo. H.J.R. 1983-1014.[19]

In short, the unadorned phrase "calendar days" does not by its own terms require that those days be consecutive.

B. The General Assembly's Interpretation Of Article V, Section 7 Is Consistent With That Provision's Purposes.

When interpreting the purpose of a constitutional provision, the Court "endeavor[s] to ascertain the intent of those who adopted it." *In re Senate Resolution No. 2 Concerning Constitutionality of House Bill No. 6*, 31 P.2d 325, 330 (Colo. 1933). Because article V, section 7 was adopted by vote of the people, the Court considers the "legitimate voter expectations" of those who approved the amendment. *Havens v. Board*

[19] In fact, during the House's consideration of Rule 23, the Speaker of the House at the time described the rule as "an opportunity to clarify an ambiguity in the constitutional amendment. The constitutional amendment limited the session to 140 calendar days, but it did not say specifically that they should be consecutive calendar days." *Hearing on House Joint Resolution 1014*, May 5, 1983, at 2:54-3:14, 44th General Assembly, State of Colo. (statement of Speaker Carl B. Bledsoe). Regardless of what any individual legislator thought the provision meant, this confirms that even its proponents understood that the amendment as presented to the voters was ambiguous.

of County Comm'rs of Archuleta, 924 P.2d 517, 522 (Colo. 1996). The Court "should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment." *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996).

A constitutional amendment's objectives may be gleaned from "relevant materials such as the ballot title and submission clause and the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislature." *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999). By contrast, any "reliance on the supposed intent of the drafters" of the amendment "is misplaced." *Davidson v. Sandstrom*, 83 P.3d 648, 655 (Colo. 2004). Such intent is "not relevant," *id.*, save to the extent that that intent is also "adequately expressed in the language of the measure," *Great Outdoors*, 913 P.2d at 540.

Applying these principles leaves no doubt that the General Assembly's interpretation of article V, section 7 is consistent with the purposes of that provision.

Article V, section 7 was enacted by amendments that the voters approved in 1982 and 1988. The Bluebooks in those years made clear that the provision's two purposes are (1) ensuring that legislators have adequate time to consider and deal with all "[c]ritical or important issues," Colorado General Assembly, Legislative Council, An Analysis of 1988 Ballot Proposals, at 6 (Aug. 16, 1988) ("1988 Bluebook")[20]; *see also* 1982 Bluebook at 21 (similar), and (2) preserving the "citizen legislature"—meaning a part-time body composed of citizens of diverse backgrounds rather than a full-time body composed of career politicians, *see* 1988 Bluebook at 6; 1982 Bluebook at 21.

First, voters were assured that the limitation on session length would not interfere with legislators' ability to do the work that the people of Colorado elected them to do. The 1982 Bluebook told voters that the "calendar days" provision would "provide sufficient flexibility to balance the workload between legislative sessions" and "would be more than adequate to meet foreseeable workloads." 1982 Bluebook at 21-22. The 1988 Bluebook similarly told voters that 120 calendar days ensured

[20] A copy of the 1988 Bluebook is included as Appendix B.

"[c]ritical or important issues can be considered and acted upon" during a regular session. 1988 Bluebook at 6.

Second, both the 1982 and 1988 amendments sought to preserve Colorado's tradition of a "citizen legislature." The 1982 Bluebook explained to voters that the amendment "assur[ed] continuation of the part-time citizen legislature." 1982 Bluebook at 21; *see also* 1988 Bluebook at 6. Fundamentally, accomplishing this goal implies that the legislative session should be compact and predictable, to enable legislators to maintain their private lives and employment outside the Capitol.

The General Assembly's rules interpreting article V, section 7 honor both of these objectives—and in fact harmonize them. By providing that the 120-day limit is normally consecutive days, Rule 23(d) avoids any concern that having sessions extend beyond 120 consecutive days steps away from a "citizen legislature." But by providing that the 120-day limit is working days during specified (and carefully limited) extreme circumstances, Rule 44(g) promotes a citizen legislature by allowing legislators to return to their homes,

communities, and businesses to address a public-health disaster like COVID-19, while also ensuring that the General Assembly has the time necessary to complete the essential business of the people once the emergency has passed.

