

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
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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
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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.
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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
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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
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Final Draft

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
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Mr. Mario Branciforte

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34 providing medical care to a woman of child-bearing age ~~if it is determined to affect~~
35 ~~another "person."~~ WHICH ENDANGERS HER PREGNANCY.

36 2) Amendment 48 may limit the ability of individuals to make private, personal
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Protect Families Protect Choices

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9 ~~being~~ REDEFINES A "PERSON" AS EXISTING from the moment of fertilization. The term
10 "moment of fertilization" is not defined in Amendment 48. The generally accepted
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12 **Arguments For**

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36 ~~providing medical care to a woman of child-bearing age if it is determined to affect~~
37 ~~another "person."~~ 1) AMENDMENT 48 REQUIRES GOVERNMENT INTRUSION INTO PRIVATE,
38 PERSONAL CHOICES AND RESTRICTS THE EXERCISE OF INDEPENDENT MEDICAL JUDGMENT.
39 UNDER THIS AMENDMENT, MEDICAL PROFESSIONALS WOULD BE SUBJECT TO LEGAL ACTION
40 FOR PROVIDING HEALTH CARE, BECAUSE FERTILIZED EGGS WILL HAVE THE SAME LEGAL
41 RIGHTS AS A WOMAN. THIS VIOLATES THE IMPORTANCE OF THE DOCTOR-PATIENT

Protect Families Protect Choices

1 RELATIONSHIP AND BRINGS THE GOVERNMENT, LAWYERS AND COURTS INTO PERSONAL,
2 PRIVATE HEALTH CARE DECISIONS.

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6 ~~used forms of birth control, and treatments for cancer, tubal pregnancies, and~~
7 ~~infertility. The amendment may restrict some stem cell research that could lead to~~
8 ~~life-saving therapies for a variety of disabilities and illnesses.~~ 2) GRANTING LEGAL
9 RIGHTS TO FERTILIZED EGGS COULD HAVE FAR-REACHING NEGATIVE CONSEQUENCES FOR
10 IMPORTANT LIFE DECISIONS. FOR EXAMPLE, ABORTIONS WOULD BE BANNED IN EVERY
11 CIRCUMSTANCE. THE MEASURE WOULD PROHIBIT MEDICAL CARE, INCLUDING EMERGENCY
12 CONTRACEPTION EVEN FOR RAPE VICTIMS, COMMONLY USED FORMS OF BIRTH CONTROL, AND
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16 3) Amendment 48 is more complex than adding a definition to the state
17 constitution. ~~Creating a definition of the word "person" in the constitution could impact~~
18 ~~many existing state laws containing the term. The courts and the legislature will have~~
19 ~~to determine how to apply the new definition to a wide variety of laws, including~~
20 ~~property rights and criminal laws.~~ NO ONE KNOWS HOW DEFINING "PERSON" FROM THE
21 MOMENT OF FERTILIZATION AND GIVING LEGAL STATUS TO FERTILIZED EGGS WOULD
22 ACTUALLY BE APPLIED IF THE PROPOSED AMENDMENT TOOK EFFECT. THE NEW DEFINITION
23 COULD AFFECT EVERY LAW AND EVERY REGULATION THAT USES THE WORD "PERSON," AND
24 MAY IMPACT THOUSANDS OF COLORADO LAWS AND REGULATIONS, INCLUDING PROPERTY
25 RIGHTS AND CRIMINAL LAWS. FOR EXAMPLE, IF TREATING A WOMAN'S CANCER RESULTED IN
26 A FERTILIZED EGG BEING HARMED, AMENDMENT 48 WOULD ALLOW THE DOCTOR TO BE
27 PROSECUTED.

28 **Estimate of Fiscal Impact**

29 No immediate impact to state revenue or expenditures is expected because
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MARIO BRANCIFORTE'S COMMENTS ON LAST DRAFT OF AMENDMENT 48

Amendment 48

3rd draft

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Definition of the term "person." The Colorado bill of rights does not currently contain a definition of person. Amendment 48 defines person to include a human being from the moment of fertilization. The term "moment of fertilization" is not defined in Amendment 48. The generally accepted medical definition of fertilization is the union of a male sperm and a female egg, which is sometimes referred to as a fertilized egg [or a human zygote](#).

