
March 4, 2026

Dear Chair Bagnall, Vice Chair Cullison, and Members of the Health Committee:

On behalf of Pregnancy Justice, we respectfully submit this written testimony in support of the **Maryland Lung Float Test Ban (HB 1143)**.

Pregnancy Justice is a non-partisan legal, policy advocacy, and research organization that works to advance and defend the rights of pregnant people, no matter if they give birth, experience a pregnancy loss, or have an abortion. Our work is rooted in the belief that all people should have the freedom to make decisions about their bodies and their lives, without fear of surveillance, punishment, or criminalization; and that no one should lose their rights—or their personhood—because of their pregnancy.

Pregnancy Criminalization Is a Growing Threat

Pregnancy Justice has documented over 1,800 cases of pregnancy criminalization¹ from the 1973 *Roe v. Wade* decision until the 2022 *Dobbs v. Jackson Women’s Health Organization* decision, which overturned *Roe*, including three cases in Maryland.² In just the first two years after *Dobbs*, Pregnancy Justice identified 412 such cases across the country.³ At least 31 cases have been brought against women since *Dobbs* for experiencing a pregnancy loss.⁴ These figures are likely an undercount.⁵ What these numbers show, particularly in our current post-*Dobbs* landscape, is that any pregnancy loss can be viewed with suspicion.⁶ These cases are not limited to states with abortion restrictions; in fact, Pregnancy Justice is currently working on pregnancy loss prosecutions in states as diverse as Michigan, Arizona, New York, Alabama, and Kentucky, among others.

The sad truth is that pregnancy loss, including miscarriage and stillbirth, are common, often unavoidable, medical events. Each year, an estimated 10-20% of pregnancies end

¹ Pregnancy criminalization occurs when the state wields a criminal law to render acts associated with a pregnancy, pregnancy loss, birth, and/or associated healthcare the subject of criminal prosecution. Pregnancy Just., *The Rise of Pregnancy Criminalization: A Pregnancy Justice Report 20* (2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/9-2023-Criminalization-report.pdf>.

² *Id.* at 20.

³ Pregnancy Just., *Pregnancy as a Crime: An Interim Update on the First Two Years After Dobbs 1* (2025), <https://www.pregnancyjusticeus.org/wp-content/uploads/2025/09/Pregnancy-as-a-Crime-An-Interim-Update-on-the-First-Two-Years-After-Dobbs.pdf>.

⁴ *Id.* at 2.

⁵ *Supra* note 1 at 55.

⁶ Pregnancy Just., *After Pregnancy Loss 3-4* (2026), <https://www.pregnancyjusticeus.org/wp-content/uploads/2026/01/After-Pregnancy-Loss.pdf>.

in miscarriage⁷ and around 21,000 end in stillbirth,⁸ with even higher rates among Black, American Indian or Alaska Native, and Native Hawaiian or Pacific Islander women, a result of structural racism manifesting in persistent healthcare inequities.⁹ In Maryland, the stillbirth rate is approximately 6.35 per 1,000 live births, with an average of 436 pregnancies ending in stillbirth each year.¹⁰ What is a far too common and tragic medical event has increasingly become cause for criminal investigation.¹¹

The Lung Float Test Has Been Used to Wrongfully Convict Women for Their Pregnancy Losses, Including in Maryland

Prosecutors have charged women with murder or manslaughter based on the allegation that the woman did not, in fact, experience a pregnancy loss as she asserts, but instead murdered her baby after it was born. These cases typically involve two deeply problematic elements. First, prosecutors seek to rely on facts that they believe show the woman did not comport herself as a pregnant woman “should”—for example, by not obtaining any or obtaining “sub-adequate” prenatal care, by choosing not to share the news of her pregnancy with family and friends, or by contemplating abortion—to argue that such conduct establishes a motive to kill a baby once born.¹² According to Madalyn Wasilczuk, a law professor at the University of South Carolina who has researched these prosecutions: “It is not satisfying to us that a baby could just die for no reason, or an unknown reason... and so we reach for someone to blame and especially when women are not performing motherhood as we think they should, or they’re not upholding the standards that we set out for mothers—we’re happy to blame them.”¹³

