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ANNUIITY PROVISIONS FOR FORMER SPOUSES

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HEARINGS

BEFORE THE

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SUBCOMMITTEE ON

COMPENSATION AND EMPLOYEE BENEFITS

OF THE

COMMITTEE ON

POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 3951

A BILL TO PROVIDE THAT A FORMER SPOUSE OF A FEDERAL EMPLOYEE WHO IS MARRIED TO SUCH EMPLOYEE FOR TWENTY YEARS OR MORE SHALL BE ENTITLED TO A PORTION OF SUCH EMPLOYEE'S ANNUITY AND TO A PORTION OF THE ANNUITY OF ANY SURVIVING SPOUSE OF SUCH EMPLOYEE

APRIL 19, MAY 4, 18, JUNE 15 AND 30, 1977

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## ANNUITY PROVISIONS FOR FORMER SPOUSES

TUESDAY, APRIL 19, 1977

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,  
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 304, Cannon House Office Building, Hon. Gladys Spellman (chairwoman of the subcommittee) presiding.

Mrs. SPELLMAN. The subcommittee will come to order.

We are having a difficult time getting assembled this morning. Many of our members are involved in different activities but a record of this hearing will be kept for the inspection of all interested parties.

A long time ago poets suggested that marriages are made in heaven and it wasn't until sometime in the 1800's that another writer said that if marriages are made in heaven they should be happy.

I'm sure most of us know marriages that seemingly were made in heaven. I have one of those and I'm knocking on wood. I'm not superstitious I just knock on wood. Most of us know marriages which obviously work.

We convened this morning to consider one of the major ironies of modern American life: the great disparity between the emotional values which we as a society assign the role of woman as a mother and homemaker and the economic rewards attached to those same roots.

The bill before us is H.R. 3951 which provides that a former spouse of a Federal employee who was married to that employee for 20 years or more shall be entitled to a portion of the employee's annuity. He or she would also be entitled to a portion of the annuity of any surviving spouse of the employee.

I say he or she because many people perceive this as a bill which effects and benefits women only. But while the bill will mostly benefit women in its initial stages since men earn more than women the increasing number of women in higher positions in the Federal workforce suggests strongly that the bill will greatly benefit men in the years to come.

This country idealizes the woman as mother and homemaker and strongly encourages the institution of marriage itself, but the high value that we place on those roles is emotional and not economic. If a woman devotes what would otherwise be peak earning years to home, husband, and children, no society which calls itself just should later penalize her for that choice.



In a perfect world, all marriages would be good, lasting, and rewarding for both spouses. But in the real world, where some marriages fail, no matter how great the rewards of happiness remembered, they won't pay the rent or buy the groceries.

We are a society which rightly places values on homes and families. We are encouraging women to stay home and take care of children, yet, one of the most severe forms of economic discrimination is that we fail to attach an economic value to this service. This feature of pension portability and earned right for the homemaker is essential if spouses are to have choices of whether to work inside or outside the home.

I was perturbed to learn from the staff that the American Bar Association has declined to testify at these hearings despite its 1974 policy recognizing the economic contribution of the homemaker. The bar association now says it has no policy in this area of the law.

Approximately 4 million employees, active and retired, rely on the Federal civil service retirement system for retirement benefits. However, this Federal pension plan fails to provide economic protection to the former spouse of a Federal worker. This failure in the system leaves the dependent spouse with no direct retirement benefits despite many years of working for no pay, managing a home, raising children, and contributing time and effort to the joint marital enterprise.

I know that as far back as 1963, the report of the President's Commission on the Status of Women affirmed that marriage as a partnership in which each spouse makes a different, but important contribution, is increasingly recognized as a reality in this country. During marriage, each spouse should, therefore, have a legally defined substantial right of the earnings of the other, in the real and personal property acquired through those earnings, and in their management. Such a right should be legally recognized as surviving the marriage in the event of its termination by divorce, annulment, or death. Appropriate legislation should safeguard either spouse and should protect the surviving spouse against improper alienation of the property of the other.

The bill is based on that thesis. It is but a small step toward accomplishments of its goals.

Our first witness this morning I am very pleased to say is a woman who has been working in the field of people's rights for quite some time.

I have worked with this very capable woman in our county government and I know of the enormous contributions that she has made in the Maryland General Assembly. I can recall the day when in the general assembly women were not given posts of chairman—or chairperson. We were not allowed to chair committees and when our next speaker raised the question about that, the speaker assigned her to be chairman of the women's lounges, ladies' rooms.

I think we have come a long way since that time in the general assembly although Pauline says, "so-so, not far enough." But I know the contribution that she has made and I know her very capable efforts along these lines so I'm very pleased and proud to present a good friend, the Honorable Pauline H. Menes, who is speaking as a member of the Women's Caucus of the Maryland General Assembly.



**STATEMENT OF HON. PAULINE H. MENES, PRESIDENT, WOMEN'S  
CAUCUS OF THE MARYLAND GENERAL ASSEMBLY**

Mrs. MENES. Thank you very much, Madam Chairman, for the kind introduction.

Mrs. SPELLMAN. Are you president of the caucus?

Mrs. MENES. Yes; I am. Just in case your introduction implies that there have been tremendous steps in improving the leadership potential of women in the Maryland Legislature let me indicate that through today, no women chair a standing committee nor a subcommittee of a standing committee but we do have a number of our members who chair special committees so we are moving forward, but much too slowly.

The history of our country demonstrates that when a large group of people feel repressed or frustrated by a serious inequity which touches their lives, change is inevitable. It never comes quickly enough for those seeking the remedy, but if the solution involves a rebalancing of rights, power, or money, some other group is resisting the change equally zealously. H.R. 3951 is a bill that attempts to rebalance such an inequity.

The Federal Government has been the leader in developing the employee retirement concept. The Congress has accepted responsibility not only for decent hours, wages, and working conditions for Federal workers, but also Congress accepted an obligation to the individual Federal employee to be able to maintain themselves in their retirement at a level related to the level of their earnings. Then followed the policy, again set by Congress, that all workers in the private sector should develop some postretirement resources, and social security was begun.

With family stability and permanence no longer the usual circumstances, and with women of middle years and older not yet prepared for independent financial security, a most inequitable situation has developed. The retirement system of the Federal Government and the system of social security both recognized the vested interest of the spouse of the employee in some share in the retirement income in case of death or disability of the worker spouse. No thought was given then to the social revolution we are engaged in today. Long-established marriages are ending in divorce, leaving one spouse, usually the women, in middle age with no means of caring for themselves financially, nor sufficient remaining work years to adequately earn their own retirement credits. They are therefore unable to provide for their senior years when they are no longer able to work.

Since it is a matter of public policy to encourage one spouse to stay home during the formative years of the children, it is essential that both spouses be given a vested interest in the pension of the working spouse.

H.R. 3951 provides for a fair and equitable sharing of the assets of a pension between the employee and the spouse if they were married for a minimum of 20 years, while the retirement credit was accruing.

Because the bill provides only for a pro rata share based on the number of years of marriage during which the Federal employee was



earning creditable retirement benefits, there would be no additional cost to the system.

All of the women elected to the Maryland State Legislature have organized into a women's caucus which I serve as President. In setting legislative priorities for the 1977 session, the caucus included the subject of pensions and retirement. This decision was in recognition of the high priority set by the women of the State of Maryland to try to correct the economic imbalance presently existing for those families where the more traditional pattern of life was followed. We have each heard from constituents and from citizens coming to testify before our committees that the homemaker spouse is left unprotected when the worker spouse of 20 and more years divorces, and in some cases, remarries at or near retirement. The new spouse becomes the beneficiary of the many years of struggle which went into the effort to earn the retirement credit. For many of these "cast off" spouses it meant taking care of home and children alone, while the working spouse traveled. For others it involved moving to many different posts, uprooting the family time and time again; each new move bringing new problems of dislocation and the attendant trauma to the children. Too little if any thought was given to the large contribution of the homemaker spouse which in fact made the earning of the pension possible.

The Women's Legislative Caucus supported efforts during the recent session to share death benefits with the divorced spouse of a Maryland employee in the same way that the Federal social security law applies. Our statement of support reads:

The Women's Caucus of the Maryland General Assembly has set pension equity as a legislative priority this session. The Women's Caucus supports House Bill No. 1396.

This bill would correct an injustice in the present pension system that leaves a homemaker without a death benefit because her husband divorced her after many years of marriage. Women who choose as their career the raising of children and providing domestic services for their families do not have a pension plan of their own. In effect they have counted on that plan to support them if left a widow. House bill No. 1396 would guarantee a homemaker a share of her husband's death benefit in proportion to the number of years she was married to him.

We urge your support of House bill No. 1396.

Unfortunately, this and other bills affecting the Maryland pension system were not passed, but instead were sent to the Policy Committee for assignments to a special study committee for consideration during the next legislative session. We members of the Women's Caucus of the Maryland General Assembly look to you in the Congress to continue to point the way in adopting this far reaching and sorely needed concept of equity in pension rights. We are confident that once the concept is accepted on the Federal level it will be easier for the States to follow and hopefully then the private sector. For a significant step in the direction of economic justice this bill must pass.

Mrs. SPELLMAN. Thank you very much. Do I understand that your organization supports this bill?

Mrs. MENES. The organization did not have an opportunity of reviewing this bill but the organization did take a stand on the concept.

We feel that the position of the spouse of a military person is even in a more disadvantageous position if divorced and given no equity in the military retirement that the spouse earns.



In many many instances the divorced homemaker's spouse is at a young enough age to go on and work at annuity earning jobs but surely the spouse married during the time of the accumulation of credits under the military retirement system should be included in any concept that you develop for the sharing of those earned benefits.

Mrs. SPELLMAN. Very good. That is an excellent point.

That jurisdiction would be under the Armed Services Committee, and I did want to point out that—that this bill was presented by Congresswoman Patricia Schroeder who is also preparing a similar bill to cover the armed services.

Mrs. MENES. Very good.

Mrs. SPELLMAN. I am especially interested in your comment that this bill would recognize that the homemaker spouse has in fact earned a vested interest in the working spouse's annuity. Although I don't want to imply that the homemaker is nonworking. It is harder work and I admire the people who can do what they are doing.

Certainly this isn't intended to be a form of welfare but a recognition of what is really earned.

Mrs. MENES. This is truly becoming a policy position to be taken at all levels of government. The homemaker spouse, and truly we can use the word spouse now because we are seeing the development of some families where the husband is by choice becoming a homemaker spouse, is a rather new concept. We are beginning to see it more and more. It is truly a matter of public interest that we encourage in all ways possible one of the adult members of the family to assume the full responsibility of being the homemaker because we see the dire results in some instances where children are left without adequate supervision and without the concern of either spouse for the upbringing of the children. I think therefore, that it is a matter of significant public policy and we should encourage it or reward it or recognize it in whatever way we possibly can as we set government policy, rules, or regulations, or as we set statutes in law.

Mrs. SPELLMAN. Some of the opponents of the bill point out that it makes no distinction between wives, husbands, and retirees. For example, what about a secretary who retires on a relatively small pension after divorcing her husband of over 20 years. Under this bill she would have to share that small pension with him even if he had plenty of money from other sources.

Do you have any comments?

Mrs. MENES. I think it is a valid concern and I would not be at all disappointed if there were some floor put under the credits so that you would eliminate from a sharing where the economic necessity is not shown.

We also have to be concerned I think about the instance of the divorce settlement where perhaps a sharing of the asset in the pensions is determined in the course of the divorce and in the court room and there may be decisions made at that time agreeable to both parties or mandated by the court that have or should have priority over the statute. I think that ought to be taken into consideration where there are court decisions or a private agreement such as a no-fault divorce where we are attempting to encourage the spouses to come to mutually



agreeable settlements outside of the court and cutting the high cost of divorce by coming to an agreeable settlement on their own.

I would advise that in most cases by statement put into the court record the automatic value in the retirement system would not then have to be distributed as your bill determines.

Mrs. SPELLMAN. For the record, our attorney points out that the bill gives women the right, but it isn't mandatory.

Mrs. MENES. Then that will solve the court problem in a mutually agreed divorce.

Mrs. SPELLMAN. I have letters from men who indicate that they would like very much to leave their first wives on record as their beneficiaries. I know a man who says he's now remarried and my present wife doesn't really need the annuity that might be left to her so he wants to leave it to his first wife who worked for years raising their family, but he isn't able to do it under the present law.

Mrs. MENES. I find that surprising. It is my understanding that the working spouse names the beneficiary. And as a matter of fact in Maryland we had some concern because a change in beneficiary was permitted without the former beneficiary being notified.

Now I'm not certain about the Federal—

Mrs. SPELLMAN. Under Federal statute the beneficiary must be a member of the immediate family. A divorced wife is no longer a member of the immediate family.

Mrs. MENES. The working spouse could name one of the children and even the present wife could find herself circumvented, I presume.

The working spouse could assign to one of the children the benefits of the pension, and the wife while even not divorced and still living and in financial need, might not get the benefits of the retirement. Now I am not that familiar with the Federal system but this was a matter brought to our attention at the State level. We were made aware of the fact that the employee could on their own initiative without any notification to any beneficiary change the beneficiary. That would also mean that the working spouse's mother, father, brother I imagine that they are all considered family under the Federal statute. It does not have to be one's own wife or children but usually your brothers and sisters and your mother and father are also considered family so you can circumvent your responsibility to your own family by assigning as beneficiaries a parent or a brother or sister or a child and in that way also renege on any responsibility that someone owes to a spouse and do all this without the spouse even being aware that he or she is no longer the beneficiary.

Mrs. SPELLMAN. Mr. McCluskey.

Mr. MCCLUSKEY. For the record I would like to clear up that in the Federal retirement system if a Federal retiree or Federal employee at the time of retirement elects to provide an annuity for his wife or his spouse that is an irrevocable election.

Mrs. MENES. At retirement?

Mr. MCCLUSKEY. And he can only provide for his spouse. He cannot provide for his child or his brother or his sister or his mother. Only a single annuitant may do that.

Mrs. SPELLMAN. For his child?



Mr. McCLUSKEY. Well, for his immediate family or brother, sister, mother, or father. In some cases it could be a child.

Mrs. SPELLMAN. It could be a child if he is divorced.

Mr. McCLUSKEY. Under Federal law if he takes that election and then later remarries he cannot leave it to his children in the first marriage even. It is automatically reduced for the second spouse so there is no getting around it in the Federal system. The way to get around it is to not elect to choose to provide for your spouse and just don't tell them.

Mrs. MENES. I am concerned about the election preretirement. You usually indicate your beneficiary at the time you sign up for your retirement program which would be at the time of employment.

Mr. McCLUSKEY. When a person is ready to retire he then makes an election whether or not to take or reduce the annuity to provide for his spouse.

Mrs. MENES. Or the lump sum benefit?

Mr. McCLUSKEY. Well, he's going to receive the entire annuity. He makes that election to choose to receive a full annuity. He is then notified again from the Civil Service Commission if you do not choose to take a reduced annuity you are not providing for the spouse in the future. In other words, it is reaffirmed to make sure that he understands his position or her position.

Mrs. MENES. I see.

Mr. McCLUSKEY. And once he writes back, "I've made my choice," that's it. And he receives the full annuity. If he chooses or she chooses to provide for the spouse then he checks the reduced annuity block and the spouse is taken care of.

Mrs. SPELLMAN. There is one area that concerns me and that is the fact that the spouse does not necessarily have to know whether his wife or her husband has elected to have a survivor benefit. We are advised by the Civil Service Commission that one of the saddest jobs that their people have to perform is to say to the surviving spouse, "Well, you weren't taken care of." Usually it is an older woman who says I can't believe my husband would have done that to me. We had a good marriage. He loved me. Why would he have done that? But he did do it without her knowledge and it is irrevocable so I am investigating legislation which would require both spouses' signatures at the time that the election is made.

At this point then I will ask the gentleman from Iowa, Mr. Leach, if he has any questions?

Mr. LEACH. I just have one. It related to flexibility when you are dealing with a very serious problem of an individual who is divorced. I'm kind of presuming she had a major divorce. What about the situation when after 20 years the man retires and divorces his wife and remarries and maybe remarried for 20 years and that first divorce might have had a substantial settlement and that person might also get married and then under this the second wife might be somewhat prejudiced against in favor of the first wife. Now I am not sure but can you address that issue and whether or not the instance of flexibility is built in or if this pretty well covers that issue?



Mrs. MENES. Well I truly think that the family unit that earns the credit deserves the reward and there are certainly economic problems in any family where the spouses separate and each one proceeds to develop new family ties. There are more problems created of an economic nature than we care to go into today but I'm not at all sure that those other problems are related to the concept here. The concept is that if there is a family unit working together and sharing responsibility at a time a certain economic equity was earned and the distribution of that equity should take that into consideration and other situations that develop postearning of the equity must deal with that time.

Mr. LEACH. But what happens if there is a recognition that develops of equity at the time of divorce and there is a very generous settlement involved and then the person goes on and marries someone and they live with them for a long period of time and that individual is suddenly left without benefits.

I think this bill addresses a very serious problem but then it creates another problem at the same time. It seems to me that that second wife, coming in with no retirement, is faced with the possibility that the husband is also possibly paying support to the first wife over a given period of time. They possibly made a major settlement. My question is, is there a flexibility that might be built into the bill to handle the second circumstance or am I visualizing the circumstances as far-fetched, in your judgment?

Mrs. MENES. I'm not at all sure that it is farfetched. If the financial arrangement with the original spouse were other than a lump sum payment then that couple had access to court to renegotiate or to change the settlement if it is a continuing alimony payment for instance. So there is that avenue of reequalizing. If there is in fact some disequilibrium that has developed.

Mr. LEACH. Who has that, the second wife or the first?

Mrs. MENES. Both spouses as long as there is a continuity of payment between spouses for support. Either spouse can get back into court for the judge to redetermine whether or not the payment level is equitable.

Mr. LEACH. But the second spouse has full recourse to the retirement benefits which at this point would be arbitrary.

Mrs. MENES. What I am referring to is that the husband will be able to go back into court and say that my former wife has remarried. Usually the settlement has specific terms that bring them back into court for reevaluation at a minimum when the spouse remarries. But very often, I think much more usual, is that no additional support is given once the first spouse remarries. Stopping support payments are contingent upon her remarrying.

We are talking in terms of he's and she's again but very few if any, pay alimony once the original spouse remarries so that there is a realigning of the economic equity here. But I think you are also disabused of the reality in terms of what the financial support relationship is. In fact, very few wives get much of anything in the way of payments, regardless of the economic status of their husbands. The husband tries to make the situation as uncomfortable as possible for the former wife, and here again I'm talking about the majority of cases. It's not true



always. But there's usually such antagonism that the one weapon that the wage earner has against the homemaker spouse is not to send the payments on time if in fact the payments are sent at all.

In my experience and in the information brought to me by women in the community much more frequently no money comes regardless of what the court has decreed and when the spouse, the working spouse is brought into court and is ready to be charged with the crime of not following the orders of the court then a couple of payments are made once again and it's dropped from the court docket. Once again, the nonworking spouse finds herself or himself without the resources that really are carrying the family. Usually the former wife and one or two or more children are trying to exist on the income from the former working spouse.

And the percentage of those that have any kind of a continuing financial settlement is extremely small. As a general thing the only payments that are given are for the minor children and even they are not usually received. The instance in the community that I hear of, is that there is a rather rare instance where the former working spouse in fact does what the court orders and sends money regularly even if only for the minor children. There are many cases, and I'm sorry that I don't have the facts with me in terms of the percentage of women who get alimony but it is well under 50 percent and I would think much closer to 30 percent, if even that high and, even where alimony is in the court order the number of women who actually receive it is infinitesimal. Even when they do receive it, it is very irregular. This is a very, very bad situation that is created when one part of the family is dependent upon another for their economic survival, so the situation that you posed where there is in fact a good faith attempt to be economically responsible to two families is really rather rare and I think the opportunity for reevaluation by the court is always available unless there was a lump sum giving of money that is irrevocable of course once it is made. In which case there is no longer any responsibility and the working spouse proceeds with developing new economic assets to support a new family.

MR. LEACH. So you would recommend no flexibility or that the arbitrary principle relates exclusively to who is married, and percentage years, the husband of the spouse in case the wife was a civil service employee?

MRS. MENES. Yes. Particularly—

MR. LEACH. And therefore you would also, by holding that position, say that in this circumstance a second spouse married after the fact, of a person's service in the civil service, would receive nothing?

MRS. MENES. Nothing from the civil service retirement that was earned prior to the marriage. Of course the second spouse in most circumstances would be the recipient of any retirement in the employment of that spouse in the years of his or her marriage to the working spouse.

It is probably quite unlikely that the circumstance where two complete families have been raised, the second family has been raised at a time when there was no employment and no retirement being earned in those years.

MR. LEACH. I think I agree with you with what you are saying and I am just wondering if there's an arbitrary rule, and if there shouldn't be some flexibility?



Mrs. MENES. Ordinarily I am not inflexible. There may be circumstances of which I am still unaware that would lead me to believe that perhaps more flexibility is necessary but I do not at this point feel that the access to court which is available to the spouses under most circumstances would not give you that flexibility. It would allow for a renegotiation of the level of support that the working spouse owes the nonworking spouse and that of course takes into account any private or personal assets of the nonworking spouse through estate or inherited family wealth or due to remarriage.

It would seem to me that that gives us the flexibility that might be needed.

Mr. LEACH. There is an implicit principle here that the first spouse is probably more important than the second simply because the first spouse was married in a period of time during which it was more likely that the working spouse was actually working. That may be a correct premise but it is a very arbitrary premise and that in the event that someone divorces at 55 and they've been married 15 or 20 years you can create theoretically a more difficult circumstance for the second spouse.

Mrs. MENES. Have you considered that in many many instances, again I can't give you the statistical frequency, but the second spouse was also married prior to the second marriage and might also have a vested interest in the first spouse's earnings at the time of the original marriage.

If we are talking about the late years of divorce and the advanced age of the remarriage which we are seeing in the community, of those that I am aware of, at least many are not first marriages for either of the parties and so both spouses remarriage have resources that were earned in earlier years or have a call upon retirement or under this bill, would have a call upon the retirement of the first spouse. In many instances there are contracts being drawn between the two marrying spouses of advanced years that precludes any sharing of assets. These have developed because we entered into this whole new era of people in their fifties and sixties marrying each with financial obligations to others. They enter into a marital contract that precludes either one receiving the assets of their estate and instead determine in advance who within their own families would get the assets of their estate but agree that neither of the new marital partners will share in it.

And we're entering upon an area of new ground completely from what we were used to in past years. Marital contracts, marriage, second marriage, third marriage at ages 50, 60, and even older than that. And we have to rethink the economic situations that these people are in and what their obligations are to other members of the family and I think this bill does speak to that equity and I think the original families with their need must be taken into consideration prior to the new family that may in fact have economic assets earned earlier to sustain them.

Mrs. SPELLMAN. If the gentleman would yield I would like to ask a question. Would there be any advantage in building the kind of flexibility which would enable a spouse at the time of the divorce to elect to take a cash settlement rather than share in the annuity which might come about goodness knows when.



Would there be an advantage to having that type of flexibility recognizing that he or she has an interest in that area; that that belongs to him and that it could be provided through cash settlement instead if that election were made?

Mr. MENES. Yes, I would think so. I think there are many instances where economics at the time of divorce could be helped significantly by the cash settlement. Very often the value in the family home for instance must be divided equitably.

Now if there were a lump sum of economic benefits, if the retirement that could be used to either buy the home from the other partner or an agreement to only take a part of it and by so doing the homemaker spouse can own the house by forgiving part of the lump sum payment, that might very well provide a means for an easier settlement at time of divorce.

Very often the major problem is that the assets are tied up in either property or long-range investments and it is very difficult to split them without losing the economic benefit that has been accruing over the many years. The sale of the family home for instance is usually the most traumatic thing especially for the homemaker spouse with minor children remaining to be raised and unable to sustain the family home because of the necessity of actually dividing the assets of that piece of property.

So flexibility in dealing with the assets of the retirement system I think would be useful.

Mr. LEACH. We have a problem now with the first spouse, because that person is not covered and so, presumably, those are problems that emerge. When the second spouse suffers, proportionately speaking, it could well be that the second spouse's problem will be more inevitable to occur in part. From the point of view of flexibility, it is my understanding that if a marriage occurs in retirement—for a former civil service employee—there is no entitlement to social security as in the case of a former private corporation employee. Under that circumstance, it is conceivable that the first spouse, under this bill, would then be entitled to the entirety of the civil service retirement leaving the second spouse with very, very little. My only concern is whether or not that circumstance ought to be addressed, particularly when you are talking in the real world and we are only looking at the exceptions.

The first spouse may remarry. The first spouse as you point out in most circumstances may not have had a very willing settlement, but they might have also. Some settlements do work and are equitable and reasonable and so my only concern is to say that there might be a small percentage of cases where an effort to be equitable with one group may be inequitable with others and might there not be some flexibility built in to comply under those circumstances.

Mrs. MENES. Let me remind you that when there is a second marriage there is knowledge in advance of what the economic circumstances is concerning any premarrriage retirement benefits and there certainly should be honesty and I would think in most instances a couple remarrying do spell out what their economic circumstances are. In this day and age that is something that's spoken of I think very easily among couples. The first wife had no such opportunity.



The first wife always thinks that their marriage was made in heaven and it was going to last forever and if you think about it most first families live as if the marriage is going to last forever. They had no forewarning as a rule. There was no opportunity of developing a coverage for the homemaker spouse. There is no planned work experience that prepares the homemaker spouse for what is ahead because it was a surprise and a shock usually when it develops that the marriage is not going to continue.

But the second marriage is one that is gone into with eyes open and you can say, you know if we marry we will have a hard time financially because my retirement is shared with my first wife. We won't have that to live on. In other words, you are walking into an economic circumstance that you know in advance and I think that is a far different thing than being married—and we are talking about marriages of 20 years or more. We all know of marriages that have failed in many, many fewer years. A 20-year marriage is one that I think both couples—both individuals have a right to think was going to last forever. This is really something that I find shocking. People who have lived together for 20 years or more and they can suddenly decide that they want to be divorced. But the new couple coming together can, and do discuss the economics of the new family arrangement and can provide for whatever the needs of the new spouse are.

MR. LEACH. You are correct but knowledge is knowledge.

MRS. MENES. But you can provide for equity. You don't walk into a circumstance that you know in advance is not to your liking. In the advanced age marriage where there are no children at home usually you have the option then of having a two person-working family. Both adults work so that the second spouse in fact begins to earn or continues to earn. In many instances there is someone who has been working, continues to earn or begins to earn their own retirement but you are walking into a situation where you see what the problems are and can deal with them as opposed to the original circumstance where you thought you were in full control of your circumstances, of your economic life, of the well-being of your self and your children and suddenly after fairly advanced years, 20 years of marriage or more, you find out what you thought was your future—and as I pointed out in my statement of frequency of moving the family and low income with the idea—that one day you will have secure retirement, and will be able to make up for all of these years that you have suffered or worked hard in order to help your spouse earn the retirement income. Instead, suddenly you have all the bad and none of the good.

And that is something that I think we must consider. The fact that you have no way of dealing with your circumstance. In one instance you are a victim of circumstances and in the other you're a partner setting up a new economic unit which you have the opportunity of determining how it will be worked. How it will operate. Whether or not you will work. Whether or not you will get benefits. Whether or not assets from a former husband will transfer to the new spouse or whether you will keep them within your own direct decedent line.

These are things you have something to say about and I think we all realize it is a vast difference between making a bad decision and taking the responsibility for it or not having any say in the decision



that is made at all and having to take the consequences of somebody else's decision and in many of the instances brought to my attention the wife was not interested in divorce. It was not at her instigation. It was a surprise and shock and devastating to her.

Again I am sure this is not always the case but at least I believe it is in a majority of the cases and so she is the recipient of somebody else's actions without any opportunity of determining for herself what her role would be. She can only take what is given and in all too many instances it is not enough to survive on and to continue raising a family on.

Mrs. SPELLMAN. Thank you very much. We are grateful to you for your testimony.

Mrs. MENES. I appreciate the opportunity of coming. I wish you well on the bill.

Mrs. SPELLMAN. Our next witness is Patricia Barry who is an attorney.

