Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 24, 2020 4:42 PM FILING ID: 1ABDE7F48DC53 CASE NUMBER: 2020SA100
Original Proceeding Pursuant to Article VI, Section 3 of the Constitution of the State of Colorado	
In Re: Interrogatory on House Joint Resolution 20-1006 Submitted by the Colorado General Assembly.	**▲COURT USE ONLY ▲**
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BRIEF FOR INTERESTED PARTIES ACLU OF COLORADO, ADAMS COUNTY COMMISSIONER STEVE O'DORISIO, AFT COLORADO, BELL POLICY CENTER, CITY OF AURORA, CITY OF NORTHGLENN, COLORADO CHILDREN'S CAMPAIGN, COLORADO CRIMINAL JUSTICE REFORM COALITION, COLORADO CROSS-DISABILITY COALITION, COLORADO FISCAL INSTITUTE, COUNTIES AND COMMISSIONERS ACTING TOGETHER, COLORADO CRIMINAL DEFENSE BAR, CLUB 20, DEMOCRATS FOR EDUCATION REFORM, DENVER DISTRICT ATTORNEY, GOOD BUSINESS COLORADO ASSOCIATION, INTERFAITH ALLIANCE COLORADO, JEFFERSON COUNTY BOARD OF COMMISSIONERS, METRO MAYORS CAUCUS, SEIU COLORADO STATE COUNCIL, SIXTH JUDICIAL DISTRICT ATTORNEY'S OFFICE, TOWARDS JUSTICE, AND WOMEN'S LOBBY OF COLORADO

Interested Parties ACLU of Colorado, Adams County Commissioner Steve O'Dorisio (in his individual capacity), AFT Colorado, Bell Policy Center, City of Aurora, City of Northglenn, Colorado Children's Campaign, Colorado Criminal Justice Reform Coalition, Colorado Cross-Disability Coalition, Colorado Fiscal Institute, Counties and Commissioners Acting Together, Colorado Criminal Defense Bar, Club 20, Democrats for Education Reform, Denver District Attorney, Good Business Colorado Association, Interfaith Alliance Colorado, Jefferson County Board of Commissioners, Metro Mayors Caucus, SEIU, Sixth Judicial District Attorney's Office, Towards Justice, and Women's Lobby of Colorado, by and through their undersigned counsel of record, David H. Seligman and Brianne Power of Towards Justice, hereby submit their Brief in support of affirming the constitutionality of Joint Rule 44 to the Colorado Supreme Court.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32, including:

Word Limits: My brief has **5,738 words**, which is less than the 9,500 word limit.

I understand that my brief may be rejected if I fail to comply with these rules.

s/David H. Seligman
David H. Seligman
Counsel for Interested Parties

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ISSUE PRESENTED FOR REVIEW

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 CASE

This Interrogatory arises in the context of the current COVID-19 pandemic. But the question before this Court concerns the validity of a Joint Rule of the General Assembly that was enacted more than a decade ago.

The General Assembly has enacted two Joint Rules regarding the length of its legislative sessions: Joint Rule 23 and Joint Rule 44. In regular course, Joint Rule 23 applies. Joint Rule 23 states "[t]he maximum of one hundred twenty calendar days prescribed by section 7 of article V of the state constitution for regular sessions of the General Assembly shall be deemed to be one hundred twenty *consecutive* calendar days." Rule 23 of the Colo. Joint Rules of the Senate and House of Reps. ("Joint Rule 23") (emphasis added).

But in the narrow context when the State confronts a public health crisis that the Governor has declared a state emergency, like the COVID-19 pandemic

currently confronting the State, Joint Rule 44 comes into play. Joint Rule 44 allows the "calendar days" spelled out in the Constitution to be counted *non-consecutively* "as one hundred twenty *separate* working calendar days." Rule 44 of the Colo. Joint Rules of the Senate and House of Reps. ("Joint Rule 44") (emphasis added).

This Interrogatory calls upon the Court to determine whether that provision of Joint Rule 44 is constitutional. The Court should rule that it is.

The General Assembly unanimously enacted Joint Rule 44 in 2009,[1] amid the Great Recession and in the same year that President Obama declared the H1N1 flu pandemic a national emergency.[2] Joint Rule 44 is designed to provide a workable framework that permits the General Assembly to continue its essential role in Colorado's government when the Governor issues "an executive order that declares that the state of Colorado is in a state of disaster emergency caused by a public health emergency." Until this year, it had never been invoked.

