



**Testimony for the
House Health and Government Operations Committee
March 15, 2013**

HB 1312 – Pain-Capable Unborn Child Protection Act

Oppose

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
ALLI HARPER
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

The ACLU of Maryland opposes HB 1312, which would ban abortions at 20 weeks of pregnancy,¹ as it is a dangerous and unconstitutional attempt to restrict a woman's right to abortion care. For the following reasons, we urge an unfavorable report.

The most important reason to oppose HB 1312 is that it endangers women's health. However, as civil liberties advocates and legal experts, we offer testimony on the ways that this bill violates Maryland law, Md. Code Ann., Health-Gen. § 20-209, and the federal Constitution.

Under longstanding Maryland law,
the State may not interfere with the decision of a woman to terminate a pregnancy:

- (1) Before the fetus is viable; or
- (2) At any time during the woman's pregnancy, if:
 - (i) The termination procedure is necessary to protect the life or health of the woman; or
 - (ii) The fetus is affected by genetic defect or serious deformity or abnormality.

Md. Code Ann., Health-Gen. § 20-209. HB 1312 seeks to ban abortions at 20 weeks, which is pre-viability. Fetal viability is generally determined to occur around 23-26 weeks.² As a result, HB 1312 is in violation of Maryland law.

HB 1312 also violates Maryland's law as it does not provide adequate exceptions to protect a woman's life or health. Finally, HB 1312 violates Maryland law because it does not provide an exception for fetal deformity or defect. There is no sound policy reason -- and certainly no legal justification -- for Maryland to ban abortion for women when they decide to end their pregnancies because they learn they are carrying extremely compromised, non-viable fetuses. Whereas § 20-209 requires an exception for cases of fetal anomalies (even if those anomalies do not preclude viability), the proposed § 20-217 through § 20-225 ban abortions after 20 weeks with no exception

¹ The bill states it would ban abortions after 20 weeks post-fertilization. However, post-fertilization is not the medically accepted definition of pregnancy, which is calculated from the woman's last menstrual period. For simplicity, we will use the bill's term of 20 weeks in this testimony.

² See http://en.wikipedia.org/wiki/Fetal_viability, citing "ACOG Practice Bulletin: Clinical Management Guidelines for Obstetrician-Gynecologists: Number 38, September 2002. Perinatal care at the threshold of viability." at <http://www.ncbi.nlm.nih.gov/pubmed/12220792>.

for these very difficult, often tragic circumstances. There is, again, no sound justification for legislative interference in these highly personal, sensitive decisions that women and their families make in consultation with their doctors, pastors, and others from whom they are comfortable seeking advice and comfort.

For all the reasons stated above, HB 1312 also violates the federal Constitution. Under the federal Constitution, a state may not ban abortion prior to fetal viability. *Planned Parenthood v. Casey*, 505 U.S. 833, 870-1, 879 (1992) (“The woman’s right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce.”); *Roe v. Wade*, 410 U.S. 113, 164-65 (1973). After viability a state may ban abortion, but again, the state must provide exceptions for instances in which abortion is necessary to preserve the woman's life or health, which HB 1312 does not.

Finally, and precisely on point, just last week the District Court for the District of Idaho struck down that state’s attempt at banning abortions at 20 weeks. *See McCormack v. Hiedeman*, 2013 WL 823318 (D.Idaho, March 6, 2013). In so doing, the Court not only held the law was unconstitutional, but also chastised the legislature for its “improper purpose” in enacting the ban.

For all of these reasons, the ACLU of Maryland opposes HB 1312 as a dangerous, ill-considered, and unconstitutional bill that also violates longstanding Maryland law.