### STATEMENT OF PATRICIA BARRY, ATTORNEY AT LAW

Ms. BARRY. Thank you for the opportunity to testify before the committee.

Mrs. SPELLMAN. As I recall you have some considerable reputation as being very, very knowledgeable in this field so we were delighted that we could ask you to be with us.

Ms. BARRY. Thank you.

I am in full support of the bill with one reservation mainly that the 20-year marriage requirement be deleted. I have had occasion to do research in this as part of the marital property to be divided at the time of divorce. I have found through my research that all of the community property States as well as some common law jurisdictions, including Wisconsin, New Jersey, and Colorado—if Colorado can be characterized as a common law jurisdiction—hold that retirement annuities and pensions are a part of the marital property and must be divided at the time of divorce.

In the community property States of which California is the leading one, the law is that whatever annuity is earned during the marriage must be divided equally between the parties at the time of divorce. If the 20-year marriage requirement is passed into law with the rest of bill one will have the anomaly where the Civil Service Commission—that wonderful friend of Federal employees—will honor a property settlement agreement directing a certain percentage of Federal annuity to the spouse that was not the Federal employee, but refusing to honor another such agreement for no other reason except that in the former case, the spouses were married 20 years or more, and in the latter one, they were not.

This is obviously in violation of the equal protection clause in the 14th amendment. It also poses Federal Government interference with the regulation and administration of family law and property law both of which have been left to the States. State courts will enforce any separation agreement between two formerly married persons provided that it is not illegal, unconscionable, or against public policy.

The refusal to recognize the validity of such contracts between divorced spouses by the Civil Service Commission leads to a confisca-



tion of property of the non-Federal employee spouse. Therefore it's a violation of the due process clause limit.

What further boggles the mind is that the Commission recognizes that if the payment of the retirement annuity to the non-Federal employee spouse were characterized as alimony, rather than as her/his separate property after the divorce, that spouse could have the retirement annuity garnished under Public Law 93-647. Thus, domestic relations lawyers in California and in other jurisdictions where the annuity is included in the marital property at the time of divorce, could through artful pleading call the annuity award alimony rather than separate property. All of the desirable characteristics of it being separate property could be retained by naming a percentage of the annuity, rather than a fixed sum, as alimony to the spouse receiving the award.

This is nominalism at its worst. In reality, whether one chooses to call the income alimony or separate property, it is the same thing: simply giving her—for after all the spouse we are talking about is inevitably the wife—what is her just due for all of the economic contribution she has made to the family unit and to the furtherance of her husband's career by providing her with the security for her old age that probably at one time both she and her husband believed would be provided for directly by the husband's annuity for them to get while living together.

The world will not come to a grinding halt for male Federal employees, for as I indicated before, awarding a portion of the retirement annuity to a spouse who has not worked outside the home has been settled law for a long period of time in community property States. California residents who are male Federal employees and who have had occasion to get a divorce in California have yet to dump their settlement agreements into any of the ports along the Pacific and cry taxation without representation or whatever. At any rate, there are few who have taken an appeal of the issue, and those who have, have lost soundly.

There is simply no good reason for keeping a 20-year marriage requirement in the bill. The formula applied in community property States for determining the portion of the retirement annuity the nonemployee spouse receives is a sound and sensible one: one-half times the number of years married over the number of years worked to earn the annuity. In no event not to exceed one-half.

If a younger couple divorces, say, after 7 or 8 years the spouse without the annuity could get a lump sum from the spouse with the annuity in place of deferring the interest until retirement.

If both spouses are employed—Federal or otherwise—and therefore both have annuities, many times the spouses will waive their interest in each other's annuity.

In conclusion, I believe this bill, if passed, will reinforce what is already the law in many jurisdictions in this country. It will eliminate administrative bureaucratic obstacles presented by the Civil Service Commission and it will help bring about justice and equity once the 20-year marriage requirement is eliminated for a group that is often forgotten, we women, our mothers, and ourselves.



Thank you once again for allowing me the opportunity to testify before this committee.

Mrs. SPELLMAN. Thank you very much.

What you have said about the annuity property settlement is very interesting. Are you saying that in California and other community property States that this bill with a 20-year provision could actually hurt divorced wives of Federal retirees?

Ms. BARRY. That is my feeling, Mrs. Spellman. It is my understanding from reading some letters sent to me that the condition—right now it is a problem only of administrative procedure. My Commission simply won't honor these court orders. They treat these awards as property settlements. That is making it personal property of the nonannuity spouse and it is not a question of what is the law in these jurisdictions. In fact one of the cases I read, *Smith v. Lewis*, interestingly enough was that of a legal malpractice case in which the lawyer had a jury verdict of \$100,000 against him for his failure to include the husband's military and I believe the California retirement pensions in the divorce settlement and for some reason the wife could not vacate the judgment so she got the judgment against the lawyer and the California Supreme Court affirmed that decision.

Simply what is done in those States as I indicated in my testimony I have not practiced domestic relations in California only in Washington, D.C., but I did have occasion to do a research project and I found that in the settlements that were pre-1972 that is before no-fault was enacted. They tended to be older marriages where the wife had not worked outside of the home and there was a definite award made either of a lump sum or it was deferred until the man had retired if he had not retired at the time of divorce. But in the post-1972 actions I found there tended to be younger couples with shorter marriages and that the wife would simply waive her interest in the husband spouse because she had an annuity or some kind of retirement security that she was developing on her own.

I will say for the record that in most of the cases I suspect without further research that the wife's annuity is still much lower because of the employment discrimination women face. They inevitably never make the money that the husbands do but nonetheless because it's a short marriage and it is not worth waiting all that time period. She will simply waive her interest.

If I may address I am very concerned Mr. Leach seemed to be concerned that there was some kind of inequity. I think all of us women here are not saying that we're for a certain group of women within the group of all women. That's absurd. It's simply that if you have earned the entire annuity during the period of the first marriage you're simply saying that the wife as the economic contributor, you know, who has been asked in many cases to give up a chance of developing her own career. She's really only getting back what is her due and I suspect that the second wife who is going to marry a gentleman who's retired assuming that her age is similar to his probably by the same axioms that we've applied to the first wife will have some kind of a retirement security. If it isn't an annuity award itself maybe some type of property assets. I suppose alimony ceases



at the time of marriage. Maybe she will have social security benefits, but I don't see that as being very much of a practical problem. In fact, all of the cases I know of there seems to be a lot of cynicism there here is the younger woman who marries the gentleman for 2 years and then he drops over dead and she takes all.

And I think if we are working toward more equitable distribution of assets and so on that the younger woman would find it only reasonable that yes the other woman who had been previously married to him is the one that in all fairness ought to have survivor benefits but again that could be worked out on a pro rata basis as well.

I don't think that we have a lot of administrative problems where it's simply a matter of calculations standing in our way. I mean she certainly could take it based on the 2 years of marriage. She could be getting a pro rata benefit of that survivor annuity and all the Commission could say is oh, my gosh, I'm going to have to send out all these checks to all these different people. Well, if you're willing to employ a man that's willing to engage in a lot of marriages that's the problem the employer's going to have to deal with and I don't see that as a very great problem to be overcome.

Mrs. SPELLMAN. On page 2 of your testimony you state that this bill and I quote "Is obviously a violation of the equal protection amendment or the 14th amendment" and as an attorney then do you believe that the courts will declare the bill if it is enacted this way to be unconstitutional?

Ms. BARRY. No, I'm saying here, Mrs. Spellman, is apparently that the Commission will not honor the settlement agreements that wives say in California to them. What I'm saying again it imposes an administrative problem. You'll have the General Counsel over at the Commission saying, well, let's see how long she was married. Well, we can honor this agreement but we can't honor that and it just seems to be an unfair application of the law.

Mrs. SPELLMAN. On page 3 you indicate and I quote, "After all the spouse we are talking about is inevitably the wife," and of course we all know that is today and there are a lot of women working for the Government. In this particular bill there are more women working for the Government than there are men and I don't know what the statistics are. Does anybody know what the statistics of the work force is?

Ms. BARRY. On the white collar I believe there are 32 percent.

VOICE. Eighty percent are in the lowest income bracket.

Ms. BARRY. If you leave it in mutual language, which of course is what California as a community property State must do, you're not going to have that situation. In fact, I asked a male friend if he'd like to give up his government career and come to work in my office and take all the risks of that and he said, you mean you're asking me to give up my career and my chances of getting ahead and my annuity. It seems unthinkable for a man. So if you do have a woman employed the chances of her having a dependent husband are very very minimal because it's like we're going into a whole different perspective. Men aren't moving out of their set. You know the way that they view themselves. We're not asking them to become homemakers and certainly



they have every right to do so and I suspect that if men would become homemakers we'd have a lot of protection for homemakers. [Laughter.]

Mrs. SPELLMAN. On page 4 toward the bottom you give an example of a marriage breaking up and a wife taking a lump sum annuity. Is this the kind of an arrangement that is normally worked out by the parties involved in court?

Ms. BARRY. Yes.

Mrs. SPELLMAN. Do you suggest that we ought to legislate in that area?

Ms. BARRY. I was thinking about that when you posed the question to the other speaker. I think that that should be an option.

Mrs. SPELLMAN. That should be permitted.

Ms. BARRY. Yes, it should be open to both parties. If you can look at this as personal property it seems to me people can do pretty much with their property what they wish. I know the Commission has a different perspective on the annuity but then the Commission can always be reeducated particularly with this kind of a statute and that we simply say if the parties wish a lump sum that there is option to do so.

Ms. SPELLMAN. I thank you very much.

Mr. Leach?

Mr. LEACH. Just a couple of questions.

If we look at circumstances, and again I am drawing an exception, would you think that it would be a grievous error to provide the second spouse—who lacks given assets or lacks any retirement annuity whatsoever—a certain percentage?

Ms. BARRY. That percentage would be based on the number of years that she was married to the Federal employee.

Mr. LEACH. But under this law what if he didn't marry the second spouse until retirement?

Ms. BARRY. Well it would be the same kind of thing. If she wanted the survivor annuity it will be based on a pro rata share. For example, if the annuity—well, this gets to a problem that I was just thinking about also while the second speaker was testifying. If it is deferred compensation and it was fully earned during the period of the first marriage actually I would hold that she would have no interest in the community property States to any of those earnings. In other words, if you got a divorce in California and the annuity was completely earned during the period of the marriage she is entitled to one-half unless there has been some form of a formal settlement worked out for equity in that deferred compensation of the annuity so he would have one-half to live on.

I suspect that it could possibly not be characterized as community property and therefore it might be argued that he wouldn't even have to support her which seems, you know, a very unfair situation and probably would not work out in practice but it seems to me she probably wouldn't even have any interest in survivor annuity under community property in a community property State.

Now, I'm not talking about what the Federal statutes would do but I would suspect that the second wife if he is living solely on re-



tirement would not even have an interest as a new wife even an annuity that he is receiving while he is alive or any interest whatsoever in the survivor benefits.

Now what I have often thought about is if you have a marriage say 20 years and 10 years then you have a definite pro rata situation where the first wife would take 20—lets say he worked 35 years in the Government—she would take one-half times 20 over 35 and the second wife would take one-half times 10 over 35.

Mr. LEACH. Do you see any possible conflict between Federal-State jurisdiction? Let me throw out this theoretical circumstance. Let's say there is a settlement in the case of the first divorce in which there is substantial physical assets and retirement is considered as part of the settlement and the worker says, I will keep the retirement rights and give you all of the physical rights thereby allowing the second spouse all of the retirement. The problem is that under current laws virtually anything dealing with divorce is State law and yet this particular Federal law might preempt that State law might it not?

Ms. BARRY. That is what Mrs. Spellman was asking me about the options of allowing a lump-sum settlement. And that is why I said I don't think this law should be couched in mandatory terms.

Mr. LEACH. But there should be more flexibility?

Ms. BARRY. Yes. It is my understanding, from looking at some letters that the Commission has written concerning the annuity, they seem to look at it as some kind of property of the Government. They don't really view it as a personal deferred compensation which really belongs to the Federal employee. After all, he or she has earned it and it is one of the compensations that comes to them, you know, in the past and it's deferred until their old age. And if it's personal property, that person can do anything with it that he or she wishes, provided, you know, that the courts will be willing to enforce such agreements—and you're really talking about a particular kind of people. You're talking about the marital community and again, from what I remember in law school, it's handled like wills. They rarely include children any more. What people are concerned about is that the other spouse it taken care of. This is law. Men aren't really that nasty, at least when they're married to you. And they basically want to provide for the wife—and it's just as the other woman said, when you go through a divorce there's so much bitterness—but the wife doesn't have the clout to demand it. She's got to come begging to that court room and there is so much bitterness and he says nothing, and it's almost even you're the moving party in the case, it is very much, because in this case it happened to be property jointly held, but in many instances the man says, don't worry, honey, I'm taking care of everything, puts the property in his name, then it comes time for the divorce and no matter who files, who really feels he's at fault, the man's going to get you because he's got the economic clout. A woman could be angry, she could do a lot of things but she can't harm you in an economic way that a man can. I feel that until these kinds of relationships that in our society we're supposed to assimilate the person—you know, it's our personal problems until it really becomes the concern of the public domain—I feel that particularly the older woman in our society has gotten a very unfair deal.



And I'll give you an example in California which I feel is a leader in terms of protecting married women's rights when it comes to alimony; it's very punitive, I understand. I haven't practiced, it's just other women attorneys I've spoken to. It's very hard to get alimony there and the attitude is that they're taking everything for the good that women have gotten—us, we women, and they're trying to poison it. OK, ladies, you got your liberation, get out there and work. Now, I know for a fact that older women, because I do Federal employment discrimination, they will not hire older women. You can be the most educated woman, it is simply sex, and they say, well, prove it. You can't separate a person's sex from their personhood and when I see the incredible bad dealings that older women get and if they're applicants for employment, you can forget it. They're not going to get that job. I'm talking about a decent paying job. It is ironic the lower paying you go, the younger they are. Given the male heterosexual orientation of employers in our society, the younger and prettier they have had to be. The lower pay you go, the more desirable in terms of male terms that you have to be. It's a very ironic situation.

But I'm saying for the older women in our society because of the turning tide, yes, I would imagine that younger women are getting better opportunities and yet I see history repeating itself because I have women clients, and I see this young woman. I say, get out there and get a job; I don't care how bad it is. I'll fight for you once you get the job, but they are very much repeating the same cycle, repeating the husband's being the sole source of compensation so that when she enters into her fifties and sixties, unless this kind of law is passed, I'm afraid she'll be very, very insecure. I think every woman in this room—I imagine even Mrs. Spellman, I don't know—has probably felt that horrible paranoia of what happens if that person walks out on you—the question: where am I at? It's a very, very frightening situation and think it's probably hard for a man to imagine the humiliation that women have gone through because of the historical division of labor and because of the devaluation or reproduction and taking care of babies and taking care of the home. There's a tremendous devaluation of that, and as a result, what I find so humiliating for us women is that we have to come begging for what I feel is our just due. That tide has to turn and I think the tide will turn when people value women in whatever importance—I guess their biological functions are ceasing but whatever importance the basic sex differentiation has that we have to respect women as women just as men have always gotten their dues in this society; unfortunately, that respect is expressed in dollar and cents, and it's yet to come.

Mr. LEACH. Thank you.

Mrs. SPELLMAN. I would like at this time to call on our counsel for questions.

Mr. McCLUSKEY. With all due respect, I would say that divorce is a traumatic experience for men as well as for women.

Ms. BARRY. It is.

Mr. McCLUSKEY. And that there are cases where women are at fault as much as the men.

Ms. BARRY. I'm not questioning that emotional relationship, Mr. McCluskey. What I'm saying is that men can get back at us at a way that we could not get back at them.



Mr. McCLUSKEY. We have some problems with this bill. Perhaps you can comment on some of these things.

What about the situation where there is fault. Say either spouse runs off. They have been married for 20 years. The way the bill is written, the Civil Service Commission will be required to hold  $x$  amount of money. Now that's grounds for divorce. She gets a divorce. She's a secretary or he gets a divorce. She has run off with somebody else but as the bill is written, that person is still entitled to  $x$  amount of money and the Civil Service Commission will be required to hold onto that money until settlement. Or the case where either party is convicted of a felony—which is automatic grounds for divorce. The way the bill is written, it makes no distinction. So, here is somebody in prison serving time and has been married for over 20 years, and suddenly here we have a prisoner starting to receive checks because obviously he's not going to waive anything like that.

Would you care to comment on this?

Ms. BARRY. What comes to my mind is simply not making any mandatory provision. In other words as I would see this Federal statute, it is simply very much similar to the garnishment law. Simply say that the Federal Government, or the Civil Service Commission acting on behalf of the Federal Government, is not going to stand in the way of honoring any kind of property agreement that would involve the annuity. I would say that, however, the one thing that should be kept in mind that if the person is married at the time of retirement and makes that selection, that's irrevocable; the spouse must have her signature on it.

Mr. McCLUSKEY. And you wouldn't object if the bill were amended to take care of the situation where there is fault of this type, felony or desertion or whatever the case we could think of, that would be serious enough that we make an exemption?

Mr. BARRY. And it may happen and probably in very rare situations but even what the court would designate as a fault on the part of one party and the other person has no fault, still maybe if there is a 20-year marriage and he or she just couldn't take it any more, maybe I should just keep the annuity in, and I also think that most jurisdictions are going the no-fault way. I think even if they list a fault it is so much easier to do the no-fault that is currently available and most people will go that route. So I don't think there's going to be much of a problem in the future only because the jurisdiction seems to be going all no-fault.

Mr. McCLUSKEY. Thank you very much.

Mrs. SPELLMAN. Thank you. And I certainly thank you for being a superb witness.

Mr. BARRY. Thank you very much.

CHAIRWOMAN. Our next witness is Miss Sara Deane of the National Organization of Women.

#### STATEMENT OF SARA DEANE, NATIONAL ORGANIZATION OF WOMEN TASK FORCE ON OLDER WOMEN COMMITTEE ON INCOME SECURITY

Ms. DEANE. I represent the NOW Task Force on Older Women Committee on Income Security and also the Task Force on Marriage



and Divorce in the District of Columbia, NOW. There are about 80 units of each of these task forces in NOW chapters throughout the country.

I feel a special, almost maternal interest in this bill because in testimony before a subcommittee of the House Committee on Aging I brought up the need for this legislation. Later, together with some other small groups in NOW and otherwise, we formed a coalition on income security to lobby Mrs. Spellman, Mrs. Schroeder, and others who have since taken an interest in the bill. I am delighted that they have; it speaks well for the responsiveness of the system.

I would like to speak to Mr. Leach before I get into my own testimony because I think there are a couple of things he has said which need to be answered if possible. I think his concern for the second spouse is commendable but I think you probably will find that she rarely really needs it. For one thing men do usually remarry and women do not, partly because the availability of men in the age group declines with chronological increase in age, and men marry downward in age sometimes with an extreme gap between their own age and that of their new wives. Usually also they marry working women who have careers of their own and they do not have the need for the dependency on the retirement income.

Again you were speaking of alimony and I think this tendency to confuse alimony and the property share of the annuity is a natural one but it leads to confusion. Alimony, by definition, ends with the death of either spouse or the remarriage of the wife. We have a myth that divorces used to give women the right to spend the rest of their lives in their mink coats and dripping diamonds, with huge lump sum settlements. The actual fact is that only 23 percent of divorce settlements in the past awarded alimony at all and of that 71 percent was not paid.

Now the proportion of women getting alimony has gone down to 14 percent, perhaps because courts are now awarding alimony only in the extreme cases where they absolutely cannot say "go out and earn your own living." Also because, as I'm sure you know, the long arm of the Federal law has gone to help the States through HEW to enforce child support on those recalcitrant husbands who had not wanted to pay in the past, 46 percent of the 14 percent awarded is paid on a more or less regular basis, but that still is a miniscule proportion of all divorces which are increasing at a galloping rate. The rate of divorce has doubled in the last decade and a quarter of those divorces are taking place in marriages which have lasted 15 years or more.

Mine is a personal interest in this bill because as the divorced wife of a Federal employee—our marriage coincided for 25 years of partnering his Government career. My share of the partnership was in entertaining and representation, sharing in whatever work the ranking diplomatic, military government agency wives at a post felt that American wives ought to be doing in that country. It also, of course, was in fulfilling women's traditional homemaking role, with the added duties of packing and moving house to establish secure home environments for the three children's formative years, sometimes in alien, and even sometimes dangerous conditions.

Heroism is served up for breakfast every morning by the wives who manage to achieve anything like a normal family life under those



demanding conditions; they deserve far more than the insecurity and fear of poverty which they come to in their later years unless this bill is voted out by this subcommittee and passed by the full committee and then by Congress.

During the past couple of years, as a result of the effort of some of these women themselves, we've seen a beginning identification of their problems through the displaced homemaker tag and other legislative initiative. This is a group of women who are victimized—and that's not too strong a word—they're victimized by their own choice they made a generation ago to dedicate their lives to homemaking and a supportive role in their husbands' careers, subordinating their own professional ambitions. Increasing longevity gives them an average of 8 years more life expectancy than men. The divorce rate has doubled in the past decade, increasing especially among couples who have been married 15 years or longer—those marriages that once were considered most stable and almost never vulnerable to divorce.

These women who are suddenly cut off from home-supporting incomes by death or divorce of a spouse in childhood were conditioned to believe marriage was woman's true fulfillment, only fulfillment. Most of them had no career training, little or no work experience before marriage, and only community volunteer services outside the home during their homemaking years. Partnering civil service or military careerists, they frequently were assigned where no work opportunities existed for them even when they wanted to work and had professional skills to offer. What are the characteristics of this newly-emerging group and what are their needs?

Well, we have to begin a report on this question by recognizing how very, very little we know and how little we have cared to know.

Patricia Barry has suggested that problems might be different if men were the objects of the legislation as well as the initiators of it. The same is true in medical research because most doctors are men. There has been very, very little research, says Susan McCarter of the Women's Medical Center who has used her training in health education to conduct therapy groups for women in menopause.

She found that she can offer almost nothing in the way of literature, research, anything but empirical evidence to discuss the needs on those meetings. Still less is there concern to study the side effects of drugs that are marketed and recommended.

It's still said by reputable doctors that menopause is all in the head of women and they don't really need any treatment. If they come asking for it give them a pill and send them on their way and hope they won't bother to come back.

A recent study of "Sex Differences and Mental Health; the Effects of Marital and Occupational Status" was undertaken recently by the Center for Epidemiological Studies at the National Institute of Mental Health. It shows that not only do women suffer depression more than men, and in greater numbers, but also there is a higher incidence of depression among women who are married or divorced and separated as opposed to other women who have never married.

Both men and women suffer depression after marital breakup and for women the effect is deeper and longer lasting. Furthermore de-



pression scores are high among the unemployed, both men and women, with women scoring more significantly since in the older population they number twice the number of unemployed men.

In her clinical work and private practice, Dr. Carol Newman, clinical psychologist, has noted that the divorced women she treats have focused their lives on marriage. When they come to her at its termination they suffer feelings of failure and anxiety. They have difficulties sleeping or they sleep as an escape. They feel embarrassed and uncomfortable as singles in groups of people and when they feel socially inept, that increases their feeling of isolation to the point that they may completely withdraw or take to alcohol or other drugs.

Significantly, Dr. Newman describes these women who were her patients as women who were coping effectively when they were married doing their duties as homemakers and mothers and expressing various interests in making a career, a homemaking career.

A recent survey shows that only 3 percent of 18-year-olds said that they would like to be homemakers. Probably they meant full-time homemakers, but probably we will continue for the foreseeable future having most women spend a major part of their lives in full-time homemaking. If young women are so acutely disinterested in the homemaking role society has got to give a lot of thought to replacing the family unit as a means of nurturing children and its economic function as a consumer organization in society.

I speak not from textbook documentation—I have personally experienced the downward cycle of self-image and I have seen many among my peers in the NOW task force on older women—the symptoms of dysfunction and declining self-confidence that procedures more dysfunction and so on.

The beginning may come with the empty-nest syndrome when children no longer need nurturing and a woman wonders what to do with an expected quarter century to live after they are launched. Or it may begin with a sudden discarding from a marriage she had thought was satisfying. Rejected at just the time in life she feels her sexual attractiveness waning, a woman has great difficulty pulling herself together to offer her skills in a job market where she must show herself to be self-confident in order to compete with younger women with fresher training. She finds the job market hostile, disinterested in homemaking skills, doubtful that she can adjust to work schedules and coworkers after long isolation in the sole responsibilities of homemaking. In other words, she doesn't get a job, as Patricia Barry has said divorce courts expect her to do, even at the lowest level of scale.

Her confidence then is further downgraded by rejection. She may desperately try to pretzel herself into a menial low-paid job which then becomes a self-fulfilling prophecy of maladjustment. Then that feeling of failure may bring on symptoms of sleeplessness, headaches, fatigue, depression, and greater problems—and even less confidence to compete for scarce jobs.

Even if she does get menial low-paying job she hasn't years enough to earn her own social security. She is unlikely to get any training opportunities. They're all but nonexistent because employers cannot see years ahead enough to make a return of their investment or training in her.



Why should she have this desperate struggle, insecurity and fear of poverty while her ex-husband has the comfortable security of his annuity to which she contributed earning? Doesn't she have the right to compensation from the annuity she helped to earn, a return on the contributions paid from the family income denied to her use in supporting a family with food and clothing and other essentials which she participated in buying during all those years that her marriage coincided with her husband's career?

If she has no realistic expectations of earning her own security as well as her own living even if willing and able to do so, if she is not rewarded in a share of the annuity, what then are her alternatives?

Remarriage? Most unlikely. Men usually remarry, but the great majority of older women live alone. Among older people, 2 out of 3 are women, more than half living singly and in poverty, on incomes under \$1,900 a year, barely half the poverty level income and 14 percent on no incomes at all. This is the future into which we are sliding, since few have social security benefits in their own right and federally employed husbands, of course, do not usually have those benefits under which their divorced wives would be covered.

Old age assistance? Yes, if they live so long, but why must they go on public welfare? Why must public welfare be their only means to support if they have earned the right and fully expected to share the benefits they paid for out of family income during their homemaking years?

Another question arises of whether the Federal Government or the State and local government are prepared for this new and growing of dependents. At just the time that the long arm of the law is reaching out to help States enforce the obligation of fathers to support their families, should not legislation correspondingly ask that the family-earned annuity support women who have fulfilled the family maturing role?

We who will be effected by this legislation wonder why a line must be drawn among these women of equal entitlement and realistic expectations of security, decreeing on the side of the date line before the law becomes effective, they will not receive the retirement and survivor benefits conferred by this legislation while on the other side of arbitrary line, with identical qualifications of time vested, contributions made, and expectations confirmed with maturity of the annuity, entitlement is conferred.

Such capriciousness will make the law only slightly less inequitable than the inequities it corrects. To include all would not retroactively deprive anyone of entitlement; rather, it would restore entitlement to the divorced wife who partnered the annuity-earning career.

I would like to add parenthetically to what you said about the retirement annuity being an irrevocable decision at the time of the retirement. The interesting thing is that it is only revoked by divorce. If the Federal Government, as it has said in other legal decisions, does not engage in risk-taking, what else is it? What do they call it if a decision allegedly irrevocable assumes the risk that it will be revoked if there is a divorce?

An overriding social concern, which certainly this group of women deserves to claim, is the constitutional response to permitting retro-



active inclusion. As a potential burden on the public conscience and welfare system, the entire group of Federal employees' divorced wives should and must be included to share retirement and survivor benefits if earned in marriage coinciding with Federal career partnership.

Having fulfilled the role society expected of them in homemaking and family nurturing and performed loyally the function their Government asked of them in support of their husbands' careers, these women—who can be the only women defined as surviving spouse of the career partnership—these women deserve a share in the rewards they helped to earn.

Mrs. SPELLMAN. Thank you very much, Ms. Deane.

It is very obvious that you feel this bill should be amended to make it retroactive to cover all of the 20 years of marriage.