C. The General Assembly's Interpretation Is Entitled To Deference.

As these arguments show, even if this Court were reviewing the matter under a de novo standard of review, the 120-calendar-day limit in article V, section 7, should not be interpreted as necessarily meaning consecutive calendar days. But this Court is not reviewing the matter de novo. Rather, the Court is considering longstanding General Assembly rules construing the constitution. Under this Court's precedent, the General Assembly's construction warrants judicial deference.

The Court held long ago that it "should show *great deference* to the legislative construction of the constitution." *Board of Comm'rs of Pueblo County v. Strait*, 85 P. 178, 179 (Colo. 1906) (emphasis added). And more recently, the Court reaffirmed that the General Assembly is "authorized to resolve ambiguities in constitutional amendments in a

manner consistent with the terms and underlying purposes of the constitutional provisions." *Great Outdoors*, 913 P.2d at 539. The question for the Court is whether the General Assembly has adopted a reasonable interpretation. *See Strait*, 85 P. at 180.[21]

Deference to the General Assembly's interpretation is especially appropriate here, for at least two reasons. First, the rules in question relate to the Assembly's own procedures, and constitute an appropriate exercise of the constitution's independent grant to the Assembly of the "power to determine the rules of its proceedings," the power "to protect its members against violence," and "all other powers necessary for the legislature of a free state." Colo. Const. art. V, §12. Indeed, this Court's case law confirms that deference to the General Assembly's reading of the state constitution is especially appropriate "with reference to its

[21] This is particularly the case where more than one resolution is possible. *In re Interrogatories of Governor Regarding Certain Bills of Fifty-First Gen. Assembly*, 578 P.2d 200, 208 (Colo. 1978) ("[W]hen the constitutional requirement can be complied with in a number of ways, our task is to determine whether the method actually chosen is in conformity.").

construction of the procedure provided by the Constitution for the passage of bills." *Strait*, 85 P. at 179.

Second, Rules 23(d) and 44(g) have been in place for over a decade. As this Court has said, courts "should show deference to a long standing practice of Senate action." *In re Interrogatories of Governor*, 578 P.2d at 208; *cf. Thiele v. City & County of Denver*, 312 P.2d 786, 793 (Colo. 1957) (deeming it constitutionally significant that a challenged practice "ha[d] long been followed by our state legislature"); *see also Strait*, 85 P. at 179 (assigning "great weight" to the prospect that invalidating an established legislative practice would "lead to great confusion in governmental affairs").

D. A Contrary Interpretation Would Create A Potential Conflict With Other Constitutional Provisions.

As a general rule, the Court should "adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict." *Gessler*, 419 P.3d at 969 (quoting *Zaner*, 917 P.2d at 283). Because construing the 120-calendar-day limit in article V, section 7 as necessarily meaning

consecutive days would potentially frustrate other constitutional provisions, this Court should reject that construction.

Article X, section 2 requires the General Assembly to pass an annual budget. At the time the 2020 legislative session was suspended, the budget bill had not been fully drafted, let alone introduced, debated, and passed by both chambers. Interpreting article V, section 7 narrowly to bar emergency-based pauses of the legislative clock could thus prevent the Assembly from meeting its constitutional obligation to pass a budget. By contrast, interpreting the provision as do Rules 23(d) and 44(g) avoids that possibility, harmonizes the two provisions, and permits the legislature to reconvene and pass a budget when it is safe to do so.

In addition, in 1988—in the same election in which voters ratified the second amendment to article V, section 7—the electorate overwhelmingly approved the "Give a Vote to Every Legislator" (GAVEL) constitutional amendment, which requires that "[e]very measure referred to a committee of reference of either house shall be considered by the committee upon its merits." Colo. Const. art. V, §20.

