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**HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA**

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House Bill 2265

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**House Judiciary Committee
Task Force on Domestic Relations**

**Main Capitol Building
Room 140, Majority Caucus Room
Harrisburg, Pennsylvania**

Monday, July 27, 1998 - 9:33 a.m.

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BEFORE:

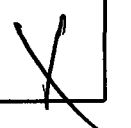
**Honorable Lita Indzel-Cohen, Majority Chairperson
Honorable Brett Feese
Honorable Al Masland**

ALSO PRESENT:

**Honorable Scot Chadwick
Honorable Stephen Maitland
Honorable Thomas Caltagirone
Honorable Larry Roberts**

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1998-102



1 **ALSO PRESENT:**

2

3 **Karen Dalton, Esquire**
4 **Majority Counsel**

5 **Judy Sedesse**
6 **Majority Administrative Assistant**

7 **Galina Milohov**
8 **Minority Research Analyst**

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C O N T E N T S

1		
2		
3	WITNESSES	PAGE
4		
5	Honorable Larry Roberts, Remarks	6
6	Dept. of Military and Veterans Affairs	
7	John Patten, Deputy Adjutant General	17
8	John F. Keith, Deputy Director	20
9	Bureau for Veterans Affairs	
10	Pam Lord, Editor of Newsletter	32
11	Carlisle Barracks Officers' Wives Club	
12	Patricia Bruce, National Director	48
13	Women in Search of Equality for Military	
14	in Divorce	
15	Captain Frank Ault, Executive Director	59
16	American Retirees Association	
17	Kay Ward, Member, Board of Directors	69
18	Ex-partners of Servicemen/Women	
19	for Equality	
20	Edward Essl, Secretary	81
21	State Legislative Committee	
22	American Association of Retired Persons	
23	Kenneth A. Grunewald, Adjutant	86
24	Disabled American Veterans	
25	Department of Pennsylvania	
26	Major Paul Hastings	93
27	Chaplain Colonel Charles Kriete	91
28	United States Army (retired)	
29	Leslie Love Engle, Esquire, Chair	106
30	Family Law Section - Phila. Bar Assoc.	
31		
32	(Written testimony was submitted by	
33	Stanley W. Reinhard, Jr., on behalf of	
34	The American Legion; Jeffrey L.	
35	Newman, Lieutenant Colonel, United	
36	States Air Force; and NMFA.)	

1 CHAIRPERSON COHEN: Good morning. My
2 name is Lita Cohen. I'm a State Representative
3 from Montgomery County, and I am Chair of the
4 Task Force on Domestic Relations. We've been
5 charged by the Legislature to examine our divorce
6 laws.

7 We've been at this for four years,
8 better part of four years too; and our charge is
9 to make our domestic relations experience and
10 laws more equitable and more fair and so that all
11 of the people who are involved in any kind of
12 domestic relations issues are treated fairly.

13 I have to comment just looking at this
14 room, I'm glad we're not on a ship. I don't know
15 why everybody's on this side of the room. The
16 first thing that I would like to do is have the
17 folks that are sitting up here introduce
18 themselves.

19 This will be a painless experience, we
20 hope, for all of you. We will be examining a
21 Bill that's been introduced by Representative
22 Roberts, who will make his presentation and
23 explain the merits of the Bill. Why don't we
24 start to my left, your right, with Representative
25 Chadwick?

1 **REPRESENTATIVE CHADWICK:** I'm
2 **Representative Scott Chadwick** from Bradford and
3 **Susquehanna Counties.**

4 **REPRESENTATIVE FEESE:** **Representative**
5 **Brett Feese, Lycoming County.**

6 **REPRESENTATIVE CALTAGIRONE:**
7 **Representative Tom Caltagirone, Berks County.**

8 **MS. DALTON:** **Karen Dalton, counsel to**
9 **the Task Force.**

10 **REPRESENTATIVE MASLAND:** **Al Masland from**
11 **Cumberland and York Counties.**

12 **MS. MILOHOV:** **Galina Milohov, research**
13 **analyst to the Committee.**

14 **CHAIRPERSON COHEN:** **Before we start the**
15 **hearing, I would like to announce that we had**
16 **asked representatives from the Defense**
17 **Department, the Department of the Army to be here**
18 **today to give testimony.**

19 **We sought those witnesses; they declined**
20 **to come. And I just wanted to put that on the**
21 **record that we had issued the invitation to these**
22 **people and to these representatives.**

23 **We will start our hearing with**
24 **Representative -- a presentation from**
25 **Representative Roberts. By the way, all of the**

1 Members sitting before you are Members of the
2 Judiciary Committee under whose auspices this
3 hearing is being held.

4 Representative Roberts is not a member
5 of the Committee, but we've asked him after his
6 presentation to join us up here and feel free to
7 participate in this hearing. Representative
8 Roberts, thank you for being here, thanks for
9 introducing this Bill, and it's yours now.

10 REPRESENTATIVE ROBERTS: Thank you very
11 much. Thank you, Madam Chairman, and good
12 morning to you and the Committee Members. I'm
13 quite pleased that you are holding this public
14 hearing on House Bill 2265, and I'm happy to be
15 here to comment on the Bill.

16 The agenda shows that you also have
17 people here to testify who have some very
18 significant and impressive credentials. Most
19 importantly, those who are here today showing
20 support of my Bill represent thousands of
21 Pennsylvanians who could be affected by my
22 legislation.

23 Letters of support from those who could
24 not attend are attached to my comments. And
25 there are others on the way, but I'll get to that

1 at a later time.

2 As an example for the numbers of people
3 that are affected by this legislation, I would
4 like to say that the Retired Officers Association
5 alone represents 9500 people in the State of
6 Pennsylvania.

7 They have 9500 members, so it's rather
8 significant as to the number of people that are
9 affected. After hearing all the testimony, I'm
10 hopeful that you and the Committee will support
11 the Bill and work ahead to put it on the House
12 floor.

13 My legislation is designed to protect
14 our military retirees, but it could also have an
15 affect on our career fashion National Guardsmen
16 and the women who serve in uniform.

17 The legislation is in response to
18 inequities that were created by the former
19 Spouse Protection Act, which is a federal law.
20 If passed into law this, legislation will protect
21 military pension by changing Pennsylvania's
22 divorce law.

23 Specifically, this legislation would do
24 two things: Number (1), it would require at
25 least ten years of marriage before a military

1 pension could be subjected to a property
2 settlement action; No. (2), it would provide for
3 termination of any award made from a military
4 pension if the former spouse remarries or
5 cohabitates before the age of 60.

6 There has been an indication of some
7 concern by your legal staff I understand that the
8 language of my legislation may conflict with
9 federal law, but I assure you this is not the
10 case.

11 When Congress passed the former Spouse
12 Protection Act and it was signed into law, the
13 manner in which a military pension would be
14 treated in a divorce situation was left to the
15 states to decide. That is why I've chosen to
16 address the issue here at the state level so it
17 would not have a problem with the federal law.

18 To assist you in understanding the
19 problem I'm trying to correct, I would like to
20 present you with just a little background. Prior
21 to the former Spouse Protection Act, a military
22 pension by law could not be considered as an
23 asset in a divorce or a property settlement
24 action.

25 At Exhibit A in my comments you'll find

1 a list of the reasons why the former Spouse
2 Protection Act then came about. It was a direct
3 result of a very specific personal case: Mcarty
4 versus Mcarty.

5 In that case, a military colonel who had
6 been married to a devoted and supportive wife for
7 33 years decided to divorce shortly after
8 retiring from the military.

9 During their marriage, his wife did not
10 pursue her education or a career. She stayed at
11 home raising children and doing all those things
12 that dedicated military wives do. And there is
13 no doubt that Ms. Mcarty made some personal
14 sacrifices for her husband's career.

15 After the divorce, she had no means of
16 support and no marketable skills. She was, in
17 fact, destitute while her ex-husband was now well
18 off with his military pension and a new,
19 high-paying, executive position obtained through
20 his military experience which his wife helped him
21 obtain.

22 The wife went to court and sought a
23 portion of her husband's military pension. She
24 lost her court case and she lost every appeal
25 up to and including the Supreme Court. She

1 then took her plight to Congress where she found
2 sympathetic ears.

3 It was her situation that brought about
4 a very quick passage of the former Spouse
5 Protection Act that affected so many military
6 members. It was even made retroactive to provide
7 some relief. But little did anyone know the
8 adverse affect that the Act would later have on
9 our military members.

10 The Act basically changed the existing
11 law to allow consideration of a military pension
12 in certain divorce situations; however, it is
13 very important that the Committee understand that
14 division of military pensions in property
15 settlements was not made mandatory by the Act.
16 The Act has only a "may" provision.

17 Unfortunately, military pensions in
18 Pennsylvania divorces are routinely treated as
19 marital property without regard for the
20 circumstances or how it was earned. That is the
21 problem that we must correct.

22 I've studied all the debates and the
23 discussions that were held on the Act at the
24 time, and I understand very clearly the intent of
25 Congress. That intent was very clear.

1 There was no intent or even a suggestion
2 that military pensions should be routinely
3 considered as marital property as is currently
4 being done in Pennsylvania today. We all know
5 the importance of legislative intent. This is
6 why our debates often become so detailed.

7 Transcripts from the hearings held on
8 the former Spouse Protection Act show that the
9 originators and the supporters of the Bill felt
10 that a former spouse should prove there was an
11 entitlement. It is also obvious that Congress
12 felt there had to be financial need.

13 The transcripts also show that Congress
14 felt ten years of marriage as a minimum should be
15 required to gain an entitlement to a portion of
16 that military pension. Some Members even felt
17 that 15 years of marriage would be more
18 appropriate.

19 But it's most obvious that Congress
20 wanted their intent to be documented. That's why
21 there are so many transcripts of the debates.
22 The intent of Congress was clearly to make
23 military pensions available only to those spouses
24 who were truly supportive of the military career
25 and a military member.

1 It was not intended for a spouse of
2 short duration to automatically be entitled to a
3 portion of the member's military pension, but
4 that's really what's happening today.

5 At the time of the Act, the matter was
6 also regarded as a gender issue because most
7 military retirees at that time were men. Today,
8 there are record numbers of women who are
9 retiring. So this is no longer a gender issue.

10 Unfortunately, the intent of Congress
11 has long been lost and the pendulum has swung far
12 away from the military member and mostly in the
13 direction of the spouse. Today, military men and
14 women are being thrown to the wolves in divorce
15 situations.

16 Treating military pensions as an asset
17 in property settlements have become so lucrative
18 for former spouses that clubs have been even
19 formed by ex-partners of servicemen and women.
20 These groups insist they have earned the right to
21 a portion of the military pension of their
22 ex-spouse.

23 And while some may have, I cannot agree
24 that a marriage of short duration could even
25 begin to satisfy the intent of Congress. If

1 Congress wanted all military pensions to be
2 considered as marital property, I believe they
3 would have said so; but they did not.

4 What the Act says is, A military
5 pension may be treated, may, as property of the
6 military member or it may be treated as marital
7 property leaving it to the states to decide.

8 Unfortunately, too many attorneys and
9 judges do not understand the intent of the Act,
10 nor do they understand the military or the
11 military way of life.

12 Over the years, many precedents have
13 been set by the courts. And as you know, Madam
14 Chairman, attorneys are very quick to use case
15 law. You have attorneys on the panel, so you can
16 relate to that.

17 Once precedents have been set by the
18 ruling of a judge, that is near impossible to
19 overcome. Unfortunately, the ridiculous rulings
20 and dangerous precedents having to do with the
21 Former Spouse Protection Act continue to prevail,
22 and that is why we need this legislation passed
23 into law. And I think we need it without delay.

24 Military members should at least be
25 given the same protection and treatment as our

1 other retirees, especially federal employees.
2 The CIA and Foreign Service employees, as an
3 example, have specific protections built into the
4 law.

5 For them, the minimum number of years of
6 marriage are required and termination of benefits
7 cease upon remarriage of the former spouse.
8 That's basically what my legislation asks for.

9 Other federal employees enjoy
10 protections as well. Even our Social Security
11 laws require at least ten years of marriage
12 before an entitlement can be gained from a
13 spousal account.

14 Consider this scenario, please: If a
15 military member -- and when I say military
16 member, we have to keep in mind that are
17 Guardsmen are also military members and they are
18 affected -- who is married to a person employed
19 by the Foreign Service, the CIA, or some other
20 federal agency, which is not unusual in a
21 military situation, and after seven or eight or
22 nine years of marriage is divorced in
23 Pennsylvania, the military pension is then
24 subjected to their property settlement; but the
25 federal civilian employee pension is not

1 subjected to the property settlement.

2 This is unjust. It is just one example,
3 but it is an excellent one. Our military members
4 and veterans certainly deserve fair and equal
5 treatment, and that's all I'm seeking with this
6 legislation.

7 I'm not trying to reinvent the wheel.
8 The language of my legislation is similar to that
9 found in federal laws pertaining to other federal
10 employees.

11 In addition to the unfairness to the
12 individual that I have outlined, the individuals,
13 you must consider the impact this situation could
14 have on our National Guard here in Pennsylvania.

15 A military pension has always been a
16 significant incentive for our career Guardsmen.
17 But if a Guardsmen is subjected to a divorce and
18 learns that a portion of his or her pension
19 belongs to the spouse, as is currently happening,
20 the incentive is greatly reduced; and that could
21 affect our National Guard.

22 So in closing, I would like to make it
23 clear, first of all, that I wholeheartedly support
24 the intent of the Former Spouse Protection Act.
25 I'm not here to destroy that intent. However,

1 those former spouses who do not satisfy that
2 intent should not be allowed to enjoy a windfall
3 at the expense of our military and our Guardsmen.

4 Madam Chairman, Committee Members, I'm
5 hopeful that the Committee will support this
6 legislation and help me get it passed into law.
7 If you feel it needs to be tailored in some way
8 or we need to amend it, I would certainly be
9 happy to work with you and see that those changes
10 come about.

