

**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       Both the U.S. Constitution and the Colorado Constitution have 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 person for  
13       sections 3, 6, and 25 of the Colorado bill of rights. These sections concern inalienable  
14       rights, equality of justice, and due process of law. This measure amends the  
15       Colorado Constitution and does not affect the U.S. Bill of Rights.

16       ***Inalienable rights.*** Section 3 asserts that all persons have natural, essential, and  
17       inalienable rights to life, liberty, property, safety, and happiness. These rights include  
18       the 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.  
21       The constitution requires that the government protect these rights, although the  
22       government is permitted to limit the exercise of rights as necessary for the public  
23       welfare.

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

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

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

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 sentencing a person to death, detaining a  
6 person, or taking a person's property.

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 sperm and an egg, which is sometimes referred to as a fertilized egg.

## 12        **Arguments For**

13            1) Amendment 48 ensures that all persons, including those from the moment of  
14 fertilization, are afforded fair and equal treatment. Currently, the rights guaranteed by  
15 the state constitution are not given to a person until he or she is born. Some health  
16 professionals believe that human life begins at the moment of fertilization. By  
17 including the moment of fertilization within the definition of person, this measure gives  
18 all human beings, whether born or unborn, equal rights and protections.

19            2) Amendment 48 gives clear direction to the courts and the legislature about who  
20 is considered a person. Because the bill of rights does not currently contain a  
21 definition of "person," interpretation of the word is subjective. The measure ensures  
22 consistent 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. Creating a definition of "person" for Colorado's bill of rights that  
27 includes human beings from the moment of fertilization may provide support for legal  
28 challenges to prohibit abortions in Colorado.

## 29        **Arguments Against**

30            1) Amendment 48 may eliminate a woman's right to make private, personal  
31 medical decisions. Because the measure does not define how a fertilized egg's rights  
32 will be applied, it is possible that government officials, rather than a woman, may  
33 make decisions when the fertilized egg's and woman's rights conflict. Whether a  
34 fertilized egg is a human being is an ethical question about which many people  
35 disagree. Rather than allowing individuals to make decisions based on their beliefs,  
36 Amendment 48 may result in government interference into a woman's medical  
37 decisions.

1           2) Amendment 48 gives fertilized eggs the same legal rights that people are given  
2 at birth. The result of this change cannot be predicted with any certainty because the  
3 measure provides no direction to the courts and legislature regarding its interpretation.  
4 Many existing laws containing the word person could be interpreted to apply to  
5 fertilized eggs — including those concerning property rights or criminal laws.  
6 Furthermore, the exact moment of fertilization cannot be easily and conclusively  
7 pinpointed. It is not clear how the measure will be applied when a woman has no way  
8 of knowing for certain if she is carrying a fertilized egg.

9           3) Amendment 48 may be interpreted to prohibit a number of different medical  
10 procedures that affect a fertilized egg, including commonly used forms of birth control  
11 and treatments for cancer, ectopic pregnancies, and infertility. Because some stem  
12 cell research involves the use of fertilized eggs, the amendment may restrict research  
13 that could lead to life-saving therapies for a variety of disabilities and illnesses.  
14 Finally, it is possible the amendment could be used to challenge a woman's right to  
15 have an abortion.

#### 16   **Estimate of Fiscal Impact**

17           No immediate impact to state revenue or expenditures is expected because the  
18 amendment does not include language directing the state to implement use of the new  
19 definition. If the amendment is adopted, the courts may determine that the definition  
20 applies in certain situations, and require the state to provide services resulting in  
21 additional state spending.