



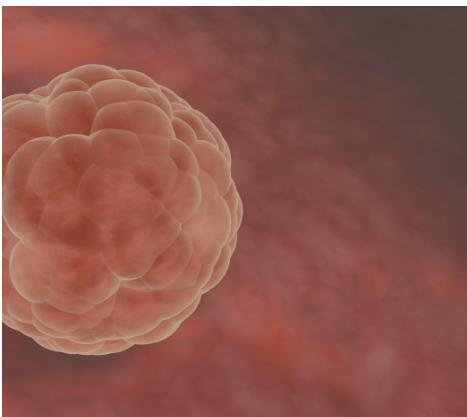
Amendment 48 Is Anti-Life

Why It Matters That a Fertilized Egg Is Not a Person

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The Coalition for Secular Government advocates government solely based on secular principles of individual rights. The protection of a person’s basic rights to life, liberty, property, and the pursuit of happiness—including freedom of religion and conscience—requires a strict separation of church and state.

Consequently:

We oppose any laws or policies based on religious scripture or dogma, such as restrictions on abortion and government discrimination against homosexuals.

We oppose any government promotion of religion, such as the teaching of “intelligent design” in government schools and tax-funded “faith-based initiatives.”

We oppose any special exemptions or privileges based on religion by government, such as exemptions for churches from the tax law applicable to other non-profits.

The only proper government is a secular government devoted to the protection of individual rights.

The Coalition for Secular Government seeks to educate the public about the necessary secular foundation of a free society, particularly the principles of individual rights and separation of church and state.

Introduction

Amendment 48 seeks to define a fertilized egg as a person with full legal rights in Colorado’s constitution. If fully implemented, it would profoundly and adversely impact the lives of sexually-active couples, couples seeking children, pregnant women, doctors, and medical researchers, subjecting them to severe legal restrictions, police controls, protracted court battles, and criminal punishments.

Amendment 48 would outlaw abortion, even in cases of rape, incest, terminally deformed fetuses, and danger to the woman’s health. The measure might or might not allow abortions in cases of extreme risk to the woman’s life; either way, it would endanger the lives and health of many women. In conjunction with existing statutes, Amendment 48 would subject women and their doctors to first-degree murder charges for willfully terminating a pregnancy, with the required punishment of life in prison or the death penalty.

The impact of Amendment 48 would extend far beyond abortion into the personal corners of every couple’s reproductive life. It would outlaw many forms of birth control, likely including the pill. It would require criminal investigation of any miscarriages deemed suspicious. The measure also would ban potentially life-saving stem-cell research and many popular fertility treatments.

Amendment 48 rests on the absurdity that a fertilized egg is a full human person with an absolute right to biological life-support from a woman—regardless of her choices and whatever the cost to her. The biological facts support a different view, namely that personhood and rights begin at birth. Colorado law should reflect those objective biological facts, not the Bible verses so often quoted by advocates of Amendment 48.

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Legal Impacts of Amendment 48

Amendment 48 would alter Colorado's constitution, granting a fertilized egg the same legal status as a born human baby. It would add a new section to Colorado's Bill of Rights stating:

Section 31: Person defined.

As used in sections 3, 6, and 25 of Article II of the state constitution, the terms 'person' or 'persons' shall include any human being from the moment of fertilization."

Those other sections state:

Section 3. Inalienable rights.

All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

Section 6. Equality of justice.

Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.

Section 25. Due process of law.

No person shall be deprived of life, liberty or property, without due process of law.

The state legislature likely would draw up new statutes implementing Amendment 48, and state courts would determine its effect on present and future legislation. The more consistently Amendment 48 were enforced and interpreted by the courts, the more ghastly its implications would be.

For example, Statute 18-3-102 states, "A person commits the crime of murder in the first degree

if...[a]fter deliberation and with the intent to cause the death of a person other than himself, he causes the death of that person or of another person... Murder in the first degree is a class 1 felony." Thus, if a fertilized egg is legally a person, then any intentional act of preventing a fertilized egg from implanting (such as by taking the "morning after" pill) or aborting an embryo or fetus would be first-degree murder. By Colorado law, the punishment for that crime would be life in prison or death. Statute 18-1.4-102 states, "Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment..." While few supporters of Amendment 48 would likely endorse such draconian punishments, the wording of the amendment leaves no room for doubt: any woman who deliberately prevents a fertilized egg from implanting or who terminates her pregnancy would be guilty of murder under Colorado law. In fact, at least one Colorado religious leader has explicitly called for the death penalty for abortion.¹

Given these implications for criminal law, police officers and prosecutors might be obliged (or inspired) to investigate and prosecute any miscarriage deemed suspicious. A woman suspected of inducing a miscarriage (or attempting to do so) could be subject to criminal prosecution, as could others suspected of helping her in the act. Doctors might be required to report any evidence that a patient attempted to terminate a pregnancy under child abuse reporting laws.

However, the implementation of Amendment 48 also would depend on federal restrictions on state law. The Fourteenth Amendment prevents states from enacting laws that violate federally-recognized rights:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In legalizing abortion, the 1973 Supreme Court decision *Roe v. Wade* invoked the Fourteenth Amendment. So long as that ruling stands, Colorado could not ban abortion under Amendment 48. However, overturning *Roe v. Wade* and outlawing abortion is precisely what the advocates of Amendment 48 aim to do.

