

All Above All - Support - HB1143 (Finance).pdf

Uploaded by: Daniel Mosher

Position: FAV

Daniel Mosher
All* Above All
611 Pennsylvania Ave. SE #508
Washington, DC 20003
dan@allaboveall.org
March 24, 2026

RE: Letter of Support for HB 1143 (Lopez)

Dear Chair Beidle and Vice Chair Hayes,

All* Above All strongly supports HB 1143 and urges the legislature to adopt this measure as soon as possible to ensure that no one else is subject to the antiquated and dangerous lung float test .

The lung float test is a pseudoscientific tool for the criminalization of pregnancy outcomes, transforming a patient's most sensitive and personal experiences into a potential criminal investigation. When prosecutors rely on this discredited technique, they effectively treat a medical emergency as a potential crime scene, often targeting birthing persons who have already suffered a devastating loss. By using a test that forensic experts have rejected for decades, the legal system risks wrongfully convicting and incarcerating individuals on the basis of their pregnancy outcomes.

Across the country, we have seen numerous instances where this junk science was used to support the criminalization of pregnancy. As several states seek to increase penalties on pregnant patients who seek reproductive care, we can not allow this test to threaten the human rights and liberty of pregnant people.

All* Above All is an abortion forward reproductive justice organization that envisions a world where all people, regardless of their socioeconomic status, race, religion, sexual orientation, gender identity, or geographic location, have complete autonomy over their reproductive health. That means fighting back against laws that aim to criminalize a person for their pregnancy with outdated policies like the lung float test.

Ultimately, keeping the lung float test in the legal system is dangerous, as it provides a false veneer of scientific certainty to justify state surveillance and punishment of pregnant bodies. Instead of supporting those in need of medical care, the reliance on

the test forces clinical staff and law enforcement into adversarial roles, further stigmatizing reproductive health.

The lung float test must be prohibited, and we urge the swift passage of this bill through the legislature to put Maryland on a path towards accomplishing that goal.

Thank you,

Daniel Mosher
Deputy Director of State Strategies
All* Above All

HB1143_HadassahGB_FAV_SenFinance.pdf

Uploaded by: Harriet Rubinson

Position: FAV

**Testimony FOR HB1143
Lung Float Test Moratorium - as Amended
Senate Finance Committee
March 26, 2026**

P.O. Box 21571
Pikesville, MD
21282-1571
P 410.484.9590

baltimore@hadassah.org

Presidents

Nancy Braverman
Barbara Deitch

Vice Presidents

Melissa Brill
Michelle Cines
Andrea Polsky
Rachel Raphael
Harriet Rubinson
Carol Wynne

Recording Secretary

Robin Sakin

Treasurer

Rona Pepper

FAVORABLE

TO: Senator Pamela Beidlel, Chair Del. Senator Antonio Hayes, Vice Chair and Members of the Senate Finance Committee

FROM: Nancy Braverman & Barbara Deitch, Co-Presidents
Hadassah Greater Baltimore

Hadassah, The Women's Zionist Organization of America, Inc. staunchly supports full and complete access to reproductive health services and has —and always will — unequivocally stand for women's reproductive rights and empowering women with the knowledge to make critical health decisions for themselves and their families.

The Hadassah Greater Baltimore Region, representing over 4,200 Marylanders, is writing to urge you to vote FOR HB1143 as amended. This bill that introduces a two-year moratorium of Medical Examiners from administering the "Lung Float Test" in our state and directs the Department of Health, and the Offices of the Attorney General and the Medical Examiner to study the usefulness of this test and render recommendations by 12/1/2028. For decades, medical experts have rejected the accuracy and credibility of the "lung float test" to distinguish between live versus stillbirth. Its use in Maryland should be halted and studied as required by the amended bill so that an informed recommendation can be made.

We strongly urge you to protect the health of women and to return a FAVORABLE report HB1143, the Lung Float Test Moratorium, as amended.

Thank you,
Nancy Braverman and Barbara Deitch
Co-Presidents Hadassah Greater Baltimore
P.O. Box 21571
Pikesville, MD 21282
nbraverman@hadassah.org
bdeitch@hadassah.org

HB 1143 - Senate - FAV.pdf

Uploaded by: Jennifer Mercer

Position: FAV



BILL NUMBER: HB 1143

TITLE: Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies (Lung Float Test Ban)

COMMITTEE: Finance

HEARING DATE: March 26, 2026

POSITION: Favorable

Reproductive Justice Maryland Action supports House Bill 1143 in keeping with our mission to champion reproductive justice as a fundamental human right for all Marylanders. We believe that everyone deserves the freedom to make informed decisions about their bodies, health, and futures, free from discrimination, coercion, and barriers.

HB 1143 will support the integrity of criminal prosecutions by placing a two-year moratorium on the use of the unscientific hydrostatic lung test, also known as the Lung Float Test (LFT). During the moratorium, the Attorney General of Maryland and the Maryland Department of Health are to investigate the use of the LFT and to determine whether scientific evidence supports its continued use. The LFT is currently used to determine whether an infant was born alive for a homicide investigation.¹ The test, which dates to the 17th century, involves placing the infant's heart and lung tissue in a vial of water and observing whether it floats, indicating the lungs held air/a live birth, or it sinks, indicating a stillbirth.²

Alarming, there is no standard procedure used for the LFT. There is no standard water volume or temperature. If the sample floats, the practitioner is then directed to test each lung and each lung lobe twice: once before compressing it, and once after. There is no standard procedure for compression, meaning that the tissue could be compressed with a small amount of force (such as with the practitioner's fingers) or with a larger amount of

¹ MacLeod, Heather, et al. "The National Association of Medical Examiners (NAME) Position Paper." *American Journal of Forensic Medicine & Pathology*, vol. 47, no. 1, Lippincott Williams & Wilkins, Feb. 2026, <https://doi.org/10.1097/paf.0000000000001117>. Accessed 1 Mar. 2026.

² *Id.* at 7-8.

force (such as with the practitioner standing on a board on top of it).³ The nature of the test also means it cannot be replicated by another practitioner.

It is of grave concern to us that such a test could be used to support a homicide prosecution of a woman who has suffered a personal tragedy in losing a pregnancy. Based on Maryland's adoption of the Next Generation Science Standards in 2013, it would be reasonable to expect an average Maryland tenth grader to understand that such a problematic experimental design would not lead to scientifically valid results. Yet disturbingly, we are aware of the use of the LFT by the Office of the Chief Medical Examiner.⁴ No Marylander experiencing the trauma of pregnancy loss should be imprisoned based on the results of such an obviously flawed procedure. Reproductive Justice Maryland Action is proud to support HB 1143 and urges a favorable report.

