COLORADO COURT OF APPEALS 2 East 14th Ave. Denver, CO 80202 DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO Case Number: 2019CV30973 **JOHN B. COOKE, Senator; ROBERT S. GARDNER, Senator, and CHRIS HOLBERT, Senate Minority Leader, Appellees-Plaintiffs,** **v.** **CINDI MARKWELL, Secretary of the Senate, and LEROY M. GARCIA, JR., President of the Senate, Appellants-Defendants.**	▲ COURT USE ONLY ▲
Attorneys for Appellants: Mark G. Grueskin, #14621 Marnie C. Adams, # 39395 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rklawpc.com	**Case No.** 2019CA1130
Appellants' Opening Brief	

CERTIFICATE OF COMPLIANCE

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

The brief complies with C.A.R. 28(g).

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s/ Mark G. Grueskin
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2. Did the District Court err in granting injunctive relief, when Plaintiffs failed to satisfy the well-established requirements for such relief?
3. Did the District Court err in granting declaratory relief to require the "reading" of a bill *after* the bill was signed into law and to create standards for "reading" that are so vague that they will promote rather than resolve controversies about the meaning of this requirement?

STATEMENT OF THE CASE

I. Statement of the facts.

Plaintiffs below, John Cooke, Robert Gardner, and Chris Holbert are State Senators, Cindi Markwell is the Secretary of the Senate, and Leroy Garcia is a State Senator and President of the Senate. Record (hereafter "R."), 116 (Factual Stipulations (hereafter "F.S.") #1-5).

House Bill 19-1172 (hereafter "HB 1172") was a lengthy piece of legislation (2,023 pages and 560,524 words) that was considered by the Colorado General

Assembly in the 2019 legislative session. R., 119 (F.S. #39, #40). It sought to recodify Title 12 of the Colorado Revised Statutes, dealing with the regulation of professions and occupations. The bill was a nonsubstantive recodification, making technical changes to existing law to "conform similar provisions to achieve uniformity, eliminate redundancy, or allow for the consolidation of common provisions or that eliminate provisions that are archaic or obsolete." R., 117, 121 (F.S. #10, 52).

HB 1172 was introduced in the House of Representatives on February 7, unanimously reported out of the House Judiciary Committee on February 14, 2019, and passed by the full House on second reading on February 22 and on third (and final) reading on February 26. R., 117 (F.S. #13-16). The bill was introduced in the State Senate on February 27 and approved by the Senate Judiciary Committee on March 4. R., 117-18 (F.S. #17-18).

Senators Bob Gardner and John Cooke were the Senate prime sponsors of HB 1172. Given that role, both senators had access to, and the opportunity for input on, the text of HB 1172 before its introduction. R., 118 (F.S. #20, 28).

On March 4, the Senate Judiciary Committee considered HB 1172. The bill passed out of committee unanimously with the recommendation that it be placed on

the Senate's "consent calendar."[1] Senators Gardner and Cooke, as members of that committee, voted to favorably recommend HB 1172 to the Senate. R., 118 (F.S. #21-23).

The committee report was read across the Senate desk on March 5, and HB 1172 was scheduled to be placed on the March 7 consent calendar. On March 6, however, the bill was removed from the consent calendar at the request of a member of the Senate. R., 118-19 (F.S. #29-30).

On March 11, when HB 1172 was before the Senate for second reading, Senator Cooke asked that the full bill be read at length, pursuant to Senate Rule 11(a) and article V, §22 of the Colorado Constitution. R., 119 (F.S. #32-33). For approximately three and one-half hours, a single Senate staff person read the bill. R., 145.

Thereafter, Markwell set up multiple laptop computers to read the text of HB 1172. The devices' maximum reading rate was set at approximately 650 words per minute. R., 119 (F.S. #36-37). The computers were programmed to simultaneously read different portions of HB 1172. Initially, six computers were used; later, there

[1] Bills on the Senate's consent calendar may be considered by the full Senate on second reading as long as there is "[n]o substantial debate or substantive floor amendments." Senate Rule 25A(b)(1). The same condition applies to bills on the third reading consent calendar. Senate Rule 25A(d). http://leg.colorado.gov/house-and-senate-rules (last viewed Oct. 23, 2019).

were just four. A representative sample of the sound produced by the multiple computers is found at 3:33:55 of the video which is available directly at: https://www.youtube.com/watch?time_continue=12835&v=QCpq_3jlP30. The computerized reading of HB 1172 took an additional four hours. R., 120 (F.S. #42-43).

Through their staff, Gardner and Cooke asked Markwell to slow the reading of HB 1172. Markwell rejected this request. Later, Holbert asked Garcia to slow the reading of HB 1172. Garcia rejected this request. R., 107.

The reading of HB 1172 ended at about 5:20 p.m. on March 11. HB 1172 was laid over on second reading without a vote. The bill was re-scheduled for March 13, but this action was filed before that date, and no action was taken on the bill until after the District Court issued its preliminary injunction. R., 107-08.

Starting the date it was introduced (February 7, 2019), HB 1172 was accessible to Senators Cooke, Gardner, and Holbert (as well as all other members of the General Assembly) on the legislature's website. By means of that same website, any member of the public could gain access to the text of HB 1172. R., 118 (F.S. #19, #23, #24-27).

In prior years, when a Senator requested a bill be read at length, as many as ten (10) Senate staff members read different portions of the bill simultaneously. One such reading was recorded and preserved. R., 120 (F.S. #44).

II. Nature of proceedings below.

Senators Cooke, Gardner, and Holbert (hereafter "Cooke") filed a verified complaint for declaratory and injunctive relief on March 12, 2019. The District Court granted a temporary restraining order after holding an *ex parte* hearing. R., 16-17; *see* 135. On March 18, Cooke filed a motion for a preliminary injunction, R. 37-55, and Markwell and Garcia (hereafter "Markwell") responded. R. 56-72.

On March 19, the District Court heard testimony of one witness, a recording of the automated reading of HB 1172, and the parties' legal argument; it then issued an order granting a preliminary injunction. R. (Transcript of March 19, 2019 Hearing) (hereafter "Tr."); R., 105-12.

