ADVANCE SHEET HEADNOTE
April 1, 2020

2020 CO 23

No. 20SA100, *In Re: Interrogatory on House Joint Resolution 20-1006*—Original Jurisdiction—Colo. Const. art. V, § 7— Joint Rules— Length of Regular Session.

The supreme court exercises its original jurisdiction to review an interrogatory propounded by the General Assembly asking whether language in article V, section 7 of the Colorado Constitution limiting the length of the regular legislative session to "one hundred twenty calendar days" requires that those days be counted consecutively, or whether the legislature may, during the exceptional circumstance of a public health disaster emergency, count only "working calendar days" toward the 120-day maximum.

The supreme court concludes that article V, section 7 is ambiguous as to whether the 120 calendar days allotted for a regular legislative session must be counted consecutively. The court further concludes that the General Assembly reasonably resolved the ambiguity in article V, section 7 through its unanimous adoption of Joint Rules 23(d) and 44(g), which together operate to count the 120

calendar days of a regular session consecutively except during a declared public health emergency disaster, in which case only days on which at least one chamber convenes count toward the 120-day maximum. Because the General Assembly's interpretation is consistent with the constitutional text and fully comports with the underlying purposes of article V, section 7, the supreme court concludes that Joint Rules 23(d) and 44(g) are constitutional.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2020 CO 23

Supreme Court Case No. 20SA100
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

General Assembly's Interrogatory Answered
en banc
April 1, 2020

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JUSTICE MÁRQUEZ delivered the Opinion of the Court.
JUSTICE SAMOUR dissents, and **CHIEF JUSTICE COATS** and **JUSTICE BOATRIGHT** join in the dissent.

¶1 In the 1980s, Colorado voters amended the state constitution to limit a regular legislative session to "one hundred twenty calendar days." The General Assembly has unanimously adopted legislative rules interpreting this language. Together, these rules provide that the General Assembly will count the 120 days consecutively from the start of the regular session, with a single, narrow exception: when the Governor declares a state of disaster emergency and has activated the state's emergency operations plan due to a public health emergency "infecting or exposing a great number of people to disease, agents, toxins, or other such threats." The General Assembly agreed that in such circumstances, it would count only "working calendar days" toward the 120-day limit.

¶2 Before the spring of 2020, this narrow exception had never been triggered. But the United States now lies at the epicenter of a global pandemic of COVID-19, a highly contagious and potentially lethal respiratory disease caused by a novel coronavirus.

¶3 On March 14, 2020, recognizing the danger to the public and legislators posed by continuing to congregate at the State Capitol, the General Assembly adjourned until March 30, 2020. Both chambers have since extended their adjournments. This suspension of the regular session is without precedent in state history; moreover, because the situation continues to escalate, it is possible the

legislature may be unable to convene safely before the originally scheduled adjournment *sine die* on May 6, 2020.

¶4 Some have now questioned whether the legislative rule counting only "working calendar days" during a declared public health disaster emergency runs afoul of article V, section 7, such that legislation passed after May 6 in reliance on the rule could be challenged as void. Thus, the General Assembly has petitioned this court to exercise its original jurisdiction under article VI, section 3 of the Colorado Constitution to answer the following interrogatory:

> 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?

We accepted jurisdiction and now answer that the limitation on the length of the regular legislative session in article V, section 7 to "one hundred twenty calendar days" is ambiguous as to whether those calendar days must be counted consecutively. We further answer that the General Assembly reasonably resolved this ambiguity through its unanimous adoption of Joint Rules 23(d) and 44(g). Together, these rules interpret article V, section 7 to count the 120 calendar days of a regular session consecutively, except in the extraordinary circumstance of a

declared public health disaster emergency that disrupts the regular session, in which case only "working calendar days" (i.e., calendar days when at least one chamber is in session) count toward the 120-day limit. We conclude that such an interpretation does not run afoul of either the text or underlying purposes of article V, section 7 and is therefore valid.

I. Background

A. COVID-19

¶5 COVID-19, a respiratory disease caused by a novel coronavirus, was first detected in December 2019.[1] Like other respiratory illnesses, COVID-19 is transmitted by close exposure to a person with the virus, particularly an infected person's respiratory droplets from coughing or sneezing.[2] COVID-19 may also be transmitted by touching a surface that has the virus on it and then touching one's mouth, nose, or eyes.[3] Symptoms include fever, coughing, and difficulty

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[1] Colo. Exec. Order No. D 2020 003, at 1 (Mar. 11, 2020), https://www.colorado.gov/governor/2020-executive-orders [https://perma.cc/66FD-5MUY].

[2] *Id.*

[3] *Id.*

breathing.[4] COVID-19 can be mild, but for some individuals, COVID-19 can be severe enough to require hospitalization and can result in death.[5]

¶6 Over the last few months, this highly contagious respiratory illness has spread across the globe to over 200 countries, including the United States, and has already claimed tens of thousands of lives.[6]

¶7 In Colorado, the response to the spread of COVID-19 has developed rapidly.

¶8 On March 3, 2020, Governor Jared Polis ordered the Office of Emergency Management to activate the State Emergency Operations Plan.[7] On March 5, Colorado identified its first COVID-19 case.[8] By March 10, Governor Polis had

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[4] *Id.*

[5] Colo. Dep't Pub. Health & Env't, Order No. 20-22, *Notice of Public Health Order 20-22 Closing Bars, Restaurants, Theaters, Gymnasiums, and Casinos Statewide* (Mar. 16, 2020), https://www.colorado.gov/pacific/sites/default/files/atoms/files/Bars%20Restaurants%20PH%20order.pdf [https://perma.cc/V7HM-JTMS].

[6] *Coronavirus Disease (COVID-19) Pandemic*, World Health Org., https://www.who.int/emergencies/diseases/novel-coronavirus-2019 (last updated Apr. 1, 2020, 7:09 GMT-6) [https://perma.cc/FWB5-SULX].

[7] Exec. Order No. D 2020 003, at 2; *see* §§ 24-33.5-701, to -716, C.R.S. (2019). The State Emergency Operations Plan guides the state's response to emergency and disaster events. *State Emergency Operations Plan*, Colo. Div. Homeland Sec. & Emergency Mgmt. 1 (Sept. 30, 2019), https://drive.google.com/file/d/1JN8CAkwZcaG80ocHOdcx83-ALCIT8KCz/view [https://perma.cc/6XVY-9KY8].

[8] Exec. Order No. D 2020 003, at 2.

declared a statewide disaster emergency due to the virus.[9] The following day, the World Health Organization officially declared COVID-19 to be a pandemic,[10] and Colorado had 33 identified cases.[11] By Saturday, March 14, Colorado had 101 reported cases of COVID-19 and 1 death.[12] The same day, the General Assembly adjourned its regular session to March 30.[13] It also passed House Joint Resolution 20-1006, posing the interrogatory now before us. In reciting its reasons for seeking this court's guidance, the General Assembly observed that COVID-19 can spread quickly through the personal contact that occurs when large numbers of people congregate in enclosed spaces, such as happens daily at the State Capitol during the legislative session; that legislators and members of the public who may become infected with COVID-19 during their interactions at the State Capitol could spread the virus to other areas of the state as they return to their communities; and that

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[9] *Id.*

[10] H.R.J. Res. 20-1006, 72d Gen. Assemb., 2d Reg. Sess., at 1 (Colo. 2020) ("HJR 20–1006").

[11] Colo. Exec. Order No. D 2020 003, at 2.

[12] John Daley, *As Colorado Coronavirus Cases Climb, 'There Is Clearly A Surge Here'*, Colo. Pub. Radio (Mar. 24, 2020), https://www.cpr.org/2020/03/24/colorado-coronavirus-cases-climbing-surge/ [https://perma.cc/VKE3-JRL5].

[13] H.R.J. Res. 20-1007, 72d Gen. Assemb., 2d Reg. Sess. (Colo. 2020) ("HJR 20-1007").

restricting public access to the State Capitol to limit the spread of COVID-19 while continuing to hold public hearings on legislation "is not a viable option that respects and upholds the foundational value of civic participation in public policy-making and government."[14]

¶9 Since then, Colorado's response to the pandemic has escalated. On March 15, the Colorado Department of Public Health and Environment ("CDPHE") issued guidance recommending that events of fifty or more people be postponed or canceled.[15] On March 16, the CDPHE issued an order closing bars, restaurants, theaters, gyms, and casinos.[16] The same day, the Chief Justice of this court issued an order suspending certain court operations, including jury trials not subject to imminent criminal speedy-trial deadlines.[17]

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[14] HJR 20-1006, at 2.

[15] Staff, *Colorado Coronavirus Updates for March 14–15*, Colo. Pub. Radio (Mar. 14, 2020), https://www.cpr.org/2020/03/14/colorado-coronavirus-updates-march-14-legislature-testing-and-more/ [https://perma.cc/S8F8-44HF].

[16] CDPHE Order No. 20-22, *supra* note 5; see also Colo. Dep't Pub. Health & Env't, Amended Order No. 20-22, Updated Notice of Public Health Order 20-22 Closing Bars, Restaurants, Theaters, Gymnasiums, Casinos, Nonessential Personal Services Facilities, and Horse Track and Off-Track Betting Facilities Statewide (Mar. 19, 2020), [https://perma.cc/37DT-Q3KJ].