Second, to establish that a baby was born alive, prosecutors often use discredited forensic science: the lung float test.¹⁴ Originating in and fundamentally unchanged since the 1600s, the lung float test is a primitive method that evokes the witch trials: if a baby’s lung or a piece of the lung floats in a liquid, the belief is, the baby breathed. If it

⁷ *Miscarriage*, March of Dimes, <https://www.marchofdimes.org/find-support/topics/miscarriage-loss-grief/miscarriage> (last visited Feb. 25, 2026).

⁸ *Data and Statistics on Stillbirth*, U.S. Centers for Disease Control and Prevention (Aug. 26, 2025), <https://www.cdc.gov/stillbirth/data-research/index.html>.

⁹ Latoya Hill, et al., *Racial Disparities in Maternal and Infant Health: Current Status and Key Issues*, KFF (Dec. 3, 2025), <https://www.kff.org/racial-equity-and-health-policy/racial-disparities-in-maternal-and-infant-health-current-status-and-key-issues/>.

¹⁰ *Maryland*, Count the Kicks, <https://countthekicks.org/statistics/md/> (last visited Feb. 25, 2026).

¹¹ Cary Aspinwall, *Some States Are Turning Miscarriages and Stillbirths Into Criminal Cases Against Women*, ProPublica (Oct. 31, 2024), <https://www.themarshallproject.org/2024/10/31/stillbirth-oklahoma-arkansas-women-investigated>.

¹² *Id.*

¹³ *Id.*

¹⁴ Duaa Eldeib, *A Lab Test That Experts Liken to a Witch Trial Is Helping Send Women to Prison for Murder*, ProPublica (Oct. 7, 2023), <https://www.propublica.org/article/is-lung-float-test-reliable-stillbirth-medical-examiners-murder>.

sinks, the baby never breathed.¹⁵ Studies show that the test often produces incorrect results,¹⁶ including false positives (lungs float even if the neonate didn't breathe) and false negatives (lungs sink even if the neonate breathed). For decades, the test has been viewed as “wholly unreliable”¹⁷ and akin to other so-called “junk sciences,” such as bite mark analysis, that have contributed to wrongful convictions.¹⁸ Indeed, at least one woman's conviction has been overturned after the use of the lung float test incorrectly found that a baby had taken a breath.¹⁹ In another case, after securing a grand jury indictment for murder on the basis of the lung float test after a woman experienced a stillbirth in her bathroom, the prosecutor agreed to present the case to new grand jury with information about how unreliable the lung float test is. The grand jury declined to return an indictment when presented with that evidence.²⁰

Indeed, in 2022, a Maryland woman was convicted and sentenced to 30 years in prison for second-degree murder and to a concurrent 20 year sentence for child abuse resulting in a death, after enduring a traumatic labor and delivery at home that ended in a stillbirth.²¹ In securing that conviction, the state relied in part on the lung float test.

Recently, 11 experts with the National Association of Medical Examiners (NAME) released a position paper showing that the test has “known pitfalls,” is of “questionable value,” and is “without clearly defined error rates.”²² Knight's Forensic Pathology, the leading and authoritative textbook in the field, cautions against using the lung float test in determining live versus stillbirth.²³ Forensic experts are advised to consider multiple assessment methods, recognizing that a high degree of certainty is rarely achieved through the lung float test alone.²⁴ For these reasons and more, belief in the efficacy of

¹⁵ George K. Behlmer, *Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England*, 34 J. Hist. Med. & Allied Sci. 403, 410 (1979).

¹⁶ Pekka Saukko & Bernard Knight, *Knight's Forensic Pathology* 445 (3rd ed. 2004).

¹⁷ Physicians for Hum Rts., *Use of the Lung “Float Test” (Hydrostatic Lung Test): An Inaccurate, Outdated, and Unethical Forensic Practice* 1 (Oct. 2023), https://pfr.org/wp-content/uploads/2023/10/PHR_Floating-lung-fact-sheet_Oct-2023.pdf.

