

Amendment 67 Definition of Person and Child

1 **Amendment 67 proposes amending the Colorado Constitution to:**

- 2 ♦ specify that the terms "person" and "child" in the Colorado Criminal Code
3 and the state wrongful death statutes include unborn human beings.

4 **Summary and Analysis**

5 Amendment 67 creates a constitutional provision stating that the terms "person" and
6 "child" in the Colorado Criminal Code and the state wrongful death statutes must include
7 unborn human beings. The measure does not define the term "unborn human beings."

8 ***Colorado Criminal Code.*** The Colorado Criminal Code contains criminal offenses
9 in state law. It currently defines a "person," when referring to the victim of a homicide, as
10 a human being who had been born and was alive at the time of the criminal act. The
11 code excludes a human embryo, a fetus, and an unborn child at any stage of
12 development prior to live birth from the definition of "person." The Colorado Criminal
13 Code does not uniformly define "child;" the definitions vary based on different offenses.

14 ***State wrongful death statutes.*** State wrongful death statutes allow surviving
15 spouses, families, and estates to seek compensation for negligent actions resulting in
16 the death of a person. These statutes do not define "person" or "child."

17 ***Laws concerning offenses against pregnant women.*** Colorado law defines an
18 unlawful termination of a pregnancy as the termination of a pregnancy by any means
19 other than birth or a medical procedure with the woman's consent. Under Colorado law,
20 it is a crime to intentionally, knowingly, or recklessly cause an unlawful termination of a
21 woman's pregnancy, including vehicular unlawful termination of a pregnancy. Unlawful
22 termination of a pregnancy and offenses against a person are categorized in separate
23 sections of the law and may carry different penalties. If a person commits an offense
24 against a pregnant woman that results in the loss of her pregnancy, the offender can be
25 charged with at least two crimes — the offense against the woman and the unlawful
26 termination of the pregnancy. The law exempts pregnant women and health care
27 providers from criminal prosecution for acts related to a woman's pregnancy.

28 Colorado law also allows a woman to seek compensation from any person who
29 intentionally, knowingly, or recklessly causes an unlawful termination of her pregnancy.
30 Colorado law states that a woman is not liable for damages for acts she takes with
31 respect to her own pregnancy, nor is a health care provider for providing services.
32 Additionally, the law excludes a human embryo, fetus, and an unborn child at any stage
33 of development prior to live birth from the definition of "person."

34 ***Effect of Amendment 67 on abortion and reproductive health care.*** The
35 measure does not specify how its provisions will apply to health care providers or
36 medical procedures. Depending on how the term "unborn human being" is defined or

1 interpreted, the measure may impact the availability of abortions under Colorado law. It
2 may also impact the availability of other medical procedures, devices, and medications,
3 such as certain forms of birth control or in vitro fertilization.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

7 **Arguments For**

8 1) One of government's responsibilities is to protect its citizens from harm.
9 Amendment 67 protects pregnant women and unborn children by making it illegal to kill
10 or otherwise harm an unborn human being and holds perpetrators both criminally and
11 civilly liable. Crimes against unborn human beings should be subject to the same legal
12 penalties as crimes against human beings who have been born. Under Amendment 67,
13 a person who kills an unborn human being could be charged with homicide.

15 2) By including unborn human beings in the definition of "person," the measure may
16 establish the legal foundation to protect the unborn by ending the practice of abortion in
17 Colorado. If the Colorado Constitution recognizes an unborn human being as a person,
18 the measure may allow a district attorney to prosecute abortion as homicide or child
19 abuse and could limit the willingness of health care providers to perform abortions in
20 Colorado.

21 **Arguments Against**

22 1) Amendment 67 is unnecessary and unclear. There are already laws in place to
23 protect pregnant women endangered by the criminal acts of others, while respecting the
24 personal medical decisions of a woman and her health care provider. The term "unborn
25 human being" has no established legal or medical definition in Colorado law, and could
26 apply at the earliest stages of pregnancy. The measure could have far-reaching
27 consequences, including making pregnant women and health care providers criminally
28 and civilly liable for a pregnancy that does not result in a live birth.

31 2) Amendment 67 allows government intrusion into the personal health care
32 decisions of individuals and families and makes no exceptions for the privacy of the
33 doctor-patient relationship. The measure could make abortion a crime, including those
34 for victims of rape or incest. It may prevent doctors, nurses, and pharmacists from
35 providing certain types of medical care to a woman, including some forms of birth

1 control such as emergency contraception and intra-uterine devices, and treatment for
2 miscarriages, tubal pregnancies, cancer, and infertility.

3 **Estimate of Fiscal Impact**

4 Amendment 67 has no immediate impact to state or local government revenues or
5 expenditures. The measure does not require any new action or additional services, nor
6 does it impose any new fines or charges. Depending on how the measure is interpreted
7 and applied by the courts, or whether the state legislature adopts specific legislation, this
8 may result in new criminal offenses and penalties being created or applied in certain
9 situations when a pregnancy is terminated. These potential criminal penalties may
10 increase costs for state and local law enforcement agencies, the courts, and the
11 Department of Corrections for the investigation and incarceration of individuals
12 committing offenses. The potential costs cannot be determined at this time.