[17] Chief Justice Nathan B. Coats, *Order Regarding COVID-19 and Operation of Colorado State Courts* (Mar. 16, 2020), https://www.courts.state.co.us/

¶10 On March 18, the CDPHE issued a public health order limiting gatherings to no more than ten people.[18] Individuals have been asked to practice "social distancing"—maintaining a physical distance of six feet or more from other people—to curb transmission and slow the rate of infection.[19] Between March 18 and 25, the Governor issued a series of executive orders suspending in-person instruction in public schools,[20] amending an earlier order closing ski resorts,[21]

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userfiles/file/Media/Opinion_Docs/COVID-19%20Order%2016Mar2020(1).pdf [https://perma.cc/T6G7-BEA6].

[18] Colo. Dep't Pub. Health & Env't, Order No. 20-23, *Notice of Public Health Order 20-23 Implementing Social Distancing Measures* (Mar. 18, 2020), https://county.pueblo.org/sites/default/files/2020-03/Public%20Health%20Order%2020-23.pdf [https://perma.cc/4E2S-5G5L].

[19] *Coronavirus – What Social Distancing Means*, Am. Red Cross (Mar. 27, 2020), https://www.redcross.org/about-us/news-and-events/news/2020/coronavirus-what-social-distancing-means.html [https://perma.cc/H234-J865]; *Colorado COVID-19 Public Survey Results: Trusted Information on COVID-19 and Precautions Taken to Avoid Exposure*, Colo. Dep't Pub. Health & Env't (Mar. 28, 2020), https://cohealthviz.dphe.state.co.us/t/HealthInformaticsPublic/views/COVID-19PublicSurveyDashboard/InformationPrecaution [https://perma.cc/ZK3M-MNGK].

[20] Colo. Exec. Order No. D 2020 007 (Mar. 18, 2020), [https://perma.cc/QN74-TJ7V].

[21] Colo. Exec. Order No. D 2020 006 (Mar. 18, 2020), [https://perma.cc/M3PC-6EGJ], *amending* Colo. Exec. Order No. D 2020 004 (Mar. 14, 2020), [https://perma.cc/3JLJ-S8F6].

canceling all non-essential surgeries,[22] suspending certain regulations,[23] limiting evictions, foreclosures, and public utility disconnections,[24] and ordering employers to reduce their in-person workforce by fifty percent.[25] And on March 25, consistent with action taken in other states, the Governor ordered all Coloradans to "stay at home, subject to limited exceptions such as obtaining food and other household necessities, going to and from work at critical businesses, seeking medical care, caring for dependents or pets, or caring for a vulnerable person in another location."[26]

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[22] Colo. Exec. Order No. D 2020 009 (Mar. 19, 2020), [https://perma.cc/S8DN-MDXY].

[23] Colo. Exec. Order No. D 2020 011 (Mar. 20, 2020) (suspending certain regulatory statutes), [https://perma.cc/9NUM-WD5K]; Colo. Exec. Order No. D 2020 016 (Mar. 25, 2020) (suspending certain criminal justice statutes), [https://perma.cc/M4L8-MRLB].

[24] Colo. Exec. Order No. D 2020 012 (Mar. 20, 2020), [https://perma.cc/PS25-XTJ7].

[25] Colo. Exec. Order No. D 2020 013 (Mar. 22, 2020), [https://perma.cc/X2GA-Q28D].

[26] Colo. Exec. Order No. D 2020 017, at 2 (Mar. 25, 2020), [https://perma.cc/JD5S-XUZ8].

¶11 Despite these efforts, as of March 31, Colorado has amassed more than 2,900 COVID-19 cases and 69 deaths.[27] Globally, more than 750,000 people have contracted the virus and 36,405 people have died.[28] The pandemic is expected to continue into May and possibly well beyond.[29]

¶12 Beyond the human toll, the COVID-19 pandemic has also caused significant economic disruptions in the United States and globally.[30] These economic disruptions are expected to impact state and local budgets dramatically. In Colorado alone, COVID-19 is projected to result in $749.9 million in reduced revenue for fiscal year 2020–21.[31]

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[27] *COVID-19 Colorado Case Summary*, Colo. Dep't Pub. Health & Env't (last visited Mar. 31, 2020), https://covid19.colorado.gov/case-data [https://perma.cc/FZ3J-BW45].

[28] *Coronavirus Disease Situation Report – 71*, World Health Org. (Mar. 31, 2020), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports [https://perma.cc/WWB8-U6B3].

[29] *See* Governor Jared Polis, Update on COVID-19 Response (Mar. 27, 2020), *presentation slides available at* https://perma.cc/2DNF-38P7 (predicting peak hospital needs ranging from late April to June).

[30] Staff of the Colo. Legis. Council, 72d Gen. Assemb., *Economic & Revenue Forecast: March 2020*, at 4 (Mar. 16, 2020), http://leg.colorado.gov/sites/default/files/images/lcs/marchforecast.pdf [https://perma.cc/VK6X-X9D9].

[31] *Id.* at 6.

¶13 When it adjourned on March 14, the General Assembly had been in regular session for sixty-seven days.[32] Absent the current public health crisis necessitating this suspension of the regular session, the legislature was scheduled to adjourn *sine die* on May 6, 2020.[33]

¶14 On March 16, concerned that any legislation enacted after May 6 could be subject to challenge if Joint Rule 44(g) is deemed unconstitutional, the General Assembly submitted its interrogatory to this court. The House Joint Resolution states that at the time the legislature adjourned, 355 bills were pending.[34] It further acknowledges that if the General Assembly were to adjourn *sine die* on May 6, 2020, it could convene for a special legislative session after that date, but only if called by the Governor or by written request of two-thirds of each house of the General

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[32] H. Journal, 72d Gen. Assemb., 2d Reg. Sess., at 759 (Mar. 14, 2020); S. Journal, 72d Gen. Assemb., 2d Reg. Sess., at 543 (Mar. 14, 2020). Across the country, more than thirty-five other states' legislatures have canceled, postponed, or adjourned at least a portion of their sessions in response to the virus. *Legislative Sessions and the Coronavirus*, Nat'l Conference of State Legislatures (Mar. 26, 2020), https://www.ncsl.org/research/about-state-legislatures/legislative-sessions-and-the-coronavirus.aspx [https://perma.cc/2MX3-RSQX]; *see also* Joey Garrison, *'An Unprecedented Situation': Coronavirus Clamps Down on Statehouses as Legislatures Scramble to Adapt*, USA Today (Mar. 25, 2020), https://www.usatoday.com/story/news/politics/2020/03/25/coronavirus-state-legislatures-shutting-down-legislation-flux/2897398001/ [https://perma.cc/EHK5-WPNV].

[33] HJR 20-1006, at 3.

[34] *Id.*

Assembly.[35] The House Joint Resolution correctly notes that bills could only be heard in a special session if included in the Governor's call or the General Assembly's written request.[36]

¶15 We accepted the interrogatory the same day and ordered expedited, simultaneous briefing. As of the March 24 deadline, the court received briefs from the following parties:

- Governor Jared Polis and Attorney General Philip J. Weiser;
- the Colorado General Assembly;
- forty individual members of the Colorado General Assembly;
- the 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;
- the Colorado Association of Local Public Health Officials;
- the Independence Institute;
- and Chris Paulson, a former member of the Colorado House of Representatives.

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[35] *Id.*

[36] *Id.*

Given the urgency of the situation, the court has chosen to resolve the question on the briefs without oral argument.

B. Laws

1. Article V, Section 7

¶16 Relevant here, article V, section 7 of 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.

¶17 This language is the product of two constitutional amendments referred to Colorado voters by the General Assembly in the 1980s. The first, approved by voters in 1982, repealed other language in article V, section 7 that limited the regular sessions in even-numbered years to consideration of bills raising revenue, making appropriations, or pertaining to subjects designated in the Governor's "call," or agenda. Legis. Council, Colo. Gen. Assembly, Research Pub. No. 269, *An Analysis of 1982 Ballot Proposals* 20 (1982) ("1982 Blue Book"). The 1982 amendment thus removed the Governor's authority to set the even-year agenda and added language stating that regular sessions in even-numbered years "shall not exceed one hundred forty calendar days." *Id.* Following this change, even-year sessions were limited to 140 days but odd-year sessions had no limit and occasionally filled as much as half the year. *See* Legis. Council, Colo. Gen. Assembly, Research Pub.

No. 326, *An Analysis of 1988 Ballot Proposals* 6 (1988) ("1988 Blue Book") (informing voters that "[s]ince 1967 . . . [o]dd-year session lengths have ranged from 132 to 185 days"). To address this imbalance, voters approved a second amendment in 1988 that removed the distinction between even- and odd-year sessions and instead established that all regular sessions "shall not exceed one hundred twenty calendar days." *Id.* at 5.

