

## Amendment 62 Application of the Term Person

1 **Amendment 62 proposes amending the Colorado Constitution to:**

- 2     ◆ apply the term "person," as used in the sections of the Colorado bill of  
3 rights concerning inalienable rights, equality of justice, and due process  
4 of law, to every human being from the beginning of the biological  
5 development of that human being.

### 6 **Summary and Analysis**

7     Like the U.S. Constitution, the Colorado Constitution has a bill of rights. The  
8 Colorado bill of rights contains the rights of the people of Colorado and outlines the  
9 principles of state government. Amendment 62 addresses the application of the term  
10 "person" for sections 3, 6, and 25 of the Colorado bill of rights. These sections  
11 concern inalienable rights, equality of justice, and due process of law.

12     ***Inalienable rights.*** Section 3 asserts that all persons have natural, essential, and  
13 inalienable rights to enjoy life and liberty, to acquire, possess, and protect property,  
14 and to seek and obtain safety and happiness. These rights include the right to  
15 survive, the right to defend against threats to safety, the freedom to make  
16 independent decisions, and the right to work and obtain economic goods. Inalienable  
17 rights are fundamental to all persons and are not created by laws and government.  
18 The constitution requires that the government protect these rights, although the  
19 government is permitted to limit the exercise of rights as necessary for the welfare and  
20 general security of the public.

21     The constitutional provision regarding inalienable rights has been applied by  
22 courts, for example, to guarantee the right of an individual to pursue a legitimate trade  
23 or business, to acquire property without fear of discrimination, and to travel freely  
24 around the state.

25     ***Equality of justice.*** Section 6 requires the courts in Colorado to be open to all  
26 persons. If a person's legal rights are violated, this section guarantees that a judicial  
27 remedy is available.

28     Courts have determined that this section applies to a variety of circumstances. For  
29 instance, individuals are denied equal access to justice if juries are chosen in a  
30 discriminatory manner. Additionally, all persons have the same right to use the courts  
31 regardless of their financial resources.

32     ***Due process of law.*** Section 25 ensures that no person is deprived of life, liberty,  
33 or property without due process of law. Due process of law requires the government  
34 to follow consistent procedures before a person's fundamental rights are taken away.  
35 The courts have determined, for example, that due process requires the government

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1 to provide notice and a fair hearing before detaining a person, taking a person's  
2 property, or sentencing a person to death.

3 ***Application of the term "person."*** Sections 3, 6, and 25 of the Colorado bill of  
4 rights do not currently address the application of the term "person." Amendment 62  
5 applies the term "person" in a manner that extends inalienable rights, equal access to  
6 justice, and due process of law from the beginning of biological development. The  
7 measure does not define the phrase "the beginning of biological development."

## 8 **Arguments For**

9 1) Amendment 62 ensures that all human life is afforded equal protection under  
10 the law. Currently, this right is not recognized until birth. Amendment 62  
11 acknowledges that a new human life is created at the beginning of biological  
12 development and gives all human life, whether born or unborn, equal rights and  
13 protections.

14 2) The measure may establish the legal foundation to end the practice of abortion  
15 in Colorado. The U.S. Supreme Court decision that legalized abortion in the  
16 United States found that the unborn were not included in the word "person" as used in  
17 the U.S. Constitution. If each human life, from the beginning of biological  
18 development, is recognized as a person under Colorado's bill of rights, Amendment 62  
19 may provide support for legal challenges to prohibit abortions in Colorado.

20 3) Amendment 62 establishes a legal definition of the term "person" as used in  
21 sections 3, 6, and 25 of the Colorado bill of rights. Because these sections do not  
22 currently contain a definition of the term "person," interpretation of the word is  
23 subjective, which may lead to the rights granted by sections 3, 6, and 25 of the  
24 Colorado bill of rights being inconsistently applied.

## 25 **Arguments Against**

26 1) Amendment 62 may limit the ability of individuals and families to make  
27 important health care decisions. The measure could be used to prohibit or limit  
28 access to medical care, including abortions for victims of rape or incest, and even  
29 when a woman's life is in danger. Amendment 62 may also limit access to emergency  
30 contraception, commonly used forms of birth control, and treatment for miscarriages,  
31 tubal pregnancies, cancer, and infertility. The amendment may restrict some stem cell  
32 research that could lead to life-saving therapies for a variety of disabilities and  
33 illnesses.

34 2) Amendment 62 allows government intrusion in the privacy of the doctor-patient  
35 relationship and could limit the exercise of independent medical judgment. The  
36 measure could restrict a doctor from using certain medical procedures and treatments.  
37 Further, "the beginning of biological development" cannot be easily and conclusively  
38 pinpointed. Therefore, the measure may subject doctors and nurses to legal action for

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1 providing medical care to a woman of child-bearing age if that care could affect a  
2 "person" other than the identified patient.

3 3) The effects of Amendment 62's change to the constitution are unclear. The  
4 measure applies certain rights from "the beginning of biological development," a term  
5 which is not defined within the measure, has no established legal meaning, and is not  
6 an accepted medical or scientific term. The legislature and the courts will have to  
7 decide how a wide variety of laws, including property rights and criminal laws, will  
8 apply from "the beginning of biological development."

## 9 **Estimate of Fiscal Impact**

10 No immediate impact to state revenue or expenditures is expected because  
11 Amendment 62 does not require that any specific actions be taken or services  
12 provided. If legislation is adopted, or the courts determine that the measure requires  
13 the state to provide new services, state spending may increase.