To expedite this appeal, on May 7, the parties jointly petitioned the District Court for a final order in this case. R., 127 (¶E). Their joint motion specifies that, in doing so, neither party waived or conceded any legal argument for appeal. *Id.*, (¶F). Thus, the injunctive and declaratory relief granted by the District Court are both properly at issue in this appeal.

On May 8, the Court entered final judgment in favor of Cooke. R., 131. This appeal followed.

SUMMARY OF ARGUMENT

At issue here is Article V, §22 of the Colorado Constitution which states in relevant part: "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."

The District Court erred in three principle ways. First, the District Court did not evaluate the political question Cooke's complaint posed: should a court involve itself in how a legislative body applies its legislative procedures? The District Court did not conduct the mandatory analysis for political questions established by the U.S. Supreme Court and embraced by the Colorado Supreme Court. Had it done so, it would have found Cooke's claims to be nonjusticiable.

Second, the District Court erred in its analysis of key criteria for injunctive relief: a plaintiff's likelihood of success on the merits; real, immediate, and irreparable injury; and no adequate remedy at law. Moreover, the reach of the injunctive relief granted is excessive, as it was not limited to HB 1172 but applies to all legislative consideration of all bills in the future. Thus, the judicial entanglement in legislative matters, approved due to the Court's errors in applying

Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982), needlessly undermines the balance between coequal branches of state government.

Finally, the declaratory relief in this matter was moot, as it was granted after HB 1172 had passed. Further, the District Court's order did not actually provide clarity to definitively resolve disputes about the legal question posed here. And the indefinite nature of the declaratory relief granted purports to bind future legislatures to the vague standards the Court mandated.

Therefore, the District Court's decision should be reversed.

LEGAL ARGUMENT

I. Standard of review; preservation of issues for appeal.

A. Standard of review.

A lower court ruling, resting on a constitutional interpretation, is subject to *de novo* review by an appellate court. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶7, 327 P.3d 232, 235. *De novo* review of a legal ruling is appropriate whether the district court issued injunctive or declaratory relief. *Evans v. Romer*, 854 P.2d 1270, 1275 (Colo. 1993); *North Sterling Irrigation Dist. v. Simpson*, 202 P.3d 1207, 1210 (Colo. 2009).

"[I]t is axiomatic that questions of subject matter jurisdiction may be raised at any time," *Pueblo West Metropolitan Dist. v. Southeastern Colorado Water*

Conservancy Dist., 717 P.2d 955, 957 (Colo. 1986), even for the first time on appeal. *Kirbens v. Martinez*, 742 P.2d 330, 334 n.8 (Colo. 1987).

B. Preservation of issues for appeal.

Markwell preserved for appeal the questions of whether this litigation presents a political question (R. 58-59), whether an injunction was warranted (R., 68-71), and whether the law could be interpreted to declare the right sought by Cooke. (R., 59-67). Markwell also preserved objections to the court's subject matter jurisdiction by denying that the Court had subject matter jurisdiction in her answer. R., 84 ¶1. The parties expressly preserved their right to challenge any of the District Court's rulings in petitioning the District Court for an expedited final ruling. R., 127 (¶F).

II. The political question posed in this litigation is nonjusticiable, and the District Court improperly asserted control over legislative procedures.

Markwell asserted in District Court that Cooke's claims were political questions, as they addressed the propriety of a legislative process. As such, they were nonjusticiable. The lower court took note of the six factors identified by the courts for evaluating a political question. But then, the District Court neither applied nor assessed any of the factors and erred by deciding that its duty to interpret the Constitution displaced its need to evaluate the existence of a political question.

As the Supreme Court has held, "The judiciary's avoidance of deciding political questions finds its roots in the Colorado Constitution's provisions separating the powers of state government, and recognizes that certain issues are best left for resolution by the other branches of government." *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 205 (Colo. 1991) (citations omitted) (hereafter "*Bledsoe*"). The way in which legislative procedures are implemented by a legislative body is just such a topic. Dissatisfied with a legislative determination about legislative process, Cooke turned to the District Court for resolution of questions that are clearly and exclusively within the province of the legislative branch of government.

Political questions are nonjusticiable where resolution of a dispute reflects:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. at 205 (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962) (hereafter "*Baker*"). These "tests are probably listed in descending order of both importance and certainty." *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality opinion) (hereafter "*Vieth*").

As Appellants stressed to the District Court, the first, second, and fourth factors are particularly problematic under these facts. R., 58. The District Court took note of the *Baker* standards, R., 118, but did not specifically apply or analyze them.

Instead, the Court noted its job to interpret the Constitution, R., 118-19, and used a yardstick of "legitimate limits" on the Senate's authority. *Id.*, citing *In re Speakership of the House of Representatives*, 25 P. 707, 710 (Colo. 1903) (hereafter "*In re Speakership*"). Notably, *In re Speakership* did not deal with the procedures at issue here but instead addressed whether the House could replace the Speaker. *Id*. The District Court thus applied a standard that was not crafted to, and cannot, gauge the appropriateness of a legislative body's decision about how to satisfy a legislative procedural matter such as the reading of a bill.

A. Proper application of key *Baker* tests establishes that the issues raised here reflect a political question.

1. Textually demonstrable commitment to a coordinate political department

This test from *Baker* has been acknowledged and restated by the Colorado Supreme Court. In *Busse v. City of Golden*, 73 P.3d 660 (Colo. 2003), the Court cited the six *Baker* standards and noted about the first, "courts must refrain from reviewing controversies concerning policy choices and value determinations that are

constitutionally committed for resolution to the legislative or executive branch." *Id.* at 664. Functionally, the test in Colorado is still to evaluate whether there is constitutional authority – and, importantly, specific limits on that authority – for a coequal branch of government to act.

The Constitution provides, "The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives." Colo. Const., art. V, §1(1). "Each house shall have the power to determine the rules of its proceedings." *Id*., §12. Section 22 thus imposes a requirement for a legislative process – reading a bill at length upon request – but leaves to the Senate or the House the authority to "determine," under Section 12, what further limits should be imposed on its implementation. Here, no limits were imposed by the existing Senate rule dealing with a bill's reading.[2] Nevertheless, the District Court established its own restrictions and conditions and directed the Senate to read bills only in that prescribed manner.