Arguments For

1) Amendment 48 ensures that all human life, beginning with the moment of fertilization, is afforded fair and equal treatment. Currently, these rights are not given until birth. Amendment 48 recognizes that a new human ~~being is created~~ [life begins](#) at the moment of fertilization and gives all human beings, whether born or ~~unborn~~ [pre-born](#), equal rights and protections.

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

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

Arguments Against

1) Amendment 48 allows government interference into private, personal choices [affecting prenatal human beings](#) and potentially restricts the exercise of independent medical judgment. The measure could be used to limit access to abortions and to ~~prohibit~~ [affect](#) medical care, including emergency contraception, commonly used forms of birth control, ~~and~~ [some](#) treatments for cancer, tubal pregnancies, and infertility. The amendment may restrict ~~some~~ [embryonic](#) stem cell research that could lead to life-saving therapies for a variety of disabilities and illnesses. The measure may subject medical professionals to legal action for providing medical care to a woman of child-bearing age [which endangers her pregnancy](#).

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

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

Estimate of Fiscal Impact

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General Thought:

The arguments for and against seem to be a case of apples vs. oranges. The arguments for are based on a principle – that the government does not have the authority to declare any part of the human family to be non-persons. The arguments against are pragmatic concerns.

A more balanced approach would be to argue principle against principle. The arguments against should be based on the principles underlying the position that the government has the authority to declare parts of the human family to be non-persons.

KRISTI BURTON'S COMMENTS ON LAST DRAFT OF AMENDMENT 48

Here are our suggested changes:

1. On lines 11 and 12 fertilization is defined and then the result is called "... a fertilized egg". The introduction of this term definitely turns the analysis towards the opposition's viewpoint. We would suggest at least adding the phrase, "or the first cell of a unique, new human being" or "a human being from the moment of fertilization."

2. The first argument against the Amendment is misleading and disingenuous. The only way the Amendment could be used against "...medical professionals...for providing medical care to a woman of child-bearing age" is if that professional intended to take the life of another person as a direct result of that care. The laws of this state already provide criminal penalties for such an act. They just don't specify who is actually a person. We would recommend that this argument be rewritten to reflect the full truth.

Thank you,
Kristi Burton

MICHAELA DASTEEL'S COMMENTS ON LAST DRAFT OF AMENDMENT 48

TO: Elizabeth Burger
FROM: Michaela Dasteel, FertilityCare Practitioner

COMMENTS ON BLUE BOOK ARGUMENTS AGAINST AMENDMENT 48

1. "The measure could be used to limit access to abortions and to prohibit medical care, including ... treatments for cancer and tubal pregnancies"

Pro-life surgeons routinely perform surgeries to treat women with cancer and ectopic pregnancies. The difference is, their intention is to try to save both patients. When abortion was illegal, these surgeries were done.

2. "some stem cell research the could lead to life-saving therapies"

Please don't let them use the blue book as a platform to hype embryonic stem cell research. The latest research has shown that undifferentiated cells can be obtained without using embryos.

3. "The woman has no way of knowing for certain if she is carrying a fertilized egg"

If the doctors who are advising you are using the term "fertilized egg" because that's easy for the common person to understand, I would ask them why they keep asking us to say "penis" and "vagina" instead of the common terms. I think the blue book should use the scientifically correct term for the human at the single-celled stage: zygote ((page 321; William J. Larsen, Human Embryology (New York: Churchill Livingstone, 1993).

Attached is Chapter 58 of the "Medical and Surgical Practice of NaProTECHNOLOGY" textbook by Thomas Hilgers, MD (<http://www.fertilitycare.org/napro/naprotext.htm>). The introduction and final notes are as follows

Early Pregnancy Loss: Challenging Current Paradigms

Over the years, there has been an assertion in reproductive medicine that the natural wastage of human embryos is extremely high. It has been estimated, for example, that at least 73 percent of natural single conceptions have no real chance of surviving six-weeks gestation. Furthermore, that wastage is noted to occur "prior to clinical recognition." Often, this type of data is used to justify in vitro fertilization because, as noted by some authors, "IVF conceptions do nearly as well as natural pregnancies after clinical recognition."!