11 Once again, I thank you for the
12 opportunity to be here. I would also like to
13 make one final comment. I received today a
14 letter from the American Legion. Stanley
15 Reinhard sent me a letter. He did want to
16 testify, but he'd be out of the area.

17 But he did also send this morning by fax
18 a copy of the testimony he would like to have
19 presented, and I think you have that available to
20 you. Thank you very much.

21 CHAIRPERSON COHEN: Thank you,
22 Representative Roberts. We appreciate the
23 thoroughness of your analysis. We certainly
24 appreciate your calling this issue to our
25 attention. We will accept written testimony and

1 make it part of the record today.

2 I have to comment that I certainly have
3 received an enormous number of letters from the
4 public, not only residents of the Commonwealth
5 but people all over the country in support of the
6 this issue. They've all been supportive of the
7 issue except one; and I'm not sure what that one
8 was, if it -- which position that particular
9 person took.

10 So we thank you for opening up this
11 issue for our discussion. This is part of the
12 Task Force matters. Please join us up here and
13 feel free to question any witnesses that may
14 appear.

15 The next person on the agenda, two
16 people who will be making a presentation
17 together: John Patten, Deputy Adjutant General,
18 Department of Military and Veterans Affairs; and
19 John F. Keith, Deputy Director, Bureau of
20 Veterans Affairs, Department of Military and
21 Veterans Affairs. Gentlemen, please join us.

22 Thank you and welcome. Would you
23 identify yourselves, please?

24 MR. PATTEN: Good morning, Madam
25 Chairman. I'm John Patten, Deputy Adjutant

1 General for Veterans Affairs in the Department of
2 Military and Veterans Affairs. With me today is
3 Mr. Jack Keith, who is Deputy in the Bureau for
4 Veterans Affairs.

5 The Department interposes no objection
6 to House Bill 2265. We as advocates for veterans
7 frankly have not received a great deal of
8 interest in the legislation.

9 And generally on veterans issues that
10 are important to veterans in the Commonwealth
11 with 1.4 million veterans in the Commonwealth, we
12 receive a good deal of notification either in
13 writing or telephonically when there's
14 legislation pending.

15 We've not received such correspondence
16 or interest in this legislation, which does not
17 indicate a lack of interest. It just may not
18 affect a great population in Pennsylvania. And
19 it affects a selected audience within
20 Pennsylvania, and perhaps that explains it.

21 So that's why when I say the Department
22 interposes no objection to it, we just simply
23 haven't received an awful lot of information in
24 that regard. The issue always is whether or not
25 you treat retired pay as income or as property.

1 And obviously in federal government,
2 they have come down, it would seem, on the side
3 of property since they've allocated part of a
4 veterans retired pay to a former spouse.

5 On the other hand, it needs to be
6 pointed out that when the veteran passes away
7 that entitlement ends. And so in that regard it
8 can be treated as paid. And so there's that
9 dichotomy that appears. At least that's how the
10 federal government would treat a veteran's
11 retired pay, at least as I call it, retired pay.

12 There are some examples, of course, of
13 why 2265 would correct some inequities. If a
14 person is married to, let's say, a captain in the
15 military service and they are divorced after a
16 period of ten years of marriage and that captain
17 goes on to serve and rises to the rank of colonel,
18 let's say, and then retiree's at the rank of
19 colonel, the former -- even though they were
20 divorced when the military member was a captain,
21 that former spouse is entitled to a certain
22 portion of the retired pay of a colonel. And
23 there may be some inequities there.

24 There are some other examples; but,
25 basically, we've come here today if you have any

1 questions regarding veterans issues or as we have
2 seen it in the Department, response to the
3 legislation, we'd be happy to answer any
4 questions you might have.

5 CHAIRPERSON COHEN: Thank you. I
6 appreciate it. Mr. Keith, did you have a
7 presentation?

8 MR. KEITH: I just wanted to add a few
9 facts to this. One of the things I looked at
10 were the more technical aspects of the Bill.
11 One of the difficulties might be, as I
12 researched, I found a bulletin from the
13 Department of Defense finance office which said
14 they would only entertain requests from the
15 former spouse or from the attorney for the former
16 spouse.

17 So if one of the provisions of the Bill
18 were to put in place and a former spouse were to
19 marry then the court order were to change the
20 divorce decree, I was curious as to whether the
21 Department of Defense would accept that petition
22 from the serviceman.

23 And, indeed, in talking to the Department
24 of Defense lawyers, they would. As a matter of
25 fact, they said, Whatever the court order is. If

1 it's changed in any way, shape, or form as this
2 Bill would cause, they would entertain and
3 execute that court order.

4 CHAIRPERSON COHEN: Thank you. I would
5 certainly like to introduce Representative
6 Maitland who has joined us in these hearings.
7 And now we'll -- would you agree to answer any
8 questions the panel may have?

9 MR. PATTEN: Sure.

10 CHAIRPERSON COHEN: Representative
11 Chadwick.

12 REPRESENTATIVE CHADWICK: Thank you.
13 Let me say up front that I've not taken a
14 position on this Bill yet. I just haven't
15 thought it through. It's a short Bill and fairly
16 straightforward and it seems, at least the first
17 part about ten years duration, it seems like it's
18 pretty much agreeable to a lot of people and
19 makes a lot of sense.

20 The question I have is Section B,
21 Forfeiture, which states that a party who's
22 awarded a portion of other party's disposable
23 retired pay under this section forfeits any right
24 to receive that portion if before obtaining the
25 age of 64 that party marries or cohabitates with

1 another person.

2 I guess probably the easiest way for me
3 to ask this question would be to pose a short
4 hypothetical. Let's say that a wife is married
5 to a military person for 35 years and that
6 military person works their way up through the
7 ranks, in fact, becomes a general and that spouse
8 during that 35 years has basically sacrificed
9 everything to help advance her husband's
10 career -- moving every two or three years and
11 giving up any chance that she may have had to
12 establish a business, build a career, or develop
13 any kind of expertise that would help her go out
14 into the marketplace and become employable -- and
15 then at age 59 shortly after the divorce she
16 remarries and she's lost everything. And I'm
17 just wondering -- I haven't taken a position on
18 this Bill -- is that fair?

19 MR. PATTEN: Well, I suppose -- the
20 short answer is I think it is. They have built a
21 life together and then participated jointly at
22 least, and then that's the way this was first
23 crafted, the former Spouse Protection Act, is
24 that the traditional career for the spouse was to
25 support the military person as they advanced in

1 the military. And she gave up -- when it was
2 drafted, it was "she" primarily -- gave up any
3 career aspirations that she had and participated
4 in developing his career.

5 Now, all of that has changed today also.
6 Because with increasing numbers of females in the
7 military, it has changed dramatically. But in
8 any event, she participated in that career and
9 when they divorced, she was entitled to a part of
10 that pension based on her contribution to the
11 career.

12 But when she then remarries, she has
13 moved outside of the participation in that
14 career. And I say again because the military
15 says when that military person dies, it ceases
16 anyway. So it is not property in the sense that
17 she has acquired a portion of that which will
18 continue until her demise.

19 The entitlement flows through the
20 military service member. And since that's the
21 case, when she remarries, she has taken on a
22 different tract, if you will, and made other
23 provisions for her future life.

24 And I think at that point the
25 contribution that the military member has made to

1 her up to that point terminates with her
2 remarriage, and rightfully so.

3 REPRESENTATIVE CHADWICK: Let me ask you
4 just one follow-up question and then I'll stop.
5 In many businesses and governments a retiree has
6 the option of taking a lower pension so that if
7 they predecease their spouse their spouse can
8 continue to receive some of that. Is that not
9 the case in the military?

10 MR. PATTEN: No, it is the case in the
11 military. A retiree may elect for a survivor
12 benefit plan, which basically is an annuity that
13 says I will take a smaller part of my retired pay
14 to ensure that my dependent or dependents are
15 cared for through their lifetime.

16 That is not affected either by the
17 former Spouse Protection Act or by House Bill
18 2265. If the military retiree opts for that
19 annuity program, gets a smaller retired pay, a
20 part of it goes to the survivor, that continues
21 on through her lifetime.

22 REPRESENTATIVE CHADWICK: Thank you.

23 CHAIRPERSON COHEN: Thank you,
24 Representative Chadwick. Representative Masland.

25 REPRESENTATIVE MASLAND: Thank you.

1 Just picking up on that last line of questioning
2 from Representative Chadwick, I have to tell you
3 I disagree with you 100 percent.

4 I can't for the life of me believe that
5 a woman in most cases who has contributed to the
6 career of a military person to the extent that he
7 advances through his career whether it's for 10
8 years or 15 years, whatever, and then they
9 divorce and he may remarry and go on with his
10 life a separate way and she remarries, that that
11 would terminate her rights, that you can state
12 that somehow she has waived her contribution.

13 She's already contributed to the
14 marriage. She's already contributed to help get
15 him where he is. So how you can say she all of a
16 sudden waives that contribution because she has
17 decided to go on with her life just as he has
18 decided to go on with his life on a different
19 tract? That I cannot agree with.

20 And I would also suggest that simply
21 because there may be some inequities here we
22 should not jump to the conclusion that in every
23 case where there are -- where there is a division
24 of this type of a pension that there necessarily
25 is an inequitable situation.

1 I think most of our courts will take
2 into account the fact that maybe they were only
3 married for five years or seven years. It wasn't
4 very long. Maybe the spouse didn't contribute
5 very much. And in that case, they probably would
6 not go up to the maximum of 50 percent and
7 probably would go much lower; and that's probably
8 why you haven't heard a whole lot in your office
9 regarding this Bill.

10 Now, I'm not saying there aren't some
11 cases where somebody can complain that it's
12 inequitable. But I did a fair amount of domestic
13 relations work, and just about every case I ever
14 handled people thought it was inequitable, on
15 both sides.

16 When I was a master and decided some
17 divorces, I always felt very good when both
18 parties took exceptions to my report because then
19 I figured I probably had it pretty close to where
20 it should be. Because nobody is ever going to be
21 a hundred percent happy, and everybody's always
22 going to feel like it's inequitable if somebody
23 else got something that they deserved.

24 So I apologize for getting on a soapbox
25 here a little bit, but I can't buy into the

1 argument that because somebody has contributed
2 for 10 or 15 or 20 years and then gets remarried
3 that that waives their contribution. That I
4 cannot agree with.

5 And as far as of the remainder of the
6 Bill, I stand here waiting for somebody to prove
7 that there are these kinds of inequities that we
8 really need this Bill to address. Thank you.

9 MR. PATTEN: I would comment that it
10 depends on how you define it whether it's pay or
11 property. If it's pay, then you participate
12 during the time that you are married, you share
13 in the lifestyle that comes from the advances in
14 increased pay as you spend more time in the
15 military, and you derive certain benefits from
16 that, privileges from that, and a lifestyle from
17 that.

18 On the other hand, when you then
19 divorce, if that is pay, you have severed your
20 relationship to that pay. If you then remarry,
21 you have further separated yourself from that
22 paying entitlement and you have established a
23 partnership with someone else who is providing
24 for your care and your lifestyle.

25 REPRESENTATIVE MASLAND: Let me say

1 this: I believe that in just about every
2 state -- and I haven't checked -- a pension,
3 whether it's military or private, whatever, a
4 pension is considered a portion of marital
5 property. Pensions are generally considered
6 marital property.

7 I don't see any reason to treat military
8 pensions any differently and say that that's not
9 marital property. I have no problem with
10 somebody's alimony terminating when they get
11 remarried or cohabitate; but to say that
12 you're going to terminate this which is
13 considered marital property in just about every
14 jurisdiction I imagine, not every jurisdiction,
15 then I can't agree with that.

16 I mean, that's the argument. You can
17 say you consider it pay; but when my pension from
18 wherever as long as it's not military is
19 considered to be marital property, I think the
20 military should be also.

21 MR. PATTEN: Except, again, I say that if
22 it's property, that the wife has or the spouse
23 has become entitled to, you wouldn't necessarily
24 terminate with the death of one partner. If it's
25 property, then you've earned a right to that

1 property through your lifetime.

2 REPRESENTATIVE MASLAND: Well, the quirk
3 that the military pension stops at a death of the
4 spouse that earned it I would suggest is just a
5 quirk of the military pensions and does not mean
6 that it is not property. That's just the way
7 they work it.

8 CHAIRPERSON COHEN: Thank you. Thank
9 you, Representative Masland. Representative
10 Roberts.

11 REPRESENTATIVE ROBERTS: Thank you,
12 Madam Chairman. Gentlemen, I thought you gave us
13 a very good explanation on the difference between
14 property and pay. And, of course, I understood
15 that. But I appreciate your input and your
16 explanation of that.

17 I spoke to a number of folks at the
18 Guard unit at the Gap trying to find out how many
19 people were really familiar with this -- with the
20 Former Spouse Protection Act and how it affects
21 them; and I was surprised to learn even your
22 personnel officer was not really aware.

23 He knew there was a ten-year rule, but
24 he thought that ten-year rule meant that his
25 retirement would not be affected unless he was

1 married for ten years. And when I explained
2 to him that that was simply whether or not the
3 award would be automatically be taken out of his
4 pension, he was kind of surprised.

5 I make that comment because I wanted to
6 ask you -- the question I wanted to ask you is,
7 If our Guardsmen knew that a portion of their
8 military pension that they may some day receive
9 is automatically going to be given to their
10 spouse here in Pennsylvania, do you think that
11 would affect our retention and recruitment here
12 in the National Guard in Pennsylvania once that
13 word got out?

14 MR. PATTEN: If the word gets out, there
15 may be some impact to it. But because Guard
16 pension kicks in at age 59 and after age 60, it
17 doesn't impact in the same way that it would with
18 active military.