[2] Senate Rule 11(a), entitled "Reading of Bills," provides: "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." http://leg.colorado.gov/house-and-senate-rules (last viewed Oct. 23, 2019).

The central question is whether the Constitution "provide[s] an **identifiable textual limit** on the authority which is committed to the Senate." *Nixon v. United State*s, 506 U.S. 224, 237-38 (1993) (emphasis added) (hereafter "*Nixon*"). In *Nixon*, the U.S. Supreme Court addressed whether a challenge to the U.S. Senate's rules on impeachment was a political question. The Court held that it was a political question, given that the U.S. Constitution did not textually limit a legislative body's conduct under its own rules. As such, any challenge to those rules was nonjusticiable. *Id.*

Even when the Colorado Constitution mandates a step in the law-making process, the legislative body determines the way in which that requirement is met unless the manner of compliance is specified in the Constitution. "Whatever manner or form the Legislature may provide… is a compliance with this provision. To make provision for the publication [of statutes] is mandatory, but **the manner and form is the sole province of the Legislature**." *In re Interrogatories from House of Representatives*, 254 P.2d 853, 856-57 (Colo. 1953) (Court evaluated claim that General Assembly did not comply with constitutional requirement for publication of statutes) (emphasis added) (hereafter "*In re Interrogatories*").

When the Colorado Supreme Court considered the legislature's compliance with the separate requirement under §22 that a bill's final passage "be taken by ayes

and noes and the names of those voting be entered on the journal"), it recognized the General Assembly's latitude to determine the manner of compliance, including the use of technological options not available to or anticipated by the Founders.

> The constitutional section (Art. V, §22) 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. There are undoubtedly many ways of taking an ayes and noes vote and **no particular one is constitutionally mandated**.

Interrogatories of Governor Regarding Certain Bills of Fifty-First General Assembly, 578 P.2d 200, 208-09 (Colo. 1978) (emphasis added). Again, absent a textual limit on legislative authority, the means for complying with §22 is vested in legislative bodies, not the courts.

The precise issue concerning an automated, high-speed reading of bills has not been addressed by Colorado appellate courts. It has, however, been decided elsewhere, and that decision is instructive for this Court.

In Mississippi, a legislator asked that certain bills be read at length under an analogous provision of that state's Constitution. *Gunn v. Hughes*, 210 So.3d 969, 970 at ¶1 (Miss. 2017) (Miss. Const., art 4, §59 states: "every bill shall be read in full immediately before the vote on its final passage upon the demand of any member"). The reading, done mechanically at the device's highest speed, was

conducted "so quickly that no human ear nor mind can comprehend the words of the bills." *Id.* at 971, ¶2.

In a lawsuit by the legislator who objected to this form of reading, that state's Supreme Court reversed the entry of a temporary restraining order by a lower court due to the "absolute separation of powers" under the state constitution. *Id*. at 973, ¶16.

> By requesting the courts to force Speaker Gunn to read bills in a particular manner, Rep. Hughes seeks to involve the judiciary in legislative procedural matters. **The text of our state Constitution that imposes upon the Legislature the obligation to read bills upon a member's request, necessarily commits upon the Legislature the obligation to determine how that requirement will be carried out.** So this case must be dismissed, not as a matter of judicial discretion, but because we are without constitutional authority to adjudicate it. The constitutional authority, and duty, to decide the matter lies squarely within the legislative branch of our government.

Id. at 974, ¶18. The Mississippi Supreme Court found the U.S. Supreme Court's decision in *Nixon, supra,* concerning a legislative body's rules, was "on all fours" with the political question analysis applicable to a legislative decision to read a bill by automated device. *Id*., n.17.

The Colorado Constitution sets no identifiable textual limit on the Senate's authority to establish the manner in which it conducts "reading" of a bill. Our Constitution – like Mississippi's Constitution – leaves to the legislature "the obligation to determine how that requirement will be carried out." Thus, the District

Court here erred by displacing the Senate in determining how Senate proceedings must be conducted under Senate rules.

2. A lack of judicially discoverable and manageable standards

As to the second factor in *Baker* (dispute presents "a lack of judicially discoverable and manageable standards for resolving it"), the District Court failed to establish any clear standards that would apply to Senate officials. The lower court mandated that Secretary Markwell "employ a methodology that is designed to read legislation in an **intelligible** and **comprehensive** manner, and at an **understandable speed**." R., 112 (emphasis added). These tests are "neither discernible nor manageable." *Vieth*, *supra*, 541 U.S. at 290 (political question exists where proposed standards to be used in legislative redistricting process are vague).

The District Court's three non-constitutional standards were set to meet the asserted needs of Cooke and persons who were not litigants in this matter. "[T]he Court finds that the purpose of reading a bill is not just for the legislators to be on notice, but for the citizens of Colorado as well." R., 111. "[T]he Colorado citizenry" had "a legally protected interest" in judicial imposition of, and legislative compliance with, these standards. *Id.* (finding that, without the requested relief, citizens – who were not parties to this lawsuit – faced a danger of real, immediate, and irreparable injury).

But not one of the lower court's tests provides a discernible yardstick by which to assess future compliance. In the language of *Baker*, the tests fall far short of "judicially discoverable and manageable standards."

For instance, to whom must the reading be "intelligible?" What is meant by a "comprehensive" reading of a bill? And what person – legislator or citizen – will be the gauge for an "understandable speed?" What level of education and hearing capacity must that person, whoever he or she is, possess?

The relief granted was not limited to HB 1172. By the terms of the Order and entry of both injunctive and declaratory relief, it applies universally – to any bill that ever comes before the Senate. R., 112 ("Secretary of the Senate… must… read legislation.…), 127 ("Secretary of the Senate must… read legislation…."). Thus, a court presented with a pre- or post-enactment challenge to a bill, based on compliance with the District Court's standards for a bill's "reading," will have to evaluate several questions, laden with a number of variables:

- What is an acceptable manner of reading (human vs. mechanized)?
- What is a permitted maximum rate of reading?
- Which persons must be able to comprehend the reading (legislators; lobbyists; citizens listening at the Capitol; citizens listening at home)?