Ms. DEANE. Yes, I do because I feel the effects of the law are going to decrease with more women working outside the home earning their own security even in difficult circumstances of living overseas. Even the Foreign Service is considering the problem of women having to leave their own careers, not having the work opportunities in foreign countries. I think this is a trend that is not going to be turned in the foreseeable future so that the group of people who are most inequitably treated are the ones who are right now in this position who, as the first speaker, said had no choice or could see no choice, were not aware of the implications of the choice they were making and now can do nothing about it because it is too late in their lives. They are the ones who most need the equities this bill would provide. I think to say, "Well, after this date you get it and before that date you don't," is a gross hardship. You leave those women to whom it said "nothing for you" just no alternative at all.

Mrs. SPELLMAN. Are you proposing that there be no time limitation, and even if divorce took place 15 or 20 years ago it would still be retroactive?

Ms. DEANE. If there were 20 years of marriage before the divorce took place I would think so; yes.

Mrs. SPELLMAN. Do you foresee any legal problems with making this retroactive? Should the court take financial need into consideration?

Ms. DEANE. Yes, possibly but I think again we are confusing divorce settlement with property settlement. Alimony ends with death of the spouse. The annuity carries survivor benefits. There is no substitute for those survivor benefits in any divorce settlement unless there is an insurance policy awarded or something of that kind. Those cases are very few. I would think that yes, perhaps some loophole should be put in that if the wife clearly has been compensated in other ways—but that key word is compensation and that's why I question Mr. McCluskey's doubts about the very rare cases where there might be a spouse receiving checks in jail as you put it.

There are two problems here. One is that we have tended to treat divorce very differently than death and yet it has the same effect or virtually so. A divorced wife has the same needs as a widow; yet we have not allowed her to make the same claim on the assets of her departed spouse as a widow may do with the law fully supporting her. The law is open to a divorced woman making her claim but, as some-



one earlier pointed out, she does not have the assets to do so. She simply does not have the access to legal talent. She does not have the clout unless she is privately wealthy and of course then she doesn't need to; so that is a catch 22..

I must repeat that the key word is "compensation." A spouse has earned that compensation for the period the marriage coincides with the annuity-earning career. If it's 20 years, I tend to agree with Ms. Barry that would cause inequities in the States which now award on the community property principle. Also I wonder why a wife must have her annuity vested in 20 years when a Federal employee's annuity vests for himself in only 5 years. Why should a woman have to work 20 years to receive her share of rewards, if indeed the annuity is "deferred compensation," which is the principle that is used to define the Federal annuity.

The "surviving wife" definition applies, it seems to me, only to the wife who survives the career, who survives the marriage that coincided with the career. She is the surviving wife, therefore, so far as the annuity is concerned, not the wife who survives at the death of her husband. She may have been married to him 1 year or perhaps 10, but she has not partnered the career which earned the annuity. She may live on it, she may share in survivor benefits, but she should not receive all of what she did not earn.

Mrs. SPELLMAN. Mr. Leach.

Mr. LEACH. On the issue of the 20-year situation, would you suggest reducing it or would you suggest taking what I think is a suggestion of Ms. Barry regardless of circumstances?

Ms. DEANE. That would be my suggestion too. If you have any minimum at all I would suggest no more than 5 years, first on the grounds that is the time that a Federal annuity is vested for the employee so it would seem to me that would be only reasonable to suggest the same requirement the wife. The law would not apply until the annuity was vested. Also, I think there was a kind of building your castle on the sand because as I understand Congresswoman Schroeder's drafting of the bill, she was considering the equity of making the Federal retirement system equal to the social security which requires 20 years. However, bills have been introduced in the last three or four sessions of Congress by several Members to change that. I think inevitably that is going to be changed; then you're going to have to go through the motions again to change this bill to comply. Why not break the ground for the social security system and acknowledge that 20 years is arbitrary and it needs to be reduced? Maybe they will follow your example and put that system on a pro rata basis which I would think would be much more fair also.

Mr. LEACH. Would you support a type of flexibility—

Ms. DEAN. It should be easy enough to put a provision into the law that would say in effect this will not be applied to reduce the share awarded in divorce in a State law settlement. In other words, that the Federal Government—in the same way that it allowed itself to be garnished—would not preempt Federal precedence over State law and simply say that this is the floor we are creating and if you in the States wish to give a woman more than we are saying is necessary, fine and



well—that is your privilege. But we are saying that in the case of Federal annuity you must give this amount by formula or by fraction or whatever.

Mr. LEACH. Under a State settlement one could agree to give up one's annuity entirely in favor of a lump sum which is a more flexible approach.

Ms. DEANE. I don't see that as a major problem. If the bill has that type of provision, I see nothing wrong with it provided that the choice is preserved. If the spouse wants to make that choice, fine, but she should not be forced to do so.

Mr. LEACH. Thank you. I have nothing further.

Mrs. SPELLMAN. We will ask our counsel to pose a few questions.

Mr. McCluskey?

Mr. McCLUSKEY. I wonder if you agree with the previous statements that law relating to the domestic relations is in the purview of States rights.

Ms. DEANE. That this law infringes on States rights?

Mr. McCLUSKEY. I'm just asking if you believe in that?

Ms. DEANE. Yes, if you mean the States' jurisdiction over domestic relations.

Mr. McCLUSKEY. I wonder then if we couldn't find a better solution by just allowing the decrees to consider Federal retirement and enforce those decrees rather than write a bill like this?

Ms. DEANE. Well I think that—question two doesn't follow question one. If we say that the States do have the right to—

Mr. McCLUSKEY. Well it does follow because we are allowing State courts to enforce their own decrees.

Ms. DEANE. But you're telling them what they have to take into consideration.

Mr. McCLUSKEY. But they do that in most common law States already—community property States—in fact 27 States out of a total.

Ms. DEANE. Community property States, yes. In fact 28 States do say that the individual property will be taken into account in divorce. The District of Columbia has passed a reform law in which that is provided. It does not, however, say anything about the fact that the court must consider an annuity, a Federal annuity a part of an individual's property and some courts, probably will not make that leap.

Mr. McCLUSKEY. I think Ms. Barry has a very good point. Courts will consider retirement if the attorneys bring it up. As far as legal access to attorneys, most of the cases that I have, women didn't have trouble obtaining legal representation. In fact, most cases that actually go to court you find that the men wind up paying both attorneys.

Ms. DEANE. Not all of it.

Mr. McCLUSKEY. Lets just rephrase it and say that it's in the decree. Whether or not it's collected is another problem.

Mrs. SPELLMAN. If the gentlemen would yield.

I suspect that Mr. McCluskey's clients had an attorney who was skillful enough so that things turned out favorably but not all women are fortunate enough to have such a skillful attorney.

Ms. DEANE. In our experience the situation is pretty desperate in many cases. If they own half a house they are ineligible for the free



or low-cost legal services. If they don't have jobs they don't earn the kind of money that lawyers ask for a retainer at least, and usually for the whole fee on the assumption that the settlement will include attorneys fees will be paid by the husband. But they aren't always, or they aren't in the amount that the attorney wanted, or expected and the wife has to make up that deficiency.

Mr. McCLUSKEY. Thank you, Madam Chairman.

Mrs. SPELLMAN. Thank you and we certainly do want to thank you for testifying here today.

Ms. DEANE. Thank you for the opportunity.

Mrs. SPELLMAN. Our additional hearings will be held on May 4 and May 18.

Are there any other announcements.

[No response.]

Mrs. SPELLMAN. The subcommittee will now adjourn.

[Whereupon, the hearing was adjourned, subject to the call of the Chair.]



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STATEMENT OF ALICE FRANDSEN, WOMEN'S LOBBY, INC.  
ACCOUNTED BY HELEN HEINER

Mrs. Frandsen, Chairman, members of the committee, I am  
Alice Frandsen, a lobbyist with the Women's Lobby, Inc.  
the type of person relating our story is a woman's rights lobbyist  
all states in 40 States, and we are on women's rights lobby  
now it is pleasant to be in the Women's Lobby  
it was not by a lobby  
today I proposed  
the first time in view of

## ANNUITY PROVISIONS FOR FORMER SPOUSES

WEDNESDAY, MAY 4, 1977

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,  
*Washington, D.C.*

The subcommittee met at 9:45 a.m., in room 304, Cannon House Office Building, Hon. Gladys Noon Spellman (chairwoman of the subcommittee) presiding.

Mrs. SPELLMAN. The subcommittee will come to order. We will have other members joining us, but we're all dashing hither and yon this morning.

The subcommittee has convened this morning to continue its hearings and deliberations on H.R. 3951, a bill which provides that a former spouse of a Federal employee, male or female, who is married to that employee for 20 years or more shall be entitled to a portion of the employee's annuity, and to a portion of the annuity of any surviving spouse of such employee.

Additional hearings on this subject are scheduled for the 18th of May and the 14th of June at 9:30 in the morning, in this room.

Thus far we've had one day of hearings on the legislation in which we received some very interesting testimony from Pauline Menes, of the Women's Caucus of the Maryland General Assembly; from Patricia Barry, a private attorney; and from Sara Deane, of the National Organization of Women.

As I stated at the previous hearing there are approximately 4 million employees, active and retired, who rely on the Federal civil service retirement system for benefits.

In spite of the fact that the Federal pension plan is one of the more stable employer-employee plans, it fails to provide any economic protection to the former spouse of a Federal worker. A former spouse—and I might use the word “her” in this case, because in most cases we are talking about women—the former spouse, despite her years of devotion to managing a home, raising children, and contributing time and effort to a joint marital enterprise, is left no direct retirement benefit.

If marriage is to be considered a partnership then let us accept the fact that each spouse makes a different, but an important, contribution and should have a legal right to a portion of the earnings of the other spouse. Such a right should be legally recognized and survive the marriage in the event of its termination by divorce, annulment, or death.

Now, our first witness today will be Alice Frandsen of the Women's Lobby, Inc.



**STATEMENT OF ALICE FRANDSEN, WOMEN'S LOBBY, INC.,  
ACCOMPANIED BY HELEN HELFER**

Mrs. FRANDSEN. Madam Chairman, members of the committee, I am Alice Frandsen, a lobbyist with the Women's Lobby, Inc.

With me is Helen Helfer, a lobbyist who has done much work in the area of pension reform. Our lobby is a national organization with affiliates in 40 States, and we work solely on women's rights legislation. It is a pleasure to appear before you.

It was not by a toss of the coin that I represent Women's Lobby today. I requested this opportunity to testify on H.R. 3951 in view of the fact that I exemplify millions of women in this country married to Federal civil service employees for whom a decent future could be nonexistent because we have chosen, or had chosen for us, a progression with little or no social or economic redeeming value. I am talking about the profession of homemaker-mother. A profession that has never been considered bona fide work, but rather a life style, and consequently not part of the gross national product. This is the value put on women who do nothing very important but raise the next generation and keep this one functioning by freeing men from their spousal duties to work outside of the home.

In my case, next July will mark my silver wedding anniversary. A quarter of a century commitment to a marriage-partnership. I feel I have done a good job. My husband, an economist, works for the General Services Administration. My son is a junior at the University of Maryland where he is majoring in accounting. We have a comfortable, but modest home in the suburbs, with homemade curtains and homemade slipcovers and homemade bread and basement shelves stocked with home canned fruits and vegetables.

Mrs. SPELLMAN. I hope my husband never reads this testimony. [Laughter.]

Mrs. FRANDSEN. Well, this is my job. Making a home that's not only liveable, but one that gives a feeling of family stability. In no way am I unique. My mother and her mother before her followed the same profession, but with one difference. I feel as threatened in my job as the village blacksmith must have felt when the model T's started rolling down the pike.

I know that 1 out of every 4 divorces occur in marriages of 15 years duration or longer and growing at a faster rate each year. Soon to equal teenage divorces.

I do not profess to know why or how to stop these dreadful statistics, but I do know that we now have a society riddled with divorced older first wives, who through no fault of their own, are living in poverty. Over 50 percent of these women will spend the rest of their lives living on less than \$1,800 a year.

If women manage to get employment when their marriages break up, they are restricted to low paying, dead end jobs. Older women find both sex and age discrimination against them. Needless to say, it is even more difficult for minority women. Nowhere are they welcomed. Not in the private sector, not in Government employment and certainly not by Congress. To prove my point, I spent an hour or so during a lunch period in the Longworth Cafeteria estimating the average



age of the female office employee. It must be about 22 years. Very few older women are in evidence. What's even more laughable, I personally know an older woman, well qualified to work in any office on the Hill who felt she was turned down for employment because of her age by a legislator for whom she had worked very hard to get elected.

It is not my intention to pepper my testimony with statistics on divorce, women in the labor market, older women living in poverty or women on the government dole. Others will supply that information, for there certainly is an abundance of it available. Unfortunately, the number of divorced women who have lost their pension rights over the years is not available.

My hope is to convey the human tragedy that somehow gets lost in statistical columns. I think that H.R. 3951 could have much more meaning than assuring women of some monetary protection in their later years; it could also address itself to the value of the work done by homemakers in this country. Even women like myself, who have been in and out of the work force, depending on the needs of our families, will have accumulated inadequate benefits to meet our retirement needs. For example, while our son was growing up, my husband insisted that I be home to give him the loving care we both felt he needed. Lack of adequate day care pretty much settled his and my decision about my working outside of the home.

We moved to Washington early in our marriage when my husband's career with the civil service began. Leaving our families hundreds of miles away, we could not rely on them for the kind of support and care they could have given our family if I had worked. Over the years, I constantly fought the urge to get back into the labor market because it always led to dissension in our family. Never once during the years our son was growing up did my husband lose time from his job because of our son's illnesses or other family problems. I shouldered his family responsibilities when it was necessary for him to work overtime or to leave Washington on business trips. If my husband were working in the private sector, I would be eligible to share in his social security benefits since we do work as a team. The Internal Revenue Service recognizes that we are a team by permitting us to file a joint income tax return, but unfortunately the civil service does not recognize the team concept.

The hostility that I sense toward older first wives was very evident when the Governor of my State of Maryland wanted to throw his wife out of the Governor's mansion, leaving her to fend for herself. A shining example for all husbands, I might add. Believe me, public sympathy was not that strong in her favor. The usual comments I heard were, "Well if my husband didn't want me, I certainly wouldn't stay," or "Who would want her when he's got a really cute chick so much younger."

The unfortunate side of this story is that most wives are unaware of how little protection they receive from marriage and it is only when that marriage has ended do they begin to realize the high price they have paid.

Women's Lobby asks that H.R. 3951 be enacted into law to protect the so-called dependents of civil service employees, most of whom are women. According to the Civil Service Commission (September 1976 report) there are 1,330,045 employees 45 years of age and over. Assum-



ing that people of this age have been married 20 or more years, the probable number will divorce is approximately 250,000.

This represents a sizable number, since the U.S. Government is the largest employer of people in the country. The only expense, if H.R. 3951 is enacted, will be the administrative costs, and an additional advantage would be to save the American taxpayers the cost of supporting these abandoned women in their old age.

Also included in our testimony is the Women's Lobby Fact Sheet on the economic position of older women in our society today, and an article, "The Economics of the American Housewife," by John Galbraith, which appeared in the Atlantic Monthly for August 1973,<sup>1</sup> which I think pretty much sums up what's happening to the housewives in America today.

[The fact sheet article referred to follows:]

#### WOMEN'S LOBBY FACT SHEET

##### FEDERAL RETIREMENT INCOME EQUITY ACT

The Women's Lobby supports Congresswoman Patricia Schroeder's Federal Retirement Income Equity Act. The bill provides that a former spouse who has been married to a Federal employee for at least 20 years will be entitled to a portion of that employee's retirement annuity.

Of all the groups of the poor, older women are the most disadvantaged. Fifty percent live on under \$1,800 per year.

Only 5 percent of women over 65 have incomes of more than \$5,000 per year.

Fourteen percent of aged women have no income. (Only 1 percent of aged men have no income.)

Forty-two percent of elderly women received less than \$120 per month, compared to 19 percent of men in 1972.

Women's pension benefits are substantially less than men's because it is common policy for providers to give lesser amounts to women to offset their higher life expectancies.

In March 1974, the median income of women over 65 was \$2,119 per year, while the median for men was \$4,106. Only 12.4 percent of men over 65 lived below the low income level, while 19 percent of women did.

There are 169 women for every 100 men in the over 75 age group now, with estimates putting them at 20 percent of the population over 75 by the year 2000.

Data sources: Bureau of the Census, Current Population Reports, Social and Economic Characteristics of the Older Population, 1974, Series P-23, No. 57; and U.S. Congress, House of Representatives, Committee on Aging, Subcommittee on Retirement Income and Employment, 1st Session, 94th Congress, Hearing, "Social Security Inequities Again Women," September 11 and 29, 1975, and Hearing, "Pension Problems of Older Women," October 21, 1975.)

Mrs. SPELLMAN. I certainly thank you for some very very excellent testimony, and beautifully stated I might add.

Would you recommend that this bill be passed as it is written or would you suggest any changes?

Mrs. FRANDSEN. It's been our feeling in the Women's Lobby that we sometimes question the 20 years and we question other retroactive—this sort of thing, but since that we know that this could perhaps lead to the defeat of this piece of legislation we're deathly afraid to tamper with it. And we think that there are millions of women in this country who have been unjustly denied their rights.

I understand that the counsel had suggested that we might perhaps be impinging upon the rights of the civil service employee is we tam-

<sup>1</sup> Retained in subcommittee files.



per with former marriages, but one wonders what happens to the constitutional rights of these former spouses who have put in these many many years as a partnership who are denied this right. No one has addressed themselves to the constitutional rights of these women. But even taking that into consideration we're really dreadfully afraid to tamper with it for fear the bill will be defeated. It's like Pandora's box. You open it up and there we go.

Mrs. SPELLMAN. The more stringent we make it the less chance we would have of getting anything.

Mrs. FRANDSEN. That's right.

Mrs. SPELLMAN. I might say an enormous number of letters that we've received are from second wives who are terribly opposed to this bill and feel threatened by it.

Mrs. FRANDSEN. And I'm sure third wives as well.

Mrs. SPELLMAN. I don't remember any from third wives.

A very interesting letter that I recall is one from a second wife who is opposed to this bill. She points out the bad shape she was left in when she was divorced by her first husband. What was interesting to me is that she identified only with her role as a second wife and not any more with what had happened to her in the first case. Of course second wives, if this were to be retroactive, would have a real stake in this because they entered into a marriage thinking they knew the terms of the marriage and now those parameters would be changed. But, lets make it very clear, for the record, this bill is prospective, not retroactive.

Mrs. FRANDSEN. Well of course I feel the first wives have—the second wives have far more advantages than the first wife. The first wife never knew there was going to be a second wife, but wife No. 2 certainly knows from the day she married that there was wife No. 1, which is a tremendous advantage in a marriage.

Mrs. SPELLMAN. I suppose it depends on where we sit. We will, of course, be hearing from second wives. We'll get to that point of view too.

With the bills making no distinction on the basis of sex we're saying that female employees will have to share their pensions as well with their husbands. Do you feel this is the way it should be done?

Mrs. FRANDSEN. That's right.

Mrs. SPELLMAN. It is just.

Would you want to see some kind of flexibility or provision for exceptions built into this bill?

Mrs. FRANDSEN. No, I do not think—

Mrs. SPELLMAN. You just want it to be straight across the board?

Mrs. FRANDSEN. That's right.

Mrs. SPELLMAN. Kenneth Galbraith in the article that you attached with your testimony referred to wives as crypto-servants.

Mrs. FRANDSEN. I think that was it.

Mrs. SPELLMAN. What do you think of that?

Ms. HELPER. The quote that I think is applicable here is:

Convenient social virtue ascribes merit to any pattern of behavior, however uncomfortable or unnatural for the individual involved, that serves the comfort or well-being of the more powerful members of the community, and he goes on, as you said, to define that more clearly.



Our concern again is only that for the first wife and the years of service that she gave to that partnership. And we in no way to impinge in any other relationship that the employee might engage in, but that we have to be careful of being equitable in that relationship. And we're being clear that that is the issue we're interested in.

Mrs. SPELLMAN. Mr. Leach, did you want to ask any questions?

Mr. LEACH. I just have one. As I understand the bill doesn't refer to whether there might be two incomes at the time of the divorce, but let's say you had a situation where there were two people who worked for the Federal Government and there's a divorce. Does the wife have the right to claim that she was the homemaker and therefore is entitled to half of the husband's retirement, or is there any reference to this situation?

Mrs. FRANDSEN. As far as I know there really isn't any reference in the bill. I have not read this into the bill. But when one considers if she claims and was truly the homemaker then she really had two burdens on her. She not only had the burden of making life livable for this family, but she also assumed the role of bringing in part of the family income. So, if this woman, if she has served this role, has a dual stake in—

Mr. LEACH. She should get 1½?

Mrs. FRANDSEN. You know, we're talking about something that probably the employee will get what, 55 percent of and his spouse will get one-half of that. And I think when you start whittling it away we're not talking, I mean, she certainly is not going to be able to retire and wing herself around the world on this. And what we're hoping is that this will supplement or be a part of some other income she will be able to get for herself, because she certainly will never be able to live on this income alone. And if this poor soul has taken on a double burden in that marriage, that being the homemaker as well as doing part of the breadwinning, then I certainly think she's entitled to it.

Mr. LEACH. I'm not altogether critical of the concept. I'm just looking at it in terms of earlier testimony which touched on the fact that Federal retirement often isn't considered as part of a settlement of a divorce proceeding.

Mrs. FRANDSEN. That's right.

Mr. LEACH. And that actually, in arriving at a balanced, divorce settlement, there may be a need to come up with a less arbitrary division. For instance, it might be that a wife in one case might get 100 percent and nothing else, or it might be that she should get substantially more property and no retirement. The approach taken by this bill is an arbitrary one, looking at it in that context. Regardless, my concern is whether or not we build exceptions into the law. In situations where, for example, a husband and wife are working for the Federal Government, not infrequently there's a sharing of relationships at home as well and a husband might make an argument that he is as much the homemaker as the wife is. Now, I'm just looking at exceptions here.

Ms. HELFER. I'm sorry, I worked at HUD for several years before coming with the lobby and I knew several male-female relationships who both worked for the Federal Government, but in each instance the husband was at least a GS-12 or 14. The woman was maybe, at



best, a 7 or 8 at GS level so she was consistently earning less. That's one point. In fact, the average grade level for men at HUD was 12; for women, it was somewhere between 6 and 7. For minority women it was between 5 and 6. So we're talking also about a very great discrepancy of salary.

Second, as Alice pointed out, there is that extra responsibility that goes along with being the female member. When the child is sick, it's usually the mother who has to take time off for it. There's all the rest that goes into that. And, yes, there is some sharing, but I think in most instances we're more traditional than we might want to admit in terms of bringing up the children.

Mr. LEACH. That's a good point. But I'd be a little hesitant to apply average statistics. In marriage, for example, college educated men are apt to marry college educated women and vice versa. Maybe the average job at HUD for a woman is GS-6 or 7, and the average job for a man might be GS-12, but could it not also be that the average college educated woman might be closer to the same level as her husband?

Mrs. FRANDSEN. No; a college educated woman would probably do very well if she makes a 6 or 7.

Ms. HELFER. Unfortunately, this is another area that's a problem in the program is that women are overeducated for the grade levels that they occupy at this point.

That's slowly changing, but I think it's going to take some time.

Mrs. FRANDSEN. I would like to address myself on the divorce settlement. I don't think that if I went into court, and a settlement was made, that the court can anyway interfere with my husband's pension. In no way could they make an agreement or could I make an agreement in this marriage that I be included in that pension. As far as I know that's like the Rock of Gibraltar. Now perhaps they could the way the law is now conceivably collect or garnishee that for child support or alimony, but as far as a divorce settlement I do not believe that. That is just sacred and we could not collect.

Mr. LEACH. At this point that's right, but perhaps this could be changed.

Mrs. FRANDSEN. And on this point is what we're basing our testimony. I don't know what will happen in 25 years from now.

Mr. LEACH. True. Another approach to the whole situation could be to make it more explicit that it should be considered in the divorce settlement.

Mrs. FRANDSEN. It could not now legally be considered.

Mr. LEACH. At this time, that's right.

Mrs. FRANDSEN. And I don't know when it will ever change so I must address myself to what it is now.

Mr. LEACH. In divorce settlement, unrelated to whether this package is considered in certain States, the principle of fault is sometimes applied. Do you believe this bill should address itself to the principle of fault?

Mrs. FRANDSEN. Absolutely not, because it has absolutely nothing to do with whose fault. We're looking at the service that this person has done in the team over the 20 years. It has nothing to do with the reason that this marriage broke up. That he found somebody or she found somebody. We are talking about the 20 years or so that this person has



put into the marriage. I mean, if someone works and they have had 20 years of good faithful service, got drunk or something like that, did something dreadful and was fired—but I think we should address ourselves to the number of years that that person was a faithful, good employee.

Mr. LEACH. Thank you, I appreciate your comments.

Mrs. SPELLMAN. Thank you. I'm not quite sure I understood what has been said. If husband and wife were both working are we saying there should be a sharing of the new annuities of each?

Mrs. FRANDSEN. That's right.

Mrs. SPELLMAN. Yes. They both would share in each other annuities—right?

Mrs. FRANDSEN. Right.

Mrs. SPELLMAN. Well I thank you very much for your testimony. We appreciate your coming.

Our next witness is Mrs. Jeannette Phillips.

#### **STATEMENT OF JEANNETTE (JUDY) S. PHILLIPS, GREENBELT, MD.**

Mrs. SPELLMAN. Mrs. Phillips, you're a Federal housewife and we hope that you'll be giving us another side of the picture that we haven't had thus far.

Mrs. PHILLIPS. I'm afraid so from what I've heard. I had a bit of a problem with asthma, so if I don't manage to get this read, I do ask that it please be put in the record in its entirety.

Mrs. SPELLMAN. It certainly will be.

Mrs. PHILLIPS. This is my husband, Dick.

Madam Chairman, I do appreciate the opportunity to state my feeling and opinions and share some of my experiences and observations with you.

My introduction to this bill came via the Washington Post. I then talked with Mr. McCluskey and he did assure us that the bill will not be retroactive and that we won't be affected by it, but I am concerned about the many more persons who will be affected by it and that's the reason I'm going through this period of insecurity here to present this to you.

Presently as I see it there is not a provision whereby Federal employees may be excluded from liability due to having made agreeable and satisfactory arrangements at the time of divorce. Neither does it take into consideration that some former spouses initiated a divorce and also prepared by attending college of whatever to get into the job market and to earn their own retirement and in this case of course the husband would have helped and shared with her in attending college or whatever with the thought in mind that imminently there would be a divorce. It would be difficult the way it is now written for me to believe that in this society that it can even be enacted into law.

All rights that I have always thought were inherently ours because we came here for freedom it seems to me will be violated if it is enacted as it is now. At this time our courts, of course, as we have seen in the last few years don't have fixed and rigid sentences whereby all persons are penalized equally for a specific inappropriate behavior, as defined by society. Instead of course the judge and the jury mete out different



punishments according to the individual case. Yet, this bill advocates a mandatory punishment and does not take into consideration the many variables.

First, former spouses who either married for financial security or served their 20 years for same. Females are culturally conditioned to seek financial security through a good marriage. It is not surprising that a person will take whatever action is necessary when they find a person who desires a relationship with them based strictly on love.

Second, adultery by the former spouse.

Third, divorce initiated by former spouse who will then live with another partner without benefit of marriage in order to qualify for benefits as a former spouse of a Federal retired employee.

Fourth, mutual agreement to divorce as a result of incompatibility.

Fifth, women who are seeking their freedom after the children are of age. Many disappear and leave the children with the husbands.

Sixth, former spouses who may have sufficient assets; in some cases more than the retired Federal employee.

Seventh, health and expenses of the retired Federal employee.

We could list as many variables as there are human beings, who just happen to be Federal employees, that will be affected if this bill is enacted.

Think of what may happen if a retired Federal employee or a Federal employee has been married for 20 years, mainly he might have stayed because of the health and welfare of the children. Any combination of variables may exist: Adultery, drug abuse, mental cruelty. Now the Federal employee is faced with either being forced to continue the marriage and tolerate circumstances which are damaging to his or her mental health or divorce and not be self-supporting because a portion of the annuity will not pay the fixed expenses, not to mention medical bills or other emergencies.

