COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, Colorado 80203	
Appeal from Denver District Court: Hon. David H. Goldberg Case Number: 2019CV30973	
Plaintiffs-Appellees: JOHN B. COOKE, Senator; ROBERT S. GARDNER, Senator; CHRIS HOLBERT, Senate Minority Leader, **v.** **Defendants-Appellants:** CINDI MARKWELL, Secretary of the Senate; LEROY M. GARCIA, JR., President of the Senate.	▲ **COURT USE ONLY** ▲
Attorney for Plaintiffs-Appellees: John S. Zakhem, #30089 JACKSON KELLY, PLLC 1099 Eighteenth Street, Suite 2150 Denver, Colorado 80202 Phone: 303.390.0351 Email: jszakhem@jacksonkelly.com	Case No.: 19CA1130
Answer Brief	

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).

It contains **9,404** words (answer brief does not exceed 9,500 words).

The brief complies with the standard of review requirements set forth in Colorado Appellate Rules 28(a)(7)(A) and 28(b).

In response to each issue raised, Appellees provide under a separate heading before the discussion of the issue, a statement indicating whether Appellees agree with Appellants' statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

s/John S. Zakhem
John S. Zakhem

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (cont.)

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont.)

TABLE OF AUTHORITIES (cont.)

TABLE OF AUTHORITIES (cont.)

Constitutional Provisions

TABLE OF AUTHORITIES (cont.)

Statutes

Other Authorities

TABLE OF AUTHORITIES (cont.)

RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Article V, section 22 of the Colorado Constitution mandates that every bill be "read at length" in each chamber of the General Assembly unless the members present unanimously consent to dispense with the requirement. For HB 19-1172, Senator John Cooke withheld his consent and asked Defendants to read the bill at length. Defendants responded by programming multiple computers to "read" different portions of HB 1172 at a pace incomprehensible to the human mind. Did the district court err in rejecting Defendants' argument that their compliance with this constitutional mandate is a political question unreviewable by the courts?

2. District courts have broad discretion to fashion necessary and appropriate injunctive relief. Guided by the *Rathke* factors, the district court exercised its discretion and to craft an injunction that enjoins the Senate Secretary from evading the legitimate operation of article V, section 22 of the Colorado Constitution by using multiple computers to speed-read bills at an unintelligible pace. Did the district court err in enjoining the Senate Secretary from violating article V, section 22?

3. A declaratory judgment is intended to settle and decide disputes regarding rights, status, and other legal relationships. Based on the stipulated facts and evidence presented at its March 19 hearing

and upon controlling Colorado Supreme Court case law, the district court issued a declaration that using multiple computers to speed-read HB 1172 at an unintelligible rate violated article V, section 22 of the Colorado Constitution, and that the Senate Secretary must comply with section 22 by reading bills in an intelligible manner and at an understandable speed. Did the district court err in granting declaratory relief, and, alternatively, is its declaratory judgment moot given the passage of HB 1172 before the judgment's entry?

STATEMENT OF THE CASE

I. Article V, Section 22 of the Colorado Constitution and Its History.

This case centers on a provision that has been part of the Colorado Constitution since statehood. In part, that provision today reads:

> Every bill shall be read by title when introduced, and at length on two different days in each house; provided, however, any reading at length may be dispensed with upon unanimous consent of the members present.

Colo. Const. art. V, § 22. These two clauses—the Reading Clause and the Consent Clause—impose a *constitutional* limitation on the powers conferred to the General Assembly. For its part, the Reading Clause requires: (i) that every bill shall be read *by title* when *introduced*; and (ii) that every bill shall be read *at length* on *two different days* in each house. The General Assembly must strictly adhere to the Reading

Clause's requirements, *Watrous v. Golden Chamber of Commerce*, 218 P.2d 498, 507 (Colo. 1950),[1] except when the Consent Clause applies. The Consent Clause dispenses with the Reading Clause's obligations upon *unanimous* consent of the legislators present. Thus, any one legislator, no matter his or her affiliation, purpose, or standing, may invoke the rights protected by the Reading Clause.

Colorado's Reading Clause has existed in some form since statehood. Colorado's original constitution required that "[e]very bill shall be read at length, on three different days in each House." Colo. Const. art. V, § 22 (1876). Indeed, the framers described the Reading Clause as a constitutional safeguard imposed to protect the body politic:

> **To afford protection from hasty legislation**, it is required that all bills shall be printed; that only one subject shall be embraced in each bill, which shall be clearly expressed in its title; **that it shall be read on three different days in each house before being passed**, and that no bill shall be introduced, except for the general expenses of the government, after the first twenty-five days of the session.

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[1] *See also People ex rel. Manville v. Leddy*, 123 P. 824, 830 (Colo. 1912) ("The sovereign people, in whom is vested all governmental power, have spoken in their organic law, and their mandate, so expressed, must be enforced by the courts, even though wise and beneficent attempted legislation is thereby defeated.").

Address to the People, *Proceedings of the Constitutional Convention*, 1875–1876, at 725 (1907) (emphasis added). The Colorado Supreme Court heeded the framers' intent in its earliest decisions vindicating the Reading Clause. For instance, *In re House Bill No. 250*, holds the animating purpose of the Reading Clause is to prevent "hasty and ill-considered legislation," while minimizing "fraud and trickery and deceit and subterfuge in the enactment of bills." 57 P. 49, 50 (Colo. 1899).

The framers' inclusion of the Reading Clause in the Colorado Constitution was neither new nor novel. Since long before our nation's founding, the idea that legislative bodies should act deliberately and without haste, on adequate information, and in an orderly fashion, has been the parliamentary norm.[2] Historical accounts of this philosophy's impact on colonial-era and state constitutions confirm that reading

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[2] *See, e.g.*, Thomas More, *Utopia*, in Cambridge Texts in the History of Political Thought 50-51 (George M. Logan ed., Robert M. Adams trans., Cambridge Univ. Press 3d 2016) (1516) (stating no decision on a public matter shall be made "unless it has been discussed in the senate on three separate days" and "[t]he senate . . . has a standing rule never to debate a matter on the same day it is first introduced"). More wrote *Utopia* in the early sixteenth century. *See also* James Wilson, The Works of James Wilson 427-32 (Robert G. McCloskey ed., Belknap Univ. Press 1967) (1804) (tracing the history of the reading requirement from ancient Greece through the founding era of the United States).

clauses promote "(1) deliberate action, (2) adequate information, and (3) orderly discussion." Robert Luce, Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes 204 (1922). The accounts also confirm the ubiquity of such clauses among the States. *Id.* at 208 ("[t]hirty of the States now have constitutional provisions requiring three readings on separate days"); *see also* 1 Sutherland Statutory Construction § 10:3, nn.1-3 (7th ed. 2017).

