



# Constitutional Peril in Colorado: The Legal and Policy Implications of Enshrining a Right to Abortion in Colorado’s Constitution

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## Introduction

Across the nation, state ballot boxes have become a battleground for life. In the wake of *Dobbs v. Jackson Women’s Health Organization*,<sup>3</sup> pro-abortion activists have sought to contrive state constitutional protection for elective abortion. These efforts pose a serious threat to pro-life laws and the protection of preborn human beings, women, and adolescent girls. Both Michigan and Ohio are harrowing examples of the impact pro-abortion ballot measures have on life-affirming policies. In 2022, Michigan residents voted to enshrine a “right” to elective abortion in their state constitution. In the following year, Ohioans passed a similar amendment. Since then, both states have seen challenges to life-affirming laws in the legislature and the courts. For example, following the constitutional amendment in Michigan, the legislature sought to repeal numerous protections for women and preborn children, including the state’s ban on partial-birth abortions, informed consent safeguards, and provisions requiring abortion facilities to be licensed and operated under necessary health and safety standards.

This November, Colorado faces a similar ballot initiative entitled, the “Right to Abortion and Health Insurance Coverage Initiative” (“Pay for Abortions Amendment”). The ballot initiative seeks to amend the Colorado constitution to declare the “Government shall not deny, impede, or discriminate against the exercise of [the right to abortion], including prohibiting health insurance coverage for abortion.”<sup>4</sup> The amendment goes further by specifically removing the current constitutional prohibition on public funding of abortion.<sup>5</sup>

Unlike citizens of other states facing abortion ballot initiatives, Coloradans are being asked to declare not only that the state may not discriminate against the termination of a human life in the womb, but that every Coloradan must pay to extinguish that life with their tax dollars. Further, the Amendment also declares that a person’s decision to terminate a human life in the womb rises to the level of a protected class – meaning any action by the state, such as ensuring a woman is fully informed about the procedure or crafting health and safety requirements for abortion facilities, would be an act of discrimination. Note, this newly formed protected class for abortion would stand alone among those already crafted or being joined with it. It is the only protected class that involves the act of terminating another human being – thereby denying any protections the aborted child may have enjoyed, such as protections against discrimination on the basis of race, gender, religion, etc.

Although Colorado’s current law is egregious in that it provides no protections for women, adolescents, and the preborn<sup>6</sup>, it pales in comparison to the Pay-for-Abortion Amendment’s financially incentivized reckless abandonment of human life.

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<sup>3</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>4</sup> Right to Abortion and Health Insurance Coverage Initiative (Colorado 2024).

<sup>5</sup> *Id.*

<sup>6</sup> COLO REV. STAT. ANN. §§ 25-6-401 - 25-6-407 (2024).

The consequences of the unrelenting power of paying for abortions through taxpayer dollars must disabuse Coloradans of the amendment's attempts to disguise abortion as healthcare. As discussed below in Section V, abortion is not healthcare. It is the intentional destruction of innocent preborn human life. Additionally, as the Supreme Court acknowledges in *Dobbs v. Jackson Women's Health Organization*, states have a legitimate interest in preserving prenatal life, mitigating fetal pain, and protecting maternal health.<sup>7</sup> The Amendment asks voters to compel Colorado to do the opposite.

The Pay-for-Abortion Amendment's fallout would be devastating, especially for the welfare of Colorado women and their preborn children. The Amendment would enshrine abortion-on-demand throughout pregnancy into the constitution, increase the number of coerced abortions in Colorado, and further the harmful and false narrative that abortion is necessary for women to have equality and success in America. The Amendment does nothing to stop abortion activists from making the most dangerous place in Colorado the womb – establishing the state as a permanent abortion destination with financially incentivized abortion and endangerment of the health and safety of its residents both inside and outside the womb.