- Where is intelligibility determined (the Senate floor; the lobby outside of the Senate where lobbyists and legislators often stand; the gallery above the Senate where lobbyists and citizens can sit; on transmissions via the legislature's website by which legislators, lobbyists, and citizens can listen)?
- Is there compliance if the one or more standards are met with respect to one person or multiple people within a class but not the entire class?

Consistent with the constitutional principle of separation of powers and the political question considerations which apply in this context, courts cannot enact, monitor, and enforce this level of detail in legislative procedure.

Importantly, because the District Court did not limit the citizens who must be able to understand this reading, relief was crafted for persons listening via the Internet or in another, unstated manner.

> THE COURT: Why is it (the reading requirement) less important today than it was then relative to the citizenry? I mean, we have people who are not able to read and -- and who count on the ability to listen to the proceedings and be able to weigh in and participate in the legislative process who are deprived of that, in essence by virtue of the fact that they can't listen to the broadcast version or attend a session and -- and really listen to what is properly before the legislature.

R., Tr. at 65:6-13. No such person was a party to this litigation. There was no record evidence that such people depend on the reading of bills to know they exist or their content or that any persons ever communicated such needs to legislators who, due

to those communications, refused to waive the reading requirement so the bill reading would occur.

Even assuming such persons exist and they listen "to the broadcast version" of Senate proceedings, *id.*, an electrical outage or technical obstacle to such broadcasts would mean that the constitutional reading requirement cannot be satisfied because such persons would be unable to hear a bill being read. If the condition of a reading is that members of the public who are not present can hear it, the Senate could never consider bills until these technology problems were fixed. That result is plainly beyond the terms and meaning of Article V, §22. In a session of limited duration (120 days pursuant to article V, §7), this interpretation of the reading requirement could derail the legislative process.

A court invades the legislative province if its decision "require[s] formulating of legislative policy or **developing standards not legal in nature**." *Busse*, *supra*, 73 P.3d at 664 (emphasis added); *see Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 230 ("courts are fundamentally underequipped to… develop standards for matters not legal in nature") (citation and internal quotation marks omitted). As used in the District Court's Order here, "intelligible," "comprehensive," and "understandable" are all standards that are "not legal in nature." *Id.*

Thus, this dispute presents a political question under *Baker*'s second test as well as the first.[3]

3. Decision reflects lack of respect due to a coordinate branch of government

As to the fourth *Baker* factor, a court necessarily elevates the judiciary's role above a coordinate branch of government when it preempts process-related judgments of the coordinate branch.

The legislature must determine the "form and manner" of complying with constitutional mandates that provide guidelines for its conduct. *See In re Interrogatories, supra,* 254 P.2d at 856-57. This threshold is a long-standing limit on judicial intervention in legislative matters. "While the keeping of a journal or record of proceedings is an imperative constitutional requirement [under Article V, §22], nevertheless, as **the form and manner of keeping it is left wholly to the legislative body**, that which it makes and treats as its journal is essentially the journal of the constitution." *People v. Leddy*, 123 P. 824, 827 (Colo. 1912) (emphasis added).

Moreover, the District Court exceeded its boundaries in interfering with legislative process by enjoining the enactment of legislation under certain

[3] The first and second *Baker* tests are related. "[T]he lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch." *Nixon, supra,* 506 U.S. at 228-29.

circumstances. Courts cannot grant injunctive relief either to force the legislature to act in a particular way or to prohibit it from acting in a specific way. "Legislative action by the general assembly cannot be coerced or restrained by the judicial process…. **[T]he 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**." *Town of Minturn v. Sensible Housing Co., Inc*., 2012 CO 23 at ¶20, 273 P.3d 1154, citing *Bledsoe*, *supra*, 810 P.2d at 208 (internal citations omitted) (hereafter "*Town of Minturn*").

Yet, the District Court was asked to, and did, enjoin legislative action in connection with HB 1172 as well as generally. To serve what it identified as the public interest, the Court "grant[ed]… the requested limited preliminary injunction… [and] require[d] HB 1172 to be read in a comprehensible fashion, in full, prior to a vote." R., 112. Further, the Court granted injunctive relief to "prevent the passage of a law that is procedurally flawed under the Colorado Constitution." *Id.* The injunction was not limited to HB 1172 but instead applied to "a law" – any law – that was flawed under the Court's non-legal, unmanageable standards.

By prohibiting the Senate from enacting HB 1172 unless it met the District Court's vague standards for "reading," the Court failed to reflect the due respect to be accorded to a coordinate branch of state government. In enjoining all future

legislative acts from being adopted if the Senate does not meet the Court's standards, the ruling below likewise undermines the capacity of and respect for the General Assembly, a coequal branch. The District Court's intervention in this matter necessarily "entangle[d] the judiciary in legislative affairs." *Bledsoe, supra*, 810 P.2d at 213 (Lohr, J., concurring in part and dissenting in part).

The due respect that courts must accord to the legislative branch includes allowing the legislature to determine the manner in which it implements its procedures and granting a significant level of deference to its interpretations. As to the latter, when a court does interpret the Constitution, it has a "duty to resolve any doubt we may have in favor of the legislative procedure." *Bd. of County Comm'rs of Pueblo County v. Strait*, 85 P. 178, 179 (Colo. 1906). In this sphere, the legislative body is owed more than casual deference. "[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**." *Id.* (emphasis added). The District Court's relief fell short of this standard.

For this reason, it is the Senate's prerogative to determine the ways in which a bill reading can occur. "[I]n the first instance, the body to which has been delegated the power to pass laws must be left untrammeled, to act in such matters as

its wisdom may dictate." *Bledsoe, supra*, 810 P.2d at 210 (district court refusal to grant injunction affirmed).

The General Assembly's freedom to act on the matters before it was addressed in *Van Kleeck v. Ramer*, 156 P. 1108 (Colo. 1916). There, the Court was asked to review the legislative decision to exempt a bill from the right of referendum, an invitation the Court wisely declined, thus adhering to the dictates of Article III concerning the separation of powers.