Of course, the People of Colorado retain the power to vary the edicts of the Reading Clause. They have twice exercised their power to amend article V, section 22. The Reading Clause was first amended in 1883, to clarify that the first reading of a bill, upon introduction, shall be by title only. Colo. Const. art. V, § 22 (1883) ("Every bill shall be read by title when introduced, and at length on two different days in each house . . . ."). More recently in 1950, the Consent Clause was added, Colo. Const. art. V, § 22 (1950), to form section 22's current structure.

Study of the text and history of section 22 reveals several important truths. First, the Reading Clause is not a procedural sword meant to inhibit the legislative process; rather, it has always been a constitutional shield retained by the people to ensure their elected representatives in the General Assembly carefully and deliberately exercise their delegated power to make law. Second, the Consent Clause

permits the people's representatives to determine—but only unanimously—that the protections afforded the legislative process by the Reading Clause are not needed for a specific piece of legislation. As such, the Consent Clause necessarily vests each legislator with the constitutionally guaranteed right to invoke the requirements of the Reading Clause. Third, the Reading Clause has a rich history informed by parliamentary norms that pre-date Colorado's statehood. And fourth, the People of Colorado appreciate the Reading and Consent Clauses' check on legislative power and understand how to amend the constitution if they believe this check should be altered.

It is against this textual and historical backdrop that the Senators' made their claims against Defendants.

II. Factual Background.

House Bill 19-1172 (HB 1172) was considered by the Colorado General Assembly in the 2019 legislative session. (CF, p 117-19.) Although HB 1172 was largely a recodification of Title 12 of the Colorado Revised Statutes (dealing with the licensing and regulation of professions and occupations), it included substantive provisions.[3]

[3] For example, HB 1172 proposed a new set of definitions applicable to all of the new Title 12 at C.R.S. § 12-20-102.

After the House of Representatives passed HB 1172, it was introduced in the Senate on February 27, 2019. (*Id.* at 117 (Factual Stipulation (FS) No. 17.)) Senators Gardner and Cooke were prime sponsors of HB 1172 in the Senate. (*Id.* at 118 (FS Nos. 20, 28).) HB 1172 was considered and approved unanimously by the Senate Judiciary Committee on March 4, 2019. (*Id.* at 117-18 (FS Nos. 17-18).) This resulted in its referral for consideration by the full Senate. (*Id.* at 118 (FS No. 18).)

On March 11, HB 1172 came before the Senate for second reading. (*Id.* at 4-5, 85, 119 (FS No. 32).) Senator Cooke invoked his right under the Consent Clause to withhold his consent and thereby require that the full bill be read at length. (*Id.* at 119 (FS No. 33).) As a result, beginning at approximately 10:30 a.m., a single Senate staffer read the bill from its beginning at a quick, but intelligible pace. (*Id.* at 145 (FS No. 38).) At approximately 1:05 p.m., the reading paused while Senate Secretary Cindi Markwell set up six laptop computers to read HB1172 using automated software. (Tr. (Mar. 19, 2019), pp 16:9-17:8, 19:5-14; CF, p 119 (FS Nos. 34, 35, 42).) The computers' reading rate was set to maximum speed: approximately 650 words per minute. (*Id.* at 119 (FS Nos. 36-37).) Each of the six computers was programmed to read simultaneously a different portion of HB 1172. (*Id.*) The reading

resumed at approximately 1:15 p.m. (Tr. (Mar. 19, 2019), p 19:5-14; CF, p 199 (FS No. 37).) The sound produced by the computers simultaneously reading multiple portions of the bill was unintelligible.[4] (*Id.* at 17:23-19:4.)

Senators Cooke and Gardner, through the Senate Minority Chief of Staff, requested that Markwell slow the pace of the computers' reading to an intelligible pace. (CF, p 120 (FS No. 46).) Markwell rejected this request and suggested that Senator Holbert contact Senate President Leroy Garcia personally. (*Id.* (FS No. 47).) Senator Holbert did as Markwell suggested and personally requested that Senate President Garcia permit Markwell to slow the pace of the reading so as to render it intelligible. (*Id.* (FS Nos. 45, 48).) Senate President Garcia rejected Senator Holbert's request. (*Id.* (FS No. 48).) On Markwell and Senate President Garcia's orders, the computers continued to read over one another at a pace far faster than human beings are capable of understanding for over four hours, concluding at approximately 5:20 p.m. (*Id.* (FS Nos. 42-43).) Thereafter, HB 1172 was laid over on second reading without a vote. This action was filed the next day. (*Id.* at 1-12.)

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[4] A representative sample of the sound produced by the multiple computers is available directly at: https://bit.ly/2EFSqp1. (*See* CF, p 120 (FS No. 48) (same).)

III. Procedural Background.

In order to vindicate their rights and the rights of the public guaranteed by the Reading and Consent Clauses of article V, section 22, Senators Cooke, Gardner, and Holbert (collectively, the Senators) filed a Verified Complaint and Motion for Temporary Restraining Order on March 12, 2019. (CF, pp 1-12.) After holding an *ex parte* hearing, Judge David Goldberg, Denver District Court, entered a temporary restraining order restraining both Senate President Garcia and Markwell (collectively, Defendants) from failing to read legislation in an intelligible fashion absent the unanimous consent of all Senators present as required under the Consent Clause. (*Id.* at 16-17, 135.) The district court also set a hearing to consider a preliminary injunction for March 19, 2019. (*Id.* at 17.)

Defendants filed a written opposition to the temporary restraining order and preliminary injunction. (*Id.* at 56-72.) In advance of the preliminary injunction hearing, the parties agreed on a set of factual stipulations, which were presented to the district court. (*Id.* at 115-21.)

At the hearing, the district court heard testimony from Senator Gardner, which included the playing of a representative portion of the recording of the sound created by the computers simultaneously reading different portions of HB 1172 over each other at 650 words per minute.

(*See generally* Tr. (Mar. 19, 2019).) The district court afforded Senate President Garcia and Markwell the opportunity to present evidence. With the exception of playing a portion of a recording of an incident in 2017, when a bill was read at length in the House of Representatives by approximately ten staffers reading different portions of the bill over one another, they presented no evidence. (*Id.* at 31:10-33:19.)