19 REPRESENTATIVE ROBERTS: It wouldn't
20 impact on the second part of the Bill, that being
21 giving up if you remarried. That would be
22 protected. But the fact -- let's say a person
23 married for just a few years, three or four
24 years -- which in my Bill calls for ten years of
25 marriage -- but if your Guardsmen knew that when

1 they're terminated in eight years now their
2 pension is perhaps half gone, are they going to
3 stick around to stay with our National Guard for
4 only half of what they were expecting to get in
5 the first place?

6 I mean, that's always been a big
7 incentive. The military retirement has been a
8 big incentive for us.

9 MR. PATTEN: Anything I tell you would
10 be speculation. But because a young person joins
11 the Guard and knows to stay until full
12 retirement, your pension does not become
13 effective until age 60, I don't think the impact
14 would be as large in the Guard as in the active
15 military where it kicks in whenever you retire.

16 There's an age limitation in the Guard
17 that is somewhat different. But I think anything
18 that reduces the amount of entitlement you will
19 receive at the end of your career when you
20 realize that there's an influence that will take
21 away from that, it's bound to have some impact on
22 recruiting and retention.

23 REPRESENTATIVE ROBERTS: Do you know of
24 any examples in response to Representative
25 Masland's question? Do you know of any specific

1 examples where a retiree's been adversely
2 affected?

3 MR. PATTEN: I do not know of any in the
4 Guard particularly. I do know of some in active
5 were the former spouse, for instance, divorced a
6 colonel, married another colonel, continues to
7 receive pay from the first colonel. There are
8 examples like that.

9 REPRESENTATIVE ROBERTS: -- spouse is
10 married to three military people and she's
11 drawing a portion of three military retirements,
12 but I wanted you to say that. Thank you very
13 much.

14 CHAIRPERSON COHEN: Thank you,
15 Representative Roberts. Thank you, gentlemen.
16 We appreciate you coming here. The next person
17 to make a presentation today is Pam Lord.

18 Ms. Lord is the editor of a newsletter,
19 The Carlisle Barracks Officers' Wives Club.
20 Welcome, Ms. Lord. Thank you for being here.

21 MS. LORD: My pleasure. Thank you.

22 CHAIRPERSON COHEN: You may proceed.
23 Just make sure the mike is turned on.

24 MS. LORD: Okay. There's a red light
25 on, so I assume that means it's working.

1 CHAIRPERSON COHEN: Yes, you're on.

2 MS. LORD: I've submitted a written
3 statement.

4 CHAIRPERSON COHEN: Yes.

5 MS. LORD: I don't want to read that.
6 What I'd like to do is explain who I am and sort
7 of my reason for being here.

8 CHAIRPERSON COHEN: Fine.

9 MS. LORD: I am the wife of an active
10 duty military colonel who is a faculty member at
11 the U.S. Army War College in Carlisle Barracks.
12 Together we have put 28 years and eight months
13 into the service of the nation.

14 And one of the things that strikes me is
15 that our service to our country isn't a job.
16 It's a lifestyle. When we first came on active
17 duty -- it was kind of funny because we got to
18 Germany, which was my husband's first tour of
19 duty. And in the military people there, the
20 quote was, or the joke, If the Army had wanted
21 you to have a wife, they'd have issued you one.

22 And the basic part of the way our
23 careers started out -- and I say "they" because I
24 truly believe I'm a part of the system -- that
25 without my support, without my willingness to

1 pack up and move every two, three, four years, I
2 don't think he would have stayed in as long as he
3 has.

4 And the only reason he is about to
5 retire is that Carlisle offered him a teaching
6 position as a Title 10 instructor; so he gets to
7 keep the same desk, the same job, just as a
8 retiree. And mandatory retirement is at the end
9 of 30 years anyway, so it's a done deal.

10 But I wanted to give you a little bit of
11 what life in the service has been for us. When
12 we first got in, like I said, the Army's attitude
13 was that we were a luxury, so to speak.

14 There were a lot of paid positions in
15 the Army Community Service that were taken care
16 of by professional people that helped deal with
17 family situations for those few that were
18 married.

19 Then we hit the drawdown after Vietnam
20 and an awful lot of people left the service.
21 Then the military started to look around and
22 said, Whoa, wait a minute. We don't have people
23 to fill these paying jobs to help with the
24 families, we don't have the money or the
25 personnel, so what we'll do is we'll but put out

1 for volunteers.

2 And the volunteers were us, the spouses
3 of the service member. And we were glad to help
4 because, as I said, this is a lifestyle that we
5 bought into, had a greater sense of meaning for
6 us in that we were serving the nation.

7 And in order to make a community where
8 you live, you had to all pull together,
9 especially when you were stationed in Europe. If
10 you were part of the predeployed forces to
11 Germany, then it was very important for the
12 spouses to be involved.

13 My husband was a company commander while
14 we were in Germany, and they would call alerts.
15 And this would be no notice. The higher
16 headquarters calls up the unit and says, Move
17 out. We're being attacked. You've got to go to
18 your full deployed positions and defend against
19 the oncoming enemy.

20 At that point, a spouse such as myself
21 who is the wife of a company commander was
22 expected to contact all of the other spouses in
23 my husband's chain of command and let them know
24 that the service member was gone for we knew not
25 how long. They never specifically said.

1 The trial was, How fast can you get your
2 troops together, mustered at a central point, and
3 move out to your predeployed defense position.
4 So they didn't tell anybody. In some cases, the
5 husbands were already at work and they just took
6 off.

7 And not everybody had a phone at that
8 time, '72, '73 in Germany; so it was up to me to
9 go around to make sure everybody was notified.
10 It was up to me to make sure that those spouses
11 who were over there without a car or means of
12 transportation got to the commissary, got to the
13 PX, got to the laundromat to do their laundry.
14 Or if they needed child care because they had to
15 go someplace else, it was up to me to make sure
16 that all of that was handled by the spouses in
17 the company.

18 So it was really kind of a challenging
19 time for us, and it was part of having the sense
20 of being family and community. And just about
21 everybody pulled together because it was
22 important to do so.

23 A lot of times we ended up being
24 surrogate parents for people who showed up
25 overseas who had never been away from home, first

1 time away from mom. The first thing they do is
2 pick up the phone and call home. And then the
3 next thing the soldier finds out he's got a 4,000
4 mark phone bill and how is he going to pay that
5 on what he's paid?

6 So the kids run into all kinds of
7 problems, and we were there to sort of help out
8 where we could or go to Army Emergency Relief to
9 help out with that situation.

10 And we were part of the volunteer force
11 that raised money within our various communities
12 to give back to helping child care and things
13 like that, scholarships for students who
14 sometimes schools look at our husbands and say
15 you make too much money. Sorry. No assistance
16 for you. And the military doesn't make that much
17 money.

18 So on through the years, we bought into
19 the fact that the military was a family and you
20 took care of your own and wherever you went, it
21 was up to us to help make things come together.

22 Then we came to -- we won the Cold War.
23 And public outcry was, We want to see the
24 benefit. Where is the relief from all the
25 military pay and there's a drawdown? Now the

1 spouses are needed even more to fill those
2 voluntary positions.

3 And every year there is volunteer month,
4 which is April. And it's a big do made. The
5 community gets together and pulls their resources
6 and does all kind of special
7 activities for the volunteers.

8 And at this time, the volunteer
9 organizations get together and make one of those
10 huge checks so that they count up all the
11 volunteer time that the spouses have made, rotate
12 that over into dollars, and present the community
13 commander with this huge check that says, Here's
14 what these volunteer hours would have cost you if
15 you had to man this installation with paid
16 personnel.

17 Actually, it'd probably be a little bit
18 higher because the volunteer dollars are on
19 average and not at higher ends depending on which
20 skill level.

21 So a lot of what we have done is
22 absolute, total support of the community, of our
23 husband's careers, and it just escalates each
24 place you go. There are certain things that were
25 expected of us.

1 In this day and age, as they properly
2 pointed out, like at Carlisle there's a couple of
3 soldiers there going to school this semester
4 whose wives are still wherever they are because
5 they've got good jobs and they've said, sorry,
6 we're not going. So we called them roadrunners.
7 And that's in several places.

8 I know in some cases the wives are
9 concerned about the quality of education for
10 their children in various places that their
11 husbands are assigned. So they say to their
12 spouse, Sorry, Dear, but for the sake of the
13 kids' education, we are not going with you to
14 Guam, to Germany, to wherever because the schools
15 aren't up to what we think they ought to be and,
16 therefore, I'm staying here. Have a good tour.

17 But there are some of us who regardless
18 of where the military sends our husbands we're
19 going to go because we're family and it's
20 important to us to keep that community and
21 relationship going.

22 Now, a lot of us have job skills; but
23 they're not portable. So that -- I'm a potter by
24 profession; and it's very difficult to take a
25 kiln, a potter's wheel with you all over the

1 world. So I've set that aside until the point
2 where my husband retires in which case then I
3 hope to become pretty close to a studio potter.

4 But we really do give an awful lot of
5 ourselves. And I have to admit, not everyone
6 does. It's not a case of I can tell you across
7 the board that every wife gives that much to the
8 situation, but an awful lot of us feel that it is
9 family and we need to take care of our own.

10 And another phrase that we love is,
11 Bloom where you're planted. So every place you
12 go you put in a new plant and hope that it grows
13 and takes seed. But we're the people in the
14 chapels, we're the people in the Army Community
15 Service, in the Army Emergency Relief -- oh,
16 Lord -- in the wives' clubs, in the thrift shops.
17 We're a little bit of everywhere.

18 So I just wanted to let you know that
19 for a lot of us, it is a lifestyle. We buy into
20 it hook, line, and sinker with our kids. And my
21 children -- my daughter, I think I put in the
22 report, has been in seven different schools in
23 seven years. And that was just the first part,
24 not into high school. And that's a lot of moving
25 around for kids.

1 And she thought when she applied to
2 college that who would want her. No stability,
3 hadn't been in a band for so many years, hadn't
4 played on anybody's major sports teams. So when
5 a university looked at her and granted her a
6 scholarship, she went, oh.

7 And they said, But look where you've
8 been. Look what you've done. Benefits of being
9 a military family child outweigh a lot of the
10 things that you feel you lost by moving around so
11 much. And it turned out she's now a Ph.D. and
12 working for Corning Glass.

13 So everything worked out, and they're
14 very happy with what we've done. So I just
15 wanted to let you know that it is a total
16 commitment on the part of the families and the
17 spouses and we put in a lot of hard hours. Thank
18 you very much.

19 CHAIRPERSON COHEN: Thank you, Ms. Lord.
20 That certainly was enlightening and educational
21 for all of us. I believe that Representative
22 Roberts has a few questions for you.
23 Representative Roberts.

24 REPRESENTATIVE ROBERTS: Thank you,
25 Madam Chairman. Ms. Lord, thanks for being here

1 today.

2 MS. LORD: You're welcome.

3 REPRESENTATIVE ROBERTS: I was
4 impressed. You are to be commended. And, in fact,
5 I have to say that you are probably one of the
6 role models that our military members need to
7 look up to because your story was rather
8 touching.

9 And I'm sure there are many like you.
10 In fact, in *Mcarty versus Mcarty*, if you heard my
11 testimony, seemed like a similar situation where
12 the spouse stayed by her husband all those years.

13 But I'm not sure if you're in favor or
14 opposed to the legislation. I didn't hear you
15 say one way or the other. And I say that with
16 maybe tongue in cheek because I heard you say
17 some things that seemed contradictory to being
18 nonsupportive of the legislation.

19 You talked about your daughter having
20 all the benefits of the military. I mean, she
21 doesn't get any of the military benefits, but she
22 had all these benefits that she enjoyed. You did
23 the same.

24 Then you mentioned the fact that some
25 spouses refused to join their husbands and

1 decided to stay with their jobs while the husband
2 had to go off somewhere. And that person
3 obviously did not support the military member
4 because that person decided to stay.

5 So my question is, With you having spent
6 all those years supporting your husband and doing
7 an excellent job of it -- and I commend you -- do
8 you really think that a spouse who is married for
9 three or four or five years who did not support
10 her husband or his wife who may have been a
11 military member is entitled to the same benefits
12 that you as a person who stood by her man all
13 these years?

14 MS. LORD: Actually, personally, no, I
15 don't. I feel that you have to take it case by
16 case. And I was concerned about whether my
17 testimony would have any validity because my
18 husband isn't retired and we're not divorced. So
19 I kind of wasn't sure.

20 But I thought, if nothing else, I could
21 give you some insight into those of us who are
22 committed and do put in the time. One of the
23 things -- now that my husband's getting ready to
24 retire, of course, they submit you for all these
25 final awards that you can be so proud of and hang

1 on your -- we call it the husband's war room, if
2 you will.

3 And so my husband said to me, I need to
4 list all those things that you've been a part of.
5 Would you please help me? I've hit the
6 highlights.

7 And I have been volunteer of the year
8 for several military communities four times. And
9 because of those I have been submitted for --
10 now, the community can be a brigade level or a
11 battalion level or sometimes a division level
12 unit.

13 Then you go much higher to the
14 headquarters beyond them; and I have received
15 two, if you will, volunteer of the year awards
16 from them, which is the Helping Hand Award from
17 the 7th Corps and the Soaring Eagle Award from
18 the 5th Corps.

19 And I was concerned whether that had any
20 bearing on this at all. And I wasn't going to
21 mention it; but in a way, I feel that, yes, you
22 do need to look at each case individually and you
23 do need to see who has made the effort and who
24 has not because I don't -- the world isn't fair.

25 REPRESENTATIVE ROBERTS: Are you aware

1 today, Mrs. Lord, that most our divorces are no
2 fault-type divorces and that's pretty much the
3 norm today then?