A document from the “Personhood ‘08 Colorado” campaign from Colorado for Equal Rights states, “Why redefine the term person? In the famous *Roe v. Wade* Supreme Court case Justice Blackmun said basically that the whole argument for abortion rights falls apart if we know that the pre-born is a person.”² Similarly, *LifeSiteNews.com* reports that Kristi Burton, the sponsor of Amendment 48, believes that “the time is ripe for a legal challenge to *Roe v. Wade*, especially at a point in history when the next appointment to the Supreme Court may come from a pro-abortion Democratic president.”³ At their 2008 state convention, Colorado Republicans passed a resolution calling for the overturn of *Roe v. Wade*.⁴ In its 2008 Candidate Questionnaire, Colorado Right to Life states, “Colorado RTL opposes every law that regulates the killing of unborn children because, regardless of the intention, such laws...will keep abortion legal if *Roe v. Wade* is merely overturned...”⁵ A *World Net Daily* article reports, “Pro-life activists in Colorado have cleared a major hurdle in preparing an initiative for the 2008 election that would grant personhood to the unborn and create a possible confrontation to the 1973 *Roe vs. Wade* ruling that created abortion rights.”⁶

So the passage of Amendment 48 in Colorado would not immediately ban abortions due to overriding federal law. However, its advocates explicitly hope to use the measure to overturn *Roe v. Wade*. If successful, they could fully implement Amendment 48, thereby

outlawing abortion (and more) in Colorado.

The legislature and courts in Colorado might be strongly tempted to pretend that Amendment 48 doesn’t mean what it plainly says in order to avoid its absurd implications. Such a course of legislative and judicial winking might save Colorado from the worst effects of the measure, but it would do so by undermining the basic principle of rule of law so essential to a free society.

Alternately, the Colorado legislature could try to rewrite the myriad statutes mentioning “person” or “persons” to exclude fertilized eggs, embryos, and fetuses. However, anti-abortion lawyers could effectively challenge such legislative changes based on the constitutional language of Amendment 48. The measure would be subject to interpretation by Colorado courts, but those courts would be legally bound by the constitution, including Amendment 48.

If Amendment 48 passes, its exact effects would depend greatly on the decisions of future legislators and judges. However, we can be sure that the advocates of Amendment 48 will work doggedly to force the Colorado government to fully implement and enforce the measure.

Amendment 48 and Birth Control

The most obvious and severe effect of Amendment 48 would be a total or near-total ban on abortion. Perhaps more importantly, it would profoundly affect the day-to-day sex lives of couples by restricting birth control. If a fertilized egg is a person with full legal rights, then any action that prevents a fertilized egg from implanting in the uterus must be considered murder. Thus, if fully implemented, Amendment 48 would ban any form of birth control that could prevent implantation of a fertilized egg, most notably, the birth control pill—the most popular type of birth control—as well as emergency contraception and intrauterine devices (IUDs). Such a ban would

force couples to resort to more difficult and less reliable forms of birth control, thereby increasing the number of unwanted pregnancies. (Amendment 48 would not ban all birth control: methods that only prevent fertilization of the egg, such as the diaphragm, sterilization, and condoms, would still be permitted.)

Significantly, natural or spontaneous abortion is a routine occurrence. Most fertilized eggs fail to implant; they are flushed out of a woman's body. Due to the difficulty of detecting when a woman's body rejects a fertilized egg, estimates of prevalence range widely. However, some researchers estimate that as many as 80 percent of fertilized eggs fail to implant.⁷ Even after a woman becomes pregnant with the implantation of the embryo, the risks of losing it by natural causes still hover around 10 to 25 percent.⁸ Nature is by far the greatest cause of death for fertilized eggs. (Notice that such natural deaths of fertilized eggs are not lamented, nor regarded as a public health crisis—not even by those who think of them as persons.) Thus Amendment 48 would ban forms of birth control that mimic the body's natural processes. Also, as William Saletan observes, other activities that inhibit implantation include breast feeding, drinking coffee, and exercising.⁹ Would the defenders of fertilized eggs ban all women of child-bearing age from those activities, on the grounds that they risk killing human persons? Probably not—meaning that Amendment 48 would be selectively enforced.

A ban on the birth control pill would affect most sexually-active couples. A report from the Centers for Disease Control shows widespread use of contraception, noting that, as of 2002, “98 percent of all women who had ever had intercourse had used at least one contraceptive method,” and “82 percent had ever used the oral contraceptive pill.” Furthermore, “[t]he leading method of contraception in the United States in 2002 was the oral contraceptive pill. It was being used by 11.6 million women 15-44 years of

age; it had ever been used by 44.5 million women 15-44 years of age.”¹⁰ The reason for its popularity is not difficult to fathom; it is not only easy to use but also highly reliable. It is more effective than sterilization and condom use, the second and third most popular forms of birth control. Under “perfect use,” only 0.3 percent of women on the pill experience an unwanted pregnancy within the first year of use, as compared with 0.5 percent for sterilization and 2.0 percent for condoms.¹¹ So women forced to switch from the birth control pill (perfect use) to condom use due to Amendment 48 would experience around seven times the number of unintended pregnancies. Although effective, sterilization is surgically invasive and permanent, and it exposes women to an increased risk of ectopic pregnancy and other problems.¹² Amendment 48 would require many thousands of women to scramble to find a new method of birth control, yet none is likely to be as convenient and effective as the pill.

In reply to those who equate the pill and other forms of birth control with abortion, some prominent defenders of reproductive rights deny that they have any effects after fertilization. Planned Parenthood claims, for instance, that “there is no proof” that “the pill works by keeping a fertilized egg from attaching to the lining of the uterus,” that an IUD “keeps a fertilized egg from attaching to the lining of the uterus,” or that “the morning after pill works by keeping a fertilized egg from attaching to the lining of the uterus.”¹³ However, Planned Parenthood does not mention the fact that definitive proof in this case is practically impossible to acquire, so the matter rests on inconclusive data coupled with known physiological effects and their theoretical implications.¹⁴ For the defenders of Amendment 48, that possibility of harm to a fertilized egg would be grounds to vigorously push for a ban on these forms of birth control.

