

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
3 Code and the state wrongful death statutes include unborn human
4 beings.

5 **Summary and Analysis**

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

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

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

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

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

1 ***Effect of Amendment 67 on abortion and reproductive health care.*** The
2 measure does not specify how its provisions will apply to health care providers or
3 medical procedures. Depending on how the term "unborn human being" is defined or
4 interpreted, the measure may impact the availability of abortions under Colorado law.
5 It may also impact the availability of other medical procedures, devices, and
6 medications, 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
10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

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

21 **Arguments Against**

22 1) Amendment 67 is unnecessary and unclear. There are already laws in place
23 to protect pregnant women endangered by the criminal acts of others, while respecting
24 the personal medical decisions of a woman and her health care provider. The term
25 "unborn human being" has no established legal or medical definition in Colorado law,
26 and could apply at the earliest stages of pregnancy. The measure could have far-
27 reaching consequences, including making pregnant women and health care providers
28 criminally 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
34 those for victims of rape or incest. It may prevent doctors, nurses, and pharmacists
35 from 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,
6 nor does it impose any new fines or charges. Depending on how the measure is
7 interpreted and applied by the courts, or whether the state legislature adopts specific
8 legislation, this may result in new criminal offenses and penalties being created or
9 applied in certain situations when a pregnancy is terminated. These potential criminal
10 penalties may increase costs for state and local law enforcement agencies, the courts,
11 and the Department of Corrections for the investigation and incarceration of
12 individuals committing offenses. The potential costs cannot be determined at this time.

Last Draft as Mailed to Interested Parties

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10 offenses in state law. It currently defines a "person," when referring to the victim of a
11 homicide, as a human being who had been born and was alive at the time of the
12 criminal act. The code excludes a human embryo, fetus, and an unborn child at any
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14 Criminal Code does not uniformly define "child;" the definitions vary based on different
15 offenses.

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18 the death of a person. These statutes do not define "person" or "child."

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22 law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful termination
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24 Unlawful termination of a pregnancy and offenses against a person are categorized in
25 separate sections of the law and may carry different penalties. If a person commits an
26 offense against a pregnant woman that results in the loss of her pregnancy, the
27 offender can be charged with at least two crimes — the offense against the woman
28 and the unlawful termination of the pregnancy. The law exempts pregnant women and
29 health care providers acting with the consent of a pregnant woman from criminal
30 prosecution for acts related to a woman's pregnancy.

31 Colorado law also allows a woman to seek compensation from any person who
32 intentionally, knowingly, or recklessly causes an unlawful termination of her
33 pregnancy. Colorado law states that a woman is not liable for damages for acts she
34 takes with respect to her own pregnancy, nor is a health care provider for providing
35 services. Additionally, the law excludes a human embryo, fetus, and an unborn child
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3 medical procedures. Depending on how the term "unborn human being" is defined or
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10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

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

22 **Arguments Against**

23 1) Amendment 67 is unnecessary and unclear. There are already laws in place to
24 protect pregnant women endangered by the criminal acts of others, while respecting
25 the personal medical decisions of a woman and her health care provider, and the
26 measure adds unnecessary confusion to this issue. The term "unborn human being"
27 has no established legal or medical definition in Colorado law, and could apply at any
28 stage of pregnancy. The measure could have far-reaching consequences, including
29 making pregnant women and health care providers criminally and civilly liable for a
30 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
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1 control such as emergency contraception and intra-uterine devices, and treatment for
2 miscarriages, tubal pregnancies, cancer, and infertility.

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5 expenditures. The measure does not require any new action or additional services,
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7 interpreted and applied by the courts, or whether the state legislature adopts specific
8 legislation, this may result in new criminal offenses and penalties being created or
9 applied in certain situations where unborn human beings are harmed. These potential
10 criminal penalties may increase costs for state and local law enforcement agencies,
11 the courts, and the Department of Corrections for the investigation and incarceration
12 of individuals committing offenses. The potential costs cannot be determined at this
13 time.