The discussion on early human wastage began with studies by Hertig and Rock in 1956. These investigators studied 34 "human ova" within the first 17 days of development

obtained from 211 patients who had had a hysterectomy after being encouraged to have intercourse prior to the surgery. Depending upon which of their papers you believe, 13,210,3 11, 14 of the "ova" were abnormal. **Their work is essentially one of a kind since it never been repeated.** From this study, the claim was made that 50 percent of early embryos are lost. This comes from a sub-section of the Hertig-Rock study in which 4 out of 8 (50%) of "ova" recovered prior to implantation were considered to be abnormal. This small series and its evaluation is problematic. There is a serious question as to whether or not the "ova" that were recovered free-lying in the uterus and tubes, were ever fertilized. It is now well known that cleavage alone is not enough to establish the occurrence of fertilization, since unfertilized mammalian (including human) ova often exhibit degenerative changes which resemble cleavage (parthogenetic cleavage).' Shettles has aspirated unfertilized ova from perfectly intact ovarian follicles that were cleaved to the morula and early blastocyst stages."

Final Note

Ever since the original work of Hertig and Rock in 1956, it has been claimed that the human reproductive system is extremely inefficient because there is a very high rate of early pregnancy loss. As studies have become more and more refined, it appears that the original claims of 50 to 78 percent early pregnancy loss are not compatible with current studies. Wilcox, et al., " has shown much lower rates than previously presented.

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Chapter 58

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The claim that a high number of conceptuses were lost early in their development was encouraged by a hypothetical analysis presented by Roberts and Lowe.⁷ Their estimate that 78 percent of conceptuses were lost was based on a series of presumptions which were untenable, including an estimate of the number of annual acts of coitus and annual acts of unprotected coitus.

The natural embryo loss has been difficult to determine because of the complex nature of obtaining reliable information. In general, the best data available, however, have come from a number of investigations which have been conducted in various animal species.⁸⁻¹² In all of these studies, control animals were evaluated in an approximated natural state. In these mammals, the spontaneous fetal loss was consistently less than 15 percent and the preimplantation loss, 1 to 3 percent.



More recently, Wilcox, et al.,¹³ using daily urine specimens to evaluate β -HCG in 221 healthy women attempting to conceive, identified 198 pregnancies by an increase in the β -HCG level near the expected time of implantation. Of these, 22 percent ended before pregnancy was “detected clinically.”¹³

In 1999, Wilcox, et al., further investigated this issue.¹⁴ In 189 pregnancies where daily urine samples were again analyzed for β -HCG, 75 percent lasted at least six weeks in duration past the last menstrual period and the remaining 48 pregnancies (25%) ended in early loss. Among the pregnancies that lasted six weeks or more, the first appearance of chorionic gonadotropin occurred 6 to 12 days after ovulation. One of the interesting findings in this particular study was the relationship of early pregnancy loss to the timing of implantation. Using an endocrine parameter for the timing of ovulation, their data suggested that the early loss increased as the time of implantation was delayed. If implantation occurred by the ninth day, 13 percent ended in early loss. This proportion rose to 26 percent with implantation on day 10, to 52 percent on day 11 and 82 percent after day 11. This is a unique contribution and should be the subject of further investigation.¹⁴

These latter two studies by Wilcox, et al., seriously challenge the early estimates of 50 to 78 percent early pregnancy loss. These studies were well designed and used a very precise measurement for β -HCG. And yet, even more recently, the claim that human reproduction is “relatively inefficient with a presentation that 75 percent of pregnancies represent a failure of implantation and, are therefore, not clinically recognizable” continues to be made.¹⁵

Table 82-1: Pregnancy Loss Prior to
20 Weeks Outcome Data
Pope Paul VI Institute
Total Pregnancies – 1,704

Outcome	n	%
Spontaneous abortion	264	15.5
Mid-trimester SAB	65	3.8
Ectopic	32	1.9
Induced abortion	4	0.2
Totals	365	21.4

Pope Paul VI Institute Evaluations

This issue has been examined at the Pope Paul VI Institute in a couple of different ways. First of all, the overall incidence of pregnancy loss prior to the 20th week of pregnancy has been evaluated for 1,704 consecutive pregnancies (Table 58-1). This shows an overall pregnancy loss rate of 21.4 percent with 15.5 percent representing early miscarriages (within the first 12 weeks of pregnancy, 3.8 percent in the middle trimester of pregnancy, a 1.9 percent incidence of ectopic pregnancies and a 0.2 percent incidence of induced abortion.