Moreover, the manufacturers of those products tell a different story about their effects. While these forms of

birth control mostly act to prevent fertilization, they also endanger the lives of fertilized eggs. The popular birth control pill Ortho Tri-Cyclen® states in its prescription information that the medication affects implantation of a fertilized egg: “Combination oral contraceptives act by suppression of gonadotropins. Although the primary mechanism of this action is inhibition of ovulation, other alterations include changes in the cervical mucus (which increase the difficulty of sperm entry into the uterus) and the endometrium [the lining of the uterus] (which reduce the likelihood of implantation).”¹⁵ The emergency contraception medication Plan B® “may inhibit implantation (by altering the endometrium).”¹⁶ The IUD Mirena® also causes “alteration of the endometrium” and may “thin the lining of your uterus,” which (though unstated) would inhibit implantation. Moreover, if an IUD fails, it threatens the embryo: “Severe infection, miscarriage, premature delivery, and even death can occur with pregnancies that continue with an intrauterine device (IUD). Because of this, your health care provider may try to remove Mirena, even though removing it may cause a miscarriage.”¹⁷ One woman per thousand users of Mirena gets pregnant within the first year, so it poses a significant risk to embryos—an unacceptable risk, according to Amendment 48.¹⁸

Many religious opponents of abortion welcome the fact that Amendment 48 would ban the birth control pill, morning-after pill, and IUD. They accept the logical implications of their belief that fertilization creates a human person with full rights, as seen in the following articles. The *Wall Street Journal* reports:

The Bush Administration has ignited a furor with a proposed definition of pregnancy that has the effect of classifying some of the most widely used methods of contraception as abortion.

A draft regulation, still being revised and debated, treats most birth-control pills and intrauterine devices as abortion because they

can work by preventing fertilized eggs from implanting in the uterus. The regulation considers that destroying “the life of a human being.”¹⁹

ProLife.com, which advocates “ending abortion,” hosts an article by J. T. Flynn which begins, “Physicians across America—and around the world—are now confirming that the Pill, IUDs, Depo-Provera and Norplant cause early abortions.”²⁰ The Christian web page, Contraceptive Information Resource, states, “When fertilization is not prevented, hormonal birth control methods commonly cause the expulsion of an embryo prior to implantation by changing the lining of the uterus so that it will not accept an embryo and by changing the way the fertilized ovum travels down the fallopian tube.”²¹ That source refers to the view of Dr. Walter L. Larimore, who writes:

[A]fter many months of debate and prayer, I decided in 1998 to no longer prescribe the Pill. As a family physician, my career has been committed to family care from conception to death. Since the evidence indicated to me that the Pill could have a postfertilization effect, I felt I could no longer, in good conscience, prescribe it...²²

If a fertilized egg is a person, then birth control that blocks implantation even sometimes must be considered morally abhorrent. Its use and distribution must be outlawed and criminally penalized. The same would apply to any medication that might harm fertilized eggs, regardless of the costs in pain and suffering to women. Such is the logical consequence of treating fertilized eggs as persons.

If implemented, Amendment 48 would certainly outlaw some forms of birth control. The process of doing so would subject Coloradans to lengthy battles in the legislature and the courts regarding which forms of birth control may or may not prevent a fertilized egg from implanting in the uterus, before a woman even becomes pregnant.

Fertility Treatment and Medical Research

Amendment 48 would require dramatic changes to the treatment of fertilized eggs in laboratory settings, including fertility clinics and research facilities. Such changes further illustrate the harm Amendment 48 would inflict on real people as well as the absurdities that arise from granting legal rights to fertilized eggs.

The Centers for Disease Control reports that nationally, “about 12% of women of childbearing age in the United States have used an infertility service.” Fertility treatments account for more than one percent of all U.S. births. In 2005, the 422 fertility clinics evaluated helped women deliver 52,041 infants. The seven clinics in Colorado helped around 820 women deliver babies. In Colorado, the clinic with the most treatments in 2005 was the Colorado Center for Reproductive Medicine in Englewood.²³ Because of the fertility treatments offered by that center, 690 women became pregnant in 2007.²⁴ So 690 women had the chance to become mothers who otherwise would not have borne children, thanks to these fertility treatments. Without them, their children would not exist today.

One might think that those who claim to “respect life” wouldn’t want to outlaw all those births, yet Amendment 48 would do just that.

Nearly all fertility treatments involve fertilizing a woman’s eggs in the laboratory. The Colorado Center for Reproductive Medicine explains how its services work: generally “the eggs and several thousand sperm are placed together in a dish which contains a nutrient liquid. These dishes are kept in an incubator overnight and are examined under the microscope on the morning after the egg retrieval to determine which eggs have fertilized normally.”²⁵ “Three to five days after egg collection, the embryos are placed inside the woman’s uterus. . . . The number of embryos transferred depends upon the age of the patient, the quality of the embryos and the stage of their

development.”²⁶ So what happens if the fertilization process results in more healthy, fertilized eggs than the clinic implants into the woman?

Some couples are fortunate enough to collect a large number of embryos from one egg collection. Any remaining viable embryos that are not transferred into the woman’s uterus during the month of treatment may be frozen (“cryopreserved”) in small tubes and kept in storage in the embryo laboratory for future use. Cryopreservation allows the patient to limit the number of embryos transferred “fresh” without discarding the unused embryos that could lead to a future pregnancy. The embryos may be kept in storage for several years.²⁷

The critical point is that not all of the embryos are transferred to the woman’s uterus: that is where the process would run afoul of Amendment 48. Embryos in the lab could not be allowed to perish, nor languish in cold storage, as they would be persons with rights. (Frozen embryos only remain viable a few years.) So fertility clinics would be left with two options. They could fertilize one egg at a time, vastly raising the costs and time of the procedure because most eggs don’t fertilize. Or they could implant all fertilized eggs into the woman, in some cases posing a health risk or producing more children than a couple can raise well. The practical result of Amendment 48 likely would be to shut down Colorado’s seven reproductive clinics.