Last Draft Comments from Interested Parties

Amendment 67 Definition of Person and Child

Drew Hymer, representing Personhood USA as a proponent:

As a preliminary matter, I note that you have accepted virtually none of our many suggested edits to your second draft, despite our attempts to explain in great detail the reasons for the suggested changes and how your draft was either unclear or unfair. I hope that you will at least allow us some freedom to revise the Arguments For section, since we are the proponents of the Amendment, I have some additional suggestions to make regarding that section, in order to make it more responsive to the Arguments Against and to assist the voters.

The Arguments Against already claims that A67 will make abortion illegal and it makes that claim in merely seven words. Why should the Arguments For waste 70 words on the point? A67 proponents should be allowed to state the point just as briefly in order to have more space for truly defending the amendment.

Recommendation: **Remove second paragraph (page 2, lines 16-21).**

Recommendation: Page 2, line 13 should read:

“Under Amendment 67 a person who kills, whether through abortion or another violent criminal act, an unborn human being could be charged with homicide.”

The Arguments Against contains several philosophical claims regarding “personal medical decisions”, “personal health care”, “government intrusion” and “privacy”. The Arguments For should be allowed to address these philosophical claims. Homicide isn’t a personal decision nor is it a private act because there’s a victim. Intervening to prevent homicide is not intrusion.

Recommendation: The second paragraph of the Arguments For should include:

“Harming or killing another human being is not a personal or private decision nor is it health care.”

Recommendation: In order to address the claim regarding “government intrusion”, the second sentence of the Arguments For (page 2, line 8) should read:

“Therefore, the government should intervene to protect people from harm.”

The Arguments Against also contains ambiguous claims regarding “some forms of birth control, such as emergency contraception and intra-uterine devices” and “prevent[ing]... treatment for... infertility”. A67 opponents do not tell the voter that only devices that kill or harm a living human being could possibly be affected by A67. The Arguments For should be allowed to address this ambiguity, and the Council’s refusal to allow the

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

proponents of A67 to fairly address the Arguments Against is itself unfair both to the proponents and to the citizens who must consider and ultimately decide this matter.

Recommendation: The second paragraph of the Argument For should include:

“Amendment 67 will not affect any birth control devices or infertility treatments that do not harm or kill another living human being.”

The Arguments Against also falsely claims that A67 will prevent “treatment for miscarriages, tubal pregnancies, [and] cancer.” In an earlier response, I explained that the Colorado Criminal Code allows for life saving acts (which includes medical treatment) even when the act results in the death of a person (C.R.S. 18-1-702 – 704). The Council refused to include these proposed amendments. A67 does not in any way change the criminal code’s allowance for life-saving acts such as life-saving medical treatment. The Council’s failure to note this fact is misleading to the voters and unfair to the proponents of A67. The Arguments For should be allowed to counter the lies contained in the Arguments Against:

Recommendation: The second paragraph of the Arguments For should include:

“Amendment 67 continues to allow for life-saving medical treatment, including treatment for miscarriage, tubal pregnancy and cancer.”

In summary, the Arguments For should be allowed to fairly rebut the philosophical, ambiguous and false claims contained in the Arguments Against. How can the voter make an informed decision if both sides are not equally represented? I’ve coalesced my suggested recommendations. The Arguments For should read:

One of government's responsibilities is to protect its citizens. Therefore, the government should intervene to protect its people from harm. Amendment 67 protects pregnant women and unborn children by making it illegal to kill or otherwise harm an unborn human being and holds perpetrators both criminally and civilly liable. Crimes against unborn human beings should be subject to the same legal penalties as crimes against human beings who have been born. Under Amendment 67, a person who kills, whether through abortion or another violent criminal act, an unborn human being could be charged with homicide.

Harming or killing another human being is not a personal or private decision nor is it health care. Amendment 67 will not affect any birth control devices or infertility treatments that do not harm or kill another living human being. Amendment 67 continues to allow for life-saving medical treatment, including treatment for miscarriage, tubal pregnancy and cancer.