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[1] Joint Rule 44 was enacted by Senate Joint Resolution 09-004. The resolution passed the Senate 33-0, and there was no recorded opposition in the House, where there was a voice vote. *See* Colo. Senate Journal, Sixty-Seventh General Assembly (January 8, 2009) at 25–26; House Journal, Sixty-Seventh General Assembly (January 9, 2009) at 57–58.

[2] Philip Elliott, *Obama Declares Swine Flu a National Emergency*, DAILY HERALD (October 25, 2009), available at https://www.heraldextra.com/news/national/article_a4de47bf-1dd4-52ea-9f2d-db535ba581b4.html.

On March 10, 2020, Governor Polis declared a state of disaster emergency in Colorado resulting from the COVID-19 pandemic.[3] That declaration triggered Joint Rule 44. Around this time, public health officials advised Americans not to congregate in large groups and to work from home if possible.[4] Consequently, many organizations whose functioning involves the meeting of large groups suspended their operations.[5] On March 14, the General Assembly followed suit and temporarily adjourned until March 30, 2020. *See* Colo. House Joint Resolution 20-1007 (2020). That adjournment may be extended.

When Joint Rule 44 has not been triggered, the days when the General Assembly is adjourned all count toward the 120 "calendar day" limit in Article V, Section 7. But Pursuant to Joint Rule 44, which applies because of the Governor's declaration of a disaster emergency, the General Assembly need not count the days of this adjournment toward the constitutional limit—meaning that the General

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[3] *See* John Ingold, *Gov. Jared Polis Declares State of Emergency in Response to Coronavirus Outbreak*, COLORADO SUN (Mar. 10, 2020), available at https://coloradosun.com/2020/03/10/colorado-state-of-emergency-coronavirus-jared-polis/.

[4] *C.D.C. Gives New Guidelines, New York to Close Restaurants and Schools and Italian Deaths Rise*, NEW YORK TIMES (March 15, 2020), available at https://www.nytimes.com/2020/03/15/world/coronavirus-live.html.

[5] *See, e.g.*, Staff and Wire Reports, *How the Coronavirus Is Affecting Sports Leagues and Events*, LOS ANGELES TIMES (March 9, 2020), available at https://www.latimes.com/sports/story/2020-03-09/coronavirus-latest-news-sports-world.

Assembly will be able to resume its regular session, even if the temporary adjournment lasts several more weeks or months. If, however, Article V, Section 7—contrary to its text and purpose—is read to require that days must be counted consecutively in all cases, contrary to Joint Rule 44, then each day of this temporary adjournment is one fewer day for the General Assembly to do its important work legislating on behalf of the People of Colorado.

The interested parties submitting this brief represent a diversity of political viewpoints and substantive expertise. They include District Attorney offices, local governments, labor unions, faith groups, and advocacy organizations that address a range of issues, including workers' rights, fiscal policy, and healthcare issues. These interested parties do not always agree on the substance of legislative debates. But they all agree on at least one thing: Consistent with the language and purposes of Article V, Section 7 of the Colorado Constitution, this Court should affirm the validity of Joint Rule 44, allowing the General Assembly to return from adjournment when it is safe and feasible to do so in order to meet the increasing and emergent demands facing our State.

The interested parties submitting this brief include:

- **The ACLU of Colorado**, which advocates to the General Assembly on issues related to the civil and constitutional rights of Colorado citizens, including issues related to the criminal legal system, the treatment of immigrants in Colorado,

the right to reproductive health care, and transparency in both state and local government.

- **Adams County Commissioner Steve O'Dorisio (in his individual capacity)**

- **AFT Colorado**, the state affiliate of the American Federation of Teachers.

- **The Bell Policy Center**, a public policy research and advocacy organization, which joins this brief because it believes that the Colorado Constitution provides the mechanisms to the Legislature needed to adjust the critical work of the Colorado Legislature to meet unpredictable emergencies of state, nationwide, and global scale.

- **The City of Aurora**. Given the important policy and budget issues being considered at the Legislature, the City of Aurora sees benefit in having flexibility to adjust the schedule. Flexibility, including meeting for 120 non-consecutive days, would allow for issues critical to the City of Aurora to still be considered at the Capitol even in the face of an emergency as we face today.