¶18 The Blue Books describing these proposed amendments advised voters that limiting the length of the session would "assur[e] continuation of the part-time citizen legislature." 1982 Blue Book at 2; *see also* 1988 Blue Book at 6 ("A constitutional limitation on the length of sessions will ensure a part-time legislature and best maintain the 'citizen legislature' concept."); *id.* ("The proposal is necessary to maintain the 'citizen legislature' which has existed since statehood."). The concept of a citizen legislature allows the General Assembly to reflect "[a] variety of professional and occupational backgrounds, and the social and demographic composition of . . . various communities," and thus for "a greater diversity of viewpoints to impact the formulation of state policy." *Id.* In describing arguments for establishing the 120-day limit, the 1988 Blue Book noted the concern that the number of full-time legislators had increased because the time requirements of office "ma[d]e it difficult for many legislators to maintain a business or occupation and still participate fully in the legislative process." *Id.*

¶19 At the same time, voters were assured that the proposed limits on the length of the session would still give the legislature sufficient time to complete its critical work. The 1982 Blue Book advised that the 140-day time limit "would be more than adequate to meet forseeable [sic] workloads," 1982 Blue Book at 22, while the 1988 Blue Book advised that "[c]ritical or important issues [could] be considered and acted upon within" the 120-day regular session, 1988 Blue Book at 6.

2. Joint Rules 23(d) and 44(g)

¶20 Article V, section 12 of the Colorado Constitution provides that "[e]ach house shall have the power to determine the rules of its proceedings." Section 2-2-404(1), C.R.S. (2019), further provides that each house shall have the power "to adopt rules or joint rules, or both, for the orderly conduct of [its] affairs and to preserve and protect the health, safety, and welfare of [its] members, officers, and employees in the performance of their official duties, as well as that of the general public in connection therewith." Such legislative rules "shall have the force and effect of law." § 2-2-404(7).

¶21 Exercising this authority, the General Assembly has unanimously adopted a pair of Joint Rules that together implement the 120-calendar-day limit in article V, section 7 of the Colorado Constitution.

¶22 First, Joint Rule 23(d) provides the general rule that "[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." Colo. Legis. Rules, Joint Rules of the Sen. & H.R., Rule 23(d) (Dec. 2019) (emphasis added) ("Joint Rule 23(d)"). This rule was first adopted in 1983, shortly after Colorado voters approved the amendment to article V, section 7 imposing the 140-calendar-day limit on even-year sessions. H.R.J. Res. No. 1014, 54th Gen. Assemb., 1st Reg. Sess. (Colo. 1983). As originally enacted, Rule 23(d) provided that "[t]he maximum of one hundred forty calendar days prescribed by section 7 of article V . . . shall be deemed to be one hundred forty consecutive days." *Id.* When voters amended the constitution again in 1988 to impose a 120-calendar-day limit on all regular sessions, the General Assembly responded by amending Joint Rule 23(d) to its current language. H.R.J. Res. No. 1003, 57th Gen. Assemb., 1st Reg. Sess. (Colo. 1989). Joint Rule 23(d) has been readopted each year but its language has remained unchanged since 1989.

¶23 Second, Joint Rule 44, unanimously adopted in 2009 in the wake of the H1N1 flu epidemic, allows the General Assembly to deviate from Joint Rule 23(d) when three conditions are met, all of which lie beyond the legislature's control: (1) the Governor has declared a state of disaster emergency; (2) the disaster emergency is caused by a "public health emergency infecting or exposing a great number of people to disease, agents, toxins, or other such threats;" and (3) the Governor has

activated the Colorado Emergency Operations Plan. Colo. Legis. Rules, Joint Rules of the Sen. & H.R., Rule 44(a) (Dec. 2019) ("Joint Rule 44"); S.J. Res. 2009-004, 67th Gen. Assemb., 1st Reg. Sess. (Colo. 2009). When these extraordinary conditions are met, Joint Rule 44(g) provides that for the duration of the declared public health disaster emergency, the General Assembly counts only "working calendar days" against the 120-day limit:

> Notwithstanding the provisions of [Joint Rule 23(d)] regarding counting legislative days of a regular session as consecutive days, the maximum of one hundred twenty calendar days prescribed by section 7 of article V of the state constitution shall be counted as one hundred twenty separate working calendar days if the Governor has declared a state of disaster emergency due to a public health emergency pursuant to section 24-33.5-704, Colorado Revised Statutes. Once the disaster emergency is over, the House of Representatives and the Senate shall resume following Joint Rule 23(d) during regular sessions.

Joint Rule 44(g).

¶24 Although it has been unanimously readopted by both chambers of the legislature every year since 2009, Joint Rule 44(g) has never been invoked before now. Given the uncertainty posed by the current situation and its implications for how the remainder of the regular session should proceed, the General Assembly now asks whether its scheme for measuring the 120 calendar days of a regular session as set forth in Joint Rule 44(g) is permissible in light of article V, section 7 of the Colorado Constitution.

II. Jurisdiction

¶25 Colorado is one of a small minority of states in which the supreme court is authorized to issue advisory opinions on questions presented to it by the Governor or legislature. *In re Hickenlooper*, 2013 CO 62, ¶ 35, 312 P.3d 153, 160 (Márquez, J., dissenting); *In re Senate Resolution Relating to Senate Bill No. 65*, 21 P. 478, 479 (Colo. 1889). Under our state constitution, "[t]he supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decision of said court." Colo. Const. art. VI, § 3.

¶26 We have uniformly held that the supreme court decides whether a question is "important" and arises from a "solemn occasion" for purposes of exercising original jurisdiction under this constitutional provision. *Interrogatories by the Governor*, 245 P.2d 1173, 1175 (Colo. 1952); *see also In re Lieutenant Governorship*, 129 P. 811, 814 (Colo. 1913) (noting that "this court must decide for itself, as to any given question, whether or not it should exercise the jurisdiction of answering the same" (quoting *In re Appropriations by Gen. Assembly*, 22 P. 464, 466 (Colo. 1889))). While we have emphasized that "[i]t is impossible to state any absolute rule" for determining the importance and solemnity of a given question, *Hickenlooper*, ¶ 7, 312 P.3d at 156 (majority opinion) (quoting *Senate Bill No. 65*, 21 P. at 479), we have provided some guidance.

¶27 We have held, for example, that a question posed by the legislature "must be connected with pending legislation and must concern either the constitutionality of the legislation or matters connected to the constitutionality of the legislation concerning purely public rights." *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999). And we have declined to exercise our original jurisdiction to answer "questions affecting private or corporate rights," *Lieutenant Governorship*, 129 P. at 814; questions that call for "hasty consideration" rather than the thorough analysis the interrogatories require, *In re House Bill No. 1503 of Forty-Sixth Gen. Assembly*, 428 P.2d 75, 76–77 (Colo. 1967); and questions that readily could be addressed through ordinary judicial channels, *see Senate Bill No. 65*, 21 P. at 472–73.

¶28 We conclude that the interrogatory now before us presents an important question upon a solemn occasion. Accordingly, we exercise original jurisdiction. The General Assembly and the public at large urgently need an answer to the interrogatory to avoid uncertainty surrounding the length of the remaining regular session and its impact on pending bills and bills yet to be introduced. *See In re Senate Resolution No. 10*, 79 P. 1009, 1011 (Colo. 1905) (exercising original jurisdiction to answer interrogatories where "the General Assembly wishes to be advised with respect to its authority . . . so that intelligent action may be taken, or action which might be illegal prevented"). Although the interrogatory considered

here does not concern the constitutionality of a specific bill, *e.g.*, *House Bill 99-1325*, 979 P.2d at 554 (exercising original jurisdiction to review a bill that only awaited final action by the Senate), the question posed does concern the constitutionality of pending legislation because any bills passed outside the constitutionally established length of a regular legislative session could be challenged as void. Waiting to address this issue through ordinary judicial channels is not a viable option under the present circumstances. Moreover, the discrete question of constitutional interpretation posed by the interrogatory is not so complex as to oblige us to refrain from answering it. *Cf. House Bill No. 1503*, 428 P.2d at 76–77 (declining to answer an interrogatory that required "hasty consideration" of eighty-five separate provisions as they related to the applicable constitutional provisions).

¶29 Ultimately, our exercise of original jurisdiction turns on whether the question is "important" and is presented upon a "solemn occasion[]." Colo. Const. art. VI, § 3; *see also Hickenlooper*, ¶ 7, 312 P.3d at 156 (recognizing that there is no "absolute rule" for measuring this standard). Given the virtually unprecedented public health crisis disrupting the regular session and the need to provide certainty for the legislature as it seeks to move forward, we conclude that the standard is met in this instance. Accordingly, we exercise original jurisdiction and answer the interrogatory presented by the General Assembly.

III. Standard of Review

¶30 When construing a constitutional amendment, courts seek to ascertain and give effect to the intent of the electorate adopting the amendment. *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996). As always, we begin with the plain language. *Id.* Terms in the amendment should be given their ordinary and popular meaning. *Bolt v. Arapahoe Cty. Sch. Dist. No. Six*, 898 P.2d 525, 532 (Colo. 1995).

