

Amendment 67 Definition of Person and Child

ANALYSIS

Amendment 67 proposes amending the Colorado Constitution to:

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

Summary and Analysis

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

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

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

Laws concerning offenses against pregnant women. Colorado law defines an unlawful termination of a pregnancy as the termination of a pregnancy by any means other than birth or a medical procedure with the woman's consent. Under Colorado law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful termination of a woman's pregnancy, including vehicular unlawful termination of a pregnancy. Unlawful termination of a pregnancy and offenses against a person are categorized in separate sections of the law and may carry different penalties. If a person commits an offense against a pregnant woman that results in the loss of her pregnancy, the offender can be

charged with at least two crimes — the offense against the woman and the unlawful termination of the pregnancy. The law exempts pregnant women and health care providers from criminal prosecution for acts related to a woman's pregnancy.

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

Effect of Amendment 67 on abortion and reproductive health care. The measure does not specify how its provisions will apply to health care providers or medical procedures. Depending on how the term "unborn human being" is defined or interpreted, the measure may impact the availability of abortions under Colorado law. It may also impact the availability of other medical procedures, devices, and 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 hyperlink for ballot and initiative information:

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

Arguments For

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

2) By including unborn human beings in the definition of "person," the measure may establish the legal foundation to protect the unborn by ending the practice of abortion in Colorado. If the Colorado

Constitution recognizes an unborn human being as a person, the measure may allow a district attorney to prosecute abortion as homicide or child abuse and could limit the willingness of health care providers to perform abortions in Colorado.

Arguments Against

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

2) Amendment 67 allows government intrusion into the personal health care decisions of individuals and families and makes no exceptions for the privacy of the doctor-patient relationship. The measure could make abortion a crime, including those for victims of rape or incest. It may prevent doctors, nurses, and pharmacists from providing certain types of medical care to a woman, including some forms of birth control such as emergency contraception and intra-uterine devices, and treatment for miscarriages, tubal pregnancies, cancer, and infertility.

Estimate of Fiscal Impact

Amendment 67 has no immediate impact to state or local government revenues or expenditures. The measure does not require any new action or additional services, nor does it impose any new fines or charges. Depending on how the measure is interpreted and applied by the courts, or whether the state legislature adopts specific legislation, this may result in new criminal offenses and penalties being created or applied in certain situations when a pregnancy is terminated. These potential criminal penalties may increase costs for state and local law enforcement agencies, the courts, and the Department of Corrections for the investigation and incarceration of individuals committing offenses. The potential costs cannot be determined at this time.