It seems to be that there would be so much resentment, anger, hostility, and frustration that it is quite likely that he or she could easily become physically violent. That is, this is a double bind: "you are damned if you do and you're damned if you don't." I suggest that you, the committee, research this aspect with professionals.

This bill, it seems, was conceived as a result of interviews with divorced women. Did you also interview the divorced men who were involved? It takes two to make or break a marriage and it is never one-sided. The myth that all women are lily white and innocent and that all men are dirty, old men who chase young, sexy women is degrading to both sexes and is, in my opinion, chauvinistic.

I have found that married women who are unfaithful to their husbands do not confide in married women who are not unfaithful to their spouses. However, as a divorcee I was confided in. I was shocked. Time does not permit a lengthy discussion of some of these revelations, but believe you me they, you know, set your ears back.

The general philosophy, however, as I found was to stay with the spouse for financial security and alleviate any boredom, or lack of desires having been met, by having a lover. If there was not freedom to engage in affairs while living with the spouse, divorce him and get all you can out of it. Women have laughed about how their lawyers



told them to dress and behave in the presence of the judge so that he would rule favorably for them; and this included rehearsals during which they practiced crying and looking very sad and rejected.

Now, with this, I've even heard it taken so far as to who the judge would be—the lawyers of course would be familiar with the particular philosophy of the judge so they would know the part where he was vulnerable and that he would fall for it. So they would tell the woman: at this particular point I'm going to ask you a question and you behave in such and such a way and you will get through to the judge, and you will get more alimony or whatever.

OK, the recommendations that I have are that I think there should be career exploration. It should concentrate on education for the former wife. I think that student loans particularly NDA's should be made available to them. I would say almost mandatory that it would be so that it would help them of course, and they would be self-sufficient. And I think have more feeling of accomplishment and self-respect.

I don't think that it's really a good thing to depend entirely on another person for your well-being and, if enacted, as it is or with some modifications, I think this bill should apply only to persons who accept positions after the date of enactment and discuss this provision with all civil service applicants so that they are thoroughly aware of all the implications.

Current Federal employees accepted employment as a result of the benefits which will accrue to them. If they are average, they basically live on their salary and do not accumulate a large nest egg. I doubt that the average employee can live on one-half of the expected annuity. Had they known from the beginning that they would have to share their annuity, I believe their life style would have been different.

Also, it seems only fair and equitable that current Federal employees be given a chance to change their marital status before the date when this new provision is phased in.

The special interest group which would benefit from the enactment of this bill should be able to go through the courts to obtain a fair and equitable financial agreement. If necessary and desirable, they should be able to garnishee the salary or annuity check when the alimony is in arrears. The former spouse may consider a life insurance policy on the Federal employee or an annuity endowment policy, et cetera, which could be a part of the divorce settlement.

Since this is a democracy, I do not believe our government should take the property of their citizens without their consent. This is especially appalling because many of the federal retirees may be old, disabled, and innocent of any wrongdoing that caused the divorce other than not working hard enough to communicate and this, of course—again, it takes two to communicate. It is disheartening to realize that a federal employee can have worked long and hard for years only to end up as a welfare recipient because the expected annuity has been seized unjustly.

I would not consider working for an employer that was empowered to deprive me of the retirement income which I earned. If I were currently a federal employee, I would resign or retire before this bill



is enacted. Although this bill was introduced in order to correct an inequity, it is my opinion just been shifted to the other party.

As a female and wife, I am disgusted that the sacred state of matrimony is being treated as a profession. If being a wife is a profession, then am I not being paid to perform my wifely sexual duties? I do not have any more respect for a woman who marries for financial security or continues to live with her husband for financial security, that I do a paid prostitute who is at least honest about her motivations. That is, I consider this type of marriage legalized prostitution.

My impression is that the original intent was to protect former spouses who were abandoned for other women. It is not fair to enact legislation that is mandatory for all retired federal employees to satisfy, in my opinion, the few former spouses who may possibly be justified in receiving more compensation than they were given in a divorce decree.

If enacted, I will be opposed to the money that will be spent in order to administer the law. I do not believe that all taxpayers should be required to pay taxes to support the few persons in this special interest group. Thank you.

Mrs. SPELLMAN. Thank you very much for your testimony and you were able to get through it all.

As you mentioned in your discussion with our counsel, Mr. McCluskey, we were thinking about this bill in a prospective sense, so it applies to divorces which take place after enactment. Am I right that you recommended that it should apply to employees who are hired after this bill's enactment?

Mrs. PHILLIPS. That's right. I think that would be fair. In other words, if they knew the full implications, you know, you may think when you get married—certainly you don't plan to get a divorce, but I'm not sure that anybody can say, I am never going to get a divorce. But if they know when they apply for the job that there is a possibility or they will, in fact, share their annuity if they get a divorce then they may prefer to stay out of federal employment.

And the other thing along this line is that I wondered is it really fair to treat federal employees one way and the private sector another. That seems to me unfair that this should be the case.

Mrs. SPELLMAN. Of course, we don't really control the private sector—we today are concerned with federal employees only.

I was interested in something you said here and I sort of panicked a little bit when you said it seems only fair and equitable that current federal employees be given a chance to change their marital status before the date when the new provision is phased in. I could see just a rash of divorces in anticipation. I think it's kind of scary.

Mrs. PHILLIPS. Well, no, I was thinking in terms of, you know, some persons who will be affected. Their marriage may be shaky. They may be trying to hang on until the children are through high school or through college, or whatever, but if they knew that this would come into law then I think that they should be given a chance to obtain a divorce according to the divorce laws in their State. In some States it takes 2 years to get a divorce. They should be given an opportunity to decide and if they want to change their marital status, get on. But it's the act of having a choice that I'm mainly interested in.



Mrs. SPELLMAN. You have said something that apparently both sides of the issue are in agreement on and that is that this annuity should be able to be regarded by the court as part of a financial settlement. I think we seem to find agreement on both sides on that. This is a provision which is not law today.

I think you've probably answered most of the questions that we had.

Did you have any questions, Mr. McCluskey?

Mr. McCLUSKEY. I would just like to clear up for the record a statement on page 1 of your testimony. You state that judges and juries mete out different punishments according to individual cases and that this bill advocates mandatory punishment. I don't think it's the intent of the committee, nor is it the intent of the judicial system to mete out punishments in any divorce case. Divorce cases are generally held in a court of equity. You're dividing up property rights, and so forth. Punishment is a pretty harsh word.

Mrs. PHILLIPS. Well it could have been. Well, that's the way I see it. It seems that the husband is, generally speaking, always the one that is at fault. And of course, you know, he can really get it socked to him. So to me this is a punishment to take away his retirement without his consent. If he had agreed to it in the divorce settlement then I think that would be fair enough.

Mr. McCLUSKEY. Or retirement?

Mrs. PHILLIPS. Right. But it does seem to me—this is my impression—it does appear to me to be a punishment. Now that's my perception. I'm sure it would not be your word to use, but that's the way it appears to me.

Mrs. SPELLMAN. If we follow along those lines whether it's punishment or not, and I would hope that it would not be considered that way, then we might take a look at the bill that is coming before us on the criminal justice system which will call for mandatory sentences to give crimes. Surely we are not discussing any crime and punishment situations when we speak of divorces and annuities.

Mr. McCLUSKEY. So you would advocate unlike the previous witness that this bill should make a distinction between fault and no-fault divorces?

Mrs. PHILLIPS. Yes, I think definitely so, because you see what I mentioned—I don't think you picked it up. I doubt very seriously that you, Mrs. Spellman, or the maker of the bill, Mrs. Schroeder and the women who have testified, if you have never been divorced and lived in the world of the divorcee, have heard the stories that I have heard. You have not seen the behavior that I have seen and women, from what I have seen and heard, do some atrocious things. They step out on their husbands. As if that's not enough and of course then they expect their husband to support them, but they even laugh and call them stupid because they were so naive and gullible that they didn't realize what they were doing.

It's as though many women deliberately use men and this use of men is what I detest so and seeing women do it is insulting to me. I dislike very much to see it and I don't think you have heard those stories. So I'm not being critical of the maker of the bill, but it's



just that unless you have lived in that world you cannot possibly know, I don't think, how men are viewed by many women and used terribly. And also of course the many stories of how they deliberately use anything they can come up with to get favorable treatment from the judge. Not that the really think they deserve it, because they will laugh and talk about how they tricked the judge. And it's again how you trick and use men.

So, yes, I think it should be fault. In these instances I definitely don't think that a woman deserves it. She doesn't even deserve what she's getting at the time much less anything later on.

Mrs. SPELLMAN. On the other hand we have seen and talked with women who were good wives and good mothers for 20 years and then suddenly found themselves with nothing. Nothing to compensate them for all the years that they had put into that job. It was their job and they took it very seriously. They worked very hard at it. It comes as a great shock to them suddenly to realize that they're not wanted in the labor market. That's something we hope to change some day, but it is true today. Just this morning I was reading a letter from someone who qualified for a job and was by far the best candidate. She was a woman in her 50's and had considerable experience. But a young woman who had just come out of secretarial school was hired instead. Older women have problems even though they may have good skills.

What we seek is a way to find some area of equity where people are paid for the work that they do perform. In this case being a wife and mother was work that was being performed. It's not easy work in many cases. I have lived that role. I love my husband and love my children, dearly, but there were times when I could hardly wait for my husband to come home so I could leave the children with him and go out for an hour's respite.

I was determined that I would not go to work until all the children were in school. I then went to teaching so that I would be out only during the hours the children were out.

Being a homemaker is just not easy work for some people to perform and yet they do it and do it very well. It is very shocking to many women, if they have no other skills, to suddenly find themselves after years of marriage, having to go out into the job market today. It is most difficult! So we're trying to find some area of equity and no law is going to take care of every situation. But we hope that somewhere we will find a ground which will take care of most people in the most equitable way.

Mrs. PHILLIPS. Could it be that each case can be judged individually? This again it seems to me would be more fair.

Mrs. SPELLMAN. In a sense I guess that's what would happen if we were to say that the annuity could be used as part of a marriage settlement.

That's what would be happening if the court were able to use this as a settlement in a divorce case. The annuity would be part of the couple's assets and the division would be made on the merits of the case.

We've had correspondence from men, who wished that they could leave their annuities to their first wives. Each believed his first wife deserved it—that—in a sense, she had helped earn it. So, we're not say-



ing that men are opposing this and that women are favoring it or that the first wife is and the second wife isn't. Each person views it in terms of his own experience and I think that somewhere, somehow we'll have to find that common ground.

I might say there are a great many men in the House and at least one woman in the House who are divorced and who will look at this bill in terms of their own experiences and many have certainly voiced their thinking on this bill. Several of them have said, "Hey, before you go very far with this you should sit down and talk to my second wife and so and so's second wife, also Jack's second wife, and Jim's second wife. Until this bill I had no idea of how many second wives there are here.

Politics is very difficult on marriages. Especially in the Congress. When husbands come here many wives are staying home to keep the families going and to keep the political pot boiling. Unfortunately, that doesn't lead to stable marriages so we've had a lot of experience here in the House with second marriages. That may color what happens to this bill since unfortunately the word "Member" appears in that bill constantly. I'm not sure I would have written it that way. I think I would have sneaked up on them. There will be difficulty finding something that all of us can feel is just.

Mrs. PHILLIPS. Well, of course, as a second wife there's not anything very much personal I think in there, but of course I have not or will not complain that I did know. But the fact of the matter is that of course our life style is different than it would have been had the divorce settlement not been split about 50-50 or so. So, the second wife contrary to what some people may believe does not really have a bed of roses all the time. Certainly there is that part I don't want to get into nor complain about because I don't really have any complaints. I don't think that maybe the first wife can be objective toward the second wife and I can see why. But I do wish that they would consider that after the settlement, which in some cases and in this one were split and in alimony for a period of time and then the kid to college and all this. So, it's not as though he was able to retain, you know, the assets that he had all these years. And also of course his life style has changed too and it's not just the one who has to face a difference in life style, but both. And that's just the penalty you get for perhaps not trying from the beginning to make the marriage work. I don't know. But it's not all one-sided, I'm sure.

Mrs. SPELLMAN. We thank you very much for coming today. It was most helpful. We were going to have testimony from the Civil Service Commission today, but because the Commissioner of Civil Service Commission has not yet been confirmed by the Senate, we don't have a way of getting the necessary permission for their testimony. We will be hearing from the Civil Service Commission on June the 4th.

Our next meeting on the subject will be on the 18th of May.

We thank you very much for attending.

[Whereupon, at 10:35 a.m., the hearing was adjourned.]



## ANNUITY PROVISIONS FOR FORMER SPOUSES

WEDNESDAY, MAY 18, 1977

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE OF COMPENSATION AND EMPLOYEE BENEFITS,  
*Washington, D.C.*

The subcommittee met at 9 a.m. in room 304, Cannon House Office Building, Hon. Gladys Noon Spellman, chairwoman, presiding.

Mrs. SPELLMAN. The subcommittee will come to order.

The subcommittee has convened this morning to continue its hearings and deliberations on H.R. 3951, a bill which provides that a former spouse of a Federal employee, who was married to such employee for 20 years or more, shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee.

An additional hearing on this subject is scheduled for June 24 at 9:30 a.m., in this room.

Thus far, we have had 2 days of hearings on this legislation, in which we received extremely interesting testimony. At a previous hearing I stated that there were approximately 4 million employees, active and retired, who rely on the Federal civil service retirement system for benefits.

In spite of the fact that the Federal pension plan is one of the more stable employer-employee plans, it fails to provide any economic protection to the former spouse of a Federal worker. A former spouse, despite her years of devotion to managing a home, raising children, and contributing time and effort to a joint marital enterprise, is left no direct retirement benefit.

If marriage is to be considered a partnership, then let us accept the fact that each spouse make a different, but important, contribution and should have a legal right to a portion of the earnings of the other spouse.

Such a right should be legally recognized and survive the marriage in the event of its termination by divorce, annulment, or death.

Our witness this morning will be Prof. Henry H. Foster, Jr., of New York University. Professor Foster is also chairman of the American Bar Association's Family Law Section.

Professor, we're delighted to have you here today. We appreciate your taking the time.

Mr. FOSTER. If it suits your pleasure, I would like to submit my prepared statement. I've already delivered 35 copies or so; I'm sure one is available for the record.



I would like to make a few general remarks, then respond to any questions.

Mrs. SPELLMAN. I found your prepared statement most interesting.

**STATEMENT OF HENRY H. FOSTER, PROFESSOR, NEW YORK  
UNIVERSITY SCHOOL OF LAW**

Mr. FOSTER. Thank you. I appear before you as one who has enjoyed civil service status with the Federal Government, as one who has received numerous advantages and detriments for military service.

I do not believe that any of us who, in my day, served the Government or the military, considered the immunization or sanction of paying benefits as an inducement for, or as an indispensable term for, employment. At least I did not regard it as a fringe benefit.

But times have changed. One might say, "Oh, how they've changed!" And I believe that the law, ordinarily, should reflect changing conditions and circumstances, and should reevaluate equities and fairness in accordance with legal reform.

The sad fact is that in the United States there is something over 1 million divorces a year, involving somewhere between  $3\frac{1}{2}$  to 4 million persons—when you include children.

Moreover, there has been a dramatic increase in the dissolution of long-term marriages. I am sure you are aware of those statistics. And, in many divorce situations, pensions or retirement benefits constitute the largest asset of the family which could be subject to equitable distribution.

It would not be uncommon or atypical for the parties to have a couple of end tables, TV, and a few odds and ends, and that's it, after 20 or more years of marriage.

Without the inclusion of such benefits in what I call the "kitty," available for distribution upon the dissolution of the marriage, then equity, certainly, would be denied to a substantial number of spouses; and more important, financial hardship may be occasioned, especially to the women in their later years who may not be readily employable for the labor market.

It is not enough to say that alimony can pick up the slack. Alimony is a "sometime thing." Collection is expensive—often difficult, if not impossible. Alimony also perpetuates dependency, while a spousal share of a pension or retirement benefit is something which is earned, not a gratuity.

So-called no-fault divorce, which exists in all but three States of the United States, often is available upon unilateral demand and at the request of one who has violated marital obligations.

In the old days there may have been some poetic justice achieved in the battle of the sexes by permitting the wife to win the battle over alimony, but to lose the war in enforcement and collection.

Note, I said "there may have been some poetic justice." In fact, it was more often a most cruel hoax looked at from the standpoint of equality and fairness.

How can one justify the insulation of valuable assets from distribution upon no-fault divorce? If modern marriages are, or should be, a



partnership of coequals, isn't any exemption of assets accumulated during the course of the marriage, attributable to the function of the partnership, unconscionable?

Note that in other areas the point of view that I am advocating has overcome the resistance of Government employees so that garnishment, for example, now is permitted to satisfy the support claims of wives and children.

I do not say that it is working well, but in theory at least, it does now exist.

As a one-time student of constitutional law, it has always troubled me that the Stuart credo that "the King could do no wrong" evolved into a doctrine of government immunity in the United States.

Government immunity from the consequence of wrongs is bad enough, but it is an even greater affront to the principles of the democratic society that such a shield should be extended to all the king's men.

I thank you for having invited me to appear, and, again, I would be most happy to try to respond to any questions.

[The prepared statement follows:]

PREPARED STATEMENT OF PROF. HENRY H. FOSTER, JR., NEW YORK  
UNIVERSITY SCHOOL OF LAW

For nearly thirty years, I have been researching, lecturing, and writing in the area of Family Law and have published numerous articles and books, and have been the official reporter or consultant for divorce law reform in several states. Currently, I am Chairman of the Family Law Section of the American Bar Association. I might add that I have had almost 43 years of practical experience with marriage and have been spared the splitting headache of divorce. The following remarks are made in my individual capacity and do not represent the official views of my employer, the American Bar Association, or my wife.

From the standpoint of a theorist who occasionally is exposed to the practical problems of matrimonial litigation, it is evident that there is much wrong with our statutory and decisional law pertaining to marriage and divorce. We have reached the point where all but three states (Illinois, Pennsylvania, and South Dakota) have some form of so-called "no-fault" divorce. The new law for the District of Columbia which permits divorce upon mutual consent after six months separation and after a year's separation upon unilateral demand, is fairly typical of recent legislation in the United States. The important thing to note about "no-fault" divorce is that there are no meaningful defenses and divorce may be obtained upon unilateral demand.

Before the tidal wave of "no-fault" divorce, the main characteristic of traditional American divorce law was that if both parties desired divorce and the case was uncontested, as was true over 90% of the time, the marital bond could be legally severed. However, if one party opposed divorce, he or she had bargaining leverage to exact more favorable terms from the other party. No-fault divorce eliminates that leverage, and unlike the situation in Canada and England, hardship, economic or otherwise, is not a basis for postponing or denying a divorce.

Elsewhere we have written an article entitled "Divorce Reform: Brakes on Breakdown?" [13 J. Fam. Law 443 (1973-74)]. Our conclusion was that although breakdown of the marriage is a sound and reasonable ground for dissolution, it required special safeguards and protections including: (1) some check on impetuous divorce and some specification of how breakdown is determined; (2) provisions for alimony and distribution of property which are fair and equitable; and (3) recognition that welfare of children, if any, must be furthered and protected. It is the second safeguard stated above that we are here concerned with and which I will discuss.

The reform of divorce law and the dramatic increase in the incidence of divorce have brought about a serious quantitative if not qualitative difference in the



divorce process and the problems it engenders. It is imperative that the economic incidents of divorce be resolved in a fair and equitable fashion. This means that modern marriage should be viewed as a partnership of co-equals and that upon dissolution of the marriage there should be an equitable distribution of "family assets" produced by either partner during the marriage and that alimony or maintenance should be ordered where there is economic need and ability to pay.

It follows from the partnership concept of marriage that upon dissolution the economic emphasis will be upon an equitable distribution of marital property, and that alimony or maintenance, based upon actual need and ability to pay, will play a subordinate role. In many instances no alimony whatsoever will be awarded, in other cases it will be granted for an interim period, and in the case of senior citizens it will be for an indeterminate period. The economic plight of the wife who is divorced after thirty or more years of marriage should deserve special consideration.

First of all, although the divorce rate for persons married thirty years or more is not as high as that for shorter marriages, nonetheless it has at least doubled in the past ten years. If the parties have accumulated little property, or if divorce occurs in a state which does not provide for equitable distribution (viz., Florida, Georgia, Mississippi, New York, Pennsylvania, Rhode Island, South Carolina, Virginia, and West Virginia), the divorced wife may be entirely dependent upon alimony for survival. If the former husband dies the week following the divorce decree, the wife of many years standing ordinarily loses her sole or main means of support.

It seems obvious, at least to me, that in order to accomplish economic justice, there must be an expanded definition of "marital property" or the "kitty" which is subject to distribution by the divorce court. Alimony or maintenance is too uncertain; often is difficult if not impossible to collect; and in any event the partnership of marriage calls for a fair division of the economic assets produced by the marital partnership. Unilateral divorce upon demand is acceptable only if such fairness is achieved.

In the nine states listed above "marital property" consists only of those family assets which are held jointly. Separate property of each partner remains such upon divorce. In the nine community property jurisdictions, however, the community is subject to distribution upon divorce. In the remaining thirty-seven common law property states which by statute or decision permit equitable distribution, separate as well as jointly owned property is subject to distribution upon divorce, although there is disagreement over whether separate property acquired before marriage, or by gift or bequest, is subject to distribution. Moreover, the community property states differ as to whether there may be an equitable distribution of the community, or as in California and Washington an approximately equal division.

The practical problem for equitable distribution is to make sure that all spousal assets are in the "kitty" and that neither partner is allowed to insulate assets of value because of legal definitions or fictions which were devised for other situations and purposes. In determining what constitutes "property" or a family asset, the partnership concept of marriage and a fair division of the product of the marriage should be kept in mind. Thus, the "good will" of a profession or business should be included in the "kitty," and pension or retirement benefits, whether "vested" or accrued, or not, should be regarded as subject to a spousal interest. Otherwise, the beneficiary will be permitted to insulate what may be the largest thing of value produced by the marital partnership.

I am aware of past court decisions which have sustained under the Supremacy Clause the doctrine of federal pre-emption by statutes which were held to supersede inconsistent state law regarding marital or family property. Decisions such as *Wissner v. Wissner*, [338 U.S. 655 (1949)], *Free v. Hand* [369 U.S. 663 (1962)], and *Yiatchos v. Yiatchos* [376 U.S. 306 (1964)], however, involved such significant federal policies as the exemption accorded under the National Service Life Insurance Act, the survivorship provision in the federal law as to United States savings bonds, and the designation of the beneficiary of federal savings bonds. The federal policies involved were held to be legitimate and important. But all of these decisions were handed down before the current wave of divorce



reform and the change in the relationship of alimony and division of marital property. Today, obviously the state and individual interest in a fair and equitable distribution of marital assets is far greater than formerly. The federal power to pre-empt may still exist, but it should not be exercised regardless of cost to human lives.

In practical terms, the issue is whether or not at a time when divorce is readily obtainable upon unilateral demand and a pension or retirement benefit may be a significant portion of the assets accumulated during marriage, the federal policy should be to contract rather than to expand the marital property subject to equitable distribution upon divorce. The most recent expression of Congressional policy in an analogous situation is that set forth in Public Law 93-647, approved January 4, 1975, which added section 459 to the Social Security Act, and permits the garnishment of Civil Service retirement monies to enforce obligations to provide child support or alimony. Admittedly, the new statute makes no reference to the enforcement, as such, of marital property settlement agreements.

There are several things to be noted, however, regarding the limited application of Public Law 93-647. The first is that it now has become public policy to subject federal retirement monies to garnishment in order to enforce marital obligations, including alimony. Secondly, it is possible that Congress was unaware of the recent developments regarding the economic incidents of divorce which we have discussed in these remarks. Thirdly, there may have been no awareness that the distinction between property settlements and alimony is most tenuous and inexact, and that it may be more appropriate to lump them both into the larger category of the economic incidents of divorce. Whether a particular financial claim comes to be described as "property" or "alimony" may depend upon such matters as convenience, liquidity of assets, current cash flow, etc. What is called "lump sum" alimony is especially difficult to distinguish from a property settlement.

Professor Max Rheinstein, a world-renowned scholar in the field, has pointed out that "The distinction between alimony as a means of support, and the unscrambling of the parties' property, can easily be lost in such a process." [Rheinstein, "Marital Property Division," 12 Willamette L.J. 413, 424 (1976)]. Professor Rheinstein also comments favorably on the trend to emphasize the equitable distribution of marital property and to limit alimony to instances of actual need and ability to pay, and notes that such emphasis would ease the burden of post-divorce litigation over the enforcement or modification of alimony claims.

It is fair to assume that the formulation of Congressional policy should have regard for the practical consequences of particular legislation and that bad situations should not be worsened. Although traditionally alimony law has been discriminatory against men in that it might be awarded only to wives or ex-wives, that supposed advantage was more than offset by breakdowns in collection and enforcement. The sorry record in this country is that support and alimony orders more often than not are disobeyed, that is, payment is not made at all or is not made on time. I know of no comparable area where defiance of court orders is so prevalent and so successful. Moreover, resolution of the practical problems that the process entails is extremely difficult. Congress, however, in Public Law 93-647, provided some amelioration of the problem by removing the exemption of federal income or monies from state garnishment proceedings to collect support or alimony. The same considerations which led to that declaration of federal policy also support H.R. 3951 because increasingly the distribution of family assets, including spousal rights in pension or retirement benefits, is serving the same purpose as alimony.

In urging the enactment of H.R. 3951, I wish to add that I agree with the position taken by others who have made statements before your esteemed Committee, such as Ms. Pauline H. Menes, and Patricia J. Barry, who endorsed the bill but suggested that the 20 year marriage requirement be deleted. I also favor that deletion and likewise would eliminate the 20 years of marriage requirement in the Social Security Act. Unless the 20 year requirement is abolished grave injustice will be unnecessarily inflicted on many wives whose marriages were of shorter duration. Any claimed administrative convenience does not justify an arbitrary withholding of entitlements or a discriminatory infliction of financial hardships on some wives.



I hope that in some measure I may have convinced you that modern marriage should be viewed as a partnership of co-equals and that such is the reasonable expectation of the parties. Neither federal nor state law should provide havens or exemptions for those who would evade or avoid marital obligations and public policy should be to batten down the hatches so that divorce court orders are enforceable. Such a policy is of tremendous social importance because with the possible exception of the traffic court, the American citizen is more apt to be exposed to the judicial system in a divorce or family law matter than in any other type of legal proceeding. The public's reaction to the administration of justice and general respect for law and the legal process depends in no small measure upon how the divorce process functions and whether or not it is fair and equitable.

Increasingly, it has been the judgment of state legislatures and state courts that fairness and equity require that family assets be divided upon divorce and that the "kitty" to be divided should encompass all assets. The community property states, especially California, Texas and Washington, were the first to classify pension and retirement benefits as part of the community, but recently such common law property states as Colorado, Missouri, New Jersey, and Wisconsin, have regarded such benefits as marital property subject to equitable distribution upon divorce. California has even rejected the requirement that the pension or retirement rights be "vested." [See *Brown v. Brown*, 126 Cal. Rptr. 633, 544 P.2d 561 (1976); *In re Marriage of Freiberg*, 127 Cal. Rptr. 792 (Ct. App. 4th Dist. 1976); and *In re Marriage of Ames*, 57 Cal. App. 3d 912, 129 Cal. Rptr. 334 (Ct. App. 2d Dist. 1976)]. Although an argument may be made that a divorce court's lump division of federal or military retirement pay conflicts with federal statutes, so far that possibility has not prevented treatment of such benefits as family assets. [See *Ramsey v. Ramsey*, 96 Idaho 672, 535 P. 2d 53 (1975), and Bowman, "Lump-Sum Division of Military Retired Pay: A Dissenting View," 3 Community Property Journal 135 (1976)]. It also is arguable that the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93-406) has pre-empted the field so as to preclude community or marital property claims to any pension plan coming within the ambit of ERISA. [See Johnson and Jones, "How Community Property Laws Affect Employee Benefit Plans," 3 Community Property Journal 3 (1976)].