- **The City of Northglenn**, a home rule municipality, which joins this brief because it would like to assure that the tools available to address an emergency such as COVID are not adversely impacted by an artificially shortened legislative session.

- **The Colorado Children's Campaign**, a nonprofit, nonpartisan advocacy organization committed since 1985 to realizing every chance for every child in Colorado. The legislature must be equipped to effectively address crises and respond to the immediate needs of Colorado's children and families.

- **Colorado Cross-Disability Coalition ("CCDC")** is a nonprofit organization dedicated to promoting social justice for people and combining individual and systemic advocacy as effective agents for change that can benefit people of all ages with all types of disabilities. CCDC—Colorado's only social justice organization primarily led and staffed by people with disabilities—has developed a strong reputation for empowering people with the most significant disabilities to advocate for themselves and for others in difficult situations. CCDC promotes self-reliance and full participation by people with disabilities through organizing, advocacy, education, legal initiatives, training and consulting, policy development, and legislation. CCDC is committed to increasing the power of people with disabilities to participate effectively in the larger community.

- **Colorado Criminal Justice Reform Coalition**, a community-based organization that advocates for a more fair, just and effective criminal justice system. To best manage the current crisis and provide consistent government functionality, it is imperative that the General Assembly have maximum flexibility that allows

them to perform their essential and exclusive function while protecting their own health.

- **Colorado Fiscal Institute**, which focuses on tax and budget policies that support equity and widespread economic prosperity and is concerned that changing the rules of legislative participation will jeopardize the basic rights of Coloradans if our elected officials are not able to make thoughtful and reasoned decisions about policy and economic priorities during this health emergency.

- **Counties and Commissioners Acting Together (CCAT)**, a group of counties and individual commissioners who work to provide a unified, nonpartisan voice for local government issues before the Colorado General Assembly, firmly believes the General Assembly should be given the flexibility to return to session at such a time it is deemed a safe environment to fully and reasonably complete the task of representing the people of Colorado.

- **Colorado Criminal Defense Bar**

- **Club 20**, which performs non-partisan advocacy for Western Colorado.

- **Democrats for Education Reform (DFER)**, which believes it is imperative that Colorado legislators are able to complete their 120 day session so they may continue to address the inequities in the public school system.

- **The Denver District Attorney**, who joins this brief, recognizes the critical need for the Colorado General Assembly to be able to complete its important

work, particularly concerning the budget and any financial assistance the state can give to those suffering during this time of extraordinary need on behalf of the health care providers, businesses, and residents of Colorado.

- **Good Business Colorado Association**, a grassroots organization of values-driven business owners rejecting partisanship and advocating for a prosperous economy, equitable communities, and a sustainable environment.

- **Interfaith Alliance Colorado** aims to give a voice to Coloradans who want to put their faith into action as a force for good in public life and feels the best way to accommodate this voice during this difficult time is to allow the legislature to govern and pass legislation to see us through these trying times.

- **Jefferson County Board of Commissioners**

- **Metro Mayors Caucus**, which represents the mayors of 38 cities in the Denver metro area and understands that the state General Assembly must have the flexibility to respond to the unpredictable circumstances and demands arising from a public safety emergency.

- **SEIU Colorado State Council**, which represents over 10,000 healthcare, janitorial, security, airport and public workers throughout the state. We are united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.

- **The Sixth Judicial District Attorney's Office**, which believes the legislature has important work to complete in order to protect crime victims and ensure community safety.

- **Towards Justice**, a legal organization that represents workers and which joins this brief as an interested party because of the critical role that the General Assembly must play in ensuring that the workers hit hardest by this crisis have the protections they need to recover.

- **Women's Lobby of Colorado**, a membership organization, made up of hundreds of individual and dozens of organizational members, has been advocating for gender equity in policy making at the Colorado Capitol for the last twenty years.

SUMMARY OF THE ARGUMENT

Joint Rule 44's provision allowing for the counting of non-consecutive working days to determine the length of a regular session of the General Assembly during a public health crisis is a permissible reading of Article V, Section 7 of the Colorado Constitution.

First, Joint Rule 44 is consistent with the language and purposes of Article V, Section 7. The drafters of the "calendar day" limit in Article V, Section 7, could have specified a date certain before which each regular session shall end or could have specified that days must be counted "consecutively," as some of our sister state

constitutions do (and as the General Assembly did in Joint Rule 23). Instead, the Constitution merely requires that regular sessions shall not exceed 120 "calendar days." That language does not foreclose Joint Rule 44, and the Court should defer to the General Assembly's reasonable application of the "calendar day" limitation.