> The Constitution defines the powers and duties of each department, and **should the courts venture to substitute their judgment for that of the legislature in any case where the Constitution has vested the legislature with power over the subject, they would enter upon a field where it is impossible to set limits to their authority,** and where their discretion alone would measure the extent of their interference.

Id. at 1111 (emphasis added). The wisdom of leaving the legislature to determine its own processes has not changed in the hundred years since the Court made this pronouncement. And the remedy of political accountability for unwise legislative acts is also unchanged. If the legislature "erroneously or wrongfully" exercises its constitutionally assigned authority, "the remedy is with the people." *Id*.

There is a judicial remedy as well where the legislature violates a constitutional requirement: a party with standing may challenge the validity of an enacted statute. "In cases concerning the legislature, the judiciary's role in large part is limited to measuring legislative enactments against the standard of the

constitution, and declaring them null and void if they are violative of the constitution." *Bledsoe*, *supra*, 810 P.2d at 210; *see Polhill v. Buckle*y, 923 P.2d 119, 122 (Colo. 1996) (courts cannot interfere with legislative referral of a question to voters over procedural matters, such as adherence to the single subject requirement, given available remedies that can be pursued post-enactment) (hereafter "*Polhill*").

Accordingly, the District Court erred in exceeding the boundaries among coequal branches of government, given the discretion reserved to legislative bodies to decide how constitutionally required legislative procedures are satisfied. The Court should have found the asserted claims about legislative process to be a nonjusticiable political question.

B. The District Court erred by looking only to the judiciary's role in legal interpretation instead of conducting an integrated, political question analysis.

The lower court noted the *Baker* standards to be evaluated when a claim's justiciability is called into doubt as a political question. R., 108. Oddly, the District Court ignored all of those factors and based its decision solely on the judiciary's duty to interpret the law. "The Court does not perceive this issue to be a political question…. The issue before the Court is the constitutional interpretation of article V, § 22." *Id.* at 5. Citing the amorphous standard of "legitimate limits" on legislative

power, the District Court found Markwell violated those limits and granted injunctive relief on behalf of Cooke. R., 108-09.

If the District Court was correct that the judiciary's power to interpret the law is the sole test for whether it should intervene, the political question doctrine would not exist or ever be applied. The courts' broad power to interpret the law would always swallow concerns raised by the *Baker* standards. But the political question doctrine *is* employed by the courts, and the District Court erred in failing to even consider its factors and apply it.

1. The power to interpret the constitution is consistent with, and can only be exercised in light of, a full analysis of political question considerations.

It cannot be doubted that "courts possess power to review either legislative or executive action that transgresses identifiable textual limits." *Nixon, supra*, 506 U.S. at 238. But the judiciary's exercise of "that delicate responsibility," *id.*, does not block its duty to also assess whether the matter presented to it is a political question. "Sometimes, however, the law is that the judicial department has no business entertaining the claim of unlawfulness – because the question is entrusted to one of the political branches or involves no judicially enforceable rights." *Vieth, supra*, 541 U.S. at 267. Or to put this observation slightly differently, a court may have no business entertaining claims that are textually committed to another branch or that will require the court to develop and supervise a coordinate branch's adherence to

standards that are not legal in their origin. The Colorado Supreme Court recognizes that both of these considerations warrant evaluation when a political question may be before the court. *Busse, supra,* 73 P.3d at 664.

The political question analysis cannot simply be sidestepped. As our Supreme Court has held, "In deciding whether a case or controversy is justiciable, two determinations **must** be made." *Meyer v. Lamm*, 846 P.2d 862, 872 (Colo. 1993) (emphasis added).

> We must first ascertain "whether the claim presented and the relief sought are of the type which admit of judicial resolution." Second, we must determine whether the controversy presents a nonjusticiable "political question"; i.e., a question "the resolution of which should be eschewed by the courts," because of the separation of powers doctrine inherent in the Colorado Constitution.

Id. (citations omitted). The District Court failed to make either determination.

The first inquiry (whether a claim can be judicially resolved) requires a court to decide if "the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." *Id.* (citing *Baker, supra*, 369 U.S. at 198). At a minimum, the District Court conducted no analysis of whether protection of the asserted right "can be judicially molded." As to the second inquiry (whether a plaintiff raised a political question for a court to resolve), the District Court failed to address this matter by assessing

justiciability in light of applicable standards in case law. *Id*. (citing the six-part test in *Baker, supra*, 369 U.S. at 217); *see* R., 108-09.

The District Court's failure to conduct this two-part analysis, including any evaluation of the *Baker* standards, invalidates its subsequent decision on the merits.

2. The District Court did not use identifiable standards in the Constitution to invalidate Markwell's "reading."

The lower court's blanket assertion of an obligation to interpret the questioned constitutional provision was error in light of the lack of clear, limiting standards for what constitutes a "reading."

"'The judicial Power' created by Article III, § 1, of the Constitution is not **whatever** judges choose to do or even **whatever** Congress chooses to assign them." *Vieth, supra*, 541 U.S. at 278 (emphasis in original) (case citations omitted). "One of the most obvious limitations imposed by that requirement is that **judicial action must be governed by standard, by rule**." *Id.* (emphasis in original) (political question analysis turned on presence of judicially manageable standards).

Yet, there are no constitutional parameters for the standards mandated by the District Court here ("intelligible," "comprehensive," "understandable"). Section 22 of Article V only refers to a "reading" of bills – nothing more. Given this lack of textual support for the Court's chosen, subjective standards, it was error for it to create and impose them.

3. The District Court's use of "legitimate limits" as a standard to invalidate the Senate's practice for reading HB 1172 was unwarranted.

The lower court noted that, under Colorado precedent, a legislative body's control of its procedures "is plenary, and… exclusive,… when exercised within **legitimate** limits." R., 108 (emphasis in original), citing *In re Speakership*, *supra*, 25 P. at 710. The District Court further observed that the computerized reading of HB 1172 "is not within **legitimate** limits." R., 109 (emphasis in original).