#### I. The Pay-for-Abortion Amendment Coerces Coloradans to Support Abortion

Unlike the obfuscation employed in other state ballot initiatives, the Amendment is surprisingly clear. It takes Colorado's current allowance for abortion at any point for any reason and demands that taxpayers pay for it – whether they support it or not. The Amendment would disallow Colorado from prohibiting funding for abortion in Health First Colorado. In short, the double negative means Colorado would be forced to fund abortions through its Medicaid and other public health programs. The cost of terminating a life in the womb is significantly less than the costs of prenatal, and labor and delivery care – creating incentives for the state programs to encourage abortion.

This is particularly true since Colorado currently has no limits on abortion. However, if abortion moves from being a legislative allowance to a constitutional right, it will be virtually impossible to enact commonsense legislation that seeks to protect women and preborn children from abortion violence. In doing so, Coloradans would enshrine abortion into their community and culture in an indelible way.

#### II. The Pay-for-Abortion Amendment Provides Constitutional Protection for Abortion-on-Demand Throughout Pregnancy.

Passage of the Amendment effectuates abortion-on-demand up until a preborn baby's birth date as a constitutional right with Colorado taxpayers' dollars.

Although it is a common misconception that abortions performed under a health exception, or late-term abortions, are only performed in rare circumstances for medically necessary reasons, as the American Association of Pro-Life Obstetricians and

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<sup>7</sup> *Dobbs*, 142 S. Ct. at 2284.

Gynecologists (“AAPLOG”) states, “most abortions are done for social reasons.”<sup>8</sup> “Overall, common exceptions to abortion restrictions are estimated to account for less than five percent of all abortions meaning that 95 percent of abortions are for elective or unspecified reasons.”<sup>9</sup> Dr. James Studnicki published a similar outcome in *Health Services Research and Managerial Epidemiology* regarding late-term abortions. As he says,

[t]he Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships.<sup>10</sup>

Accordingly, most abortions occur for elective reasons of the mother, not because of either the baby’s or the mother’s medical condition.

Furthermore, it is estimated that abortionists perform around 10,000 abortions at 21 weeks’ gestation or later each year.<sup>11</sup> However, the number of late-term abortions is likely significantly higher given that the Centers for Disease Control and Prevention’s (“CDC”) data is limited by voluntary state reporting and abortion destination states’, such as California and Maryland, refusal to provide any data to the CDC.<sup>12</sup> Under Colorado’s current abortion law, women are already subjected to late-term abortion procedures. The Amendment promotes the increase of late-term abortions by providing constitutional protection, and financial incentive, for elective abortion throughout all nine months of pregnancy. Not only does this place more women at risk of suffering severe and life-threatening complications, but it also subjects her preborn child to painful, life-ending abortion procedures. Passing the Pay-for-Abortion Amendment is not in the best interest of women and only deepens the abortion industry’s pockets while subjecting more women to dangerous late-term abortions that threaten their physical and emotional well-being.

*a. Late-Term Abortions Carry Higher Risks of Health Complications.*

By backstopping late-term abortions in the state, the Amendment puts more women at risk of suffering severe and life-threatening complications. Abortions carry a higher medical risk when done later in pregnancy. Even Planned Parenthood, the largest abortion business in the United States, agrees that abortion becomes riskier later in pregnancy. On its national website, Planned Parenthood states: “The chances of

<sup>8</sup> AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS, Comm. Op. 10, at 10 (updated Sept. 2022).

<sup>9</sup> *The Assault on Reproductive Rights in a Post-Dobbs America: Hearing before the S. Comm. on the Jud.*, 118th Cong. 15 (2023) (written testimony of Monique Chireau Wubbenhorst, MD, MPH).

<sup>10</sup> James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.

