

Amendment 67
Definition of Person and Child

1 **Amendment 67 proposes amending the Colorado Constitution to:**

- 2 ♦ specify that the terms "person" and "child" in the Colorado Criminal
3 Code and wrongful death statutes include unborn human beings.

4 **Summary and Analysis**

5 Amendment 67 creates a constitutional provision stating that the terms "person"
6 and "child" in the Colorado Criminal Code and the wrongful death statutes must
7 include unborn human beings. The measure does not define the term "unborn human
8 beings."

9 **Colorado Criminal Code.** The Colorado Criminal Code contains criminal
10 offenses in state law. It currently defines a "person," when referring to the victim of a
11 homicide, as a human being who had been born and was alive at the time of the
12 criminal act. The code excludes a human embryo, fetus, and an unborn child at any
13 stage of development prior to live birth from the definition of "person." The Colorado
14 Criminal Code does not uniformly define "child;" the definitions vary based on different
15 offenses.

16 **State wrongful death statutes.** State wrongful death statutes allow surviving
17 spouses, families, and estates to seek compensation for negligent actions resulting in
18 the death of a person. These statutes do not define "person" or "child."

19 **Laws concerning offenses against pregnant women.** Colorado law defines an
20 unlawful termination of a pregnancy as the termination of a pregnancy by any means
21 other than birth or a medical procedure with the woman's consent. Under Colorado
22 law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful
23 termination of a woman's pregnancy, including vehicular unlawful termination of a
24 pregnancy. Unlawful termination of a pregnancy and offenses against a person are
25 categorized in separate sections of the law and may carry different penalties. If a
26 person commits an offense against a pregnant woman that results in the loss of her
27 pregnancy, the offender can be charged with at least two crimes — the offense
28 against the woman and the unlawful termination of the pregnancy. The law exempts
29 pregnant women and health care providers acting with the consent of a pregnant
30 woman from criminal prosecution for acts related to a woman's pregnancy.

31 Colorado law also allows a woman to seek compensation from any person who
32 intentionally, knowingly, or recklessly causes an unlawful termination of her
33 pregnancy. Colorado law states that a woman is not liable for damages for acts she
34 takes with respect to her own pregnancy, nor is a health care provider for providing
35 services. Additionally, the law excludes a human embryo, fetus, and an unborn child
36 at any stage of development prior to live birth from the definition of "person."

1 **Effect of Amendment 67 on abortion and reproductive health care.** The
2 measure does not specify how its provisions will apply to health care providers or
3 medical procedures. Depending on how the term "unborn human being" is defined or
4 interpreted, the measure may impact the availability of abortions under Colorado law.
5 It may also impact the availability of other medical procedures, devices, and
6 medications, such as certain forms of birth control or in vitro fertilization.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center [web site](http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html) hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

7 **Arguments For**

8 1) One of government's responsibilities is to protect its citizens from harm.
9 Amendment 67 protects pregnant women and unborn children by making it illegal to
10 kill or otherwise harm an unborn human being and holds perpetrators both criminally
11 and civilly liable. Crimes against unborn human beings should be subject to the same
12 legal penalties as crimes against human beings who have been born. Under
13 Amendment 67, a person who kills an unborn human being could be charged with
14 homicide.

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16 2) By including unborn human beings in the definition of "person," the measure
17 may establish the legal foundation to protect the unborn by ending the practice of
18 abortion in Colorado. If the Colorado Constitution recognizes an unborn human being
19 as a person, the measure may allow a district attorney to prosecute abortion as
20 homicide or child abuse and could limit the willingness of health care providers to
21 perform abortions in Colorado.

22 **Arguments Against**

23 1) Amendment 67 is unnecessary and unclear. There are already laws in place
24 to protect pregnant women endangered by the criminal acts of others, while respecting
25 the personal medical decisions of a woman and her health care provider, and the
26 measure adds unnecessary confusion to this issue. The term "unborn human being"
27 has no established legal or medical definition in Colorado law, and could apply at any
28 stage of pregnancy. The measure could have far-reaching consequences, including
29 making pregnant women and health care providers criminally and civilly liable for a
30 pregnancy that does not result in a live birth.

31 2) Amendment 67 allows government intrusion into the personal health care
32 decisions of individuals and families and makes no exceptions for the privacy of the
33 doctor-patient relationship. The measure could make abortion a crime, including
34 those for victims of rape or incest. It may prevent doctors, nurses, and pharmacists
35 from providing certain types of medical care to a woman, including some forms of birth

1 control such as emergency contraception and intra-uterine devices, and treatment for
2 miscarriages, tubal pregnancies, cancer, and infertility.

3 **Estimate of Fiscal Impact**

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5 Amendment 67 has no immediate impact to state or local government revenues or
6 expenditures. The measure does not require any new action or additional services,
7 nor does it impose any new fines or charges. Depending on how the measure is
8 interpreted and applied by the courts, or whether the state legislature adopts specific
9 legislation, this may result in new criminal offenses and penalties being created or
10 applied in certain situations where unborn human beings are harmed. These potential
11 criminal penalties may increase costs for state and local law enforcement agencies,
12 the courts, and the Department of Corrections for the investigation and incarceration
13 of individuals committing offenses. The potential costs cannot be determined at this
14 time.