Consider, though, how Amendment 48 would change the legal status of all the frozen embryos now in existence: they would suddenly become “persons” under the law, with all the rights of born infants. Presumably, women would be forced to implant or donate for implantation all of these existing embryos—or face criminal charges. Moreover, if the biological parents of a frozen embryo die, presumably the embryo has full rights of inheritance, thereby reducing the share of any born children, though how

the frozen embryo will grow up to collect remains a problem. This fantastical scenario highlights the absurdity of treating a fertilized egg as a person in the law. However, the farce of granting legal rights to frozen embryos ought not obscure the much more important point: fertility treatments bestow the gift of a child to many hundreds of Colorado women and men each year, a gift that Amendment 48 would smother.

Amendment 48 also would ban all medical research that might harm a fertilized egg—even though it may help save and improve the lives of countless born people. The National Institutes of Health summarizes some of the potential benefits of embryonic stem-cell research:

Stem cells have potential in many different areas of health and medical research. To start with, studying stem cells will help us to understand how they transform into the dazzling array of specialized cells that make us what we are. Some of the most serious medical conditions, such as cancer and birth defects, are due to problems that occur somewhere in this process. A better understanding of normal cell development will allow us to understand and perhaps correct the errors that cause these medical conditions.

Another potential application of stem cells is making cells and tissues for medical therapies. ...Pluripotent stem cells [isolated from human embryos that are a few days old] offer the possibility of a renewable source of replacement cells and tissues to treat a myriad of diseases, conditions, and disabilities including Parkinson's and Alzheimer's diseases, spinal cord injury, stroke, burns, heart disease, diabetes, osteoarthritis and rheumatoid arthritis.²⁸

In the name of “respecting life,” the advocates of Amendment 48 would impose a death sentence on

the real people whose lives might be saved through such research.

Amendment 48 and Abortion

Finally, Amendment 48 would ban all abortion, except perhaps in cases of extreme risk to the mother's life. As a result, the measure would cause permanent injury or death to some at-risk women. It would also force a woman to bring any pregnancy to term, regardless of her judgment about her best course in life.

How frequent is abortion? The Centers for Disease Control reports, “There were 4.1 million births in 2004...”²⁹ The same year, there were 839,226 legal abortions.³⁰ Put another way, there were around five live births for every abortion. The Guttmacher Institute reports for 2005: “In Colorado, 100,500 of the 1,001,833 women of reproductive age became pregnant in 2005. 69% of these pregnancies resulted in live births and 16% in induced abortions.”³¹ In other words, according to the proponents of Amendment 48, around 16,000 Colorado women murdered their own children in 2005. They should have been arrested, tried, and punished with life in prison or the death penalty.

When in pregnancy do most abortions occur? Viability, the age at which a fetus possibly can survive outside the womb with advanced medical assistance, generally is considered to be around 24 weeks. In 2004 only 12 percent of abortions occurred beyond the twelfth week, and only 1.4 percent of abortions occurred beyond the 20th week.³² Abortion generally takes place in the first trimester, long before the fetus is viable. By granting fertilized eggs the legal status of persons, Amendment 48 would outlaw abortions even in the earliest stages of pregnancy.

Amendment 48 also would outlaw the abortion of severely deformed fetuses without any reasonable hope of a life outside the womb. Although women's bodies usually naturally abort in such cases, they do

not always do so. An article in *Boulder Weekly* quotes a doctor from Georgia who discusses the devastating effects on parents if abortion is forbidden in such cases:

There were countless couples who got up and told their story [in a legislative hearing in Georgia] about how they had to have an abortion because of a child that was an[en]cephalic [missing most of the brain] or deformed in some terrible way... [T]o think that you have to carry that child, go through the pain of the delivery process and then watch it die...³³

Colorado women might be permitted to abort a terminally deformed fetus, depending on the actions of the legislature and courts. However, opponents of abortion could raise effective legal challenges on the basis of the fetus's right to life, regardless of its physical capacity to survive outside the womb. Under Amendment 48, aborting a deformed fetus would be just as much murder as killing a deformed infant. Thus painful family decisions would become political spectacles for anti-abortion activists under the false banner of "protecting life," just as happened in the Terri Schiavo case.

By defining a fertilized egg as a person, Amendment 48 would outlaw abortion for pregnancies resulting from rape and incest. Whether the fertilized egg was created in an act of consensual love or brutal force would not impact its legal rights. Without the morning-after pill to protect themselves from pregnancy, brutalized girls and women might be forced to endure an inescapable reminder of their attack for nine months thereafter, if not longer. Indeed, Colorado Right to Life asked candidates whether they "agree that abortion is always wrong, even when the baby's father is a criminal (a rapist)." Seventeen Republican candidates answered yes.³⁴

Would abortion be permitted to protect the life and health of the pregnant woman under Amendment

48? The answer is unclear.