After taking the matter under advisement, the district court issued a preliminary injunction later the same day. (*Id.* at 81:17-21; CF, pp 105-12.) Specifically, it enjoined only Markwell, requiring that she, "upon a proper objection, must comply with Const. art. V, §20 and §22 b and employ a methodology that is designed to read legislation in an intelligible and comprehensive manner, and at an understandable speed." (*Id.* at 112.)

Markwell complied with this injunction and the legislative session was successfully completed on May 3, 2019. *See* J. of the Sen. of the State of Colo. at 1384, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019), *available at* https://bit.ly/2t7fj26 (last visited Dec. 27, 2019). Among the Senate's accomplishments during Markwell's compliance with the injunction was the passage of HB 1172. *See* H.R. 1172, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019).

On the joint petition of the parties (CF, pp 126-28), the district court entered final judgment in favor of the Senators on May 8, 2019 (*id.* at 131). The district court entered both a permanent injunction against Markwell and a declaratory judgment finding Defendants' actions on March 11, 2019, violated article V, section 22, and requiring Markwell to comply with section 22, going forward. (*Id.* at 126-28, 131.)

SUMMARY OF THE ARGUMENT

On March 11, 2019, Senator John Cooke requested—as was his right under the Consent Clause—that HB 1172 be read at length when it was introduced in the Senate for second reading. Rather than honor his request and the Colorado Constitution upon which that request depended, Defendants used their control of the Senate to make a mockery of both the Reading Clause and Senator Cooke's request; and, in so doing, the sovereign command of the People of Colorado that every bill be read at least twice absent the unanimous consent of every legislator. The District Court for the Second Judicial District refused to permit this abject derision of the Colorado Constitution and enjoined Defendants from repeating it.

Defendants now ask this Court to sanction what the district court—and any fair reading of the Colorado Constitution—will not: the "reading" of a bill by multiple computers speaking over one another at a

rate no human can understand. They argue that the very constitution they abused compels this Court to countenance their cravenness because the interpretation of the Reading and Consent Clauses is beyond the ken and competence of the judiciary. They are wrong.

In Colorado, it is the duty of the judiciary to say what the constitution requires, and, when necessary, to remedy violations of those requirements. The district court fulfilled this duty when it enjoined Markwell and declared Defendants' conduct unconstitutional. This Court should do the same.

ARGUMENT

I. Colorado Supreme Court Precedent Requires Rejection of Defendants' Political-Question Challenge.

A. Standard of review and preservation.

The Senators agree that issues of constitutional interpretation are questions of law reviewed *de novo*. *Gessler v. Colo. Common Cause*, 327 P.3d 232, 235 (Colo. 2014). The Senators disagree, however, with Defendants' suggestion that their political-question challenge necessarily presents a question of the Court's *jurisdiction* over the subject matter. Unlike other doctrines of justiciability (standing), the political question doctrine does not implicate subject-matter jurisdiction. *See Baker v. Carr*, 369 U.S. 186, 198 (1962).

The Senators agree that Defendants preserved their political-question challenge.

B. It is the job of the judiciary to interpret the law.

The judicial branch is empowered to construe the constitution's meaning, Colo. Const. art. VI, § 1, and "is the final arbiter of what the laws and the constitutions provide," *Bd. of Cty. Comm'rs v. Vail Assocs., Inc.*, 19 P.3d 1263, 1272 (Colo. 2001). *See also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). This is so to safeguard the basic rights secured by the constitution: "It cannot be forgotten that ours is a government of laws and not of men, and that the judicial department has imposed upon it the solemn duty to interpret the laws in the last resort. However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it." *In re Legislative Reapportionment*, 374 P.2d 66, 68 (Colo. 1962) (quoting *Asbury Park Press, Inc. v. Woolley*, 161 A.2d 705, 710 (N.J. 1960)).

Defendants call upon a rarely applied doctrine by which the judiciary avoids deciding certain questions committed to the political branches of government. *See Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 205 (Colo. 1991). Best articulated by the U.S. Supreme Court in *Baker*, the political-question doctrine is premised on the idea that, in rare circumstances, some political "issues are best left for resolution by

the other branches of government, or 'to be fought out on the hustings and determined by the people at the polls.'" *Id.* at 205 (quoting *People ex rel. Tate v. Prevost*, 134 P. 129, 133 (Colo. 1913)). The Colorado Supreme Court has counseled against mechanical application of the federal political-question doctrine, warning that "a ruling that . . . claims are nonjusticiable would give the legislative branch unchecked power, potentially allowing it to ignore its constitutional responsibility." *Lobato v. State*, 218 P.3d 358, 369, 372 (Colo. 2009).

C. Colorado case law does not support Defendants' political-question, avoidance arguments.

Defendants' political-question challenge is unprecedented; they attempt to inoculate themselves from constitutional scrutiny by maintaining that no court has the authority to consider whether their actions violated the Reading Clause. But Colorado courts have never sanctioned Defendants' apparent view that the General Assembly is beyond constitutional accountability. *Cf. Lobato*, 218 P.3d at 368 ("This court has never invoked [the *Baker*] test to preclude judicial review of a statute's constitutionality."). In fact, the Colorado Supreme Court has rejected near-identical justiciability arguments.

Indeed, the supreme court's decision in *Bledsoe* all but decides the justiciability issue here. *Bledsoe* is often cited as the genesis of the

Baker regime in Colorado (*see* Opening Br. 9), but the case does more than Defendants admit. The first question answered in *Bledsoe* was whether alleged violations of the so-called GAVEL amendment to article V, found at section 22a, presented nonjusticiable political questions. *Bledsoe*, 810 P.2d at 205. Like the Reading Clause, ensuring sufficient deliberation by the General Assembly, section 22a "prohibit[ed] members of the General Assembly from committing themselves, or requiring other members to commit themselves, 'through a vote in a party caucus or any other similar procedure[] to vote in favor of or against any bill . . . or other measure or issue pending or proposed to be introduced in the general assembly.'" *Id.* at 203.

The supreme court started with the text of the constitution to answer whether legislators' noncompliance with section 22a was a nonjusticiable political question. The court defined its duty as one "to determine the[] scope and the extent to which [the constitutional provision] may be effectuated in accordance with the intentions of the framers of our constitution and the people of the State of Colorado." *Id.* at 205-06. While the court recited the *Baker* factors, it disposed of the political-question issue in a single paragraph:

> Our interpreting these [constitutional] provisions in no way infringes on the powers and duties of the coequal departments of our government; moreover, we do not find

> present any of the political-question characteristics identified by the United States Supreme Court. On the contrary, the issue before us "is one traditionally within the role of the judiciary to resolve," for "it is peculiarly the province of the judiciary to interpret the constitution and say what the law is." We have decided numerous other cases that have raised issues of whether legislative actions violated statutory or constitutional provisions, and we have not held that the nature of such questions automatically renders them nonjusticiable political questions. We decline to find that the constitutional issues presented in this case constitute nonjusticiable political questions.