4 MS. LORD: I'm sorry for that. I truly
5 am.

6 REPRESENTATIVE ROBERTS: It's not the
7 best situation. But I asked you that
8 because -- and, again, I commend you. But I
9 think that you're a rarity, to be honest with
10 you compared --

11 MS. LORD: Oh, I hope not.

12 REPRESENTATIVE ROBERTS: -- with the
13 short marriages. I commend you for that. The
14 point was -- and I would like to -- that's why I
15 asked you the question earlier and I'd like to
16 ask you again -- and before I ask you the
17 question, let me preface it by another comment.

18 You told us about all the volunteer work
19 you did and how many wives volunteered and gather
20 money for community services and things. Not all
21 military wives do that, right?

22 MS. LORD: Correct.

23 REPRESENTATIVE ROBERTS: So then I'll
24 ask you again for those military spouses -- and I
25 shouldn't say wives because we have women

1 retiring now with --

2 MS. LORD: Exactly.

3 REPRESENTATIVE ROBERTS: -- the husband
4 as the spouse. Do you feel -- talking about a
5 no-fault divorce and equitable distribution in
6 the State of Pennsylvania, the judges and the
7 masters only start with about 50/50 and then you
8 go from there -- do you feel that those spouses
9 who refuse to go to Guam and have been married
10 for just a couple of short years, are they
11 entitled to 50 percent of that pension as you
12 would be with all the work that you did?

13 MS. LORD: That's a hard question to
14 answer because some of the reasons that the
15 spouses don't go as far as a child's education is
16 concerned, it really takes a certain amount of
17 priority because they're our future.

18 And if we don't educate our children
19 well, what do we leave beyond that? So to a
20 certain extent, I would say that is a choice of
21 family matter, not necessarily military matter.
22 And I'm not sure you can put them on the same
23 scale.

24 But in a case of a wife who goes
25 everywhere with her husband but does not

1 participate, absolutely. I see no reason to make
2 it 50/50. You've got to weigh the individual
3 situations.

4 REPRESENTATIVE ROBERTS: Thank you very
5 much.

6 CHAIRPERSON COHEN: Representative
7 Masland, you have three minutes.

8 REPRESENTATIVE MASLAND: Okay. And I
9 can debate Representative Roberts some other day,
10 so I won't do that. But I think we do need to
11 get both sides out here.

12 I agree. It should be on a case-by-case
13 basis. And believe it or not, it is on a
14 case-by-case basis now. There's nothing that
15 says that the person that doesn't go to Guam or
16 does go to Guam gets 50 percent or 30 percent or
17 40 percent.

18 It's considered. It's a factor in
19 considering all of the marital property and how
20 you're going to distribute it. That's all it is.
21 And I would agree, if somebody does not
22 contribute, they should not share in the same
23 fashion.

24 But I would submit that most of the
25 judges in this Commonwealth would feel the same

1 way and aren't going to give somebody who was
2 only married for five years the same amount they
3 would give you. Thank you.

4 MS. LORD: You're welcome.

5 CHAIRPERSON COHEN: Thank you,
6 Mrs. Lord. We certainly appreciate your being
7 here today.

8 MS. LORD: You're welcome. I hope I
9 helped.

10 CHAIRPERSON COHEN: Yes, you have,
11 indeed. Thank you.

12 MS. LORD: Thank you.

13 CHAIRPERSON COHEN: Thank you. The next
14 people to appear before us, Patricia Bruce, the
15 National Director, Women in Search of Equality
16 for Military in Divorce will be here making
17 presentation along with Captain Frank Ault, the
18 Executive Director, American Retirees
19 Association.

20 Thank you very much, and you may begin
21 whenever you're ready. Just make sure your mike
22 is on, please. And we'll be going with your
23 testimony until 10:50.

24 MS. BRUCE: Madam Chair and Members of
25 the House Judiciary Committee, thank you for the

1 opportunity to testify before you. My name is
2 Patricia Bruce, and I'm National Director of
3 WISE, which is a nonprofit association advocating
4 equity for military members in divorce.

5 I'm here today to represent the members
6 of WISE who are legal residents of the State of
7 Pennsylvania and to offer the support of WISE for
8 House Bill 2265.

9 I want to divert just a little bit from
10 my written testimony to respond to Mrs. Lord's
11 comments. I was married to a military member for
12 20 years, which marriage subsequently ended in
13 divorce.

14 My former husband was a member of the
15 Submarine Service and served on fast attack
16 submarines, so I can appreciate a military career
17 as a former spouse.

18 I was a dedicated wife. I traveled
19 throughout the United States. I did not go to
20 foreign countries. As I said, he was on a fast
21 attack submarine. We suffered a great deal as a
22 military family back in the late 50's and 60's
23 into the 70's.

24 My children were uprooted. We went to
25 different schools. I have to tell you it was

1 advantageous to them to travel and to learn about
2 the different areas in which we lived.

3 We suffered the same. My husband was en
4 route to the Thresher when she went down. That
5 was a very emotional and traumatic time for us.
6 My husband was gone for nine months, six months
7 at a time under water. So his military career,
8 he was gone a great deal of the time and I was
9 left to keep the home fires burning.

10 I have to say at the time of the
11 divorce, it was after 20 years of marriage. It
12 was before the Former Spouse Protection Act.
13 However, when I went to court, which was not in
14 the State of Pennsylvania, I waived any right to
15 his military retirement because I truly believed
16 that his military retired pay was something that
17 he earned for the dangers and the lifestyle he
18 incurred.

19 I had the opportunity to spend holidays
20 with my family. I could go to dinner with my
21 friends. I could play with my children. I could
22 take them to various sporting events. So I
23 continued with my life even though I was
24 supportive of his career.

25 At the time of the divorce, I made sure

1 that my children were provided for in the divorce
2 decree with a child support, college, et cetera,
3 et cetera.

4 And going on from there, my present
5 husband is a 30-year Navy veteran, a veteran of
6 two tours in Vietnam. He was married a little
7 over ten years. His former spouse after a
8 30-year career was awarded a portion of his
9 military retirement pay.

10 While I do not chose to air dirty
11 laundry, I will tell you according to
12 documentation, she was not worthy of this money.
13 She was an alcoholic. She had many problems.
14 She jeopardized his military career. That's
15 neither here nor there.

16 When Mrs. Lord spoke about the
17 dedication of former spouses, long-term former
18 spouses, I truly concur. I agree that there are
19 many, many deserving spouses.

20 Unfortunately, as the National Director
21 of WISE, I receive information, court documents
22 on military members who were not as fortunate to
23 have such dedicated spouses. Most of the people
24 that I hear from are enlisted personnel.

25 There's a great deal of difference

1 between enlisted personnel and officers in the
2 military ranks. There was a time that military
3 officers were required to participate in their
4 husband's careers.

5 I will tell that you there was a DOD
6 directive -- I believe it was 1980-81 -- that
7 said, Military spouses no longer are required to
8 participate. They can do it on their own
9 volition and their refusal to participate will
10 not reflect on their husband's careers, which was
11 not true prior to that time. And I will mention
12 that fact for you.

13 Moving right along, my belief is that
14 military retired pay is not the same as any
15 retired pay in the United States. A military
16 member puts his life on the line. Well, the same
17 as our police officers and fire.

18 And I will tell you in some states your
19 police officers and your firemen are exempt from
20 division of their retirement. Not in
21 Pennsylvania perhaps, but I do know in other
22 states they are.

23 Nonmilitary citizens who are in the
24 process of a divorce may have their retirement
25 divided by the court in the State of Pennsylvania

1 as directed by state law.

2 Members of the military who are divorced
3 in the State of Pennsylvania are affected not
4 only by the state law, but also federal law,
5 which is the Uniformed Services Former Spouse
6 Protection Act.

7 And it's important to note that no other
8 retirement in the United States is similar to
9 that of the retirement system of Uniformed
10 Services, specifically those retirement plans in
11 private or public employment.

12 In retirement, military retirees are on
13 a retainer. After 20 years to 30 years, they are
14 eligible for recall in the event of war, which
15 they were recalled, as a matter of fact, during
16 Desert Storm.

17 Military retiree pay serves as reduced
18 compensation for reduced current services.

19 Military retirees are subject to recall and
20 subject to the Code of Military Justice.

21 Military retired pay is not based on investing
22 current pay for deferred compensation.

23 Military members do not contribute to
24 the retirement fund. Instead, it is considered
25 reduced pay for reduced current services as

1 stated in the Mcarty Decision.

2 Although Congress passed USFSPA stating
3 that state courts may divide military retired pay
4 in a divorce, USFSPA did not alter the definition
5 of military retired pay.

6 While the intent of the law was a noble
7 one, the application of the law by the state
8 courts has proven to be at the very least
9 misunderstood. There are gross misunderstandings
10 about what the federal law does and does not do.

11 And for the purpose of clarification, I
12 respectfully submit the following brief synopsis
13 of what the federal law does: The Uniformed
14 Services Former Spouse Protection Act says the
15 states "may" divide military retirement as
16 property in a divorce and it also allows the
17 garnishment mechanism if the military member has
18 been married for at least ten years overlapping
19 military service.

20 It also mandates that only 50 percent of
21 military retired pay may be garnished as marital
22 property, but it does not dictate how the states
23 divide.

24 Because of this, we frequently see cases
25 where state divorce courts have divested military

1 retirees of a hundred percent of their retired
2 pay in a mix of pay as property, pay as alimony,
3 spousal support, and pay as child support.

4 The USFSPA provides that 65 percent of
5 the total amount of retired pay can be garnished
6 by the federal government. The remaining 15
7 percentage can be collected as state law
8 enforcement measures.

9 A similar method is being used by state
10 courts to circumvent the USFSPA's protection of
11 VA disability pay. USFSPA does not permit
12 garnishment of disability pay.

13 However, because the state is not
14 permitted to award disability pay as marital
15 property, the courts have been awarding
16 disability pay as alimony.

17 In the case of a 100-percent disabled
18 veteran, disability retirement may well be their
19 only source of income. The law does not say
20 military retired pay is property. It says the
21 states may treat it like property. It is the
22 decision of each individual state.

23 If the state chooses to divide its
24 property, the state also has the choice of how
25 and under what conditions it does divide. While

1 Congress has no control or jurisdiction over
2 state courts and how they divide military retired
3 pay, Congress does have control over the use of
4 federal compensation and benefits as well as
5 administrative mechanisms in the disbursement of
6 Federal compensations and benefits related to
7 such law.

8 Courts are limited by
9 congressionally-mandated controls concerning the
10 division of these other federal benefits in a
11 divorce-related settlement.

12 Military retired pay is a federal
13 retirement with the funding provided for in the
14 annual Defense Authorization Act. All other
15 federal retirements specifically state within
16 their retirement laws how these benefits
17 will be divided upon the divorce of employee.

18 There is no such provision written into
19 the Uniformed Service Former Spouses Protection
20 Act. Because Congress left this matter up to the
21 states, it's up to each state to determine how
22 they will divide military retired pay in a
23 divorce action.

24 The present treatment of military
25 retired pay is inconsistent with the treatment of

1 all other federal retirement plans. WISE
2 believes that because military retired pay is not
3 comparable to that of the civilian community
4 and is a federally-funded plan, the laws
5 governing how it is divided in divorce should at
6 the very least be consistent with that of other
7 federal plans.

8 This Bill would correct an aspect of
9 that law that treats retired servicemen and women
10 in a discriminatory manner in contrast to other
11 federal retirees.

12 There's simply no reason why we should
13 treat men and women who served honorably in our
14 armed forces but who divorce any less favorably
15 than men and women who served in the Foreign
16 Service and Central Intelligence Agency whose
17 duty assignments are most similar.

18 I offer for your consideration the
19 Central Intelligence Agency where payments
20 stopped to former spouses under the
21 age -- remarried former spouses under the age of
22 60. Spouses must be married to the annuitant for
23 at least ten years before becoming eligible to
24 receive a share.

25 Foreign service: Payments stopped to

1 remarried former spouses under the age of 60.
2 Spouses must be married to the annuitant for at
3 least ten years. Marital share is based on the
4 duration of marriage.

5 Railroad retirement: The former spouse
6 must have been married to the annuitant for at
7 least ten years while the benefits were accruing.

8 Social Security: Former spouse must
9 have been married to the eligible worker for at
10 least ten years; be at least 62 years old; and
11 for the purpose of distribution in a divorce,
12 must be unmarried.

13 One major misconception of the law is
14 that military retired pay is not divided unless
15 the spouse and military member are married for at
16 least ten years. And this is incorrect.

17 What USFSPA says is that the Defense
18 Finance and Accounting system of the Department
19 of Defense will only garnish the military retired
20 pay of a member if a ten-year marriage in the
21 military service of a member overlap.

22 Anything less than ten years is paid
23 directly by the military retiree. While this is
24 a very emotional and complex issue, the State of
25 Pennsylvania has distinct opportunity to correct

1 the inequities that face our military in divorce
2 by aligning the division of military retired pay
3 with that of other federal retirement plans.

4 On behalf of our military members,
5 active duty, reserve, and retired, we thank you
6 for your consideration of this much-needed
7 legislation.

8 CHAIRPERSON COHEN: Thank you, Ms. Bruce.
9 Captain Ault.

10 CAPTAIN AULT: Madam Chairman, Members
11 of the Judiciary Committee, I am Frank Alt, a
12 retired Navy captain naval aviator. I appear
13 here today in my capacity as Executive Director
14 of the American Retirees Organization, which is
15 an association formed in California in 1984 for
16 the exclusive purpose of addressing the
17 inequities in the Uniformed Services Former
18 Spouse Protection Act, which I will hereinafter
19 call USFSPA and get rid of all that tongue
20 tangling stuff.

21 I am not a victim of the law. I was
22 dragged back into court 13 years after my divorce
23 and dividing my retired pay. And because I'd
24 done everything right, I won.

25 As for contributions of my spouse, I was

1 told in 1968, divorce your suppose and you'll
2 make life; don't, and you won't. After being
3 a retired skipper, chief of staff on a nuclear
4 powered aircraft carrier, and having
5 been -- called the Alt report which resulted
6 in Top Gun. I'm sure all of you have seen the
7 movie.