The "legitimate limits" test in *In re Speakership* looked to Massachusetts case law for the proposition that a legislative body has "inherent" authority – there, to expel one of its officers. *See Hiss v. Bartlett*, 3 Gray 468 (Mass. 1855). The Colorado Supreme Court pointed out that applicable doctrines from that Massachusetts precedent gave the legislature sole authority to decide its own procedures, even at the expense of a court's oversight. The Court cited Article 5, §12 of the Constitution ("Each house shall have power to determine the rules of its proceedings…."). The remedy for a legislative misstep was political, not judicial.

> [T]he court will not in any way interfere with the procedure or mode of trial by which the legislature reaches its conclusions in expelling a member. **The house must judge for itself in such matters, and its jurisdiction to so judge and decide is exclusive.** As to those matters confided exclusively to each legislative branch of the government, **if a wrong or unwise course be pursued, there is no appeal under our system of government except to the ballot-box.**

In re Speakership, supra, 25 P. at 710 (emphasis added). Unless the legislature can exercise sole authority over its internal procedures, the legislative process could come to a standstill. "It is easy to conceive how the power to remove the speaker by the majority of the house may become necessary in order that legislation may be proceeded with in accordance with the will of such majority." *Id.*

These doctrines reflect "the fundamental principle of representative government," namely that "the majority of each legislative body has the power to control the action of such body within the limits of its jurisdiction, except as otherwise provided by positive law." *Id*. at 711. As noted above, there is no "positive law" in the Colorado Constitution specifying any limits on a legislative body's conduct of a "reading" of bills.

In such matters, the judiciary's role is restricted. The courts will "express no opinion as to the wisdom, expediency or policy of the course pursued by the majority. They [legislators] must assume and bear the responsibility for the exercise of their powers." *In re Speakership, supra*, 25 P. at 711. More to the point, the courts are not in a position to apply floating value judgments (for example, deciding the reach of "legitimate limits") to the legal prerogative of the General Assembly. "Power may be abused, but that is not a valid reason for one co-ordinate branch of the government to assign for limiting the power and authority of another

department." *Ramer, supra,* 156 P. at 1111. Even though there was no abuse of legislative power here, the District Court did restrict the authority of a coequal branch. "The Court finds that using multiple computers to read simultaneously different portions of a bill, any bill, at 650 words per minute is not within **legitimate** limits." R., 109 (emphasis in original). In passing on the "legitimacy" of this form of reading, the Court clearly passed upon the legislature's "wisdom, expediency or policy." And in doing so, it erred.

The District Court, in relying on the "legitimate limits" dictum of *In re Speakership*, treated a non-textual standard as a constitutional mandate. The District Court's use of this undefined and undefinable standard was unwarranted. As the District Court used it to incorrectly exercise judicial power, it erred. The Senate has the constitutional authority and responsibility to govern itself.

III. Plaintiffs did not meet the Rathke standards for equitable relief, and the injunction was improperly granted.

Plaintiffs did not satisfy the requirements for equitable relief found in *Rathke, supra*. Those factors are: (a) a reasonable probability of success on the merits; (b) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief, (c) there is no plain, speedy, and adequate remedy at law; (d) a preliminary injunction will not disserve the public interest; (e) the balance of equities

favors the injunction; and (f) the injunction will preserve the status quo pending a trial on the merits. 648 P.2d at 653-54.

A. Likelihood of success on the merits

1. The District Court lacked jurisdiction to prevent the legislature from enacting HB 1172 or any other bill unless it met the Court's conditions.

The Constitution does not grant a court the power to enjoin the legislative branch from acting in any particular manner. As such, Cooke lacked a substantial likelihood of success on the merits.

Jurisdiction is the power to "hear and determine" the matters presented by a plaintiff, and "[i]f this power is absent, then the court is without jurisdiction." *Colo. State Bd. of Medical Examiners v. District Court*, 331 P.2d 502, 506 (Colo. 1958) (citation omitted). A court lacks the ability to hear and determine a case that "calls for an exercise of authority upon its part over another branch of state government, which it does not possess." *Id.* This assertion of authority "is impliedly prohibited by the constitution." *Id.* It was thus unwarranted for the District Court to act as if "the judicial [branch] was of superior authority" and thereby "strip them [legislators] of their constitutional powers." *Id.* at 505.

In *Bledsoe*, for instance, the lower court refused to consider plaintiffs' claims for injunctive relief.

> When laws have been passed no doubt in a proper case the inquiry can then be made as to whether or not the requirements of the fundamental law in their passage or in their provisions have been observed, but in the first instance **the body to which has been delegated the power to pass laws must be left untrammeled**, to act in such matters as its wisdom may dictate.

810 P.2d at 210-11. Here, the District Court improperly intervened in the legislative process with an injunction, and it thus exceeded its constitutional authority. In seeking equitable relief from a tribunal that lacked the authority to grant it, Cooke had no reasonable likelihood of success on the merits.

2. The legislature has the clear and exclusive power to determine what constitutes a "reading."

As to HB 1172, a bill reading occurred. Cooke and the Court acknowledged as much. They simply differed as to the preferred manner of the reading, a decision that is legislative rather than judicial in nature.

For instance, Cooke's complaint alleged HB 1172 was initially "**read** by a single staffer." R. 5, ¶20 (Verified Complaint for Expedited Declaratory Relief) (emphasis added). Still using "read" or "reading" to describe the acts undertaken by Markwell, Cooke stated:

- A computer program was later employed by Markwell "to automatically **read** text from a document." *Id*. at ¶22.
- Markwell "directed Senate staff to set each of the five computers to **read** a different section of HB 1172." *Id*. at ¶23.

- "The **reading** resumed using the five computers at approximately 1:15 pm at a rate of approximately 650 words per minute." *Id*. at ¶24.

- The result was a "simultaneous **reading**" of different sections of the bill. *Id*. at ¶25.

- The Senate Republican Chief of Staff "objected to this method of **reading** HB 1172 on behalf of Senators Cooke and Gardner." *Id*. R., 6 (¶27).

- Holbert "requested the Senate President to permit the Secretary to slow the **reading** of HB 1172." *Id.* at ¶29.

- "the five computers concluded **reading** HB 1172 and the Senate resumed its business." *Id.* at ¶30.

(Emphasis added.)

The District Court also found HB 1172 had been "read":

- "Among other things, Nuance Power PDF allows a computer to automatically **read** text from a document loaded into the program." R., 107.