³ *Id.*

⁴ *State v. Akers*, C-13-CR-19-000367.

Rosen-TestmonyInSupportOf-HB1143-asAmended.pdf

Uploaded by: Julie Rosen

Position: FAV

March 24, 2026

Written Testimony on HB1143 (amended)

Public Health – Office of the Chief Medical Examiner – Perinatal Autopsies 2 (Lung Float Test Ban)

Finance Committee

Position: Favorable

Dear Members of the MD Senate Finance Committee:

My name is Julie A. Rosen, and I submit this written testimony as an individual resident of Montgomery County, Maryland (MD District 16), and a member of the National Council of Jewish Women, MD State Project Advocacy Committee. I strongly urge your support of **HB1143 (as amended)**, *Public Health – Office of the Chief Medical Examiner – Perinatal Autopsies 2 (Lung Float Test Ban)*.

I understand that HB1143 is intended to prohibit MD “medical examiners and pathologists authorized by the Chief Medical Examiner from using a hydrostatic lung test, also known as a lung float test, if performing a certain perinatal autopsy.” Specifically, I understand the proposed legislation applies to investigations when the “cause of death is established to a reasonable degree of medical certainty.”

Explicit sections of HB1143 reference perinatal autopsies and fire fighters and ‘sworn personnel of the State Fire Marshal’s Office. While I agree with the entirety of the proposed legislation, my testimony is submitted in specific support of the reference to perinatal autopsies authorized “to determine whether the death resulted in a still birth or occurred after a live birth.”

The ‘lung float’ test has been used as part of legal processes involving suspected infant or neonatal deaths. However, this test’s lack of clearly defined error rates has deemed the test wholly unreliable by the medical community of pathologists and forensic experts for decades. Furthermore, it is not accepted by the wider forensic pathology community as a credible or accurate test to distinguish between live versus stillbirth. Its continued use in Maryland would only benefit prosecution or public punishment for pregnancy outcomes. Therefore, there is no reason to mandate its performance. Furthermore, its use to confirm findings, while rejected if its result conflicts with findings, makes its use more dangerous and harmful to patients and their family during a challenging time of grief.

I understand that the original version of this proposed bill has been amended to include a 2 year moratorium on the use of the Lung Float Test while the Maryland Department of Health, in consultation with the Office of the Attorney General and the Office of the Chief Medical Examiner research and write a report on:

- (1) the usefulness and efficacy of the hydrostatic lung test, also known as a lung float test, in determining whether a death was the result of a stillbirth or occurred after a live birth; and
- (2) recommendations as to whether the test described in item (1) of this section continues to be needed as an autopsy tool.

It’s both the cultural values of my Jewish faith, and my long-held belief to focus on comfort, healing, and recognizing the pain of loss, not on assigning blame, that underlies my abhorrence of the notion that the ‘state’ has rights to interfere with the grieving patient, family, or community of supporters of the woman who is facing the sorrowful outcome. Therefore, I am strongly in favor of HB1143’s emphasis on the protection of the individual who experienced pregnancy loss, as well as providers who follow generally accepted medical standards from autopsy investigation using a medically discredited procedure.

I respectfully urge a favorable report on HB1143 as amended. Thank you.

Sincerely,

Julie A. Rosen, Ph.D.

Senate Written Testimony HB 1143 - Lung Float Test

Uploaded by: Lesley Lopez

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

**Testimony in SUPPORT of HB 1143: Public Health - Office of the Chief Medical Examiner
- Perinatal Autopsies (Lung Float Test Ban)**

Summary: As amended, HB 1143 addresses a critical gap in forensic and legal practice by establishing a two-year moratorium on the use of the hydrostatic lung float test as a determinative tool in assessing live birth, while directing the Maryland Department of Health, alongside the Office of the Attorney General and the Office of the Chief Medical Examiner, to study its usefulness and report findings to the General Assembly by December 1, 2027. The hydrostatic lung float test is widely considered an unscientific and outdated method, as air in the lungs can result from multiple non-respiratory causes, such as decomposition or resuscitation, making it incapable of reliably proving sustained life after birth. By pausing reliance on this method and requiring a comprehensive review, the bill promotes evidence-based practice, safeguards the integrity of legal outcomes, and reduces the risk of unsupported conclusions.

Overview: When criminal liability hinges on proving a live birth, the science must demonstrate sustained life, not simply the presence of air in the lungs. Our evidentiary standards must reflect modern medical understanding and protect against conclusions drawn from findings with multiple possible explanations.

In practice, the hydrostatic lung float test is often used alongside other postmortem observations to determine whether air is present in the lungs. From that finding, investigators may infer that a live birth occurred and proceed to assign a cause of death. However, the presence of air alone does not establish effective circulation, duration of survival, or independent physiological function. Because lung aeration can result from multiple mechanisms unrelated to sustained life after delivery, including decomposition, resuscitative efforts, or passive air entry, using it as a foundational step creates a significant risk of conclusions that extend beyond what the science can reliably support.

Importantly, there are no universally accepted scientific or legal standards governing how the hydrostatic lung float test is performed. Variables such as tissue handling, flotation methods, and interpretation are not standardized across jurisdictions, meaning results can vary depending on the examiner or procedure used. This inconsistency has been widely noted in forensic literature and further undermines the reliability of the test in legal proceedings.



THE MARYLAND HOUSE OF DELEGATES ANNAPOLIS, MARYLAND 21401

Modern forensic guidance emphasizes that determinations of live birth require evidence of sustained extra-uterine physiological function, such as effective respiration with circulation, evaluated through a comprehensive, multidisciplinary assessment. [Authoritative guidance from the National Association of Medical Examiners](#) states that investigations of fetal and early neonatal deaths should rely on multiple lines of evidence, including scene investigation, medical history, placental examination, and full autopsy findings, rather than any single test with known limitations

Independent medical experts and human rights organizations have similarly cautioned against the continued use of lung flotation as proof of live birth. [Physicians for Human Rights explains](#) that the presence of air in lung tissue does not establish sustained extra-uterine life and should not be treated as dispositive evidence in forensic determinations, particularly where criminal liability may follow.

[A national investigation by ProPublica](#) documents decades of scientific criticism of the test, including the potential for false positives and the absence of consensus that lung aeration demonstrates live birth. The reporting further highlights that medical examiners and courts have increasingly questioned the reliability of the test when used in isolation or as a determinative factor in criminal cases.

The scientific concerns are longstanding. Forensic literature has repeatedly emphasized that lung flotation cannot distinguish between air introduced through respiration and air introduced through postmortem processes. Classic and contemporary forensic pathology texts note that putrefaction gases can cause lung tissue to float even in cases of intrauterine death, and that mechanical ventilation or handling can introduce air without sustained life. These limitations are precisely why current professional standards favor holistic medical evaluation over single-test determinations.