Thank you for your consideration,

Drew Hymer
303-456-2800

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Mr. Hymer also resubmitted his comments from Draft #2, as follows:

Summary and Analysis

Page 1, lines 5-7 purport to summarize Amendment 67. However, this summary fails to provide any background or context for the Amendment. The Council is required by law to provide the voters “a fair and impartial analysis” of the measure. The Council also seeks “to include any other information that will assist the reader in understanding the purpose and effect of the measure.” (Quoting letter from the Council soliciting comments, dated July 11, 2014). In order to understand the purpose and effect of Amendment 67, a fair and impartial summary of Amendment 67 should include a brief explanation of the background leading up to the Amendment. After all, how can voters reasonably weigh the need for and reasonableness of the Amendment without understanding the context in which it is presented?

Recommendation: Delete existing summary, and replace with the following:

“In the case of *People v. Lage*, 232 P.2d 138 (Colo. App. 2009), a woman 8½ months pregnant was hit head-on by a fleeing felon. An emergency caesarean section was performed, and the child was delivered alive. However, he died one hour and nine minutes later. The defendant was charged with numerous criminal violations, seven of which involved the death of the child. The homicide statutes defined “person” as requiring that the victim be “a human being who had been born alive and was alive at the time of the homicidal act.”

Consequently, the court held that the defendant could not be charged with homicide for the child’s death. One judge noted that this area of the law ‘cries out for new legislation.’

In response, the citizens of Colorado have proposed Amendment 67, which creates a constitutional provision stating that the terms “person” and “child” in the Colorado Criminal Code and the wrongful death statutes must include unborn human beings.”

Colorado Criminal Code

Page 1, lines 9-15 contain a very brief explanation of the current state of the criminal code that leaves something to be desired. Once again, it fails to set forth the context of the Amendment and its role in responding to the legislature’s failure to act in the wake of *People v. Lage*.

Recommendation: Insert the following sentence on line 12 after “criminal act:”

“Although ‘human being’ is not defined in the current homicide statute, either, the court in *People v. Lage* had no trouble discerning its meaning and finding it ‘clear and unambiguous’ and declaring that it ‘could not be any clearer.’” 232 P.2d at 139.

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Unlawful Termination of Pregnancy

Page 1, lines 19-21 reflect a clearer and more concise summary of existing Colorado law regarding offenses against women than the first draft. We appreciate the improvement. Nevertheless, we suggest that further revisions are still needed.

Page 1, lines 25-28 is misleading insofar as it speaks of two criminal offenses with which one who commits an offense against a pregnant woman may be charged. The crime of “unlawful termination of a pregnancy” is not classified as a homicide, even though it results in the death of the child in the womb. We therefore suggest a revision to make this point clear.

Recommendation: On line 28, after the end of the sentence regarding the two crimes, add the following:

“Under existing law, the defendant cannot be charged with a homicide, however.”

Page 1, lines 29-30 address Colorado criminal law regarding “Unlawful Termination of Pregnancy” (C.R.S. 18-3.5-101 et seq.). But while the ballot analysis repeatedly (and misleadingly) represents Amendment 67 as vague or ambiguous, it represents the criminal law here as unambiguous when it is not. The analysis states that “the law exempts . . . health care providers **acting with the consent of a pregnant woman** from criminal prosecution for acts related to a woman's pregnancy.” (Analysis at p. 1) (emphasis added). But C.R.S. 18-3.5 appears to exempt health care providers from prosecution even when they act **without** the consent of the pregnant woman:

“Nothing in this article shall permit the prosecution of a person for any act of providing medical, osteopathic, surgical, mental health, dental, nursing, optometric, healing, wellness, or pharmaceutical care; furnishing inpatient or outpatient hospital or clinic services; furnishing telemedicine services; or furnishing any service related to assisted reproduction or genetic testing.”
C.R.S. 18-3.5-102(1).