<sup>11</sup> Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

<sup>12</sup> See *Questions and Answers on Late-Term Abortion*, CHARLOTTE LOZIER INST. (May 16, 2022), <https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/>.

problems gets higher the later you get the abortion, and if you have sedation or general anesthesia,” a necessity for an abortion at or after 20 weeks of gestation.<sup>13</sup>

Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after 20 weeks’ gestation.<sup>14</sup> For example, compared to an abortion at 8 weeks’ gestation, the relative risk of mortality increases exponentially (by 38 percent for each additional week) at higher gestational ages.<sup>15</sup> Further, researchers have concluded that it may not be possible to reduce the risk of death in later-term abortions because of the “inherently greater technical complexity of later abortions.”<sup>16</sup> This is because later-term abortions need to dilate the cervix to a greater degree, and the increased blood flow predisposes women to hemorrhage, and the myometrium relaxes and is more subject to perforation.<sup>17</sup>

Later-term abortions also pose an increased risk to the woman’s physical and mental health. Some immediate complications from abortion include blood clots, hemorrhaging, incomplete abortions, infection, and injury to the cervix and other organs.<sup>18</sup> Immediate complications affect approximately 10% of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.<sup>19</sup> If the Pay-for-Abortion Amendment is passed, it affords constitutional protection for abortion-on-demand, and as a result, more women will experience life-threatening complications from late-term abortions.

#### *b. The Pay-for-Abortion Amendment Furthers the Psychological Harm of Abortion on Women.*

Amending Colorado’s constitution to enshrine a “right” to abortion and financially incentivizing it will result in more women suffering post-abortive psychological harms. “[P]regnancy loss (natural or induced) is associated with an increased risk of mental health problems.”<sup>20</sup> “Research on mental health subsequent to early pregnancy loss as a result of elective induced abortions has historically been polarized, but recent research indicates an increased correlation to the genesis or exacerbation of substance abuse and affective disorders including suicidal ideation.”<sup>21</sup>

<sup>13</sup> See Planned Parenthood, *How Safe Is an In-Clinic Abortion?*, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Oct. 20, 2023).

<sup>14</sup> Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).

<sup>15</sup> *Id.* at 731; PRO. ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

<sup>16</sup> Bartlett, *supra* note 28, at 735.

<sup>17</sup> *Id.*

<sup>18</sup> See Planned Parenthood, *supra* note 27.

<sup>19</sup> REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

<sup>20</sup> David C. Reardon & Christopher Craver, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, 18 INT’L J. ENV’T RSCH. & PUB. HEALTH 1, 1 (2021).

<sup>21</sup> Kathryn R. Grauerholz et al. *Uncovering Prolonged Grief Reactions Subsequent to a Reproductive Loss: Implications for the Primary Care Provider*, 12 FRONTIERS IN PSYCH. 1, 2 (2021).

Scholarship shows “that the emotional reaction or grief experience related to miscarriage and abortion can be prolonged, afflict mental health, and/or impact intimate or parental relationships.”<sup>22</sup> In fact, a recent 2023 study found that American “women whose first pregnancy ends in induced abortion are significantly more likely than women whose first pregnancy ends in a live birth to experience mental health problems throughout their reproductive years.”<sup>23</sup> Similarly, “[s]everal recent international studies have demonstrated that repetitive early pregnancy loss, including both miscarriage and induced abortions, is associated with increased levels of distress, depression, anxiety, and reduced quality of life scores in social and mental health categories.”<sup>24</sup>

The Amendment permits dangerous abortion procedures on women and adolescents that negatively impact their mental and emotional well-being. By authorizing protected status for abortion-on-demand, the rates of mental health issues—such as depression, anxiety, and suicidal ideation—will undoubtedly increase.

*c. The Pay-for-Abortion Amendment Subjects Preborn Children to Painful Abortion Procedures.*

In addition to harming women’s physical and mental health, abortion also subjects preborn children to fetal pain. There is ample research on fetal pain in the 50 years after *Roe*. As one example, in 2019, scientists found evidence of fetal pain as early as 12 weeks’ gestation.<sup>25</sup> “Pain receptors (nociceptors) begin forming at seven weeks’ gestational age, with the nerves linking pain receptors to the pain-sensing part of the brain, the thalamus, forming at 12 weeks.”<sup>26</sup> Furthermore, by twelve weeks’ gestation almost every organ and tissue has formed in a preborn baby<sup>27</sup> and the baby has arms, legs, fingers, toes, a face, and eyelids.<sup>28</sup>

A 2010 study found that “the earlier infants are delivered, the stronger their response to pain”<sup>29</sup> because the “neural mechanisms that inhibit pain sensations do not begin to develop until 34–36 weeks[] and are not complete until a significant time after

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<sup>22</sup> *Id.*

<sup>23</sup> James Studnicki et al., *A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth*, 15 INT’L J. WOMEN’S HEALTH 955, 959 (2023).

