

**Initiative #46
Application of the Term Person**

1 **Amendment _ proposes amending the Colorado Constitution to:**

- 2 ◆ apply a constitutional right to life equally to all innocent persons;
- 3 ◆ apply the term person to a human being at any stage of development
4 regardless of the method of creation;
- 5 ◆ prohibit the intentional killing of any innocent person, including one
6 created through rape or incest; and
- 7 ◆ prohibit the use of birth control and assisted reproduction that kills a
8 person.

9 **Summary and Analysis**

10 ***Right to life.*** Both the U.S. Constitution and the Colorado Constitution
11 recognize the right to life. The U.S. Constitution states that no person "shall be
12 deprived of life, liberty, or property, without due process of law." Similarly, the
13 Colorado Constitution states that "all persons have certain natural, essential and
14 inalienable rights, among which may be reckoned the right of enjoying and defending
15 their lives and liberties; of acquiring, possessing and protecting property; and of
16 seeking and obtaining their safety and happiness."

17 Amendment _ specifies that the right to life applies equally to all innocent
18 persons. The measure applies the term person to a human being at any stage of
19 development regardless of the method of creation. Neither Colorado law nor the
20 measure defines the term innocent.

21 ***Prohibition of killing an innocent person.*** The measure prohibits the
22 intentional killing of any innocent person, including any innocent person created
23 through rape or incest. The U.S. Supreme Court decision that legalized abortion in the
24 United States found that the unborn were not included in the word "person" as used in
25 the U.S. Constitution. If the measure is adopted, each human being, at any stage of
26 development, will be recognized as a person under the Colorado Constitution. As a
27 result, the measure conflicts with federal law.

28 The measure prohibits the use of birth control and assisted reproduction that
29 kills a person. According to the Center for Disease Control, assisted reproduction
30 includes all fertility treatments in which both eggs and sperm are handled. The most
31 common method of assisted reproduction, known as in vitro fertilization, involves
32 surgically removing eggs from a woman's ovaries, combining them with sperm in a

1 laboratory, and returning them to the woman’s body or donating them to another
2 woman. Assisted reproduction does not include intrauterine or artificial insemination
3 (treatments in which only sperm are handled), or procedures in which a woman takes
4 medicine only to stimulate egg production.

5 **Exceptions.** The measure does not apply to medical treatment for
6 life-threatening medical conditions when the treatment is intended to preserve life.
7 Such medical treatments include, but are not limited to, treatments for:

- 8 ♦ cancer;
- 9 ♦ ectopic pregnancy, also known as a tubal pregnancy, a potentially
10 life-threatening form of pregnancy in which implantation of the
11 fertilized egg occurs outside the uterus;
- 12 ♦ molar pregnancy, when tissue that normally becomes a fetus
13 instead becomes an abnormal growth in the uterus;
- 14 ♦ twin-to-twin transfusion syndrome, a rare condition where blood
15 moves from one twin to the other and affects the development of
16 both twins and may result in the death of a twin; and
- 17 ♦ placenta previa, when the placenta forms low in the uterus and
18 covers all or part of the cervix. Placenta previa can cause medical
19 problems, including early delivery, severe bleeding, and birth
20 defects.

21 Additionally, the measure does not apply to a spontaneous miscarriage, which
22 is defined in the measure as the unintentional termination of a pregnancy.

23 **Arguments For**

24 1) Amendment _ establishes in the Colorado Constitution that all human
25 beings at any stage of development are afforded the right to life, including those
26 created through rape, incest, and assisted reproduction. It prohibits the killing of an
27 innocent person and establishes Colorado's intent to protect the unborn by ending the
28 practice of abortion in Colorado.

29 2) Amendment _ provides clarity and directs the courts and the legislature to
30 apply the term person to human beings at any stage of development regardless of the
31 method of creation. Because the Colorado Constitution does not currently contain a
32 definition of the term "person," interpretation of the term is subjective, which leads to
33 the courts and the legislature inconsistently applying the right to life and other rights.

34 **Arguments Against**

35 1) Amendment _ allows government intrusion into the private, personal
36 decisions of individuals, families, and doctors. The measure restricts the availability of
37 all abortions, even for victims of rape or incest. The measure also creates confusion
38 for women and their doctors in determining what types of birth control and fertility

1 treatments remain legal. Additionally, miscarriages may have to be reported and
2 investigated to determine whether the miscarriage was unintentional.

3 2) The repercussions of extending a right to life to the unborn are unclear.
4 The measure does not provide sufficient guidance for health care providers regarding
5 acceptable medical treatments, leaving doctors and nurses open to potential legal
6 action for providing care to women of child-bearing age. In addition, the measure may
7 affect a wide variety of laws, including property rights and criminal laws. Adoption of
8 the measure could lead to lawsuits being filed on behalf of eggs used for assisted
9 reproduction and embryonic stem-cell research.