8 We deeply appreciate the opportunity to
9 come here today to talk to a state organization
10 about a process the federal government should
11 have stayed out of in the first place. That's
12 divorce. They have definitely interfered.

13 And I want to make sure that I
14 read into the record the explicit wording of the
15 Mcarty decision mentioned by Congressman Roberts
16 (sic) because it is very, very important.

17 It says, quote, A military retirement
18 system confers no entitlement to retired pay upon
19 a retire member's spouse and does not involve
20 even a limited community property concept.
21 Moreover, the application of community property
22 principles of the military retired pay threatens
23 grave harm to clear and substantial federal
24 interests.

25 What Congress is tampering with is

1 the military compensation system, a part of the
2 whole inducement to keep people in the military.

3 The Supreme Court did recognize,
4 however, that there could be special
5 circumstances such as where retired pay was the
6 only asset of the marriage which would cause
7 destitution or some other predicament for the
8 ex-spouse.

9 And for that reason and realizing that
10 judges might consider that they put a fence
11 around retired pay, they said, Congress, take a
12 look at this thing.

13 Well, Congress took a look. And what
14 they could have done quite simply was to say
15 retired pay be used as a source of alimony and
16 child support. Instead, they said it will be
17 treated as property.

18 And at the same time, they did nothing
19 to prevent the contemporaneous award of alimony
20 and child support and property from retired pay.
21 So we see it used as property for one purpose and
22 pay for another.

23 And military people are the only people
24 in the world that have their retired pay
25 classified in accordance with what the government

1 award; income and protection by taxing by the
2 IRS.

3 Certainly it's fair to ask how it can be
4 both. I doubt that very many members of Congress
5 who voted for this law and classify the military
6 pay as property understood the implications of
7 making this property, because it has none of
8 characteristics of property.

9 It can't are sold, bartered,
10 transferred, or passed to heirs. If I gave you a
11 house, it wouldn't vaporize on the day that I
12 die. It would still be there. Retired pay does
13 not.

14 Now, I want to talk specifically to the
15 gentleman who's been talking about domestic
16 relations law. I'm not a lawyer, but I'll have
17 to give you a lesson, sir.

18 USFSPA in its present form is
19 inconsistent with customary notions of spousal
20 support in the U.S. Domestic Relations Law. An
21 obligation to pay alimony usually terminates on
22 the end of some rehabilitation period or upon the
23 remarriage of the recipient.

24 This has been standard legal doctrine
25 since the founding of the country based on the

1 rationale that in a remarriage there's the
2 transfer of spousal support responsibility to
3 the new spouse.

4 The continuation of payments from
5 remarriage overrides any aspect of financial
6 need. Usually, remarried ex-spouses obtain
7 financial security by virtue of the income of
8 their new marital partner or by combination of
9 two incomes.

10 By contrast, many military members whose
11 retired pay has been divided also support a
12 second family. This means that the military
13 member is severely handicapped by his or her
14 efforts to get on with the rest of their lives by
15 payments to ex-spouses who no longer need them.

16 Now let me tell the Members of this
17 Committee, there's a big difference between an
18 officer's ability to survive this law and an
19 enlisted person's ability to survive this law, a
20 vast difference.

21 And we do see the phenomena of
22 ex-spouses marry more than once. Congressman
23 mentioned the lady from the south who's in her
24 fourth marriage to a military guy and collecting
25 USFSPA payments from the first three.

1 The foregoing mention of multiple
2 marriages raises the question of length of
3 marriage in order to qualify. Here even a
4 casual inspection will reveal that the USFSPA is
5 poorly crafted.

6 This law is just as bad for what it
7 doesn't say as what it does say. There's a
8 ten-year qualifying requirement in the law, but
9 that applies only to the qualification to be paid
10 directly by Defense Finance and Accounting.

11 And unfortunately, military members have
12 frequently misinterpreted this provision. Let me
13 say that HB 2265 would certainly remedy this
14 aspect of the law by making this ten-year
15 restriction very real.

16 Now, since it's not specific on this
17 point, since federal law isn't specific on this
18 point, it's entirely possible for a bride to come
19 to the door of a church with the rice still
20 flowing and say I don't think this is going to
21 work and with the right judge go get 50 percent
22 of this guy's retired pay after having been
23 married a matter of a few seconds.

24 On the other hand, the military person
25 has to serve at least 20 years; and that's a

1 given. It would get rid of this
2 bride-leaps-right-at-the-door-of-the-church and
3 it would certainly take care of that.

4 The ex-spouse who draws from the same
5 pay envelope as the military man has none of the
6 constraints that he has. I was responsible until
7 I reached a certain age for being recalled. I
8 had a duty assignment, Convoy Commodore, in a
9 specific convoy. I still have to comply with the
10 Uniformed Code of Military Justice. I can't call
11 the President a fink, although I might think so.

12 Dual compensation constraints if I
13 accept the postcivil service employment; in some
14 cases, constraints on foreign travel. The
15 ex-spouse doesn't have any of these on her. She
16 can do anything she wants to.

17 And while it wouldn't completely level
18 the playing field, the passage of HB 2265 would
19 represent a major step in restoring equity to the
20 qualifying roles for the military retired pay and
21 it ought to reduce the abuse of the entitlement
22 of retired pay because, indeed, Members of the
23 Committee, what may be evolving here is a
24 marriage industry supported by military veterans.

25 Now, to anyone who might raise the issue

1 of federal supremacy -- and I heard it raised
2 here this morning as regards to HB 2265 and the
3 USFSPA -- the federal law states, and I quote, A
4 court may treat disposable retired pay payable
5 to a member either as property solely of the
6 member or property of the member and his
7 spouse -- and here I emphasize -- In accordance
8 with the law of the jurisdiction of such court.

9 Which says that Pennsylvania courts
10 would be able to handle 2265 if you enact it
11 here. May I observe also in passing that the use
12 of the pronoun "his" in the excerpt just cited is
13 characteristic of the discriminatory
14 underpinnings of the USFSPA.

15 This law advertised by its sponsors as
16 applying to both sexes uses only one pronoun to
17 describe retired pay. It is "his." It appears
18 five times in the law. Perhaps it's time for
19 some enterprising divorcing female military to
20 claim exemption from distribution because they're
21 talking about "his" retired pay and not "hers."

22 And I've been advising young ladies to
23 do that, and I'm waiting for it to happen. I
24 have only one objection to HB 2265, and that is
25 that it is prospective only in its application.

1 It will not help my constituents. It
2 will not help those tens of thousands of people
3 that have already been impacted by this law. But
4 it is in line with our overall objective to
5 terminate the payments to ex-spouse when they
6 remarry for reasons which I have cited.

7 Now, there's a lot more to the USFSPA
8 story than I'm able to tell you in --

9 CHAIRPERSON COHEN: Excuse me, Captain.
10 If you could sum up, please, we are running a
11 tight schedule this morning.

12 CAPTAIN AULT: I'm going to sum up and
13 get out right now, ma'am.

14 CHAIRPERSON COHEN: Thank you.

15 CAPTAIN AULT: There is much more to the
16 USFSPA story than I've been able to go through,
17 obviously. And I have to say HB 2265 falls short
18 of the totality of what is needed. It is,
19 however, a significant step in the right
20 direction.

21 And I want you to accept the thanks of
22 the ARA members for your consideration of this
23 issue. And I want to emphasize, ladies and
24 gentlemen, we're not looking for a win in divorce
25 court. We'll settle for a tie.

1 CHAIRPERSON COHEN: Captain Ault,
2 Mrs. Bruce, thank you very much. We certainly
3 appreciate your taking the time to be here today.
4 Thank you.

5 REPRESENTATIVE MASLAND: I really to do
6 need to ask this one question. I'm not going to
7 debate you. But let me just give you the one
8 hypothetical that I think is important for you to
9 answer; and that is, if a person in the situation
10 of Mrs. Lord was faced with a divorce and after
11 that divorce was awarded, as part of that award a
12 portion of the military pay, and then she
13 remarried before the age of 60, do you think that
14 her benefits should terminate?

15 CAPTAIN AULT: Yes, sir, I do. Let me
16 emphasize, sir, divorce courts contain all the
17 remedies for a military spouse that are available
18 to any other spouse. All we're doing is gilding
19 the lily but putting something on there which
20 they keep for life no matter what they did to get
21 it or what they do to keep it.

22 REPRESENTATIVE MASLAND: Congress
23 determined that this pension is property and can
24 be considered as property. And I think if it's
25 going to determine that, then we should treat it

1 as any other pension that's determined as
2 property too.

3 CAPTAIN AULT: Well, here I rely on --

4 REPRESENTATIVE MASLAND: We're not going
5 to be able to debate this. We could go for a
6 long time the two of us, but she's going to cut
7 one or both of us off here in about ten or
8 fifteen seconds.

9 CHAIRPERSON COHEN: Thank you both. I
10 appreciate it. Any further comments you have,
11 Captain Ault or Ms. Bruce, by all means, please
12 submit them in writing and we will enter them
13 for the record.

14 MS. BRUCE: Thank you for the
15 opportunity.

16 CHAIRPERSON COHEN: Thank you,
17 Representative Masland. The next person to
18 appear before this hearing is Kay Ward, who is a
19 member of the Board of Directors of Ex-partners
20 of Servicemen/Women for Equality.

21 Mrs. Ward, thank you for being here. If
22 you'll take the seat in the middle and be sure
23 your microphone is on, you may begin whenever
24 you're comfortable.

25 MS. WARD: Madam Chairman, Committee

1 Members, and ladies and gentlemen, my name is Kay
2 Ward. I'm a member of the National Board of
3 Directors of Ex-partners of Servicemen and Women
4 for Equality, otherwise known as EXPOSE,
5 headquartered in Alexandria, Virginia.

6 On behalf of myself and the rest of
7 our board and members of our association, we
8 thank you for this opportunity to address your
9 Judiciary Committee.

10 EXPOSE is a nonprofit organization
11 almost totally volunteer founded in 1980. Our
12 mission is to assist the military spouse in the
13 many intricacies involved in a military divorce.

14 It is our experience that a great many
15 military spouses are unable to acquire or to
16 interpret the information necessary to
17 successfully protect their interests in military
18 divorces.

19 It is our mission to help them. We
20 maintain an office in Alexandria and we are
21 available five days a week to answer questions,
22 to provide resource information, and sometimes
23 simply to offer a sympathetic ear to the members
24 of the organization.

25 Although we do have some male members

1 who are men married to women in the military and
2 we do not wish to imply that their problems
3 are of any less concern, however, the
4 preponderance of our membership is female. And
5 because of this, I may use the pronoun "she."

6 Now let us get to discuss House Bill No.
7 2265. EXPOSE has no objection to the first
8 portion of this Bill. While many former military
9 spouses who are married for less than ten years
10 do pursue shares of retirement pay, the monies
11 involved are negligible.

12 It is totally understandable that awards
13 of this type should be denied. Having said that,
14 let me also add that circumstances do alter
15 cases and on occasion, such awards are fully
16 justified.

17 However, rather than legislate, we
18 must rely upon the wisdom inherent in our
19 judicial system to determine those rare cases.
20 The second portion of this proposed
21 legislation, however, we feel must be addressed
22 in a much more thorough manner.

23 This section proposes that a former
24 military spouse forfeit any right to retirement
25 pay in the event she remarries before reaching

1 age 60.

2 For purposes of this presentation, let
3 us make two assumptions: That the marriage was
4 entered into in good faith by both parties with
5 every hope and expectation of a life-long,
6 fulfilling relationship; and (2), said marriage
7 is, for whatever reason, cannot be saved.

8 We do not feel this is a proper setting
9 for affixing blame, for recriminations, for
10 reviewing behaviors, nor for determining which
11 party bears the most responsibility for the
12 divorce. This marriage is over.

13 Let us consider the military spouse who
14 has recently been divorced. Is she bitter?
15 Sometimes she is. Angry? Sometimes she's
16 that too. Is she is relieved to be out of the
17 marriage? Sometimes she's very relieved to be
18 out.

19 There are many other emotions and
20 reactions as there are divorces. However, we
21 have two unvarying truths: She no longer has a
22 husband as he no longer has a wife until he
23 finds another; but she alone has lost her support
24 system and she's no longer in the military.

25 The life that this former spouse is

1 leading is a life of changing commitments to any
2 given location, a life wherein she is not only
3 the primary caregiver but often the only
4 caregiver.

5 The very nature of this life, this
6 military life, precludes career pursuits.
7 Regardless of her educational background, there
8 are very few careers which can withstand the
9 multiple moves and the uncertainty of this life.

10 Industry is understandably reluctant to
11 invest time and money and training to an employee
12 for upward mobility who may at any time announce
13 she is leaving; her husband's been transferred.

14 Now she is suddenly on her own after
15 this divorce, perhaps well into middle age, and
16 now starting on her career path at ground zero.

17 It is or experience that most military
18 former spouses do not have careers; they have
19 jobs or they've had volunteer work. What of a
20 monetary nature does she take from this marriage
21 of over ten years or over twenty years or over
22 thirty years?

23 If she is divorcing in a community
24 property state, she is awarded by the courts
25 one-half of the property acquired during the

1 marriage. A house may be either sold and the
2 proceeds divided or its ownership may be
3 negotiated along with other similar assets,
4 investments are divided, et cetera.

5 This, of course, is the area of a
6 divorce attorney. There is, however, another
7 property involved here: The retirement pay of
8 this woman's former husband. The courts have
9 defined this also as property.

10 All too frequently this is the only
11 property available to a former military spouse
12 from a long-term marriage. The Department of
13 Defense Finance and Accounting Center has
14 established a formula for dividing this property,
15 which is as follows:

16 You take the years married while the
17 husband was on active duty, you divide it by the
18 number of years the military member served, and
19 you multiply it by 50 percent.