<sup>24</sup> Grauerholz, *supra* note 35; see, e.g., Louis Jacob et al., *Association Between Induced Abortion, Spontaneous Abortion, and Infertility Respectively and the Risk of Psychiatric Disorders in 57,770 Women Followed in Gynecological Practices in Germany*, 251 J. AFFECTIVE DISORDERS 107, 111 (2019) (finding “[a] positive relationship between induced abortion . . . and psychiatric disorders”).

<sup>25</sup> Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).

<sup>26</sup> 12 Facts at 12 Weeks, CHARLOTTE LOZIER INST. (Apr. 25, 2023), <https://lozierinstitute.org/12-facts-at-12-weeks/>.

<sup>27</sup> Thomas Sadler, *MEDICAL EMBRYOLOGY* 14th ed. (2019).

<sup>28</sup> Carnegie Stage 23 Introduction, VIRTUAL HUM. EMBRYO: DIGITALLY REPRODUCED EMBRYONIC MORPHOLOGY, <https://www.ehd.org/virtual-human-embryo/intro.php?stage=23> (last visited Apr. 25, 2024).

<sup>29</sup> Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

birth.”<sup>30</sup> As a result, preborn children display a “hyperresponsiveness” to pain.<sup>31</sup> According to one group of fetal surgery experts, “[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures.”<sup>32</sup>

Given the medical advancements in fetal medicine and the evidence of fetal pain early in a pregnancy, it is well within the state’s legitimate interests to enact laws that preserve prenatal life as well as minimize fetal pain as much as possible.<sup>33</sup> However, the Amendment’s passage impedes Colorado’s ability to enact or maintain any gestational limit on abortion whatsoever. While abortion activists may argue that such laws are discriminatory because they interfere with a woman’s constitutional protected “right” to abortion, these laws actually further the state’s legitimate interest to preserve prenatal life and mitigate fetal pain.

### III. Passage of the Pay-for-Abortion Amendment Denies Coloradans the Ability to Protect Pregnant Women, and Preborn Children.

The Amendment impedes the state from passing any future protections for women, adolescent girls, and preborn children by treating abortion as a protected class. This Amendment appears to impose a strict scrutiny standard on abortion regulations, similar to the Supreme Court in *Roe*. Specifically, the Amendment prohibits the state from “den[ing], imped[ing], or discriminat[ing] against the exercise of [the right to abortion]”.<sup>34</sup> Strict scrutiny is the highest and strictest standard a court uses when reviewing the constitutionality of a challenged law. Courts apply strict scrutiny when analyzing laws that restrict constitutionally guaranteed rights. Under this standard, courts require states to demonstrate that they have a compelling governmental interest to restrict the constitutional right and did so through the least restrictive means possible. In *Roe*, the Supreme Court found that restrictions on abortion require strict scrutiny review because abortion was a purported fundamental right.<sup>35</sup> The Supreme Court quickly found strict scrutiny was unworkable in the abortion context, and discarded this approach in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, although it implemented the equally unworkable “undue burden” standard.<sup>36</sup> Later, the Supreme Court in *Dobbs* overturned *Roe* and *Casey* entirely, holding that there is no right to abortion in the U.S. Constitution.<sup>37</sup>

Accordingly, the *Dobbs* Court applied the lowest standard of review, known as “rational basis review.” Under this standard, if the law is rationally related to a legitimate

<sup>30</sup> *Fact Sheet: Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), [https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#\\_ednref14](https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14).

