

Value Pregnant Women and Mothers

Vote NO on Amendment 67

Amendment 67 (also known as the “Brady Amendment”) is not a narrow “feticide” law designed to bring justice to women who are harmed while pregnant and lose their babies. Make no mistake: Amendment 67 is a “personhood” measure, not a narrow feticide law that, if passed, would radically change Colorado’s entire criminal code.

Amendment 67 states: *In the interest of the protection of pregnant mothers and their unborn children from criminal offenses and negligent and wrongful acts, the words “person” and “child” in the Colorado Criminal Code and the Colorado Wrongful Death Act must include unborn human beings.*

A typical feticide law changes a few sections of a state’s criminal code, often by adding additional penalties or categories to a state’s existing statutes on murder, negligent homicide, or manslaughter. The overwhelming majority of feticide laws specifically exclude prosecution for any woman with respect to abortion and her own pregnancy.¹ Amendment 67 would change the entire Colorado criminal code, broadening every single statute that uses the words “person” or “child,” and making no distinction between the actions of a pregnant woman and attacks on pregnant women by third parties.

Significantly, none of the 38 states that have passed actual “feticide” laws have done any research to determine if they have reduced violence against pregnant woman or protected them in any way. Research, however, has shown that these laws have been used to arrest pregnant women themselves.²

Amendment 67 would create many grounds for police and prosecutors to arrest and punish pregnant women and new mothers. People who say this is a “scare tactic” are wrong.

Amendment 67 would make having an abortion first-degree murder.

Scare tactic? Colorado’s criminal law says that a person commits the crime of murder in the first degree if she intentionally causes the death of **a person** or knowingly (no intent needed) causes the death of **a child**.³ If this amendment passes, the words “person” and “child” would be redefined to mean an “unborn human being,” and as a result, a pregnant woman who deliberately and intentionally terminates a pregnancy would be causing the death of a “person” or “child” as defined in Colorado’s criminal laws. Nothing in Colorado’s murder statutes exempts pregnant women who have abortions – for any reason – from the scope of the statute. The penalty for this crime is life imprisonment or the death penalty.

Amendment 67 goes farther than any anti-abortion measure in U.S. history and farther than any that exists around the world. Before *Roe*, criminal abortion laws typically created penalties of 1-10 years (not life in prison or death). Worldwide, of the countries that still criminalize abortion,

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very few prohibit abortion in all circumstances (as would Amendment 67) and none, even on paper, impose the death penalty.

- In countries where abortion is currently criminalized, women who have abortions are arrested and jailed. They are not treated as “victims” and they are not “protected” by these laws. **Women who experience miscarriages and stillbirths are also arrested and incarcerated.** ⁴
- National Advocates for Pregnant Women has documented numerous cases in the United States - before 1973 and after - in which women who sought to end their pregnancies have actually been arrested on homicide and other charges and some have been convicted under far less punitive state criminal laws. ⁵
- Although current federal law would still, on paper, protect the right to choose to have an abortion, experience from around the country demonstrates that if Amendment 67 passes, enterprising prosecutors will start arresting women (and/or the doctors or family members who help them). Because bail is often denied to people charged with the crime of murder, women who are charged with murder for having an abortion will have to mount their challenge to the arrest from a jail cell.
- In countries where abortions are legal and not criminalized, the lives and health of women are protected. ⁶

Amendment 67 would do far more than threaten abortion rights. This Amendment would put every woman who suffers a miscarriage or stillbirth, or who gives birth to an infant who does not survive, at risk of being charged with a crime.

Scare tactic? Colorado’s criminal law says that manslaughter, ⁷ criminally negligent homicide,⁸ or vehicular homicide⁹ applies if someone recklessly or negligently causes the death of another **person**. If this amendment passes, the words “person” would be redefined to mean an “unborn human being.” As a result, a pregnant woman who loses a pregnancy will become subject to investigation, interrogation, arrest and prosecution if anyone believes she could have or should have done something to prevent that loss. National Advocates for Pregnant Women has documented numerous cases in which women were charged with such crimes because they experienced miscarriages and stillbirths, or because the woman was unable to guarantee that the child she gave birth to would survive.

- A Louisiana woman went to the hospital when she had unexplained vaginal bleeding. Although she did not know that she had been pregnant, she was suspected of having had a stillbirth or secretly giving birth to a baby. She was jailed on murder charges for more than a year before medical records were obtained that showed she had suffered a miscarriage at 11 weeks of pregnancy. ¹⁰

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- A Utah woman gave birth to twins, one of whom was stillborn. Based on the claim that her decision to delay having recommended cesarean surgery caused the stillbirth, she was arrested for criminal homicide. She was only released after agreeing to plead guilty to a lesser crime.¹¹

Amendment 67 would make pregnant women subject to arrest for crimes like reckless endangerment or child abuse.

