DISTRICT COURT CITY & COUNTY OF DENVER 1437 Bannock Street Denver, Colorado 80202	DATE FILED: May 19, 2020 4:24 PM
Plaintiffs: Rocky Mountain Gun Owners, a Colorado nonprofit corporation; Representative Patrick Neville, House Minority Leader; Representative Lori Saine; and Representative Dave Williams. v. **Defendants:** Jared S. Polis, in his official capacity as Governor of the State of Colorado.	▲ **COURT USE ONLY** ▲ Case Number: 2019CV31716 Courtroom: 409

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the Court on Defendant's Motion to Dismiss filed on June 27, 2019. Plaintiffs filed a Response on July 18, 2019; and Defendant filed a Reply on August 1, 2019. The Court heard oral argument on this matter on April 9, 2020. The Court, having reviewed the filings, the registry of actions, and applicable legal authority, Finds and Orders the Following:

I. Background

According to the complaint, HB 19-1177 was introduced in the House of Representatives on February 14, 2019. Complaint at ¶ 17. The House passed the bill on second reading on March 1, 2019, and on third reading on March 4, 2019. *Id.* The Colorado Senate passed HB 19-1177 with amendments on March 28, 2019. *Id.* The House concurred in the Senate's amendments and repassed the bill on April 1, 2019. *Id.* The Governor signed HB 19-1177 on April 12, 2019. *Id.*

The error alleged by Plaintiff is that While HB 1177 was being considered on second reading, Representatives Williams and Saine requested that HB 19-1177 be read at length, and that the chair of the Committee of the Whole denied Rep. Williams' request," and would not consider Rep. Saine's motion.

Plaintiffs allege that HB-1177 was passed in violation of the "reading requirement" contained in the first sentence of Article V, § 22 of the Colorado Constitution.

> 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.

Colo. Const. art. V, § 22 (relevant portion underlined).

Plaintiffs filed suit in this court on May 2, 2019. Defendant has moved to dismiss under Colorado Rules of Civil Procedure 12(b)(1)--alleging a lack of standing by all Plaintiffs, and that the complaint presents a nonjusticiable political question--and 12(b)(5)--failure to state a claim (laches).

HB 19-1177 adds article 14.5 to Title 13, entitled "Extreme Risk Protection Orders (ERPO). The bill creates a comprehensive process for the temporary removal of firearms from persons who a court determines, after a hearing, pose a significant risk of causing personal injury to themselves or others.

II. Standard of Review

a. Standard of Review under C.R.C.P. 12(b)(5).

In addressing a motion to dismiss under C.R.C.P. 12(b)(5), the court must decide whether the allegations of the complaint are sufficient to raise a right to

relief "above the speculative level" and provide "plausible grounds" to support the cause of action asserted. *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016) (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The trial court is tasked with the responsibility of weeding out groundless complaints early, and one which does not plead enough facts to suggest the claim is "plausible on its face" must be dismissed. *Warne*, 373 P.3d at 594. Although C.R.C.P. 8 does not require "detailed factual allegations," *Twombly*, 550 U.S. at 555, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. Put another way, the complaint should be dismissed if "the substantive law does not support the claims asserted." *Sonitrol Corp., W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008).

The court "must base its decisions solely on the complaint itself" and accept all well-pleaded facts contained in the complaint as true, view them in the light most favorable to the plaintiff, and draw all inferences in the plaintiff's favor. *Bristol Co., LP v. Osman*, 190 P.3d 752, 755 (Colo. App. 2007); *See Twombly*, 550 U.S. at 556; *Warne*, 373 P.3d at 591. In addition, "a document that is referred to in the complaint, even though not formally incorporated by reference or attached to the complaint, is not considered a matter outside the pleading." *Yadon v. Lowry*, 126 P.3d 332, 336 (Colo. App. 2005).

b. Standard of Review under C.R.C.P. 12(b)(1).