Whatever the merits of these arguments regarding federal pre-emption insofar as constitutional power is concerned, it is clear that supremacy should not be exercised in a manner to perpetuate or to engender discrimination and hardship. For many years it has been conceded that marriage and divorce law is a subject within the special competence of states and that the federal government should intrude only where necessary to accomplish an important national purpose. [See *Spindel v. Spindel*, 283 F. Supp. 797 (E.D.N.Y. 1968)]. Surely, the insulation or exemption of a significant family asset so that it may not be considered along with other forms of property serve no useful federal purpose and undermine important and socially significant state policy as to economic fairness between parties to divorce.

Finally, it may be realistic to note that even a misguided federal policy of exemption cannot ultimately prevail since state courts remain free to consider pension or retirement benefits in computing the amount of alimony to be awarded and thus form will triumph over substance.



## APPENDIX

STATES HOLDING THAT PENSION OR RETIREMENT BENEFITS ARE  
COMMUNITY OR MARITAL PROPERTY

## COMMUNITY PROPERTY STATES:

California: Cases include the following: Brown v. Brown, 126 Cal. Rptr. 633, 544 P.2d 561 (1976); In re Marriage of Freiberg, 127 Cal. Rptr. 792 (Ct. App. 4th Dist. 1976); In re Marriage of Ames, 57 Cal. App. 3d 912, 129 Cal. Rptr. 334 (Ct. App. 4th Dist. 1976); In re Marriage of Maunders, 127 Cal. Rptr. 707 (Ct. App. 4th Dist. 1976); In re Marriage of Pithian, 10 Cal. 3d 851, 592, 111 Cal. Rptr. 369 (1974); In re Marriage of Wilson, 10 Cal. 3d 851, 112 Cal. Rptr. 405 (1974); Smith v. Lewis, 118 Cal. Rptr. 521, 530 P.2d 589 (1975); In re Martin's Marriage, 50 Cal. App. 3d 581, 123 Cal. Rptr. 234 (1975); In re Brugh's Marriage, 120 Cal. Rptr. 597 (1975); Bensing v. Bensing, 25 Cal. App. 3d 889, 102 Cal. Rptr. 255 (1972).

Idaho: Cases include Ramsey v. Ramsey, 96 Idaho 672, 535 P.2d 53 (1975).

Louisiana: Cases include Swope v. Mitchell, 324 So. 2d 461 (La. App. 1975).

New Mexico: Cases include: LeClert v. LeClert, 80 N.M. 235, 453 P.2d 755 (1969); and Otto v. Otto, 80 N.M. 331, 455 P.2d 642 (1969).

Texas: Angott v. Angott, 462 S.W.2d 73 (Tex. Civ. App. 1970); Mora v. Mora, 429 S.W.2d 660 (Tex. Civ. App. 1968); Dominey v. Dominey, 481 S.W.2d 473 (Tex. Civ. App. 1972); Webster v. Webster, 442 S.W.2d 786 (Tex. Civ. App. 1969); Busby v. Busby, 457 S.W.2d 551 (1970).

Washington: Cases include: In re McKinney, 2 Fam. Law Reporter 2370 (Wash. Ct. App. March 19, 1976); Wilder v. Wilder, 85 Wash. 2d 364, 534 P.2d 1355 (1975); Payne v. Payne, 82 Wash. 2d 573, 512 P.2d 736 (1973); Morris v. Morris, 419 P.2d 129 (Wash. Sup. Ct. 1966); DeRevere v. DeRevere, 488 P.2d 763 (Wash. App. 1971).

## EQUITABLE DISTRIBUTION STATES:

Colorado: In re Ellis' Marriage, 538 P.2d 1347 (Colo. App. 1975) (husband's military pension and future retirement pay although not marital property may be considered in setting alimony).

Missouri: In re Marriage of Powers, 527 S.W.2d 949 (Mo. App. 1975) (husband's interest in private company's profit sharing plan is marital property).

New Jersey: Callahan v. Callahan, 2 Fam. Law Reporter 2585 (N.J. Super. Ct. June 16, 1976); Kruger v. Kruger, 139 N.J. Super. 413, 354 A.2d 340 (1976); Blitt v. Blitt, 139 N.J. Super. 213, 253 A.2d 144 (1976); White v. White, 136 N.J. Super. 552 (App. Div. 1975); Hughes v. Hughes, 132 N.J. Super. 559, 334 A.2d 379 (1975) (unliquidated workman's compensation benefits); Scherzer v. Scherzer, 2 Fam. Law Reporter 2061 (N.J. Super. Oct. 10, 1976); Tucker v. Tucker, 121 N.J. Super. 539 (1972); Pellegrino v. Pellegrino, 134 N.J. Super. 512 (App. Div. 1975).

Wisconsin: Pinkowski v. Pinkowski, 67 Wis. 2d 176, 226 N.W.2d 518 (1975), and prior cases there cited.



Mrs. SPELLMAN. Many people are very skeptical about this legislation, and a great deal of misinformation abounds.

You indicate that it is essential to reevaluate public policy concerning divorce because the situation has changed so much with the liberalization of divorce laws, resulting in rising divorce rates.

Do you think the garnishment provisions that appear in Public Law 94-647, which now apply only to alimony and child support, should also apply to property and other spousal support?

Mr. FOSTER. Certainly, and note how arbitrary the distinction is between so-called property settlements on the one hand and alimony on the other in those states providing for lump-sum alimony. It's almost the accident of what term or word is used by lawyers in drafting.

The same function or purpose can be served. I think it is proper to look at distribution of property, alimony, child support, as the financial or economic incidents of dissolution. Look at the whole package is the realistic thing to do.

And it's certainly artificial to try to draw a firm line, a dichotomy, between property on the one hand and alimony on the other. It's most often very fortuitous, although there are important legal consequences.

I think we should be wary of labels such as "alimony" or property settlement. As a law professor I often remark to my students that lawyers tend to use a magic Latin phrase such as *res ipsa loquitur*, and the unfortunate thing is that it stops all thinking once you've got this magic phrase.

Or, say, the doctor, when he writes out his prescription, that's another kind of magic. It forecloses or puts an end to thinking.

So, for my point of view—and my premise, of course—is that modern marriage is a partnership of coequals. If that premise is rejected, then, of course, what I have to say is, perhaps, objectionable.

But I think in a modern marriage—and based upon many contacts with clients, with students, with lawyers and others—I think that it is common today for both parties to a marriage to regard it as truly a partnership with a division of labor that they work out themselves; and that commonly they regard the contributions of each one of the partners as being an equal contribution, at least until trouble comes and a breakdown of their relationship occurs.

There is difficulty, of course, in evaluating in monetary terms the value of the homemaker, the mother, the companion, and so on. I think that, despite attempts to put a dollar sign on it, the proper approach would be that this is an equal contribution to the marriage—that, ordinarily, upon dissolution or divorce there should be a division of the family assets attributable to the workings of the partnership, in other words, that were produced by the marriage, and that normally there should be a 50-50 split of those family assets.

Alimony—to me—should be available in the form of maintenance where there is actual need on the one hand and the ability to pay on the other. And we should try to eliminate the washing the dirty linen in public in divorce cases.

We should try to promote a planning for the future of the parties upon dissolution. They do not stop being parents, for example, and there should be wise planning as to custody and visitation.



There should be planning of the economic future of the shattered family, and it should be done in a fair and realistic way; otherwise, our divorce reform of the past 10 years is going to ruin many, many lives because there is no brake upon divorce upon the basis of family breakdown.

Jerry Geisler, a prominent west coast lawyer, one time said that there are two things that should not be resorted to prematurely: embalming, and divorce.

We have no brake on impetuous divorce in many States today. The least we can do, in that event, is to try to protect the welfare of any children in the family, and to try to make the economic incidents of divorce realistic, fair, and equitable.

And I think it is a monstrous thing if we fall down, as the law continuously does in many states, on the enforcement and collection of court orders for support and alimony. Well over 50 percent of all such orders throughout the country are violated.

And this occurs even in States where the money must be sent to the court rather than to the spouse, and where, purportedly, they have followup and check when someone gets in arrears.

Michigan is the only State I know of that's doing a first-rate job in assuring the enforcement and collection of support and alimony. The rest of the States are doing a very poor job.

This adds to the cost of public welfare and assistance. AFDC is bloated—or inflated—with some of these cases. It leads to utter disrespect for law and the legal process, and we're talking about an area where the citizen has the most frequent contact with the law and administration of justice, with the possible exception of the traffic court.

It is the divorce court or the matrimonial court which most often comes in contact with citizens. In some states these cases—matrimonial cases—now constitute 70 percent of all litigation being filed in the State. In New York it is over 50 percent of all actions commenced in the court of original jurisdiction—matrimonial cases.

We're talking about more cases by far than those involving collisions or automobile accidents—what, at law school, we call tort actions—plus contract actions, plus property actions.

You put them all together and you haven't got the volume of litigation we're talking about right here. And over and beyond that is all of the domestic relations or family court business, which in New York City exceeds the aggregate of the criminal courts.

Now, I suggest, respectfully, that it is of utmost public importance that this area of law be administered thoughtfully, justly, and that there be an assurance that the equal partners of marriage get a fair distribution of whatever it is that the marriage produced.

I think that the overwhelming trend in this country is in that direction, plus a lowering of the amount of alimony available and the insistence that alimony be regarded many times as an interim, or temporary, thing.

I think it is somewhat accidental that we have the necessity for the proposed amendment. I think it grew out of failure to look at the whole problem as an economic package, the way we must do since we've had no-fault divorce reform in this country.



I apologize for having gone on so long, but I'm trying to give you my philosophical set insofar as the problem is concerned.

Ms. SPELLMAN. I appreciate that. Having served in local government for a long time before coming here, I'm thoroughly aware of the really great number of women who are on welfare, getting AFDC because they're just unable to collect alimony.

I'm also aware of the fact that even when alimony payments are being made, and are being made faithfully, the women oftentimes can't use that money to make certain contracts—to buy a house, for instance.

Mr. FOSTER. Sure.

Ms. SPELLMAN. The banks would not recognize that as income, feeling that it was too "iffy"—as you said, a "sometime thing."

Mr. FOSTER. Statistics would support them in that, incidentally.

Ms. SPELLMAN. On another subcommittee which I am a member of, we have had to pass legislation saying that people can't be discriminated against because of marital status, and what we are attempting to say there is that alimony money is real money.

But we can understand, with the history of alimony, that lenders are skittish about putting their faith in that kind of money.

I think you've put it as well as I've ever heard it: Alimony equals dependency; and it just doesn't spend like real money in some cases; it's really quite difficult.

I wanted to ask you just a couple of questions. I understand that you're not appearing here in the capacity as chairman of the family law section of the American Bar Association.

Mr. FOSTER. I had no advance clearance for my appearance. It might be that my testimony would be subject to ratification; I'm not sure.

Ms. SPELLMAN. Are you aware that the Bar Association, in 1974, approved a Uniform Marriage and Divorce Act, which included detailed economic provisions to protect the wife and the children, recognizing the economic contribution of the homemaker along with her special problems in getting a job and raising a family?

Mr. FOSTER. Yes; I was one of the legal consultants to the National Conference of Commissioners on Uniform State Laws—from the family laws section to them—for the formulation of the Uniform Marriage and Divorce Act.

Second, I was the principal draftsman of the competing proposed uniform act that the family law section devised, and we succeeded in getting the commissioners to compromise—to change some of the terms of the Uniform Act, and eventually reached an agreement. So, I'm painfully aware.

Ms. SPELLMAN. I wonder if you, as an individual insider, might have knowledge as to why the bar association informed our subcommittee staff that they no longer maintain a policy in this area?

Mr. FOSTER. I'm concerned that there may be some kind of communication failure or misunderstanding, or somebody made some unfortunate remarks to your committee counsel.

I do know that before we can officially or publicly give anything in the way of an endorsement, we've got to get advance clearance from



the board of governors. And there's also a procedure for gaining approval of anything that comes out of our section in the way of a resolution.

Now, there is no immediate, pinpointed resolution dealing with the specific topic before your subcommittee this morning. There is a general proposition, particularly a lot of the philosophy, that I have espoused here this morning. It is approved—has been supported—by the American Bar Association and its family law section.

I don't think there's any disagreement from that quarter on what I've said. There is the lack of "Good Housekeeping seal of approval" on my prepared statement.

Ms. SPELLMAN. That's reassuring. I'm glad to hear that.

The bill, as written, makes no distinction between no-fault divorces, which you allude to as being most common, and divorce which is based on serious fault, such as desertion or felony conviction. In your opinion, should a distinction be made?

Mr. FOSTER. Well, in the background here is the matter of the negotiation of what usually are called separation agreements, in some States property settlements.

And in the negotiation between lawyers representing clients—the husband and the wife—there have been certain bargaining leverages. One obvious bargaining leverage is one party may be very anxious to get out of the marriage, and the other party indifferent or even wanting to retain the marriage.

That makes a difference in what ends up being the financial terms of the separation agreement. It may even affect custody and visitation, I think, often—unfortunately. So, you've got that sort of thing.

Second, before no-fault divorce became so common, a contested divorce in many States was very difficult to obtain. Pennsylvania remains one such State today. New Jersey, before they had their 18-month separation provision, was a difficult State in which to obtain divorce. Massachusetts would be another one.

On the other hand, Kansas—you couldn't successfully defend, no matter what your defense was, because the climate there was that the wife wasn't bothered with it—one of them wants a divorce, let's have the divorce and avoid the traditional defenses which existed historically.

So, your leverage before no-fault was that if you wanted to fight the divorce, and make a contested matter out of it, you were in a position to gain concessions—economic, custodial, or otherwise—from the other party.

Now that leverage is all gone, and I'm not disappointed that it's gone if you have a fair ball game left over so that you have some protection against economic hardship in the alimony situation, and as long as you have fair treatment of both on the distribution of what has been produced by the partners during the course of their marriage.

So that, as I see it, is the problem. Most divorces now, where you have a combination of no-fault and fault grounds, most divorces are occurring on the no-fault ground. New York, for example, the great majority of the cases—70 percent, perhaps, of all the divorces are on the living separate and apart grounds rather than the adultery, or the imprisonment, or the abandonment grounds.



Ms. SPELLMAN. Does it make a difference in the settlements when they are no-fault as opposed to adultery?

Mr. FOSTER. It makes a difference in New York, because in New York, if a wife has been found guilty of adultery, that is an automatic bar to any alimony.

That same wife in New York will not get any part of the separate property of the husband. She is limited to a share in jointly owned property—joint bank account, perhaps. If they owned a home or co-op, she would get a share of that.

Most serious consequences can occur where the wife is penalized in that fashion.

Ms. SPELLMAN. What if it's the husband?

Mr. FOSTER. The husband can't get alimony in New York; 34 States, to my recollection, now permit the husband to be awarded alimony. The remainder of the States do not, as yet, have any provision.

Ms. SPELLMAN. What if the husband is charged with adultery; what does that do in the settlements?

Mr. FOSTER. It might depend if we're speaking, say, of a Congressman—

Ms. SPELLMAN. Let's not. I think if you're speaking of a Congressman, his wife would get him just before the next election.

[Laughter.]

Mr. FOSTER. It would depend on what the livelihood, what public scrutiny he is subject to, and so on.

It can be a matter of major concern to men in various occupations that they not be sued for divorce on the grounds of adultery. Just to take a better example, let's suppose an Episcopalian minister instead of a Congressman.

Ms. SPELLMAN. Does the court view it differently, though, if they were just John Jones and Mrs. Mary Jones? Does the court see it as serious in the case of a man's committing adultery?

Mr. FOSTER. There was a double standard at one time in States such as Kentucky and North Carolina. This very thing was in a North Carolina case which points out the distinction between the husband and the wife vis-a-vis the adultery grounds for divorce.

It points out that as long as the husband "flits about from one soiled dove to another"—I'm quoting the court's language, not my own—"he is not subject to divorce on the grounds of his adultery."

But if he had a relationship that is somewhat meaningful with a woman other than his wife, then that continued cohabitation, a bigamous situation, can be a ground for divorce.

The wife—one slip from virtue—is enough; she's had it. At her husband's pleasure he can turn her out of doors and cut her off from all financial support.

Ms. SPELLMAN. I do want to give my colleague the opportunity to ask questions.

The gentleman from Iowa, Mr. Leach.

Mr. LEACH. I would like to pursue this a little bit further. Currently the legislation has no provisions for fault. The question, then, is: Do you think there should be any provision for serious fault or any exception whatsoever?



Mr. FOSTER. No, with the qualification—the bill as drafted proposes a 20-year marriage as a basis for assertion of espousal claim and the kinds of benefits we're talking about.

I think I object to the 20-year limitation here, the same as I do in the Social Security Act.

Mr. LEACH. Should there be any specific year limitation?

Mr. FOSTER. I think that you might have a 2- or a 5-year limitation and be able to justify it on the ground that marriages of very short duration are quite distinguishable from those which have longer duration. And the equities certainly build up in favor of what is today even retrospectively a longer marriage.

I think we certainly can agree that fairness must be accomplished, but if we're talking about a teenage elopment which lasts for a year or two having extremely economic consequences, then I think there's a difference.

Five years, perhaps, would be a reasonable cut-off point if you insist upon having one; but note that it isn't necessary to have such a cutting off point if you have a formula based on number of years marriage during the time the question or other benefit was building up.

And if you have that kind of formula, I don't see any need for a 20-year limitation at all. The wife of many years will, obviously, end up getting half of whatever the formula of years has served in the duration marriage may be.

Mr. LEACH. Let me just make sure I clearly understand response on the first question, which was that there should be no consideration of the length of the marriage whatsoever; would you stick with that arbitrary criteria under any circumstance?

Mr. FOSTER. Yes, I would, and I would cite as authority the law of the great state of Iowa, which so provides.

Ms. SPELLMAN. Now, how did you pick Iowa?

[Laughter.]

Mr. FOSTER. Well, I pick Iowa because I have heard what the word "Iowa" means—it means "sleepy ones."

Ms. SPELLMAN. Did you know that, Mr. Leach?

Mr. LEACH. "Sleepy" but "very savvy."

[Laughter.]

Mr. FOSTER. You see, at one time I was a Corn Husker, and a Sooner, and a few other things.

Mr. LEACH. Well, I have no further questions. Thank you.

Ms. SPELLMAN. There are just a few that I want to ask just to get some answers into the record. Do you think that H.R. 3951 infringes upon States' rights?

Mr. FOSTER. Not at all; quite to the contrary, it furthers them.

Ms. SPELLMAN. Would this bill interfere with property division at the State level, or would judges take the pension split into consideration when awarding the settlement?

Mr. FOSTER. I would believe the latter, particularly if you have statutory guidelines which, I think, are needed by States in this area.

Ms. SPELLMAN. I think that's an important point to make to some of our colleagues who see this above and beyond the usual split.

Mr. FOSTER. It's not a bonus.



Ms. SPELLMAN. It would just be considered to be part of the property that's being split.

It has been suggested that a compromise position might be to require the Civil Service Commission to honor State court orders in view of the mandatory division proposed by this bill. Would you feel that that might be a compromise for that position?

Mr. FOSTER. I think that there would be considerable merit to that. Right now I am aware that there is a great deal of trouble under the existing law in trying to garnishee, with federally imposed percentage limitations, in States which have no such limitations under local law.

I would suggest that there is an area that needs attention also.

Ms. SPELLMAN. On the other hand now, would you feel that that would truly be an equitable way to handle this bill, to just take that fallback position? Or do you think that it would be a much fairer kind of settlement upon the spouses to deal with the bill more as it exists today?

Mr. FOSTER. I would be reluctant to make that decision, because I don't have the advantage of all of the information that you and this committee have.

Ms. SPELLMAN. That, I think, will pretty much take care of those questions that we felt we needed to have answers to in the record.

I think your testimony has been invaluable. We certainly do thank you for taking the time to come before us.

Mr. FOSTER. Thank you for listening to me. It's been a pleasure to be before your committee. I, as a citizen, feel a great deal of confidence in the sincerity, and the integrity, and the public concern the chairwoman has shown. And I'm sure that Mr. Leach has given you full support.

Ms. SPELLMAN. He's been a very faithful member.

I must say I think your students are very fortunate.

Mr. FOSTER. Thank you.

[Whereupon, at 9:40 a.m., the hearing was adjourned.]



## ANNUITY PROVISIONS FOR FORMER SPOUSES

WEDNESDAY, JUNE 15, 1977

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,  
*Washington, D.C.*

The subcommittee met at 9:30 a.m., in room 304, Cannon House Office Building, Hon. Gladys Noon Spellman presiding.

Mrs. SPELLMAN. The subcommittee will come to order.

The subcommittee has convened this morning for additional public hearings on H.R. 3951, a bill to provide that a former spouse of a Federal employee who is married to such employee for 20 years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee.

Before getting underway, I'd like to clear up just a couple of misconceptions because misinformation abounds.

First, I want to reiterate that there is, in fact, a very real and legal need for this bill. I have many times during these hearings spoken of the human needs, and I won't go back into it this time, but if there is no objection—and since, at this moment, I'm the only one here I guarantee that there is no objection—I'm going to place into the record an article by Richard Cohen, which appeared in the Washington Post on April 5 of this year.

I hope, incidentally, that everybody reads Richard Cohen's column. I know that I do regularly. Almost always he sees things as I see them, which makes them right, of course; and he says things as I wish that I could say them. He has real depth and compassion and understanding and empathy, and I just hope that someday he'll be publishing a volume of his columns, because I intend to race to the store and pick one up.

I assure you this is not meant to be a commercial for Richard Cohen. I'm not his mother, or his sister, or his cousin, or his niece, but I am just one of his ardent fans.

I am going to put that column into the record because, once again, he hit the mark when he concluded that there is justice in sharing the retirement annuity.

[See p. 138, for article referred to.]

Mrs. SPELLMAN. Regarding the legal justification, we have, today, a dichotomous attitude in our Federal Government. We recognize that domestic relations matters should fall within the purview of the States, but we refuse to honor the decrees of the State courts when they award a share of an employee's retirement to a divorced spouse.



As a matter of fact, only in recent years has the Federal Government even allowed for the garnishment of annuity checks of Federal retirees for purposes of child support and alimony.

There are over 30 States which recognize, by law, that an employee's retirement interest is a property right earned by both spouses, directly and indirectly, and, therefore, that it is to be shared accordingly.

Now, despite those determinations on the parts of the States, and despite the fact that all States provide legal processes by which all of its people, including Federal employees, may obtain divorces and so forth, the Federal Government, which requires States to honor each other's laws, will itself do so only on a limited basis where Federal employees are concerned.

A reading of the constitution would, certainly, convince anybody that it was not meant to apply one way to those who are non-Federal worker force, and another way to those in Federal service.

Now, the committee does find some problems with the bill, and, as I'm sure I've said before, it's the general rule of the full committee that legislation should be prospective and not retroactive.

For this reason as well as others, members of this subcommittee determined from the outset that the bill will be amended to make it applicable only to divorces which occur after the enactment of this legislation.

This incidentally, has been agreed to by Congresswoman Pat Schroeder, the principal sponsor of this venture, who, incidentally, is our first witness today.

Pat, we are delighted to have you here. I've had the opportunity to talk with you many times, but others haven't had the opportunity, so we're very pleased to have you here today.

Ms. SCHROEDER. Well, thank you, Madam Chairman, I certainly thank you for the opportunity of appearing here. In these hearings on H.R. 3951 I think it's very, very important that we move ahead, and I think what you've done has been quite courageous.

If it's all right with you, I'll put my long, formal testimony with addenda in the record, and give a short summary informally of what I have seen.

Mrs. SPELLMAN. That will be very good.

**STATEMENT OF HON. PATRICIA SCHROEDER, REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO, ACCOMPANIED BY LINDA ITTNER, STAFF ASSISTANT**

Ms. SCHROEDER. First of all, with me on my right is Linda Ittner who is on my staff, and who has been working very hard on this bill.

I suppose the real problem, and the cardinal rule I've broken in drafting this legislation, is the putting of Members of Congress under it. I think we find an awful lot of flak and a lot of misinformation, and a lot of hysteria, because the one thing that we love to do around here is legislate for everyone else.

And I think that is where a lot of the misinformation has emanated from. It's when your own ox is gored that you try to find some way to divert it and throw up all sorts of smoke screens that really aren't there.



So, I'm going to try to attempt to put some of those smokescreens down that we've heard about, and try and explain what the bill really does, and encourage people to read the bill before they jump to all sorts of conclusions which are being jumped to right and left.

My initial conversations in developing this bill was that I almost felt apologetic because we haven't done enough. So, I'm a little overcome by all of the people who think that it's gone way too far.

I really don't see much of any way we can compromise it. I think it's just a tiny beginning toward the way we're going.

The developments that led me to move into this area and write the bill is, first of all, the divorce rate in the United States has doubled in the last 10 years. It's one of those great American institutions that we don't talk about on the Fourth of July, but it's happened, and we must deal with it.

Second, There's been a phenomenal trend toward no-fault divorce, so all the old fault notions, basically, have been thrown out by most States. As a result, divorce can be obtained by unilateral demand almost anywhere in the United States.

Now, Congress—and I remind you Congressmen and Senators aren't under social security—in 1965; 12 years ago, had absolutely no problem amending the Social Security Act that would provide benefits to divorced spouses who had been married for 20 years.

In essence, all this bill does is bring the Federal retirement in line with what we did 12 years ago in social security. As I say, it's incredible that 12 years later we have such difficulty dealing with that; I still can't help but believe it may be partly because our own annuity is tied into it.

What the bill in essence does is what we did with social security, to provide benefits to any male or female who's married for at least 20 years to a civil servant. I remind you, it's 20 years before it vests, for entitlement to a pro rata share of the employee's retirement annuity and death benefits.

Now, once again, that doesn't mean they get everything. They get a pro rata share, so it's not winner take all or any such thing.

The former spouse who remarries before the age of 60 would lose annuity rights. Again, that's one of those compromises that I'm sure we should put in there, trying to deal with it in the same manner that we dealt with it 12 years ago.

I can't emphasize enough that this change would cost no money. We don't increase the annuity; it would just take the same annuity and share it in a pro rata form. So, it's no additional cost.

The problem is with the Civil Service Commission's policy toward divorced people which I think must be revamped.

A Federal employee is prohibited right now, from naming a former spouse as recipient of his survivors benefits. I think that, in a good many instances, people might want to do that.

Also, Federal annuities are immune from State court orders, and, so, keeping that in mind, let me go through some of the questions that I've heard asked most about this bill, and try to answer them.

First, the Civil Service Commission has said that this retirement system is a staff retirement system with no obligation to ex spouses.

Well, on that basis, they really fail to recognize the whole economic



theory of human capital. What they are saying to anyone in a marriage is if you really want to protect yourself, you'd better go out and vest your own pension from day one, and you'd better work, forget staying home and all of that, because it's every person for himself.

That appears to be the Civil Service Commission's viewpoint. I find that quite archaic. It's also like saying all benefits—and I certainly think this is a fringe benefit—all fringe benefits in civil service are only for the person employed, and whatever they do with it is their own business.

Well, I don't know of that being applied in any other area. Most courts, most States, almost everywhere else looks at the family as an economic unit, and they feel that the woman is giving her services, or the man is giving his services, in return for the other one making their contribution at different levels. But you share what's brought home, and you share the fringe benefits, and you share the health benefits, and you share the life insurance benefits, and you share all of those types of things.

So, I think that the Civil Service Commission's position on that is really out of date I can't emphasize enough that we, if we really are a society that values home and family, if spouses are going to have a choice as to whether or not they work inside or outside the home, we must remedy Civil Service Commission's approach to this. Otherwise, no attorney and no financial planner with any sense could ever tell a woman that she dare stay home if she is at all concerned about her long-range security.

Secondly, they are also saying—and others are saying it too—"Well, we're turning this into a welfare program; this is interference in private matters," and so forth and so on.

Well, let's just hit that for a couple of fast things. First of all, in the retirement system and the annuity system, the employee does make a contribution, but so does the Federal Government. They are making a matching contribution.

So, it seems to me that the Federal Government should have some decision as to what happens to it. It's not like it's 100 percent yours all the way down the line.

You look at social security where, again, I remind people we've already acted, the contribution is made by the private employee and the private employer. The total sum of that money is coming out of the private sector.