Id. at 206 (citations omitted).

This conclusion is further confirmed by the supreme court's decision in *In re Interrogatories of Governor Regarding Certain Bills of Fifty-First Gen. Assembly*, 578 P.2d 200 (Colo. 1978). There, the court specifically addressed article V, section 22's requirement that a vote for final passage of a bill be taken by ayes and noes, and observed, "The constitutional section does not specify in exactly what manner the ayes and noes are to be taken whether by roll call requiring a verbal response, by standing, by a hand signal, by a tally on an electric scoreboard, or by any other specific method." *Id.* at 207. Despite this, the court did not use the perceived ambiguity to avoid its duty to say what the law is. Rather, it explained "when the constitutional requirement can be complied with in a number of ways, *[the court's] task is to determine whether the method actually chosen is in*

conformity." *Id.* (emphasis added). More precisely, "[t]he critical inquiry" is whether the General Assembly's chosen process violated section 22. The court must "hold the General Assembly to compliance with specific constitutional provisions regulating its procedure." *Id.*

Other Colorado decisions are in accord.[5] Simply, Defendants fail to identify any Colorado case to the contrary. For that reason, it is Defendants who are asking the Court to plow new ground with the political-question doctrine and *Baker*—not the Senators.

In truth, the supreme court has decided this issue (correctly) multiple times over the last 120 years. The Reading Clause imposes on the General Assembly a constitutional obligation: "Every bill shall be read . . . at length on two different days in each house." Colo. Const. art. V, § 22. That obligation is insisted upon by the people, and it is precisely the judiciary's job to pass judgment on whether the General Assembly has complied with this limitation on legislative power.

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[5] *See, e.g.*, *Colorado Gen. Assemb. v. Lamm*, 704 P.2d 1371, 1378-79 (Colo. 1985); *In re Legislative Apportionment*, 374 P.2d 66, 68-69 (Colo. 1962); *Rio Grande Sampling Co. v. Catlin*, 94 P. 323, 325 (Colo. 1907); *In re Speakership of the H.R.*, 25 P. 707, 708 (Colo. 1903); *In re House Bill No. 250*, 57 P. 49, 51 (Colo. 1899); *Grossman v. Dean*, 80 P.3d 952, 961 (Colo. App. 2003).

While Defendants may desire to shortchange their constitutional responsibility in the name of convenience (*see* Opening Br. 36-37), convenience has never been the guiding principle of American democracy. "With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution." *INS v. Chadha*, 462 U.S. 919, 959 (1983). And, in Colorado, it is incumbent upon the courts to ensure those carefully crafted restraints are not eliminated from the constitution, even if by the practice of another branch of the government. This is the essence of a necessary check in the balance of power among coordinate branches of government. Thus, the district court correctly refused to entertain Defendants' strategy to avoid interpreting and applying the Reading Clause.

D. Defendants' out-of-state cases are inapposite and should be disregarded.

The dearth of Colorado case law supporting Defendants' unprecedented position leaves them to tout out-of-state decisions. First, the Mississippi Supreme Court's politically charged decision in *Gunn v. Hughes* is an aberration, wrongly decided, and should not be a model for Colorado. 201 So. 3d 969 (Miss. 2017). There, a Republican-led majority

dispensed with Mississippi's constitutional requirement that "every bill shall be read in full immediately before the vote on its final passage upon the demand of any member." Miss. Const. art. 4, § 59. Similar to here, the defendant had "bills read by an electronic device (set on the highest speed adjustment, #10) such that the [the bill] is being read artificially and so quickly that no human ear nor mind can comprehend the words of the bills." *Gunn*, 201 So. 3d at 971.[6]

In a decision that spans just six pages, the court refused to enjoin these speed-reading efforts,[7] holding "this Court lacks constitutional authority to interfere in the procedural workings of the Legislature, even when those procedures are constitutionally mandated." *Id.* This statement is as striking as it is incorrect. But even more concerning is that the Mississippi Supreme Court had to overturn its own prior

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[6] *See also* Amicus Curiae Br. of the Miss. House Democratic Caucus at 6-7, *Gunn v. Hughes*, Case No. 2016-IA-00442-SCT (Miss. June 2, 2016) ("[T]he text of the bills are not 'read,' but instead broadcast at an extremely high speed. Indeed, no one can know what the machine is actually broadcasting because it is unintelligible and cannot be understood by a reasonable person.").

[7] The plaintiff in *Gunn* did not seek declaratory relief, only an "injunction against the Respondent, mandating each request bill be read at a speed and audible level of normal comprehension by each Representative within the House chamber." Pet. for TRO & Request for Prelim. Inj., Alternatively, for Issuance of a Writ of Mandamus, *Hughes v. Gunn*, Case No. 25CI116CV00198 (Miss. Cir. Ct. Mar. 23, 2016).

precedent in another—relatively recent—reading-clause case to reach its result, *see Gunn*, 201 So. 3d at 974 (overruling *Tuck v. Blackmon*, 798 So. 2d 402 (Miss. 2001)), drawing a bright line that courts are without authority to vindicate Mississippi's constitutionally mandated lawmaking process, *id.* at 972. *Gunn* is wrong and stands alone. But more importantly, *Gunn* is at odds with Colorado law and should be disregarded. *See, e.g., Bledsoe*, 810 P.2d at 206 ("We have decided numerous other cases that have raised issues of whether legislative action violated statutory or constitutional provisions . . . .").

Second, *Nixon v. United States*, 506 U.S. 224 (1993), is even more doubtful. *Nixon* concerned a U.S. Senate procedural *rule* dictating how the Senate was to take evidence in an impeachment trial. *Id.* at 227-28. But whether review of a Senate rule presents a political question isn't the issue here; rather, it is whether the Senate complied with a *constitutional* obligation that bills be read at length when a legislator requests it. To the extent Defendants seek refuge in Colorado Senate Rule 11(a) under *Nixon*, they are mistaken, because Rule 11(a) does not address the Reading Clause. Instead, the rule addresses the Consent Clause's consent requirement by flipping the presumption of consent.[8] Accordingly, *Nixon* and Rule 11(a) are of no help.