Amendment and Path Forward:

As amended, HB 1143 takes a measured and responsible approach. Rather than permanently prohibiting the test, it establishes a two-year moratorium while requiring the Maryland Department of Health, in consultation with relevant experts, to evaluate the usefulness and efficacy of the lung float test and make recommendations on whether it should continue to be used as an autopsy tool. This ensures that any future policy decisions are grounded in a thorough, evidence-based review.

LESLEY J. LOPEZ
Legislative District 39
Montgomery County

Health and Government
Operations Committee



Annapolis Office
The Maryland House of Delegates
6 Bladen Street, Room 210
Annapolis, Maryland 21401
301-858-3021 · 410-841-3021
800-492-7122 Ext. 3021
Lesley.Lopez@house.state.md.us

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Conclusion: HB 1143 reflects a balanced approach: it acknowledges serious scientific concerns while allowing time for careful study and expert input. By pausing the use of a disputed method and requiring a comprehensive evaluation, the bill helps ensure that determinations of live birth, and the significant legal consequences that follow, rest on reliable, validated evidence. This approach strengthens scientific integrity, supports just outcomes, and reinforces public confidence in Maryland's forensic and legal systems..

Attachments:

- Letter from Dr. Gregory Davis, MD, FCAP Forensic Pathologist, Former Associate Chief Medical Examiner, Commonwealth of Kentucky

November 11, 2020

Honorable Timothy McCrone
Circuit Court for Howard County
8360 Court Avenue
Ellicott City, MD 21043

Re: the float test / hydrostatic lung test

Dear Judge McCrone:

We, the undersigned, affirm that in our opinion, to a reasonable degree of medical certainty, the float test / hydrostatic lung test is not a scientifically reliable test or indicator of live birth.

Given the education, training, experience, positions, and number of the undersigned, it is clear that the float test is not generally accepted within the forensic pathology community.

Respectfully yours,

Gregory J. Davis, MD, FCAP
Professor & Director, University of Kentucky Division of Forensic Consultation
Services
Former Chair, College of American Pathologists Forensic Pathology Committee
Former Associate Chief Medical Examiner, Commonwealth of Kentucky
Lexington, Kentucky USA

J. Scott Denton, MD
Forensic Pathologist
McLean County Coroner's Office, Bloomington, IL
Associate Professor, University of IL College of Medicine at Peoria
Former Interim Chief/Deputy Chief, Cook County Medical Examiner's Office,
Chicago, IL
Bloomington, Illinois USA

Michael Graham, MD
Professor of Pathology
St. Louis University, School of Medicine
Chief Medical Examiner, City of St Louis, MO
St. Louis, Missouri USA

Kim A. Collins, MD
Former President, National Association of Medical Examiners
Wadmalaw Island, South Carolina USA

Beth E. Frost, DO, FCAP, FASCP, D-ABMDI
Medical Examiner
Scottsdale, Arizona USA

Andrew M. Baker, MD, FCAP
Chief Medical Examiner – Hennepin County Medical Examiner’s Office
Minneapolis, Minnesota USA

John C. Hunsaker III, MD, JD, FNAME
Professor Emeritus of Pathology and Laboratory Medicine
Director, Division of Forensic Pathology
University of KY College of Medicine
Associate Chief Medical Examiner [ret]
Kentucky Justice and Public Safety Cabinet
Lexington, KY USA

Mary E. Case, MD
Professor Emerita
St. Louis University School of Medicine
Chief Medical Examiner
St. Louis, St. Charles, Jefferson, and Franklin Counties
St. Louis, Missouri USA

Stephen J. Cina, MD, FCAP, D-ABMDI
Former Chief Medical Examiner, Cook County, IL
Former Chair, CAP Forensic Pathology Committee
Clinical Professor of Pathology, University of Colorado Health Science Center
Loveland, Colorado USA

Thomas Gilson, MD
Chief Medical Examiner, Cuyahoga County, Ohio
Cleveland, Ohio USA

Margaret Greenwald, MD
Former Chief Medical Examiner, State of Maine
Augusta, Maine USA

Grace D. Dukes, MD, FCAP
Forensic Pathologist, Pathology Associates
Clinical Assistant Professor, University of South Carolina School of Medicine
Greenville
Greenville, South Carolina USA

Meredith Frame, MD
Assistant Professor, Department of Pathology and Laboratory Medicine
University of Kentucky College of Medicine
Assistant State Medical Examiner, Commonwealth of Kentucky
Frankfort, Kentucky USA

Professor Roger W. Byard
AO PSM, BMedSci, MB, BS, MMedSci(Paed), PhD, MD, CCFP, CAP, FRCPC,
FRCPath, FRCPA(Hon), FFFLM, FFSc, FAHMS.
Professor of Pathology, University of Adelaide,
Senior Specialist Forensic Pathologist, Forensic Science SA,
Adelaide, South Australia, Australia.

Neil Langlois
MB BChir MD FRCPath FRCPA DMJpath FFFLM FFSc (RCPA)
A/Prof (University of Adelaide)
Consultant Forensic Pathologist
Adelaide, South Australia, Australia

David Ranson, BMedSci BM BS LLB FRCPath FRCPA FACLM FFFLM FFCFM
DMJ(Path)
Deputy Director & Head of Forensic Services, Victorian Institute of Forensic
Medicine
Adj Clinical Professor, Department of Forensic Medicine, Monash University
Melbourne, Victoria, Australia

Noel Woodford, MBBS LLM DMJ(Path) FRCPA FRCPath MFFLM(UK)
Director, Victorian Institute of Forensic Medicine
Professor of Forensic Medicine, Monash University
Melbourne, Victoria Australia

Paul L. Morrow, MD MPH
Forensic Pathologist, Auckland, NZ
Former Chief Medical Examiner, State of Vermont
Auckland, New Zealand

Prof. Dr. Michael Tsokos
Chair / Director
Institute of Legal Medicine and Forensic Sciences
Charite - Universitätsmedizin Berlin
Berlin, Germany

Professor Lora J. Martin
MBBCh (WITS), Dip For Med (CMSA), MMed [For Path](UCT), FCFor Path (CMSA)
Head: Division of Forensic Medicine
Department of Pathology, Faculty of Health Sciences
University of Cape Town
Cape Town, South Africa

Christopher M. Milroy MBChB, MD, BA, LLB, LLM, FRCPath, FFFLM, FRCPC, DMJ
Director, Eastern Ontario Regional Forensic Pathology Unit, Ottawa, Canada
Professor, University of Ottawa, Canada

