DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: March 19, 2019 4:39 PM CASE NUMBER: 2019CV30973
JOHN B. COOKE, Senator, ROBERT S. GARDNER, Senator, CHRIS HOLBERT, Senate Minority Leader, Plaintiffs, v. CINDI MARKWELL, Secretary of the Senate, and LEROY M. GARCIA, JR., President of the Senate Defendants.	▲ **COURT USE ONLY** ▲ Case No. 19CV30973 Courtroom 269
ORDER GRANTING PRELIMINARY INJUNCTION	

This matter came on for hearing on March 19, 2019. Having read the operative pleadings, the file, and listening to the arguments of counsel, the Court finds and concludes as follows:

THE PARTIES

Plaintiffs are State Senators. John Cooke ("Senator Cooke") represents the 13th Senate District. Robert Gardner ("Senator Gardner") represents the 12th Senate District. Chris Holbert ("Senator Holbert" or the "Minority Leader") represents the 30th Senate District.

Defendant Cindi Markwell ("Markwell" or the "Senate Secretary") is the Secretary of the Colorado Senate ("Senate"). The Senate Secretary is the Senate Parliamentarian and the head of the nonpartisan Senate Services Staff.

Defendant Leroy Garcia ("Senator Garcia" or "Senate President") represents the 3rd Senate District. Senator Garcia is the presiding official of the Senate, managing, *inter alia*, all aspects of the legislative process.

PROCEDURAL HISTORY

The Colorado Constitution ("the Constitution") was drafted on March 14, 1876 and adopted by Colorado's electorate on July 1, 1876. The Constitution took effect upon Colorado's admission to the Union on August 1, 1876. From the time of its drafting, article V of the Constitution has governed the Legislative Department of Colorado's government, which it vests in the General Assembly.

The General Assembly is comprised of two houses: Colorado's House of Representatives and Senate. Since its drafting and adoption, article V has specified requirements for subjects ranging from the qualification of Members of the General Assembly to when Laws passed by the General Assembly generally take effect. *See* Colorado Const. art. V, §§ 4 and 19.

Article V, section 22 of the Constitution provides as follows:

> ***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. All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house, nor unless upon its final passage the vote be taken by ayes and noes and the names of those voting be entered on the journal.

(emphasis added).[1]

This requirement is mandatory. If either house violates this requirement in enacting a law, the law so enacted is invalid. *In re: House Bill 250*, 57 P. 49, 50 (Colo. 1889).

Procedural History of House Bill 1172

Senator Cooke is a primary Senate sponsor of House Bill 19-1172 concerning amendments and reorganization of Title 12 of the Colorado Revised Statutes dealing with laws administered by the Department of Regulatory Agencies (hereinafter "HB 1172"). Stipulated Facts ¶ 1. Senator

[1] The Constitution originally required three readings and did not permit the members present to dispense with the reading. *See* Authenticated Original Colorado State Constitution (available at: https://www.colorado.gov/pacific/sites/default/files/CO_Constitution_150dpi_Signed.pdf).

Gardner is a primary Senate sponsor of HB 1172. *Id.* ¶ 2. On February 26, 2019, HB 1172 passed the Colorado House of Representatives. *Id.* ¶ 16. The Bill was introduced in the Senate on February 27, 2019, by Senators Cooke and Gardner as its primary Senate sponsors. *Id.* ¶¶ 17, 20. The Senate President assigned HB 1172 to the Senate Committee on Judiciary the same day. *Id.* ¶ 17. The Senate Committee on Judiciary unanimously referred HB 1172 to the Committee of the Whole—that is the entire Senate sitting in its capacity as a committee of the whole—on March 4, 2019. *Id.* ¶¶ 18, 22. HB 1172 was introduced for its second reading in the Senate on March 11, 2019. *Id.* ¶ 32. At that time a Member of the Senate asked for the unanimous consent of the members present to waive reading the bill at length. *Id.* ¶ 33. Under Senate Rule 11, the unanimous consent to dispense with the reading of the bill in full is presumed, unless a Senator requests the reading of the bill in full. *See* Senate Rule 11(a).

Senator Cooke exercised his right under article V, § 22 of the Constitution and Rule 11(a) when he requested that the bill be read at length. Stipulated Facts ¶ 33. Accordingly, at approximately 10:30 am Senate staff began reading HB 1172. *Id.* ¶ 38. Initially, the bill was read by a single staffer. *Id.* After approximately three and a half hours, the Senate Secretary directed Senate staff to set up multiple laptop computers running a program called Nuance Power PDF. *Id.* ¶ 35. Among other things, Nuance Power PDF allows a computer to automatically read text from a document loaded into the program. *Id.* ¶ 36. 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.* ¶ 36. The reading of the bill resumed using the multiple computers at approximately 1:15 p.m. *Id.* ¶ 37. The computers operated at a reading rate of approximately 650 words per minute. *Id.*

Senate Republican Chief of Staff, Timothy P. Griesmer objected to this method of reading HB 1172 on behalf of Senators Cooke and Gardner, asked the Senate Secretary to slow the reading of the HB 1172. *Id.* ¶¶ 45-46. The Senate Secretary rejected Senator Cooke and Senator Gardner's requests and suggested that Senator Holbert contact the Senate President. *Id.* ¶ 47.