Scare tactic? Colorado’s criminal law says someone who creates a substantial **risk** of serious bodily injury to another **person** commits the crime of reckless endangerment.¹² In a separate law, a person commits **child** abuse if she permits a **child** to be placed in a situation that **poses a threat** of injury.¹³ If this amendment passes, the words “person” and “child” would be redefined to mean an “unborn human being.” As a result, whenever anyone believes a pregnant woman is risking harm to the fertilized egg, embryo, or fetus inside her, she could be investigated, arrested, and prosecuted. Amendment 67 would give health care providers the power to threaten arrest whenever a woman disagreed with her doctor’s advice. As every leading medical group, including the American Academy of Pediatrics, has concluded, the ability to arrest and threaten the arrest of pregnant women is bad for babies and undermines maternal, fetal, and child health.¹⁴

- Courts have already permitted more than 200 women in the United States to be charged or convicted of child abuse or endangerment - even when they gave birth to completely healthy infants.¹⁵ Some of the women who faced charges drank alcohol while they were pregnant.¹⁶
- Samantha Burton, a Florida woman, was 22 weeks pregnant and had two small children to care for. When she went into premature labor, doctors obtained a court order allowing them to keep her prisoner in the hospital and forcing her to undergo cesarean surgery without her consent. Neither the detention nor the surgery prevented the stillbirth.¹⁷
- Laura Pemberton was arrested at her Florida home while she was in active labor. She was forcibly taken to a hospital, and without any right to counsel, was required to undergo cesarean surgery against her will. The hospital claimed that her decision to try and give birth vaginally, posed a threat of injury to her unborn child.¹⁸

Amendment 67 would undermine the trust pregnant women have in their health care providers by taking away patient confidentiality

Scare tactic? Colorado’s criminal law says that there is no physician-patient confidentiality for people accused of the crimes of murder¹⁹ and child abuse.²⁰ If Amendment 67 passes, first degree murder will include the “death” of fertilized eggs, embryos, and fetuses, and child abuse

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will include “abuse” of fertilized eggs, embryos, and fetuses. As a result, nothing a woman confides in her doctor that could be considered harmful to her future child – including an inability to quit smoking or to control her diet – would be considered confidential.

- In Iowa, a woman who fell down the stairs while pregnant was arrested for attempted feticide. She went to the local hospital where she confided that, earlier in her pregnancy, she had considered having an abortion. Her arrest was based on this information that she had shared with a health care provider.²¹ Fortunately, the charges were dropped, but Amendment 67 would deny physician-patient confidentiality and allow such arrests.

Amendment 67 may eliminate women’s freedom to travel while pregnant.

Scare tactic? Colorado’s criminal law says that any person who, without consent, knowingly carries any **person** from one place to another commits second degree kidnapping.²² If this amendment passes, the words “person” would be redefined to mean an “unborn human being,” and as a result, a pregnant woman who travels while pregnant (for example over the objections of the person who impregnated her) could be threatened with or actually charged with kidnapping. In fact, courts have already treated women who have traveled out of state while pregnant as if they had kidnapped a child.

- Sarah McKenna moved to New York while she was seven months pregnant. When her son was born she went to the New York courts to work out custody arrangements for the child. The father, who lives in California, argued that the case should be decided by California courts, even though the child had never been in that state. The New York trial court agreed with the father, and called Ms. McKenna “irresponsible” and “reprehensible” for “appropriating the child while in utero.”²³ Fortunately, a higher court disagreed,²⁴ but Amendment 67 would create legal authority for controlling and punishing women who travel while pregnant.

Amendment 67 would allow prosecutors to charge pregnant women with crimes if they smoke cigarettes or drink alcohol.

Scare tactic? Colorado law makes it a crime for someone to give or deliver cigarettes to anyone under age 18, or any alcohol beverage to a person under the age of 21.²⁵ Pregnant women who drink alcohol have already been arrested for child endangerment and attempted homicide.

- A New York woman was arrested in 2003 and charged with criminal child endangerment because she drank alcohol while pregnant.²⁶
- In Wyoming, a woman who was four months pregnant went to the hospital because she had been beaten by her husband. She was arrested for felony child abuse when she tested positive for alcohol.²⁷

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In both of these cases, the charges were eventually dismissed because there was no legal authority for the arrests. If Amendment 67 passes, it would create the legal authority to police and punish any pregnant women who smoke cigarettes or use any amount of alcohol. Every leading medical group, including the American Medical Association,²⁸ has stated that such a law would be bad for babies, deterring women from health care that protects maternal, fetal, and child health.