¶31 "When the language of an amendment is plain, its meaning clear, and no absurdity involved, constitutional provisions must be declared and enforced as written." *In re Great Outdoors Colo. Tr. Fund*, 913 P.2d 533, 538 (Colo. 1996); *see also Davidson v. Sandstrom*, 83 P.3d 648, 655 (Colo. 2004) ("The intent of the drafters, not expressed in the language of the amendment, is not relevant to our inquiry.").

¶32 "However, where ambiguities exist, a court should favor a construction that harmonizes different constitutional provisions rather than creates conflict. Where possible, courts should adopt a construction of a constitutional provision in keeping with that given by coordinate branches of government." *Great Outdoors Colo. Tr. Fund*, 913 P.2d at 538 (citations omitted); *see also Bd. of Comm'rs of Pueblo Cty. v. Strait*, 85 P. 178, 180 (Colo. 1906) ("When there is a real doubt of the proper interpretation of a constitutional provision relating to the course of procedure, it

should be solved in favor of the practical construction given it by the Legislature." (quoting Cooley's Constitutional Limitations, 86)).

¶33 "In enacting legislation, 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 Colo. Tr. Fund*, 913 P.2d at 539 (upholding the General Assembly's "reasonable and permissible interpretation" of a constitutional amendment).

¶34 Legislative enactments are presumed to be constitutional; overcoming this presumption requires a showing of unconstitutionality beyond reasonable doubt. *Huber v. Colo. Mining Ass'n*, 264 P.3d 884, 889 (Colo. 2011); *see also People v. Graves*, 2016 CO 15, ¶ 9, 368 P.3d 317, 322 (noting that this presumption acknowledges that "declaring a statute unconstitutional is one of the gravest duties impressed upon the courts" (quoting *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000))).

¶35 As with its power to enact statutes, the General Assembly derives its ability to adopt legislative rules from a specific grant of constitutional authority. Colo. Const. art. V, § 12. These legislative rules have "the force and effect of law." § 2-2-404(7); *cf. Colo. Ground Water Comm'n v. Eagle Peak Farms*, 919 P.2d 212, 217 (Colo. 1996) (noting that executive agency rules are "presumed to be valid" and any challenging party has "a heavy burden" to overcome this presumption).

Accordingly, we extend the presumption of constitutionality to a joint rule enacted by the legislature. *See Grossman v. Dean*, 80 P.3d 952, 964 (Colo. App. 2003) (applying the presumption of constitutionality to a House Rule). Thus, the unconstitutionality of such a rule must be established beyond a reasonable doubt. *See Great Outdoors Colo. Tr. Fund*, 913 P.2d at 540.

IV. Analysis

¶36 We begin by examining the text of article V, section 7 of the Colorado Constitution and conclude that it is ambiguous as to how the 120 calendar days allotted for a general session must be counted. Next, we conclude that the General Assembly reasonably resolved this ambiguity through its adoption of Joint Rules 23(d) and 44(g). Together, these rules interpret article V, section 7 to count the 120 calendar days of a regular session consecutively, except in the extraordinary event of a declared public health disaster emergency that disrupts the regular session, in which case only "working calendar days" count toward the 120-day limit. Because these Joint Rules are consistent with the constitutional text and comport with the underlying purposes of article V, section 7, we conclude they are valid.

A. Article V, Section 7 is Ambiguous

¶37 As described above, article V, section 7 provides that "[r]egular sessions of the general assembly shall not exceed one hundred twenty calendar days." Colo.

Const. art. V, § 7. We conclude that this language is ambiguous as to how the 120 allotted calendar days must be counted.

¶38 To begin, if the unambiguous intent of article V, section 7 had been to mandate consecutive counting of the 120 calendar days allotted for the regular session, the drafters simply could have included the word "consecutive." Several other state constitutions do precisely that. *See, e.g.*, Alaska Const. art. II, § 8 ("The legislature shall adjourn from regular session no later than one hundred twenty *consecutive* calendar days from the date it convenes . . . ." (emphasis added)); Fla. Const. art. III, § 3(d) ("A regular session of the legislature shall not exceed sixty *consecutive* days, and a special session shall not exceed twenty *consecutive* days . . . ." (emphases added)); Wash. Const. art. II, § 12(1) ("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." (emphases added)). Instead, the word "consecutive," or any synonymous term, is conspicuously absent from article V, section 7.

¶39 Also absent from article V, section 7 is any express requirement that the regular session end by a date certain, such as, "Regular sessions shall finally adjourn not later than the second Thursday in May." The omission of any such deadline in article V, section 7 is particularly striking given that the provision is

quite specific about the start date: "The general assembly shall meet in regular session at 10 a.m. no later than the second Wednesday of January of each year." Colo. Const. art. V, § 7. Here, too, our constitution is distinctive, as several other states' comparable provisions pinpoint the date by which a session must terminate. *See, e.g.*, Del. Const. art. 2, § 4 ("[E]ach session shall not extend beyond the last day of June . . . ."); Mo. Const. art. III, § 20 ("The general assembly shall reconvene on the first Wednesday after the first Monday of January after adjournment at midnight on May thirtieth of the preceding year."); Okla. Const. art. V, § 26 ("The Legislature shall meet in regular session at the seat of government at twelve o'clock noon on the first Monday in February of each year and the regular session shall be finally adjourned sine die not later than five o'clock p.m. on the last Friday in May of each year.").

¶40 We disagree that the phrase "calendar days" necessarily connotes "*consecutive* calendar days." If that were true, the word "consecutive" in each of our sister states' constitutional provisions quoted above—and in our own statutes, *see, e.g.*, § 24-51-1702(28), C.R.S. (2019) ("in excess of thirty *consecutive* calendar days") (emphasis added)—would be superfluous. Rather, the modifier "calendar" merely prescribes how to measure a particular "day": from midnight to midnight. *Calendar Day*, Black's Law Dictionary (11th ed. 2019) (defining "calendar day" as "[a] consecutive 24-hour day running from midnight to midnight"); *see also*

Calendar Day, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/calendar%20day [https://perma.cc/YHD3-GDJK] (defining "calendar day" as "the time from midnight to midnight"). This modifier matters because alternative methods exist to determine what time period counts as a day. For example, a day might be defined as "any 24-hour period." *Day*, Black's Law Dictionary (11th ed. 2019); *White v. Hinton*, 30 P. 953, 955 (Wyo. 1892) ("[A] day commencing at noon means a day closing at noon of the following day."). But the definition of a day as a "calendar" day (i.e., as running from midnight to midnight) does not automatically tell us how a total of 120 such days must be counted.

¶41 Certainly, the constitutional language limiting a regular session to "one hundred twenty calendar days" could reasonably be interpreted to mean the session may last no more than 120 consecutive calendar days. But it may just as reasonably be construed to allot a sum of days during which the General Assembly may meet in regular session—continuously or not—to complete its work, so long as the total does not exceed 120 calendar days.[37] Nothing in the plain language of article V, section 7 forecloses construing it to prescribe such an allotment.

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[37] Such allotments of time are not uncommon. For example, schools in Colorado generally must be in session for at least 160 days, § 22-32-109(1)(n)(I), C.R.S. (2019) ("In no case shall a school be in session for fewer than one hundred sixty days without the specific prior approval of the commissioner of education."), and

¶42 We also disagree that the use of the phrase "calendar days" in other contexts to connote "consecutive calendar days" requires the language in article V, section 7 to be so construed. Certainly, many deadlines in the Colorado Revised Statutes are expressed in terms of a number of calendar days running from or until a defined event. *See, e.g.*, § 1-12-117(1), C.R.S. (2019) ("Nomination petitions . . . shall be filed *no later than fifteen calendar days prior to* the date for holding the election . . . ." (emphasis added)); § 1-40-118(1), C.R.S. (2019) ("If the secretary of state fails to issue a statement *within thirty calendar days*, the petition shall be deemed sufficient." (emphasis added)); § 8-43-204(7), C.R.S. (2019) (requiring that benefits be paid to injured worker claimants "*within fifteen calendar days after* the date the executed settlement order is received" (emphasis added)); § 8-74-103(1), C.R.S. (2019) (providing that benefits appeals "must be received by the [administrative hearing officer of the] division *within twenty calendar days after* the date of notification of the decision" (emphasis added)). But unlike these examples, article V, section 7 is *not* expressed as a deadline; it lacks any temporal prepositions

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pupils must annually receive a minimum number of hours of teacher-pupil instruction, § 22-32-109(1)(n)(I)–(II). Similarly, the federal Family and Medical Leave Act of 1993 allows eligible employees leave for up to "a total of 12 workweeks . . . during any 12-month period" for certain family and medical reasons. 29 U.S.C. § 2612(a)(1) (2018).

like "within," "no later than," or "prior to," that trigger a clear cut-off date by which some event must occur. Far from persuading us that article V, section 7 must require consecutive counting of calendar days, these statutes serve only to highlight the restrictive textual detail that article V, section 7 lacks.[38]

¶43 Importantly, high courts in other states have construed the word "days" in provisions limiting the length of a legislative session to mean working days, not consecutive days. *See* Norman Singer & Shambie Singer, Sutherland Statutes and Statutory Construction § 6.7 (7th ed. 2007) ("Where a session is limited to a specified number of days, courts usually hold the provision to mean legislative working days, rather than consecutive days."); *see also John V. Farwell Co. v. Matheis*, 48 F. 363, 364 (C.C.D. Minn. 1891) ("[T]he [word 'session'], when applied to a legislative body, is the actual sitting of the members of such body for the transaction of business. . . . The 'last three days of the session' . . . means working days, when the legislature is in actual session for the transaction of business.");

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[38] Such detail matters. Consider an employer's offer letter that provides: "You must respond to this offer of employment within 15 calendar days. Please be aware that if you accept this offer, paid time off shall not exceed 15 calendar days per year." The phrase "15 calendar days" appears twice. But the first reference establishes a deadline that reasonably connotes consecutive counting of those calendar days, while the second sets a sum of allotted calendar days that do not necessarily run consecutively.