[8] *Compare* Colo. Const. art. V, § 22 ("provided, however, *any*

More generally, the Court should view cases like *Nixon* with skepticism. Federal and state political-question analyses differ because "the negative rights guaranteed under the Federal Constitution differ from certain affirmative guarantees of state constitutions" and state courts "engage . . . in substantive areas that have historically been outside the Article III domain." *Lobato*, 218 P.3d at 370-71 (quoting Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1888-89 (2001)).

* * *

In sum, the district court was correct to reject Defendants' argument that their noncompliance with the constitution's Reading Clause is unreviewable by the judiciary.

II. The District Court Correctly Interpreted the Colorado Constitution's Reading Clause in Article V, Section 22.

The district court's interpretation of the Reading Clause was essential to the injunctive and declaratory relief awarded, and similarly

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reading at length may be dispensed with upon unanimous consent of the members present" (emphasis added)), *with* Colo. Sen. Rule 11(a) ("*Unless a member shall request the reading of a bill in full* when the bill is being considered by the committee of the whole or on third and final reading, it shall be read by title only, and *the unanimous consent of the members present to dispense with the reading of the bill in full shall be presumed*." (emphasis added)), *available at* https://bit.ly/2SfiNKt (last visited Dec. 27, 2019).

relevant to the political-question analysis. The Senators address the Reading Clause's constitutional requisite here in one place for completeness and for the Court's convenience.

A. Standard of review and preservation.

The Senators agree that issues of constitutional interpretation are questions of law reviewed *de novo*. *Gessler v. Colo. Common Cause*, 327 P.3d 232, 235 (Colo. 2014). The Senators also agree that Defendants preserved their challenge to the Court's review of the Reading Clause.

B. The Reading Clause imposes a constitutional mandate that the General Assembly read bills in an intelligible and understandable manner.

The district court did not err in interpreting the Reading Clause's dictate "to read at length" requires something more than "using multiple computers [between four and six] to read different portions of the bill at one time, at a speed the mind cannot comprehend." (CF, p 110.) The court "was unable to discern a single word" of the reading, and to read in such a way would render the Reading Clause a nullity. (*Id.* at 109.) Keeping with the framers' intent for including the Reading Clause in the constitution, the court found that, in the least, the Reading Clause requires bills be to read "in an intelligible and comprehensive manner, and at an understandable speed." (*Id.* at 112.)

Defendants only make passing arguments at the correctness of the district court's constitutional interpretation, with the force of their position being that the Reading Clause lacks any discernable constitutional mandate. (Opening Br. 26, 28, 33.) And, even if there is some textual constitutional minimum, Defendants argue the district court's interpretation of what is required is vague and unmanageable. (*Id.* at 15-18.) Defendants are wrong on both accounts.

1. The Reading Clause's mandate on the General Assembly is supported by its text, history, and purpose.

Courts are the "the final arbiter of what the laws and the constitutions provide." *Vail Assocs.*, 19 P.3d at 1272. "In construing a constitutional provision, [the court's] obligation is to give effect to the intent of the electorate that adopted it." *Harwood v. Sen. Majority Fund, LLC*, 141 P.3d 962, 964 (Colo. App. 2006). The court does so by starting with the plain language of the provision, *Lambert v. Ritter Inaugural Comm., Inc.*, 218 P.3d 1115, 1121 (Colo. App. 2009), and affording the language its ordinary and common meaning, *Vail Assocs.*, 19 P.3d at 1272. Likewise, the court "must construe a constitutional provision consistent with its purpose, 'to avoid the shoals of vagueness.'" *Indep. Inst. v. Coffman*, 209 P.3d 1130, 1137 (Colo. App. 2008) (quoting *Buckley v. Valeo*, 424 U.S. 1, 77-78 (1976)). The Court must "construe

the constitution in such a manner as will prevent an evasion of its legitimate operation." *Bledsoe*, 810 P.2d at 207 (citing *Inst. for the Educ. of the Mute & Blind v. Henderson*, 31 P. 714, 716 (Colo. 1892)).

Starting with the text of the Reading Clause, it provides: "Every bill shall be read by title when introduced, and at length on two different days in each house . . . ." Colo. Const. art. V, § 22. First, the introductory phrase "[e]very bill shall be read" has been in the constitution since statehood. *See* Colo. Const. art. V, § 22 (1876) ("Every bill shall be read at length, on three different days in each House."). The plain language of "every bill shall" leaves no doubt that *every* bill is subject to the Reading Clause's mandate. *See People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (noting "the word 'shall'" has "'mandatory connotation' and hence is the antithesis of discretion or choice").

And this reading makes sense in light of the provision's overriding purpose. After delegating powers to the General Assembly in article V, Colorado's framers retained for the people certain constitutional safeguards on that power, including in the Reading Clause. "To afford protection from hasty legislation, it is required that all bills . . . shall be read on three different days in each house before being passed." Address to the People, *Proceedings of the Constitutional Convention*, 1875–1876, at 725 (1907); *see also In re House Bill No. 250*, 57 P. 49, 50 (Colo. 1899)

("The object of this requirement . . . is to prevent, so far as possible, fraud and trickery and deceit and subterfuge in the enactment of bills, and to prevent hasty and ill-considered legislation."). That is, the people instructed the General Assembly to be methodical and to act without haste in enacting positive law that will bind the people.

Second, the famers' intent and purpose of the Reading Clause also informs what it means for the General Assembly to "read" a bill. As previously explained, the purpose of the Reading Clause is multi-faceted. As the district court found, it functions as a safeguard to ensure other legislators and the people have proper notice of pending legislation. (CF, p 111.) And reading bills in an unintelligible manner would negate the notice to legislators and the people. (*Id.*) But, as the history of the Reading Clause makes clear, its animating purpose was to prevent hasty and ill-considered legislation. In that way, requiring the General Assembly "to read" the bills makes perfect sense. It ensures the body will act with complete information and with deliberation, which are hallmarks of the legislative process in Western society.