Standing is a component of subject matter jurisdiction. *Sandstrom v. Solen*, 2016 COA 29, ¶ 14, 370 P.3d 669, 672. And, although Defendant has invoked the lack of jurisdiction as a defense by way of his Motion to Dismiss, the burden of establishing this trial court's jurisdiction is Plaintiffs' burden. *Arline v. American Family Mutual Insurance Company*, 2018 COA 82; 431 P.3d 670 (Colo. App. 2018). Unlike a motion to dismiss brought under C.R.C.P. 12(b)(5), a trial court's jurisdiction may turn on disputed facts, in which case the court cannot determine its jurisdiction on the face of the pleading but instead may hold an

evidentiary hearing and make factual findings related to its jurisdiction. C.R.C.P. 12(d); *Medina v. State*, 35 P.3d 443 (Colo. 2001).

III. Analysis

As this Court analyses each of the issues presented, it is important to keep in mind that the case *sub judice* is not a full-throated constitutional challenge to HB 19-1177, as applied. The Plaintiffs do not bring this action as an alleged violation of their right to bear arms under Colo. Const. art. II, § 13; rather, this matter presents only a narrow, legal issue: Allegations that the House violated the State constitution by the manner in which it passed HB 19-1177.

The specific provision at issue is the "unanimity clause" of Article V, § 22 of the Colorado Constitution. Article V, § 22 contains numerous, distinct clauses: (1) what has been referred to as the "reading requirement," "Every bill shall be read by title when introduced, and at length on two different days in each house;"; (2) a "unanimity clause," "provided, however, any reading at length may be dispensed with upon unanimous consent of the members present."; (3) the "substantial amendments" clause, "All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill,"; (4) a "voting clause," "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,"; and finally (5) the "ayes and noes" requirement, "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." The unanimity clause is an independent clause whose terms qualify the reading requirement.

a. Political Question

The Defendants contend this matter should be dismissed pursuant to C.R.C.P. 12(b)(1) as delving into a nonjusticiable political question exceeds the judicial branch's jurisdiction. A nonjusticiable political question implicates the court's jurisdiction, and Defendant's motion is properly brought, and reviewed,

under C.R.C.P. 12(b)(5). *See People ex rel. Tate v. Prevost*, 134 P. 129, 134 (Colo. 1913).

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.

Baker, 369 U.S. at 217.

Plaintiffs argue that this matter has been settled in their favor. For example Plaintiffs' write,

> The Defendant's argument is directly contrary to the Colorado Supreme Court's holding in *In re Interrogatories of Governor Regarding Certain Bills of Fifty-First Gen. Assembly*, 195 Colo. 198, 578 P.2d 200 (1978). In that case the Court stated in a case specifically addressing compliance with art. V, § 22: "we [i.e., the Courts] hold the General Assembly to compliance with specific constitutional provisions regulating its procedure." *Id.*, 195 Colo. at 209, 578 P.2d at 208.
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> Plaintiffs' Response to Motion to Dismiss, p. 19.

The holding and analysis of the *In re Interrogatories* court is very instructive to the matter before this Court, though Plaintiffs' argument misconstrues both. In *Interrogatories*, the Colorado Supreme Court was faced with a situation in which both the Governor and the legislature were not following applicable constitutional requirements.

As to the Governor, the relevant provisions were Colo.Const. Art IV, §§11 and 12 which, together, impose a specific ten-day limitation for the Governor to return a bill with his objections to the house in which the bill originated. The court concluded, "[s]ince it was not returned to the Senate with his objections with ten days after it had been presented to him, it then became law." The Governor was held to *strict compliance* with the *specific* 10-day requirement imposed by the Constitution.