20 To make it a little bit more
21 understandable, if you take a 20-year marriage
22 who retired at 30 years of service time, you
23 would calculate the 20 years married while on
24 active duty divided by the 30 years of military
25 service and multiply by the 50 percent.

1 That only gives you 33.33 percent, not
2 always the half that everybody thinks that
3 military spouses get. The former spouse can only
4 receive this money upon the retirement of her
5 ex-husband.

6 Now, when her ex-husband retires, he
7 most likely embarks upon a new and more lucrative
8 career, probably due in large part to his
9 experience in the military. He will most likely
10 remarry and, indeed, enjoy the good life.

11 We wish him no ill will. We feel that
12 he is entitled to the best the world has to
13 offer; however, we have the same good wishes
14 for his ex-spouse. Is she not also entitled to a
15 dignified, fulfilling life?

16 One other point: If the former spouse
17 should perhaps have a 401-K plan or something of
18 a similar nature, that is divided equally in
19 divorce between the two parties. There is no
20 mention, however, of the monies being returned to
21 her upon his remarriage.

22 Why then must she forfeit what has been
23 awarded to her as property simply because she
24 wishes to remarry? This defies logic. A house
25 is not returned upon remarriage, investments are

1 not returned, property is just as it is defined:
2 Something owned or possessed, not something
3 loaned.

4 Since there is no mention of the
5 retirement pay being forfeited by the husband or
6 military member upon his remarriage, the implied
7 meaning would seem to be that his ex-spouse has
8 not earned the pension, that it is awarded in a
9 rehabilitative manner just until she remarries.

10 This trivializes the role of the
11 military wife. It's an insult. We wonder what
12 has happened to the military philosophy which
13 stated that the military wife also has a tough
14 job in supporting the military family.

15 Another facet of this discussion must be
16 the fact that many times retirement pay serves to
17 meet mutual obligations of the serviceperson and
18 his former spouse such as the college
19 education of their children.

20 To deny this retirement income to a
21 spouse upon her remarriage is simply unjust. It
22 puts an added burden on her new husband and may
23 jeopardize her new marriage since frequently each
24 party in a second marriage has prior financial
25 obligations. This is her property; and in all

1 fairness, it should be treated as such.

2 Additionally, the thrust of this
3 legislation appears to be that the military's
4 been singled out because they are called upon to
5 provide a share of their retirement pay to their
6 former spouses. Such is definitely not the case.

7 Neither civil service nor private
8 pension plans have a remarriage penalty. To
9 treat the former military spouse in this manner
10 is discriminatory.

11 As a rule, neither the civil service
12 spouse or those of persons in private industry
13 are subject to the military spouse's multiple
14 moves and frequent long periods of separation
15 from her husband, being both mother and father of
16 the family.

17 Unlike the military spouse, the
18 civil service and private industry wives have a
19 greater opportunity to pursue individual careers.

20 I wish to make one final observation.
21 The Federal Former Spouses Protection Act, which
22 provides the guidelines for military divorce,
23 possesses a fail-safe factor. Decisions are
24 made at the discretion of the individual judges
25 at the state level on a case-by-case basis.

1 The law specifies what a judge may
2 grant, not what he or she must grant. There are
3 no guarantees, no entitlements. This provision
4 in the law precludes abuse. It serves to protect
5 all parties involved.

6 Lastly at this time, there is no state
7 in the United States which requires a military
8 former spouse to forfeit retirement pay upon
9 remarriage. Should Pennsylvania enact this
10 legislation, you risk becoming a haven for
11 persons seeking to evade their responsibilities.

12 I cannot believe you wish this to
13 happen. And I want to mention that Governor
14 Ridge instituted Executive Order 1997, dash, 3,
15 which was the reestablishment of the Pennsylvania
16 Commission for Women.

17 And it seemed to me that if HB 2265
18 would become law it would certainly put many
19 women in the Commonwealth of Pennsylvania at
20 great risk and certainly counter the objectives
21 of his Executive Order. Thank you very much.

22 CHAIRPERSON COHEN: Thank you, Ms. Ward.
23 I might mention that my husband is a member of
24 that Commission. There are 17 members of the
25 Commission; sixteen of them are women. I believe

1 Representative Roberts has some questions.

2 I would just like to make the statement,
3 those of you who are on the remainder of the
4 agenda that are testifying, we've asked you to
5 hold your testimony to 10 minutes because we've
6 allotted 20 minutes for each person. We'd like
7 to allot 10 minutes of that time for questions
8 from the Members of the Committee.

9 So if you have submitted written
10 testimony, there is no necessity for you to read
11 word-for-word from that testimony. You can just
12 summarize it so that we would appreciate having
13 some time for questions so that we don't have to
14 cut off Members of the Committee. Representative
15 Roberts.

16 REPRESENTATIVE ROBERTS: Thank you,
17 Madam Chairman. Thank you, Ms. Ward, for being
18 here today. I appreciate the fact that you
19 somewhat agree with the first portion of my Bill.
20 I do appreciate that.

21 I have one short question for you. You
22 commented that -- and I'm quoting from your
23 testimony here -- neither civil service nor
24 private pension plans have a remarriage penalty.
25 To treat the former military spouse in this

1 manner is discriminatory.

2 Mr. Ault and Mrs. Bruce I believe
3 testified that there are other -- I think the CIA
4 was mentioned, federal retirements were
5 mentioned, Social Security was mentioned,
6 railroad pensions were mentioned as having that
7 penalty clause. Were they inaccurate in their
8 testimony?

9 MS. WARD: No. We were looking at the
10 overall federal civil service and not
11 specifically those two organizations.

12 REPRESENTATIVE ROBERTS: So there are
13 other federal --

14 MS. WARD: There are some.

15 REPRESENTATIVE ROBERTS: -- and the
16 military's being treated differently than those.
17 Thank you. Thank you, Madam Chairman.

18 CHAIRPERSON COHEN: Thank you,
19 Representative Roberts. Ms. Ward, again, thanks
20 for your presentation. I appreciate you being
21 here.

22 The next two people on the agenda,
23 Edward Essl, Secretary, State Legislative
24 Committee and American Association of Retired
25 Persons; and Kenneth Grunewald, Adjutant, disabled

1 American Veterans Department of Pennsylvania.

2 Thank you, gentlemen. Would you please
3 identify yourselves? And you may proceed when
4 you're ready.

5 MR. ESSL: My name is Edward Essl. I'm
6 currently Secretary to the American Association
7 of Retired Persons. Because of the time
8 constraints, I'd like to make some personal
9 comments. I would like to read certainly a
10 portion of my testimony as a testament to my
11 life.

12 I am a retired Air Force officer,
13 lieutenant colonel after 39 and a half years of
14 service. A portion of that time was served in
15 the Reserves, at which time I also was a
16 Commonwealth of Pennsylvania personnel officer.

17 I'd like to make some comparisons
18 between my military retirement and my state
19 retirement. My state retirement in the event of
20 my death ends for my wife. My military
21 retirement in the event of my death, as I
22 understand the law when I was a personnel officer
23 in the United States Air Force, ended with my
24 death.

25 In the event of her remarriage with my

1 state retirement, my state retirement ends as a
2 benefit to her. When I was a personnel officer
3 with the military, my understanding was that
4 should a divorced spouse remarry, that portion
5 of the retired pay which was claimed also ends.

6 We have deviated very seriously from the
7 intent of the law, and I do not say this in a
8 punitive sense. When I was a personnel officer
9 in the military, I had occasion to counsel four
10 of my officers who were in the process of
11 divorcing their wives.

12 I must say in all four cases my
13 sympathies lied with the wives. I am still in
14 contact with each one of those wives; although, I
15 have since lost contact with all of the husbands.
16 The wives were indeed very supportive.

17 But very often, men being what they are,
18 left their wife at home and chose to be with
19 someone else and got found out or caught in the
20 action. I was sorry for them, but that's what
21 you get for what you do.

22 I am supporting House Bill 2265. I
23 would say I am also a member of the Retired
24 Officers Association; and in their publications,
25 I would believe that they would also support this

1 piece of legislation.

2 As an AARP member, I think out of 1.9
3 million members here in Pennsylvania we have
4 quite a few retired military members and some of
5 them are divorced. I can't give you specific
6 numbers. AARP does not have an official position
7 on this piece of legislation, but I want to give
8 you my personal opinion of where we're going.

9 As I mentioned, I'm a retired Air Force
10 officer with 39 years of service to my country
11 spanning the post-Korea period through Vietnam
12 and beyond. I am proud of my service and I feel
13 the retirement provided me by my government is
14 fair and just, and I might add, well earned.

15 I am also a married person whose wife
16 endured all the difficulties and separations
17 inherent in service life. While I flew in peace
18 and war, she kept my home, reared my children,
19 and put her own career as a chemist on hold while
20 I undertook my great adventure.

21 I know many wives who could not endure
22 the rigors of service who chose to divorce their
23 service husbands for a safer, worry-free, stable
24 environment.

25 I am now an AARP volunteer. Until

1 recently, I chaired the State Legislative
2 Committee for two terms and now serve as
3 secretary of that organization. As I mentioned,
4 AARP does not have a formal position.

5 The USFSPA the legislative vehicle by
6 which the federal government can be required to
7 send up to 50 percent of the service members
8 disposable retired pay to an ex-spouse as
9 property, the award must be made by a state
10 court.

11 And the important point here is that
12 USFSPA does not automatically divide retirement
13 pay as property. It does, however, authorize
14 state courts to treat military pay as property
15 of the retiree or as property of the retiree and
16 spouse in accordance with the law of the
17 jurisdiction of state courts.

18 This award is, I might add, in addition to
19 any other court-awarded spousal or child support
20 and/or division of other material property. I
21 know one individual whose savings were
22 practically wiped out because of a divorce.

23 I might say the action was brought not
24 because he didn't deserve it. But I know that at
25 this point he's working as a -- we call them

1 campus cop on Southern University.

2 House Bill 2265 is consistent with the
3 provisions of Public Law 97252 in its intent and
4 detail. House Bill 2265 also incorporates the
5 requirement that a former spouse must have been
6 married to the military member for ten or more
7 years during which time the member performed ten
8 years of service credible for military
9 retirement.

10 House Bill 2265 also returns our courts
11 to the sanity of Public Law 97252 where only an
12 unremarried former spouse is entitled to
13 certain military-related benefits and privileges,
14 including former spouse payments from military
15 retired pay.

16 This last requirement of the Act has too
17 frequently been ignored, unfairly cheating
18 taxpayers, and amounting to fraud. I do not take
19 this position lightly. I simply feel that the
20 monies should be judiciously dispensed and that
21 no beneficiary is entitled to extra helpings.

22 I know several cases where spouses
23 have remarried and draw two and three military
24 pensions. House Bill 2265 requires forfeiture of
25 that spousal award of retired pay if that party

1 before obtaining age 60 remarries or cohabitates
2 in a conjugal relationship with other persons.

3 I am happy to say that my military
4 career was supported by a dedicated and loving
5 wife who may have had more than ample reasons to
6 leave but stuck in there and who now shares my
7 retirement with me, and I might add, joyfully.
8 Thank you.

9 CHAIRPERSON COHEN: Thank you.
10 Mr. Grunewald.

11 MR. GRUNEWALD: Thank you, Madam
12 Chairman. Good morning. My name's Ken
13 Grunewald. I represent the Disabled American
14 Veterans of the Department of Pennsylvania, some
15 52,000 strong.

16 We are comprised solely of veterans who
17 have had honorable military service and are
18 either in receipt of disability compensation or
19 have been subjected to an injury or disease or
20 hardship by which disability compensation would
21 be considered.

22 We're actually present here this morning
23 because of the change or the amendment that HR
24 (sic) 2265 would bring to the Pennsylvania
25 Consolidated Statutes. My remarks have been

1 printed, and I'm going to deviate from them if I
2 may.

3 Some years ago as I was a National
4 Service Officer representing the interests of
5 disabled veterans for the last 21 and a half
6 years, one of the veterans that I recall
7 instantly when I looked at this legislation was a
8 triple amputee.

9 He was married prior to going into
10 service, had a family; and upon his return and
11 his rehabilitation, of course, many hardships
12 were imposed upon the family.

13 Fifteen years approximately after his
14 return to the United States, the wife and he
15 decided that the marriage was unreconcilable
16 and it was dissolved by the courts.

17 Through the courts, however, this
18 gentleman was living on less than 22 percent of
19 the entitlements that were granted to him by the
20 federal government. These, of course, are the
21 Social Security and Disability Compensation
22 Benefits. I believe that that is truthfully
23 unjust.

24 However, that's only one case. You've
25 heard this morning many testimonies of people who

1 have equal stories of hardships and/or marriages
2 that have been dissolved. We're concerned
3 primarily with the language.

4 Looking at the initial section of the
5 amendment under the general rule where it speaks
6 solely of ten years of credible military service
7 and ten years of marriage, we believe that this
8 language is vague.

9 There is other language that has been
10 adopted by the federal government. Title 10,
11 subchapter 1408 deals with the military and the
12 military retired pay; and it defines the court
13 and the court order. It defines the payment of
14 property and the entitlement and the division of
15 properties.

16 I've heard for the last half hour while
17 I've been in attendance the argument back and
18 forth as to who has identified and who has not
19 identified what is construed to be property and
20 the dissemination of the same.

21 The Social Security Administration has
22 separation and division of property. Our concern
23 specifically is that we have not identified a
24 date on which this law or amendment would be
25 construed to take effect.

1 Would it be the effective date that the
2 change or amendment in the statutes is adopted by
3 the Pennsylvania Assembly? The second part of
4 the problem that we see is the clarification of
5 forfeiture.

6 The forfeiture amendment indicates under
7 federal law as it stands now that upon the
8 remarriage of the spouse that that benefit would
9 terminate.

