

TESTIMONY OF

EX-PARTNERS OF SERVICEMEN/WOMEN FOR EQUALITY

BEFORE

THE JUDICIARY COMMITTEE OF

THE PENNSYLVANIA HOUSE OF REPRESENTATIVES

JULY 27, 1998

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Good morning, ladies and gentlemen. Permit me to introduce myself. I am Kay Ward; I am a member of the Board of Directors of Ex-Partners Of Servicemen/women for Equality. On behalf of myself and the rest of our Board, let me say we are very pleased to have this opportunity to address this assembly.

We are a nonprofit organization, almost totally volunteer, founded in 1980. Our mission is to assist the military spouse in the many intricacies involved in military divorce. It is our experience that a great many military spouses are unable to acquire nor to interpret the information necessary to successfully protect their interests in military divorces. We endeavor to help them. We maintain a small office in Alexandria, Virginia and we are available five days a week to answer questions, to provide resource information, and sometimes simply to offer a sympathetic ear to the members of our organization. We currently have 3,000 members nationwide; we have helped more than 12,000 members over the years to successfully get on with their lives. We are proud of our accomplishments.

Although we do have some male members - men married to women in the military - and we do not wish to imply their problems are of any less concern to us, the preponderance of our membership is female. Because of this, I shall use the pronoun "she" to indicate the military spouse in this presentation.

Let us now discuss House Bill No. 2265

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We have no objection to the first portion of this Bill. While many former military spouses who are married for less than ten years do pursue shares of retirement pay, the moneys involved are negligible; it is totally understandable that awards of this type be denied. Having said that, let me also add the circumstances do alter cases, and on occasion such awards are fully justified. However, rather than legislate, we must rely upon the wisdom inherent in our judicial system to determine those rare cases.

The second portion of the proposed legislation, however, we feel must be addressed in a much more thorough manner. This section proposes that a former military spouse forfeit any right to retirement pay in the event she remarries before reaching age 60.

For purposes of this presentation, let us make two assumptions:

- 1 That the marriage was entered into in good faith by both parties with every hope and expectation of a life-long, fulfilling relationship; and
- 2 Said marriage is, for whatever reason, cannot be saved.

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

Let us consider the military spouse who has recently been divorced. Is she bitter? Sometimes she is. Angry? Sometimes she is. Relieved to be out of the marriage? Again, sometimes. There are as many reactions - as many emotions - as there are divorces. However, we have two unvarying truths.

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She no longer has a husband (as he no longer has a wife) but she alone has lost her support system - she is no longer "Military."

The life that this former spouse is leaving is a life of short-term commitments to any given area - a life wherein she is not only the primary caregiver, but often the only caregiver. The very nature of this life precludes career pursuits. Regardless of her educational background, there are very few careers which can withstand the multiple moves, the uncertainty of the life. Industry is understandably reluctant to invest time and money training an employee for upward mobility who may - at any time - announce she is leaving, her husband has been transferred.

Now, she is suddenly "on her own" and, although perhaps well into middle age, starting on her career path at ground zero. Although, it is our experience that most military former spouses do not have "careers" they have "jobs."

What - of a monetary nature - does she take from this marriage of over ten years - or over twenty years - or over thirty years? If she is divorcing in a community property state, she takes one half of the property acquired during the marriage. A house may be either sold and the proceeds divided or its ownership may be negotiated along with other similar assets; investments are divided, etc. This, of course, is the area of the divorce attorney. There is, however, another property involved here. It is the retirement pay of this woman's ex-husband. The courts have defined this also as "property." All

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too frequently, this is the only property available to a former military spouse from a long-term marriage. There is a formula for dividing this property - it is as follows:

$$\frac{\text{Years married while spouse served in the military}}{\text{Years spouse served in the military}} \times 50\%$$

For example, a 20 year marriage to a serviceperson who retires at 30 years of service would appear as follows:

$$\frac{20}{30} \times 50\%, \text{ or } 33.33\% \text{ of the retirement pay}$$

The former spouse receives these moneys upon the retirement of her ex-husband. Upon his retirement her ex-husband may perhaps embark upon a new, more lucrative career - probably due in large part to his experience in the military. He will, most likely, remarry and indeed enjoy the "good life." We wish him no ill will; we feel he is entitled to the best the world has to offer. However, we have the same good wishes for his ex-spouse. Is she not also entitled to a rich, fulfilling life? One other point here: Should the former spouse perhaps have a 401K plan, or something of a similar nature, it is divided equally at divorce between the two parties; there is no mention, however, of the moneys being returned upon his remarriage. Why then must she forfeit what has been awarded to her as property simply because she wishes to remarry? This defies logic - a house is certainly not returned upon remarriage; investments are not returned; "property" is just as it is defined, "something owned or possessed" - not something "loaned." Since there is no mention of the retirement pay being forfeited by the ex-serviceperson upon

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his remarriage, the implied meaning would seem to be that his ex-spouse has not "earned" the pension, that is it awarded in a rehabilitative manner, just until she remarries. This trivializes the role of the military wife. It is an insult! We wonder what has happened to the service philosophy which stated the military wife to have "the toughest job."

Another facet of this discussion must be the fact that many times retirement pay serves to meet mutual obligations of the serviceperson and his former spouse, i.e., the college education of children. To deny this retirement income to a spouse upon her remarriage is simply unjust. It puts an added burden on her new husband and may jeopardize her marriage, since frequently each party in a second marriage has prior financial obligations. This is her property and in all fairness it should be treated as such.

Additionally, the thrust of this legislation appears to be that the military is being singled out because they are called upon to provide a share of their retirement pay to their former spouses. Such is definitely NOT the case. Neither civil service nor private pension plans have a remarriage penalty. To treat the former military spouse in this manner is discriminatory.

As a rule, neither the civil service spouse nor those of persons in private industry are subject to the military spouse's multiple moves and frequent long periods of being both mother and father of the family. They, therefore, have greater opportunity to pursue individual careers.

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I wish to make one other observation. The Federal Former Spouses Protection Act - which provides the guidelines for military divorce - possesses a fail-safe factor. Decisions are made at the discretion of the individual judges at the state level on a case-by-case basis. The law specifies what a judge "may" grant - not what he or she "must" grant. There are NO guarantees, NO entitlements. This provision in the law precludes abuse; it serves to protect all parties involved.

Lastly, at this time there is no state in the union which requires a military former spouse to forfeit retirement pay upon remarriage. Should Pennsylvania enact this legislation, you risk becoming a haven for persons seeking to abrogate their responsibilities. I cannot believe you wish this to happen.

Thank you.