Now, because we've dumped some welfare programs into the social security trust fund, granted, we've had to add revenues from some other places. But that was not the employees' and the employers' fault.

So, if you're going to make the welfare argument, you certainly should have made it way, way back under social security.

I have a much better case to plea for people with the Federal annuity, because at least 50 percent of it is coming out of Federal funds, whereas with social security contributions were coming out of private funds into the trust fund.

I don't think that you can really say that it's a welfare system. Not only that, we're not giving everyone vested rights instantly: it's after performing 20 years in the family unit. That's not opening Pandora's box, I don't think, by any means.



And, again, I just think that those are earned rights. They're not welfare rights. There's a great difference between earned rights and welfare rights, and people who are throwing up this whole welfare thing are not looking at the human capital theory and the family as an economic unit. They are not looking at those economic theories which is what most people go by today.

I really find that is one more smokescreen that's coming up.

And then I hear the freedom-of-choice argument. People are saying, "Well, we must have a freedom of choice."

Well, you know, I see that as kind of a joke, because there is no freedom of choice right now really. I've had many Federal employees write to me, totally outraged, that they are currently prohibited from naming an ex-spouse as the recipient of their survivor benefits.

That's no freedom of choice. It is absolutely mandated that you cannot do it. They may have an ex-spouse—they may not have remarried; the ex-spouse may have the children and they may want to do that just as a security, but they're told no.

Yet we're told we can't change it because we will be denying freedom of choice. So, I think, once again, it is another smokescreen that gets thrown up.

I think that all of these things can be dealt with in here. What we are allowing, again, is freedom of choice, to some extent, with people knowing what the ground rules are. That is, perspectively, when you sign up, if you're married 20 years, your spouse has a right to part of it, and the next spouse, if there is one, will have a right to the next part of it, and so forth and so on. And I think that makes an awful lot of sense.

A lot of people say that this bill is very inflexible, because it doesn't take fault into account. Fault is going out of the divorce laws. Since the early seventies, there are now only three States that don't have some form of no-fault divorce.

I don't think that any of us are naive enough anymore to believe that anything breaks apart 100 percent because of one person's fault. It usually takes two to make a fight. One may be more quarrelsome than the other, but you still have to have two, or you can't get the sparks going.

It just appears to me that, again, since we're basing it on 20 years, it's not after overnight marriages that we're vesting people. If it's been 20 years, you haven't been able to get along, and you still think you've been living with somebody who's 100-percent guilty, and then you decide to get a divorce, again, it's another smokescreen. I just don't see it as reasonable response.

Then I hear people saying this is a means to usurp State authority over divorce. It's no such thing. In fact, right now State law is being thwarted by the Federal statutes. We are now immunizing Federal pension from State orders.

So, if you believe in States' rights, we certainly shouldn't allow the Civil Service Commission to immunize someone's pension. If some court holds that your pension, your annuity, or your survivor benefits, are part of the community property or part of the family property that is to be divided, they give you an order, the Feds thumb their nose at the State courts.



And since there's no such thing as a Federal divorce decree, there's no way to get to it. So, again, if you're arguing states rights, you're arguing the wrong thing, because we're thwarting them right now. And this would, really, be more in compliance with what is going on if they're moving in that direction.

Well, I could go on forever. There are several things that, I think, really should be pointed out. No. 1, there's a move in the House that's very interesting going on—with conservatives, the Black Caucus, women, all sorts of people—moving to allow homemakers to create their own IRA accounts.

And I think this is recognition by the Congress that the human capital thing is very, very important. We are beginning to see much greater awareness that the fastest growing property group in America is female, because we tend to live longer.

And very often we've done all the things we were told to do in society—stay home, take care of the children, be a good role model. And if you get thrown out or divorce comes along, and there's no recourse for you, what do you do?

You're either on welfare, which is a tremendously devastating thing, or you find out that the Federal laws didn't really protect you—which they don't right now. You thought you had a part of that annuity; you thought you had something. Only its surprise, it isn't. It's his own private treasure—or her own private treasury—and you can't touch it, you know.

I don't think that's what we want to perpetuate.

I think if you look at other countries in the western world, you'll find we're way behind. Canada and West Germany have moved ahead very rapidly in this area, and they have gone much further than we have.

I have submitted for the record reports on pension sharing in Great Britain, France, Germany, and Canada, as prepared by the Library of Congress, and I would like to include that in the record. I think it's a good thing to show how far behind we really are, and what's going on in the world.

Also, we have an endorsement from Parents Without Partners, a group which is especially concerned about this whole area of the quality of life of a person without a partner when a marriage disintegrates.

I appreciate the opportunity to appear; and I appreciate the gentlewoman's courage in taking some of the flak that I know she is taking, because we've shared it equally in the cloakroom when the doors were shut—when they come running at you at 60 miles an hour saying, "How could you do this?" "insane," "horrible," "terrible," "give-away program."

And I must say, as a legislator, that I'm amazed at how those arguments change back and forth; one day we're protecting women and the next day "They deserve what they got," and "They got such a good deal that they shouldn't get a dime."

So, you know, it depends on where one sits, I guess, anyway.

I do commend you for all of your hard work.

[The complete statement follows:]



Testimony on H.R. 3951 by

HON. PATRICIA SCHROEDER

before the

Subcommittee on Compensation and Employee Benefits

June 15, 1977

In August, 1975 I testified before the House Select Committee on Aging about the economic problems of elderly women. My interest in pension rights was stimulated by later testimony before their Subcommittee on Retirement Income and Employment presented by Arlene T. Shadoan and Paul S. Nathanson of the National Senior Citizens Law Center.

Their testimony took on flesh and bones as I remembered the many people who had called or written me in shock when they realized that when a long marriage ended in divorce they had no security. They were unable to find a job because of high unemployment and lack of recent paid work experience. They were dropped from pension health plans and found it difficult to get health insurance. Since federal workers are not covered by Social Security, their spouses and widows are not eligible for Medicare. To help remedy some of these problems, I introduced the Federal Retirement Income Equity Act in the 94th Congress and re-introduced it this Congress.

The bill, H.R. 3951, would amend the Civil Service Retirement System to entitle former spouses of federal employees - both male and female - to a pro-rata share of retirement and death benefits, if married a minimum of 20 years. Their share of the benefits would be based upon the number of years of marriage over the number of creditable years of government service. Those married the entire work period would be entitled to up to 50% of the annuity. Since this proposal splits the current benefits, there is no additional cost to the retirement system. Former spouses who remarry before age 60 lose their annuity rights.

Since there has been much discussion about the pension rights of the employee's second spouse, I want to emphasize that the death benefits would be divided between the former spouse and the surviving widow. The widow would be entitled to at least half of the death benefits, regardless of the number of years married to the retiree during covered government employment. This is a formula that many federal workers find equitable, considering that the first marriage lasted a minimum of 20 years. In the event that the Federal employee chooses a lump sum payment instead of an annuity, the former spouse would be entitled to a portion of the lump sum payment based on the same ratio of duration of marriage during years of creditable Federal service. The bill as introduced becomes effective for those who divorce and retire after enactment of the bill.



This bill is based upon the thesis that marriage is an economic partnership. It is my contention that the former spouse made a significant contribution to the employee's ability to earn the wage and consequently receive the pension. While there is no dispute that homemakers perform valued services for their families and society, it is frequently argued that pensions are an earned retirement benefit. However, I think it is important that the concept of earned benefits be applied to those homemakers who, after contributing substantially to an economic partnership, find themselves divorced in their middle years, unable to find work and ineligible for Social Security. A similar concern was expressed in the 1963 report of the President's Commission on the Status of Women. It affirmed that -

Marriage as a partnership in which each spouse makes a different but important contribution is increasingly recognized as a reality in this country. During marriage each spouse should have a legally defined substantial right in the earnings of the other, in the real and personal property acquired through those earnings, and in their management. Such a right should be legally recognized as surviving the marriage in the event of its termination by divorce, annulment, or death. Appropriate legislation should safeguard either spouse and protect the surviving spouse against improper alienation of property by the other.

Although this bill applies to both male and female federal employees, since 60% of the women in our society are full-time homemakers it will initially benefit women more than men. However, as the number of employed women increases, more men will become entitled by the provisions of the bill.

We are a society which places value on home and family, encouraging women to stay home to take care of children. Yet one of the most severe forms of economic discrimination is that we fail to attach an economic value to this service. This feature of pension portability and earned right for the homemaker is essential if spouses are to have a choice whether to work inside or outside the home.

Homemakers have provided a variety of services to our society for which they have not been compensated. Community organizations, hospitals, schools, and churches have depended heavily upon the voluntary services of homemakers. They have frequently been the backbone of the "people programs" in our cities, towns, and rural areas, organizing and running programs that serve people in need, ranging from children and youth to the elderly.

Recent Census Bureau statistics indicate that women outnumber men by 4.1 million among the Nation's elderly and that the gap will widen to 6.5 million by the end of the century. According to the March 1975, census figures there were over 5 million



women over the age of 65 who live alone, and half of that number are living their last years below the official poverty line. Most of these women have not always been poor, but their circumstances have deteriorated with advancing age. What happened to them is not inevitable, but rather the result of discrimination throughout their lives which strikes its cruelest blow at the end. It is my view that our public retirement system contributes to the economic impact of sex discrimination and punishes women for their traditional roles of wife and mother.

The fact is that although more than 3 million employees rely on the Federal Civil Service Retirement System for retirement benefits, the Federal pension plan fails to provide economic protection to the former spouse of a Federal worker. This failure in the system leaves the dependent spouse with no direct retirement benefits despite many years working for no

pay managing a home, raising children, and contributing time and effort to the marriage. Although the number of women in the labor market is increasing, the majority of women are still homemakers, and have no independent retirement benefits.

It is time that Congress look at the Federal retirement system. I do not think it was the intent of Congress to deny old-age protection to these former spouses.

The divorce problem today was not envisioned in 1920, when the Federal retirement system was established -- 15 years before the creation of the Social Security system. Today the family unit is no longer as durable as in the past.

The United States has the highest divorce rate in the world, according to statistics compiled by Paul C. Glack, Senior Demographer of the Bureau of the Census. <sup>1</sup> In 1973 there were 4.4 divorces per thousand population in the United States, compared with 2.1 in Great Britain, 1.7 in Canada, and 1.4 in Germany. All of these countries have experienced rising divorce rates in the 1970's because of the liberalization of the divorce codes.

In the United States the divorce rates have doubled between 1960 and the mid 1970's. In 1975, for the first time, the number of divorces peaked at an annual one million, while the number of marriages declined to 2.1 million.

Census statisticians Paul C. Glick and Arthur J. Norton, tracing probable future trends in divorce rates, projected that 25 - 29% of the marriages of young women in their late 20's and early 30's would end in divorce. Looking at the prospects for older women, they project divorces for 19% of the women ages 45 - 55 and 12% for those between the ages of 65 and 75.

In March 1976, there were 2.8 million men and 4.4 million women who were currently divorced and who had not married, according to Census data issued January, 1977. <sup>2</sup> This data shows a greater likelihood of remarriage among men. Five



out of six divorced men remarry, compared to three out of four divorced women who remarry.

More and more divorces are occurring at young ages. One-third of the married persons 25 - 35 years old in 1975, may eventually end their first marriages in divorce. The most typical age for divorce after a first marriage is 25 - 29 years of age for men and 20 - 24 for women. The most typical ages for remarriage after the first divorce are 25 - 34 for men and 20 - 34 for women. Furthermore, a growing proportion of recent second marriages may end in redivorce. Census projections are that 4/10 of the persons in their late 20's and early 30's may expect their second marriages to also end in divorce.

"A marriage squeeze" developed in the 1960's and continued into the 1970's. This occurred because women born during the upturn of the birth rate in the 1940's and early 1950's were reaching their maximum period for entering first marriages 2 to 3 years before men born in the same year. As a result, in recent years there has been an excess of women of marriageable age. Because of the sharp decline in the birth rate during the last 15 years, a reverse form of "marriage squeeze" will develop by 1985 and last for 10 years or more. During this period there is likely to be up to 5% more men than women in the ages when first marriages are usually most frequent.

The statisticians suggest that the "marriage squeeze" and the shortage of eligible single men may have exerted pressure on older, unhappily married men to disrupt intact marriages, increasing the pool of eligible partners. It would have had a similar effect on young, unhappily married men, who after divorce could select remarriage partners from numerous eligible, unmarried women.

Some have argued that divorce settlements are a sufficient means to deal with the problems resulting from a divorce rate that has doubled in the last 10 years.

However, the trend in divorce is toward no-fault settlement with spousal support for limited periods if granted at all. In fact, a September 1975 survey conducted by Market Opinion Research revealed that only 14% of divorced women were awarded alimony, while only 44% of the divorced mothers were awarded child support. Moreover, less than half of the payments arrive regularly, with compliance dwindling to zero as the years pass.

Finally, alimony and child support cease suddenly with the death of the breadwinner -- leaving absolutely no security for the later years.

Acknowledging the gaps in the legal system's protection of homemakers, the Homemakers Committee of the National Commission on the Observance of International Women's Year is publishing booklets for each state to educate homemakers of their legal risks and rights.



According to former Congresswoman Martha Griffiths, Chair of the Homemakers Committee, "Federal and state law in the common law states, in general, do not give recognition to the economic and social value of the homemaker's contribution". Speaking from her experience as an attorney and member of the House Ways and Means Committee, Mrs. Griffiths said that "far from being the darling of the law, the homemaker is the most vulnerable woman in society, with the least knowledge available to her of the reality of her legal status".

In May, June, and July, the International Women's Year Commission will sponsor 56 state and territorial meetings which will, among other things, focus on the homemaker's role and pending legislation which would effect her wellbeing.

In 1965 Congress responded to the growing number of long marriages ending in divorce by amending the Social Security Act to provide benefits for a divorced wife who was married a minimum of 20 years. Since federal workers are not covered by Social Security, their former spouses do not receive this basic protection.

It would be incongruous for Congress to recognize the needs of Social Security recipients and ignore the former spouses of civil servants.

Present policy does not respond to the need of divorced persons. Civil Service Commission policy regarding divorced people must be completely overhauled.

The Civil Service Commission argues that the Civil Service Retirement System is a staff retirement system, as opposed to social insurance, like Social Security. As a result, it recognizes a limited obligation to certain dependents - which does not include ex-spouses.

Second, present policy thwarts states rights by immunizing federal pensions from court orders that award a portion of the annuity to a former spouse.

Third, adherence to archaic rules hurts widows, whose pension rights should be considered vested. I received a shocking letter from Mrs. Priscilla C. Leezy of Brentwood, Missouri, who was married for 30 years to a federal employee before they were divorced. Later they remarried each other. However, even though Mr. Leezy had chosen survivors benefits with the resulting reduced annuity, his wife of over 30 years was not considered eligible for widow's benefits since he died before they had been remarried a year. What kind of justice is this?

Those who oppose the concept of marriage as an economic partnership are raising a number of red herrings about this bill.

One. There are those who suggest passage of H.R. 3951 would turn the Civil Service Retirement System into a welfare program. This is nonsense since we are talking about spouses who have dedicated at least 20 years to a marriage.



Two. Another argument complains that H.R. 3951 would take away the employee's freedom of choice. What freedom of choice? Current law prohibits a retiree from naming an ex-spouse the recipient of survivors benefits -- and many federal employees are burned up when they realize that they cannot designate their survivor. However, a closer look at the law reveals that this policy is inconsistent with others in the federal retirement system. While employees are denied the right to name an ex-spouse as survivor, they are permitted to change the beneficiary for their life insurance policies. They are allowed to switch beneficiaries since it is considered "the intent of Congress", as expressed in 38 U.S.C. S 802 (g), that "the proceeds belong to the named beneficiary and no other" -- regardless of Supreme Court decisions in California or Texas. (U.S. Supreme Court, Wissner v. Wissner, 338 U.S. 655 (1950) and Free v. Bland, 369 U.S. 633 (1962)).

Three. Others argue that the bill is inequitable because it has no exceptions for fault divorce. What is ignored here is that the national trend in divorce is toward no-fault -- "divorce on demand" -- with little grounds to fight it, even for the innocent party.

Four. Others are concerned that a mandated division of the federal pension steps on the toes of state courts. These opponents seem to be convinced that the courts are doing a fine job in dealing out justice for homemakers. The fact is that the record is spotty -- it varies from state to state and from judge to judge. Both husbands and wives involved in divorce proceedings can recite litanies of inequities that have been heaped upon their heads.

The conclusions of the International Women's Year state-by-state surveys entitled "The Legal Status of Homemakers" are that the gaps in legal justice for homemakers are widespread.

Furthermore, this argument fails to take into consideration that many of these people are unable to get adequate legal advice and protection under the law because of their inability to pay. While the poor have legal aid and the rich can buy expert legal counsel, the middle class often is out of luck.

The issue before us is whether the former spouse has a vested interest in the retirement benefits earned during the marriage. It is an issue with which other countries are also wrestling.

This month the Library of Congress Law Library prepared a study for me on pension sharing upon divorce in a number of countries. It revealed that Germany and Canada are taking measures that would compensate the homemaker for her non-salaried services.

In July 1976, Germany passed a marriage and family law reform entitled "the Equalization in Division of Pension Expectancies". This law recognizes pensions as being jointly earned by both spouses to provide old age security of both insured and non-insured spouses. There is no duration of marriage requirement



and the law divides the pension on a pro-rata basis by the ratio of work years to marriage years.

The law applies to pensions in the public as well as private sector. If both spouses have their own pensions, half the excess of the highest is transferred to the account of the other.

In Canada on April 18, 1977, the Canadian Minister of National Health and Welfare and Minister Responsible for the Status of Women introduced an amendment to the Canada Pension Plan (CPP) to permit equal splitting of CPP credits between husband and wife upon divorce regardless of the amount of direct contribution made by husband and wife.

The aim of the proposed amendments is to retain the basic characteristics of the CPP, which was begun in 1966 as a compulsory, earnings related, contributory pension plan covering all workers. The 2 groups exempted from coverage are those in Quebec, which has a separate pension system, and those with annual earnings less than the "basic exemption" of \$900, who receive a Family Allowance. Finally, the CPP provides survivors benefits for all widows and children.

Under the Canadian proposal, an individual's interest vests after 3 years of cohabitation and credit splits would be made upon application by either spouse within 3 years of the dissolution of the marriage. The amendment covers the ex-spouse against disability and makes the child of the ex-spouse eligible for survivor's benefits following the death of the former spouse. The pension is discontinued upon remarriage, but reinstated upon application if the second marriage is dissolved.

The Canadian proposal is retroactive, providing credit splits for all years of marriage back to 1966 when the CPP was created. Those already receiving CPP retirement and disability benefits at the time of the credit splitting would receive a new benefit amount calculated on the basis of the split.

A second amendment excludes "drop out months" of low or zero earnings for those rearing pre-school children under age 7. The amendment provides for equal treatment for male and female parents by entitling a male parent who assumes the primary child-rearing responsibility to the "special child-rearing drop out months" exclusion when calculating average lifetime earnings for benefit purposes and would be effective from the beginning of the Canada Pension Plan, January 1, 1966.

Both of these amendments, if passed by the Canadian Parliament, must have the approval of two-thirds of the provinces having two-thirds of the Canadian population. The sponsors anticipate the credit splitting proposal has the necessary support. Even though the "child-rearing drop-out months" proposal has the support of all the provinces except Ontario, because of its population, Ontario's failure to ratify the amendment would effectively veto the measure.



In comparison with the German and Canadian laws, you can see that my bill, H.R. 3951, is a modest proposal. It requires a marriage to last 20 years before a spouse is entitled to benefits. It is prospective, not retroactive. It guarantees half the survivors benefits to the second spouse even when not married to the employee during the creditable years of service.

This bill is the bottom line. Rather than talking about ways to water it down, we should be discussing ways to beef it up.

There are those who advocate a compromise on this bill which I consider to be totally inadequate as a solution to the problem we face. I agree that it is essential to change the federal statutes that thwart states rights in the division of marital property.

However, to rely solely on new language requiring the Civil Service Commission to honor state court orders is to deny protection to the majority of former spouses who need basic retirement security. It ignores those who are not fortunate enough to live in the 8 community property states or the several others, including Colorado, which consider pensions marital property subject to division. Finally, it fails to set federal guidelines that recognize the non-monetary contribution of the former spouse.

There are several points about the bill which I would like to address.

First, I want to emphasize that the 20 year marriage requirement in H.R. 3951 was chosen solely for comparability with Social Security. I recognize that the 20 year cut off is unfair to those persons married less than 20 years. A long range policy should provide straight pro-rata benefits, so that those married shorter periods would be entitled to fewer benefits.

In view of the Supremacy clause, it is essential that the legislative history of this bill clearly state that this legislation proposes minimum, not maximum, standards of protection. It sets a federal guideline that anyone married 20 years or more is eligible for a pro-rated share of the benefits. In no way, however, should the 20 year marriage requirement be construed so as to limit the power of the states to divide marital property for those married less than 20 years.

Second, although U.S. pension policy consistently cuts off pension benefits to those widows who remarry before age 60, it is based on the assumption that a wife is a dependent, who should rely solely upon her spouse for financial security, without developing a credit record in her own name. It also assumes that every husband has adequate income and retirement benefits for himself and his spouse. This is misleading since a majority of workers in this country -- either male or female -- do not receive pensions. A 1968 "Survey of New Beneficiaries" prepared by Walter Kolodrubetz for the Social Security Administration indicates that less than half the private work force is covered by pension plans, in addition to Social Security, with only one-



third of them ever actually drawing pension payments. Even after the passage of ERISA (The Employee's Retirement Income Security Act), it is estimated that half of the private work force will continue outside private pension coverage.

Finally, others argue that while the provisions of H.R. 3951 are important for the security of homemakers, they will burden female employees who must share their pensions with divorced spouses. It is my view that all legislation must apply equally to men and women. Pension rights should vest with marriage, and the sooner pension sharing becomes applicable across the board with all pensions, the more equitable will be the economic consequences of divorce.

I would like to submit for the record reports on pension sharing in Great Britain, France, Germany, and Canada prepared by the Law Library of the Library of Congress; House of Commons Bill Number C-49, amendments to the Canada Pension Plan; the Congressional Research Service's study on the effect of this bill on state law; and a letter of endorsement for the bill from Parents Without Partners, Inc.

Again, I appreciate the opportunity of appearing before the Subcommittee.





## Parents Without Partners, Inc.

An international non-profit, non-sectarian educational organization  
devoted to the welfare and interests of single parents and their children

May 17, 1977

The Honorable Patricia Schroeder  
U. S. House of Representatives  
603 House Annex #1  
Washington, DC 20515

Dear Congresswoman Schroeder:

We are writing in support of H.R. 1703, and commend your efforts to extend to the former spouses of Federal employees the same benefits Congress has already granted to former spouses of Social Security recipients.

Parents Without Partners has been deeply concerned with the welfare of single parents and their children for nearly twenty years. Since its founding in 1957, PWP has worked with over one-half million parents---two-thirds of them women---and the membership has extensive first-hand knowledge of the struggles, both financial and emotional, that single parents currently face.

National studies repeatedly show us that more and more children each year live in single parent families, and they are most likely headed by a working woman whose income is totally inadequate to meet her family's needs. In 1974 the median income of single parent families headed by men was \$12,000 compared to \$6,000 for families headed by women. This wage gap has steadily widened throughout the 1970's.

Therefore, if a woman works for part or all of her married life her income, savings and pensions are much smaller than her husband's. After the divorce, even if she is awarded alimony and/or child support by the courts, her chances of actually collecting either are remarkably small.

Imagine how much worse is the plight of the wife who did what society told her to do, and stayed home, caring for her husband and children and supporting their endeavors. After the divorce, her chance at getting a job at all is not good; her chance at getting a job with a decent income and good potential for advancement and future security is practically zero. We can only echo your words in the Congressional Record: "...our public retirement system contributes to the economic impact of sex discrimination and punishes women for their traditional roles in society."

We urge the House to pass H.R. 1703 as an additional step toward ending this discrimination.

Sincerely yours,

Virginia Martin  
Executive Director



THE LIBRARY OF CONGRESS,  
CONGRESSIONAL RESEARCH SERVICE,  
Washington, D.C., March 18, 1977.

To: Hon. Patricia Schroeder (Attention: Linda Ittner).

From: American Law Division.

Subject: Effect of H.R. 1703, 95th Congress (providing a pro rata share of civil service retirement annuities to former spouses of Federal employees), on State law.

You recently contacted this office with regard to the potential impact on State law of H.R. 1703, 95th Congress, a bill introduced on January 11, 1977, "to provide that a former spouse of a Federal employee who is married to such employee for twenty years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee" (123 Congressional Record, Daily Edition, p. H327).

Under the present Civil Service Retirement System, codified at 5 U.S.C. §§ 8331 et seq., an individual is generally entitled to a survivor annuity only if he or she is married to the annuitant at the time of such annuitant's retirement (cf. § 8341(b)). Thus a wife, for example, who divorces her Federally employed husband prior to his retirement is entitled to no share of his annuity, regardless of how long they were married or the size of his pension.

H.R. 1703, as its title implies, is designed to deal with this situation, through the enactment of a new 5 U.S.C. § 8338A, "Former spouse annuity" (§ 2(a) of the bill). Under this provision, a former spouse would be entitled to 50 percent of the retiree's annuity, if the couple has been married throughout the latter's Federal service (§ 8338A(a)(1)). Otherwise, a pro rata formula would be employed, based on the length of marriage/length of service ratio (§ 8338A(a)(2)). Also, in the event of a post-retirement divorce, the former spouse would immediately become eligible for a portion of the annuity (§ 8338A(b)). However, the marriage would have to have lasted at least twenty years for any of the above provisions to come into play (5 U.S.C. § 8331(a)(22), as proposed by H.R. 1703, § 1(a)).

Two questions have been raised as to the possible impact of this requirement on the States: (1) would the statute have the effect of jeopardizing awards by State courts to spouses married less than 20 years; and (2) how would it affect divorce settlements in community property jurisdictions?

With reference to (1), it has been suggested that if the Federal Government sets the precedent of making no provision for a divorced spouse unless the marriage has lasted for twenty years, individual States may then follow suit when awarding alimony.

Except in community property States, to be discussed *infra*, there is a routine State requirement that courts, when awarding alimony and child support payments, or in deciding whether such awards are justified, consider a wide variety of factors, including the relative economic position of the parties (24 Am Jur 2d, "Divorce and Separation," § 601). The presence or absence of pension rights such as those proposed in H.R. 1703 would logically be considered by the court in setting the level of such payments. However, it would not seem to be possible under these statutes for a court to arbitrarily cut off or limit the payments, in contravention of State law, on the basis of a Federal statute which did not specifically so provide. Should a State desire to impose a blanket cutoff of such payments for any reason, such as the failure of a marriage to last for twenty years, it would seemingly have to amend the pertinent statutory provisions.

Although H.R. 1703 might not have any direct legal effect on awards of alimony in State courts, it could be argued that its enactment might have broader policy implications which could eventually have some impact at the State level. That is to say, it might come to be used as a guideline by courts in deciding cases, or by legislatures in enacting statutes, affecting certain provisions setting standards as to when a spouse gains some "vested" right in certain expectancies (pension, insurance, trust, etc.). To clarify congressional intention in this regard, the language of the bill might be amended to show what such intent is, or this can be set out in the legislative history.

With reference to point (2), the general rule in community property States is that a pension due one of the spouses becomes part of the marriage "community" (i.e., belongs jointly to the husband and wife and is divided equally at the time of divorce) if it arises from a contractual obligation and is part of the consideration for services rendered during the marriage (see 15 Am Jur 2d, Community



Property, § 53, "Pensions; military and employee benefits."). Individual State laws and precedents vary slightly in this area, but such minor differences are not relevant to this discussion.

While our research has not uncovered any decisions construing the effect of Federal Civil Service retirement statutes on State community property systems, seemingly related precedents uniformly indicate that under the Supremacy Clause (Article VI, cl. 2) of the Constitution, valid congressional enactments (that is, enactments in areas in which Congress may properly legislate) preempt conflicting State community property provisions.