Thankfully, modern medicine makes pregnancy relatively safe. The Centers for Disease Control reports, "The risk of death from complications of pregnancy has decreased approximately 99% during the twentieth century, from approximately 850 maternal deaths per 100,000 live births in 1900 to 7.5 in 1982. However, since 1982, no further decrease has occurred in maternal mortality in the United States." The report notes that most women who die from pregnancy die during live birth.³⁵ By way of comparison, the Guttmacher Institute notes, "Fewer than 0.5% of women obtaining abortions experience a complication, and the risk of death associated with abortion is about one-tenth that associated with childbirth."³⁶

However, pregnancy can risk a woman's life in rare cases. Ectopic pregnancy, for instance, in which a fertilized egg develops outside of the uterus, occurs in about two percent of all pregnancies: without medical intervention, it often proves fatal.³⁷ The risks to women of an abortion ban in such cases is illustrated by recent events in Nicaragua. Human Rights Watch reports that the abortion ban in that country discouraged hospitals and doctors from administering abortions even in medical emergencies, for fear of prosecution. In response, the government tried to force doctors to provide emergency care: "In an attempt to mitigate the consequences of the ban, the Nicaraguan Health Ministry in December 2006 issued a number of mandatory protocols for the provision of emergency obstetric care." Yet even such measures were insufficient to prevent the needless deaths of pregnant women.³⁸ Even though Nicaragua's abortion ban permits medical intervention in cases of an ectopic pregnancy, the Associated Press recounted the story of one woman with an ectopic pregnancy who died because doctors refused to treat her, apparently out of fear of prosecution.³⁹

Most people properly recoil in horror at the thought of forcing a woman with a high-risk pregnancy to

continue that pregnancy at the cost of her life. Is that really what Amendment 48 would require?

Many supporters of Amendment 48 do not imagine that it would outlaw absolutely all abortions. Polling data suggest that the overwhelming majority of Americans believe abortion should be legal in at least some cases. Only about 15 percent of Americans think that abortion always should be illegal, and multiple polls over multiple years never show that view climbing above 22 percent.⁴⁰ Yet 35 percent of Colorado voters polled said they support Amendment 48.⁴¹ What explains this disparity?

One plausible explanation is that some supporters of Amendment 48 hold the common view that the life of the mother must be weighed against the life of the embryo or fetus. On this approach, if the life of the mother were seriously threatened, abortion should be permitted by law. (Still, doctors might not be willing to perform such abortions, as they would be risking investigation and prosecution by zealous police officers and prosecutors.) However, Amendment 48 does not endorse that approach of balancing the two lives. Instead, the legislature and courts would be required to decide the nature and extent of risks that a woman should be forced to bear for an embryo or fetus. No one can know in advance what they might decide. However, we can form some idea of what the supporters of Amendment 48 want.

Colorado Right to Life rejects the idea that the risks to the mother should be weighed against the life of the fetus, except perhaps if the mother is on death's door. They asked candidates in 2008 whether they "support the 2008 Colorado Personhood amendment effort to define 'person' to include any human being from the moment of fertilization." The organization seeks to "uphold the God-given, inalienable Right to Life for the unborn," and it holds "that abortion is always wrong..." Does that still apply when a woman's life is at risk? Colorado Right to Life states:

When the mother's life is seriously threatened

by a pregnancy, of course it is morally justified to deliver the baby but not if the intention is to kill the baby. When the life of the mother is at serious risk by her pregnancy, the goal must be to save the life of the mother and the baby if at all possible. It is just as wrong to kill the mother to save the baby, as it is to kill the baby to save the mother. "Legalizing" abortion, defined as the intentional killing of the unborn child, for the life of the mother leads to repugnant acts like emergency removal of late-term babies from the womb stopping midway in the procedure to kill the baby. If the baby dies, it is a tragedy; if the baby is intentionally killed, it is murder. If necessary to save the mom's life, the unborn baby could be delivered with the determination to care for both, and if possible, to save both the baby and mother!⁴²

Colorado Right to Life's position rests on the farce that doctors could "deliver" an ectopic embryo or pre-viable fetus without "intentionally killing" it. Semantic contortions aside, if Colorado Right to Life is prepared to allow doctors to "deliver" an embryo to its death, then it favors abortions in cases of "serious" threats to the woman's life. And how are doctors to know which threat is sufficiently "serious?" Colorado Right to Life does not say, and Amendment 48 leaves the matter to be decided by the legislature, prosecutors, and the courts.

Ominously, even ectopic pregnancies may not be operable under Amendment 48. Pamela White, a critic of Amendment 48, offers the following scenario:

A couple who thought they were expecting a baby rush to the hospital, the wife doubled over in agony. An ultrasound shows that the fetus isn't in her uterus, but is implanted in one of her fallopian tubes. The pregnancy is doomed, and the woman's life is in very real danger. Rather than terminating the

pregnancy immediately, however, doctors admit the wife and let her wait out the agony, watching for the fetus's heart to stop beating or for the wife's fallopian tube to rupture. Then they will have no choice but to operate if they hope to save the wife's life.⁴³

Lest White be accused of sensationalism, the Association of Pro-life Physicians advocates just such a policy:

We must respond to all tragic circumstances of pregnancy from the unshakeable foundation of two indisputable premises: human life begins at conception, and it is always wrong to intentionally kill an innocent human being. The unborn child's right to life and liberty is given by his or her Creator, not by his or her parents or by the state. ... It is never right to intentionally kill an innocent person, even if it does relieve another's emotional or physical suffering. ...

What is rarely realized is that there are several cases in the medical literature where abdominal ectopic pregnancies have survived! There are no cases of ectopic pregnancies in a fallopian tube surviving, but several large studies have confirmed that time and patience will allow for spontaneous regression of the tubal ectopic pregnancy the vast majority of the time. So chemical or surgical removal of an ectopic pregnancy is not always necessary to save the mother's life after all.

However, if through careful follow-up it is determined that the ectopic pregnancy does not spontaneously resolve and the mother's symptoms worsen, surgery may become necessary to save the mother's life. The procedure to remove the ectopic pregnancy may not kill the unborn child at all, because the unborn child has likely already deceased by the time surgery because necessary. But

even if not, the procedure is necessary to save the mother's life, and the death of the unborn baby is unavoidable and unintentional.⁴⁴

While some advocates of Amendment 48 apparently would allow some abortions at some undefined threshold of risk to the woman's life, all of them would forbid abortions below some threshold of risk. Ultimately, legislators and judges would determine when abortion to preserve the life and health of the mother would be justifiable homicide rather than murder. Yet due to the inherent uncertainty of these emergency medical situations, no bright line could be drawn. So a woman suffering from an ectopic pregnancy might only be able to hope that a judge would rule in her favor in an emergency hearing before her condition deteriorated too far for a surgeon to save her life. She may not have much time to spare.