That a reading requires something more than speed-reading bills with multiple computers "speaking" over one-another such that no person can understand is also consistent with the plain meaning of the word "read" at the time of statehood. *See New Prime Inc. v. Oliveira*,

139 S. Ct. 532, 539 (2019) (stating when interpreting text words should be given their common ordinary meaning at the time of adoption). Indeed, the common meaning of "to read" in 1876 when the Clause was adopted was to advise, explain, and understand. Webster's 1890 dictionary offered this definition: "1. to advise; to counsel"; "2. To interpret; to explain"; "3. To tell; to declare; to recite"; "4. To go over, as characters or words, and utter aloud, or to recite to one's self inaudibly; to take in the sense of, as of language, by interpreting the characters with which it is expressed; to peruse"; "5. Hence to know fully; to comprehend"; "6. To discover or understand by characters, marks, features, etc.; to learn by observation"; "7. To make a special study of." Webster's International Dictionary 1194 (1890).[9] Based on this understanding of the text, history, and purpose, no reasonable person would believe that Defendants' purported "reading" of HB 1172 complied with the Reading Clause's mandate "to read" bills.

Third, the Reading Clause textually distinguishes between a reading "by title" and a reading "at length." Upon introduction, the

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[9] *See also* Chambers's Twentieth Century Dictionary of the English Language 771 (1903) ("to utter aloud written or printed words"; "to peruse"; "to comprehend"; "to study"; "to teach"; "to make out, from signs"; "to solve"; "to interpret"; "to understand"; "to note the indication of"; "impute by inference").

General Assembly is to read the bill by title only, whereas the other two readings must be at length. This distinction is revealing in two ways. One, it evidences an unmistakable distinction by the drafters between simply reading the title of the bill and reading the entirety of the bill. *Compare Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74, 84 (Ky. 2018) (reviewing constitutional provision that "[e]very bill shall be read at length on three different days in each House" as only requiring bill to be read by title). "Every word and every provision is to be given effect [and n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (alternation added) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012)). Two, it evidences an intent that the reading at length requirement must be more informative than reading only the title of the bill. Stated differently, if a reading at length does not mean something more substantive and deliberative than reading by title only—which conveys little to no information—then there would be no reason to distinguish between reading by title and reading at length.

Fourth and finally is the Consent Clause, which permits either house of the General Assembly to dispense of a reading at length upon unanimous consent of the body. *See* Colo. Const. art. V, § 22. This clause

again indicates that a reading at length is meant to be a substantive and meaningful exercise, as opposed to reading at a pace by which no reasonable person could discern a single word. Specifically, if the Consent Clause is to have any meaning, legislative consent to dispense of the reading must mean the reading is a substantive act worth dispensing of in the first place. Otherwise, why would the people bestow upon a single legislator the right to ask that a bill be read—unless the act of asking for the reading actually has worth? Accepting Defendants' understanding of the Reading Clause would all but read the Consent Clause out of the constitution.

At bottom, Defendants are wrong that "there are no constitutional parameters for the standards mandated by" the district court because the Reading Clause "lack[s] textual support." (Opening Br. 26.) Rather, the textual and historical markers discussed above provide ample support for the district court's interpretation of the Reading Clause, and show Defendants' position for the naked contrivance it is.[10]

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[10] That a reading under the Reading Clause shall at least be intelligible and understandable is not a new concept in constitutional law. Lawyers and laypersons are intimately familiar with the requirement that a person be "read his rights" prior to custodial interrogation. *See Miranda v. Arizona*, 384 U.S. 436 (1966); *see also People v. Matheny*, 46 P.3d 453, 462 (Colo. 2002). Surely a system in which an accused is "read" his rights by a machine that recites them in

2. The Senate's compliance with the district court's order proves the constitutional standard is both manageable and discernable.

Defendants make much ado about the purported questions left unanswered by the district court's order regarding what constitutes an intelligible and understandable reading. (Opening Br. 16-17.) Defendants query whether computerized readings are permissible, what the maximum words per minute is for a reading, and the standard for intelligibility (who and where)? (*Id.*) But Defendants' compliance with the court's order suggests that (1) Defendants understand the constitutional standard articulated by the court and (2) the injunction vindicating that standard is not hindering the Senate's business.

The district court issued its temporary restraining order on March 12, 2019. After that date, the General Assembly passed hundreds of bills that span thousands of pages in the State Session Laws. Indeed, the General Assembly passed *more* bills in 2019 than 2018, despite the supposed burdensome reading requirement. *See* Office of Legislative Services, 2019 Digest of Bills at viii, Leg.Colorado.gov (July 2019),

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gobbledygook that the average person could not understand would not be sanctioned. *See People v. Mejia-Mendoza*, 965 P.2d 777, 780 (Colo. 1998) (requiring waiver of *Miranda* to "be knowing and intelligent, meaning that the defendant possesses an awareness of both the nature of the right and the consequences of the decision to waive it").

https://bit.ly/2ZhTgSc. And, a greater percentage of introduced bills passed the General Assembly (77% in 2019 versus 60% in 2018), suggesting the reading requirement—to the extent it was actually invoked—did not unduly stall the legislative process. *Id.* Specific to the reading requirement, the Senate in fact read bills on numerous occasions after the March 19 order, indicating the Senate understood how to measure its future compliance. *See, e.g.*, Colorado Senate 2019 Legislative Day 113 (at 4:29:00 of 4:41:37), Youtube (Apr. 26, 2019), https://bit.ly/363MWAw. In the end, Defendants' unrealized hypotheticals are just that. The Senate knows well how to comply with the Reading Clause—indeed, it had done so for over a century before Defendants' action in this case.

* * *

Based on the foregoing, the district court correctly interpreted the constitution's Reading Clause to require bill readings to be, in the least, intelligible and understandable to a reasonable person. Additionally, the court was correct in finding that setting up multiple computers to read simultaneously different portions of a bill at a rate of 650 words per minute does not pass constitutional muster.

III. The District Court Properly Enjoined the Senate Secretary and Its Declaratory Judgment Was in Keeping with *Bledsoe*.

A. Standard of review and preservation.

The grant or denial of injunctive relief lies within the sound discretion of the district court and will be reversed only upon a showing of an abuse of that discretion. *Scott v. City of Greeley*, 931 P.2d 525, 530 (Colo. App. 1996). Only if the district court's ruling was manifestly unreasonable, arbitrary, or unfair will an appellate court ordinarily substitute its judgment for that of the district court. *Evans v. Romer*, 854 P.2d 1270, 1274 (Colo. 1993) (citing *People v. Milton*, 732 P.2d 1199, 1207 (Colo. 1987)). Here, in granting the injunction, the district court addressed the six requirements for a preliminary injunction set forth in *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982).[11] Of course, the district court's preliminary injunction was converted to a permanent injunction upon the stipulation of the parties. The requirements for a permanent injunction are essentially the same as those for a

[11] Under *Rathke*, the party seeking such relief must demonstrate that: (1) there is a reasonable probability of success on the merits; (2) there is a danger of real, immediate, and irreparable injury that may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of an injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending a trial on the merits. 648 P.2d at 653-54.

preliminary injunction; however, the applicant must show actual success on the merits rather than merely a reasonable probability of success. *Langlois v. Bd. of Cty. Comm'rs of Cty. of El Paso*, 78 P.3d 1154, 1157-58 (Colo. App. 2003) (citing *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n.12 (1987)).