As to the legislature, the court's analysis and decision were completely different. The issue submitted to the court was that certain bills were not duly enacted as there was not a vote as to each "taken by ayes and noes." *In re Interrogatories*, 195 Colo. at 205. Unlike the specific ten-day provision applicable to the Governor, the court wrote, "The real problem with the 'ayes and noes' requirement is that it is inherently ambiguous." *In re Interrogatories*, 195 Colo. 198, 208 (internal quotations in the original). It is as this point in its opinion that the supreme court wrote the passage from which the Plaintiffs selected the language they put into their brief, quoted above (and underlined in the excerpt of the ruling below):

> *If the Colorado Constitution required a particular manner of taking the ayes and noes, then the legislature would be required to strictly comply with that procedure.* Just as we hold the Governor to literal compliance with the *specific procedures and time limitations* for exercise of his veto power, *so should we* hold the General Assembly to compliance with specific constitutional provisions regulating its procedure. *However,* when the constitutional requirement can be complied with in a number of ways, our task is to determine whether the method actually chosen is in conformity. The critical inquiry is whether, during final passage, the members of the legislative body were afforded the opportunity to approve or disapprove the pending bill and whether this individual approval or disapproval was recorded in the official journal as mandated by the constitution. Here, the method of voting by the Senate by use of the "present roll call" and "previous roll call" in adopting the bills under consideration, afforded the members the opportunity of approval or disapproval.

> While we do not necessarily concur, it has been urged, with the citation of a number of cases as authority, that we should hold that the recitals in the journal are conclusive and may not be contradicted or altered in any manner. Under the situation here presented we should show deference to a long-standing practice of Senate action in the adoption of bills. We quote the philosophy of this court expressed over 70 years ago in *Board of County Commissioners of Pueblo County v. Strait*, 36 Colo. 137, 85 P. 178 (1906):
>
> > ". . . we 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.
> >
> > "We are not without serious doubts as to the correctness of the legislative practice, and we are not prepared to say that unaided by the legislative construction of the articles of the Constitution, our construction would have been the same; but it is our duty to resolve the doubt in favor of the validity of the act."

In re Interrogatories, 195 Colo. 198, 209, 578 P.2d 200, 208 (1978). (emphasis added)(quotations in the original).

The Colorado supreme court did not, as argued by Plaintiffs, hold that the General Assembly must strictly comply with the requirements of art. V, § 22. It held quite the opposite: that when a constitutional requirement can be fulfilled in multiple ways, it can be and the court's only to task is to determine whether the method actually chosen is in conformity.

Plaintiffs' use of *In re House Bill No. 250* suffers similarly. In arguing that "the principle that issues arising under art. V, § 22 are judicially cognizable by the Colorado courts dates back 12- years,"[1] Plaintiff cites, and quotes, *In re House Bill No. 250*, 26 Colo. 234 (1899), in which the Colorado supreme court invalidated a statute for failure to comply with a mandatory provision of art. V, § 22. Plaintiffs write,

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[1] Plaintiffs' Response at p. 19.

The defendants in that case apparently argued that the legislature itself should be the judge of whether it has complied with the constitutionally mandated procedures. The Court made short work of this argument:

> If either house of the general assembly may for itself conclusively determine whether or not [art. V, § 22 has been complied with], then all the benefits of this clause would be lost . . . the question as to whether or not [art. V, § 22 has been complied with] is judicial, and not legislative . . . (sic)

Plaintiffs' Response to Motion to Dismiss, p. 19.

The actual language the court used (with Plaintiffs' selected verbiage underlined) is as follows:

> If either house of the general assembly may for itself conclusively determine whether or not *any amendment is a substantial one*, then all the benefits of this clause would be lost, and its effect altogether frittered away; for the mere neglect or refusal of that body to have any amendment printed would be equivalent to its determination that the amendment was not substantial; and, if that decision was final, then, by a majority vote, the most substantial amendment that can be conceived of might be ingrafted upon a bill, and the members not have the benefit of a printed copy before them before finally voting on the bill itself. The case nearest in point that we have been able to find is that already cited upon another proposition in 20 Colo. 1, 36 Pac. 793. The precise question here was not then before the court, but the act there considered was claimed to be in violation of section 22 of article 5 of the constitution. One of the points sought to be made was that the amendment not having been printed, the act was void; but the court disposed of the contention by saying that it did not make a substantial, or any, change in the effect of the act, and 'consequently is not such an amendment as the constitution requires to be printed.' That decision, in its logical effect, is authority for the proposition that the question as to whether or not an *amendment is a substantial one* is judicial, and not legislative; for, if it was a legislative question, the court would probably have put its decision upon that ground, and not upon the ground that the amendment was not, in the opinion of the court, a substantial one. Impliedly, also, the effect of this decision is that, if the amendment had been a substantial one, the constitution requiring that it should be printed before the vote upon the bill was taken, the act as so amended would have been void, had not such amendment been