For example, *Wissner v. Wissner*, 338 U.S. 655 (1950), construed former 38 U.S.C. § 802(g), which granted those covered by the National Service Life Insurance Act the right to "at all times . . . change the beneficiary or beneficiaries" of the policy. Major Wissner, at the time of the dissolution of his marriage, changed the beneficiary of his policy from his wife to his mother. After his death, the estranged wife brought suit, claiming that under California's community property system she was entitled to one-half the proceeds of the policy. While her claim was supported by the California judicial system, the Supreme Court disagreed:

"The National Service Life Insurance Act is the congressional mode of affording a uniform and comprehensive system of life insurance for members and veterans of the armed forces of the United States. A liberal policy toward the serviceman and his named beneficiary is everywhere evident in the comprehensive statutory plan. . . . Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other. . . . It is plain to us that the judgment of the lower court, as to one-half of the proceeds, substitutes the widow for the mother who was the beneficiary Congress directed shall receive the insurance money. We do not share appellee's discovery of congressional purpose that widows in community property states participate in the payments under the policy, contrary to the express direction of the insured. . . . [T]he judgment below nullified the soldier's choice and frustrates the deliberate purpose of Congress. It cannot stand." (338 U.S., at 658-9)

In language which would seem to apply equally well to the situation we are now discussing, the Court stated further:

"Venerable and worthy as this [marriage] community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases" (*id.* at 660).

Thus, in conclusion:

"However 'vested' [the widow's] right to the proceeds of nongovernmental insurance under California law, that rule cannot apply to this insurance" (*id.* at 661) (citations omitted).

*Free v. Bland*, 369 U.S. 633 (1962), is a somewhat similar case, except that it involved the right of survivorship in U.S. Savings Bonds registered in co-ownership form. Former 31 CFR § 315.61, promulgated under authority of 31 U.S.C. § 757c(a), stated that, with regard to such bonds, when either co-owner died, "the survivor will be recognized as the sole and absolute owner." Mr. Free, using community property, purchased various treasury bonds, all issued to "Mr. or Mrs." Free. At Mrs. Free's death, a controversy arose between Mr. Free, who claimed exclusive ownership of the bonds under the Treasury regulation, and Mrs. Free's son by a previous marriage who, as the principal beneficiary under his mother's will, claimed an interest in the bonds by virtue of Texas' community property laws. As stated by the Court, "Respondent son demanded either one-half of the bonds or reimbursement for the loss of Mrs. Free's community half interest in the bonds which was converted into petitioner's separate property by operation of the federal regulations" (369 U.S., at 665).

An earlier Texas case, *Hilley v. Hilley*, 161 Tex. 569, 342 S.W. 2d 565 (1961), had dismissed the argument that the Constitution's supremacy Clause would compel judicial recognition of the survivorship provisions in U.S. Savings Bond regulations, as follows:

"It is clear that the Federal regulations do not override our local laws in matters of purely private ownership where the interests of the United States are not involved. *Bank of America National Trust and Savings Association v. Parnell*, 352 U.S. 29, 161 Tex., at 577, 342 S.W. 2d, at 570." 369 U.S., at 662.

Relying on this precedent, the Texas Supreme Court in *Bland v. Free*, 162 Tex. 72, 344 S.W. 2d at 435 (1961), upheld the right of the son to the requested inter-



est. However, once again the Supreme Court disagreed with the State court's interpretation.

The Court first noted, as the basis for Federal regulation, that Article I, § 8, cl. 2 of the Constitution delegates to the Federal Government the power "[t]o borrow money on the credit of the United States." U.S. Savings Bonds are issued under authority granted in this provision, and the survivorship feature is intended to help make them attractive to savers and investors by avoiding complicated probate proceedings. Thus the Texas holding must be overruled:

"We hold, therefore, that the state law which prohibits a married couple from taking advantage of the survivorship provisions of United States Savings Bonds merely because the purchase price is paid out of community property must fall under the Supremacy Clause." 369 U.S., at 670.

So far as we can determine, there has been no judicial challenge to the authority of Congress to create the Civil Service Retirement program. The employment of satisfactory personnel and their reasonable compensation, including such incentives as a retirement system, would seem to be an integral part of the functioning of our government. Such inherent authority seems to be assumed in the annotations (cases and Attorney General opinions) following 5 U.S.C.A. §§ 8331 et seq. This being the case, and based on the *Wissner* and *Bland* precedents, the provisions in H.R. 1703 if enacted into law would appear to supersede conflicting State statutes under the Supremacy Clause.

We hope the above information will be of some assistance. Please feel free to contact us further in this regard.

RITA ANN REIMER,  
*Legislative Attorney.*

THE LIBRARY OF CONGRESS,  
*Washington, D.C., April 1, 1977.*

HON. PATRICIA SCHROEDER,  
*House of Representatives,*  
*Washington, D.C.*  
(Attention: Linda Ittner).

DEAR MRS. SCHROEDER: Your letter of February 28, 1977 and subsequent phone call requesting the Law Library to review certain divorce reform laws and provide summaries of the provisions for property settlement, including division of pensions, in proceedings in Canada, France, Great Britain, and the Federal Republic of Germany, was referred to the Law Library for attention and reply.

We hope that the enclosed report will be of assistance to you. In response to a telephone call from your office on March 28, we will forward as soon as possible an addendum with information about the proposed amendments to the Canada Pension Plan.

Sincerely,

CARLETON W. KENYON, *Law Librarian.*

Enclosure.

#### CANADA

There are two general approaches to the division of property between spouses in operation in Canada. Quebec has a type of community property, whereas the other provinces and the territories have a separate property approach.

Under the Canadian Constitution the division of matrimonial property is a subject of provincial rather than federal legislative competence. The federal government is, however, competent to legislate on the subject of divorce. The Divorce Act<sup>1</sup> contains provisions in respect of maintenance rights and obligations of divorcing spouses. The federal interest in the area of property regimes is premised on the fact that questions of maintenance upon divorce cannot be treated in isolation from issuance relating to the disposition of property. In order to deal coherently with all aspects of the economic relationship, the divorce court must address the distribution of present capital assets as well as the charging of future income by way of maintenance awards. It has been suggested that, despite constitutional limitations on federal legislative involvement in this area, the Parliament of Canada might conceivably introduce amendments to the Divorce Act to regulate the distribution of property on divorce.<sup>2</sup>

<sup>1</sup> Divorce Act, Can. Rev. Stat. c. D-8 (1970).

<sup>2</sup> Law Reform Commission of Canada. "Studies on family property law" (1975).



Federal involvement in the reform of laws affecting family property is further based on the need to promote uniformity or compatibility between the various provincial regimes. Provincial interest in reform of existing property systems is evidenced by studies undertaken by British Columbia, Saskatchewan, Alberta, Ontario, Newfoundland and the Northwest Territories. However, several provinces have been unable to undertake such research. Accordingly, the Federal Law Reform Commission has analyzed existing property regimes and formulated proposals for reform.<sup>3</sup>

There is great interest in Canada in the reform of present matrimonial property schemes. The precipitating event may well have been the 1973 Canadian Supreme Court decision in *Murdoch v. Murdoch*<sup>4</sup> in which a wife was denied any interest in assets she had helped develop through 21 years of ranch labor. In response to the public reaction to that decision, provincial law reform commissions initiated studies to lead to the formulation of a more equitable system.

A recent Canada-wide Gallup poll indicated that a substantial majority of those interviewed favored the sharing of accumulated family assets.<sup>5</sup>

#### MATRIMONIAL PROPERTY REGIMES IN THE COMMON LAW PROVINCES

The system presently in force in the common law provinces is still for the most part a separate property regime, ameliorated somewhat by legislation protecting dower and homestead rights and providing for relief and maintenance of dependents. This legislation is really an aspect of the maintenance obligations arising out of marriage, rather than being aimed at the division of property.

The role of the courts in the common law provinces had traditionally been limited to determining who owned the property. It was generally held that the courts had no discretionary power to interfere with title by ordering a transfer of property from one spouse to the other.<sup>6</sup>

In order to mitigate the harshness of separate property regimes and secure a sharing of assets irrespective of how title was taken or who paid for the property, several of the common law provinces have proposed or enacted legislation which confers statutory discretion on the courts to divide the property between the spouses having regard to the circumstances of the individual case. These legislative proposals and enactments have been either modeled on or influenced by provisions enacted in New Zealand in 1963.<sup>7</sup>

#### ONTARIO

The 1974 Report on Family Law of the Ontario Law Reform Commission<sup>8</sup> proposed that a deferred community property regime replace the present separate property system. The deferred community property proposal has now been superceded by a new proposed regime known as the "family assets system." The bill embodying this latter proposal has been introduced in the provincial legislature. Its passage and the royal assent are expected before July 1, 1977; it is expected to become effective the early Fall of 1977.

The abandonment of the deferred community property system and the formulation of its successor regime were responses to the negative popular reaction to the complexity and rigidity of the once proposed deferred community property system.

The "family assets system" is a discretionary regime much like that of New Zealand. There is a presumption toward an equal sharing of such family assets as the house, furniture, and automobile. This presumption would operate to produce a 50-50 division of family property assets unless the judge finds that such division would be inequitable. The burden of rebutting the presumption of equal sharing must be borne by the spouse alleging that such division would cause an inequity.

Pensions are not considered to be family property assets. A decision such as

<sup>3</sup> *Id.*

<sup>4</sup> 41 D.L.R. 3d (Can. S.C. 1973).

<sup>5</sup> Law Reform Commission of Canada, *supra* note 2, at 271.

<sup>6</sup> This proposition is illustrated by *Murdock*, *supra* note 4, and *Rathwell* (14 R.F.L. 297 (Sask. Q.B. 1974); reversed on appeal [1976], 5 W.W.R. (Sask. C.A. 1976)) decisions. In *Rathwell*, a case similar to *Murdock*, the court below held that the wife, who had contributed assets and labor, had not acquired any interest in the matrimonial home. On appeal, the court reconsidered the facts and found an intention to jointly own the property. In both decisions the court abstained from exercising discretion to transfer title.

<sup>7</sup> Matrimonial Property Act, 1963, as amended by the Matrimonial Property Amendment, 1968. The pertinent provisions are included as Attachment I.

<sup>8</sup> Ontario. Law Reform Commission. Report on Family Law, part IV, "Family Property Law" (1974).



that in Bilodeau,<sup>9</sup> under the Quebec community property system, in which a pension was held to be part of the community property, would not be possible under the proposed "family assets system." Under the proposed Ontario system, pensions are sources of support. It is suggested that it will be within the judge's discretion to direct the transfer of a pension credit to the wife.<sup>10</sup>

#### SASKATCHEWAN

As in Ontario, the Saskatchewan Law Reform Commission had originally proposed a deferred community property regime. Its recommendations have been reformulated and reported to the Attorney-General as the "Saskatchewan Matrimonial Homes Act." This bill is to be introduced in the next session of the provincial legislature. This legislation provides for co-ownership of the matrimonial home unless the spouses choose to opt-out of the legislative regime. The system of co-ownership is limited to the home, although the bill widens judicial discretion in the division of other family assets.<sup>11</sup>

The Saskatchewan legislature amended the Married Women's Property Act<sup>12</sup> in its 1974-75 session, to provide for judicial discretion in the division of property between spouses in regard to disputed property. Subject to any written agreement to the contrary, this legislation empowers the judges to make any order which he considers fair and equitable to dispose of the property. Property may be sold, partitioned, and converted from a joint tenancy to a tenancy in common regardless of whether a spouse holds any legal or equitable title to the property.

The subject of pensions has not been expressly considered by the Saskatchewan Law Reform Commission. Presumably, as in Ontario, it would be considered as a source of maintenance payments rather than matrimonial property subject to division between the spouses.

#### BRITISH COLUMBIA

The Family Relations Act, 1972, § 8<sup>13</sup> confers broad judicial discretion to order a division of property between spouses irrespective of who paid for it or how title is held.

The Act provides that, on the issue of a decree of divorce, judicial separation or declaration that a marriage is void, or within two years after the date of such a decree, the court may in its discretion order the application of all or part of the property of one spouse for the benefit of either or both spouses. The court is further empowered to order that the property be sold and may direct the disposition of the proceeds. No statutory guidelines are provided to the court respecting the circumstances in which its discretion should be exercised. The Act appears to confer unfettered discretion on the court to direct divisions and transfers of property. No judgment decided under this Act has yet defined the limits of judicial discretion conferred by it.

#### NORTHWEST TERRITORIES

The Matrimonial Property Ordinance, 1974, § 28<sup>14</sup> confers broad judicial discretion to make interspousal property dispositions. The court has power to make orders respecting disputes involving real or personal property as it considers fair and equitable. The ordinance specifically requires the court to take account of the respective contributions of husband and wife, whether in the form of money, services, prudent management, or caring for the home and family.

#### QUEBEC

Since 1970 a deferred community property system known as the "partnership of acquests" has operated in Quebec.<sup>15</sup> Prior to that a regime known as the "community of moveables and acquests" was the law.<sup>16</sup> Because the community was

<sup>9</sup> See text at note 19.

<sup>10</sup> Ontario, Ministry of the Attorney General, "Family Law Reform" 1976.

<sup>11</sup> Saskatchewan Law Reform Commission, Proposals for a Saskatchewan Matrimonial Homes Act (1976).

<sup>12</sup> 1974-75 Sask. Stat. c. 29.

<sup>13</sup> 1972 B.C. Stat. c. 20.

<sup>14</sup> 1974 N.W.T. Ord. c. 8.

<sup>15</sup> Que. Civil Code, §§ 1266c-1267d (1970).

<sup>16</sup> Que. Civil Code, §§ 1272-1435 (1970).



the legal regime for over 100 years, there are still a number of people who are married under it. Although the regime will likely disappear in a generation,<sup>17</sup> it is still presently operative in regard to those who married before 1970. It must be noted that these regimes are not dispositive of property relationships between married people since spouses may choose by contract any system they prefer, be it separate property, community, or the partnership of acquests.<sup>18</sup>

Quebec's two deferred sharing system constitute a compromise between the common law doctrine of separation of property and the civil law doctrine of community of property. During the subsistence of a viable marriage, each of the spouses may acquire, own and dispose of property independently of the other. Upon the termination of the marriage by death or by divorce, their resources are pooled and divided equally between them. The object of deferred sharing is to ensure that any increase in the wealth of the spouses is equally shared. Certain property, such as that owned before marriage and gifts or inheritances received by one spouse from a third part, is generally designated as non-sharable.

In regard to the subject of pensions, under the community of moveable and acquests regime, the code does not expressly regulate property deriving from retirement pensions. Two recent Superior Court decisions<sup>19</sup> arrive at apparently contradictory conclusions. The dispute in both cases related to the designation of the sums accumulated by the husband by his contributions to his employer's pension plan. In one case, the judge concluded that, "... this pension cannot form part of the common property and thus is the private property of the husband."<sup>20</sup> In the other case, the court found that, "... the pension fund accumulated ... forms part of the asset of the community."<sup>21</sup> Despite these contrary characterizations of the nature of a pension, both cases arrived at effectively the same result, for in the first case, the court required the husband to return to the mass for partition the sum contributed by him from his salary. The underlying rationale was that his salary was part of the common property, therefore, payments made from it to the pension fund were also.

Under the partnership of acquests, pensions are apparently personal and inalienable: "The right of a consort to an alimentary allowance ... or any other benefit of the same nature remains his private property and no compensation is due by reason of sums paid out of the acquests."<sup>22</sup> Section 1266o specifically stipulates that no compensation is due by reason of sums or premiums paid for pensions and insurances if the beneficiary is the spouse or the children of either spouse. The Federal Law Reform Commission Report observes that if, however, a spouse has named a third person as beneficiary and has paid the premiums out of the acquests, his private property will owe compensation at the time of liquidation.<sup>23</sup>

The effect of these two provisions appears contradictory and it is arguable that under the partnership of acquests regime as well as under the community, a divorcing spouse could demand repayment of premiums paid out of the acquests.

#### PENSION LEGISLATION

In presenting the law in Canada respecting marital property division, this report has thus far attempted to survey the provincial law and proposals for reform which determine the disposition of family assets upon divorce.

In response to the particular focus of your inquiry, we have examined the Federal laws respecting pensions. The pertinent legislation is the Canada Pension Plan,<sup>24</sup> which provides pensions for all members of the labor force, and the Canada Pension Act,<sup>25</sup> which provides pensions for members of the Canadian forces.

The Pension Act provides that a woman who is divorced from a member of the forces may, in the discretion of the Pension Commission, be entitled to the equivalent of a widow's pension if she is in a dependent condition and if she was awarded alimony, or would have been entitled to an award of alimony had she applied for it.<sup>26</sup>

<sup>17</sup> Law Reform Commission of Canada, *supra* note 2, at 121.

<sup>18</sup> Que. Civil Code, § 1257.

<sup>19</sup> *Lemster v. Matieshyn* (1972) R.P. 1; *Bilodeau v. Turcotte-Bilodeau* (1972) C.S. 358.

<sup>20</sup> *Lemster*, *Id.* at 3.

<sup>21</sup> *Bilodeau*, *supra* note 19, at 360.

<sup>22</sup> Que. Civil Code § 1266h.

<sup>23</sup> Law Reform Commission of Canada, *supra*, note 2, at 85.

<sup>24</sup> Canada Pension Plan, Can. Rev. Stat. c. C-5 (1970).

<sup>25</sup> Pension Act, Can. Rev. Stat. c. P-7 (1970).

<sup>26</sup> *Id.* § 34(5) and (6).



While there is presently no analogous provision in the Canada Pension Plan, an announcement by the Minister of Health and Welfare to the Federal Advisory Committee of the Status of Women,<sup>27</sup> indicates that legislation may soon be introduced to change the present pension law.

The Minister described the proposed amendments which would permit splitting of Canada Pension Plan credits earned by both spouses during the years of marriage equally between the spouses upon the dissolution of the marriage. The announced purpose of this amendment is to insure that an asset accumulated by a couple during the marriage is equally shared between them.

(Prepared by (Ms.) Lin Murphy, Technical Information Specialist and (Mrs.) Marlene C. McGuirl, Chief, American-British Law Division, Law Library, Library of Congress, March 1977.)

#### FRANCE

Property settlement in French divorce proceedings is governed by articles 265-269 of Law No. 75-617 of July 11, 1975, Divorce Reform.<sup>1</sup> The first sentence of article 265 states that a "divorce shall be deemed pronounced against one spouse if it has taken place as a result of his [her] exclusive torts."<sup>2</sup> The same presumption of guilt is attributed to the initiating party when a divorce is granted on the grounds of disruption of marital life. The specific elements of property settlement are determined on the basis of these two rules.

The spouse against whom the divorce is pronounced loses the rights to which a divorced spouse is normally entitled by law or by agreement with third parties, including the right to any gifts or matrimonial benefits that his or her spouse may have consented to, whether before or after the marriage.<sup>3</sup> The party deemed not a fault, however, retains the right to all gifts and benefits to which his or her spouse consented before or after marriage, even if these were given in the expectation of reciprocal advantages which were never realized. The initiating party in a divorce pronounced by reason of disruption of marital life is subject to the same loss of rights.<sup>4</sup>

In case of wrongful conduct by both parties, each spouse may revoke all or part of the gifts and benefits granted to the other.<sup>5</sup> Thus, although the revocation of matrimonial gifts and benefits is a matter of law in the case of wrongful conduct by one party, where the responsibility for the failure of the marriage is shared, the revocation is not automatic and depends on the will of each of the spouses. In the case of a divorce demand by one spouse, the same provisions govern when the consenting spouse excludes the notion of wrongful conduct.<sup>6</sup>

In a divorce by mutual demand and consent, the disposition of gifts and benefits is determined by the spouses themselves. When there is no agreement in this regard, gifts and benefits are considered as belonging to the party to which they were originally given.<sup>7</sup>

Legislation in force prior to the 1975 divorce reform law provided that three types of financial payments could be made to one of the spouses during divorce proceedings or by the divorce decision itself:

(1) *Alimony* (*pension alimentaire*) of a temporary nature could be allotted to the wife until the divorce became final, though occasionally judges required its continuation until the actual liquidation of community property.<sup>8</sup> This payment was separate and distinct from that of child-support.

(2) *Alimony* of a permanent nature could be allotted to the spouse who obtained the divorce when, in the court's judgment, the benefits stipulated appeared insufficient to insure subsistence.<sup>9</sup> This alimony payment could not exceed one-third of the other spouse's income.

(3) *Damages* could be allotted to the spouse who obtained the divorce.<sup>10</sup>

These categories of payment were modified by the reform law in order to provide for a more humane and equitable settlement throughout the post-divorce

<sup>27</sup> News Release of Oct. 29, 1976.

<sup>1</sup> Journal officiel (official law gazette of France), July 12, 1975, p. 7171.

<sup>2</sup> Art. 265.

<sup>3</sup> Art. 267. These rights are not lost, however, if both parties have displayed wrongful conduct or if the divorce is granted by mutual consent.

<sup>4</sup> Art. 269.

<sup>5</sup> Art. 267-1.

<sup>6</sup> Art. 268-1.

<sup>7</sup> Art. 268.

<sup>8</sup> Art. 240 ancien of the Civil Code (hereafter CC).

<sup>9</sup> Art. 301 ancien, CC.

<sup>10</sup> Art. 301 ancien, part 2, CC.



period. Alimony of a permanent nature (see 2 above) was replaced by a legal obligation of support in the case of divorce on the grounds of disruption of marital life and, in other cases, by the creation of a compensatory payment (prestation compensatoire). In all, there are six types of remuneration under the new law:

(1) *Alimony* of a temporary nature paid during the proceedings until the final judgment takes effect.<sup>11</sup>

(2) *Compensatory payment*. Article 270 provides for this type of remuneration under the following conditions:

"Art. 270. Except when pronounced by reason of disruption of marital life, divorce terminates the obligation of support provided in article 212 of the Civil Code; but one of the spouses may be required to turn over to the other a payment designed to compensate, insofar as possible, for the disparity that the breach of marriage has created in the conditions of their respective lives."

However, article 280-1 retains the provision that the spouse whose wrongful conduct results in a divorce decree against him [her] is not entitled to any compensatory payment.

It bears emphasis that this article, unlike former article 301, does not exclude the possibility that a compensatory payment may be required in divorces where wrongful conduct is mutual. In accord with the spirit of the divorce reform law, the compensatory payment can no longer be characterized solely as a sanction but must also be looked upon as an equitable remedy designed to ameliorate the disparity between the standards of living of the two spouses in the post-divorce period. The attribution of wrongful conduct no longer bears a direct relation to the payment of compensation except where such conduct is attributed to only one party.

Article 271 describes the general principle by which the amount of the payment is to be determined:

"Art. 271. The compensatory payment shall be fixed according to the needs of the spouse to which it is paid and the resources of the other [spouse], taking into account the situation at the time of divorce and its development in the foreseeable future."

The following article lists the various factors that a judge should take into consideration when determining the needs and resources of the spouses:

"Art. 272. . . . the ages and state of health of the spouses; the time spent or which will have to be spent in the education of their children; their professional qualifications; their potential for future employment; their existing and foreseeable future rights; the eventual loss of their rights in respect to reversionary pensions; and their patrimony, capital as well as revenue, after property settlement."

One of the most controversial provisions of the reform law is contained in the next article.

"Art. 273. The compensatory payment has the character of a forfeiture.

"It cannot be revised even in the case of unforeseen changes in the resources or the needs of the parties, except when the absence of a revision would have consequences of exceptional gravity for one of the spouses."

Not only is this article inconsistent with the equitable spirit of the reform law, but it is internally inconsistent. At one and the same time, the compensatory allowance is characterized as a forfeiture and as an equitable remedy which is to take into account the resources of one spouse and the needs of the other.

One commentator has noted that in seeking to avoid the possibility of innumerable revision proceedings, the new law has created a category of financial hardship cases for which there is no remedy.<sup>12</sup> An impossible burden has been placed upon the individual judge to accurately predict both the future financial needs of the two spouses and their ability to meet these needs. During the parliamentary debate on these provisions, many members expressed skepticism that even the best informed judge could predict the future. While revision of the compensatory allowance is virtually excluded, no provision is made for the consideration of remarriage as a factor in determining the original allowance.

Article 276 stipulates that the form of the compensatory payment should be a capital lump sum, or when this is not possible, an annuity. The purpose of this mode of payment is to preclude the difficulties that divorced women en-

<sup>11</sup> Art. 254 and 255.

<sup>12</sup> Lindon, R. "La Nouvelle législation sur le divorce et le recouvrement public des pensions alimentaires" 23, par. 182 (Paris, 1975).



counter in trying to collect their allotted alimony payments. The annuity, which is by far the more common method of payment, is payable for a period equal to or less than the life of the spouse-creditor and is indexed to the cost of living. At the death of the spouse-debtor, the legal obligation to pay the annuity passes to his [her] heirs.<sup>13</sup>

The compensatory allowance provides reparation for damages resulting from the divorce to the economic well-being of one of the spouses (except when the divorce is pronounced against that spouse). Apparently, it is for this reason alone that the allowance is not subject to revision, that eventual remarriage is not a factor to be considered, and that the payment of a capital lump sum is the preferred mode of payment.

(3) *Obligation of support (devoir de secours)*.—Unlike the compensatory payment that is available in divorces on grounds other than the disruption of marital life, the obligation of support is a duty of marital life<sup>14</sup> which continues after divorce on the grounds of disruption of marital life. It is to be paid in the form of alimony (pension alimentaire) which is subject to revision at any time in accordance with the resources and the needs of each of the spouses. As a matter of law, the duty to make support payments ceases upon the remarriage of the recipient.<sup>15</sup> At the death of the obligor, however, the obligation of support passes to his [her] heirs.

(4) *Damages (dommages-intérêts)*.—Damages are available only when wrongful conduct is entirely one-sided. The pertinent article stipulates:

"Art. 266. When the divorce is pronounced [as resulting] from the exclusive torts of one of the spouses, he [she] can be sentenced to pay damages in reparation for material or moral injury that the dissolution of the marriage caused his [her] spouse.

"The latter cannot request damages except at the time of the divorce proceedings."

(6) *Exceptional indemnity (indemnité exceptionnelle)*.—Article 280-1 of the reform law contains an innovation permitting the spouse against whom the divorce decree is pronounced to receive remuneration, even when it results exclusively from his [her] wrongful conduct.

"Art. 280-1. The spouse whose conduct is exclusively wrongful [and] against whom the divorce is pronounced has no right to any compensatory payment.

"However, he [she] may obtain an indemnity by special title if, after notice is taken of the length of the marital life and of the collaboration in support of the profession of the other spouse, it appears manifestly contrary to equity to refuse him [her] any pecuniary compensation following the divorce."

(6) *Reversion pension*.—The other significant source of remuneration available to the divorced spouse is covered by article 11 of the reform law which added the following article to the Social Security Code:

"Art. L. 351-2. When an insured party has not remarried after a divorce pronounced against him [her] for the disruption of marital life in accordance with articles 237-241 of the Civil Code, the divorced spouse shall be considered as a surviving spouse for the purpose of application of article L. 351 of the Social Security Code, if the spouse has not remarried.

"When the insured party has remarried, the reversion pension, to which the right accrues upon the insured party's death by authority of article 351 of the Social Security Code, shall be divided between the surviving spouse and the preceding divorced spouse or spouses, who have not remarried, on a prorated basis according to the respective duration of each marriage. This division shall be effective as a final determination from the time of settlement of the rights of the first [spouse] among them who makes the request for division.

"When the beneficiary meets the conditions specified by article L. 388 of the Social Security Code, her [his] part of the pension shall be increased by 10 percent."

(Prepared by Dr. Ivan Spikov, Assistant Chief, and Richard Greenfield, Legal Reference Assistant, European Law Division, Law Library, Library of Congress, March 1977.)

<sup>13</sup> Art. 276-2.

<sup>14</sup> Art. 212, CC.

<sup>15</sup> Art. 283.



## FEDERAL REPUBLIC OF GERMANY

## I. GENERAL

The First Law Concerning the Reform of Marriage and Family Law of June 14, 1976,<sup>1</sup> has changed, in the first place, the marriage and family law provisions of the German Civil Code. In addition, it has also changed numerous other laws, among them the Reich Insurance Regulations (Reichsversicherungsordnung), the Code of Civil Procedure, and the Law on Noncontentious Jurisdiction.