The district court's entry of a declaratory judgment is also reviewed for abuse of discretion. *See Constitution Assocs. v. N.H. Ins. Co.*, 930 P.2d 556, 561 (Colo. 1996). Actions for declaratory judgment are meant to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. C.R.S. § 13-51-102; *Cacioppo v. Eagle Cty. Sch. Dist. Re–50J*, 92 P.3d 453 (Colo. 2004). A court may refuse to render a declaratory judgment only where entering a declaratory judgement would not terminate the uncertainty or controversy giving rise to the proceeding. C.R.S. § 13-51-110.

The Senators agree that Defendants preserved their challenge to the Court's injunction and declaratory judgment.

B. The district court appropriately enjoined Markwell from violating article V, section 22.

Having correctly found that Markwell's actions neither presented a political question nor complied with article V, section 22, *see* Parts I & II, *supra*, the district court properly exercised its discretion to fashion a

remedy when it entered an injunction in accordance with *Rathke*. This injunction protects the Senators' (specifically Senator Cooke's) right under the Consent Clause to insist that legislation be read at length and their interests as prime sponsors of HB 1172 to see that it would not be left exposed to constitutional challenge after adoption. Contrary to Defendants' argument that the injunction is an overbroad intrusion into the operations of the Senate, and consistent with *Rathke*, the injunction appropriately leaves to the Senate the question of the exact method or means of compliance with the district court's command that legislation be read in an intelligible and comprehensive manner and at an understandable speed. (*See* CF, pp 112, 131.)

1. The Senators succeeded on the merits.

By entering a final judgment and permanent injunction, the district court determined that the Senators prevailed on the merits: Defendants' use of multiple computers reading different parts of HB 1172 over each other at a pace no human could understand violated both the Reading Clause and the Consent Clause of article V, section 22. For the reasons briefed in Parts I and II, *supra*, the district court was correct.

2. The injunction avoided real, immediate, and irreparable injury.

Having found a violation of article V, section 22, the district court properly held that a violation of an interest protected by the Colorado Constitution establishes an injury in fact. The district court fittingly cited *Romer v. Colorado General Assembly*, 810 P.2d 215 (Colo. 1991), in which the supreme court held that the governor may sue the General Assembly for infringing on his constitutional veto power by purporting to ignore line-item vetoes made to the 1989 appropriations bill without conducting the constitutionally mandated vote to override those vetoes by 2/3 in both houses of the General Assembly. *Id.* at 220. The supreme court reasoned that the governor "alleged a wrong that constitutes an injury in fact to the governor's legally protected interest in his constitutional power to veto provisions of an appropriations bill." *Id.*

Just so here. The Senators allege a wrong—violation of the Reading Clause—which necessarily constitutes an injury to their legally protected interest in their constitutional power under the Consent Clause to insist that a bill be read at length.

Defendants attempt to obscure the plain nature of the Senators' injury by noting that the district court—accurately—held that the Reading and Consent Clauses protect the rights of all Colorado residents and that there is no record evidence of members of the general

public objecting to Defendants' actions. (Opening Br. 34-35.) This should not throw the court off the trail. The Senators alleged, and the district court found, that Defendants' conduct injured their rights protected under the Colorado Constitution. Therefore, injury was real.

The only remaining question for this Court is whether the injury was immediate and irreparable such that injunctive relief was appropriate. On this point, Defendants apparently do not contest that the actions of Defendants rendered the injury immediate, but they gamely suggest that the Senators—or perhaps another Coloradan—could sue after HB 1172 was passed and signed into law, and that such a suit would permit the Senators redress for their alleged injuries. (Opening Br. 35.) But a post-enactment lawsuit of this nature would have the Senators ask the courts to exchange one injury—the violation of their constitutional right under the Reading and Consent Clauses to have a piece of legislation read at length before its adoption—for another: the invalidation of legislation they sponsored. Because absent an injunction the Senators could not simultaneously protect their interest in the legitimacy of HB 1172 and in vindicating their rights under article V, section 22, the injunction was appropriate.

3. The Senators had no adequate remedy at law.

Defendants again attempt to argue on the basis of *Town of Minturn v. Sensible Housing Co.*, 273 P.3d 1154 (Colo. 2012) and *Polhill v. Buckley*, 923 P.2d 119 (Colo. 1996), that because a post-adoption challenge to legislation adopted in apparent violation of article V, section 22, is available to virtually any Coloradan, the Senators necessarily have an adequate remedy at law such that the injunction is unnecessary and inappropriate. (Opening Br. 36.)

Leaving aside the fact that such an action could not simultaneously vindicate the Senators' rights under the Reading and Consent Clauses and their interests in the constitutional viability of legislation they sponsored, *see* subpart III.B.2, *supra*, Defendants whistle past the crucial difference between the postures of their cited cases and the Senators' case here. Specifically, in both *Town of Minturn* and *Polhill*, the plaintiffs were private citizens seeking an injunction against a legislative body to prevent the adoption of pending legislation. *See Town of Minturn*, 273 P.3d at 1156 (plaintiffs in quiet title action sought injunction against town council to prevent adoption of pending annexation of property on basis of petition by defendant in possession of land); *Polhill*, 923 P.2d at 119, 120 (plaintiffs sought injunction against pending referendum on amendment to Colorado Constitution on basis

that proposed amendment violated single-subject requirement of article XIX, section 2(3)). In both cases, the court rightly held that such relief was unavailable. And these decisions were in keeping with the longstanding rule in Colorado that

> the legislature cannot be thus compelled to **pass an act**, even though the constitution expressly commands it; **nor restrained from passing an act** even though the constitution expressly forbids it.

Bledsoe, 810 P.2d at 208 (emphasis added) (quoting *Lewis v. Denver City Waterworks Co.*, 34 P. 993, 994 (Colo. 1893)).

Here, the Senators did not request and the district court did not grant an injunction restraining the passage of HB 1172 (or any other legislation). Instead, the district court granted a more limited injunction requiring compliance with the Reading and Consent Clauses of article V, section 22. And absent that injunction, Defendants would have been free to run roughshod over the Senators' procedural rights guaranteed by that constitutional provision and later invalidation of legislation—much less invalidation of legislation like HB 1172 *supported* by the Senators—would not have remedied this constitutional injury.