printed before such vote was had.

In re House Bill No. 250, 26 Colo. 234, 240, 57 P. 49, 51 (1899)(emphasis added).

In presenting the cobbled together verbiage for authority that "the question as to whether or not [art. V, § 22 has been complied with] is judicial, and not legislative," Plaintiffs mischaracterize that court's holding. The court in *House Bill No. 250* was interpreting the meaning of the words "substantial amendment" in a separate independent clause within art. V, §22. That court did not address the "unanimity clause" of the "reading requirement."

It is appropriate to pause here to address Judge Goldberg's decision in *Cooke v. Markwell*, Denver Dist. Ct. No. 2019CV30973, as both sides site to his determination that the "reading requirement" clause of Colo.Const art. V, §22 was appropriate for judicial review. Though Judge Goldberg's decision is on appeal, this Court will, nonetheless, opine that a proper application of the precedent cited above confirms that his decision was a correct one. The facts of the *Cooke* case had the majority party attempting to comply with the requirement that "every bill shall be read...at length" by utilizing five separate computers to "read" different portions of a bill, simultaneously, at 650 words per minute. The result was such a cacophony of meaningless sound that Judge Goldberg was unable to discern a single word.

It is important to note that the "reading requirement," is qualified by the "unanimity clause: (1) "Every bill shall be read by title when introduced, and at length on two different days in each house;" and (2) "provided, however, any reading at length may be dispensed with upon unanimous consent of the members present."

Judge Goldberg was called upon to determine what the word "read" means in clause (1) of that sentence. Just as the court in *House Bill 250* found it appropriate to determine what the discrete term "substantial amendment"

meant, Judge Goldberg held that it was the providence of the court to determine what "read" means. The *Cooke* decision is also consistent with *In re Interrogatories*. Under the specific facts of the case before him, it was readily determinable by Judge Goldberg determined that the "method actually chosen" by the legislature to comply with the reading requirement (unintelligible noise) was, facially, not in conformity with the Colorado constitution. The issue presented in *Cooke* did not implicate internal legislative rules.

In this case, the "method actually chosen" by the House to effectuate compliance with unanimity provision of the "reading requirement" clause of Const.art V, § 22 is House Rule 27(b). As quoted in the Complaint at ¶19, that Rule provides:

> Every bill shall be read by title when introduced, which shall constitute first reading, and at length on two different days prior to its being finally passed. Reading before the House sitting as committee of the whole shall constitute second reading. Unless a member shall request the reading of a bill in full when it is being considered on second or on third reading, it shall be read by title only, and the unanimous consent of the members present to dispense with the reading of the bill at length shall be presumed.

Just as in *In re Interrogatories*, the constitutional requirement *sub judice* can be complied with in a number of ways. This Court may only determine whether the method actually chosen is in conformity. On its face, as a method of compliance with the constitution, House Rule 27(b) is in conformity.

The question then becomes, may (or should) this Court delve further into the legislative process. Here, there are a number of other constitutional provisions that limit this Court's authority:

- Colo. Const. art. III. "The powers of the government of this state are divided into three distinct departments, --the Legislative, Executive and Judicial; *and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others*, except as in this Constitution expressly directed or permitted." (emphasis added.)