The GAVEL amendment was premised on the principle that "'citizens should not be denied the right to testify in favor of or against legislation.'" *Grossman v. Dean*, 80 P.3d 952, 963 (Colo. App. 2003) (quoting the 1988 Bluebook); *see also* Colo. H.J.R. 20-1006 at 2. That principle—and the constitutional command of article V, section 20 of consideration on the merits—will be difficult if not impossible to fulfill this year if the 120-day limit is interpreted to mean consecutive days, as 355 bills have already been introduced this session, and dozens of those bills have not yet received their first hearing. The Court should not adopt an interpretation that would create such tension (if not outright conflict) between constitutional mandates—particularly when doing so could deprive the citizens of Colorado of their fundamental right to be heard by their elected representatives.

E. The Overriding Need To Preserve Public Health And Safety In The Midst Of An Unprecedented Public-Health Crisis Strongly Supports Upholding The General Assembly's Interpretation.

In addition, the overriding public interest in maintaining the health and safety of all Coloradans in an unprecedented crisis strongly supports upholding Rules 23(d) and 44(g). Those rules allow the

General Assembly to meet its constitutional obligations without exposing legislators—at least one of whom is already infected—or their staff, the public attending the session, and others they come in contact with, to infection with COVID-19. *See* Colo. H.J.R. 20-1006 at 2. A contrary holding would thus put the General Assembly in the untenable position of choosing between protecting public health and safety (including its own) and fully completing its constitutional role and duties. *See* Colo. H.J.R. 20-1006 at 5.

The General Assembly's decision to suspend its session to protect public health and safety was obviously well-founded. Both other branches of the state government have also curtailed their operations sharply. *See Order Regarding COVID-19 and Operation of the Colorado State Courts*, C. J. Nathan Coats (Mar. 16, 2020); Colo. Pub. Health Order No. 20-24 (Mar. 22, 2020) (applying 50% workforce-reduction order to all non-critical government functions). And the governor has closed private businesses, banned public gatherings of more than ten people, and sent state employees to work from home, among other measures. Colo. Pub. Health Order No. 20-22 (Mar. 16, 2020); Colo.

Pub. Health Order No. 20-23 (Mar. 18, 2020); *see also* Colo. H.J.R. 20-1006 at 1. The General Assembly's closure of the state capitol—which more than 1,000 people visit each day during the session (H.J.R. 20-1006 at 2)—and suspension of the legislative session was also consistent with the directives and recommendations of federal and state health officials. *See, e.g.*, CDPHE, Notice of Public Health Order 20-23 (Mar. 18, 2020); The White House, *The President's Coronavirus Guidelines for America* (Mar. 16, 2020).[22] Finally, the decision to suspend mirrored those of other state legislatures, nearly half of which have now postponed or adjourned their legislative sessions. *See* https://tinyurl.com/qk83m3c (last updated Mar. 24, 2020).[23]

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[22] Available at https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

[23] Article V, section 14 of the Colorado constitution provides that "sessions of each house, and of the committees of the whole, shall be open" to the public. Prior to suspending the legislative session, the General Assembly explored the possibility of continuing to operate virtually. But conducting the full spectrum of legislative business on a virtual basis, including ensuring public access to and participation in legislative proceedings, was simply not feasible on such a tight timeline. In particular, the General Assembly lacks the technological infrastructure necessary to conduct committee hearings and floor sessions remotely. Nor does it have the funds or the time necessary to

At the same time, critical legislative work remains to be done. When the General Assembly suspended its session, hundreds of already-introduced bills were awaiting final action, with many more undoubtedly set to be introduced. Indeed, as noted, the constitutionally required annual budget—perhaps the legislature's most important responsibility—has not even been introduced. Many pending bills have not received constitutionally mandated consideration on the merits. Interpreting the 120-day limit in article V, section 7 to mean consecutive days could therefore result in enormous amounts of important legislative work going undone, to the severe detriment of the entire state. This Court has consistently declined to adopt interpretations of voter-approved constitutional amendments that would "cripple the everyday workings of government," *In re Submission of Interrogatories*, 979 P.2d at 557, or "unreasonably curtail" government functions, *TABOR Found.*, 416 P.3d at 105 (quoting *Mesa County Bd. of County Comm'rs*, 203 P.3d at 529) (discussing article X,

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procure, install, and test such a system in a way to enable citizens to attend, speak, and advocate for or against bills.

section 20). It should avoid an interpretation of article V, section 7 that would produce such a result.