The inevitable result of Amendment 48 is that some women would die unnecessarily due to its ban on abortion. The only unresolved question is how many.

Personhood and the Right to Abortion

Amendment 48, if fully implemented, would outlaw all or nearly all abortions involving concerns of health, and definitely all abortions for rape, incest, and other reasons. That result would be disastrous for the men and women of Colorado. So what should Colorado's abortion policy be instead? What laws would be consistent with individual rights?

Some common reasons given for keeping abortion legal are inadequate or misguided. For example, one standard claim is that an abortion ban would force women to obtain illegal abortions, thereby risking their lives and health. The real-life effects of an abortion ban are significant: while the number of deaths related to illegal abortions were fewer than often claimed, they did occur.⁴⁵ However, if a fertilized egg truly has the moral status of a person, then abortion should be outlawed as a morally abhorrent violation

of fundamental rights. The fact that some women might hurt themselves while committing murder would be irrelevant: we should pity the victim, not the perpetrator. Likewise, it would be bizarre to legalize assault to prevent perpetrators of that crime from injuring themselves. In other words, the problems of illegal abortion become relevant only if abortion is in fact a woman's right, rather than murder.

Similarly, the NO on Amendment 48 Campaign, organized by the "Protect Families Protect Choices" coalition, offers as its tag line, "It Simply Goes Too Far." But how far is too far? That's unclear. The statement suggests that some restrictions on abortion would be acceptable. Perhaps the embryo or fetus should be granted some legal rights at some point in its development. Perhaps abortions should be permitted only in cases of rape, incest, deformity, or risk to the life of the woman. Yet surely coalition members like NARAL Pro-Choice Colorado and Planned Parenthood of the Rocky Mountains would oppose such restrictions on abortion.⁴⁶ By claiming that Amendment 48 "simply goes too far," the NO on Amendment 48 Campaign dodges the fundamental questions about the right to abortion, vaguely suggesting that some limits should exist without saying what or why.

In fact, Amendment 48 is not wrong because it is too extreme. It is wrong because its basic premise that fertilized eggs, embryos, and fetuses are human persons deserving of full legal rights is contradicted by the facts.

The central question raised by Amendment 48 is whether a fertilized egg has the same moral standing as an infant. Why do the advocates of Amendment 48 think that it does?

Colorado for Equal Rights, the group behind Amendment 48, states, "This issue is a matter of conscience and it is a matter of truth—the truth that is placed within each of our hearts by God—the truth that all men are CREATED equal. Not just

born equal, but CREATED equal..."⁴⁷ Similarly, Colorado Right to Life holds that a fertilized egg has a "God-given" right to life.⁴⁸ The appeal to God's will is common to all public advocates of Amendment 48. They believe that they have a mandate from God to outlaw abortion because God condemns it as murder. Kristi Burton, the public face of the Amendment 48 campaign, explained her reason for fighting to ban abortion: "It just came to me. I prayed about it and knew God was calling me to do it."⁴⁹ Amendment 48 is thus a prime example of faith-based politics: it is a blatant attempt to force everyone to conform to the dictates of a particular religious creed. While the passage of Amendment 48 would not constitute an "establishment of religion" in the sense of creating a state-sponsored church, it would establish sectarian religious doctrine as law. Thus it would violate the First Amendment, which Thomas Jefferson lauded as "building a wall of separation between Church and State."⁵⁰

However, Colorado for Equal Rights also claims to have science and medical evidence on its side. The group claims, "Because of breakthroughs in science, we know that from the moment of fertilization a unique human comes into existence."⁵¹ Burton claims, "Science clearly proves that life begins at the time of fertilization. We are secure in the fact that we have science and reason on our side..."⁵² Is that right? No one doubts that a fertilized egg is alive, that it contains human DNA, or that it has the potential to develop into a born person (assuming it implants and develops properly in a woman's uterus). The fundamental question is whether these facts are sufficient to establish a fertilized egg as the moral equivalent of an infant, worthy of full legal protections. Beyond their faith-based claims about God-given rights, the advocates of Amendment 48 offer not a single argument bridging that gap.

Establishing a fertilized egg as "life" takes the debate nowhere. Burton is wrong when she claims that "life begins at the time of fertilization." Both the sperm

and the egg are already alive prior to fertilization, so life precedes fertilization. Yet we do not regard every sperm (and egg) as sacred, as in the classic Monty Python sketch. In general, the fact that something is alive is not sufficient to give it the moral status of a person: animals and plants are alive, yet they are not persons. Nor is the fact that something is human and alive sufficient to make it a person. Every cell in our body is both human and alive, yet we don't worry about giving blood for testing or scraping off a few skin cells in a fall. Also, a cancer is a distinct, human, living entity that we try very hard to kill. A fertilized egg is different from those other living things because, in addition to being alive and human, it might develop into a born baby given the right conditions. Nobody disputes this fact. What opponents of abortion fail to establish, however, is that a potential baby has the moral status of an actual baby.

In fact, the advocates of Amendment 48 depend on an equivocation on "human being" to make their case. A fertilized egg is human, in the sense that it contains human DNA. It is also a "being," in the sense that it is an entity. That's also true of a gallbladder: it is human and it is an entity. Yet that doesn't make your gallbladder a human person with the right to life. Similarly, the fact that an embryo is biologically a human entity is not grounds for claiming that it's a human person with a right to life. Calling a fertilized egg a "human being" is word-play intended to obscure the vast biological differences between a fertilized egg traveling down a woman's fallopian tube and a born infant sleeping in a crib. It is intended to obscure the fact that anti-abortion crusaders base their views on scripture and authority, not science.