Moog v. Randolph, 77 Ala. 597, 608 (1884) ("'[F]ifty days' mean fifty legislative *working days*, exclusive of the Sundays, and other days upon which the Senate and House concur in refusing to sit by joint resolutions of adjournment."); *Shaw v. Carter*, 297 P. 273, 279 (Okla. 1931) ("[A] day of such session is to be construed as a day during which the Legislature was convened, actually engaged in business, sitting for the transaction of business."). *But see Redmond v. Ray*, 268 N.W.2d 849, 855 (Iowa 1978) (construing reference to "days" in a pocket veto provision to mean "calendar days" where the general veto provision was measured in calendar days). Thus, in the particular context of legislative sessions, a mere reference to a number of "days" does not necessarily mean consecutive days.

¶44 We note that the ambiguity of the language at issue in article V, section 7 has been acknowledged since it was first adopted by Colorado voters. Indeed, the 1982 Blue Book specifically identified the possibility that "the General Assembly could define calendar days to mean those days in session and not in recess." 1982 Blue Book at 22.

¶45 To clarify this ambiguity in the language adopted by the voters in 1982, the General Assembly enacted Joint Rule 23(d). Colo. H.R.J. Res. 1983-1014, 54th Gen.

Assemb., 1st Reg. Sess. (Colo. 1983).[39] It later amended this clarifying rule in response to voter passage of the 1988 amendment that limited the session length to 120 calendar days. H.R.J. Res. No. 1003, 57th Gen. Assemb., 1st Reg. Sess. (Colo. 1989). The General Assembly's adoption and amendment of Joint Rule 23(d) are telling, particularly considering that the legislature referred the language in article V, section 7 to voters in 1982 and 1988. Put simply, if the plain text of article V, section 7 unambiguously mandated consecutive counting of calendar days, why were its drafters twice compelled to adopt a clarifying rule?

¶46 In sum, the plain text of article V, section 7 does not mandate reading "calendar days" to mean "consecutive calendar days." Neither the word "consecutive" nor synonymous language appears in article V, section 7, and we are disinclined to add words to the provision. *Cf. People v. Rojas*, 2019 CO 86M, ¶ 11, 450 P.3d 719, 721 (setting forth the rule that when construing a statute, this court "may not add or subtract words," but must instead "read the words and

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[39] At a hearing on Joint Rule 23(d), then-Speaker of the House Carl B. Bledsoe 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 H.R.J. Res. 1014*, May 5, 1983, at 2:54–3:14, 44th Gen. Assemb., 1st Reg. Sess., (May 5, 1983) (statement of Speaker Carl B. Bledsoe).

phrases in context, construing them according to the rules of grammar and common usage"). Because the phrase "one hundred twenty calendar days" can just as sensibly refer to a combination of non-consecutive days so long as the total number of days does not exceed 120, the provision is reasonably susceptible of more than one interpretation, and therefore is ambiguous. *Gessler v. Smith*, 2018 CO 48, ¶ 18, 419 P.3d 964, 969.

B. Joint Rules 23(d) and 44(g) Comport with the Constitutional Text and Further the Dual Purposes of Article V, Section 7

¶47 Because article V, section 7 is susceptible of more than one reasonable interpretation, the General Assembly is authorized to resolve that ambiguity through its enactments so long as it does so "in a manner consistent with the terms and underlying purposes of the constitutional provision[]." *Great Outdoors Colo. Tr. Fund*, 913 P.2d at 539. We conclude that the interpretation set forth in Joint Rules 23(d) and 44(g) is consistent with both the constitutional text and its purposes of preserving Colorado's citizen legislature while ensuring the General Assembly can complete its critical work.

¶48 Because article V, section 7 does not specify how the calendar days of a regular session must be counted, Joint Rules 23(d) and 44(g) do not run afoul of the constitutional text. As described above, Joint Rule 23(d) establishes the general rule of consecutive counting of days during the regular session. Joint Rule 44(g)

establishes a narrow exception to that general rule, providing that in the extraordinary circumstance of a declared public health disaster emergency, the legislature will count only "working calendar days" toward the 120-day limit. Importantly, Rule 44(g) does not grant additional days beyond the constitutionally allotted 120; it merely permits those 120 days to run non-consecutively during a public health crisis. As discussed above, nothing in the plain language of article V, section 7 forecloses this reading.[40]

¶49 In combination, Joint Rules 23(d) and 44(g) also sensibly effectuate the dual purposes of the 120-day limit in article V, section 7 to "assur[e] continuation of the part-time citizen legislature" while still being "more than adequate to meet forseeable [sic] workloads." 1982 Blue Book at 21–22; *see also* 1988 Blue Book at 6 (informing voters that reducing the length of the session was "necessary to maintain the 'citizen legislature' which has existed since statehood" and that "[c]ritical or important issues can be considered and acted upon within this time limitation").

¶50 First, the rules prioritize a part-time, citizen legislature by making Joint Rule 23(d) the default. Under all but the rarest of circumstances, Joint Rule 23(d)

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[40] In light of this reasoning, we are unpersuaded by the contention that Joint Rule 44(g) "amends" article V, section 7.

governs and the regular session will be counted as 120 consecutive calendar days, with ample time for members to return home to their districts and responsibilities outside the State Capitol. Indeed, though the narrow exception in Joint Rule 44(g) has existed since 2009, it had never been invoked before the current, unprecedented COVID-19 pandemic. Precisely because it presents the rare exception, Joint Rule 44(g) is unlikely to deter ordinary citizens from seeking legislative office.

¶51 The rules further promote the part-time, citizen legislature by providing crucial flexibility when a declared public health crisis renders it unsafe to meet to consider and debate legislation. Joint Rule 44(g) ensures that in the event of such a public health disaster emergency, citizen legislators do not have to choose between representing their constituents in the General Assembly and supporting their communities through the crisis at home. In their capacities outside the State Capitol, legislators may serve essential roles, for example working in the healthcare profession or operating essential businesses. *See, e.g.*, John Frank, *A Lawmaker Returns to Frontlines of the Coronavirus Fight as an ER Nurse: "You Can See a Tsunami Coming"*, Colorado Sun (Apr. 1, 2020), https://coloradosun.com/2020/04/01/colorado-lawmaker-er-nurse-kyle-mullica-coronavirus/ [https://perma.cc/DQ7R-2NRR] (describing three Colorado lawmakers who have returned to work as a nurse, a paramedic, and a pediatric

physician to address the COVID-19 pandemic while the legislature is temporarily adjourned). Joint Rule 44(g) permits, rather than stifles, members' abilities to attend to these non-legislative obligations.

¶52 At the same time, the rules ensure that the General Assembly retains the time Colorado voters allotted to it in article V, section 7 to meet the needs of the state. The Blue Book arguments regarding the sufficiency of 140 or 120 days for the General Assembly to accomplish its work clearly presumed that the legislature would be able to convene through the entire allotted period. Without the narrow exception provided by Joint Rule 44(g), that voter expectation would be frustrated precisely when it matters most. A public health disaster so grave that it prevents the General Assembly from safely convening inevitably will have consequences for the state that will necessitate a legislative response. By allowing legislators to return to the Capitol when the crisis abates, the rule facilitates completion of the work that would have occurred but for the intervening emergency that disrupted the regular session. In short, it safeguards continuity of government at the time Coloradans need it most.

¶53 The current crisis caused the General Assembly to adjourn on March 14, 2020, the 67th day of the session. At that time, in addition to the 355 pending bills, the legislature had not yet introduced the annual budget required by article X, section 2 of the Colorado Constitution. Depending on how long the public health

emergency continues, absent Joint Rule 44(g) the legislature could find itself with little or no time to pass the annual budget, let alone address other pending bills consistent with article V, section 20, the Give a Vote to Every Legislator ("GAVEL") 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." *Grossman*, 80 P.3d at 963 (quoting Colo. Const. art V, § 20); *id.* (noting that the GAVEL Amendment was premised on the principle that "citizens should not be denied the right to testify in favor of or against legislation" (quoting 1988 Blue Book at 20)); *see also* HJR 20-1006, at 2. Joint Rule 44(g) ensures that the legislature can continue to meet its constitutional obligations, even when a public health emergency outside the legislature's control disrupts the regular session.