Michael S. Pollanen MD PhD FRCPath DMJ (Path) FRCPC
Chief Forensic Pathologist for Ontario
Professor of Laboratory Medicine and Pathobiology
Toronto, Ontario, Canada

John C. Butt, MD
Former Chief Medical Examiner, Provinces of Alberta and Nova Scotia
Vancouver, British Columbia, Canada

Professor Marta Cohen MD, FRCPath, DMJ (Pathol), Dip Med Ed
Consultant Paediatric and Perinatal Pathologist. Head of Department.
Clinical Director of Pharmacy, Diagnostics and Genetics
Former President of the International Paediatric Pathology Association
Giordano Fellowship Director for the Paediatric and Perinatal Pathology Training
Program, European Society of Pathology
Sheffield Children's NHS FT, UK

Dr Philip S.L. Beh, MBBS, DMJ, FFFLM, FHKCPath, FHKAM Pathology.
Associate Professor (Forensic Pathology)
Department of Pathology
The University of Hong Kong
Hong Kong SAR, China

HB1143 3:26:26 Float Test.pdf

Uploaded by: Lynn Mortoro

Position: FAV



TESTIMONY IN SUPPORT OF HB1143

Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies
(Lung Float Test Ban)

FAVORABLE

TO: Chair Senator Pamela Beidle, Vice Chair Senator Antonio Hayes and members of the Senate Finance Committee.

FROM: Lynn Mortoro, member of the Maryland Episcopal Public Policy Network (MEPPN)

DATE: March 26, 2026

Dear Chair Senator Beidle, Vice Chair Senator Hayes and all members of the Senate Finance Committee.

Thank you for the opportunity to testify on this important bill.

I am a retired Registered Nurse. I have done reading on this subject. Women are in danger of being blamed for the death of a fetus after a miscarriage.

This “test” is hundreds of years old. Recent studies have all found no merit and false results. Professional organizations have stated that it should not be performed.

The Episcopal Church called for “women’s reproductive health and reproductive health procedures to be treated as all other medical procedures.”

This is not a sanctioned procedure. It should be banned.

I hope that the research to be done on this procedure will be well researched with reputable scientists who have published in scientific journals. We cannot just have opinions.

The Maryland Episcopal Public Policy Network (MEPPN) requests a

FAVORABLE report

The Maryland Episcopal Public Policy Network (MEPPN) is a ministry of The Episcopal Diocese of Maryland, The Episcopal Diocese of Washington, and The Delaware-Maryland Synod ELCA

Dr. Steven White_Committee Letter_Maryland_Lung hy

Uploaded by: Steven White

Position: FAV

Dr. Steven White, MD, PhD, MPH
Forensic Pathologist and Consultant

Dr. Steven White in Support of the Lung Float Test Ban Act (House Bill 1143)

March 24, 2026

Dear Senators Beidle and Hayes and Members of the Finance Committee,

As a practicing forensic pathologist with experience in perinatal pathology, I respectfully submit this written testimony in support of the *Lung Float Test Ban Act* (House Bill 1143).

I am a physician and board-certified by the American Board of Pathology in anatomical (general) and forensic pathology with experience in perinatal pathology. In brief, I graduated from medical school in Louisiana in 2007 after completing MD and PhD (Biochemistry and Molecular Biology) degrees, as well as a master's degree in public health (MPH).

I completed residency training in Anatomic Pathology at the National Institutes of Health (NIH) in Bethesda, MD in 2010, followed by a Forensic Pathology fellowship at the Cook County Medical Examiner's Office in 2011. I obtained additional training in perinatal pathology and worked as a staff pathologist in perinatal and autopsy pathology at Northwestern Memorial Hospital in Chicago (in addition to my regular forensic pathology work). I also joined the faculty of the Northwestern University Pathology Department.

I have extensive experience in forensic and perinatal pathology, having performed more than 5,500 autopsies, including more than 300 perinatal autopsies. I have taught and supervised the work of numerous trainees, including medical students, pathology residents, forensic pathology fellows, and other trainees. I am a member of several professional organizations related to pathology and forensic pathology and have served on national and international committees establishing standards of practice in death investigation and forensic pathology. Additionally, I have testified in more than 60 criminal trials, as well as numerous depositions, and maintain an active private forensic consultation practice.

BACKGROUND

The hydrostatic lung test, more commonly known as the lung float test, was developed several hundred years ago to help distinguish between liveborn infants from stillborn fetuses at autopsy (1). The main idea behind the lung float test is that if an infant was born alive and took breaths, the lungs would be filled with air and lighter than lungs of stillborn fetuses that died prior to birth. During autopsy, the lungs would be removed from the body and placed in water. If they floated, this would indicate that they were filled with air from the baby actively breathing. If they sank, this would indicate that the baby was dead when born and never breathed (1). The "test" has remained unchanged in the centuries since it was developed.

During the past 20 to 30 years, numerous problems with the lung float test have been brought to light. During this time, the validity of the lung float test was being called into question. During my pathology residency (2007-2010) and forensic pathology fellowship (2011), I was taught that the

lung float test had many flaws and was unreliable. At that time, many academic training centers started realizing that the lung float test was not valid. In the past few decades, teaching has centered on explaining why the lung float test is not valid. It was taught so that forensic pathologists would recognize what the test was, not that it was a valid test.

Part of the drive to create the NAME position paper and spread the word about problems with the lung float test has been the recognition by forensic pathologists that the test has been used in courts for the purposes of prosecution, leading to miscarriages of justice.

MEDICAL AND SCIENTIFIC EVIDENCE

The practice of forensic pathology, like other medical specialties, is practiced according to evidence-based medicine. This means that as scientific and medical knowledge advances with peer-reviewed studies, medical practice changes, based on new evidence.

The National Association of Medical Examiners (NAME) is the professional organization of forensic pathologists that accredits medical examiner and coroner offices in the United States, defining standards of practice in forensic pathology, and ensuring competent death investigation systems. They issue position papers to address and correct issues in death investigation practices.

The NAME published a position paper regarding investigation and certification of fetal demise, stillborn, and early neonatal deaths in 2026 to address changes in knowledge and inconsistencies in practice (1). The paper highlights that there are known false positive and false negative results for the lung float test. The position paper states that it should not actually be regarded as a test because there is no standardized methodology for performing the “test,” no error rates, and there is insufficient data to analyze results obtained (1). Basically, the results are not reproducible (a requirement for scientific and medical tests) and cannot be used alone to determine if a baby died in the uterus or was born alive (1).

The final recommendations in the NAME position paper state that “while it may be possible to distinguish a stillborn fetus by the process of postmortem investigation, this distinction can be very difficult” and that “those who use the lung float should be wary of accepting the results” (1). These recommendations are based on evolving knowledge in forensic pathology.