<sup>31</sup> Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).

<sup>32</sup> Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN J. ANAESTHESIOLOGY 188 (2014).

<sup>33</sup> See *Dobbs*, 142 S. Ct. at 2284.

<sup>34</sup> Right to Abortion and Health Insurance Coverage Initiative (Colorado 2024).

<sup>35</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>36</sup> 505 U.S. 833 (1992).

<sup>37</sup> *Dobbs*, 142 S. Ct. at 2284.

governmental interest, the law is permissible. *Dobbs* acknowledges that states have legitimate governmental interests in regulating abortion in order to protect maternal health and safety, to preserve prenatal life, to mitigate fetal pain, to prohibit barbaric medical procedures, to preserve the integrity of the medical profession, and prevent discrimination on the basis of race, sex, or disability.<sup>38</sup> However, despite the Supreme Court’s overturn of *Roe*, the Amendment’s use of the phrase, “discrimination,” implicates strict scrutiny review – raising the act of terminating a human being in the womb to a characteristic class similar to race, sex, or disability. In doing so, the Amendment imposes the highest standard of review on laws regulating abortion in Colorado that the Supreme Court has disavowed twice—first in *Casey*, then in *Dobbs*. This makes it difficult for Colorado to pass any protections for women and preborn children even though these laws further the state’s legitimate interests to do so.

Michigan residents have faced a similar challenge. Shortly after the residents voted to amend their constitution to enshrine a right to abortion, the legislature successfully repealed many of the state’s pro-life policies. Michigan’s abortion amendment allows for a broad exception for late-term abortions to protect a woman’s “physical or mental health,” and prohibits the state from regulating abortion unless “justified by a compelling state interest achieved by the least restrictive means.”<sup>39</sup> Yet, the Pay-for-Abortion Amendment is even broader because it prohibits any and all protections for the preborn without any exceptions. Thus, the ramifications of Colorado passing the Pay-for-Abortion Amendment may be enshrining into its constitution even more devastating effects than those seen in Michigan. This includes potentially incentivizing abortion activists to challenge protections for conscientious objectors, arguing that such laws discriminate against a woman’s “right to abortion.”

#### IV. The Pay-for-Abortion Amendment Enables Sex-traffickers and Abusers to Coerce Victims into Having Abortions Against their Will.

The Amendment subjects women and adolescents to coerced abortions while protecting their abusers. Under the Amendment, Colorado would face high barriers to implementing policies to prohibit a sex trafficker or abusive partner from bringing their victim to an abortion clinic to have an abortion. Efforts such as parental involvement and anti-coercion policies would face challenges for “impeding” a woman’s “right to abortion.”<sup>40</sup> As a result, the Amendment strips Colorado women of necessary safeguards for authentic choice and increases the number of coerced abortions.

Sadly, many women have coerced abortions. For example, a woman seeking an abortion may be facing intimate partner violence (IPV). There are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n abortion].”<sup>41</sup> For women seeking abortion, the prevalence of IPV is nearly three times greater than

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<sup>38</sup> *Id.*

<sup>39</sup> MICH. CONST. art. I, § 28.

<sup>40</sup> Similar policies have been challenged in Michigan and Ohio.

<sup>41</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).



women continuing a pregnancy.<sup>42</sup> Post-abortive IPV victims also have a “significant association” with “psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”<sup>43</sup>

Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are “actions that interfere with a woman’s reproductive intentions.”<sup>44</sup> In the context of abortion, reproductive control not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.<sup>45</sup> Reproductive control is a prevalent issue for women. “As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”<sup>46</sup>

There are several studies that highlight the prevalence of coerced abortions. A recent peer-reviewed study showed that 43% of post-abortive women described their abortion as “accepted but inconsistent with their values and preferences,” while 24% indicated their abortion was “unwanted or coerced.”<sup>47</sup> Similarly, another study found that 61% of women reported experiencing “high levels of pressure” to abort from “male partners, family members, other persons, financial concerns, and other circumstances.”<sup>48</sup> This study found that:

These pressures [to abort] . . . are strongly associated with more negative emotions about [a woman’s] abortion; more disruptions of their daily life, work, or relationships; more frequent . . . intrusive thoughts about their abortions; more frequent feelings of loss, grief, or sadness about their abortion; . . . [and] a perceived decline in their overall mental health that they attribute to their abortions . . . .<sup>49</sup>

Furthermore, victims of sex-trafficking are among the number of women who experience reproductive control. A 2014 study on the health consequences for sex-trafficking victims found that 66 sex-trafficking victims had a total of 114 abortions, “[w]ithout accounting for possible underreporting.”<sup>50</sup> “The [sex-trafficking] survivors in this study [] reported that they often did not freely choose the abortions they had while being trafficked.”<sup>51</sup> A majority of the 66 sex-trafficking victims “indicated that one or

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<sup>42</sup> COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (Feb. 2013).

<sup>43</sup> Hall, *supra* note 57, at 11.

<sup>44</sup> Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 *BMJ SEXUAL & REPROD. HEALTH* 61, 62, 65 (2019).

<sup>45</sup> *Id.* at 62–63.

<sup>46</sup> *Id.* at 62.

<sup>47</sup> David C. Reardon et al., *The Effects of Abortion Decision Rightness and Decision Type on Women’s Satisfaction and Mental Health*, *CUREUS*, May 11, 2023, at 1.

<sup>48</sup> David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women’s Emotional Responses and Mental Health*, *CUREUS*, Jan. 31, 2023, at 1.

<sup>49</sup> *Id.* at 1.

<sup>50</sup> Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *ANNALS HEALTH L.* 61, 73 (2014).

<sup>51</sup> *Id.*

more of their abortions was at least partly forced upon them.”<sup>52</sup> Given the prevalence of coerced abortions among sex-trafficking victims, the authors of the study note how “[h]ealthcare providers can play a crucial role in the trafficking rescue process by identifying possible victims and following up on those suspicions with careful, strategic questions, and actions that catalyze rescue or help create exist strategies.”<sup>53</sup>

Despite the prevalence of coercive abuse among women seeking abortions, the Amendment prohibits Colorado from denying or impeding an abortion even when abusers or sex traffickers are “assisting” a woman seeking an abortion. If the state wants to enact additional laws to protect women against coerced abortions, it can only do so by demonstrating that it is not “discrimination.”<sup>54</sup> Colorado will have a hard time meeting this standard, as discussed above in Section III.

Last year, Michigan’s legislature sought to repeal a Michigan law that requires doctors to screen for coercion and provide victims of coercive abuse with helpful resources. Proponents of the repeal argue that the law creates barriers to women’s access to abortion. Ultimately, the legislature was unsuccessful in its attempt to repeal these crucial protections for Michigan women. However, abortion activists are likely to challenge the law again in the future. Accordingly, because abortion activists consider abortion as evidence-based care and see any law that limits abortions as a burden on women, Colorado will likely not meet the Amendment’s standard to enact laws that would protect against coercive abuse.

If the Pay-for-Abortion Amendment is passed, abortion activists may seek to prevent and eliminate critical protections for women experiencing IPV or reproductive control. They may also challenge any attempt to enact new laws to protect against coercive abuse, arguing that such laws create barriers to abortion and constitute “discrimination.” Preventing protections against coerced abortions incentivizes abusers to continue forcing women to obtain abortions in order to cover up their violent acts, leaving women unprotected, victimized, and silenced.

#### V. The Pay-for-Abortion Amendment Furthers the False Narrative that Abortion is Necessary for Women’s Equality in American Society.

By purporting that there should be and is a “right” to abortion on demand, the Amendment furthers the narrative that women need abortion in order to obtain success and equality in American society. This belief is unfounded and is anti-woman.

First, the language used in the Amendment is deceptive and does not describe the reality of what abortion is. Abortion is not healthcare. It is the intentional destruction of innocent preborn human life. According to the American Association of Pro-life Obstetricians and Gynecologists (“AAPLOG”), “elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 84.