Who are the women the sponsors of Amendment 67 want to see subject to Colorado’s Criminal Code?

They are overwhelmingly mothers. Approximately 70% of women who have abortions are already mothers. Eighty-four percent of all women by the time they are in their 40’s have gotten pregnant and given birth.²⁹

Amendment 67 will not create justice for pregnant women.

It will put pregnant women at risk of being arrested and imprisoned.

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¹ The Georgia Code provides an example of a typical feticide law that specifically contains an exception for prosecution of any woman with respect to abortion and her own pregnancy: “(a) For the purposes of this Code section, the term “unborn child” means a member of the species homo sapiens at any stage of development who is carried in the womb. (b) A person commits the offense of feticide if he or she willfully and without legal justification causes the death of an unborn child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, or if he or she, when in the commission of a felony, causes the death of an unborn child...**(f) Nothing in this Code section shall be construed to permit the prosecution of:**

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(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) Any person for any medical treatment of the pregnant woman or her unborn child; or

(3) Any woman with respect to her unborn child. GA ST § 16-5-80 (emphasis added).

² See e.g., Alexandria Sage, Mother accused of murder of unborn pleads not guilty, *Laramie Wyoming Boomerang*, March 16, 2004; *State v. Tucker*, Santa Barbara County, Municipal Court, No. 147092 (June 1973); See also, Becca Wilson, .22 Cal Abortion Brings Prolonged Ordeal, *Santa Barbara News & Review*, May 3, 1974; Jordan Smith, Naked City, Save the Fetus --From Mom? *The Austin Chronicle*, (Sept 10, 2004) <http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid%3A228254>

³ C.R.S.A. § 18-3-102.

⁴ See e.g., *The Total Criminalization of Abortion in El Salvador*, The Center for Reproductive Rights (Sept. 17, 2014), available at

http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/GLP_FS_ElSalvador-Final.pdf; *Q & A: Abortion and the Law in Uganda*, The Center for Reproductive Rights (June 2012), available at

http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_uganda_QA_v5.pdf.

⁵ Lynn Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973– 2005: Implications for Women’s Legal Status and Public Health*, 38 *J. Health Pol. Pol’y & L.* 299 (2013), available at

<http://jhhppl.dukejournals.org/content/38/2/299.full.pdf+html?sid=bo811f36-d4e4-4b51-a830-e175e6eee40c>.

⁶ Sneha Barot, *Unsafe Abortion: The Missing Link in Global Efforts to Improve Maternal Health*, 14 *Guttmacher Policy Review* (Spring 2011), available at

<http://www.guttmacher.org/pubs/gpr/14/2/gpr140224.html>. See *The Safety of Legal Abortion and the Hazards of Illegal Abortion*, NARAL Pro-Choice America (Jan. 2014), available at

<http://www.prochoiceamerica.org/media/fact-sheets/abortion-distorting-science-safety-legal-abortion.pdf>; David Grimes, et. el, *Unsafe Abortion: the Preventable Pandemic*, 368 *The Lancet* 1908

(Noc. 2006), available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(06\)69481-6/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(06)69481-6/abstract).

⁷ C.R.S.A. § 18-3-104,

⁸ C.R.S.A. § 18-3-105.

⁹ C.R.S.A. § 18-3-106.

¹⁰ *State v. Greenup*, No. 2003–300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Lolly Bowean, *Reserve Woman Indicted in Baby’s Death; Cops Believe Suspect Disposed of Newborn*, *TIMES-PICAYUNE* (New Orleans), July 30, 2003, at 1; Leonard Gray, *Jones Counts Three Homicides*, *L’OBSERSVATEUR* (LaPlace, La.), Feb. 11, 2004; Leonard Gray, *Reward Boosted for Suspect*, *L’OBSERSVATEUR* (LaPlace, La.), Mar. 5, 2004; Gabrielle Maple, *Miscarriage Proof Frees Woman; She Faces Charges of Killing Her Baby*, *TIMES-PICAYUNE* (New Orleans), Aug. 18, 2004.