- "The Senate Secretary directed Senate staff to set each of the multiple computers to **read** a different section of HB 1172 and to have the computers do so simultaneously at the maximum speed permitted by Nuance Power PDF." *Id*.

- "The **reading** of the bill resumed using the multiple computers at approximately 1:15 p.m." *Id.*

- "At approximately 5:20 p.m., the multiple computers concluded **reading** HB 1172." *Id.*

- "The Court finds that using multiple computers to **read** simultaneously different portions of a bill, any bill, at 650 words per minute is not within legitimate limits." R., 109.

- "Neither the Senators, nor a Colorado citizen, listening to the March 11th **reading** of HB 1172, would have been able to ascertain or give effect to the intent of the words of HB 1172." R., 111.

- "The Court finds that the actions of the Senate Secretary and the Senate President causing different sections of HB 1172 to be **read** simultaneously by multiple computers at an incomprehensible speed violated article V, § 22 of the Colorado Constitution." *Id.*

(Emphasis added.)

What is at issue before this Court is not *whether* there was a reading of HB 1172. Cooke and the District Court acknowledged, multiple times, that the bill literally was "read." They simply suggest that there is an unstated speed limit in the Constitution that somehow negates the fact that the reading that was done. The only legal precedent in the country on this precise issue is to the contrary. *Gunn*, *supra*, 210 So.3d at 970 at ¶18.

Further, the position that Markwell violated the reading requirement as to HB 1172 is at odds with the oft-stated construct that it is up to the Senate to settle on the "form and manner" of compliance with this requirement, not the courts. *In re Interrogatories, supra,* 254 P.2d at 856-57 (manner and form is "the sole province of the Legislature"); *Leddy, supra*, 123 P. at 827 (form and manner "left wholly" to

the legislative body); *see Bledsoe, supra,* 810 P.2d at 210 (legislature must be able to act "untrammeled" by courts during legislative process); *Ramer, supra,* 156 P. at 1111 (legislative decision on process "is not subject to review by the courts or any other authority"). If left undisturbed, though, the District Court decision would literally embrace judicial decision making about the "manner" of applying legislative procedures. *See* R., 127 (permanent injunction mandated that Markwell "read legislation, including HB 19-1172, in an intelligible **manner** and at an understandable speed"). For these reasons, Cooke failed to demonstrate a substantial likelihood of success on the merits.

B. Real, immediate, and irreparable injury

The District Court identified the "injury" aspect of *Rathke* in this way: "there is a real and immediate possibility that bills will be signed into law in violation of the Constitutional process guaranteed by the Colorado Constitution." R., 111. The Court also stated the "requirements of article V, §22 are a legally protected interest of not just the legislature but of the Colorado citizenry." *Id.*

In effect, the Court speculated HB 1172 would be passed and other unidentified bills might be passed without a required reading. But there was no showing HB 1172 (or other pieces of legislation) would, in fact, pass the Senate after having been read in the manner questioned here. Or that the Governor would sign

such legislation into law. Or that, for some reason, such legislation would be immune from litigation after enactment due to the form of reading used.

As to this last consideration, the opposite is true. "[T]he passing of… ordinances does not result in irreparable injury beyond redress by later judicial proceedings." *Town of Minturn, supra*, 2012 CO 23 at ¶25. Any such injury may thus be addressed by an action in district court, filed after the bill in question passes. It is only such a challenge that is crystalized in a fact-specific scenario by persons who have suffered injury due to the legislative act and thus have standing.

Further, the record is devoid of evidence that there were citizens who were interested in HB 1172 and frustrated by an inability to understand its reading. If these individuals exist, Cooke did not allege they existed or prove any injury to them. Further, if these interests are important in defining what constitutes a constitutionally adequate "reading," the legislature can never function if the Internet is down or the amplification system on the Senate floor is inoperative; citizens' ability to have a bill (otherwise available on the General Assembly's website[4]) read would be frustrated by that occurrence. Certainly, article V, §22 compliance cannot occur only when technology cooperates. But, going forward, this could be the reason given

[4] The parties stipulated, "Given their access to the General Assembly's website,… members of the public generally had access to House Bill 19-1172 from the date the measure was introduced on February 7, 2019." R., 118 (F.S. #27).

to enjoin future legislative proceedings if the District Court's view of irreparable injury is upheld.

C. Lack of an adequate remedy at law

The Court held that, given "the fundamentally flawed second reading," HB 1172 might proceed to "passage and signature by the Governor." R., 111. If that were to occur, "there is no other plain, speedy, and adequate remedy provided at law." *Id.*

But a bill, plagued by unconstitutional process, can be challenged after enactment. Post-passage litigation is a sufficient remedy at law. *Town of Minturn, supra*, 2012 CO 23 at ¶25 (post-enactment challenge to enacted legislation is "an adequate remedy"); *Polhill, supra*, 923 P.2d at 122 ("an adequate remedy is available for challenging a legislative referendum because courts can review the referendum if it is approved" by voters); *see Mass. Mutual Life Ins. Co. v. Colorado Loan & Trust Co*., 36 P. 793, 794 (Colo. 1894) (under article V, §22, plaintiff challenged enacted law over whether bill was read at length).

D. The public interest

HB 1172 was comprised of 560,254 words. Read at a constant, uninterrupted pace of 200 words per minute (which equates to 12,000 words per hour), it would have taken a single reader no less than 46.7 hours to read it. If the Senate was in

session for normal, eight-hour business days and spent each full day reading the bill, it would have required almost six (6) business days to read HB 1172 at length.

In a legislative session consisting of only 120 calendar days, Colo. Const., art. V, §7, Cooke sought to dedicate five percent (5%) of the entire session solely to the reading of one bill, preventing the Senate from considering or taking action on other legislation during that time. Keeping legislators from performing duties for which they were elected is inconsistent with the public interest. *In re Governor's Proclamation*, 35 P. 530, 531 (Colo. 1894) (courts are to avoid rendering decisions that obstruct "the right of legislating by the representatives of a free people").