Second, Joint Rule 44 is consistent with the critical importance of the General Assembly in our government. The purpose of Article V, Section 7 is to preserve a citizen legislature that can serve as the voice of the People, not to limit the General Assembly's ability to respond to a crisis. Indeed, our Constitution contemplates a critical role for the legislative branch in times of crisis like these, and as a practical matter, the General Assembly will have to play a critical role in responding to the COVID-19 crisis.

Third, Joint Rule 44 appropriately balances the constitutional importance of the General Assembly with its inherent nature as an open and deliberative body that cannot easily function under the demands of "social distancing" that may arise during a pandemic crisis like COVID-19. As key stakeholders in a myriad of legislative debates, we understand that it is imprudent and contrary to the advice of public health professionals for the General Assembly to continue meeting now. But we also understand that when it is safe for the General Assembly to return to regular session (hopefully sooner rather than later), its open, deliberative debate will play an essential role in ensuring that Colorado can recover from this crisis. We may

ultimately disagree in the course of that debate, but we think it essential that debate occur in the General Assembly.

ARGUMENT

The Interrogatory before this Court raises a pure question of law. In resolving that question, this Court should be guided by its traditional norms regarding the resolution of constitutional questions. Specifically, because Joint Rule 44 is a legislative enactment, it is due a presumption of constitutionality. *See Mt. Emmons Min. Co. v. Town of Crested Butte*, 690 P.2d 231, 240 (Colo. 1984) ("legislative enactments are vested with a presumption of constitutionality "); *Meyer v. Lamm*, 846 P.2d 862, 876 (Colo. 1993) ("The presumption of constitutionality accorded all statutes also assumes that the legislative body intends the statutes it adopts to be compatible with constitutional standards.").

As set forth below, this Court should uphold Joint Rule 44 because it: (a) is consistent with the language and purpose of Article V, Section 7, (b) recognizes the critical role of the legislature branch under the Constitution, and (c) honors the General Assembly's nature as a deliberative body open to the public.

A. JOINT RULE 44 IS CONSISTENT WITH THE LANGUAGE AND PURPOSES OF ARTICLE V, SECTION 7

To interpret a constitutional amendment, courts afford language its plain and ordinary meaning. *See People v. Rodriquez*, 112 P.3d 693, 696 (Colo. 2005). If the language is unclear, "courts 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, 286 (citing *People in Interest of Y.D.M.*, 593 P.2d 1356, 1359 (Colo. 1979)). Courts may also consider the commentary found in the "Blue Book" to determine such objectives. *See, e.g.*, *Davidson v. Sandstrom*, 83 P.3d 648, 655 (Colo. 2004).

(1) Joint Rule 44 Is Consistent with the Plain Language of Article V, Section 7, and This Court Should Defer to the General Assembly's Reasonable Interpretation.

Nothing in the plain language of Article V, Section 7 prohibits the General Assembly from enacting rules, like Joint Rule 44, to allow it to meet in a regular session for up to 120 non-consecutive workdays when a public health emergency requires the General Assembly to temporarily adjourn.

The Constitution sets out when the General Assembly shall convene in regular session ("at 10 a.m. no later than the second Wednesday of January of each year"), and it specifies that a regular session "shall not exceed one hundred twenty calendar days." But nothing in Section 7 prohibits the General Assembly from establishing rules to enable it to adjourn in cases of emergency, tolling the 120-period, and resuming the regular session when it is safe to do so.

If the drafters of Article V, Section 7 had wanted to convey to voters that the provision was intended to prohibit measures like Joint Rule 44, they could have done so through several means. *Cf. State v. Medved*, 2019 CO 1, ¶ 19, 433 P.3d 33, 37

("[I]n interpreting a statute, we must accept the General Assembly's choice of language and not add or imply words that simply are not there." (quoting *People v. Diaz*, 2015 CO 28, ¶ 15, 347 P.3d 621, 625)). They could have set out a date certain by which each regular session must terminate: the second Thursday in May, for example, which generally falls 120 days after the second Wednesday in January. Indeed, the 1982 Blue Book explaining Amendment 4—which first introduced the "calendar day" limitation into Section 7 by setting a "140 calendar day" limitation for regular sessions in even-numbered years—explicitly contrasted the "calendar day" limitation with the constitutional language in several states that requires completion of sessions by a certain date. Legislative Council, Colo. Gen. Assembly, Research Pub. No. 269, An Analysis of 1982 Ballot Proposals 21 (1982) ("1982 Blue Book").

