

March 7, 2011

**Re: “Military Retainer Pay Protection Act” (SB 528)**

Dear Senator,

On behalf of the undersigned organizations, we are writing to you today to express concerns with the proposed Military Retainer Pay Protection Act (SB 528), relating to the division of military retired pay resulting from divorce.

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

There are a number of provisions in the proposed legislation that raise concerns for the undersigned organizations, including the treatment of benefits based on the duration of the marriage and the treatment of disability pay generally. However, the main area of concern for the undersigned pertains to the proposal that military retirement benefits would terminate if the former spouse were to remarry or cohabit with a member of the opposite sex. The proposed legislation would in this regard alter how Oklahoma divorce courts treat military retired pay in a way that deviates from current law, as well as the law of *every other state*, to the detriment of military spouses whose sacrifices and support enable our troops to defend our country.

Under current law, divorce courts in Oklahoma, as in every other state, may<sup>1</sup> and generally do treat military retirement benefits as a marital asset, dividing the portion of the benefits accrued during the marriage equitably if the parties cannot agree to a division. The proposed legislation would require courts to terminate the division of benefits once the non-military former spouse cohabitates or remarries. Similar proposals have been introduced in the United States Congress but have never succeeded;<sup>2</sup> and it appears that at least on one occasion, legislative action on a similar proposal was deferred in response to comments by the Department of Defense.<sup>3</sup>

By requiring divorce courts to terminate benefits upon remarriage or cohabitation, the proposal would effectively transform the award of a marital asset, to which a spouse has a presumptive claim to a marital share, into an award of spousal support. This would represent a dramatic change to federal and state policy. It would make the treatment of

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

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

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

military retirement benefits drastically different from any other retirement system, whether public-sector (including pensions accrued through employment in federal, state or local governmental employment) and private-sector. As a result, an individual in the military would be presumptively entitled to a portion of his or her spouse's retirement benefits, if any, earned during the marriage regardless of marital status– but the non-military member spouse would have to remain unmarried and live alone in order to retain the right to receive benefits. What is more, because the proposal, if enacted, would apply retroactively, it would incentivize married individuals to seek divorce in order to retain their benefits. This is a clearly inequitable and undesirable result.

This proposal could have a devastating impact upon the retirement security of military spouses, many of whom have difficulty working outside the home because military families are subject to frequent relocations, including outside the United States, or because spouses of deployed military personnel are required to fulfill the family and caregiving responsibilities that would otherwise have been shared between the spouses. In addition, because the bill proposes to make this change retroactive to 1981, thus covering divorce decrees nearly thirty years old, the change could deprive former military spouses near or already in retirement of what could represent their sole source of retirement income besides Social Security – and would likely violate the Oklahoma state constitution's prohibition against ex post facto laws.<sup>4</sup>

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

For the above stated reasons, the undersigned organizations respectfully request that you vote against SB 528. Should you have any questions, please contact Rebecca Davis at the Pension Rights Center (202) 296-3776.

Sincerely,



Linda Hallman  
Executive Director  
American Association of University Women  
(AAUW)



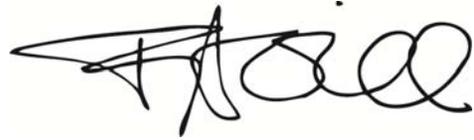
Eleanor Smeal  
President  
Feminist Majority

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<sup>4</sup> O.K. Const. art II, §15,( Bills of attainder - Ex post facto laws - Obligation of contracts - No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed.)



Susan Scanlan  
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National Council of Women's Organizations



Terry O'Neill  
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Joan Entmacher  
Vice President for Family Economic Security  
National Women's Law Center



Karen Ferguson  
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Cindy Hounsell  
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(WISER)

CC

Rita Aragon, Secretary of Oklahoma Department of Veterans Affairs  
Mary Fallin, Governor of Oklahoma  
Deborah Reheard, President Oklahoma Bar Association  
Mary T. Scott, Chair, The National Military Family Association  
Mary Walker, Chair, Oklahoma Commission on the Status of Women  
Donna Lawrence, Chair, The Oklahoma Women's Coalition  
Sheryl Lovelady, Director, The Women's Leadership Initiative  
Linda Jordan, Chair, The Tulsa Mayor's Commission on the Status of Women