¶54 Finally, because Joint Rules 23(d) and 44(g) constitute the General Assembly's reasonable interpretation of article V, section 7, that interpretation is entitled to deference. *See Strait*, 85 P. at 179 ("[W]e should show great deference to the legislative construction of the Constitution, particularly with reference to its construction of the procedure provided by the Constitution for the passage of bills."); *Great Outdoors Colo. Tr. Fund*, 913 P.2d at 538 ("[C]ourts should adopt a construction of a constitutional provision in keeping with that given by coordinate branches of government."). Significantly, it is undisputed that Joint Rules 23(d) and 44(g) were both adopted unanimously and have been readopted without

objection at the beginning of each General Assembly by Republican and Democratic-controlled chambers alike. This uniform and longstanding interpretation further warrants our deference. *Cf. In re Interrogatories of Governor Regarding Certain Bills of Fifty-First Gen. Assembly*, 578 P.2d at 200, 208 (Colo. 1978) ("[W]e should show deference to a long standing practice of Senate action in the adoption of bills.").

¶55 In sum, Joint Rules 23(d) and 44(g) reasonably construe article V, section 7. Maintaining a 120-consecutive day regular session under normal circumstances but permitting the continuity of government in the face of disaster furthers the purposes of article V, section 7.[41] We conclude the arguments against the scheme enacted by the Joint Rules 23(d) and 44(g) do not overcome the presumption of constitutionality to which these rules are entitled. *See Huber*, 264 P.3d at 889.

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[41] The conditions that trigger Joint Rule 44(g) are both extraordinary and outside the General Assembly's control. We note that a broader rule untethered to an external event such as a public health crisis or otherwise readily susceptible of legislative manipulation would be less likely to further the purposes of article V, section 7 and could be unconstitutional. *See* 1988 Blue Book at 6 (advising voters that the proposal would ensure the 120-day limit could not be changed by statute or legislative rule). However, we are not presented with such a rule.

C. A Special Session Is an Inadequate Remedy for an Interrupted Regular Session

¶56 Some have argued that the ability of the legislature to convene in a special session sufficiently addresses the challenges posed by an interrupted regular session. We disagree.

¶57 The Colorado Constitution authorizes the General Assembly to convene outside of regular session in a special session only if called by proclamation of the Governor, Colo. Const. art. IV, § 9, or "by written request by two-thirds of the members of each house." Colo. Const. art. V, § 7.

¶58 Notably, a special session "shall not be convened for general purposes," *Denver & R.G.R. Co. v. Moss*, 115 P. 696, 698 (Colo. 1911), but only to address specific subjects identified either in the Governor's proclamation, Colo. Const. art. IV, § 9 ("[A]t such special session [called by the Governor], no business shall be transacted other than that specially named in the proclamation."), or the legislators' written request, Colo. Const. art. V, § 7 (limiting special sessions convened by the legislature to consideration of "only those subjects specified in" the written request for the session).

¶59 For example, in October 2017, then-Governor John Hickenlooper called a special session to address an error in a bill passed during the 2017 regular session that "inadvertently eliminated certain special districts' and other limited purpose

governmental entities' ability to levy sales tax on retail marijuana sales." Colo. Exec. Order No. D 2017 023, at 2 (Sept. 14, 2017). During the special session, the General Assembly was limited to considering legislative action relating to that specific subject. *See* Colo. Const. art. IV, § 9.

¶60 By contrast, in 1902, the Governor called a special session and authorized the General Assembly to consider, among other subjects, "enact[ing] any and all legislation relating to or in any wise affecting corporations, both foreign and domestic, of a quasi public nature." *Moss*, 115 P. at 696. We struck down a law passed at this special session because the call from the Governor was "not narrowed to . . . some particular subject-matter of legislation." *Id.* at 697. We reasoned that if we permitted such a broad call, "the constitutional provision [would be] utterly disregarded" and "completely nullified." *Id.* at 698. We explained that the Governor could call a special session only upon "a definite conception of a public emergency," and then only "for action upon that particular subject-matter." *Id.* at 701.

¶61 The narrow function served by a special session does not comport with the broader, more general purpose of the legislature's regular session. During the regular session, the legislature convenes to debate and consider everyday, albeit potentially critical, legislation. Accordingly, a call for a special session to supplant the work left unaccomplished in a disrupted regular session would likely near, if

not surpass, the impermissible breadth of the call in *Moss* and thus risks running afoul of the constitutional provisions authorizing special sessions.

¶62 Moreover, allowing a special session essentially to replace a regular session gives rise to separation of powers concerns. As mentioned, when the Governor convenes a special session, the General Assembly is limited to the subject matter the Governor designates for legislative action. To return to the Governor such power over the general legislative agenda would defy a core purpose of the 1982 amendment to article V, section 7 to end the "unnecessary intrusion of the Governor into the legislative process." 1982 Blue Book at 21.

¶63 A special session convened by the General Assembly would also be inadequate. As noted, a special session convened by the legislature is limited to the particular topics included in the call. Colo. Const. art. V, § 7. Further, the General Assembly can convene a special session only upon the written request of two-thirds of the members of each house. In practice, legislators could withhold support for a special session until particular bill subjects were included in, or excluded from, the call. These requirements would effectively require supermajority support for bills before they are even considered, contrary to the legislative process followed during a regular session.

¶64 Further, the constitution imposes no limit on the duration of a special session. *See* Colo. Const. art. IV, § 9; *id*. art. V, § 7. Accordingly, permitting the

General Assembly to substitute the remainder of its regular session with a potentially unlimited special session could conflict with the electorate's intent in adopting the 120-day limit in article V, section 7.

¶65 Finally, a special session would be inefficient because it would restart legislative consideration of each bill left pending during the interrupted regular session. Any such bills would have to be reintroduced anew and any hearings, testimony, and debate would have to be recommenced. Such inefficiency undermines the goal of a part-time, citizen legislature that the 1982 amendment sought to advance.

V. Conclusion

¶66 "In order to assure the continuing vitality of our state constitution beyond an age when brittle words lose life and relevance to unforeseen problems, we must consider 'the object to be accomplished and the mischief to be avoided' by the provision at issue." *People in Interest of Y.D.M.*, 593 P.2d 1356, 1359 (Colo. 1979) (quoting *Inst. for the Educ. of the Mute and Blind v. Henderson*, 31 P. 714, 717 (Colo. 1892)). We conclude that the General Assembly reasonably resolved the ambiguity in article V, section 7 through its unanimous adoption of Joint Rules 23(d) and 44(g), which together operate to count the 120 calendar days of a regular session consecutively except in the extraordinary circumstance of a declared public health disaster emergency—in which case the legislature counts only days

in which at least one chamber is in session. Joint Rules 23(d) and 44(g) further the dual purposes of the provision while also safeguarding the health of the public and lawmakers, promoting democratic engagement, and allowing the General Assembly to uphold its constitutional obligations. Because the General Assembly's interpretation is consistent with the constitutional text and fully comports with the underlying purposes of article V, section 7, we conclude that Joint Rules 23(d) and 44(g) are constitutional.

JUSTICE SAMOUR dissents, and **CHIEF JUSTICE COATS** and **JUSTICE BOATRIGHT** join in the dissent.

JUSTICE SAMOUR, dissenting.

¶67 I acknowledge that these are unprecedented times—we are in the throes of a worldwide pandemic precipitated by COVID-19. But neither COVID-19 nor any other imaginable emergency allows our legislature to amend the state constitution through a statute, let alone a legislative rule like Joint Rule 44(g). Almost ninety years ago, we declared, rather presciently, that "the most certain of law[s]" is "that there has never been, and can never be, an emergency confronting the state that will warrant the servants of the Constitution waiving so much as a word of its provisions." *Walker v. Bedford*, 26 P.2d 1051, 1054 (Colo. 1933). Because the General Assembly cannot legally change section 7 of article V of the Colorado Constitution ("section 7")—an unambiguous provision in need of no clarification—and because the precedent Rule 44(g) sets is at once disconcerting and dangerous, I respectfully dissent. It is in these extraordinary times that we have the greatest need to trust that our elected officials will uphold our constitutional rights and protections.

I. Analysis

¶68 Section 7 sets forth when our General Assembly "shall meet." Colo. Const. art. V, § 7. It provides for two types of sessions: "[r]egular sessions" and "special sessions." *Id.* "[E]ach year," the regular session must begin "at 10 a.m. no later than the second Wednesday of January" and "shall not exceed one hundred twenty calendar days." *Id.* The only "other times" the General Assembly may

meet during the year is by a "special session" that's "convened" either "by the governor . . . or by written request by two-thirds of the members of each house." *Id.* The question raised by the Interrogatory on House Joint Resolution 20-1006 revolves around the maximum term for a regular session: Must the "one hundred twenty calendar days" referenced in section 7 *always* be counted as consecutive calendar days or, pursuant to Rule 44(g), must they be counted as one hundred and twenty consecutive calendar days except *in the event the governor declares a state of disaster emergency*, in which case they may be counted as "separate working calendar" days?

