



March 2, 2026

Delegate J. Sandy Bartlett, Chair
Delegate Debra Davis, Vice Chair
House Judiciary Committee
Maryland General Assembly

Lawyering for
Reproductive
Justice

ifwhenhow.org

Re: support for HB 1143

Dear Madam Chair, Madam Vice Chair and Honorable Committee Members:

We write to you today to express our support for House Bill 1143, a bill that would end the use of the lung float test by coroners and medical examiners investigating perinatal deaths.

If/When/How: Lawyering for Reproductive Justice is a national nonprofit legal organization that works in courts and legislatures to end the criminalization of people for their reproductive lives. Our organization's Litigation Team defends people subjected to reproductive criminalization in states around the country, including Maryland. In our cases, we have seen medical examiners and coroners continue to use the lung float test, despite its lack of reliability and scientific rigor.

Believed to have first been formalized in the 1600s, “[t]he test is based on the premise that if an infant has breathed, then the lungs will be inflated. Hence, if the lungs float when placed in water, this indicated that they are inflated and the infant had breathed and was born alive. If the lungs sink when placed in water, the lungs are not inflated and the infant had not breathed and was still born.”¹ Forensic practitioners themselves have criticized the test for decades, and have raised concern about its use, in particular, in the criminalization of people for their pregnancy outcomes.² Contemporary experts have called it “pseudoscience masquerading as sound forensics” and “some even liken the test to witch trials, where courts decided if a woman was a witch based on whether she floated or sank.”³

¹ Bianca Phillips & Beng Beng Ong, “*Was the Infant Born Alive?*” *A Review of Postmortem Techniques Used to Determine Live Birth In Cases of Suspected Neonaticide* 8(4) *Academic Forensic Pathology* 874 (Dec. 19, 2018), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC6491538/>.

² See Physicians for Human Rights, *Use of the Lung “Float Test” (Hydrostatic Lung Float Test): An Inaccurate, Outdated, and Unethical Forensic Practice*, https://phr.org/wp-content/uploads/2023/10/PHR_Floating-lung-fact-sheet_Oct-2023.pdf.

³ 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>.

The National Association of Medical Examiners (NAME), the foremost professional association of medical examiners, forensic pathologists, and other related professions, recently issued a position paper calling into question any continued use of the lung float test.⁴ The NAME report, reviewing extensive studies, explains:

“the lung float procedure is of questionable value and is without clearly defined error rates. There is therefore no reason to mandate its performance. Although this procedure will still be used by some practitioners, there are known pitfalls to keep in mind and the results, as with any findings, cannot be interpreted in isolation. Those who use the lung float should be wary of accepting the results when it conforms to its summation of the findings and rejecting the result if it conflicts; a “test” used in such fashion inevitably becomes more dangerous than useful.⁵

At If/When/How, we urge all forensic pathologists to follow the recommendations of NAME and end the use of this unscientific process that endangers pregnant people and subjects them to unwarranted and cruel investigation and punishment after experiencing a pregnancy loss. To that end, we support House Bill 1143 and urge its passage.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara L. Ainsworth', written in a cursive style.

Sara L. Ainsworth
Chief Legal & Policy Director

⁴ Alison Krywaczyk et al., Nat’l Ass. of Med. Examiners (NAME), *Position Paper on the Investigation and Certification of Fetal Demise, Stillborn, and Early Neonatal Deaths*, (2025) (hereinafter “NAME Report”).

⁵ Id.