In further evaluating this more specifically, an evaluation was made of 363 cycles in which the early evaluation of serum β -HCG was performed. This included 185 in which the result was positive and 178 cycles in which the β -HCG was negative. These were quantitative β -HCGs (Table 58-2). One of the questions asked was whether or not “clinical signs of pregnancy” were present or absent. This is very poorly defined in those studies which have previously been done. It was found that in all cases in which there was a positive β -HCG, clinical signs of pregnancy were present. In those patients who had a negative β -HCG, the clinical signs of pregnancy were absent (Table 58-3). Because these patients were charting their menstrual and fertility cycles with the **CrMS**, they could identify clinical signs of pregnancy,

Table 58-2: Results of Serum β -HCG Testing
Pope Paul VI Institute
(N=363 cycles)

Result	n	%
Positive	185	51.0
Negative	178	49.0
Totals	363	100.0

Table 58-3: Results of β -HCG Testing and
Presence or Absence of
Clinical Signs of Pregnancy –
Pope Paul VI Institute (N=363)

Result β -HCG	Total n	Clinical Signs of Pregnancy			
		Present n	%	Absent n	%
Positive	185	185	100.0	0	0.0
Negative	178	0	0.0	178	100.0

which before this time would have gone unnoticed. In Figure 58-1, an example of a patient who had a positive β -HCG on Peak +22 of 27.7 followed by a decrease to 7.1 on Peak +24 and a heavy menstrual period on Peak +25 shows that this prolonged post-Peak phase was clinical evidence of pregnancy. This has been referred to as a “chemical pregnancy.” However, the exact etiology of such an event is not known. For example, does a true conception occur in cycles such as this? Is there really an early embryo, or this the result of a completely abnormal physiologic event to which trophoblastic tissue is present, β -HCG is produced and the post-Peak phase delayed? The answer to these questions are not yet known, but should be pursued to be better understood. In the author’s experience with these types of pregnancies, almost invariably, the post-Peak phase is prolonged and this prolongation is almost always 18 days or greater in duration. (Table 58-3).

This evaluation of β -HCG was conducted in a *very high-risk population*. The results of the 185 positive β -HCGs are tabulated in Table 58-4. The overall pregnancy loss rate was 24.9 percent and four of the 185 pregnancies could be considered early losses that were either subtle or “subclinical” (2.2%) but all with prolonged post-Peak phases.

A different approach has also been undertaken to analyze this. In this approach, a group of infertility patients

undergoing analysis of their post-Peak hormone profiles were further examined. In reviewing these, the progesterone levels on Peak +11 were observed. It has been shown that serum progesterone exhibits a *very rapid response* to the presence of increasing levels of β -HCG.¹⁶ An example of a normal pregnancy with rising levels of progesterone is shown in Figure 58-2.

By looking at the post-Peak progesterone profiles and identifying increasing Peak +11 progesterone levels, one can obtain indirect evidence of an existing pregnancy at its very earliest stages. In addition, those cycles in which the Peak +11 progesterone was seen to increase

Table 58-4: Outcome of Positive β -HCG Tests
High-Risk Pregnancies
Pope Paul VI Institute (N=185)

Outcome	n	%
Normal pregnancy	139	75.1
Overt spontaneous abortion	38	20.5
Ectopic pregnancy	4	2.2
Early spontaneous abortion ¹	4	2.2
Totals	185	100.0

