

**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 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.

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.

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, which is sometimes referred to as a
12 fertilized egg.

13 **Arguments For**

14 1) Amendment 48 ensures that all human life, beginning with the moment of
15 fertilization, is afforded fair and equal treatment. Currently, these rights are not given
16 until birth. Amendment 48 recognizes that a new human being is created at the
17 moment of fertilization and gives all human beings, whether born or unborn, equal
18 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, which may lead to the
22 rights granted by the constitution being inconsistently applied. The measure ensures
23 uniform application of the term "person" under the law.

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

30 **Arguments Against**

31 1) Amendment 48 allows government interference into private, personal choices
32 and potentially restricts the exercise of independent medical judgment. The measure
33 could be used to limit access to abortions and to prohibit medical care, including
34 emergency contraception, commonly used forms of birth control, and treatments for
35 cancer, tubal pregnancies, and infertility. The amendment may restrict some stem cell
36 research that could lead to life-saving therapies for a variety of disabilities and
37 illnesses. The measure may subject medical professionals to legal action for
38 providing medical care to a woman of child-bearing age.

1 2) Granting fertilized legal rights equal to children and adults is impractical for
2 purposes of the law. A woman has no way of knowing for certain if she is carrying a
3 fertilized egg because there is no commonly available test to determine if a human
4 egg has been fertilized. Further, research shows that 30 to 70 percent of fertilized
5 eggs fail to result in a pregnancy.

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

11 **Estimate of Fiscal Impact**

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