10 Yet I listened to this morning the
11 debate where people feel that the Pennsylvania
12 Legislature and other bodies are construed to
13 continue as in the past the entitlement which
14 would cause for multiple disbursements of the
15 funds from multiple marriages. We construed that
16 this is an inequity and it's not fair to the
17 parties.

18 Finally, my other concern is why are we
19 affixing the age 60 to the spouse as the date
20 that entitlement is terminated if there's no
21 remarriage? That party is not eligible for
22 Social Security at age 60.

23 And the only other entitlement would be
24 if there was a death of a member by which Social
25 Security would look at it at an earlier date.

1 Not having been a member of the Subcommittee's
2 past hearings, I'm in error and I apologize if
3 I've been redundant in my remarks or critical to
4 the Committee.

5 I would like to go on record as saying
6 that we the body of the Disabled American
7 Veterans is very supportive of this piece of
8 legislation; however, we were concerned as to
9 those areas I just defined.

10 I'd like to thank you and the Members of
11 the body for allowing me to be presented here
12 today for any comments.

13 CHAIRPERSON COHEN: Thank you, sir. I
14 appreciate your being here. I understand that
15 none of the Members has any questions. So we
16 thank you. If you have any further comments,
17 please be sure to send them to us in writing. We
18 appreciate you being here.

19 We're going to take a 10-minute break
20 for the reporter. Thank you.

21 (At which time, a brief break was taken.)

22 CHAIRPERSON COHEN: If we could
23 reconvene this hearing, we would like to welcome
24 Paul Hastings and Chaplain Colonel Charles
25 Kriete, United States Army Retired. Good

1 morning, gentlemen. We appreciate your being
2 here. You may begin at any time.

3 COLONEL KRIETE: Good morning. I'm
4 Chaplain colonel Charles Kriete. I think it
5 would be redundant if I read my prepared
6 statement because most of them at one time have
7 already covered it.

8 CHAIRPERSON COHEN: That's fine. Thank
9 you.

10 COLONEL KRIETE: I served for 27 years
11 as an Army chaplain. The first 12 years in
12 various troop units up and down the east coast in
13 Germany and Vietnam and the last 15 years in
14 various policy assignments: Chief of Chaplain's
15 office and Army Chaplain's School and I served on
16 the faculty of the Army War College for seven
17 years.

18 I've had to look at both sides of the
19 Army, and I think I would like to make two
20 points: The first is Army society and results
21 are very different from civilian life, and that
22 point's been very well made by Mrs. Ward. I
23 could smell the exhaust while she was speaking.

24 The chaplain in the Army does about a
25 hundred counseling cases for every counseling

1 case he did in civilian life. And I think from
2 listening to the comments of both the Legislators
3 and the testimony, I encourage and entreat you
4 not to assume that the military member is always
5 the person at fault in the divorce.

6 It breaks, in my experience, out to about
7 50/50, for a lot of reasons. And, of course,
8 that's the reason we have no-fault divorce laws.
9 I think there has been an assumption in some of
10 the comments that I've heard that our sympathies
11 ought to lie with the dependent spouse. And I
12 think that we need to be careful to guard against
13 that.

14 The other thing I would say is that I'm
15 not competent to address the legal aspects of
16 this or to decide whether retired military pay
17 should be considered property or a pension.
18 Those are issues that you have to decide.

19 But I think that the bearing on the case
20 is that the military person feels that it is a
21 pension and not property. And I think it's very
22 important for us to recognize that and to take
23 that into account when we look at this bill.

24 As I understand the Bill -- not from a
25 legal perspective, but from the perspective of a

1 chaplain who's looking at his own retirement, a
2 very happy 51-year-old marriage that I wouldn't
3 trade for anything in the world, the contribution
4 that my wife made and looking at the people I
5 know who have been divorced, the cases I've
6 handled, those divorces and what they mean, I
7 feel that there should be a limit on the amount
8 that the divorce should take out of the military
9 person's hide.

10 And I understand that that's what this
11 Bill does, and that's why I support your Bill.
12 Thank you.

13 CHAIRPERSON COHEN: Thank you, sir.

14 MAJOR HASTINGS: Good morning, Madam
15 Chairman and Distinguished Members of the
16 Committee. I'm Major Paul Hastings, United
17 States Marine Corps retired. I want to thank you
18 for the opportunity to testify on the merits of
19 House Bill 2265.

20 I'm deeply appreciative of this
21 opportunity to appear before this Committee to
22 discuss this important issue. In July of 1984,
23 Governor Dick Thornburg appointed me as a member
24 at large to fill the Vietnam Veterans slot on
25 State Veterans' Commission, and I've been

1 reappointed by two subsequent Governors to
2 continue to serve on the Veterans' Commission.

3 I was elected by my peers to serve as
4 the chairman of the Veterans' Commission in 1991,
5 and I have served in that capacity until the
6 present.

7 I need to make it very clear that I'm
8 not testifying on behalf of the Commission or any
9 of the organizations to which I belong as a
10 member; although, I am aware that some of the
11 organizations of which I am a member have taken
12 a position on the issue before the Task Force.

13 I personally have not attended such
14 meetings of any organization where this issue was
15 discussed; however, in view of my position as the
16 Chairman of the State Veterans' Commission, I'm
17 sure this issue can be put on the agenda for
18 discussion and a position taken by the Commission
19 either after the July 31st meeting upcoming or a
20 subsequent meeting of the Commission.

21 Prior to enactment of Title 10, Public
22 Law 97252, in 1982, there was no federal
23 authority for states to consider military retired
24 pay as property for the purpose of division and
25 divorce action.

1 In fact, a landmark decision by the U.S.
2 Supreme Court on June the 26th, 1981, the court
3 ruled in *Mcarty versus Mcarty* that military
4 retired pay was not community property and
5 suggested that if it were treated as community
6 property federal interests could be supported.

7 Unfortunately, the Supreme Court
8 suggested that there could be situations where it
9 might be desirable either to prevent a spouse
10 from becoming financially impoverished. The
11 state should have authority to treat retired pay
12 as a marital asset.

13 Thus the Supreme Court made it obvious
14 that Congress might want to consider legislative
15 changes to overriding *Mcarty*. The Act was
16 enacted in 1982. Congress interceded in the
17 former spouse's behalf and authorized state
18 courts to treat retired pay as property solely of
19 the retiree or as property of the retiree and
20 the spouse.

21 At the court's discretion, at pro rata
22 share not to exceed 50 percent of disposable
23 retired pay may be awarded to the former spouse.
24 The enabling legislation also provided certain
25 safeguards to protect the retiree's interest.

1 But in retrospect, many of the safeguards failed
2 to function as intended.

3 Now approximately 16 years after
4 enactment of the Act there is no doubt that the
5 Act has swung the pendulum too far off center in
6 the former spouse. In fact, a review of family
7 law cases reveals numerous instances where the
8 state courts have abused the intent of Congress
9 in ruling some USFSPA cases.

10 For example, state courts circumvent
11 prohibitions of the division of VA Disability
12 Compensation. State courts have awarded retired
13 pay while the member is still serving.

14 The service member must therefore
15 provide the spouse a share of what the
16 retirement would have been if the member retired,
17 even though the member might serve another ten
18 years before retiring.

19 State courts provide windfalls to former
20 spouses by basing awards on grade and years of
21 service at the time of retirement instead of
22 grade and years of service at the time of
23 divorce.

24 For example, if the divorce occurs while
25 the member's an E-5 with ten years of service and

1 later retires as an E-9 with thirty years of
2 service, then the former spouse's share is based
3 on E-9 retired pay.

4 Not only are there abuses of
5 Congressional intent, but the Act treats military
6 retirees different than members of the Foreign
7 Service and the CIA from whom payments terminate
8 if the former spouse remarries before a certain
9 age.

10 Whereas under the Act, payments are for
11 the life of the military retiree and continue
12 even if the former spouse remarries and in
13 factors such as desertion, adultery, multiple
14 marriages or other culpable factors are not taken
15 into consideration.

16 As a member of the Retired Officers
17 Association, I concur wholeheartedly with Colonel
18 Paul W. Arcari's letter of March, 1998, to
19 Representative Roberts. I know Colonel Arcari
20 personally and I'm aware of his background as a
21 director of government relations for TROA.

22 I concur that forfeiture should
23 terminate upon a former spouse's remarriage at
24 any age. In addition, I believe that paragraph
25 3509 (a) of the current Act should be clarified

1 to include the verbiage that the court may, quote,
2 subject to other provisions of this chapter
3 divide a pro rata share not to exceed 50 percent
4 of disposable retired pay of a party and so
5 forth.

6 I am aware that the American Legion and
7 the Veterans of Foreign Wars adopted resolutions
8 at their 1997 national conventions to petition
9 Congress to correct the inequities of Public law
10 97252.

11 Further, a recent development at the
12 urging of the Military Coalition, which is a
13 consortium of military veterans' organizations
14 representing more than 5 million current and
15 former members of the uniformed services,
16 Congressman Bob Stump, Republican from Nevada,
17 introduced legislation to attempt to build more
18 equity into the U.S. -- the Family Support Act.

19 Stump's Bill, HR 2537, addresses several
20 of the issues discussed above; however, because
21 of the provision in the fiscal year '98 Defense
22 Authorization Bill which directs the Department
23 of Defense to conduct a study of the Spousal Act
24 with a report due to Congress by September of
25 '99, no meaningful federal reforms are expected

1 prior to the year 2000.

2 Although enactment of House Bill 2265
3 would not resolve all of the inequities in the
4 Act, it would be a critical first step to
5 restoring equity to the service members who are
6 divorced after its effective date upon adoption.

7 Therefore, I strongly support House Bill
8 2265 even though it would not eliminate the
9 inequities imposed on service members over the
10 more than 16-years plus life span of the Act.

11 It is far more preferable to enact some
12 relief now than to wait for further Congressional
13 action to provide relief to military retirees of
14 Pennsylvania.

15 Madam Chairman and Members of the
16 Committee, I feel certain that the other
17 veterans' organizations here in Pennsylvania
18 would support this Bill with the amendments
19 mentioned above at subsequent meetings of
20 the Pennsylvania War Veterans Council and the
21 State Veterans Commission if presented to those
22 bodies for consideration.

23 The full body of the Pennsylvania War
24 Veterans Council does not meet until September.
25 I want to thank the Chairman again for the

1 opportunity to testify on this issue, and I know
2 that retirees share my gratitude for whatever
3 assistance you can provide. Thank you.

4 CHAIRPERSON COHEN: Thank you,
5 gentlemen. I believe Representative Masland has
6 some questions.

7 REPRESENTATIVE MASLAND: Thank you.
8 First of all, Colonel Kriete, let me suggest that
9 even without this Bill there are limits as to
10 what can be taken from a military person's
11 retirement pay, property or otherwise.

12 The one limit is in the language that's
13 already existing as far as 50 percent. But the
14 other limit is, I think, more important that I
15 believe we just keep glossing over today; and
16 that is we're talking about equitable
17 distribution in Pennsylvania.

18 The Court is trying to do what is fair.
19 What is fair for both spouses, not just for the
20 non-military spouse but for the military spouse
21 as well. Now, I'm not going to try to convince
22 Major Hastings or Colonel Kriete as to what I
23 think are some of the problems with this Bill,
24 but let me just suggest that things are to be
25 done equitably.

1 And now I am quite confident that when I
2 speak at the Retired Officers Association in
3 September of this year at the Carlisle Barracks
4 I'll have something to talk about. Now, I think
5 I'll try to make sure I do that after dinner so
6 they feed me.

7 Let me just ask one question to Colonel
8 Kriete. In your capacity as a chaplain, did you
9 ever have somebody -- and this is going back to
10 some questions from Representative Roberts.

11 Did you ever have somebody come in and
12 say, you know, we're getting along okay. I'm
13 worried I think I, you know, I might want to get
14 divorced.

15 But if I get divorced and if she's going
16 to have a stake in my claim, so to speak, maybe I
17 should just get out of the military now rather
18 than building up any more of my military pension,
19 my military pay; I wonder if I should just get
20 out now because she has a claim.

21 COLONEL KRIETE: My experience is that
22 by the time a man or woman has served ten years
23 and is married to a person that really can't
24 tolerate the total control that is represented by
25 military bases, they either decide to get

1 divorced amicably or she puts aside -- generally,
2 it's the wife -- her own feelings and toughs it
3 out for twenty years so that they can get a
4 pension.

5 It's not the cause of the divorce in
6 most of the cases that I've dealt with.

7 REPRESENTATIVE MASLAND: Well, I guess
8 my question then was not real clear. Did you
9 ever run into people that were deciding whether
10 or not to stay in the military, the enlisted man,
11 the military person is deciding, well, if I'm going
12 to lose something here, I might as well get out
13 now?

14 If we're talking about the military
15 spouse deciding to get out early, there's the
16 Guard or the regular services, because there is
17 this threat hanging over of this military pension
18 being considered marital property?

19 COLONEL KRIETE: No, I have not had that
20 experience with enlisted people. They tend not
21 to look at the future in the same way that the
22 officers do.

23 REPRESENTATIVE MASLAND: Did you ever
24 have that experience with any officers?

25 COLONEL KRIETE: The divorce experience

1 I'm describing, yes, they do calculate that way
2 in some cases. I would say my own experience is
3 it's not the -- it can be the precipitating
4 cause; but it's not the cause of the divorce.
5 It's the cause of leaving the service.

6 Sometimes the man takes the divorce and
7 they part company amicable. In that case, it's
8 hard to tell what the cause of the divorce was.
9 I don't try to figure out cause.

10 REPRESENTATIVE MASLAND: Let me just
11 suggest that someone who is going to weigh on the
12 one hand the length of their military service as
13 well as the length of their marriage, to somehow
14 play them off against each other is not going to
15 be -- probably not going to be a very good spouse
16 on the one hand and probably not going to be a
17 very good serviceman on the other if that's the
18 way they make their decision, getting back to
19 Representative Robert's questions.