1. But clinical signs of pregnancy were present.

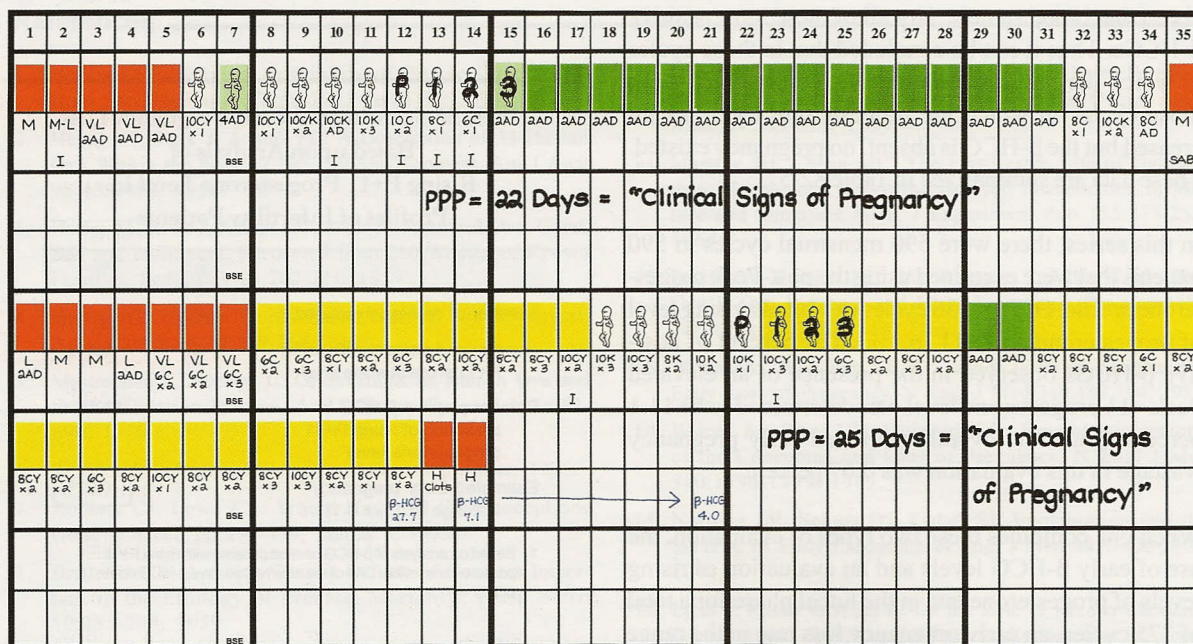


Figure 58-1: In the first case, a positive pregnancy test was obtained on P+16 and her period started on P+23. This 22-day post-Peak phase (prolonged) is a common finding in early pregnancy loss and is, *de facto*, a “clinical sign of pregnancy.” In the second case, a positive pregnancy test was observed on Peak+25. A period started on Peak +26 and her β -HCG decreased to 7.1. This is another example of an early pregnancy loss with “clinical signs of pregnancy” observed when charting the CrMS.