This exclusion contains no limitations whatsoever; a person who performs a medical procedure that results in the death of the unborn child, with or without the consent of the woman, shall not be prosecuted under this article. Period. While a future court could conceivably interpret this exclusion more narrowly, on its face it does not appear to allow for such narrowing. At the least, then, the ballot summary should mention this problematic language.

In addition, the plain language of the exclusion also seems to mean that such medical providers cannot be held criminally accountable even when they act recklessly or with gross negligence or incompetence, and serious harm to an unborn child results.

Recommendation: Lines 28-30 should be revised as follows: “The law exempts pregnant women and health care providers ~~acting with the consent of a pregnant woman~~ from criminal prosecution for acts, including acts of gross negligence or recklessness, related to a woman's pregnancy.”

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Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Page 1, lines 35-36 correctly state the law, but it may be misinterpreted by the voter in the context in which this appears. It fails to explain the significance of the exclusion.

Recommendation: Delete the existing sentence, and replace it with the following:

“However, because the law explicitly excludes a human embryo, fetus, and an unborn child at any stage of development prior to live birth from the definition of ‘person’, neither the woman nor the health care provider is liable even when their actions result in the death of the child in the womb.”

Effect of Amendment 67 on abortion and reproductive health care

Page 2, lines 1-6 reflect an improvement over the previous draft, but again we suggest it could be improved yet more. In particular, the new draft fails to clarify that the only forms of “medical procedures, devices, and medications” that could be affected by the Amendment are those that would kill or cause great bodily harm to the child in the womb. Additionally, the phrasing of the language (“Depending on how the term ‘unborn human being’ is defined or interpreted” (p.2 lines 3-4)) again improperly implies some sort of ambiguity or vagueness. But that is not true.

It is uniformly recognized under Colorado law that when a phrase is not defined by the law or statute, courts “must assume” that it was intended that the “phrase be given its usual and ordinary meaning.” *Enright v. City of Colorado Springs*, 716 P.2d 148 (Colo.App. 1985) (citing *Stanske v. Wazee Electric Co.*, 690 P.2d 1291 (Colo.App.1984)). See also *Carlson v. Ferris*, 85 P.3d 504 (Colo. 2003) (courts must interpret laws to give effect to the drafter’s intent, which “is best achieved by looking at the language of the statute and giving the words their plain and ordinary meaning”). Indeed, the very case giving rise to the need for this Amendment in the first place, *People v. Lage*, recognized this basic proposition: “To determine the legislature’s intent, we first look to the plain language of the statute.” 232 P.2d 138, 140 (citing *C.S. v. People*, 83 P.3d 627, 634 (Colo. 2004)).

In addition, the construction for the Civil Penalties for Unlawful Termination of Pregnancy Act (HB14-1388), referenced several times in the draft, specifically states that the Act does not “confer the status of person upon a human embryo, fetus, **or unborn child at any stage of development prior to live birth**” while the legislative declaration recognizes this formulation to mean “a human being at any time prior to birth”. (Emphasis added.) In exactly the same way, HB 13-1154, which became C.R.S. 18-3.5, also recognizes the phrase “a human embryo, fetus, **or unborn child at any stage of development prior to live birth.**” to mean “**a human being at any time prior to live birth.**” (Emphasis added.) The meaning of “unborn human being,” then, could not be clearer.

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Recommendation: Delete the existing paragraph, and insert the following in its place:

“The measure does not specify precisely how its provisions will apply to health care providers and medical procedures. Because the measure will protect children in the womb, it may impact the availability of medical procedures, devices, and medications, such as certain forms of birth control or in vitro fertilization, but only to the extent they operate to cause harm or death to an unborn child. Those procedures, devices and medications, including birth control, that do not harm an unborn child will not be affected by the Amendment.”

Medical Treatment

Page 3, lines 1-2 falsely claims that A67 “may prevent... treatment for miscarriages, tubal pregnancies, [and] cancer.” Lifesaving medical treatment, even when it results in the death of a person (which A67 recognizes includes an unborn baby), is not a criminal offense. This is made plain in C.R.S. 18-1-702 (1) and C.R.S. 18-1-704 (2).