At approximately 3:15 p.m., Senator Holbert on his own behalf and on behalf of the Senate Minority, requested the Senate President to permit the Secretary to slow the reading of HB 1172. *Id.* ¶ 48. The Senate President rejected his request. *Id.*

At approximately 5:20 p.m., the multiple computers concluded reading HB 1172. *Id.* ¶ 42. HB 1172 was laid over on second reading without a vote. Pl. Compl. ¶ 31; Def. Answer ¶ 31. The

Bill was scheduled to be re-considered upon second reading on March 13, 2019, before this Court entered a temporary restraining order. *Id.* No further action has been taken on HB 1172.

ANALYSIS

The first issue before this Court is whether or not this case presents the kind of nonjusticiable political question, "the resolution of which should be eschewed by the courts." *Colorado General Assembly v. Lamm*, 704 P.2d 1371, 1378 (Colo. 1985). The characteristics of a nonjusticiable political question have most clearly been identified in *Bake v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 710 (1962):

> "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issues to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind of clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

The Defendants contend that judicial action would be unprecedented, unwarranted and unwise. The Court finds that the question at hand is justiciable, and judicial intervention at this juncture in the legislative process is appropriate and warranted. In a case involving the removal of the Speaker of the House, the Colorado Supreme Court recognized that the House shall have all of the powers necessary for the legislature of a free state. "This grant of power is plenary, and, except as otherwise provided in the constitution itself, is exclusive, and when exercised within *legitimate* limits, is conclusive upon every department of the government." *In re Speakership of The House of Representatives*, 25 P. 707, 710 (Colo. 1903) (emphasis added). "But, when legislative action exceeds the boundaries of the authority delegated by the Constitution, and transgresses a sacred right guaranteed to a citizen, final decision as to the invalidity of such action must rest exclusively with the courts. 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).

The Court does not perceive this issue to be a political question. The Court does not concern itself with the legislation at hand, the majority or minority party, or the number of days remaining in the legislative session. The issue before the Court is the constitutional interpretation of article V, § 22. When a dispute arises that requires constitutional interpretation it is incumbent upon the courts to resolve the issue. *Lamm*, 704 P.2d at 1378 (citing *Marbury v. Madison*, 5 U.S. 137, 175 (1803)); *Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 206 (Colo. 1991).

With respect to the constitutional question before the Court, the intent and spirit of the legislative process is clear. "Legislative power is defined by the nature of legislative decision-making; when a government legislates, it weighs broad, competing policy considerations …" *Vagneur v. City of* Aspen, 295 P.3d 493 (Colo. 2013). To enable each Member to weigh in and address these broad policy considerations and properly participate in the legislative process it is imperative that each Member be fully apprised, and able to fully understand and appreciate the importance of each word and phrase.

The object of the requirement that every bill be read at length on two different days in each house 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." *House Bill No. 250,* 57 P. at 50. To accomplish this end, each bill considered for vote in Colorado must be read by title when introduced on two different days in each house of the General Assembly. Colo. Const. art. V, §22. A reading at length may only be dispensed with upon unanimous consent of the Members present. *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. *See, Speaker of the House*, 25 P. at 710. The Court was unable to discern a single word from the tape played during the court proceeding. To "read" the bill, which is a constitutional requisite, in such a manner renders it a nullity.[2]

[2] A definition of "read" is "to study the movements of with mental formulation of the communication expressed." *Webster's Ninth New Collegiate Dictionary* (1984). An additional definition of "read" is "to attribute a meaning to" which would require that the reading be comprehensible. *Id.*

Preliminary Injunction

Plaintiffs seek a determination of law pursuant to Colo. Rev. Stat. § 13-51-106. Pursuant to Colo. Rev. Stat. § 13-51-106 and Colo. R. Civ. P. 57, Senators Cooke, Gardner and Holbert request a determination that the actions of Defendants violated the Constitution, and the purported reading at length of HB 1172 upon second reading on March 11, 2019 was ineffective and that unless it is properly read at length or unanimous consent of the members present to waive such reading is validly obtained, HB 1172 will, if passed, be null and void.