The drafters could similarly have specified that the 120 days in each regular session shall run "consecutively," which would indicate a clear intent to prohibit rules allowing for recesses or adjournments to toll the running of the 120-day period during an emergency requiring the legislature to temporarily adjourn. By contrast to the language of Section 7, several state constitutions expressly provide that a regular session must occur within a specific window of "consecutive" days. *See, e.g.*, Fla. Const. art. III, § 3 ("A regular session of the legislature shall not exceed sixty *consecutive* days, and a special session shall not exceed twenty consecutive days,

unless extended beyond such limit by a three-fifths vote of each house." (emphasis added)); Wash. Const. art. II, § 12 ("During each odd-numbered year, the regular session shall not be more than one hundred five *consecutive* days. During each even-numbered year, the regular session shall not be more than sixty consecutive days." (emphasis added)).

The absence of the term "consecutive" from the Constitution is particularly notable because, in twice amending Joint Rule 23 in response to the inclusion of the "calendar day" limitation in the Constitution, the General Assembly has felt the need to clarify the relevant constitutional language by specifying that regular session days should be counted "consecutively." See House Joint Res. 1014 (1983); House Joint Res. 1003 (1989). Hence, the drafters of Rule 23 apparently determined that when communicating that the days of the typical regular session should be counted as consecutive calendar days beginning with the first day of the session, the language describing that schedule should include the term "consecutive."

The drafters of Section 7 declined to include a date certain for the end of the regular session, the word consecutively, or any other express limitation that forecloses Joint Rule 44. And because nothing in the Constitution forecloses the interpretation embodied in Joint Rule 44, the Court should defer to the General Assembly's reasonable interpretation of Section 7, Article V. *See Bd. of Comm'rs of Pueblo Cty. v. Strait*, 85 P. 178, 179-80 (Colo. 1906) ("The greatest deference is

shown by the courts to the interpretation put upon the Constitution by the Legislature, in the enactment of laws, and other practical application of constitutional provisions to the legislative business[.]" (internal quotation marks omitted)). The General Assembly's interpretation of Section 7 is especially deserving of deference because it promotes wise and responsible functioning of the government. We should presume that the voters would have intended that result in enacting the "calendar day" limitation. *Cf. Scholz v. Metro. Pathologists, P.C.*, 851 P.2d 901, 910 (Colo. 1993) ("We presume that the General Assembly, in enacting a statute, intends that the law will have just and reasonable results.").

(2) Joint Rule 44 Is Consistent with the Purposes of Article V, Section 7.

Joint Rule 44 is also consistent with the purposes of Section 7. In enacting Article V, Section 7, the voters sought to ensure that the General Assembly remained a citizen legislature constituted by Coloradans who maintain professions outside of the political sphere and who live and work among their constituents. The Blue Book accompanying Amendment 2 in 1988—which further amended Section 7 by adding a "calendar day" limit to regular sessions in odd-numbered years and by setting the "calendar day" limit in both even- and odd-numbered years to 120 days—explained that a "legislature composed of citizens willing to take time from their private lives to serve the public good has been our basic instrument of representative government." Legislative Council, Colo. Gen. Assembly, Research Pub. No.

326, An Analysis of 1988 Ballot Proposals 6 (1988) ("1988 Blue Book"). Amendment 2 was designed to respond to concerns that "lengthening legislative sessions" were making it more difficult for legislators to maintain their professions outside of the legislature. In fact, several legislators who had resigned apparently cited the "increasing time commitment" of serving in the General Assembly as "a principal consideration for their leaving office."

The "calendar day" limitation protects against the inevitable creep of increased legislative activity, which may interfere with legislators' ability to "plan for the time necessary to participate in the legislative process" while maintaining professions outside of the political realm. . But it was never intended to serve as a limitation on the General Assembly's ability to meet its responsibilities, including by responding to emergencies that might interrupt a regular session.