Importantly, because Rule 44 is triggered by events entirely outside the General Assembly's control, any concern about potential overuse or abuse of Rule 44 is unfounded. Specifically, the rule comes into play only when the governor issues an executive order declaring a state of disaster emergency "caused by a public health emergency infecting or exposing a great number of people to disease, agents, toxins, or other such threats and has activated the Colorado emergency operations plan." Rule 44(a). Since its adoption in 2009 (and its unanimous and bipartisan re-adoption in every General Assembly since), Rule 44 has never previously been invoked—because no governor has previously been confronted with a public-health emergency requiring such an executive order. We can all fervently hope that Rule 44 is never triggered again. But in those rare circumstances where it is, there is no sound basis in text, purpose, or policy to block its application and thereby impede the legislature from having sufficient time to complete its important work.

F. Special Sessions Are Not A Substitute For Regular Sessions.

Finally, a special session of the General Assembly is not an adequate substitute for the regular session. A special session may only be called by the governor or by a two-thirds majority vote in each house. Colo. Const. art. V, §7. Special sessions are intended to address specific subject matters, not general business, and indeed during special sessions the General Assembly may only pass legislation that has a "rational nexus" to items specified in the request convening that session. Colo. Const. art. V, §7; *see also People v. Larkin*, 517 P.2d 389, 390 (Colo. 1973); *In re Opinion of the Justices*, 29 P.2d 705, 705-06 (Colo. 1934) (holding legislation passed in the 1934 Extraordinary Session was invalid when it did not relate to raising revenue for the "unemployed and destitute"); Colo. H.J.R. 20-1006 at 4.

As a threshold matter, no sound basis exists to bar the General Assembly from acting on matters that cannot garner support from a supermajority of each chamber at the outset of the special session, *i.e.*, before even being fully considered. Many important and worthwhile laws obtain adequate support through the legislative process itself,

because that process often involves legislators becoming better informed about issues in the state and the proposed solutions most likely to redress them.

A special session called by the governor is also inadequate to replace the regular session. One of the main purposes of the 1982 amendment of article V, section 7 was creating a regular session every year, thus eliminating the governor's "call" and ending the governor's authority to "set a legislative agenda for even year sessions," which created "little flexibility in setting policy." 1982 Bluebook at 21. Requiring a special session to complete regular legislative business would effectively reinstate that authority, contrary to the voters' intent, and would give one branch of government excessive control over the core functions of another.

To be sure, the 1988 Bluebook informed voters that special sessions could be convened to address specific "emergencies which may arise in the legislative interim"—that is, *after* the 120-day session had ended. 1988 Bluebook at 6. But that does not show that special sessions are an adequate substitute (or one contemplated by the voters)

when an emergency arises *during* the regular session that requires the session to be interrupted.

To the contrary, the two situations are starkly different: In the face of an emergency *outside* the regular session, either the governor or the necessary two-thirds supermajority of each legislative chamber might well agree both to convene a special session and to put legislation specifically addressing the emergency on the agenda. By contrast, the issue here is the ability of the legislature to deal with matters *unrelated* to an emergency, *i.e.*, to deal with everyday but potentially critical legislation. A special session simply is not an adequate substitute for a full, 120-working-day regular session to permit the General Assembly to identify and address the full scope of potential legislation.

CONCLUSION

This Court should uphold the General Assembly's interpretation of article V, section 7, as embodied in Joint Rules 23(d) and 44(g).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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