C.R.S. 18-1-702

(1) Unless inconsistent with other provisions of sections 18-1-703 to 18-1-707, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is **justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury** which is about to occur by reason of a situation occasioned or developed through no conduct of the actor, and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. (Emphasis added)

C.R.S. 18-1-704

(2) **Deadly physical force may be used** only if a person reasonably believes a lesser degree of force is inadequate and: (a) The actor has reasonable ground to believe, and does believe, that **he or another person is in imminent danger of being killed or of receiving great bodily injury** (Emphasis added)

To emphasize the point, Amendment 67 does not alter the Colorado Criminal Code which allows that “conduct... is justifiable and not criminal when it is necessary to avoid an imminent... private injury....” Going further, “Deadly physical force may be used... [if a] person is in imminent danger of being killed or of receiving great bodily injury.”

Therefore, Amendment 67 will not disturb the availability of any life-saving medical treatment for pregnant mothers, including treatment for tubal pregnancy, miscarriage or cancer.

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Recommendation: The false claims regarding treatment for tubal pregnancy, miscarriage and cancer should be removed.

Pregnancy that does not result in a live birth

Page 2, lines 29-30 falsely claim: “The measure could have far-reaching consequences, including making pregnant women and health care providers criminally and civilly liable for a pregnancy that does not result in a live birth.” This claim appears calculated to instill fear in the voters in order to keep them from voting for the Amendment. In fact, however, miscarriages are very common and do not provide probable cause or even reasonable suspicion of a crime or civil tort. Furthermore, before the Supreme Court’s decision in *Roe v. Wade*, women and health care providers were never wrongly charged or sued over miscarriages. Passage of Amendment 67 would result in a similar situation to the one that prevailed before *Roe v. Wade* was decided.

It is also worth repeating that life-saving medical treatment, even when it results in the death of the child (not “a live birth”), is specifically protected under the above quoted C.R.S. 18-1-702 - C.R.S. 18-1-704. This false claim should therefore be removed.

Certain Forms of Birth Control

Page 2, line 6 and page 2, line 35 are ambiguous because they say that “certain forms of birth control”, and “some forms of birth control” will be banned without specifically identifying which particular forms of birth control will be banned. Without such specificity, the voter won’t be able to determine if he supports the measure, and may be deceptively led to conclude that *all* forms of birth control may be banned. The ambiguity biases a voter against the measure. In fact, the only forms of birth control that could possibly be affected are those that actually cause the death of a living human being. Therefore, page 2, line 6 should say “abortion-causing birth control” instead of “birth control.” Similarly, page 2, line 35 should say “abortion-causing forms”.

Emergency “Contraception”

Page 3, line 1 falsely claims that A67 would prohibit or limit access to “emergency contraception”. The word “contraception” indicates that the drug or device stops conception; that is, it stops a new human from coming into existence. A67 does not affect true contraception in the least, so the statement is misleading.

There may be some drugs or devices that act as contraceptives but may also cause abortions. It is the abortion-causing property of these drugs or devices that A67 would prohibit. In light of this fact, the phrase “emergency contraception” in page 3, line 1 should be changed to “abortion-causing pills” or perhaps “abortion-causing emergency contraception” (although technically such a phrase is self-contradictory).

Last Draft Comments from Interested Parties

Drew Hymer, representing Personhood USA as a proponent: (Cont.)

Arguments For

Page 2, line 8 correctly states that “One of government's responsibilities is to protect its citizens from harm.” To clarify how Amendment 67 furthers that laudable goal, additional revision is needed.

Page 2, lines 9-14 do not adequately describe to the voter the difference between the current statutes and A67. One difference is that A67 allows mothers civil and criminal remedy when a health care provider, through gross incompetence, kills or harms her unborn baby.