¶69 The Petitioners defend the constitutionality of Rule 44(g).[1] They argue that the legislature has authority to clarify section 7 by providing its own interpretation of it in Rule 44(g). But this contention hinges on the faulty premise that the term "calendar days" in section 7 is ambiguous and subject to multiple meanings. It is not. As such, Rule 44(g) is unnecessary. Even if we assume that "calendar days" is ambiguous, Rule 44(g) is unconstitutional because it amends section 7.

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[1] We received multiple briefs. For the sake of convenience, I refer to those who urge that Rule 44(g) is constitutional as "the Petitioners" and to those who challenge the constitutionality of Rule 44(g) as "the Respondents."

A. The Term "Calendar Days" Is Not Ambiguous

¶70 The interpretation of any constitutional provision is a question of law. *Gessler v. Smith*, 2018 CO 48, ¶ 18, 419 P.3d 964, 969. Because section 7 was added to our state constitution through a constitutional amendment approved by the voters (Amendment 3), we are duty bound "to give effect to the electorate's intent in enacting the amendment." *Id.* To effectuate the voters' intent, we must give the words in section 7 "their ordinary and popular meaning." *Id.* (quoting *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 2012 CO 12, ¶ 20, 269 P.3d 1248, 1253). In determining the plain and popular meaning of a word in a constitutional provision, we may consult definitions in recognized dictionaries. *See Wash. Cty. Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 152 (Colo. 2005).

¶71 So, what is the ordinary and popular meaning of "calendar days"? Black's Law Dictionary defines "calendar day" as "[a] *consecutive 24-hour day* running from midnight to midnight." *Calendar Day*, Black's Law Dictionary (11th ed. 2019) (emphasis added). In other words, a "calendar day" is a "*natural day*" that begins at midnight and ends twenty-four consecutive hours later at midnight. *Id.* Merriam-Webster's Online Dictionary contains a similar definition of "calendar day": it is "a civil day" encompassing "the time from midnight to midnight." *Calendar Day*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/*calendar day* [https://perma.cc/YHD3-GDJK].

¶72 Giving the term "calendar days" its ordinary and popular meaning, it is clear that it refers to *consecutive* days. If a single calendar day is a "natural day" that consists of twenty-four "consecutive" hours from midnight to midnight, then one hundred and twenty calendar days are necessarily one hundred and twenty natural days consisting of a total of 2,880 consecutive hours (120 × 24 = 2,880) from midnight to midnight. To the extent the Petitioners construe "calendar days" as meaning something substantively different from its singular form of "calendar day," I reject their position as untenable.

¶73 Significantly, our legislature has itself historically considered "calendar days" to be unambiguous. More than one hundred and forty Colorado statutes mention "calendar days," and many do so more than once. *See, e.g.*, § 25-7-115(3)(a), C.R.S. (2019) ("[w]ithin thirty calendar days"); § 31-11-109(3), C.R.S. (2019) ("no later than thirty calendar days"); § 39-28-304, C.R.S. (2019) ("at least thirty calendar days"). Not one of these one hundred and forty plus statutes contains a definition of the term. And for good reason: There is no need to define a term that's clear and that has a well settled, widely accepted, ordinary, and popular meaning. If "calendar days" were subject to multiple interpretations, wouldn't the legislature have defined it in all these statutes?

¶74 More importantly, whenever a statute refers to "calendar days," the context in which the term is used makes clear that it can only mean consecutive days. *See,*

e.g., § 1-12-117(1), C.R.S. (2019) ("Nomination petitions . . . shall be filed no later than fifteen calendar days prior to the date for holding the election . . . ."); § 8-43-204(7), C.R.S. (2019) (benefits to injured workers "shall be paid to the claimant or the claimant's attorney within fifteen calendar days after the date the executed settlement order is received"); § 38-38-103(1)(b), C.R.S. (2019) ("No more than sixty calendar days nor less than forty-five calendar days prior to the first scheduled date of sale, the public trustee shall [take the specified action]."). What else, other than consecutive days, could "calendar days" mean in these and numerous other statutes without yielding illogical or absurd results? "There is a presumption that the General Assembly intends a just and reasonable result when it enacts a statute, and a statutory construction that defeats the legislative intent or leads to an absurd result will not be followed." *Ingram v. Cooper*, 698 P.2d 1314, 1315 (Colo. 1985).

¶75 The Petitioners fail to cite a single Colorado statute that uses "calendar days" to mean non-consecutive days. None exists. And the Petitioners brush off the one hundred and forty plus statutes in which the General Assembly has used "calendar days" to mean consecutive days as irrelevant. Each of these statutes, they say, is inapposite because it sets one or more deadlines, as reflected by the use of temporal prepositions like "within," "no later than," and "prior to," which suggest a clear cut-off date for an event to occur. This is a stretch.

¶76 I am aware of no authority, and none is cited, that stands for the proposition that the term "calendar days" takes on a different meaning if it is used in conjunction with the types of quoted prepositions to set a deadline. Prepositions or no prepositions and deadline or no deadline, "calendar days" should consistently be accorded its ordinary and popular meaning—consecutive days. Moreover, section 7 is not meaningfully distinguishable. While it may not use the kinds of referenced prepositions, it certainly uses "calendar days" to set a temporal limit on the length of a regular session: It "shall not exceed one hundred twenty calendar days." Colo. Const. art. V, § 7. And, given that section 7 requires a regular session to commence by a particular date (no later than the second Wednesday of January), the maximum mandate implies a deadline—the regular session must end by a particular date. In any event, the Petitioners are mistaken because some statutes use "calendar days" to set a temporal limit—just as section 7 does. *See, e.g.*, § 1-40-116(2), C.R.S. (2019) ("The petition shall not be available to the public for a period of no more than thirty calendar days for the examination."); § 1-40-118(1), C.R.S. (2019) ("such period shall not exceed thirty calendar days");

§ 8-43-101(1), C.R.S. (2019) ("in excess of three shifts or calendar days"). These and similar statutes are indistinguishable from section 7.[2]

¶77 Notably, when the legislature means something other than consecutive days, it uses a different term, such as "business days." There are over two hundred statutes in Colorado that do just that. *See, e.g.*, § 10-4-110.7(5), C.R.S. (2019) (indicating that the insurer has "thirty business days . . . to evaluate the issuance of a policy for homeowner's insurance"); § 16-22-108(1)(a)(II), C.R.S. (2019) (requiring registration or confirmation of initial registration "within five business days after release from incarceration . . . or within five business days after receiving notice of the duty to register"). Some statutes use both "calendar days" and "business days," reflecting the legislature's understanding that the two terms have different meanings. *See, e.g.*, § 9-1.5-103(4)(b), C.R.S. (2019); § 25-7-133(7)(d)(V), C.R.S. (2019).

¶78 There are times when the legislature wishes to exclude certain consecutive days from a time computation that's based on "calendar days." In those situations,

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[2] Rather than attempt to address these statutes, which directly undercut their position, the Petitioners seek refuge in section 24-51-1702(28), C.R.S. (2019), because it refers to "consecutive calendar days." But that statute is of no avail. That the legislature chose to spell out in section 24-51-1702(28) that it meant *consecutive* calendar days doesn't somehow render the one hundred and forty plus statutes that refer to "calendar days" ambiguous.

it simply says so. *See, e.g.*, § 8-74-102(1), C.R.S. (2019); § 31-10-103, C.R.S. (2019). In section 8-74-102(1) the legislature refers to "calendar days," but provides an exception "[i]f the twelfth calendar day falls on a weekend or a state holiday." And section 31-10-103 refers to "[c]alendar days" but excludes certain days. What would be the need for these exceptions if "calendar days" didn't mean consecutive days?

¶79 Perhaps most apropos to our discussion, we know that the General Assembly understands "calendar days" in section 7 to mean consecutive days. It said so when it adopted Joint Rule 23(d) around the same time section 7's predecessor was approved by the voters in the early 1980s. In Rule 23(d), the legislature declared that it considers the maximum of one hundred and twenty calendar days prescribed for a regular session in section 7 to refer to "consecutive calendar days." Of course, contrary to the Petitioners' suggestion, the fact that the legislature decided to adopt Rule 23(d) and to reiterate what was already stated in plain, ordinary, and popular words in section 7 is not proof that section 7 is ambiguous. Otherwise, the legislature could render any constitutional provision ambiguous by simply restating it in different terms in a legislative rule.

¶80 The rest of the language in section 7 buttresses the conclusion that "calendar days" means consecutive days. We must consider section 7 "as a whole and, when possible, adopt an interpretation of the language which harmonizes" all of its

provisions "rather than an interpretation which would create a conflict between such provisions." *Gessler*, ¶ 18, 419 P.3d at 969 (quoting *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996)). Construing "calendar days" as consecutive days is in line with two aspects of section 7.