So is a fertilized egg, embryo, or fetus a person with a right to life, like an infant? No. To see why not, we must compare its basic nature as it develops through pregnancy to that of a born infant.⁵³

From the moment of fertilization to its implantation in the womb a few days later, the embryo consists of a few largely undifferentiated cells. It is invisible

to the naked eye. It has no human organs, and no human form. It has no brain, and so no capacity for awareness or feelings. It is far more similar to a few skin cells than an infant. Moreover, it cannot develop into a baby on its own: its survival beyond a few days requires successful implantation in the lining of the woman's uterus. If it fails to do that, it will be flushed from her body without anyone ever knowing of its existence.

If the embryo matures normally after implanting into the lining of the uterus, it gradually develops primitive organs. Yet its form is not distinctively human in the early stages: it looks very similar to the embryo of other species.⁵⁴ As it develops its distinctive human form, the fetus remains wholly dependent on the woman for its survival. Even with the most advanced medical technology, many fetuses born in the 22nd to 25th week of pregnancy will die, and many of those that survive will suffer from "some degree of life long disability, ranging from minor hearing loss to blindness, to cerebral palsy, to profound intellectual disability."⁵⁵ So before viability, the fetus is not capable of an existence independent of the pregnant woman.

After 26 weeks, when a fetus would be viable outside the womb, its organs continue to mature in ways critical to its survival and well-being after birth. It is aware, but that awareness is limited to the world inside the womb. Most importantly, however, so long as the fetus remains within the woman, it is wholly dependent on her for its basic life-functions. It goes where she goes, eats what she eats, and breathes what she breathes. It lives as she lives, as an extension of her body. It is wholly contained within and dependent on her for its survival. So if the woman dies, the fetus will die too unless delivered quickly. The same is true if the fetus's life-line to her body is disrupted, such as when the umbilical cord forms a tight knot.⁵⁶ A fetus cannot act independently to sustain its life, not even on the basic biological level possible to a day-old infant. It is thoroughly dependent on the woman in

which it lives.

That situation changes radically at birth. A baby lives his own life, outside his mother. Although still very needy, he maintains his own biological functions. He breathes his own air, digests his own food, and moves on his own. He interacts with other people as a whole and distinct creature in his own right, not merely as a part of a pregnant woman. He can leave his mother, either temporarily or permanently, to be cared for by someone else. He has a life of his own that must be protected as a matter of right, just the same as every other person. That's why the killing of a just-born infant is immoral—and properly forbidden by law. However, while just a fetus within the woman, the only person with rights is the woman.

The fundamental biological differences between a fertilized egg, embryo, or fetus versus an infant show that a woman has every right to terminate an unwanted pregnancy—for any reason. The pregnant woman is a human person with the right to life, liberty, and the pursuit of happiness. So is an infant. However, neither a fertilized egg, nor an embryo, nor a fetus is a person. It has no right to life-support from the woman. For the state to force a woman to provide such life-support under penalty of law would be a gross violation of her rights. Yet that's precisely what Amendment 48 would do—based on the fantasy that a fertilized egg has the same moral standing as an infant.

Of course, when a woman wants to bear a child, she will value her fetus tremendously. She will do all she can to ensure the birth of a healthy baby, protecting it from myriad harms. Moreover, she has every right to expect that the police and courts will protect her and her fetus from criminal assault. Indeed, the law should severely punish criminals who intentionally harm a woman and her fetus. However, the only rational basis for such laws is the woman's rights to her own body—not any false rights attributed to the fetus. Just as the fetus depends on the woman's body for its survival, so it depends on the woman's rights

for its legal protections.

In short, the premise of Amendment 48 is completely contradicted by the biological facts. A fertilized egg is not a person; it has no right to life. The advocates of Amendment 48 do not offer any rational grounds to think otherwise. Their whole case rests on God's alleged commands in a few often-quoted passages of Christian scripture. However, respect for the facts of reality requires respecting a woman's right to terminate an unwanted pregnancy. She must be free to act according to her own best judgment concerning the requirements of her life and happiness, regardless of anyone else's religious beliefs.

Morality and Abortion

Much of the popular opposition to abortion stems from a faulty analysis of the morality of abortion. Contrary to the critics of abortion, the termination of even a healthy pregnancy can be a morally responsible choice.

Why do women get abortions? A 2005 article in *Perspectives on Sexual and Reproductive Health* published relevant polling results. Thirteen percent of women cited "Possible problems affecting the health of the fetus." Twelve percent cited "Physical problems with my health." One percent got an abortion because of rape, and fewer than half of a percent got an abortion because of incest. The most popular answer given (where women could list multiple reasons) was, "Having a baby would dramatically change my life," at 74 percent. Many women also offered financial reasons (73 percent), lack of a partner or problems with a romantic relationship (48 percent), or desire not to have another child (38 percent).⁵⁷

Most people do not object to abortions in cases involving rape, incest, deformity, or risk to the woman's life. What about abortions obtained for other reasons, when the pregnancy is healthy? Is abortion morally acceptable even if a woman failed to use birth control—or failed to use it properly?

Irresponsible sex is the most common cause of unintended pregnancy. One study found that 46 percent of women who got pregnant unintentionally weren't using any birth control. Among the rest, only 13 percent of birth-control users and 14 percent of condom users reported correct use.⁵⁸ That's not surprising, as the difference in outcomes between "perfect use" and "typical use" of birth-control methods is dramatic.⁵⁹

Abortion can be a moral choice for the significant minority of pregnancies due to a failure of properly-used birth control. Responsible adults do not allow themselves to be buffeted about in life by accidental circumstances. Instead, they consciously direct the course of their lives by their own rational judgment. So a woman (and her partner) ought not bear a child just because she happens to become pregnant, despite careful use of birth control. Instead, they ought to consider the impact of the pregnancy and resulting child on their health, finances, careers, and well-being. They ought to consider whether their relationship is stable enough to withstand the strain of raising a child. They ought to have a child only if they are willing and able to be good parents. That's why, when the birth control of a sexually responsible couple fails, terminating an unwanted pregnancy is a morally responsible course.