<sup>54</sup> Right to Abortion and Health Insurance Coverage Initiative (Colorado 2024).

the womb.”<sup>55</sup> Elective abortions are not medically required, as AAPLOG explains, “[e]lective’ . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two in order to protect the life of one or the other (or both).”<sup>56</sup> Indeed, “there is no medical indication for elective induced abortion, since it cures no medical disease.”<sup>57</sup>

Additionally, abortion activists often imply that pregnancy is some sort of illness or disability, rather than a natural physiological process that many women experience. As AAPLOG notes, “[p]regnancy is not a disease, and the killing of human beings in utero is not medical care.”<sup>58</sup> Further, “[t]o date, the medical literature offers no support for the claim that abortion improves mental health or offers protection to mental health. In fact, there is evidence to the contrary.”<sup>59</sup> Despite these evident truths, abortion activists continue to push false narratives about pregnancy and women’s alleged “need” for abortion. However, the evidence abortion activists rely upon, which “claim[s] to show that abortion has facilitated women’s health and equality is feeble and/or scientifically invalid.”<sup>60</sup> Indeed, women are harmed by “the repetition and acceptance of the ‘equality’ argument for favoring legal abortion,” because it “easily communicates that women’s pregnancy and parenting is a disability most females suffer. It explicitly or implicitly assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve ‘agreed’ measures of success.”<sup>61</sup>

Pregnancy is neither an illness nor a disability, and to imply that it is such results in discriminatory treatment towards women. “A system that undervalues both mothering and fathering severely disadvantages women as well as men and children, and interferes with children receiving the care they require.”<sup>62</sup> Additionally, this leads to both a “public and private resistance to accommodating motherhood in employment,” which “leads to additional disadvantages for women. For example, discrimination on the basis of pregnancy and motherhood has succeeded outright discrimination on the basis of sex.”<sup>63</sup> Women deserve better than to have the abortion industry subject them to deceptive language surrounding abortion, which is a life-altering—and at times, life-threatening—decision. The Amendment furthers the abortion industry’s lies and efforts to mask the realities of abortion, which is to the detriment of women’s health, safety, and

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<sup>55</sup> AAPLOG Statement: Clarification of Abortion Restrictions, AM. ASS’N PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), <https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/>.

<sup>56</sup> Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).

<sup>57</sup> Pro. Ethics Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 8 (May 8, 2017).

<sup>58</sup> *Id.*

<sup>59</sup> Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *supra* note 73, at 5.

<sup>60</sup> Helen M. Alvare, *Nearly 50 Years Post-Roe v. Wade and Nearing its End: What is the Evidence that Abortion Advances Women’s Health and Equality*, 35 Regent L. R. 165, 216 (Feb. 2022).

<sup>61</sup> *Id.* at 213.

<sup>62</sup> *Id.* at 214.

<sup>63</sup> *Id.* at 216.

socioeconomic success and equality in America by embedding these principles into the Colorado constitution.

### **Conclusion**

Enshrining and financially incentivizing abortion in Colorado's constitution will negatively impact the welfare of women and preborn children in Colorado. The Pay-for-Abortion Amendment targets and undermines life-affirming culture and policies by contriving abortions-on-demand into the constitution. Colorado's terrible anti-life policies will be enshrined into Colorado's constitution, which will enflame a culture that threatens the health and safety of Colorado residents both inside and outside the womb. Further, having a constitutionally protected "right" to abortion will make it extremely difficult for Colorado to enact any future protections for women and adolescents seeking abortion, which subjects women to an unregulated, dangerous abortion industry funded at taxpayer expense. This amendment does not give "freedom" to women but hands control to self-interested abortionists who financially benefit from abortion-on-demand as well as to sex-traffickers and abusers who seek to cover up their crimes by forcing their victims to obtain abortions. Abortion is not healthcare, and contriving a state constitutional right to abortion will be disastrous for Colorado.