Both the 1982 and 1988 Blue Books reinforce that voters believed that the "calendar day" limitation would facilitate the maintenance of a citizen legislature without interfering with the General Assembly's ability to do its work. The 1988 Blue Book explained that the "calendar day" limitation would require the General Assembly not to do less legislating but rather to "utilize time and resources more efficiently." 1988 Blue Book at 6. And the 1982 Blue Book emphasized that the "calendar day" limitation enacted for even-numbered sessions in Amendment 4 of

that year would not undermine the General Assembly's capacity to meet "foreseeable workloads." 1982 Blue Book at 22.

Of course, government must also be built to respond to *unforeseeable* demands. For this reason, consistent with the voters' intent in enacting Amendment 4 in 1982 and Amendment 2 in 1988, the General Assembly enacted Joint Rules 23 and 44. Pursuant to Joint Rule 23, the default rule followed in almost every case prescribes that the regular session of the General Assembly shall run for "one hundred and twenty *consecutive* calendar days." Joint Rule 23 (emphasis added). This calendar ensures, just as the voters intended, that the General Assembly may be constituted by citizen legislators who can plan their professional and personal lives around a consistent and predictable regular session schedule.

Yet, the General Assembly also identified in Joint Rule 44 that a pandemic emergency like the COVID-19 crisis confronting our State today may, in some atypical circumstances, interfere with the General Assembly's ability to maintain a regular session over a 120 *consecutive*-day period, especially when doing so would itself pose public health risks. In this narrow context, Joint Rule 44 allows the General Assembly to depart from the default rule and toll the running of the 120-day period while the General Assembly adjourns. This rule is consistent with Section 7's goal of encouraging the General Assembly to "use its time and resources efficiently"

because it ensures that the State can meet its legislative demands, just as the voters intended, without endangering the health of legislators or the public.

Joint Rule 44 strikes this balance without running afoul of the voters' simultaneous intent to maintain a citizen legislature facilitated by a predictable regular session schedule that cannot be amended pursuant to the whims of the General Assembly. Joint Rule 44 applies only in narrow and temporary circumstances and is triggered by the formal determination by a different branch of government that emergency conditions exist. Furthermore, because Joint Rule 44 applies only where a public health emergency causes a "state of disaster emergency" in the State, it will necessarily only apply in times like the COVID-19 crisis, when the personal and professional lives of citizen legislators have already been interrupted in unforeseeable ways. In this way, Joint Rule 44 does not in any manner exacerbate "the mischief to be avoided by" Section 7. *See Zaner v. City of Brighton*, 917 P.2d at 286.

(3) The Availability of a Special Session Outside of the Regular Session Does Not Counsel a Different Analysis.

The availability under Section 7 of a "special session" outside of the regular session does not counsel in favor of reading into the "calendar day" limitation a requirement that such days run consecutively. Special sessions are not designed to substitute for regular sessions in permitting the General Assembly to meet the

legislative demands of the State when a public health emergency has interrupted the General Assembly's regular session.

First, special sessions may only be convened when: (1) pursuant to Article IV, Section 9, the Governor "convene[s] the general assembly, by proclamation, stating therein the purpose for which it is to assemble," Colo. Const. art. IV, § 9, or (2) upon a "written request by two-thirds of the members of each house," Colo. Const. art. V, § 7. Under the first method, the General Assembly is entirely dependent on the Governor proclaiming the need for such a session, and under the second, the General Assembly, which typically legislates on simple majorities, must depend on a super majority.

Second, in both cases, during the special session, the General Assembly will be constrained by the stated purposes of the special session as articulated by the Governor or both houses of the Generally Assembly. This constraint could prevent the General Assembly from finishing the broad and regular legislative work that began during the shortened regular session or from responding in flexible ways to the changing needs of the State during times of an evolving and expanding pandemic crisis.

Furthermore, there is no indication that in enacting Section 7, the voters intended for the availability of a special session to interfere with the General Assembly's ability to respond effectively, flexibly, and responsibly in times of crisis

that occur *during* the regular session. The 1988 Blue Book does identify the availability of a special session as a consideration counseling in favor of the "calendar day" limit. 1988 Blue Book at 6. But, importantly, the Blue Book describes to the voters that a special session may be used to respond to "emergencies" that arise in the "legislative *interim*," *id.* (emphasis added), meaning when the legislature is out of regular session. The Blue Book never suggests that the special session is the intended means for responding to emergent crises that force interruption of a regular session.

