

Amendment 48 Definition of Person

1 **Amendment 48 proposes amending the Colorado Constitution to:**

- 2 ♦ define the term "person" to "include any human being from the moment
3 of fertilization"; and
- 4 ♦ apply this definition of person to the sections of the Colorado
5 Constitution that protect the natural and essential rights of persons,
6 allow open access to courts for every person, and ensure that no
7 person has his or her life, liberty, or property taken away without due
8 process of law.

9 **Summary and Analysis**

10 Like the U.S. Constitution, the Colorado Constitution has a bill of rights. The
11 Colorado bill of rights contains the rights and duties of the people of Colorado and
12 outlines the principles of state government. Amendment 48 defines the term "person"
13 for sections 3, 6, and 25 of the Colorado bill of rights. These sections concern
14 inalienable rights, equality of justice, and due process of law.

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

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

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

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

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1 **Due process of law.** Section 25 ensures that no person is deprived of life, liberty,
2 or property without due process of law. Due process of law requires the government
3 to follow consistent procedures before a person's fundamental rights are taken away.
4 The courts have determined, for example, that due process requires the government
5 to provide notice and a fair hearing before detaining a person, taking a person's
6 property, or sentencing a person to death.

7 **Definition of the term "person."** The Colorado bill of rights does not currently
8 contain a definition of person. Amendment 48 defines person to include a human
9 being from the moment of fertilization. The term "moment of fertilization" is not
10 defined in Amendment 48. The generally accepted medical definition of fertilization is
11 the union of a male sperm and a female egg.

12 **Arguments For**

13 1) Amendment 48 ensures that all human life, beginning with the moment of
14 fertilization, is afforded fair and equal treatment. Currently, these rights are not given
15 until birth. Amendment 48 recognizes that a new human life is created at the moment
16 of fertilization and gives all human life, whether born or unborn, equal rights and
17 protections.

18 2) Amendment 48 gives clear direction to the courts and the legislature about
19 who is considered a person. Because the bill of rights does not currently contain a
20 definition of the term "person," interpretation of the word is subjective, which may lead
21 to the rights granted by the constitution being inconsistently applied. The measure
22 ensures uniform application of the term "person" under the law.

23 3) The measure may establish the legal foundation to end the practice of abortion
24 in Colorado. The U.S. Supreme Court decision that legalized abortion in the
25 U.S. found that the unborn were not included in the word "person" as used in the
26 U.S. Constitution. If each human life, from the moment of fertilization, is recognized
27 as a person under Colorado's bill of rights, Amendment 48 may provide support for
28 legal challenges to prohibit abortions in Colorado.

29 **Arguments Against**

30 1) Amendment 48 allows government interference in the doctor-patient
31 relationship and could limit the exercise of independent medical judgement. The
32 measure could restrict a doctor from using certain medical procedures and treatments.
33 Furthermore, the measure may subject medical professionals to legal action for
34 providing medical care to a woman of child-bearing age if it is determined to affect
35 another "person."

36 2) Amendment 48 may limit the ability of individuals to make private, personal
37 choices about their lives and health. The measure could be used to limit access to
38 abortions and to prohibit medical care, including emergency contraception, commonly
39 used forms of birth control, and treatments for cancer, tubal pregnancies, and

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1 infertility. The amendment may restrict some stem cell research that could lead to
2 life-saving therapies for a variety of disabilities and illnesses.

3 3) Amendment 48 is more complex than adding a definition to the state
4 constitution. Creating a definition of the word "person" in the constitution could impact
5 many existing state laws containing the term. The courts and the legislature will have
6 to determine how to apply the new definition to a wide variety of laws, including
7 property rights and criminal laws.

8 **Estimate of Fiscal Impact**

9 No immediate impact to state revenue or expenditures is expected because
10 Amendment 48 does not require that any specific actions be taken or services
11 provided. If legislation is adopted, or the courts determine that the measure requires
12 the state to provide new services, state spending may increase.