

September 10, 2009

To Chairman Anderson and Chairman Rex of the Senate and House Judiciary Committees:

On behalf of the undersigned organizations, we are writing to you today to express concerns with the proposed legislation (HB 1053), relating to the treatment of military retired pay at the time of divorce.

The undersigned are national advocacy organizations committed to supporting the retirement security of all women – both as workers and as spouses. Because pensions and retirement savings often represent the largest asset in a marriage, and because pensions and retirement savings accrued during a marriage are legally considered marital assets under state law, the undersigned organizations are advocates for robust spousal rights to pension benefits and retirement savings during divorce proceedings.

The proposed legislation would alter how Oklahoma divorce courts treat military retired pay in a way that deviates from current law, as well as the law of every other state, to the detriment of military spouses whose sacrifices and support enable our troops to defend our country.

Under current law, divorce courts in Oklahoma, as in every other state, may¹ and generally do treat military retirement benefits as a marital asset, dividing the portion of the benefits accrued during the marriage equitably if the parties cannot agree to a division. The proposed legislation would require courts instead to consider a list of factors in determining whether and in what amount to award military retirement benefits. These factors include not only the spouse's ability to support him or herself, but whether or not the spouse engaged in "criminal activity, abuse or nonconformance to military lifestyle." Similar proposals have been introduced in the United States Congress but have never succeeded;² and it appears that at least on one occasion, legislative action on a similar proposal was deferred in response to comments by the Department of Defense.³

By requiring divorce courts to consider such factors, the proposal would effectively transform the award of a marital asset, to which a spouse has a presumptive claim to a marital share, into an award of spousal support. This would represent a dramatic change to federal and state policy. It would make the treatment of military retirement benefits drastically different from any other retirement system, whether public-sector (including pensions accrued through employment in federal, state or local governmental employment) and private-sector. As a result, an individual enlisted in the military would be presumptively entitled to a portion of his or her spouse's retirement benefits, if any, earned during the marriage – but the spouse would have to argue not

¹ See generally PENSION RIGHTS CENTER, YOUR PENSION RIGHTS AT DIVORCE: WHAT WOMEN NEED TO KNOW (1995).

² See H.R. 1983, 107th Cong. (2001); H.R. 72, 106th Cong. (1999); H.R. 2537, 105th Cong. (1997).

³ See Library of Congress, Thomas: Legislative Information from the Library of Congress, Bill Summary and Status, H.R. 72, 106th Cong. (1999), available at <http://thomas.loc.gov/>.

only that he or she should be eligible to receive military retirement benefits, but also would have to demonstrate the amount, under the seven factors that would be established by this proposal. This is a clearly inequitable result. Moreover, one of the factors proposed under HB 1053, whether or not the spouse engaged in “criminal activity, abuse or nonconformance to military lifestyle,” focuses on the conduct of the spouse. Such conduct is not considered in alimony awards under Oklahoma state law,⁴ and hearkens back to the days of fault-based divorce.

In addition, this proposal could have a devastating impact upon the retirement security of military spouses, many of whom have difficulty working outside the home because military families are subject to frequent relocations, including outside the United States, or because spouses of deployed military personnel are required to fulfill the family and caregiving responsibilities that would otherwise have been shared between the spouses. In addition, because the bill proposes to make this change retroactive to 1981, thus covering divorce decrees nearly thirty years old, the change could deprive former military spouses near or already in retirement of what could represent their sole source of retirement income besides Social Security.

This unwarranted upheaval of Oklahoma law would not only be inequitable, run contrary to the law and public policy of the rest of the states, and have a tremendous and detrimental impact upon the retirement security of former military spouses, but could also transform Oklahoma into a divorce haven for military members seeking to deprive their spouses of what would be deemed marital property anywhere else.

The undersigned organizations appreciate that the joint committee has scheduled hearings on this highly controversial piece of legislation. The undersigned organizations respectfully request that, based on the concerns expressed herein, you decline to bring HB 1053 before the full legislative body of Oklahoma for a vote when the legislative session commences. This bill would undermine protections that have been put in place over the past thirty years, would create serious inequities, and could dramatically reduce former military spouses’ retirement security. Should you have any questions, please contact Rebecca Davis at the Pension Rights Center.

Sincerely,



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⁴ See, e.g., *Johnson v. Johnson*, 674 P.2d 539, 546 (Okla. 1983) (stating that alimony is based on demonstrated financial need); *Ray v. Ray*, 136 P.3d 634, (Okla. 2006) (citing factors to be considered in determining whether a spouse has demonstrated need for alimony include: (1) demonstrated need for alimony during a post-divorce rehabilitative period; (2) the parties’ station in life; (3) the length of the marriage and the age of the spouses; (3) the earning capacity of the parties as well as their physical conditions and financial means; (4) the spouses’ accustomed style of living; (5) evidence of a spouse’s income-producing capacity; and (5) the time needed for post-divorce transition).