Some people supporting use of the lung float test reference a German study performed in 2013 that examined lungs from 208 liveborn infants and stillborn fetuses (2). The study found that the test had a high accuracy rate with no false positives and four false negatives (2). However, the study was not done in a forensic setting using forensic cases. It was performed in a hospital setting, where there is no opportunity for decomposition changes to occur. Comparing this study with cases seen in medical examiner and coroner offices is like comparing apples to oranges.

Additionally, in a survey of practicing forensic pathologists, 67% did not use the lung float test to help determine stillborn versus liveborn (3). This is most likely due to the unreliability of the “test” and changing knowledge in forensic pathology. In fact, textbooks in both forensic pathology and pediatric pathology warn of the dangers of using the “lung float test” to differentiate stillborn from liveborn infants (4-7).

As a practicing forensic and perinatal pathologist and teacher of medical students and pathology trainees, I know that the lung float test is flawed and I teach trainees that they should not rely on this test.

Problems with the lung float test:

False positive results: Even when the lung float test was used in the past, forensic pathologists knew that the results were meaningless in the setting of decomposition changes or resuscitation efforts. After death, bacteria normally present in the mouth, airways, and intestines proliferate and start releasing gas (as they normally do in healthy intestines). This gas can cause lungs to float even when the baby never took a breath, leading to a false positive result. Bacteria start replicating and releasing gas in the minutes to hours after death, so that there can be gas in tissues in the absence of outward signs of decomposition.

False negative results: In addition to producing false positive results, there have been reported cases of negative lung float tests (lungs sink in water) in babies known to have been born alive and breathing. This can be caused by prematurity, where the lungs are not fully developed and certain types of lung diseases, which do not allow the air spaces (alveoli) in the lungs to fully expand. There are too many opportunities for misinterpretation of lung float test results.

Lack of standardization and data: There are no standardized methods for performing the lung float test. In medicine and science, standardization of methods is essential to ensure reproducibility. If a test is not reproducible, then the results are meaningless. When diagnosing and treating patients in a patient care setting, we must rely on standardized methods and reproducible data to ensure patient safety. If the wrong tests are used, then patients can be misdiagnosed and treated inappropriately. We would never allow such tests to be used in patient care settings.

Serious implications for the criminal justice system: Forensic pathology is the practice of medicine and interpretations of autopsy test results have serious implications in the criminal justice system. Faulty tests and bad data can lead to wrongful arrests and miscarriages of justice. When a forensic pathologist performing an autopsy on a baby uses the lung float test to indicate that a baby was born alive, this often prompts a criminal investigation, which can lead to the arrest, conviction, and imprisonment of parents.

CONCLUSION

The lung float test used by some forensic pathologists has been shown to be unreliable and should not be used in distinguishing live birth from stillbirth. The National Association of Medical Examiners (NAME) has issued a position paper describing the many problems associated with the lung float test. Most forensic pathologists no longer use this test, as medical knowledge has advanced.

Again, I am writing in support of the *Lung Float Test Ban Act* (House Bill 1143). The stakes are too high to continue using this "test."

Sincerely,



Steven White, MD, PhD, MPH
Forensic Pathologist

References:

1. Krywaczyk A, Gill J, *et al.* The National Association of Medical Examiners position paper on the investigation and certification of fetal demise, stillborn, and early neonatal deaths. *Am J Forensic Med Pathol.* 2026; 47: 15-25.
2. Grosse Ostendorf AL, *et al.* Is the lung floating test a valuable tool or obsolete? A prospective autopsy study. *Int J Legal Med.* 2013; 127(2): 447-451.
3. Krywaczyk A, Jackson NR, *et al.* A survey of forensic pathologists regarding medicolegal investigation of perinatal and stillborn deaths. *Am J Forensic Med Pathol.* 2025; 46: 122-127.
4. Dolinak D, Matshes E, and Lew E. *Forensic Pathology: Principles and Practice.* Elsevier Academic Press, 2005.
5. Saukko P and Knight B. *Knight's Forensic Pathology*, 4th edition. CRC Press, 2015.
6. Husain AN, Stocker JT, and Dehner LP. *Stocker and Dehner's Pediatric Pathology*, 5th edition. Wolters Kluwer, 2021.
7. Cohen MC and Scheimberg I (editors). *Pediatric and Perinatal Autopsy Manual.* Cambridge University Press, 2014.

HB 1143 senate finance testimony pdf .pdf

Uploaded by: Lesley Frost

Position: FWA

HB 1143: Lung Float Test Ban

Position - Favorable with amendments

March 24, 2026

To the Honorable Chair and Members of the Senate Finance Committee

My name is Lesley Frost and I am the Chair of National Council of Jewish Women, Maryland State Policy Advocacy Committee (NCJW MD SPA) and I am writing to express strong support for HB 1143: Lung Float Test Ban.

This bill would ban Medical Examiners from administering the so called Lung Float test in our state. This is a hydrostatic test that has been used in the United States and elsewhere as part of legal processes involving suspected infant or neonatal deaths. This test, however, has been deemed wholly unreliable by pathologists and forensic experts.

In a Position Paper, the National Association of Medical Examiners concluded that "The lung float procedure is of questionable value and is without clearly defined error rates. There is, therefore, no reason to mandate its performance..... Those who use the lung float should be wary of accepting the results when it conforms to their summation of the findings and rejecting the result if it conflicts; a "test" used in such a manner inevitably becomes more dangerous than useful."

Since the Dobbs decision there is a growing trend for people to be investigated, prosecuted, and punished for the outcomes of their pregnancies, including miscarriage, stillbirth, or self-managed abortion. The "lung float" test, despite its documented inaccuracy, is used to help determine if a baby was born alive or dead. and entered into evidence by prosecutors, including in Maryland.

NCJW is the oldest Jewish grassroots organization in the USA and we follow Jewish law that says following a pregnancy loss we focus on comfort, healing, and recognizing the pain of the loss, not on assigning blame. Our NCJW Resolutions also require that we work for "Laws, policies, programs and services that protect every women from all forms of abuse, exploitation, harassment, discrimination and violence."

It is the position of NCJW MD SPA, representing 600 advocates statewide, that banning the Lung Float test fulfills our obligation to protect the well being of women, and we strongly urge this committee to vote favorably on HB 1143 and ban Medical Examiners from administering this test in our state.