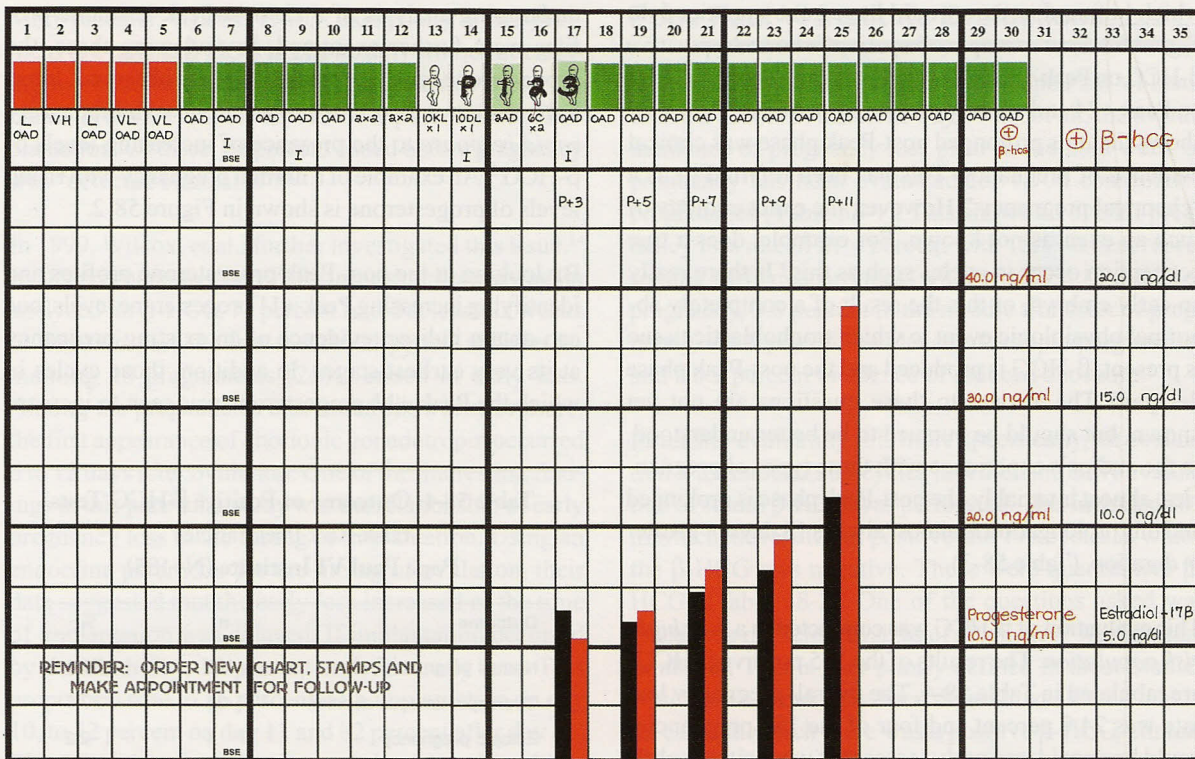


Figure 58-2: In this example, progesterone assessed during the cycle of pregnancy shows an increase on both Peak +9 and Peak +11. It has been shown that the progesterone response is very rapid when stimulated by the production of β -HCG in early pregnancy.¹⁶

were further evaluated by performing serum β -HCG levels on that blood sample. Not all of these have positive β -HCGs. Thus it can be concluded that in those cycles in which the progesterone levels are decreasing or in those cycles in which the progesterone level has increased but the β -HCG is absent, no pregnancy existed. These data are summarized in Table 82-5.

In this series, there were 590 menstrual cycles in 590 patients that were examined using the post-Peak progesterone profile. Of these, 36 cycles exhibited a rising level of progesterone on P+11 (6.1%). The percent of positive β -HCGs observed in the presence of an elevated Peak +11 progesterone level was determined to be 11.1 percent. Thus, the overall estimated early pregnancy wastage in this evaluation was 0.67 percent.

When one combines these two types of evaluation, the use of early β -HCG levels and an evaluation of rising levels of progesterone late in the luteal phase for a total of 775 cycles, an early pregnancy loss rate in the range of 0.67 to 2.2 percent was identified. This has been more consistent with the studies that were done in studies of mammals which showed an early pregnancy loss of one

Table 58-5: Estimated Early Pregnancy Loss Based upon Analysis of Rising P+11 Progesterone Level in Profiles of Infertility Patients

	n	%
Number of profiles examined	590	
Number and percent with rising P+11 progesterone level	36	6.1%
Percent positive β -HCG in presence of rising P+11 progesterone level ¹		11.1%
Estimated early pregnancy wastage (6.1% x 0.11)		0.67%

1. Based on analysis of β -HCG on nine patients with rising P+11 progesterone levels. One of the nine had positive β -HCG on P=11 (25.1).

to three percent. In addition, these patients who have early pregnancy losses, almost invariably have clinical signs of pregnancy.

Final Note

Ever since the original work of Hertig and Rock in 1956, it has been claimed that the human reproductive system is extremely inefficient because there is a very high rate of early pregnancy loss. As studies have become more and more refined, it appears that the original claims of 50 to 78 percent early pregnancy loss are not compatible with current studies. Wilcox, et al.,¹⁴ has shown much lower rates than previously presented.

In our own data analysis, using a somewhat similar and yet very different approach, and with excellent monitoring of the menstrual cycle with the ability to see “clinical signs of pregnancy” in their earliest stages, no pregnancies were observed in which some *de facto* evidence of pregnancy was not evident. In addition, using serum β -HCG levels and an analysis of rising levels of progesterone late in the luteal phase, the estimated early pregnancy loss in studies at the Pope Paul VI Institute have shown a range of 0.67 percent to 2.2 percent which is much more consistent with mammalian studies performed on animals in which pregnancy occurred in a state which approximated the natural environment.

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A.M. O'HARE'S COMMENTS ON LAST DRAFT OF AMENDMENT 48

Below are my comments on the final draft of the Amendment 48 Ballot Analysis. Thank you for the opportunity to submit them and please don't hesitate to contact me if you have any questions.

1. On lines 11 and 12 fertilization is defined and then the result is called "... a fertilized egg". Up to this point, the Analysis is written in a fair and balanced manner. However the introduction of this term definitely skews the Analysis toward the opposition. This term is inherently biased against the Amendment and should not be used. The correct medical terminology is "zygote". At the very least, the last phrase should be re-written to read, "...sometimes referred to as a zygote". To be even more accurate the phrase, "... or the first cell of a unique, new human being" should be added to the above phrase.

2. The first argument against the Amendment is misleading and disingenuous. The only way the Amendment could be used against "...medical professionals...for providing medical care to a woman of child-bearing age" is if that professional intended to take the life of another person as a direct result of that care. The laws of this state already provide criminal penalties for such an act. They just don't specify who is actually a person. In addition, the only "stem cell research" that would be affected by this Amendment is the kind that kills another person. This argument needs to be rewritten to reflect the full truth.