¶81 First, the plain language of section 7 reflects an intent to have hard start and stop date ranges for regular sessions. Section 7 states that a regular session must always commence no later than the second Wednesday of January—i.e., between January 2 and January 14 (a hard start date range). It also provides that a regular session must not exceed one hundred and twenty calendar days. Given the hard start date range of January 2 to January 14, this one-hundred-and-twenty -calendar-day restriction suggests an intent to have a hard stop date range as well. The most reasonable inference is that the legislature must stop meeting in regular session between April 30 and May 13 (at the end of one hundred and twenty consecutive days). Had the legislature and the voters meant one hundred and twenty *non-consecutive* days, they presumably would have added the timeframe within which the one hundred and twenty *separate* calendar days must be counted. For example, section 7 might have indicated that "[r]egular sessions . . . shall not exceed one hundred twenty calendar days" within a six-month period or within a twelve-month period. Otherwise, a regular session could arguably end after the following regular session begins or, worse, remain active indefinitely.

¶82 Second, section 7 establishes that when the regular session ends, the legislature may only meet if a special session is convened by the governor or by a written request from two-thirds of the members of each house. Assigning "calendar days" a meaning other than consecutive days would allow the legislature to spread the regular session throughout the entire calendar year. That, in turn, could render superfluous the provision generally prohibiting the legislature from meeting outside a regular session except through a special session. What would be the use of the general prohibition and the special session exception if the legislature could simply meet as part of the regular session between January and December? We must avoid any construction that threatens to render a constitutional provision either superfluous or a nullity. *See Indus. Claims Appeals Office v. Orth*, 965 P.2d 1246, 1254 (Colo. 1998).

¶83 For all of these reasons, I conclude that section 7 is clear and unambiguous. We are thus required to "enforce[] [it] as written." *Gessler*, ¶ 18, 419 P.3d at 969.

B. Rule 44(g) Unconstitutionally Amends Section 7

¶84 Even assuming for the sake of argument that the term "calendar days" in section 7 is ambiguous, the legislature cannot legally amend it—including under the guise of interpreting it or clarifying it. The legislature lacks authority to amend a constitutional provision, including one it believes is ambiguous.

¶85 The power to amend the state constitution rests *solely* with the people of Colorado through the initiative and referendum process. Colo. Const. art. V, § 1(1). Section 1(1) of article V provides:

> *[T]he people reserve to themselves the power to propose . . . amendments to the constitution and to enact or reject the same at the polls independent of the general assembly* and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

(Emphasis added.) "The right of initiative and referendum, like the right to vote, is a fundamental right . . . ." *Loonan v. Woodley*, 882 P.2d 1380, 1383 (Colo. 1994). It is among the rights that sets us apart as "a republican form of government." *Bernzen v. City of Boulder*, 525 P.2d 416, 419 (Colo. 1974). Even in the event of a public crisis, the legislature may not infringe on the voters' *exclusive* power to amend the state constitution. When the legislature does so, it unduly curtails the voters' fundamental right of initiative and referendum.

¶86 Yet, in 2009, more than twenty years after section 7 was approved by the voters via referendum and Rule 23(d) was adopted, the legislature passed Rule 44(g). Rule 44(g) was not motivated by a desire to interpret or clarify the term "calendar days" in section 7. There was nothing that needed interpretation or clarification. Besides section 7 being unambiguous, Rule 23(d) had made clear more than two decades earlier that the legislature understood "calendar days" in section 7 to mean "consecutive calendar days." What actually spurred the

legislature into action was a different public health scare, the swine influenza virus ("SIV"). Because of SIV's potential impact, the legislature sought to engraft an emergency-based exception onto the one-hundred-and-twenty-calendar-day maximum term for a regular session in section 7. Thus, it provided in Rule 44(g) that, "if the Governor has declared a state of disaster emergency" due to a public health crisis, then "the maximum of one hundred twenty calendar days *prescribed by section 7 of article V of the state constitution* shall be counted as one hundred twenty *separate working calendar days*." (Emphases added.)

¶87 The Petitioners claim that Rule 44(g) is constitutional because, in conjunction with Rule 23(d), it does no more than interpret and clarify section 7. I beg to differ. Rule 44(g) plainly and simply *amends* section 7. Whereas section 7 sets a maximum term of one hundred and twenty consecutive days for a regular session, Rule 44(g) creates an exception to that maximum term under specific circumstances. Pursuant to Rule 44(g), the maximum term in section 7 doesn't apply when the governor declares a state of emergency. Instead, in such a situation, Rule 44(g) provides that only "separate working calendar days" count toward the one-hundred-and-twenty-calendar-day maximum. Far from elucidating the meaning of "calendar days" or otherwise shedding light on the term, Rule 44(g) unconstitutionally changes section 7. One can't create an exception to a maximum term and then genuinely call it an interpretation or a

clarification instead of a modification.[3] Below is a chart that belies the Petitioners' interpretation/clarification claim and highlights the extent of Rule 44(g)'s revision of section 7:

Section 7	**Rule 44(g)**
Regular sessions of the general assembly shall not exceed one hundred twenty calendar days.	Regular sessions of the general assembly shall not exceed one hundred twenty calendar days, which shall mean consecutive calendar days, except that if the governor has called a state of disaster emergency due to a public health emergency pursuant to section 24-33.5-704 of the Colorado Revised Statutes, then the maximum of one hundred twenty calendar days shall be counted as one hundred twenty separate working calendar days, but only until the disaster emergency is over.

¶88 Nor can Rule 44(g) survive constitutional muster on the ground that it purports to provide a reasonable interpretation of "calendar days." As I've

[3] It's telling that the Petitioners discuss Rules 23(d) and 44(g) in tandem—as acting in partnership to "interpret" or "clarify" section 7—even though the former preceded the latter by more than two decades. This is understandable. It is difficult, even for the Petitioners, to justify the exception in Rule 44(g) as some form of interpretation or clarification of "calendar days" in section 7 given that Rule 23(d) had announced twenty plus years earlier that "calendar days" means "consecutive calendar days." Despite their thorough briefs, the Petitioners fail to identify what was ambiguous and in need of interpretation or clarification at the time Rule 44(g) was adopted.

demonstrated, "calendar days" is not an ambiguous term in need of clarification. But even if it were, Rule 44(g)'s "interpretation" of it is anything but reasonable. No dictionary or authority in the land has ever defined "calendar days" in accord with Rule 44(g). Our General Assembly, which has used "calendar days" in more than one hundred and forty statutes, has never used the term to mean anything that even remotely resembles Rule 44(g). I disagree that it is reasonable to interpret "calendar days" to mean consecutive calendar days unless the governor has declared a state of emergency, in which case it means separate working calendar days, but only until the emergency is over.

¶89 And I'm not at all persuaded by the Petitioners that Rule 44(g)'s interpretation comports with the underlying purpose of the maximum term in section 7. The primary purpose behind setting a maximum term for regular sessions was the desire by lawmakers and voters to maintain the part-time "citizen legislature" that has existed since our statehood. Having lengthier legislative sessions favors full-time legislators over part-time citizens willing to take time from their private lives to serve the public good and threatens the diversity we value so much in our General Assembly. *See* Legis. Council, Colo. Gen. Assembly, Research Pub. No. 326, *An Analysis of 1988 Ballot Proposals* 5 (1988). Rule 44(g) can never shorten the one-hundred-and-twenty-calendar-day maximum in section 7. It can only make it lengthier. In fact, as I mentioned earlier, it can make

it as long as twelve months or longer. How is that consistent with the chief purpose behind the maximum term established by section 7?

¶90 I understand that the Petitioners would likely respond that the exception Rule 44(g) gave birth to applies only if the governor has declared a state of emergency. But if the legislature can amend section 7 to create the exception contained in Rule 44(g), there is nothing that prevents it from adopting a broader exception to the maximum term (or doing away with the maximum term altogether). In my view, the risk of falling prey to a slippery slope is realistic and jeopardizes the principal purpose behind the maximum term in section 7.

¶91 Like the Respondents, I fear that Rule 44(g) opens a Pandora's Box. While no doubt well intentioned, the rule sets an ill-advised precedent that's subject to abuse by a future legislature.

¶92 To be sure, these are unprecedented times. But that cannot serve as an excuse to usurp Coloradans' exclusive right to amend their constitution. On the contrary, these challenging times only heighten the need for our leaders to show discipline by adhering to the constitution. The Judicial Branch hasn't been spared from the tsunami of challenges brought about by COVID-19 either. It has been wrestling with myriad issues that have required it to think outside the box and to use technology and other innovative approaches. Nevertheless, even in the face of heavy criticism, we all must react within the bounds of the constitution.

¶93 The legislature is certainly not without options. By way of example, assuming it cannot meet again during this year's regular session, it can meet in a special session.[4] I realize that this is not a perfect, or even ideal, solution. But it is faithful to our constitution.

II. Conclusion

¶94 The people of Colorado should be extremely concerned about Rule 44(g) and its implications for the future of our wonderful state. I am. Therefore, I respectfully dissent.

I am authorized to state that CHIEF JUSTICE COATS and JUSTICE BOATRIGHT join in this dissent.

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[4] The governor may call a special session by issuing a proclamation. Colo. Const. art. IV, § 9. Similarly, the legislature may call itself into a special session if there is a written request approved by two thirds of the members of each house. Colo. Const. art. V, § 7. While a special session is limited in scope to the specific subjects identified in the proclamation or request, there is no restriction on how many specific subjects the proclamation or request may include. Colo. Const. art. IV, § 9; Colo. Const. art. V, § 7.