B. JOINT RULE 44 IS CONSISTENT WITH THE CRITICAL ROLE OF THE GENERAL ASSEMBLY IN OUR CONSTITUTIONAL SCHEME

In Colorado, the people are sovereign. "All political power is vested in and derived from the people[, and] all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole." Colo. Const. art. II, § 1. Because its "speaks to express the will of the people," *see People v. Hoinville*, 553 P.2d 777, 781 (Colo. 1976), the General Assembly holds a special status in our constitutional framework. This Court has explained that "the legislature [is] invested with complete power for all the purposes of civil government, and the state constitution [is] merely a limitation upon that power." *Alexander v. People*, 2 P. 894, 896 (Colo. 1884).

Citizen legislature limitations like the "calendar day" requirement in Article V, Section 7 are designed not as a limitation on the legislative prerogative, but rather

to safeguard the *special* status of the legislative branch as the voice of the people. *Cf. Ga. Dep't of Human Resources v. Sistrunk*, 291 S.E.2d 524, 530 (Ga. 1982) ("One of the effective means of holding the government close to the people has been the insistence on a citizen legislature . . . ."). The "calendar day" limitation should thus not be read to include an unstated and artificial limitation on the General Assembly's central role in responding to crises that force interruption of the regular session.

Indeed, the Constitution explicitly acknowledges the need for the General Assembly to continue to function during a crisis. In Article VIII, Section 3, the Constitution provides a protocol for relocating the General Assembly after the Governor has declared a disaster emergency that affects the General Assembly's ability to meet safely in Denver. Colo. Const. art. XIII, § 3. The current pandemic requires the General Assembly to reschedule, not relocate. Still, the limitation expressed in Article V, Section 7 should be read in light of the clear constitutional intent that the General Assembly continue to function during and after crises.

In fact, the Constitution expressly charges the General Assembly with many of the essential tasks necessary to respond to the State's needs during and after an emergency like the COVID-19 pandemic. *See*, *e.g.*, Colo. Const. art. IX, § 2 (mandating that the General Assembly provide for establishment and maintenance of public schools); Colo. Const. art. X, § 2 (mandating that the General Assembly

provide for annual tax to fund state expenses); Colo. Const. art. V, § 25a (mandating that the General Assembly provide laws regulating workday hours for "branch[es] of industry or labor that [it] may consider injurious or dangerous to health . . ."). And, above all else, the General Assembly has an explicit constitutional duty to "pass all laws necessary to carry into effect the provisions of this constitution." Colo. Const. Sched. § 4.

Even during the early stages of the COVID-19 pandemic, we already know that the General Assembly will have to play a critical—and, in many cases, constitutionally-required—role in the State's response. For example, pursuant to constitutional mandate, the General Assembly will need to pass a balanced budget that accommodates both decreasing state revenues resulting from the economic fallout of this crisis and increasing demands on state services. Colo. Const. art. X, § 2. The General Assembly will also need to a pass a school finance act to ensure the maintenance of public schools in the wake of what could end up being several weeks of school closures. Colo. Const. art. IX, § 2. The General Assembly will also need to ensure that the most high-risk and essential workers in our State are protected, Colo. Const. art. V, § 25a; that the State can respond to a surge of unemployment insurance claims and effectively allocate millions of federal dollars to support the unemployment insurance program, Families First Coronavirus Response Act, Pub. L. No.116-127 § 4102 (2020); and that the State can meet the needs of businesses

facing extraordinary declines in revenue, residents who will be unable to pay for food and housing, and a healthcare system that will come under increasing strain. These are, sadly, just some of the pressing concerns facing our State and the General Assembly.

Because crises like the current pandemic pose a number of threats to the health and welfare of the people of this State, and even fundamental challenges to our constitutional order, it is essential that the General Assembly have leeway to respond flexibly to the crisis. Absent any clear textual basis, Article V, Section 7 of the Constitution should not be interpreted in a manner that interferes with the General Assembly's mandate to satisfy these and other important constitutional demands.