Sincerely,

Lesley Frost, Chair NCJW MD SPA, ncjw.mdacts@gmail.com

7707 Wisconsin Avenue

Bethesda MD 20814, lesleyfrost0@gmail.com

HB1143 -FIN– Office of the Chief Medical Examiner

Uploaded by: Meghan Lynch

Position: UNF



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Meena Seshamani, M.D., Ph.D., Secretary

March 26, 2026

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: House Bill 1143 - Public Health – Office of the Chief Medical Examiner – Perinatal Autopsies (Lung Float Test Ban) – Letter of Concern

Dear Chair Beidle and Members of the Committee:

The Office of the Chief Medical Examiner (OCME) respectfully submits this letter of concern to House Bill 1143-Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies (Lung Float Test Ban). HB 1143, as amended, establishes a two-year moratorium on the use of the lung float test in perinatal autopsies and requires the Maryland Department of Health to conduct a study and report on its usefulness and whether it should continue as an autopsy tool. While the civil liability provision has been removed, the bill still imposes physician disciplinary consequences for violations and will automatically sunset on September 30, 2028.

We appreciate the thoughtful consideration that has gone into this legislation and the efforts made to reach a balanced approach through the inclusion of a study component. We recognize the intent to thoughtfully examine complex and sensitive issues and to support women and families through informed policy. At the same time, we write to share several concerns regarding the proposed moratorium and its broader implications.

OCME would like to clarify that the lung float test is not used as a “determinative” or “standalone” method for establishing live birth. This terminology does not reflect modern forensic practice. The National Association of Medical Examiners (NAME) has consistently emphasized that autopsy findings must never be interpreted in isolation and that cause and manner of death determinations rely on the synthesis of multiple factors. The lung float observation is not used as the sole determinant of live birth. Since 1990, out of more than 1,200 reported fetal death cases to the OCME, only 15 have been certified as homicide, *none of which relied upon the lung float observation in isolation*. This statistic underscores a critical point: homicide determinations are exceedingly rare, are made with the highest level of scrutiny, and take many determinants into account.

The proposed moratorium raises concerns about legislating aspects of medical practice. Cause and manner of death determinations are inherently clinical decisions that rely on specialized professional training, experience, and the totality of investigative and medical findings. These determinations cannot be reduced to or constrained by a single prescribed approach without risking unintended consequences. Removing a tool, even temporarily, from consideration limits the ability of medical professionals to apply appropriate judgement on a case-by-case basis.

NAME guidance does not call for the prohibition of the lung float test. As reflected in the NAME position paper on the *Investigation and Certification of Fetal Demise, Stillborn, and Early Neonatal Deaths*¹, many of the considerations that the proposed study seeks to examine have already been evaluated at the national level. The paper explicitly states that:

- It is reasonable to conclude that the float test is not a test, but an autopsy finding
- If performed, it must be interpreted within the totality of the case, alongside all other findings
- There is no basis to mandate the performance of the lung float procedure
- There is no diagnostic tool or finding, aside from food in the stomach, that can stand alone as the sole determinant of whether an infant was liveborn or stillborn
- Ultimately, forensic pathologists should use their individual medical judgment to make a clear, scientifically sound determination

It is important to note that the proposed moratorium also creates an internal inconsistency in expectations placed upon this office and the field of forensic medicine. Medical examiners are frequently criticized when cause and/or manner of death is certified as undetermined, with the suggestion that additional effort or analysis should lead to clearer conclusions. At the same time, this legislation seeks to remove one of the observational components that may, in appropriate circumstances, contribute to a more informed medical determination. If the expectation is that medical examiners should strive to reach medically supported conclusions whenever possible, it is counterproductive to legislatively restrict the range of observations physicians may consider in reaching those determinations.

We do acknowledge the broader concerns raised regarding the treatment of pregnant individuals within the legal system. This is an extremely important and complex issue. To the extent that questions exist regarding how medical findings are interpreted or applied, those considerations may be more appropriately addressed within legal or policy framework, rather than through restrictions on the underlying medical evaluation, differing from national organizations recommendations.

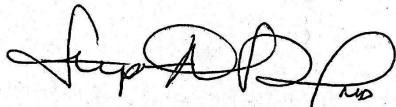
Finally, OCME urges careful consideration this approach may establish for the field of medicine as a whole. Even well-intentioned statutory direction may have broader implications for how medical decision-making is governed, extending well beyond the scope of this specific issue. In this case, the

¹ National Association of Medical Examiners (NAME), *Investigation and Certification of Fetal Demise, Stillborn, and Early Neonatal Deaths*. Am J Forensic Med Pathol (2025).

moratorium introduces constraints without demonstrated benefit and risks unintended consequences, while the study component alone would allow for thoughtful, evidence-based review.

The OCME remains fully committed to transparency, accountability, and collaboration, but it is equally important that policy decisions in this space are grounded in evidence and do not unintentionally constrain the clinical judgement required to do this work correctly. Accordingly, we strongly urge reconsideration of the proposed moratorium of a single observational postmortem finding, which is not supported by evidence and carries unintended risks to the integrity of medical decision-making.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephanie A. Dean, MD'. The signature is fluid and cursive, with a small 'MD' at the end.

Stephanie A. Dean, M.D.

Chief Medical Examiner

State of Maryland

HB 1143 FIN - BOP - LOC.docx (1).pdf

Uploaded by: State of Maryland (MD)

Position: UNF



Board of Physicians

Wes Moore, Governor · Aruna Miller, Lt. Governor · Harbhajan Ajrawat, M.D., Chair

2026 SESSION POSITION PAPER

BILL NO.: HB 1143 - Public Health - Office of the Chief Medical Examiner -
Perinatal Autopsies (Lung Float Test Ban)
COMMITTEE: Finance
POSITION: Letter of Concern

POSITION AND RATIONALE:

The Maryland Board of Physicians (the Board) is respectfully submitting this Letter of Concern for House Bill (HB) 1143 Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies (Lung Float Test Ban). The bill prohibits the Chief Medical Examiner, deputy chief medical examiners, assistant medical examiners, and pathologists authorized by the Chief Medical Examiner from using a hydrostatic lung test, also known as a lung float test, when performing certain perinatal autopsies.

It is the mission of the Board to assure quality health care in Maryland through the enforcement of the Maryland Medical Practice Act. Guided by this mission, as well as its experience and expertise in determining the applicable standard of care in specific clinical circumstances, the Board ensures that healthcare practitioners comply with all Health Occupations statutes, particularly those related to patient care. In every decision, the Board seeks to center the patient and the quality of care received, while evaluating that care through the lens of the provider's clinical discretion and professional background. The Board would like to thank the sponsor and the proponents of this bill for accepting our previous amendment and excluding the specific disciplinary ground from the amended bill text. This change maintains the Board's existing authority under the Medical Practice Act and avoids unnecessary statutory redundancy.