20 COLONEL KRIETE: I don't think I would
21 agree with that. I gave up a long time ago
22 trying to define what makes a person a good
23 spouse and what -- but I do know a little bit
24 about what makes them good officers and
25 sergeants.

1 And Captain Ault was right when he said
2 this Act impacts more heavily on enlisted people
3 than it does on officers because there's less
4 total money involved in a divorce.

5 I think the causes of divorce and the
6 causes of -- the cause for a person staying in
7 the Army, even though it may cost him his
8 marriage, is frequently the amount of retirement
9 he's going to have.

10 When a guy can retire in his 40's with
11 twenty years of service with a nice bundle coming
12 in every month, that gives him a base of
13 operations for him to do a lot of things that
14 he's always wanted to do and haven't been able.
15 So this is a factor in whether people stay in the
16 Army.

17 REPRESENTATIVE MASLAND: I agree it's a
18 factor of whether they stay in. If they're going
19 to play off the divorce versus the
20 military -- the marriage versus the military as
21 to whether or not they stay in longer because
22 she's going to get more or I get out now so she
23 gets less, then I think that they're a bad spouse
24 and they're also probably not doing the military
25 the service they should be.

1 COLONEL KRIETE: I agree that they'd be
2 a bad spouse. I'm not sure that I'd agree that
3 they would be --

4 REPRESENTATIVE MASLAND: Just to leave
5 the military because they don't want her getting
6 more is a valid reason?

7 COLONEL KRIETE: Well, I don't think
8 they would leave the military because of --

9 REPRESENTATIVE MASLAND: I'm saying if
10 they would say I'm going to leave --

11 COLONEL KRIETE: Yeah, I see your point.
12 I misunderstood your point. I think that's
13 correct. They would not be the kind of dedicated
14 person you'd want.

15 REPRESENTATIVE MASLAND: Thank you.
16 That's all I have.

17 CHAIRPERSON COHEN: Thank you,
18 Representative Masland. Representative Roberts.

19 REPRESENTATIVE ROBERTS: Thank you,
20 Madam Chairman. Major Hastings, are you going to
21 take this issue before the Commission for us?

22 MAJOR HASTINGS: I'm certainly going to
23 recommend it be put on the agenda.

24 REPRESENTATIVE ROBERTS: And if you
25 would a get a position, I would appreciate it if

1 you would send me a letter or a resolution,
2 whatever comes of that.

3 MAJOR HASTINGS: Thank you, sir.

4 CHAIRPERSON COHEN: Thank you,
5 Representative Roberts. Gentlemen, we appreciate
6 your being here. Thank you very much. The last
7 person to appear before us today is Leslie Love
8 Engle, an attorney and Chair of the Family Law
9 Section of the Philadelphia Bar Association.

10 Welcome, and we appreciate, again, your
11 being here and you may proceed whenever you're
12 ready.

13 MS. ENGLE: Good morning, Madam
14 Chairman, thank you for the invitation, Members
15 of the Task Force.

16 My name is Leslie Love Engle. I am
17 Chair of the Family Law Section of the
18 Philadelphia Bar Association and I'm here to
19 testify in opposition to the bill you are
20 considering today, House Bill 2265, providing for
21 the division of military pensions.

22 Unfortunately, the Family Law Section
23 learned of this hearing only a few weeks ago
24 which didn't give us enough time to write a
25 resolution, take it to the Board of Governors and

1 so on; but we will be doing that this month.

2 However, I can tell you I'm authorized
3 to be here by the Executive Committee of the
4 section, the Family Law Section, by the
5 Chancellor of the -- Mark Abercheck
6 (phonetic) and by the chairman of the Board of
7 Governors.

8 I must tell you that I have read this
9 legislation with great puzzlement. I have been
10 unable to grasp the purpose to be served by
11 providing that an equitable distribution award of
12 a share of a military pension can be forfeited by
13 certain behavior of the recipient's spouse.

14 Let me give you some examples to
15 illustrate the problem that I've been having
16 preceded by a brief review of the Divorce Code of
17 Pennsylvania and case law, because with respect
18 to Representative Roberts, I think that you've
19 confused alimony and equitable division of
20 property under the law in Pennsylvania as you all
21 have passed it.

22 As you know, marital misconduct is one
23 of the factors that the court must consider
24 before making an award of alimony and alimony is
25 terminated upon remarriage.

1 And that comes from the Internal Revenue
2 Code, which, of course, makes you unable to claim
3 a deduction for alimony if you don't have that
4 provision written into the alimony award.

5 And also it terminates upon cohabitation
6 with -- as you put it in the law, cohabitation
7 with a member of the opposite sex other than a
8 family member.

9 The rationale here I would suppose is
10 that the Legislature found offensive the idea
11 that a person would be required to pay support,
12 alimony, to a remarried or a cohabiting
13 ex-spouse.

14 The opposite is true, however, about the
15 determination of a fair division of marital
16 property where marital misconduct has been
17 specifically excluded by you the Legislature as a
18 factor to be considered and where there is no
19 provision for forfeiture of an equitable
20 distribution award due to remarriage or to
21 cohabitation after divorce.

22 The rationale for this exclusion is
23 based on a recognition of the fact that marital
24 misconduct -- that is, conduct that rises to the
25 level of grounds for divorce -- has little to do

1 with the economic partnership of a marriage.

2 As the Supreme Court said in Zullo,
3 quote, The primary purpose of alimony is to
4 provide one spouse with sufficient income to
5 obtain the necessities of life, unquote.

6 Equitable distribution, on the other hand,
7 has been held to be a method for dealing with the
8 property rights of the spouses. It is a division
9 of the assets that were created by this economic
10 partnership.

11 Like child support, alimony can be
12 attached from the wages of the payor spouse.
13 Sometimes an alimony award covers the period of
14 time after retirement of the payor, in which case
15 the payor's retirement benefits are attached not
16 as an award of a share of that pension to the
17 recipient spouse, but as alimony paid from the
18 payor spouse's income which just happens to be at
19 this point pension benefits.

20 Since they are alimony, these payments
21 will terminate upon the recipient's remarriage or
22 cohabitation with a person of the opposite sex
23 who is not a family member.

24 More often, however, a share of the
25 pension of an employee spouse is awarded to the

1 nonemployee spouse as part of an equitable
2 division of the marital property.

3 As the Supreme Court found in Flynn,
4 pension rights accumulated during the marriage
5 constitute a form of marital property subject to
6 equitable division without regard to the
7 contingent nature of the pension or whether it
8 has vested or matured.

9 When an award of pension is made as part
10 of an equitable distribution of marital property,
11 it is a permanent transfer of ownership of that
12 portion of the employee military's pension to the
13 nonemployee military.

14 As such, this pension award is not
15 affected by remarriage or cohabitation, unless,
16 of course, this proposed legislation becomes law.
17 In which case, in an equitable distribution award
18 of an military pension, that award would be
19 forfeited upon the remarriage or cohabitation of
20 the recipient military.

21 So let's move to those examples I
22 mentioned earlier to see how this plays out.
23 Hypothetical No. (1): A divorcing husband and
24 wife have only three major assets: A pension, a
25 house, and some cash investments.

1 Suppose the pension is in the husband's
2 name and the house and investments are in joint
3 names. If the marital pot is divided more or
4 less equally, often the wife would get the house,
5 the husband keeps his pension, and the liquid
6 assets are split between them in some way to
7 balance out the final numbers.

8 Now, if the wife remarries or cohabits
9 after divorce, the house and cash assets awarded
10 to her don't go back to her husband. In other
11 words, the assets are divided without regard to
12 marital fault and they stay divided without
13 regard to post-divorce behavior because this is
14 an economic division of property rights.

15 Example 2: The only major assets of
16 this marriage are two pensions: One from
17 husband's employment and one from wife's.

18 Suppose the wife had worked much longer
19 and at a higher paying job so her pension is
20 considerably larger than her husband's and when
21 the marital pot gets divided, husband gets not
22 only his pension and wife gets hers but he also
23 gets a portion of hers.

24 Husband receives an ownership interest
25 in wife's pension. Of course, he will not

1 receive a lump sum because unlike the situation
2 with the house and the cash investments, pensions
3 cannot be cashed in, nor does he have any rights
4 greater than wife's.

5 For example, he can't get benefits paid
6 to him before wife reaches retirement age under
7 the rules of her pension plan even if he is older
8 than she is.

9 Husband is granted in that case often a
10 deferred distribution of his property -- the
11 right to receive monthly payments from wife's
12 pension plan beginning on her retirement date
13 which would then continue regardless of his
14 marriage or cohabitation -- just as the wife in
15 the first hypothetical would keep the house and
16 investments regardless of whether she remarries
17 or cohabits.

18 Number 3: Husband was in the military
19 and married to wife for, whatever, not more than
20 ten years in terms of attachment or less
21 than that if the court decided to include the
22 pension and the parties have no other major
23 assets -- no house maybe because they've been
24 moving around.

25 After a hearing, a court decides based

1 on wife's contribution to the marriage -- and
2 that is what we're talking about here: Did she
3 or did she not contribute something to this
4 marriage?

5 And if she did, then under Pennsylvania
6 law she's entitled to share in all benefits as of
7 the marriage, including his military pension.
8 Under the present law, she would be awarded a
9 property right to a portion of husband's pension
10 that would become as much hers as if she had been
11 awarded a piece of real estate.

12 However, if House Bill 2265 becomes law,
13 then if wife ever remarries or cohabits, she'll
14 lose those property rights that she earned.
15 Again, let us be clear on this. We are not
16 dealing with alimony, which the Divorce Code and
17 federal tax regulations require to be terminated
18 in the case of cohabitation or remarriage.

19 We are talking about stripping from a
20 former military male or female the property
21 rights he or she was found by a court to be
22 entitled to either by agreement of the parties
23 and -- rather, the court or by court order. And
24 those -- that finding would be based on his or
25 her economic contribution to the marriage.

1 So I'm back to my puzzling question:
2 Why? Why should these former military wife's or
3 husband's right to her fair share of the marital
4 property which the court would have determined is
5 the pension, why should that depend on her
6 remaining single?

7 What purpose does it serve to terminate
8 those benefits if she cohabits or remarries?
9 Punishment of military ex-spouses? Regulation of
10 the conduct of military ex-spouses? Why only
11 military pensions?

12 Is this proposed legislation intended to
13 be the opening wedge of an attempt to make all
14 equitable distribution awards contingent on
15 future actions? But what public policy is served
16 by regulating post-divorce behavior?

17 As I said when I began, I am puzzled.
18 I am here to raise these questions in the hope of
19 learning from you just how this proposed
20 legislation furthers the public policy goals set
21 out in section 3102 of the Divorce Code to
22 effectuate economic justice between parties who
23 are divorcing or separated and grant or withhold
24 alimony according to the actual need and ability
25 to pay of the parties and ensure a fair and just

1 determination and settlement of their property
2 rights.

3 Or, in the absence of any such
4 rationale, I'm here to do my best to convince
5 you that this proposed legislation is a bad idea.

6 CHAIRPERSON COHEN: Thanks, Ms. Engle.
7 We appreciate it. Representative Roberts has a
8 question for you. Representative Roberts.

9 REPRESENTATIVE ROBERTS: Thank you,
10 Madam Chairman. Thank you, Ms. Engle. I have to
11 say that I take exception to your last comment.

12 MS. ENGLE: Of course. If this is your
13 idea, you wouldn't think it was bad.

14 REPRESENTATIVE ROBERTS: You asked an
15 awful lot of questions, and I don't want to take
16 up an awful lot of time to try to answer them.
17 I do have answers for most of them.

18 But I noticed when you first started
19 to speak that you said that you got short notice
20 and you didn't understand why. I would invite
21 you to do a little research on the Former Spouse
22 Protection Act and investigate the intent of that
23 Act.

24 And that's really what this is all
25 about. We have lost complete sight of the

1 intent of the Former Spouse Protection Act, and I
2 think if you would take the time to read the
3 debates and the intents of that Act you would get
4 answers to all of the questions that you asked
5 here.

6 MS. ENGLE: And that's the federal act,
7 yes.

8 REPRESENTATIVE ROBERTS: Yes, it is.
9 Yes, it is. But it is the intent of that Act
10 that you must advise -- you're an attorney and
11 you know the intent of the law is as good as the
12 law itself. I believe most attorneys will
13 recognize that.

14 But I would invite you and encourage you
15 to look at the intent of the Former Spousal
16 Protection Act.

17 MS. ENGLE: Thank you, sir.

18 REPRESENTATIVE ROBERTS: Thank you very
19 much. Thank you, Madam Chairman.

20 CHAIRPERSON COHEN: Thank you,
21 Representative Roberts. Thank you very much,
22 Ms. Engle. We appreciate again your taking the
23 time to be here and analyze this.

24 I want to thank all of the Members of
25 the Task Force and certainly thank Representative

1 Roberts for presenting this issue to us and
2 challenging us to consider this matter. Thanks
3 to those of you who testified and those of you
4 who are here today.

5 And to anyone who did not get the chance
6 to be here, to submit any comments or
7 suggestions, questions that you have in writing
8 to us, we will make them part of the record and
9 attempt to answer any of the questions that you
10 may have. With that, this hearing is adjourned.
11 Thank you.

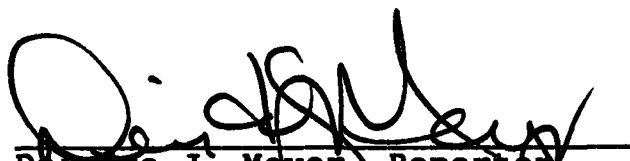
12 (At or about 11:53 a.m., the hearing was
13 adjourned.)

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C E R T I F I C A T E

I, Deirdre J. Meyer, Reporter, Notary Public, duly commissioned and qualified in and for the County of Lancaster, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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Deirdre J. Meyer, Reporter,
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