C. JOINT RULE 44 IS CONSISTENT WITH THE INHERENT AND CONSTITUTIONALLY-PRESCRIBED NATURE OF THE GENERAL ASSEMBLY AS AN OPEN AND DELIBERATIVE BODY

Inherent in the functioning of the General Assembly is the convening of the representatives of the People for the purpose of considering testimony and openly debating the pressing issues confronting our State.[6] In fact, in the same year they approved the current "calendar day" limitation, the voters approved a measure

[6] *See, e.g.*, Colo. Const. art. II, § 24 (describing the right to "to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance"); Colo. Const. art. V, § 14 ("The sessions of each house, and of the committees of the whole, shall be open, unless when the business is such as ought to be kept secret.").

requiring that all bills referred to a committee of the General Assembly be afforded a hearing and a vote. *See* Colo. Const. art. V, § 20; *Grossman v. Dean*, 80 P.3d 952, 964 (Colo. App. 2003) (Article V, Section 20 "contemplates, at a minimum, some interactive consideration by members of a committee and that each measure must be so considered before being voted on by the committee on its merits."). The Blue Book for that year—the same Blue Book touting the importance of the "calendar day" limitation for the preservation of a citizen legislature—explained to voters that the measure would ensure that all bills "be afforded a hearing before a committee" and that citizens "not be denied the right to testify in favor or against legislation." 1988 Blue Book at 20.

At this particular moment, in the midst of the COVID-19 crisis—when social distancing is a public health imperative—it is difficult for the General Assembly to comply with the letter or the spirit of these constraints.[7] For precisely these situations, the General Assembly enacted Joint Rule 44. Joint Rule 44

[7] The House Joint Resolution adjourning the General Assembly noted that at that point in time it "would be difficult for the General Assembly to do its part to limit the spread of COVID-19 while continuing to . . . uphold[] the foundational value of civic participation in public policy-making and government." House Joint Resolution 20-1006. While the General Assembly also said that it had considered the use of the technology to allow it to convene remotely, that option was "not feasible due to cost, the existence of numerous logistical hurdles, and the time required to procure, install, and test the technological infrastructure that would be necessary to ensure secure participation by legislators and access for the public." *Id.* The General Assembly could reconvene in regular session either when it is safe for it to convene in person or when it is feasible for it to convene remotely.

accommodates both the importance of the General Assembly in responding to a public health crisis and the constitutionally-prescribed openness of the General Assembly—which may not be feasible at certain periods during a public health crisis—by allowing the General Assembly to count non-consecutive calendar days toward the "calendar day" limit. Joint Rule 44 recognizes that the fact that the functioning of the General Assembly necessarily involves the engagement of legislators and others in the rough and tumble of legislative debate,[8] should not amount to a structural limitation on the General Assembly's ability to respond to a pandemic crisis like COVID-19. That legislative debate is an essential feature of the General Assembly and therefore of our government; it just cannot happen at this moment.

The interested parties submitting this brief are frequently engaged in the open and contentious debate that occurs under the gold dome of the Capitol. Like the members of the General Assembly, we frequently disagree over the content of legislation. But we all agree on the critical role of robust legislative debate in our constitutional scheme. We urge this Court to interpret Article V, Section 7, consistent with its plain language, to permit the General Assembly to promulgate rules like Joint Rule 44. Consistent with Joint Rule 44, the General Assembly should

[8] This includes Coloradans with compromised immune systems, Coloradans with disabilities, and other Coloradans more susceptible to COVID-19, all of whom are entitled to participate equally in the General Assembly's business. *See* n.6, *supra*.

be permitted to complete the remainder of its regular session so as to ensure, without compromising the public health, that Colorado's response to the COVID-19 crisis is informed by the open and full-throated legislative debate that serves as the foundation of our democracy.

CONCLUSION

WHEREFORE, Interested Parties ACLU of Colorado, Adams County Commissioner Steve O'Dorisio (in his individual capacity), AFT Colorado, Bell Policy Center, City of Aurora, City of Northglenn, Colorado Children's Campaign, Colorado Criminal Justice Reform Coalition, Colorado Cross-Disability Coalition, Colorado Fiscal Institute, Counties and Commissioners Acting Together, Colorado Criminal Defense Bar, Club 20, Democrats for Education Reform, Denver District Attorney, Good Business Colorado Association, Interfaith Alliance Colorado, Jefferson County Board of Commissioners, Metro Mayors Caucus, SEIU, Sixth Judicial District Attorney's Office, Towards Justice, and Women's Lobby of Colorado respectfully request that this Court answer the submitted Interrogatory by holding that Joint Rule 44 is constitutional.

Respectfully submitted this 24th day of March 2020.

TOWARDS JUSTICE

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2020, I filed the foregoing **Brief of Interested Parties** via the Colorado Court's E-Filing System, which will send notification to all parties who have entered an appearance in this matter.

s/David H. Seligman
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