¹¹ *State v. Rowland*, No. 041901649 (Utah Dist. Ct.-3d Apr. 7, 2004) (Fuchs, J.); Matt Canham, *Prosecutors Drop Murder Charge in C-Section Case; Plea Bargain: After Three Months Behind Bars, the Mother of a Stillborn Baby Pleads Guilty to a Lesser Felony, May Leave Jail Soon; Rowland No Longer Faces the Murder Charge*, *SALT LAKE TRIB.*, Apr. 8, 2004, at A1; Ellen Goodman, Editorial, *Eroding the Rights of Pregnant Women*, *WASH. POST*, Mar. 27, 2004, at A19; Stephen Hunt, *From Murder Charge to Probation; After the Sentencing for Two Third-Degree Felonies, Rowland Says, “I’m Happy to Be Free,”* *SALT LAKE TRIB.*, Apr. 30, 2004, at B1.

¹² C.R.S.A. § 18-3-200.

¹³ C.R.S.A. § 18-6-401.

¹⁴ American Academy of Pediatrics, Committee on Substance Abuse, *Drug Exposed Infants*, 86 *Pediatrics* 639, (1990).

¹⁵ Paltrow & Flavin, *supra* note 4 at 335.

¹⁶ Paltrow & Flavin, *supra* note 4 at 310.

¹⁷ *Burton v. State*, 49 So. 3d 263 (Fla. Dist. Ct. App. 1st Dist. 2010); *Florida Trampled Women’s Rights*, *St. PETERSBURG TIMES*, Editorial, Feb. 4, 2010.

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- ¹⁸ State v. Pemberton, No. 96–759 (Fla. Cir. Ct. Leon County Feb. 22, 1996).
- ¹⁹ C.R.S.A. § 18-3-102.1(4) ((4) The statutory privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for the crime of murder in the first degree as described in paragraph (f) of subsection (1) of this section.)
- ²⁰ C.R.S.A. § 18-6-401.1(5).
- ²¹ Bryan Nichols, *Burlington Woman Will Not Be Charged With Feticide*, RADIO IOWA, <http://www.radioiowa.com/2010/02/10/burlington-woman-will-not-be-charged-with-feticide/>; Associated Press, *Woman Accused of Trying to Kill Fetus*, Jan. 23, 2010, <http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2010100122040>.
- ²² C.R.S.A. § 18-3-302.
- ²³ *NY Court Affirms Right of Pregnant Women to Move Freely*, MS. MAGAZINE, Nov. 19, 2013; Jennifer Peltz, *Bode Miller’s Custody Dispute Becomes Women’s Rights Cause*, THE ASSOCIATED PRESS, Nov. 29, 2013.
- ²⁴ C.R.S.A. § 18-13-121.
- ²⁵ C.R.S.A. § 18-13-121
- ²⁶ Amended Misdemeanor Information, *People v. Gilligan*, No. 5456 (N.Y. Sup. Ct. Warren County Apr. 19, 2004).
- ²⁷ State v. Pfannenstiel, No. 1-90-8CR (Wyo. Laramie County Ct. Feb. 1, 1990) (Denhardt. J.).
- ²⁸ Report of American Medical Association Board of Trustees, *Legal Interventions During Pregnancy*, 264 JAMA 2663, 267 (1990) (“Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician’s knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment”). See also American College of Obstetricians and Gynecologists, Committee on Ethics, *Committee Opinion 321 Maternal Decision Making, Ethics and the Law*, 106 Obstetrics & Gynecology 1127 (2005); American College of Obstetricians and Gynecologists, Committee on Ethics, *Committee Opinion 473 Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist*, 117 Obstetrics & Gynecology 200 (2011) (“Seeking obstetric-gynecologic care should not expose a woman to criminal or civil penalties, such as incarceration, involuntary commitment, loss of custody of her children, or loss of housing. These approaches treat addiction as a moral failing. Addiction is a chronic, relapsing biological and behavioral disorder with genetic components. The disease of substance addiction is subject to medical and behavioral management in the same fashion as hypertension and diabetes.”).
- ²⁹ RK, Finer LB, Singh S. Characteristics of U.S. Abortion Patients, 2008. Guttmacher Institute. 2010. Available at: <http://www.guttmacher.org/pubs/US-Abortion-Patients.pdf>; Jones RK, Darroch JE, Henshaw SK. Patterns in the socioeconomic characteristics of women obtaining abortions in 2000--2001. *Perspect Sex Reprod Health*. 2002;34(5):226–235; Sandler L. The mother majority. *Slate*. October 17, 2011. Available at: http://www.slate.com/articles/double_x/doublex/2011/10/most_surprising_abortion_statistic_the_majority_of_women_who_ter.html. Accessed October 19, 2012.