3. The second argument against the Amendment is contradictory and patently false. It appears that the word "eggs" was inadvertently omitted from the first sentence. If this paragraph made any sense, the word "fertilized" should be omitted as well and replaced with the word "zygotes". However, the whole paragraph needs to be scrapped as it is totally senseless. It first attempts to argue that it is impossible to determine fertilization. It then makes the argument that "...30 to 70 percent of fertilized eggs fail to result in pregnancy". How can they know since they admit that they do not have any way to tell if an egg has been fertilized? Finally, tests do now exist to determine when fertilization has occurred. In addition, recent research shows that early miscarriages are actually on the order of just 3 percent not the ridiculous (and meaningless) range of "30 to 70 percent" cited.

Thank you again for the opportunity and privilege of responding to this final draft. I look forward to reading the "blue book" when it comes out.

Sincerely,

A. M. O'Hare
Co-Founder/Treasurer
LifeGuard



It Simply Goes Too Far.

PROTECT FAMILIES PROTECT CHOICE COMMENTS ON LAST DRAFT OF AMENDMENT 48

August 13, 2008

Ms. Elizabeth Burger
Amendment 48 Team Lead
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Denver, Colorado 80203

Please accept the following comments on the Third Draft of the Legislative Council Ballot Analysis for the “Definition of Person” issue. These comments represent the NO on 48 Coalition, which is currently supported by more than 50 state and national organizations. These organizations have joined the campaign because Amendment 48 intrudes in a woman’s personal, private relationship with her doctor. Changing the Colorado constitution to define a “person” as a fertilized egg will negatively impact literally thousands of Colorado laws with far-reaching consequences on important life decisions.

We believe that the Third Draft should be revised, and to that end, we have included our rationale for suggested changes and citations to the proposed act to support our requests for changes. Our recommendations are presented in the order of priority for the NO on 48 Coalition.

Use of the term “human being”:

Protect Families Protect Choices has previously asked that the term “human being” be deleted from the Ballot Analysis. Referring to a fertilized egg as a “human being” may be understood by voters as conferring rights to “human beings,” not fertilized eggs. In addition, voters may understand that the State has given approval to the core position of the proponents because a fertilized egg is referred to as a “human being” throughout the Ballot Analysis. The use of this term therefore renders the explanation unbalanced and unfair. It has the potential to trigger a favorable response to the proposed amendment, and does not contribute to voter understanding of the issues underlying the amendment.

Legislative Council has included the term “human being” in the opening section of the Ballot Analysis (Page 1, line 2) because it is a quote from the Ballot Title

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itself, and we do not object to that usage. However, we ask that the term “human being” be removed from the remainder of the Ballot Analysis to avoid the appearance of support for the proponents’ position on Amendment 48. In particular, we request the following changes:

Page 2, Lines 8-9. Change “Amendment 48 defines person to include a human being from the moment of fertilization” to “Amendment 48 *redefines a “person” as existing* from the moment of fertilization.”

Page 2, Lines 16-17. Change “Amendment 48 recognizes that a new human being is created at the moment of fertilization and gives all human beings, whether born or unborn, equal rights and protections” to “Amendment 48 *proposes* that a human life begins at the moment of fertilization and gives all developing human life, whether born or unborn, equal rights and protections.”

Arguments against:

The NO on 48 Campaign has three major arguments against Amendment 48:

Amendment 48 intrudes in the personal relationship between a woman and her doctor

Amendment 48 has far-reaching consequences on important life decisions

Amendment 48 would impact thousands of Colorado laws and regulations.

The legal consequences of Amendment 48 are of a breadth that is difficult to predict, and could be very negative.

To better communicate those concerns, we recommend making the following changes to the *Arguments Against* section of the Third Draft of the Ballot Analysis.

As written, the first argument against Amendment 48 mingles the “government intrusion” argument and the distinct concept of “far-reaching consequence for important life decisions.” To that end, the opponents request two separate arguments.

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To this end, we propose that the arguments read as follows:

Argument 1: Government Intrusion into the doctor-patient relationship

Amendment 48 requires government intrusion into private, personal choices and restricts the exercise of independent medical judgment. Under this amendment, medical professionals would be subject to legal action for providing health care, because fertilized eggs will have the same legal rights as a woman. This violates the importance of the doctor-patient relationship and brings the government, lawyers and courts into personal, private health care decisions.