However, upon further review of the bill, the Board is concerned that the clinical decision-making of a physician is being restricted. In fulfilling the Board's primary mission, the Board regulates and disciplines to ensure that the medical care patients receive meets the proper standard of care. By codifying a ban on a specific diagnostic tool, the legislature would interfere with this objective process and restrict a practitioner's independent medical judgment.

The Board advises that the determination of medical standards should remain a clinical process rooted in evidence-based decision-making and peer evaluation. Introducing a politicized medical evaluation process through statutory mandates threatens to undermine the objectivity and nuance required in safe medical practice. Additionally, Section 2, page 6, lines 12-21, of this bill mandates that the Maryland Department of Health conduct a formal study to determine the test's efficacy. The Board insists that clinical discretion be reserved until such data can be properly vetted by the medical practitioner community. Further advocating the need for the standard of care to be established and updated through medical peer review and clinical expertise rather than through legislative mandates.

Thank you for your consideration. For more information, please contact Oriell Harris, Health Policy Analyst, at OriellT.Harris@maryland.gov.

Sincerely,

A handwritten signature in cursive script that reads "Harbhajan Ajrawat".

Harbhajan Ajrawat, M.D.
Chair, Maryland Board of Physicians

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.

HB 1143_ Public Health - Office of the Chief Medi

Uploaded by: Trudy Tibbals

Position: UNF

HB 1143: Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies (Lung Float Test Ban): Please vote to **OPPOSE** this bill.

Dear Finance Committee:

I am writing to strongly urge you to **OPPOSE HB 1143**.

While concerns about certain forensic techniques are understandable, banning a long-established method like the lung float test is premature and risks undermining the accuracy and reliability of perinatal death investigations. The lung float test remains a tool in the forensic pathologist's toolkit, often combined with other evidence (histology, microbiology, scene investigation) to reach objective conclusions. **Prohibiting its use outright could hinder thorough autopsies in cases involving potential live birth, stillbirth classification, or criminal inquiries (e.g., infanticide or neglect), potentially compromising justice for victims and families seeking answers.**

Legislating specific forensic methods overrides the professional judgment of trained medical examiners and pathologists, who should follow evidence-based standards rather than statutory bans on individual tests. Civil liability and disciplinary provisions tied to this prohibition will impede forensic work, deter qualified pathologists, or lead to politicized lawsuits rather than science-driven outcomes.

Maryland should trust the expertise of the Office of the Chief Medical Examiner to use appropriate, validated tools in perinatal autopsies, not impose legislative bans on established techniques without comprehensive evidence of unreliability or harm.

For these reasons, I respectfully ask you to **vote against HB 1143**.

Thank you for your time and thoughtful consideration of my concerns regarding this important public health, forensic science, and justice matter.

Sincerely,

Trudy Tibbals

HB1143_INFO_Public Health – Office of the Chief M

Uploaded by: Christine Krone

Position: INFO



Maryland Section

Senate Finance Committee

March 26, 2026

House Bill 1143 – *Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies (Lung Float Test Ban)*

POSITION: LETTER OF CONCERN

The American College of Obstetricians and Gynecologists, Maryland Section (MD ACOG), which represents the Maryland physicians who serve the obstetrical and gynecological needs of Maryland women and their families respectfully submits this letter of concern for House Bill 1143.

As amended, House Bill 1143 establishes a two-year moratorium on the use of the lung float (hydrostatic) test by the Chief Medical Examiner, a Deputy Chief Medical Examiner, an Assistant Medical Examiner, or an authorized pathologist during perinatal autopsies in Maryland. During this period, the Maryland Department of Health, in consultation with the Office of the Attorney General and the Office of the Chief Medical Examiner, is directed to research and submit a report to the Maryland General Assembly addressing:

1. The usefulness and efficacy of the lung float test in determining whether a death was the result of a stillbirth or occurred after a live birth; and
2. Recommendations regarding whether the test should continue to be used as an autopsy tool.

MD ACOG strongly opposes any use of the lung float test that is primarily intended to investigate or criminalize patients for pregnancy outcomes. If the test is used solely to support legal action rather than to inform clinical care, it should not be used.

While the two-year moratorium temporarily halts the use of the test, MD ACOG is concerned that legislating medical practice in this way sets a troubling precedent. Decisions about clinical tools and procedures should be guided by medical evidence and the needs of patient care, not by legislation, even when intended to prevent misuse.

Any study conducted under this provision should explicitly examine whether the test has legitimate medical uses beyond potential legal applications, including whether it could inform postpartum care. If there are no demonstrated clinical benefits outside of its potential use to criminalize pregnancy loss, the test should not be authorized.

Laws cannot fully account for the diversity of individual medical circumstances. Our primary responsibility is to protect and support individuals seeking reproductive and pregnancy-related healthcare, ensuring their safety, dignity, and access to care.

Finally, MD ACOG emphasizes that the criminalization of pregnant individuals for actions allegedly harming a fetus poses serious threats to both patient health and the healthcare system. The threat of legal punishment erodes trust in the medical system, making individuals less likely to seek needed care; undermines the confidential patient–practitioner relationship by creating uncertainty about potential law enforcement involvement; and, in extreme cases, results in patients being treated as suspects rather than individuals in need of care, subjecting them to interrogation and legal scrutiny. For reference, please see ACOG’s position statement on the criminalization of pregnant and postpartum individuals: [ACOG Policy Statement, 2020](#).

MD ACOG urges careful consideration of these concerns in evaluating House Bill 1143.

2026-03-26 - HB 1143 (Public Health - OCME - Perin

Uploaded by: Jer Welter

Position: INFO

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Deputy Attorney General



JULIA DOYLE
Solicitor General

JER WELTER
Principal Deputy Solicitor General

PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief of Staff

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
OFFICE OF THE SOLICITOR GENERAL
CRIMINAL APPEALS DIVISION

ANTHONY G. BROWN
Attorney General

March 26, 2026

TO: The Honorable Pamela Beidle
Chair, Finance Committee

FROM: Jer Welter
Principal Deputy Solicitor General, Office of the Attorney General,
Office of the Solicitor General, Criminal Appeals Division

RE: House Bill 1143 – Public Health – Office of the Chief Medical Examiner –
Perinatal Autopsies (Lung Float Test Ban) – **Letter of Concern**¹

The Office of the Attorney General writes to express concern regarding **House Bill 1143**, which addresses a forensic pathology procedure called the hydrostatic float test or “HFT” (also known as the “lung float test”). As amended in the House, the bill would impose a two-year moratorium barring medical examiners and other pathologists from performing the HFT during a perinatal autopsy to determine whether the death resulted in a stillbirth or, instead, occurred after a live birth. The bill would also require the Maryland Department of Health to prepare a report on the efficacy and usefulness of the HFT.

