



March 26, 2020

Questions Abound as Colorado General Assembly Extends Suspension of Legislative Session

On Saturday, March 14, the Colorado General Assembly took the unprecedented step of adjourning for just over two weeks to help prevent spread of the coronavirus among legislators, staff, lobbyists and the general public. While lawmakers intended to resume work on Monday, March 30, as that date draws closer it appears legislative leadership in the House and Senate is resigned to extending the break. House Speaker KC Becker (D-Boulder) said this week that, given the mounting number of COVID-19 cases statewide and threats of community spread at the Capitol, the earliest the legislature would likely return is the second half of April. Becker's sentiment was echoed by Senate President Leroy Garcia (D-Pueblo), who expressed that returning against the advice of public health guidance would be imprudent.

Becker and Garcia's pronouncements are not entirely unexpected. On March 18, Gov. Jared Polis (D) closed the Capitol complex to all public access indefinitely to prevent community spread of the coronavirus. Additionally, the Joint Budget Committee (which crafts the state government's budget for each fiscal year) announced on March 20 that it would be pausing work until at least April 7. When the session adjourned on March 14, members of the Joint Budget Committee had signaled their intent to keep working until the full legislature reconvened. Finally, on March 23 it was reported that state Sen. Jim Smallwood (R-Parker) had contracted COVID-19.

Importantly, Colorado's state constitution limits the length of the state legislature's annual regular legislative session to 120 "calendar days." At the time of the temporary adjournment, 53 days remained in the 120-day regular session. Before adjourning, the legislature passed [House Joint Resolution 20-1006](#) asking the Colorado Supreme Court to determine whether the constitutional 120-day limit requires the "calendar days" to be counted consecutively and continuously, or whether the state legislature may interpret the "calendar day" limitation to be counted as working days during a declared disaster emergency.

The Colorado Supreme Court accepted the interrogatory and six simultaneous briefs were filed on March 24. Four briefs, filed by the [Colorado General Assembly](#), the [governor's office](#), the [Colorado Association of Local Public Health Officials](#) ("CALPHO"), as well as a [coalition of various public interest organizations and local governments](#), assert that calendar days are working days during a declared disaster emergency. Conversely, the other two briefs, filed by all [40 Republican lawmakers](#) (who hold minorities in both the House and Senate) and the conservative think

tank [Independence Institute](#) argue that calendar days are consecutive days.

There is little precedent for the interested parties or the court to go on, and the heart of the issue is whether the language of the state constitution—“[r]egular sessions of the general assembly shall not exceed one hundred twenty calendar days”—is clear or ambiguous. The general assembly, the governor’s office and the coalition all contend that the language is unclear, and that the state legislature’s practice of interpreting calendar days as continuous during normal times and as working days during a declared disaster emergency is permissible and consistent with the purpose of the constitutional 120-day limit. Meanwhile, CALPHO’s argument in support of the working days’ proposition is grounded less in legal theory and more in the practical consequences of legislative work continuing amidst the public health crisis.

In contrast, the Republican legislators and the Independence Institute maintain the constitutional language is clear because 120 “calendar days” has always meant consecutive calendar days, and not an accumulation of 120 days annually with the state legislature adjourning then reconvening nonconsecutively.

While the Colorado Supreme Court has not set out whether or when it will hear oral arguments or issue its ruling, how it interprets the constitutional 120-day limit will likely decide the fate of the 2020 regular session. If the court determines that the “calendar days” should be counted consecutively and continuously, the clock continues to run on the 120-day total and the state legislature must adjourn sine die on May 6. This does not preclude the state legislature from convening again this year, however, as either the governor or the state legislature may call a special session should he or they so choose. Alternatively, if the court determines calendar days can be construed as working days during a declared disaster emergency, the session is effectively paused. Resultantly, pending legislation would hold its place on the calendar and, when the legislature reconvenes, it would still possess 53 days in which to complete its work.

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