The standard for consideration of a motion for a preliminary injunction in Colorado is whether the moving party can demonstrate (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (3) that there is no plain, speedy, and adequate remedy at law; (4) that the granting of a preliminary injunction will not disserve the public interest; (5) that the balance of equities favors the injunction; and (6) that the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982); *High Plains Library Dist. v. Kirkmeyer*, 370 P.3d 254, 259 (Colo. App. 2015).

Consideration of the *Rathke* Factors

A. Plaintiffs have a reasonable probability of success on the merits.

Colo. Const. art. V, §22, clearly provides constitutional protections for the minority party, whichever political party may be, that is designed to "prevent, so far as possible, fraud, trickery and deceit and subterfuge in the enactment of bills, and prevent hast and ill-conceived legislation." *In re House Bill No. 250*, 57 P. 49, 50 (Colo. 1899). "When interpreting a constitutional amendment, we should ascertain and give effect to the intent of those who adopted it." *Grossman v. Dean*, 80 P.3d 952, 962 (Colo. App. 2003). It is clear that the framers of Colorado Constitution never contemplated computers reading bills on the floor of the Senate.[3] This Court is not troubled by technology and the fact that computers and technology have advanced to a level that they can be legally be incorporated into the legislative process, however, using multiple computers to read different portions of the bill at one time, at a speed the mind cannot comprehend, compromises and violates the legislative process. All procedural safeguards have been rendered moot.

[3] "Initially, there were six such computers; by the end of the reading, only four computers were used." Stipulated Facts ¶ 42.

As stated in Defendant's Response to Forthwith Motion for Temporary Restraining Order, filed March 19, 2019, "the purpose of reading a bill thus was to provide notice of the pendency of legislation as legislators lacked access to an alternative means of becoming aware of that bill, no matter how far in the process it had progressed to." Def. Resp. p. 7. This purpose has not changed. However, the 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. 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.[4]

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 the article V, § 22 of the Colorado Constitution. The Court concludes that the Plaintiffs have demonstrated a reasonable probability of success on the merits.

B. There is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief.

The Colorado Supreme Court has previously found that a violation of an interest protected by a constitutional provision establishes "an injury in fact." *See Romer v. Colorado Gen. Assembly*, 810 P.2d 215, 220 (Colo. 1991). The requirements of article V, § 22 are a legally protected interest of not just the legislature but of the Colorado citizenry. Absent the preliminary injunctive relief requested, 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.

The Court concludes that the issuance of a preliminary injunction, as requested herein, will prevent real, immediate and irreparable relief.

C. There is no plain, speedy, and adequate remedy at law.

In the event that a preliminary injunction is not entered, HB 1172 will be moved through the General Assembly for passage and signature by the Governor. Based upon the fundamentally flawed second reading, the Court finds that seeking extraordinary relief from the judicial branch prior to passage is appropriate as there is no other plain, speedy, and adequate remedy provided at law.

[4] A definition of "read" is "to learn from what one has seen or found in writing or printing" or "to deliver aloud by or as if by reading." *See Webster's Ninth New Collegiate Dictionary* (1984)

D. The granting of the requested preliminary injunction will not disserve the public interest.

It is in the public interest for the requirements of Constitutional provisions to be followed by the legislature. The granting of the requested limited preliminary injunction will protect the public interest by requiring HB 1172 to be read in a comprehensible fashion, in full, prior to a vote.

E. The balance of equities favors the requested preliminary injunction.

No party or other affected person or entity will be adversely affected by the preservation of stability sought through the requested preliminary injunctive relief pending final resolution of the issues posed in this action. Defendants still have the ability to read and seek passage of HB 1172 by the General Assembly.

F. The requested limited preliminary injunction will serve to preserve the status quo pending final resolution of the issues posed in this action.

The sole purpose and intended effect of the preliminary injunction is to preserve the status quo and prevent the passage of a law that is procedurally flawed under the Colorado Constitution. The General Assembly has the authority and ability to properly read the bills at issue, in full, in compliance with article V, § 22 of the Colorado Constitution.

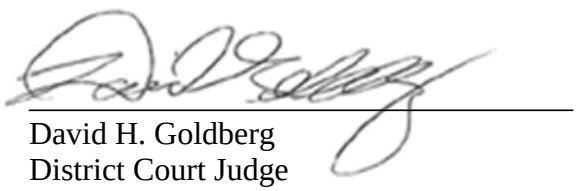
Order and Entry of Preliminary Injunction Pursuant to C.R.C.P. 65(f).

For the reasons set forth above, the Court hereby enters a preliminary injunction pursuant to C.R.C.P. 65(f), directing the Secretary of the Senate, 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.

No security shall be required from the Plaintiffs pursuant to C.R.C.P. 65(c).

Dated March 19, 2019

BY THE COURT:



David H. Goldberg
District Court Judge