Recommendation: Arguments For (page 2, lines 8-21) should be replaced with the following:

“1) Harming or killing a human being is not a personal, private, or medical decision nor is it health care. The government should intervene to protect people from harm. Therefore, Amendment 67 protects pregnant women and unborn children by making it illegal to kill or otherwise harm an unborn child and holds perpetrators both criminally and civilly liable for homicide or assault. Crimes against unborn human beings should be subject to the same legal penalties as crimes against human beings who have been born. Under Amendment 67, a person who kills an unborn human being could be charged with homicide. Also unlike current law, Amendment 67 allows a woman civil and criminal recourse when a health care provider recklessly or negligently kills her unborn child.

2) Amendment 67 allows for life-saving medical treatment for any life-threatening condition, including tubal pregnancy, miscarriage and cancer. It does not affect commonly used forms of birth control, emergency contraception or infertility treatments that do not harm unborn children.”

Fofi Mendez, representing NO on Personhood as an opponent:

August 12, 2014

Dave DeNovellis
Amendment 67
Team Lead
Colorado Legislative Council
dave.denovellis@state.co.us

Dear Mr. DeNovellis,

Please accept the following comments on the third draft of the Legislative Council Ballot Analysis for Amendment 67. These comments have been compiled from a number of organizations working with the NO on Personhood Issue Committee, a

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Fofi Mendez, representing NO on Personhood as an opponent: (Cont.)

registered issue committee doing business as Vote No 67 Campaign, which opposes this initiative.

The format we have chosen to submit our comments include identification of the “issue,” “rationale for change,” and suggested language.”

Additionally, attached you will find a redline document where the organizations collectively have used the “review” tools in Microsoft Word to identify our recommended changes.

Issue 1: General references to additional legislation being implemented post adoption of Amendment 67

The Vote No 67 Campaign disagrees with any assertion that *any* legislative action would occur in the wake of the adoption of Amendment 67, which makes abortion a felony. Defining the term “person” to include “unborn human being” in the Colorado Criminal Code *means* an abortion is a homicide offense as defined in the Colorado Revised Statutes. The language that appears throughout the Blue Book stating the legislature would have to further define “person,” “child,” or “unborn human being,” is inaccurate and misleading. Once Amendment 67 passes, there would be nothing more the General Assembly would be required to do.

Issue 2: Effect of Amendment 67 on Abortion and Reproductive Health Care

Rationale for Change:

Defining the term “person” for purposes of the Colorado Criminal Code to include fertilized eggs *means* that an abortion is a homicide offense as defined in Title 18, Article 3. There is nothing more the General Assembly would be required to do.

Suggested Language:

Page 2, lines 1 to 6

Change to the following:

Effect of Amendment 67 on abortion and reproductive health care. The measure does not specify how its provisions will apply to health care providers or medical procedures. The measure would ban abortions under Colorado law. It would also impact the availability of other medical procedures, devices, and medications, such as certain forms of birth control and in vitro fertilization.

Issue 3: Arguments For

Rationale for Change:

The proponents have made it clear their intent is the criminalize all abortions therefore the word “could” should be changed to “would.”

Suggested Language:

Page 2 line 17:

By including unborn human beings in the definition of “person,” the measure would establish the legal foundation to protect the unborn by ending the practice of abortion in Colorado.

Last Draft Comments from Interested Parties

Fofi Mendez, representing NO on Personhood as an opponent: (Cont.)

Issue 4: Arguments Against

Rationale for Change:

The phrase in 1), “and the measure adds unnecessary confusion to this issue” makes the sentence read poorly and does not add to the substance or clarity of the discussion. Additionally, in paragraph 1), the statement “could apply at any stage of pregnancy” would be stronger – and more accurate – to state “and would apply at the earliest stages of pregnancy.”

Suggested Language:

Page 2, Lines 23 to 30,

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

Issue 5: Arguments Against

Rationale for Change:

The ballot wording is clear that Amendment 67 would bestow legal rights to the earliest stage of pregnancy. There is no doubt that the result would be a criminal ban on abortions

Suggested Language:

On Page 2, Line 33, replace the sentence, “The measure could make abortion a crime, including those for victims of rape or incest” to read, “The measure criminalizes all abortions performed at any stage of pregnancy, even those for victims of rape or incest.”

