



**Testimony for the Senate Finance Committee  
March 14, 2018**

**SB 449 - Public Health – Abortions – Viability**

**OPPOSE**

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The ACLU of Maryland opposes SB 449, which alters the definition of a “viable” fetus in relation to the obtaining or performance of an abortion to mean the stage beginning at 24 weeks gestation.

The U.S. Supreme Court has held repeatedly that "the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician."<sup>1</sup> That is why a state may not fix viability at a specific point in pregnancy.<sup>2</sup> Neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability-be it weeks of gestation or fetal weight or any other single factor-as the determinant of when the State has a compelling interest in the life or health of the fetus."<sup>3</sup>

Given the fact that the Court vindicates that viability is a matter of medical judgment, SB 449’s attempt to legislate a specific time period for viability is unconstitutional.

For these reasons, we request an unfavorable report.

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<sup>1</sup> *Colautti v. Franklin*, 439 U.S. 379, 396 (1979) (citing *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 64 (1976)).

<sup>2</sup> See *Colautti*, 439 U.S. at 388-89; *Danforth*, 428 U.S. at 64-65.

<sup>3</sup> *Colautti*, 439 U.S. at 388-89.