

**Amendment 48
Definition of Person**

- 1 Amendment 48 proposes a change to the Colorado Constitution that:
- 2 ♦ defines the term "person" to include any human being from the moment of
3 fertilization; and
 - 4 ♦ applies the definition of "person" to the sections of the Colorado
5 Constitution that protect the natural and essential rights of persons, allow
6 open access to courts for every person, and ensure that no person has his
7 or her life, liberty, or property taken away without the due process of law.

8 **Summary and Analysis**

9 Both the U.S. Constitution and the Colorado Constitution have a bill of rights. The
10 Colorado bill of rights contains the rights and duties of the people of Colorado and
11 outlines the principles of state government. Amendment 48 defines "person" for three
12 sections of the Colorado bill of rights. These sections concern inalienable rights, equality
13 of justice, and due process of the law. This measure addresses only the rights and
14 responsibilities covered by the Colorado Constitution and does not affect the U.S. Bill of
15 Rights.

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

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

27 ***Equality of justice.*** Section 6 requires the justice system in Colorado to be equally
28 accessible to all persons. If a person's legal rights are violated, this section guarantees
29 that a judicial 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 the benefits of the
33 justice system, regardless of their financial resources. Finally, all defendants have the
34 right to a speedy trial.

1 **Due process of law.** Section 25 ensures that no person is deprived of life, liberty,
2 or property without due process of the law. Due process of law guarantees that
3 procedures used by government in making, applying, interpreting, and enforcing the law
4 are reasonable and consistent. The courts have determined, for example, that due
5 process requires the government to develop and follow fair procedures before sentencing
6 a person to death, detaining a person, or taking a person's property.

7 **Moment of fertilization.** The term "moment of fertilization" is not defined in
8 Amendment 48. The generally accepted medical definition of fertilization is the union of
9 a sperm and an egg. Under this measure, a fertilized egg is a person.

10 **Arguments For**

11 1) Amendment 48 ensures that all persons, including those from the moment of
12 fertilization, are afforded fair and equal treatment. Currently, fertilized eggs are not given
13 the rights guaranteed to all persons by the state constitution. By including fertilized eggs
14 within the definition of person, this measure gives all human beings, whether born or
15 unborn, equal rights and protections.

16 2) Amendment 48 gives clear direction to the courts and the legislature about who
17 is considered a person. Because the bill of rights does not currently contain a definition
18 of the term "person," interpretation of the word is subjective. The measure ensures
19 consistent application of the term "person" under the law.

20 3) The measure may establish the legal foundation to end the practice of abortion in
21 Colorado. The U.S. Supreme Court decision that legalized abortion in the U.S. found that
22 the unborn were not included in the word "person" as used in the U.S. Constitution. The
23 court suggested that if personhood of the fetus is established, then the fetus has a right
24 to life that is guaranteed by the U.S. Constitution. Creating a definition of "person" for
25 Colorado's bill of rights that includes human beings from the moment of fertilization may
26 provide support for legal challenges to prohibit abortions in Colorado.

27 **Arguments Against**

28 1) The results of Amendment 48 cannot be predicted with any certainty. The
29 measure provides no direction regarding implementation. Many existing laws containing
30 the word "person" could be interpreted to apply to all human beings from the moment of
31 fertilization. Interpretation and enforcement of the measure is impossible to predict, but
32 could affect anything from inheritance and property rights to criminal offenses.

33 2) Amendment 48 grants fertilized eggs the same legal status as women, which may
34 deny a woman's right to make private medical decisions that benefit her health, but
35 endanger the egg. Because it is not clear how a fertilized egg's rights will be applied, it
36 is possible that government officials will be required to decide whose rights are more
37 important. The measure potentially prohibits any treatment or medical procedure that
38 harms a fertilized egg, including treatments for cancer, some methods of birth control, or
39 fertility treatments.

1 3) Enforcement of the measure may be problematic because the exact moment of
2 fertilization cannot be easily and conclusively pinpointed. While there is a test to
3 determine if a woman is pregnant—after the fertilized egg has implanted in the uterine
4 wall—there is no commonly available test to determine whether an egg has been
5 fertilized. It is not clear how the measure will be applied when a woman has no way of
6 knowing for certain if she is carrying a fertilized egg.

7 **Estimate of Fiscal Impact**