Issue 6: Estimate of Fiscal Impact

Rationale for Change:

By redefining the crime of murder to include all abortion procedures, Amendment 67 subjects the state to additional investigations, prosecutions, and incarceration. In addition, there would be costs related to the Office of the State Attorney General, which would be required to defend this constitutional provision in the likelihood of a legal challenge.

Suggested Language:

On Page 3, replace Lines 4 to 14 with the following:

Estimate of Fiscal Impact

By redefining the crime of murder to include all abortion procedures, Amendment 67 would result in additional investigations, prosecutions, and incarcerations. The additional criminal penalties will increase costs for state and local law enforcement agencies, the courts, and the Department of Corrections for the investigation and incarceration of individuals committing new offenses

Last Draft Comments from Interested Parties

Fofi Mendez, representing NO on Personhood as an opponent: (Cont.)

under Amendment 67. Women and health care professionals charged with crimes stemming from any pregnancy that does not result in a live birth will incur costs for their own defense. In addition, the state would incur costs by the Attorney General, who would have to defend this constitutional provision. The costs to the State of Colorado, which include state and county courts, state and local law enforcement, the Attorney General, and the Department of Corrections, cannot be determined at this time.

Sincerely,

Fofi Mendez
Campaign Director
NO on Personhood
P.O. Box 181941
Denver, CO 80218

Ms. Mendez also submitted a redline version of the analysis that included her suggestions for the draft changes (Attachment A).

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
- 3 Code and wrongful death statutes include unborn human beings.

4 Summary and Analysis

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

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

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

- 19 __Laws concerning offenses against pregnant women. Colorado law defines an
- 20 unlawful termination of a pregnancy as the termination of a pregnancy by any means
- 21 other than birth or a medical procedure with the woman's consent. Under Colorado
- 22 law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful
- 23 termination of a woman's pregnancy, including vehicular unlawful termination of a
- 24 pregnancy. Unlawful termination of a pregnancy and offenses against a person are
- 25 categorized in separate sections of the law and may carry different penalties. If a
- 26 person commits an offense against a pregnant woman that results in the loss of her
- 27 pregnancy, the offender can be charged with at least two crimes — the offense
- 28 against the woman and the unlawful termination of the pregnancy. The law exempts
- 29 pregnant women and health care providers acting with the consent of a pregnant
- 30 woman from criminal prosecution for acts related to a woman's pregnancy.
- 31 Colorado law also allows a woman to seek compensation from any person who
- 32 intentionally, knowingly, or recklessly causes an unlawful termination of her
- 33 pregnancy. Colorado law states that a woman is not liable for damages for acts she
- 34 takes with respect to her own pregnancy, nor is a health care provider for providing
- 35 services. Additionally, the law excludes a human embryo, fetus, and an unborn child
- 36 at any stage of development prior to live birth from the definition of "person."

1 __ Effect of Amendment 67 on abortion and reproductive health care. The
2 measure does not specify how its provisions will apply to health care providers or
3 medical procedures. Depending on how the term "unborn human being" is defined or
4 interpreted, The measure may would ban abortions under Colorado law.
5 It may would also impact the availability of other medical procedures, devices, and
6 medications, such as certain forms of birth control, and 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](http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html) 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
10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

15
16 __2) By including unborn human beings in the definition of "person," the measure
17 may would establish the legal foundation to protect the unborn by ending the practice of
18 abortion in Colorado. If the Colorado Constitution recognizes an unborn human being
19 as a person, the measure may allow a district attorney to prosecute abortion as
20 homicide or child abuse and could limit the willingness of health care providers to
21 perform abortions in Colorado.