¹⁸ National Institute of Justice, *The Impact of False or Misleading Forensic Evidence on Wrongful Convictions* (Nov. 23, 2023), <https://nij.ojp.gov/topics/articles/impact-false-or-misleading-forensic-evidence-wrongful-convictions>.

¹⁹ *Supra* note 14.

²⁰ *Supra* note 14.

²¹ *Moira E. Akers v. State of Maryland*, No. 7, September Term, 2024, Opinion by Booth, J.

²² Alison Krywaczyk MD, et al., *The National Association of Medical Examiners (NAME) position paper on the investigation and certification of fetal demise, stillborn, and early neonatal deaths*, <https://pubmed.ncbi.nlm.nih.gov/41432170/>.

²³ Saukko & Knight, *supra* note 16, at 445–46.

²⁴ *Supra* note 17 at 2.

the lung float test has moved from doubt and disfavor²⁵ to outright rejection by modern forensic scientists.²⁶

The Lung Float Test, Despite Being Discredited, Is Still Being Used Across the Country

Pregnancy Justice currently represents two women charged with murder based on the lung float test, and, recently, filed an amicus brief in support of a third. Just last week, another woman reached out for legal assistance in a *fourth* case; she is being charged with murder for a pregnancy loss that occurred years ago based on the lung float test. Including these cases, Pregnancy Justice is aware of a total of 16 cases in which the lung float test has been used since 2013 in cases involving pregnancy loss; it was used in nine of those cases to obtain murder convictions. In several cases, it was the *sole* evidence used to convict. Because of how difficult it is to find these cases, this is likely an undercount.

Behind each one of these cases is a woman, often a mother, investigated, prosecuted, and incarcerated for a tragic pregnancy loss based on the use of junk forensic science that transforms a medical trauma into a criminal act. They are reduced to a murderer's mugshot, separated from their families and community. They lose their liberty and have their lives upended and thrust into the criminal legal system. In one of the cases mentioned above, Pregnancy Justice's client is a 55-year-old woman with no criminal history who was charged and arrested for murder based solely on the use of the lung float test, conducted *over thirty years ago*, following a stillbirth while she was in college. The arrest has taken her away from her disabled husband and a full-time job helping veterans that she held for many years. Now, she sits in a county jail, awaiting trial, unable to pay the \$1,000,000 bond imposed by the court.

Maryland Can Be a Model for the Nation

This bill stands at a deeply important fork in the road as policy and public opinion about the lung float test is shifting. The County of Los Angeles Department of Medical Examiner has called the results of the lung float test "inaccurate."²⁷ The Harris County Institute of Forensic Sciences in Houston said it found the test to be "very unreliable"

²⁵ Ian C. Pilarczyk, 'So Foul A Deed': *Infanticide in Montreal, 1825-1850*, 30 *Law & Hist. Rev.* 575, 598 (2012).

²⁶ Lester Adelson, *The Pathology of Homicide: A Vade Mecum For Pathologist*, Prosecutor and Defense Counsel 628 (1974) (providing that Dr. Lester Adelson, a renowned and contemporary forensic pathologist explained in his seminal textbook, the lung float test is "beset with anatomic ambiguities and pathologic perplexities...The presence of partially expanded pulmonary alveoli is not an ironclad guarantee of postpartum respiration.").

²⁷ *Supra* note 14.

and “not supported by empirical evidence.”²⁸ In Cook County, Chicago, forensic pathologists assert that there are “more reliable methods” to determine whether a birth was live or still, including X-rays, microscopic examinations and autopsy findings.²⁹ ProPublica has conducted extensive reporting on the issue, bringing national attention to the lung float test.³⁰

With the passage of HB 1143, Maryland has the opportunity to be the first state to codify a lung float test ban, and to continue to lead the nation in supporting reproductive justice as incorporated into Maryland’s constitution by the 2024 Reproductive Freedom Amendment. More importantly, this body has the chance to prevent junk science from being used to wrongfully convict Maryland women.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*