- Colo. Const. art. V, § 1. "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, § 12, which states that "[e]ach house shall have power to determine the rules of its proceedings; [and] to enforce obedience to its process[.]"

The power of the House of Representatives to act under its own internal procedural rules is "plenary" and "exclusive." *In re Speakership of the House of Representatives*, 25 P. 707, 710 (Colo. 1891). The House of Representatives "must judge for itself" compliance with its own internal procedural rules and the courts will "not inquire into the motive or cause" that might have influenced the legislature's actions taken in pursuit of its own rules. *In re Speakership*, 25 P. at 710. And, as already noted, the supreme court in *In re Interrogatories* quoted its philosophy on this issue when it quoted *Board of County Commissioners*

> ". . . we 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.

In re Interrogatories, 195 Colo. 198, 209, 578 P.2d 200, 208 (1978)(quoting *Board of County Commissioners of Pueblo County v. Strait*, 36 Colo. 137, 85 P. 178 (1906).

The matter presented raises precisely the type of political question a disciplined judiciary, mindful of its place in the constitutional scheme of things, should avoid. The application of the *Baker* considerations forcibly argues that this Court can go no further without violating basic tenants of the Colorado constitution. *Baker* begins by saying, "[p]rominent 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." Very little could be more explicit in the plain language of the Colorado Constitution than the legislature passes laws--Colo. Const. art. V, § 1--and that, in this case, the House is granted authority to make it rules and enforce its process--Colo. Const. art. V, § 12.

The second consideration—a lack of judicially discoverable and manageable standards for resolving the question—and the fourth—the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government—also counsel strongly in favor of judicial restraint.

Under C.R.C.P. 12(b)(1), a court may hold a hearing to gather evidence to help it decide if it has jurisdiction. Were such a hearing to be held, this Court could find no guidance on what standard it should apply to determine whether or not either representative followed house rules in making their requests, much less how to review the decisions of the Chair of the Committee of the Whole when it "denied Representative Williams' request" and refused to consider Representative Saine's.[2] It is inappropriate for this Court to substitute its ruling for the Chair's on issues placed squarely within the House's constitutional bailiwick. *In re Interrogatories, In re Speakership,* and *In re House Bill 250* were decided by the Colorado Supreme Court after questions were placed to it by the Governor of the State. Those courts had jurisdiction over the questions presented to them by operation of section 3 of article VI of the Colorado Constitution. The matter *sub judice* is differently situated and this Court has no similar constitutional authorization to interfere with the internal operation of the House pursuant to its own rules.

Regardless of the lack of any appropriate standard of review, unlike the *Cooke* case, the evidence necessary to decide this matter is not a recording. The

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[2] Plaintiffs seem to argue that article V, section 22, grants the representatives a personal right to have bills read at length (*See, e.g.*, Complaint at ¶¶20, 21, Representative Williams "exercised *his* right under the Constitution and Rule 27(b)" and "thus depriving Representative Saine of *her* right under the Constitution")(emphasis added). Though it is not necessary to directly address this issue, the Court would note that this section does not appear to give individual legislators an individual right, rather it seems to be a procedural requirement applicable to the legislative process. And, unlike the veto provisions examined by the court in *In re Interrogatories*, it is not specific requirement, rather it is a requirement that can be complied with in a number of ways—House Bill 27(b) being one of those ways.

evidence that would be adduced in this case would be the testimony of the Representative Plaintiffs, other Representatives, the Chair, and perhaps experts on House Rules and Procedure. Ordering the Chair to testify before this Court to explain its rulings on the various legislative maneuvers of the Representative Plaintiffs, to have it explain the House's internal procedures, subjecting the Chair and Representatives to cross examination, and then subjecting the Chair's rulings and actions (or Plaintiffs' legislative actions) to any level of judicial review would show disrespect due to that coordinate branch of government.

The "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" does not mean judicial acquiescence or that the Judiciary has no power, under any circumstance, in this space. Certainly, the House could not eschew its obligations to comply with constitutional procedural requirements and expect such dereliction to be free from judicial review. Neither could the House flaunt its own rules to the point that they render meaningless its attempts to comply with its constitutional obligations.