22 Arguments Against

23 __1) Amendment 67 is unnecessary and unclear. There are already laws in place
24 to protect pregnant women endangered by the criminal acts of others, while respecting
25 the personal medical decisions of a woman and her health care provider, and the
26 measure adds unnecessary confusion to this issue. The term "unborn human being"
27 has no established legal or medical definition in Colorado law, and would apply at any
28 stage of pregnancy, the earliest stages of pregnancy. The measure would have far-reaching
consequences, including
29 making pregnant women and health care providers criminals and responsible for any
damages for any
30 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
34 those for victims of rape or incest. The measure criminalizes all abortions performed at any
stage of pregnancy, even those for victims of rape or incest or when the life of the mother is
endangered. It may prevent doctors, nurses, and pharmacists
35 from providing certain types of medical care to a woman, including some forms of birth

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

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3 Estimate of Fiscal Impact

4. ~~By redefining the crime of murder to include all abortion procedures, Amendment 67 would result in additional investigations, prosecutions, and incarcerations,~~

5. ~~Amendment 67 has no immediate impact to state or local government revenues or~~

6 expenditures. The measure does not require any new action or additional services,

7 nor does it impose any new fines or charges. Depending on how the measure is

8 interpreted and applied by the courts, or whether the state legislature adopts specific

9 legislation, this may result in new criminal offenses and penalties being created or

10 applied in certain situations where unborn human beings are harmed. ~~The additional~~

11 potential

12 criminal penalties ~~may will~~ increase costs for state and local law enforcement agencies,

13 the courts, and the Department of Corrections for the investigation and incarceration

14 of individuals committing new offenses under Amendment 67. Women and health care

professionals charged with crimes stemming from any pregnancy that does not result in a

live birth will incur cost for their own defense. In addition, the state would incur costs by the

Attorney General, who would have to defend this constitutional provision. ~~The costs to the State~~

of Colorado, which include state and county courts, state and local law enforcement, the

Attorney General, and the Department of Corrections, cannot be determined at this

time.

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AMENDMENT 67
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Amendment 67
Definition of Person and Child

1 **Ballot Title:** Shall there be an amendment to the Colorado constitution protecting pregnant
2 women and unborn children by defining "person" and "child" in the Colorado criminal code and the
3 Colorado wrongful death act to include unborn human beings?

4 *Be it Enacted by the People of the State of Colorado:*

5 In the constitution of the state of Colorado, Article XVIII, **add** (17) as follows:

6 **Section 17. Protection of Pregnant Mothers and Unborn Children**

7 **(1) Purpose and findings.** IN 2009, JUDGES OF THE COLORADO STATE COURT OF APPEALS IN
8 PEOPLE V. LAGE 232 p.3d 138 (COLO. APP. 2009) CONCLUDED THAT:

9 (a) "THERE IS NO DEFINITION OF 'PERSON' OR 'CHILD' OF GENERAL APPLICABILITY IN THE CRIMINAL
10 CODE" (MAJORITY OPINION BY JUDGE ROY); AND

11 (b) "THIS IS AN AREA THAT CRIES OUT FOR NEW LEGISLATION. OUR GENERAL ASSEMBLY, UNLIKE
12 CONGRESS AND MOST STATE LEGISLATURES, HAS PRECLUDED HOMICIDE PROSECUTIONS FOR KILLING THE
13 UNBORN" (JUDGE CONNELLY CONCURRING IN PART AND DISSENTING IN PART).

14 **(2) Definitions.** IN THE INTEREST OF THE PROTECTION OF PREGNANT MOTHERS AND THEIR
15 UNBORN CHILDREN FROM CRIMINAL OFFENSES AND NEGLIGENT AND WRONGFUL ACTS, THE WORDS
16 "PERSON" AND "CHILD" IN THE COLORADO CRIMINAL CODE AND THE COLORADO WRONGFUL DEATH ACT
17 MUST INCLUDE UNBORN HUMAN BEINGS.

18 **(3) Self-executing, and severability provision.** ALL PROVISIONS OF THIS SECTION ARE
19 SELF-EXECUTING AND ARE SEVERABLE.

20 **(4) Effective date.** ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL
21 DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR PURSUANT TO SECTION 1(4)
22 OF ARTICLE V.