Courts reject interpretations of constitutional amendments that could "lead to absurd results" and "cripple the everyday workings of government." *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 557 (Colo. 1999) (interpreting "TABOR," Colo. Const., art. X, §20). Constitutionally based legislative procedures are to be "liberally and reasonably interpreted," in part, to "avoid unnecessarily obstructing legislation." *In re Breene*, 24 P. 3, 4 (Colo. 1890). The District Court's approach frustrates these valid public concerns and thereby disserves this well-established public interest.

E. Balance of the equities

The District Court found the balance of the equities favored Cooke, as no party or other affected person would be adversely affected by preserving the 19th century's method for reading bills. Given the interests of legislators and citizens in a Senate that can effectively consider increased numbers of complex bills within 120 days, however, the District Court erred. As long as the reading requirement is not bypassed, the judiciary should not become the arbiter of the appropriateness of chosen legislative procedures.

F. Preservation of the status quo

By transferring decision making about the legislative process to the judiciary, the injunctive relief did anything but preserve the status quo. It gave rise to substantial judicial supervision of the legislative process – a construct that did not exist prior to the commencement of this litigation. The District Court imposed vague, subjective standards that will invite more litigation. This judicial control of legislative procedure – governing a choice that is delegated to the legislature – does not reflect the status quo ante. Indeed, it is unprecedented.

As such, the Court erred in holding it is a legitimate exercise of judicial power to "prevent the passage of a law that is procedurally flawed under the Colorado Constitution." R., 112. This error should be reversed.

IV. The District Court's declaratory relief as to HB 1172 was unwarranted and unauthorized.

HB 1172 was signed into law on April 25, 2019.[5] Twelve days later, on May 7, 2019, the District Court adopted specified terms of declaratory relief:

> Final Judgment shall enter in favor of the Plaintiffs on the Plaintiffs Second Claim for Declaratory Relief pursuant to C.R.C.P. 57 and Colo. Rev. Stat. § C.R.S. S 13-51-106 as follows:
>
> a. Pursuant to Colo. Rev. Stat. § 13-51-106 and C.R.C.P. 57, that the actions of the Defendants to read HB 19-1172 at length using five computers reading different portions of the bill at the same time at an incomprehensible speed is invalid as violative of Colo. Const. art. V. § 20 and § 22b;
>
> b. The Secretary of the Senate must, upon a Member's objection to dispensing with the article V, section 22 requirement, read legislation, including HB 19-1172 in an intelligible manner and at an understandable speed[.]

R., 127 (¶3). Each element of this declaration is either irrelevant (treating a reading of a bill as "invalid" when the bill had already passed) or an attempt to control future legislative acts ("Secretary of the Senate must… read legislation, including HB 19-1172, in an intelligible manner and at an understandable speed").

Generally, courts may consider an action for declaratory relief concerning legislative process rather than enjoin that legislative procedure. *Bledsoe, supra*, 820

[5] http://leg.colorado.gov/sites/default/files/2019a_1172_signed.pdf (last viewed Oct. 23, 2019).

P.2d at 211. They must, however, determine that declaratory relief will meet its assigned objective: to clarify the legal relationship or dealings of the parties. "A court may refuse to render a declaratory judgment where such judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding." *Gresh v. Balink*, 148 P.3d 419, 422 (Colo. App. 2006) (citations omitted); C.R.S. §13-51-110.

A. The District Court's declaration as to HB 1172 is moot.

Here, after HB 1172 became law on April 25, the District Court ordered the legislature to read "HB 1172 in an intelligible manner and at an understandable speed." R., 127. This declaration did nothing to clarify the then-existing legal relationship of the parties. The bill had passed the Legislature and been signed by the Governor. There was no basis for such a declaration. Thus, the HB 1172 controversy was moot, and this "relief" was meaningless as it had "no practical effect upon an existing controversy." *Crowe v. Wheeler*, 439 P.2d 50, 53 (1968). A court "is not required to render a judicial opinion on a matter which has become moot." *Id*. Once moot, the matter was no longer within the subject matter jurisdiction of the Court.

B. The District Court's declaration did not provide clarity to the parties.

As established above, the standards of "intelligible," "comprehensive" and "understandable" were so non-specific as to promote, not end, the potential for litigation among legislators. The Court's chosen terms are likely to be invoked – but not agreed upon – whenever legislation is pending.

This result is contrary to the entire purpose of declaratory relief, which is to provide the parties with clarity to resolve a case or controversy. Since declaratory relief is unwarranted where the court's decision "would not terminate the controversy or remove an uncertainty," C.R.S. §13-51-110, the District Court erred by changing the Senate's procedures with standards that are anything but concrete or discernible. *Gresh*, *supra*, 148 P.3d at 423 ("defining the term 'relevant'" in [TABOR] does not clarify or answer plaintiff's question or terminate the uncertainty and controversy giving rise to this proceeding").

C. The District Court erred in attempting to bind the Senate's treatment of other bills in future legislative proceedings.

The District Court's order is open-ended. It states "the Secretary of the Senate must, upon a Member's objection to dispensing with the article V, §22 requirement, read legislation, including HB 19-1172 in an intelligible manner and at an understandable speed[.]" R., 127.

"The word 'includes' is a word that is meant to extend rather than limit." *People v. Patton*, 2016 COA 187 at ¶13, 425 P.3d 1152 (citations omitted). Because the declaratory relief is so phrased, it applies to future legislatures in future years under future circumstances that are now unknowable.

The Court's expansive ruling was contrary to law. To be resolved by a declaratory judgment, "[t]he legal controversy presented must be a current one rather than one that may arise at some future time." *People v. Ford*, 773 P.3d 1059, 1070 (Colo. 1989) (citations omitted). A declaratory judgment is improper if applied to "concrete situations not yet developed." *Am. Fed. of Labor v. Reilly*, 155 P.2d 145, 150 (Colo. 1944). The Court's mandatory, indefinite pronouncement exceeded its authority and cannot bind future legislative proceedings.

CONCLUSION

The District Court's order for injunctive and declaratory relief for Cooke should be reversed and vacated.

Respectfully submitted this 24th day of October, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2019, a true and correct copy of the foregoing **APPELLANTS' OPENING BRIEF** was transmitted via U.S. mail, first class and postage prepaid, to the Appellees:

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