But such dereliction has not been alleged. The complaint does not allege that there is no mechanism in place designed to comply with the unanimity clause of art V, §22 of the constitution. Nor does it allege that House Rules were ignored, or that the procedures used by the House majority was such that it flaunted or ignored the unanimity clause of the reading requirement. The Complaint simply, and straightforwardly, alleges that "requests"[3] were made by Representatives Williams and Saine and that the same were, respectively, denied and not considered.

In considering Defendant's motion, this Court has accepted the allegations made in the Plaintiffs' complaint as true and has construed them strictly against the Defendant. *Crystal Lakes Water & Sewer Ass'n v. Backlund*, 908 P.2d 534, 540 (Colo. 1996). Nonetheless, in this Court's view, a judicial determination of

[3] It's unclear what a "request" is vis-à-vis legislative procedure.

this matter hinges on the application of internal House Rules to internal House Procedures as administered by the Chair of the Committee of the Whole. At this point, the judiciary comes into head-to-head conflict with legislative authority and prerogative. Constitutional separation of powers demands this Court abjure.

b. Standing

Though Defendant's motion will be granted based upon the political questions presented, the Court will nonetheless address, briefly, the other standing issues presented for its consideration.

Standing is a jurisdictional prerequisite that can be raised any time during the proceedings. *Hickenlooper v Freedom from Religion Foundation, Inc,* 2014 CO 77, ¶7; 338 P.3d 1002, 1006 (2014). Because "standing involves a consideration of whether a plaintiff has asserted a legal basis on which a claim for relief can be predicated," *Bd. of Cnty. Comm'rs v. Bowen/Edwards Assocs.*, 830 P.2d 1045, 1052 (Colo. 1992), the question of standing must be determined prior to a decision on the merits, *see Ainscough*, 90 P.3d at 855. If a court determines that standing does not exist, then it must dismiss the case. *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977).

In *Wimberly*, the Colorado supreme court articulated a two-prong test for determining whether a plaintiff can establish standing to sue. *See id.* at 168, 570 P.2d at 539. To satisfy the Wimberly test, a plaintiff must establish that (1) he suffered an injury in fact, and (2) his injury was to a legally protected interest. *See Wimberly*, 194 Colo. at 168, 570 P.2d at 539.

The first prong, the injury-in-fact requirement, maintains the separation of powers mandated by article III of the Colorado Constitution by preventing courts from invading legislative and executive spheres. *Freedom from Religion Foundation* at ¶9. Because judicial determination of an issue may result in disapproval of legislative or executive acts, this constitutional basis for standing

ensures that judicial determination may not be had at the suit of any and all members of the public. *Id.* (internal citations and quotations omitted). The injury-in-fact requirement also finds constitutional roots in article VI, section 1, under which Colorado courts limit their inquiries to the resolution of actual controversies. *Id.*

The second prong, the legally-protected interest requirement, promotes judicial self-restraint. *Id.* at ¶10. This prudential consideration recognizes that unnecessary or premature decisions of constitutional questions should be avoided, and that parties actually protected by a statute or constitutional provision are generally best situated to vindicate their own rights. *Id.* Claims for relief under the constitution, the common law, a statute, or a rule or regulation satisfy the legally-protected-interest requirement. *Id.*

(i) Taxpayer Standing

Notwithstanding the fact that Colorado law allows for broad taxpayer standing, to satisfy the injury-in-fact requirement (prong one) a plaintiff must still demonstrate a clear nexus between his status as a taxpayer and the challenged government action. *Id.* at ¶12. A claimed injury that is "overly indirect and incidental" to the challenged government action will not convey taxpayer standing. *Barber v. Ritter*, 196 P.3d 238, 246 (Colo. 2008)(internal quotation marks omitted).