4. The injunction vindicated the public interest.

Defendants hang much crepe over HB 1172's considerable length and the delay in the legislative process that would have necessarily

resulted from an intelligible reading of it.[12] (Opening Br. 36-37.) As already discussed in subpart II.B.2, *supra*, these are crocodile tears. The district court's preliminary injunction mandating compliance with the Reading and Consent Clauses was entered on March 19, 2019, approximately a month and a half before the end of the 2019 legislative session. Given Defendant's argument that the injunction is the sort of interpretation of the constitution that could "cripple the everyday workings of government," one would expect to find that the 2019 session was unproductive. But just the opposite is true: the General Assembly passed more bills and passed a greater proportion of introduced bills than it did the 2018 session. (*See* pp 29-30, *supra*.)

And most bills—indeed, virtually all bills—are not HB 1172. Even including HB 1172 and the semi-annual appropriations bill (colloquially

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[12] Defendants would have this Court believe that a reading of HB 1172 could have taken nearly six business days "[i]f the Senate was in session for normal, eight-hour business days" during the reading. (Opening Br. 36-37.) As Defendants well know, "normal, eight-hour business days" are anything but normal during a session of the General Assembly. And, as the President of the Senate, Garcia has virtually unfettered control over the hours and agenda of the Senate as demonstrated by his refusal to close the Senate during a historic blizzard. *See* Jennifer Kovaleski, *As Colorado Blizzard Shut Down State, Senate Lawmakers Kept Working,* TheDenverChannel.com (Mar. 14, 2019, 7:11 P.M.), https://bit.ly/35RnXQS.

and aptly referred to as the "Long Bill"), the average length of legislation passed in 2019 was under 10 pages, or approximately 0.6% the length of HB 1172.[13] This equates to approximately 3,586 words per bill. Using Defendants' proposed reading rate of 200 words per minute, the average bill would be read in just under 18 minutes.[14] Given this, and given that the history and purpose of the Reading Clause is, as discussed previously, very clearly to slow legislative deliberations and prevent the making of hasty and ill-considered law, the district court was correct when it found that it is in the public interest that the Senate be required to read HB 1172 "in a comprehensible fashion, in full, prior to a vote." (CF, p 105.)

5. The equities favored the injunction.

Defendants effectively make the same argument—that the requirement that the Reading Clause and Consent Clause be adhered to will inhibit the Senate's consideration of legislation—on the issue of the balance of the equities. As discussed in subpart III.B.4, *supra*, this

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[13] As finally adopted by the General Assembly, HB 1172 was 1,565 pages. *See* H.R. 1172, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019), *available at* https://bit.ly/395GHhA (last visited December 23, 2019).

[14] If HB 1172 and the Long Bill are taken out of the average page count it drops to 6.6 pages or just 0.4% of HB 1172. This equates to approximately 2,363 words per bill, which at 200 words per minute would be read in under 12 minutes. (*See* example p 30, *supra*.)

contention is simply mistaken and not in keeping with the provenance and purpose of the Reading and Consent Clauses. The district court properly found that no other affected person or entity would be prejudiced by the requirement that Defendants adhere to the Reading and Consent Clauses.

6. The injunction preserved the status quo.

Though the preservation of the status quo is much less a factor when considering the appropriateness of a permanent, rather than preliminary injunction, *see Langlois*, 78 P.3d at 1157-58, Defendants' contention that the injunction imposes a novelty—judicial supervision of the General Assembly using "vague, subjective standards that will invite more litigation"—is fanciful. As detailed in subpart II.B.2, *supra*, the Senate read bills after the entry of the preliminary injunction in this case and Markwell had no difficulty complying with the terms of the injunction. This appeal is the only follow-on litigation arising out of the district court's decision.

Where a constitutional violation is proven, district courts have long been held to have substantial discretion to fashion an appropriate remedy. *See United States v. Paradise*, 480 U.S. 149, 183-84 (1987) (affirming broad discretion of district court to fashion appropriate remedies for constitutional violations). Here, the district court, in

keeping with this authority and established precedent merely articulated what the Reading and Consent Clauses require and left to Defendants to choose the method of compliance with those minimum standards. *See In re Interrogs. of Gov. Regarding Certain Bills of Fifty-First Gen. Assemb.*, 578 P.2d 200, 207 (Colo. 1978).

The district court's respect for the Senate and care in fashioning its remedy is particularly apparent in that it enjoined only Markwell. This is in keeping with *Bledsoe*'s recognition that Colorado's speech-or-debate clause generally protects legislators from being forced to answer in court for their actions in passing or rejecting legislation. *See* 810 P.2d at 208-09. As recognized by the U.S. Supreme Court, this protection does not apply to legislative employees because "[a] legislator is no more or no less hindered or distracted by litigation against a legislative employee calling into question the employee's affirmative action than he would be by a lawsuit questioning the employee's failure to act." *Powell v. McCormack*, 395 U.S. 486, 505 (1969). The district court's injunction preserved the status quo, and indeed the constitutional balance of powers in Colorado.

C. The district court's declaratory judgment is conclusively sanctioned by *Bledsoe*.

Finally, Defendants hand wave at the declaratory judgment issued by the district court. They argue that the judgment is moot because HB 1172 has become law. And—in a final refrain of the chorus of their Opening Brief—insist that the declaratory judgment did not provide clarity to the parties because the declaratory judgment articulates the requirements of the Reading and Consent Clauses in the same terms as the injunction. The Court need not trouble itself with these arguments. Whatever objection Defendants may make as to the propriety of injunctive relief in this case, *Bledsoe* definitively provides that legislators may seek—and obtain—declaratory relief, even against other legislators, for violations of article V, section 22, months and years after the offending actions took place, and even after the legislation in question has become law. *See Bledsoe*, 810 P.2d at 211-12 (reversing trial court's dismissal of claim for declaratory relief and remanding for further proceedings almost two years after adoption of the legislation in alleged violation of GAVEL amendments to article V, section 22). If the availability of declaratory relief for a violation of the Reading or Consent Clauses is to be restricted, it cannot be restricted by this Court, which is obligated to follow *Bledsoe*.

CONCLUSION

The Senators ask the Court to AFFIRM the district court's decision.

Dated: December 27, 2019 Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 27th day of December 2019, a true and correct copy of the Answer Brief was filed with the Court and served via Colorado Courts E-Filing System upon all counsel of record.

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