The Office of the Attorney General commends the apparent impetus of the bill to support the right to reproductive freedom guaranteed by Article 48 of the Maryland Declaration of Rights. We also appreciate that some of the more concerning features of the bill as originally introduced (provisions that would have subjected pathologists to potential civil liability and professional discipline for performing the HFT) were removed by amendment in the House. Nevertheless, the bill continues to raise significant policy concerns.

The HFT is a procedure performed in perinatal autopsies that generally involves placing the deceased’s lungs in water and noting whether they rise or sink. As explained in a recent position paper from the National Association of Medical Examiners (NAME), the test is longstanding and the principle behind it “is relatively simple, with the rationale that the lungs of a liveborn infant will float in water due to aeration from breathing, while the lungs of a stillborn

¹ This letter is a statement of the Office of the Attorney General’s policy position on the referenced pending legislation. For legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Office of Counsel to the General Assembly.

fetus, absent of air, will sink.”² As the NAME paper explains, the HFT is a subject of current medico-legal controversy: citing a publication for the criminal defense bar, the NAME paper notes that “[s]ome literature calls for the outright condemnation of the test as unreliable and dangerous,” while observing that “others applaud the test, and its usefulness if certain caveats are taken into consideration.”³ Those caveats include awareness of the possibility of “false positives” (circumstances where the lungs of a stillborn fetus float) and “false negatives” (circumstances where the lungs of a liveborn infant sink).⁴ The largest study investigating the HFT, a peer-reviewed German study in 2013 that examined 208 autopsies of known liveborn infants and known stillborn fetuses all occurring in a hospital setting, found an overall 98% accuracy rate, with zero false positives (all 194 known stillbirths had lungs that sank) and four false negatives (four out of 14 known liveborn infants had lungs that sank despite intubation).⁵ The NAME position paper ultimately recommends that the HFT should, “along with all other [autopsy] findings, be interpreted in the totality of the case and is not a diagnostic tool able to stand on its own as the sole determinant of whether an infant is liveborn or stillborn.”⁶

In a recent case in the Maryland courts, *Akers v. State*, the Appellate Court of Maryland considered the HFT and upheld the admission of expert testimony about the HFT as sufficiently reliable to be considered by a jury under Maryland’s legal standards for admission of scientific evidence.⁷ In that case, the State’s expert witnesses acknowledged controversy over the HFT but highlighted the overall 98% accuracy rate found in the German study mentioned above. The assistant medical examiner who conducted the autopsy recognized that the HFT cannot conclusively prove whether the decedent took a breath but only shows if the lungs were aerated. Consistent with the NAME guidance, the assistant medical examiner explained that the HFT

² Alison Krywaczyk, M.D., et al., “The National Association of Medical Examiners (NAME) position paper on the investigation and certification of fetal demise, stillborn, and early neonatal deaths,” at 7 (Oct. 17, 2025), available at <https://name.memberclicks.net/assets/docs/Investigation%20and%20Certification%20of%20Fetal%20Demise%2C%20Stillborn%2C%20and%20Early%20Neonatal%20Deaths%2010-17-2025.pdf>.

³ *Id.* (endnote omitted).

⁴ *Id.* at 8. A false positive could occur if “external air/gas is introduced to the respiratory and/or gastrointestinal tract, as can occur by attempted resuscitation or by the internal production of air/gas (as in putrefaction),” whereas a false negative could occur if “the infant, despite being born alive, does not draw sufficient air into the respiratory tract,” which could happen “due to birth into water (such as a toilet bowl or bath), lung pathology . . . , or other congenital anomalies which prevent full respiration.” *Id.* (endnotes omitted).

⁵ *Id.* (citing Grosse Ostendorf, A.L., et al., “Is the lung floating test a valuable tool or obsolete? A prospective autopsy study,” *Int. J. Legal Med.*, 2013. 127(2): p. 447-51).

⁶ *Id.*

⁷ *Akers v. State*, No. 925, Sept. Term 2022, 2024 WL 338958 (Md. App. Ct. Jan. 30, 2024) (unreported), *rev’d on other grounds*, 490 Md. 1 (2025). The Supreme Court of Maryland was not asked to review the portion of the Appellate Court’s decision that upheld admission of evidence about the HFT, and so the Supreme Court did not address the HFT. The Supreme Court reversed after finding that other unrelated evidence in the case was not admissible, and a retrial in the *Akers* case is currently scheduled for June 2026 in the Circuit Court for Howard County.

therefore cannot be used as the sole determinant of whether a child was born alive, but rather that pathologists must look for concordance across a variety of tests. Another expert witness, who testified for the defense, noted the ways in which the HFT could produce false positives, but he acknowledged that the HFT is generally accepted as valid and that he conducts it in his own autopsies, teaches it to his students, and would have performed it if he had conducted the autopsy in the *Akers* case.

House Bill 1143, as amended in the House, would require the Maryland Department of Health, in consultation with the Office of the Chief Medical Examiner and the Office of the Attorney General, to prepare a report to this Committee and the House Health Committee addressing the usefulness and efficacy of the HFT and providing recommendations as to whether the HFT continues to be needed as an autopsy tool. At the same time, however, the bill would impose a two-year moratorium prohibiting forensic pathologists from performing the HFT altogether. This categorical ban, though temporary, is inconsistent with the NAME guidance and Maryland evidentiary standards discussed above. The bill therefore continues to raise three concerns for OAG.

First, there is no other autopsy test that Maryland prohibits by statute. Enacting a statutory ban—even a temporary one—would set a troubling precedent of legislating which forensic tests are valid, rather than leaving that determination to medical and scientific professionals, as well as courts applying Maryland’s established evidentiary standards.

Second, the guidance from the National Association of Medical Examiners and the expert testimony discussed in the *Akers* case indicates that, notwithstanding ongoing debate about the HFT, the test remains generally accepted in the medical community as a test that, though unable to serve as a standalone basis to differentiate live births from stillbirths, can be valuable in combination with other autopsy findings. Given the test’s continuing general acceptance and the ability of courts applying Maryland evidentiary standards to exclude testimony about the test if it were used improperly as a sole determinant of stillbirth vs. live birth, it is not advisable to statutorily prohibit a useful diagnostic tool.

Finally, even if the legislature is inclined to consider regulating the performance of a forensic test, placing a moratorium on the test simultaneously with the preparation of the report evaluating the necessity and efficacy of the test is not a sound policy approach. Instead, any decision to limit performance of the test should await and be informed by the results of the report.

The Office of the Attorney General thanks the Finance Committee for this opportunity to share its concerns regarding **House Bill 1143**.

cc: Del. Lesley J. Lopez
Members, Finance Committee