Argument 2: Negative consequences for important life decisions

Granting legal rights to fertilized eggs could have far-reaching negative consequences for important life decisions. For example, abortions would be banned in every circumstance. The measure would prohibit medical care, including emergency contraception even for rape victims, commonly used forms of birth control, and treatments for cancer, tubal pregnancies, and infertility. The amendment would restrict some stem cell research that could lead to life-saving therapies for a variety of disabilities and illnesses.

We suggest striking the second argument as currently drafted in the Ballot Analysis, Page 3, Lines 1-5. In the second argument against, Legislative Council tries to explain the medical impracticalities of Amendment 48. Although we appreciate this attempt, we believe that this explanation is not a major argument against the amendment. As written, the argument does not clearly explain the legal and medical complications created by proposed Amendment 48. It has the potential to mislead the reader, and detracts from the major arguments.

The third argument against Amendment 48 fails to capture the broad and complicated range of laws impacted by proposed the proposed Amendment. The current reference on Page 3, Line 8 to “the legislature” would mislead voters: the legislature doesn’t make decisions about constitutional definitions.

The suggested changes below provide the voter with a more complete understanding of the legal implications of Amendment 48 and clearly outlines, in a concise readable fashion, the opponents’ third major argument against the proposed amendment.

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Argument 3: Thousands of Colorado laws and regulations would be affected

Amendment 48 is more complex than adding a definition to the constitution. No one knows how defining “person” from the moment of fertilization and giving legal status to fertilized eggs would actually be applied if the proposed amendment took effect. The new definition could affect every law and every regulation that uses the word “person,” and may impact thousands of Colorado laws and regulations, including property rights and criminal laws. For example, if treating a woman’s cancer resulted in a fertilized egg being harmed, Amendment 48 would allow the doctor to be prosecuted.

Summary and Analysis

Page 1, Lines 10 – 14: Please omit references to the U.S. Constitution

Amendment 48 is a state constitutional amendment. It is not necessary to mention the U.S. Constitution. Rather than clarifying, introducing information about the U.S. Constitution may confuse voters.

Page 1, Line 12: Please add “the term” before “person.” Because the definition of the term “person” is the subject of the proposed amendment, it would be more accurate to enclose “person” in quotation marks throughout the document.

Page 1, Lines 20-22: Please omit the reference to government limiting the exercise of rights.

This section implies that the government could choose to limit the reach of Amendment 48. Unlike something like speech rights, which legal precedent indicates may be limited to time and place, there are no established limits on Amendment 48.

Page 1, Line 30: Strike “Courts have determined that.”

It is not necessary for the voter’s basic understanding of Equality of Justice, and may bias readers to disproportionately weigh the second *argument* for Amendment 48.

Page 2, Line 4: Strike “Courts have determined.”

It is not necessary for the voter’s basic understanding of Due Process of Law, and may bias readers to disproportionately weigh the second *argument* for Amendment 48.

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Thank you for your consideration of our requested changes. I would be happy to discuss these issues with you in greater detail. Please feel free to call me at my office at 303-863-7777 or to e-mail me at fofi@mendezsteadman.com with any questions or concerns. We are looking forward to the next set of revisions.

Sincerely,

Fofi Mendez
Protect Families Protect Choices Coalition

Protect Families Protect Choices

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Last Draft as Mailed to Interested Persons

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.

Last Draft as Mailed to Interested Persons

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.

Last Draft as Mailed to Interested Persons

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.

AMENDMENT 48
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AMENDMENT 48
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Amendment 48
Definition of Person

1 **Ballot Title:** An amendment to the Colorado constitution defining the term "person"
2 to include any human being from the moment of fertilization as "person" is used in those
3 provisions of the Colorado constitution relating to inalienable rights, equality of justice,
4 and due process of law.

5 **Text of Proposal:**

6 *Be it Enacted by the People of the State of Colorado:*

7 SECTION 1. Article II of the constitution of the state of Colorado is amended BY THE
8 ADDITION OF A NEW SECTION to read:

9 **Section 31. Person defined.** AS USED IN SECTIONS 3, 6, AND 25 OF ARTICLE II
10 OF THE STATE CONSTITUTION, THE TERMS "PERSON" OR "PERSONS" SHALL INCLUDE ANY
11 HUMAN BEING FROM THE MOMENT OF FERTILIZATION.