There isn't a sufficient nexus between the Plaintiffs' claimed injury as taxpayers and the complained of government action in this case (the conduct of the Chair of the Committee of the Whole in denying requests made by certain representatives). Unlike other cases, this matter does not implicate a use of taxpayer money; it merely complains of legislative action taken while conducting legislative business. *Compare, e.g., Barber, supra,* (determining that plaintiffs had taxpayer standing to challenge the constitutionality of the *transfers of money* from the special funds to the state's General Fund and the concomitant

expenditure of that money to defray general governmental expense, rather than to defray the cost of services provided to those charged) 196 P.3d at 247; and *Dodge v. Dep't of Soc. Servs*,198 Colo. 379, 381–83, 600 P.2d 70, 71–72 (1979) (determining that plaintiffs had taxpayer standing to challenge an *expenditure* of public funds to finance nontherapeutic abortions). As no use, transfer, or expenditure of tax money is implicated by the specific government action complained of in this matter, there simply is no sufficient nexus for anyone to satisfy this prong, an essential prerequisite to establishing taxpayer standing.

Plaintiffs also fail to establish the second prong, the legally-protected-interest requirement. As noted above, article V, § 22 places a requirement on the conduct of the legislature, it does not grant taxpayers or individuals any rights. It does not regulate the government's use of money in any way. This constitutional provision is qualitatively different from the provisions used by other Plaintiffs, in other cases, to establish taxpayer standing. *See, e.g., Barber v. Ritter, supra* (plaintiffs sued under TABOR, Colo. Const. Art. X, § 20); *Dodge, supra* (plaintiffs sued under Colo. Cont. art. V, §33).

(ii) Individual Standing

Again, Colorado court provide for broad individual standing, but courts have refused to permit individual standing when the alleged injury is indirect and incidental to the defendant's conduct. *See Freedom from Religion Foundation,* 2014 CO at ¶17. As above, any claim of individual harm due to the specific governmental conduct complained of in this matter is, at best, attenuated. It cannot be overstated: The complained of government action in this case is an alleged failing of the Chair of the Committee of the Whole to enforce requests made by the Representative Plaintiffs. If individuals had standing to complain of every procedural maneuver, procedural ruling, legislative process, or application of legislative rules that occurred along the way to a bill's passage, then every disgruntled individual in Colorado would be able

to challenge every bill passed by every legislature every year. Such a tenuous harm cannot be the basis for individual standing.

(iii) Legislative Standing

On the other hand, this Court would find that Representatives Saine and Williams have legislative standing to bring this suit. Relying primarily upon *Grossman v. Dean*, 80 P.3d 952 (Colo. App. 2003), the Court finds that these representatives, as the ones who actually attempted to call for a full reading of the bill, would have stated an injury-in-fact to a legally-protected interest in that they are the House members who asked for the reading. If Defendant's position were adopted no one would have any type of standing to allege any sort of procedural misconduct by any legislature, and that simply is not, nor can it be, the law. As discussed above, the constitution places certain requirements on the legislature. Colo. Art V, § 22 is one such requirement. The legislature has a constitutional obligation to fulfill those requirements, and if the legislature shirks its responsibilities, or the majority acts in such a way as to deny a legislator her rights under its Rules or the constitution, then that legislator has standing to ask a Court to review whether or not the legislature is meeting its constitutional obligations.

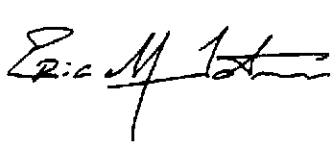
IV. Conclusion

As this case is not about whether or not the House fulfilled specific constitutional mandates, but rather about *the manner in which* the House fulfilled it obligations to the constitution this Court GRANTS Defendant's Motion to Dismiss as the application of House Rules to House procedure necessary to resolve this dispute presents a nonjusticiable political question.

This matter is here by DISMISSED.

SO ORDERED this Tuesday, May 19, 2020

BY THE COURT:



Eric M. Johnson
District Court Judge