Opponents of abortion often claim that couples can protect themselves against unwanted pregnancy by refraining from sex entirely. However, sex is a magnificent human value integral to any healthy, developed romantic relationship. Moreover, carrying a pregnancy to term itself involves some risk, as well as time, effort, and endurance. Putting up a child for adoption can involve high emotional costs. And raising a child to adulthood is an 18-year (and longer) commitment of time, energy, and resources. Those costs may be more than many couples are willing to bear, including married couples. So people who condemn abortion as immoral even when birth control fails (or worse, who advocate a ban) demand

that a woman and her partner choose between abstinence and procreation. That is morally wrong: it's not a choice that couples in a modern society should be forced to make.

Couples who cannot be bothered to use birth control or who use it carelessly, then terminate the resulting pregnancy by abortion, understandably earn the frustration of much of the public. Yet such abortions should not be restricted or outlawed, nor even condemned as immoral. The fact that a fetus is not a person means that the government must uphold the woman's right to choose whether to maintain or terminate a pregnancy, regardless of how it was caused. However, respect for a woman's rights does not require endorsing her decision to terminate a pregnancy. Yet if an unwanted pregnancy was caused by irresponsible behavior, then that behavior ought to be morally blamed, not any ensuing abortion. Similarly, if a skier breaks his leg by skiing too fast in dangerous terrain, we ought to blame him for that skiing, not for his sensible choice to restore his leg to health by surgery.

Moreover, the fact that an embryo is not a person, nor even sentient, means that the woman (and her partner) have no moral obligation to consider its not-yet-existent interests in their decision to abort or not. They ought to consider the impact of bearing a child on their own lives, as well as the kind of life they could offer that born child. Nothing else matters. So when an unwanted pregnancy results from the careless use or absence of birth control, an abortion may be the most responsible course of action, as the couple is likely ill-prepared for the immense burdens of raising a child well. In such cases, the couple ought to resolve to always use birth control properly, in order to avoid the distress of another unintended pregnancy. Yet they should feel no guilt for the abortion, if that best served their interests, only for engaging in irresponsible sex.

The opponents of abortion often gather support for their cause by associating abortions with

promiscuous, irresponsible sex and other self-destructive behaviors. However, women often become pregnant unexpectedly through no fault of their own. In other cases, the moral wrong was not the abortion but the irresponsible sex. In any case, the moral condemnation of abortion is often wrong: the embryo or fetus is not a person whose interests must be balanced against those of the woman. The attempt to outlaw abortion in order to punish irresponsible sex is doubly wrong: it is a violation of the rights of the woman and it is abusive to the children born to irresponsible, uncaring parents.

Amendment 48 Is Not a “Message”

Ironically, the fact that Amendment 48 is so outrageous in its implications may cause some Colorado voters to not take it seriously. Many voters may be tempted to think: “surely they don’t really want to ban abortions even in cases of rape, incest, deformity, or risks to the life of the mother; surely they don’t really want lengthy prison sentences or even the death penalty for women who get abortions; surely they don’t seriously want to outlaw the birth-control pill; surely they don’t want to shut down fertility clinics; surely not.” But the most consistent advocates of Amendment 48 do intend those effects—and they will use Amendment 48 to make them the law of the land.

The Religious Right typically packages the issue of abortion with a variety of other cultural issues, such as nihilism, postmodernism, promiscuous sex, violent video games, and pornography. They claim that voting for Amendment 48 will send the “message” that “all human life has value.”⁶⁰ Yet the measure does not say, “Resolved: All human life has value.” Rather, Amendment 48 is a specific measure with specific, foreseeable political implications. A vote for it is a vote for those sweeping political changes. It is a vote for granting full legal rights to fertilized eggs—at the expense of the real men and women of Colorado.

As this paper has shown, Amendment 48 would fundamentally change Colorado law. If *Roe v. Wade*

were reversed, the consistent enforcement of the measure would outlaw abortion in all cases except perhaps for extreme and immediate risk to the woman’s life, outlaw popular forms of birth control, outlaw all embryonic stem-cell research and the most common *in vitro* fertilization techniques, and impose severe police and prosecutorial control over the sexual lives of most couples. Not only would it cause some women to suffer and die needlessly, but it would violate the rights of actual persons and prevent them from making the best choices for their lives.

In its essence, Amendment 48 is profoundly anti-life.

Colorado for Equal Rights tempts voters to ignore these clear implications of Amendment 48. The organization disingenuously claims, “In and of itself, this amendment will not ban abortion, stop birth control, or prevent *in vitro* fertilization or stem cell research. This is not criminal legislation.”⁶¹ Even though the measure does not alter the criminal code, it would, if legally implemented and enforced, automatically apply existing criminal statutes, including life in prison or the death penalty for first-degree murder of a “person.” Why is Colorado for Equal Rights so coy about its agenda?

Obviously the advocates of Amendment 48 hope that Colorado voters will overlook the real and frightening implications of the measure, and instead vote based on their disapproval of irresponsible sex and their affection for cuddly babies. Yet in this case, an irresponsible vote would be worse than irresponsible sex. The way to change the culture in the direction of greater responsibility and stronger moral values is not to pass a law that would kill women, foster a police state, foist parenthood on unwilling couples, and severely violate the rights of millions of actual people.

If you believe that “human life has value,” the only moral choice is to vote against Amendment 48.

Notes

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