Democrats in the Colorado legislature jostle over whether they must return to the Capitol to continue their coronavirus pause

Senate Democrats hoped to avoid returning to the General Assembly because of the public safety threat. House Democrats felt they needed to be at the Capitol in person to avoid legal troubles.

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Jesse Paul
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The situation highlights just how much pressure the disease is putting on the legislature and how much of a threat it is to Democrats’ policy agenda. Lawmakers had a tentative, bipartisan plan to avoid gathering and extend the legislative session’s recess until April, but that fell apart on Sunday afternoon.

Instead a handful of legislators gathered at the Capitol on Monday for a few minutes to recess until later this week.

A letter was drafted and was set to be signed by about two-thirds of the legislature — both Democrats and Republicans — explaining that the General Assembly was going to continue its recess until at least April 13. But instead of returning to the Capitol to extend the pause in the legislative session as was originally thought to be necessary, lawmakers would stay home to avoid the risks posed by the disease.

A copy of the letter, obtained by The Colorado Sun, says lawmakers “recognize the critical importance of protecting the health and safety of the members and staff of this body and all other persons who work at the Capitol or who seek to observe and participate in their government, by respecting and adhering...
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But the letter was scrapped — at the behest of House Democrats — in favor of a few top lawmakers returning on Monday to punt the decision on whether to extend the recess to later in the week.

Senate Democrats appear to have been mostly united behind sending a letter, rather than meeting in person.

“I think it’s irresponsible for us to go in tomorrow, and I think we should follow the example we want to set for everybody,” Senate Majority Leader Steve Fenberg, a Boulder Democrat who was at the Capitol Monday, said in an interview late Sunday.

On the other side is House Speaker KC Becker, a fellow Boulder Democrat, who said the best option was for a brief return to the Capitol on Monday. She worried that using a letter to extend the recess might not be legal. Returning, she said, is “the safest course of action right now.”
Becker was marked excused on Monday during the House’s minutes-long gathering. A spokesman for Becker said House leaders wanted to limit the session to “as few people as possible.” House Majority Leader Alec Garnett, a Denver Democrat who lives a mile away, was designated to handle the quick proceedings.

The Senate appeared to gather for even less time.

Both chambers adjourned for three days, until Thursday, the longest period for which they are allowed to temporarily recess without a quorum and a vote. Both Senate and House Democrats urged their members not to show up for safety reasons.

Only nine lawmakers were in the 65-person House. Senate President Leroy Garcia, D–Pueblo, didn’t even bother to take a count to see if there were enough lawmakers in the 35-person Senate to proceed with business because there were so few senators who showed up.

Gov. Jared Polis has ordered people to stay home until at least April 11 to slow the spread of COVID–19, the disease caused by the new coronavirus which has killed nearly 50 Coloradans and sickened at least 2,300 more. The legislature is exempt from the order.

The General Assembly shut down on March 14 for two weeks because of the disease with the hope of returning on Monday. But with the viral outbreak only worsening since then, lawmakers couldn’t safely resume their business.

The idea behind the letter was to allow lawmakers to return the week after Polis’ stay-at-home directive expired. Many preferred sending the letter because it allowed everyone to stay home, including nonpartisan staffers and the legislative leadership who now must quickly clock in and clock back out again.
A note on the door of the Colorado Senate on March 11, 2020, asking visitors to send emails to lawmakers instead of passing them business cards or notes. (Jesse Paul, The Colorado Sun)

And while the Office of Legislative Legal Services, the legislature’s attorneys, feels sending the letter to extend the recess likely was legally sound, it wasn’t willing to call it bulletproof.

“There is a risk that someone may challenge the constitutionality of any legislation adopted following the return” of the legislature, the office wrote in an opinion.

Meanwhile, the legislature is waiting for the Colorado Supreme Court to make a decision on whether it can extend the lawmaking term beyond May 6, the day lawmakers were originally supposed to adjourn. Becker said she is hopeful that ruling will come in the next few days and by Thursday they have a better picture of how to proceed.
“We just need to wait to hear from the Supreme Court,” she said. “I want to spend our time figuring out how we’re going to move forward as a legislature for the next several months. This is just a disagreement in how you effectuate that.”

Becker called the clock-in-clock-out approach, which requires just legislative leadership and nonpartisan staff to do, a middle ground between the letter and a push from some in her caucus to return to vote in person to extend the lawmaking pause. The vote would have required at least 33 members of the House and 18 members of the Senate to show up at the Capitol.

Plans were underway last week to make that happen, beginning by choosing the least vulnerable lawmakers to come into the building. One legislator — state Sen. Jim Smallwood, a Parker Republican — has tested positive for coronavirus, but is recovering after experiencing only mild symptoms.
Becker said “there was never a deal” to go with the letter, but that she understands the position of those who didn’t want to return to the Capitol. “I think that’s a very fair position to have and I totally get it,” she said. “What we’ve put forward doesn’t require any other members to come into the chamber.”

Fenberg was emphatic about the danger of gathering. “I don’t think we should be going into the Capitol,” he said. “It puts us at risk. It puts our communities at risk when we go back. It puts our staff at risk.”

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Democratic Sens. Julie Gonzales, of Denver, and Faith Winter, of Westminster, were among those ready to sign the letter. “This procedural vote could have been achieved without putting nonpartisan staff at risk,” Gonzales said.

Both Winter and Gonzales did not go to the Capitol on Monday.

Senate Minority Leader Chris Holbert, a Parker Republican, said he also was ready to sign onto the letter. “I thought it was a viable solution.”

Holbert, the top GOP state senator, said more than half of his caucus was ready to sign the letter. He said legislative leadership has been trying to find a way to avoid making people come back to the Capitol.

He was at the Capitol on Monday morning for the brief gathering, along with a few other Senate Republicans.
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“There are some folks who really feel the responsibility to be there,” Holbert said. “They were elected and we are convening so they are going to be there.”

Staff writer John Frank contributed to this report.

Updated at 10:30 a.m. on Monday, March 30, 2020: This story has been updated to reflect the Colorado House and Senate met briefly on Monday morning to recess until later in the week. House Speaker KC Becker, D-Boulder, was marked excused.

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