In the following discussion, a general survey will be given of the new provisions concerning the division of pension expectancies following a divorce. It is based on the text of the law, as well as on the comments of Dr. Hans-Jochen Vogel, the Federal Minister of Justice, in a recent article titled "Das Erste Gesetz zur Reform des Ehe- und Familienrechts vom 14. Juni 1976 (1. EheRG)", which appeared last year in the leading legal periodical on family law.<sup>2</sup>

As will be seen from this survey, the family court ex officio effects, as a rule, the property settlement with respect to equalization of pension expectancies. Under certain circumstances that will be indicated in our survey, such property settlement takes place only at the request of the interested person.

The new law extends the principle of the community of accrued gains to the pension expectancies which have been acquired during the marriage by one or both spouses. The basic idea of this innovation is the same as has been instrumental in creating the equalization of accrued gains concept: the expectancies are to be considered—like any other property gains—as the joint performance of the spouses and are destined for old-age security. The expectancies of the insured spouse have to provide security also to the non-insured spouse. They constitute property gains of the economic community of the spouses. If the marital economic community is dissolved, the property accrued during the marriage must be divided up, so that both spouses, according to their performances of equal value, also share and share alike in the pension expectancies.

The equalization of pension expectancies is effective irrespective of the matrimonial regime, but it may be excluded by an express agreement in a marital contract. Such exclusion is, however, null and void if within one year a petition for divorce is made.<sup>3</sup>

The equalization of pension expectancies is carried out ex officio by the family court under the procedural rules of noncontentious jurisdiction.<sup>4</sup> Agreements between parties are possible but require the approval of the family court.<sup>5</sup>

## II. DETERMINATION OF THE PENSION EXPECTANCIES TO BE INCLUDED IN THE EQUALIZATION

That part of the expectancies acquired up to the termination of the marital life is to be included as accrual in the equalization, which corresponds to the ratio of the total time of productive activity (including lost time and substitute time) to the marital life, insofar as the latter falls into the time of productive activity.<sup>6</sup> In the case of civil servants, the accrual of pension expectancies apportioned to the marital life is to be computed in such a way that the service time counting toward a retirement pension, and completed up to the dissolution of the marriage, is extended by the amount of time up to the age limit. From it the amount of the pension is established which would have to be granted at the time of the divorce petition. That part which corresponds to the ratio of the marital life to the total time shall be included in the equalization.<sup>7</sup>

If pension expectancies have been acquired in an industrial old-age pension plan, the part to be included in the equalization is also to be calculated according

<sup>1</sup> Erstes Gesetz zur Reform des Ehe- und Familienrechts (1. EheRG) vom. 14. Juni 1976, "Bundesgesetzblatt" (official law gazette of the Federal Republic of Germany, hereafter cited as BGBl.) 1976, I, p. 1421.

<sup>2</sup> "Zeitschrift für das gesamte Familienrecht," No. 9/10, 481-491 at 485-487 (September/October 1976).

<sup>3</sup> Sec. 1408 (2) of the Civil Code in the new version (hereafter cited as CC).

<sup>4</sup> Sec. 626 (3) of the Civil Procedure Code in the new version (hereafter cited as CPC): Secs. 53b-53g of the Law on Noncontentious Jurisdiction in the new version (hereafter cited as LNJ). BGBl. 1976, I, p. 1453-1454.

<sup>5</sup> Sec. 1587o, CC.

<sup>6</sup> Sec. 1587a (2), No. 2, CC; Sec. 1304, (1) and (2), of the Reich Insurance Regulations in the new version (hereafter cited as RIR).

<sup>7</sup> Sec. 1587a (2), No. 1, CC. "Total time" (Gesamtzeit) is the service time counting toward a retirement pension and completed before and during the marriage, extended by the amount of time still not served up to the age limit.



to the time: time ratio; that time of the old-age pension is to be included which corresponds to the ratio of the period of employment coinciding with the marital life to the time from the beginning of the period of employment until the age limit indicated in the old-age pension regulations.<sup>8</sup>

If one of the spouses during the marital life has paid premiums into a private insurance on an old-age pension basis, it shall be computed from the performance that would result at the time of the beginning of litigation on the divorce petition, after the prior conversion of the contract into a free-of-premium insurance.<sup>9</sup>

The expectancies calculated in this manner are uniformly expressed in a monthly pension payment.

In accordance with section 53b(2) of the Law on Noncontentious Jurisdiction (new version), the court may obtain information on the basis and amount of pension expectancies from competent agencies, insurers, employers, insurance companies and other agencies. These agencies are obligated to comply with judicial requests. In cooperation with insurers, the land justice administrations, and the participating federal departments, the Federal Ministry of Justice prepares forms for requests for information and reports answering them.

### III. THE KINDS OF EQUALIZATION

The form in which equalization is to be undertaken differs depending on the individual kinds of old-age pensions. The Law distinguishes for this purpose two equalization groups.

The first group includes the expectancies from one of the three statutory old-age insurances—workers' old-age insurance, employees' insurance, and miners' provident fund insurance—and the pension expectancies of civil servants. The second group consists of all other kinds of insurance. In the first place, the expectancies of both spouses of the first-named kind are to be juxtaposed. If the expectancies out of a statutory old-age insurance of one of the spouses exceed the expectancies of the other spouse, half of the excessive value unit shall be transferred from the insurance account of the first spouse to that of the other or, if there be no such fund, to one established for this purpose.<sup>10</sup> Thereby, the other spouse acquires for his (her) person expectancies in his (her) own right. The spouse who was obligated to provide the equalization and whose expectancies have been decreased may replenish his account.<sup>11</sup>

If the expectancies to a civil servant pension alone, or together with the expectancies from a statutory old-age insurance, exceed the expectancies of the other spouse, the family court establishes for the latter, by a constitutive ruling, expectancies in the amount of half the value difference in a statutory old-age insurance.<sup>12</sup> The old-age pension of the civil servant is automatically reduced.<sup>13</sup> The civil servant, however, may again replenish his account by making payments to his employer.<sup>14</sup>

In cases of the second group, that is, all other old-age pension plans except expectancies from one of the statutory old-age pension plans and the civil servant old-age pensions, the equalization is effected as follows: the family court imposes upon the debtor the duty to pay a certain capital sum into one of the statutory old-age insurance systems in order to establish expectations,<sup>15</sup> unless the spouses have reached another agreement and the family court has approved it.<sup>16</sup>

The establishment of an expectancy to a monthly old-age pension of 100 DM costs, in a statutory old-age pension, some 16,000 DM at the present time. The person liable to equalization will often not be able to provide such sums at once because, as a rule, he will be burdened also by other costs such as maintenance, equalization of accrued gains, and litigation expenses. Therefore, under section 1587d of the Civil Code, the family court may, on the petition of the debtor, order a suspension of the obligation to pay so long and insofar as the debtor would be unequitably burdened by the payment and, in particular, would be unable

<sup>8</sup> Sec. 1587a (2), No. 3, CC.

<sup>9</sup> Id., No. 5.

<sup>10</sup> Sec. 1587b (1), CC.

<sup>11</sup> Sec. 1304 (6), RIR.

<sup>12</sup> Sec. 1587b (2), CC.

<sup>13</sup> Sec. 161 of the Federal Civil Service Law in the Version of the Law Amending the Civil Servant Old-Age Pension Law Provisions of June 14, 1976, BGBl. 1976, I, p. 1477.

<sup>14</sup> Id.

<sup>15</sup> Sec. 1587b (3), CC.

<sup>16</sup> Sec. 1587e, CC.



to support himself adequately and to honor his statutory maintenance duties. The court may also allow payment to be made in installments.

The equalization of pension expectancies is to be undertaken irrespective of indigence. Since, in individual cases, inequitable hardships may result because of this approach, an equity clause<sup>17</sup> is intended to preclude such hardships.

#### IV. THE "OBLIGATION LAW" EQUALIZATION OF PENSION EXPECTANCIES

If an equalization in the manner outlined above is not possible, or if it has not been successful, then for want thereof the "obligation law" equalization of pension expectations (schuldrechtlicher Versorgungsausgleich) takes place; it takes place also if the parties have agreed upon it.<sup>18</sup> The main cases of this equalization are: the entitled person already at the time of divorce (not of the petitioning for divorce) has reached the age at which a person is entitled to a pension;<sup>19</sup> the entitled person has, in his account with a statutory old-age pension insurance system, reached the 2½-times amount of the general assessment basis (Bemessungsgrundlage) (=250 value units annually);<sup>20</sup> and the debtor has not paid in the sums required of him under section 1587b (3) of the Civil Code (new version).<sup>21</sup>

The obligation law equalization is due if the debtor receives a pension and the entitled spouse also fulfills the preconditions for drawing pension payments due to disability, or if he has reached the 65th year of life.<sup>22</sup> The entitled spouse may demand from the debtor, in the amount of the current monthly equalization payments, the assignment of old-age pension beneficiary rights, so that he receives the monthly equalization payment directly from the pension fund. The "obligation law" equalization does not occur ex officio, as has been the case with the public law equalization (öffentlich-rechtlicher Ausgleich), but only on the motion of the entitled spouse. This principle applies also in the case in which it becomes already due during the divorce proceedings.<sup>23</sup>

#### V. DISPUTE OVER PENSION EXPECTANCIES

With respect to the proceedings concerning the equalization of pension expectancies, the following general remark must be made:

If a dispute exists between the participating parties concerning the existence or the amount of a pension expectancy, the family court may stay the proceedings concerning the equalization of pension expectancies and allow a period of time to one or both spouses to file a petition for a declaratory judgment with the competent court (in particular the social (welfare) court or the labor court) in each case.<sup>24</sup> If one of the parties has already instituted such declaratory judgment proceedings, the family court has the duty to stay proceedings.<sup>25</sup>

#### VI. PERTINENT PARTS OF TWO GERMAN ARTICLES ON DIVORCE REFORM

##### A. Article by Dr. Hans-Jochen Vogel, the Federal Minister of Justice, Titled "Victory of Reason"<sup>26</sup>

The part of this article that is pertinent to the subject matter of the report appears in paragraphs 3 and 4 of page 4. In translation, it reads as follows:

"Also the protection of the social interests of the wife is improved. For the first time, the equalization of pension expectancies grants to a group of housewives an independent claim to old-age pensions. The time during which the wife has wholly dedicated herself to the task of housewife and mother is recognized, in the case of a divorce, as effecting a pension claim.

"All questions connected with the divorce, e.g., maintenance, care of children, division of household equipment, shall be decided from now on, as a rule, in one single proceedings by a judge, the family judge. The heretofore practice of splitting the consequences of a divorce into many different pro-

<sup>17</sup> Sec. 1587c, CC.

<sup>18</sup> Sec. 1587f, CC.

<sup>19</sup> Id., No. 1.

<sup>20</sup> Id., No. 2.

<sup>21</sup> Id., No. 3.

<sup>22</sup> Sec. 1587g (1), CC.

<sup>23</sup> Sec. 623 (3), CPC.

<sup>24</sup> Sec. 53c (1), LNJ.

<sup>25</sup> Id. at (2).

<sup>26</sup> In recht 2-4, Nr. 18/1976 (Eine Information des Bundesministers der Justiz, 1976).



ceedings made the affected [spouse] realize, often too late, what burdens divorce is bringing about."

*B. Abstract of Part of an Article by Susanne Mersmann in Stern 1976, a German Magazine—Marriage Law*

Under the new divorce law, no longer is the spouse whose guilt caused the separation asked to the cash-desk to pay, but rather the spouse who has the money.

The author of the article states that members of the German Bar are full of praise for the idea of "family courts"; however, they doubt their capacity to function. Until now, in the worst case, divorce and the settling of all its consequences required proceedings in and decisions of five different courts: (1) divorce—in a civil cases chamber of a Landgericht (higher court); (2) distribution of property, depending on the value of the suit—in an Amtsgericht (lower court) or the Landgericht; (3) division of the dwelling and the household equipment—in another Amtsgericht; (4) custody of the children—by a judge of the guardianship court; (5) the amount of maintenance for the spouse and the children—again in another Amtsgericht. All these questions are now to be settled by the same judge in one proceeding, and divorce may be pronounced only if all consequences of the divorce have been settled.

The family courts have also been assigned a new function: to decide on the equalization of pension expectancies. In the future, that spouse who gives up her profession in order to take care of the children has a claim to a part of the later old-age pension of her spouse. The splitting of the old-age pension is a knotty problem for the judges and the lawyers. They fear that the complicated computation of the old-age pension claim will delay the divorce proceedings for months.

As of now, if both spouses have agreed to divorce, the consent divorce proceedings take from 4 to 8 weeks. After the introduction of the equalization pension expectancies,<sup>27</sup> the experts expect that the proceedings will last from 10 to 20 months. Pessimists even believe that the equalization of pension expectancies will lead to constitutional complaints because here the "predictability of action" ("Vorsehbarkeit des Handelns") is not assured: the marriages entered into under the old law are dissolved under the new law.

Prepared by Dr. Armins Rusis, Senior Legal Specialist, European Law Division, Law Library, Library of Congress, March 1977.

#### GREAT BRITAIN

As a result of hasty wartime marriages, the number of divorces increased and wives were left with no title to the matrimonial home at a time when it was impossible to find other accommodations. Courts built up a body of case law which put a strained interpretation on the Married Women's Property Act, 1882.<sup>1</sup> It introduced a supposed right of a wife to live in a home, based on the husband's duty to support. The House of Lords gave repeated warnings to judges attempting to create new law and instead urged Parliament to pass a statute to regulate property relations of spouses.

A Member of Parliament, Mr. Bishop, submitted a draft bill, but it was withdrawn in 1969 on the undertaking of the Government that the Law Commission, a permanent body of law reformers, should look into the whole question and produce a report. In the later part of 1969, the Law Commission published their report.<sup>2</sup> This led to the passing of the Matrimonial Proceedings and Property Act, 1970.<sup>3</sup> The provisions of that Act are consolidated in the Matrimonial Causes Act, 1973.<sup>4</sup>

The effect of this legislation is to give the court discretion to do any of the following:

(a) vary any of the existing ante-nuptial or post-nuptial settlements, whether inter vivos or by will, of which a spouse is beneficiary including his or her elimination from the benefit;

(b) order a fresh settlement of property to be made by either spouse in favor of the other and/or any child of the marriage;

<sup>27</sup> Effective July 1, 1977.

<sup>1</sup> Married Women's Property Act, 1882, 45 & 46 Vict., c. 75.

<sup>2</sup> Law Commission. No. 25, Report on Financial Provision in Matrimonial Proceedings (1969).

<sup>3</sup> Matrimonial Proceedings and Property Act, 1970, c. 45.

<sup>4</sup> Matrimonial Causes Act, 1973, c. 18.



(c) order specific property to be transferred outright by either spouse to the other or to a child or children of the marriage.<sup>5</sup>

There was much criticism. The Law Commission regarded the court's discretion as being the fundamental defect of the system. They prepared a Working Paper in favor of a scheme of joint ownership.<sup>6</sup> The Working Paper was followed by a subsequent report.<sup>7</sup>

The Law Commission proposed that in the absence of a contrary agreement, all matrimonial homes should be jointly owned in a matrimonial home trust. The scheme would operate retroactively, that is, it would apply to homes already owned at the time that the legislation came into force. The Commission recognized that it would be necessary to have a transitional period to enable spouses to opt out of the new scheme if they so desired. The Law Commission considered that their scheme reflected the "realities" of married life since both spouses regard the matrimonial home as "theirs" without considering the question of legal title or the principles of the law of trust. It gave security of ownership to the spouse who is not recognized by the law as having any proprietary interest in the home. It recognized that each spouse contributes to the marriage and to the family and that the combined efforts of both make the buying and the maintenance of the home possible. It eliminated the uncertainties of litigation in which rights of ownership are contingent on proof of financial contribution.

The Law Commission was aware of the formidable conveyancing problems which would be involved in their proposals and as a result they set up a Working Party to advise them.

The Law Commission included consideration of pensions in a Working Paper<sup>8</sup> and their Report No. 25. As the Law Commission pointed out, difficulties arise for a divorced wife on the death of her former husband because she does not qualify for the state widow's pension and her entitlement to a retirement pension might be adversely affected. A private pension scheme would represent a considerable amount of a husband's accumulated savings and it is important that the former wife does not suffer by losing her chance of benefiting.

The Matrimonial Causes Act, 1973, provides<sup>9</sup> that the court in deciding whether or not to exercise its powers of ordering financial provisions is to consider all the circumstances of the case including "the value to either of the parties to the marriage of any benefit (for example, a pension) which by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring." The court may, therefore, order the husband to pay the wife a sum to compensate her for the loss of her prospective pension rights.

In addition, there are various ways in which the divorced wife's position might be protected. It might be possible for the husband to make arrangements with the pension fund trustees whereby his former wife will benefit. Indirectly her position might be protected by her being given a share in the matrimonial home and other family assets. With regard to state pensions, some of the previous difficulties have been eliminated for divorced women by the Social Security Pensions Act, 1975.<sup>10</sup> Under that Act, a widowed ex-wife would be entitled to a child's special allowance and will receive increased supplementary benefits<sup>11</sup> provided she does not have any capital or investment income since supplementary benefits are awarded according to means.

Although some of the difficulties originally highlighted by the Law Commission have now been remedied, there may still be cases where a wife cannot be adequately compensated for loss of a pension. The Law Commission notes that the problem of utilizing savings in private pension funds for a divorced wife is not solved and that it is probably incapable of a direct and complete solution.

(Prepared by (Mrs.) Audrey F. Glover, Legal Specialist, American-British Law Division, Law Library, Library of Congress, March 1977.)

<sup>5</sup> *Id.* § 24.

<sup>6</sup> Law Commission. Working Paper, No. 42, "Family Property Law" (1971).

<sup>7</sup> Law Commission. Working Paper, No. 52, "First Report on Family Property: A New Approach" (1973).

<sup>8</sup> Law Commission. Working Paper, No. 9, "Matrimonial and Related Proceedings—Financial Relief" (1967).

<sup>9</sup> Matrimonial Causes Act, 1973, c. 18, § 25(1)(g).

<sup>10</sup> Social Security Pensions Act, 1975, c. 60.

<sup>11</sup> *Id.* § 31.



## AN ACT TO AMEND THE CANADA PENSION PLAN

The amending Bill, C-49, was tabled in Parliament April 18, 1977. The two major amendments are intended to provide some measure of financial security for spouses who work in the home. The first of the proposed amendments would permit the equal splitting of Canada Pension Plan (CPP) credits, earned during marriage, between husband and wife upon divorce or annulment of their marriage. The total pension credits would be divided equally regardless of the amount of direct contribution made by husband and wife. This would ensure that the value of the pension, an asset which had been accumulated during marriage, would be divided equally between the spouses upon dissolution of the marriage.

Spouses who had never worked outside the home and therefore had never directly contributed to the Canada Pension Plan, as well as those who had contributed for only a short time, would be able to share in the pension credits accrued through the CPP contributions made by their husband or wife. The credit split, for all years of marriage back to 1966 when the CPP began, would be made upon application by either spouse within 3 years of marriage dissolution.

The second major amendment would protect contributors who leave the labor force to raise young children against the deterioration of the amount of their eventual CPP pension resulting from periods of low or zero earnings incurred during the child rearing period. Contributors would be able to drop out of the periods when they were raising children under 7 years of age when calculating their lifetime average earnings for benefit purposes. The provision would protect both the eligibility and the amount of CPP benefits earned by a contributor prior to the child-rearing periods.

(Prepared by (Mrs.) Marlene C. McGuirl, Chief, LL AB; and (Ms.) Linda B. Murphy, Legal Analyst, American-British Law Division, Law Library, Library of Congress, May 1977.)

Ms. SPELLMAN. Thank you. Of course, we appreciate all of the effort that you have put into this legislation.

Invariably we are being told to meet with the wives of Members of Congress who will give a different point of view.

Ms. SCHROEDER. Well, I think it's a very interesting point, that the new wives will get the rest of the annuity, whether they've been married 1 month, 1 day, or however long.

Ms. SPELLMAN. A year is required by law.

Ms. SCHROEDER. They had to be married 1 year, and 20 years versus 1 year is not exactly equality, but yet they get all of the money.

Ms. SPELLMAN. All of the material which you have brought will be placed in the record—and it is excellent material.

I have one question. You mentioned Canada in your statement, and you make note of the advancement which Canada has made in permitting equal splitting of Canadian pension plan credits, similar to our social security system in the United States.

Do you know if Canada or if any of the countries where private employer-employee pension plans such as Federal retirement system permit splitting of benefits between husband and wives?

Ms. SCHROEDER. You mean in foreign countries?

Ms. SPELLMAN. In foreign countries.

Ms. SCHROEDER. In Germany they do, but I don't know—I'm really not an expert on foreign laws. I know Germany has really been out front moving in this whole area.

Ms. SPELLMAN. Yes, they have.

Ms. SCHROEDER. We have exported the American tradition of divorce as an American institution. Other Western countries have been having to deal with this, and they've really been ahead of us.



And, you know, Germany has really been a little bit more like the United States. It is a Federal Republic with the States and the Federal Government, and the private sector and the public sector.

Ms. SPELLMAN. Yes.

Counsel is asking if we should lower that 20-year requirement. I'd say take what we can get to start with, and then we'll worry about lowering things later.

Mr. McCLUSKEY. Madam Chairwoman.

Ms. SPELLMAN. Go right ahead.

Mr. McCLUSKEY. It concerns me that you mentioned, Ms. Schroeder, State rights, community property States, and so forth, those have no magical number—

Ms. SCHROEDER. That's right.

Mr. McCLUSKEY. I wonder if we aren't intervening in those type of States and saying to them, you know, despite your laws we have a magical figure of 20.

Ms. SCHROEDER. Of course, right now we're saying, "Despite your laws you can't do anything." At least this will be a little closer to where they are. I think there are only eight community property States, but if you said to them, "OK, despite your laws, you can get this much now," and they've been married 20 years.

Now, I would certainly prefer seeing us move toward a community property aspect, and allowing each State to deal within the courts. I have no problem with that at all.

I only want to say that if you think this is controversial, try that one. And the main reason that we opted for this was that it was at least in agreement—on line with social security.

And we may want to talk about how we deal with social security and Federal annuities. I mean social security right now in community property States.

Mr. McCLUSKEY. Well, of course, the main distinction in social security and this system is that social security is equal giving. A recipient or the worker does not split the annuit.

Here we are requiring, since he's not under social security, and since we are a private system, to split his annuity.

Ms. SCHROEDER. Well, it's a private system, but for public employees; so I'm not sure—

There's one thing we want to make clear, that when we do this, we want to make sure the 20-year marriage requirement should not be construed so that it will limit the States' authority to divide property, so we won't be doing what we've been doing for so long—interfering with court orders.

We will allow them to divide property if they've been married less than 20 years in those community property States. It would be very easy in the bill to say however long a person is married the States can consider this marital property.

I think it is ridiculous to deny it at the Federal level, if you see what I'm saying.

Ms. SPELLMAN. Would it be only in those States that have community property law, or could we say that if the court decrees, then we will?



Ms. SCHROEDER. Yes, if the court moves in that direction, it would be however they look at it.

And I think you could put that language in the bill, saying after 20 years it's automatic, but if the court determines it should vest before then, you'd have the best of all possible worlds.

One of the things I thought was interesting yesterday, when we talked to the Civil Services Commission, was that the new ones really have been following this—excited about it—and my understanding is that, supposedly, it is the official position they are against it, only that it's the first they knew of it.

Ms. SPELLMAN. We have a letter from the Civil Service Commission opposing it. But, as you know, in our discussion we found that this is really a holdover from the past, and additional discussion with even the chairman has indicated they will reconsider the Commission's original view. I hope that after he takes a good look at it he may change his mind totally.

So, you're so right. Others have indicated that they've not been consulted at this point. And that's the reason we called Mr. Tinsley, the Civil Service Commission representative, who was to have been our speaker here today, but we suggested that he not come until a policy has been adopted by the present Commission.

Ms. SCHROEDER. I think that was very wise because I was a little shocked yesterday to find out that, really, the Justice Department, OMB, and, apparently, a certain level, had all gotten together and decided, "Oh, well, we'll just all sign off on this." And the main reason given was that we don't allow any State decrees to be assessed against Federal annuities, which is no longer true in cases of child support and alimony.

And I think even the chairwoman was surprised to find out their position. So, hopefully, with a little more time and education, the Civil Service Commission can be enlightened.

Ms. SPELLMAN. I think it might be well for us to meet with the Director of OMB to discuss this with him.

Ms. SCHROEDER. I think that's very true.

Ms. SPELLMAN. We thank you very, very much—for all of your work and your assistance.

Ms. SCHROEDER. Thank you for all of your work.

Ms. SPELLMAN. Our next witness is Ms. Sada Chernick, who is with the Women's Alliance for Legal Opportunity and Protection.

We are switching here somewhat, and I hope we're not putting others out, but Ms. Chernick does have a pressing appointment.

#### STATEMENT OF SADA D. CHERNICK, WOMEN'S ALLIANCE FOR LEGAL OPPORTUNITY AND PROTECTION

Ms. CHERNICK. Thank you.

I would prefer not to read.

Ms. SPELLMAN. Very good. We would like that, too. We will make your statement part of the record.

Ms. CHERNICK. Right, and I will just very quickly go over it for those people who have not gotten copies.



The two points that I emphasized were first, the fact that workers in this country want fringe benefits and they want them written into law. It is a rare employee who will take on trust, at this point, his employer's guarantee that, "When you get to that point I'll take care of you."

And yet we are asking women to accept that which does not mean that I think we should not trust the men we marry, but people do change, and there should be something a little bit more secure for the woman who has been married a reasonable number of years.

The bill chooses 20, and I don't intend to argue with that, although I think there are a lot of conversations that could take place.

The other point I make is that there is an emphasis on retaining the family, and I, personally, as a mother, would have to say to my daughter at this point, "As you're not already married, either do not get married, or get a hard and fast contract that says if you stay home and do the job that has been agreed by society needs to be done, you're going to be taken care of, because otherwise, at any point, he can say, 'I don't happen to like the situation.'"

And with the new laws on divorce which have been changed drastically—they have been changed drastically while the updating in terms of security for women has not been updated in the same sense—I would have to say, "Don't take a chance."

He may be a very honorable person, or she may be a very honorable person, whichever one happens to be in that seat. I'm not certain whether life styles are going to change sufficiently to make it so, but there already are some men who are playing the role of what we call "dependent spouse," and I think they deserve the same coverage.

I would not like to see the family go by the board because of the fact that we can't find some way to make sure that women who have played that role and done what society asked for have some kind of security.

I really don't want to see the family as we know it to go down the drain, and whether the male stays home with the children or the female stays home with the children, I do think there needs to be something more secure for that person in case the situation does not last for what—40 years?

Maybe we didn't have this problem before because people died so much earlier; I don't know. But, in any case, that's not the solution we want either.

Ms. Schroeder has covered a number of points that I was going to but there were a few that I want to bring out, and one is the tradition that the State shall have the decree on divorce.

And it does have the jurisdiction on divorce, but, as I say, in most States—not all, but most States—the changes have been made in the ease of getting a divorce without considering what this means in total to the family—to the spouse that stays home, and so on.

If there was some way that we could see to it that those two went hand-in-hand, we might not need a Federal law, but we do, as someone said.

In the terms of States rights, I have seen a number of issues in my life where what might have been called States rights—such as agriculture, welfare, unemployment—have had to become Federal—Federal, I don't know another word to use.



They've had to come under the jurisdiction of the Federal because the States, for whatever reason, were unable to be relatively equal.

Nothing will ever be totally equal, we know that; but there should be some relative equality. I think they're owing something like this. The Government needs to be a leader and not a heel dragger, especially since it plays the role of an employer.

Now, one of the things that I have been asked very often is, "Why don't you get the women that are affected up here?"

I would very much like to, but I know no way, on a prospective bill, to find out who is going to be divorced 5 years from now. We know there are going to be a number of them, but I'm not able to go to a room full of people and say:

You, and you, and you, and you are going to be in this position; therefore, come to a hearing and testify or write a letter.

They talk about why have we not gotten more letters from women. The answer is that most women have been trained to believe that it isn't going to happen to them.

Surprisingly, it does. I think almost all of them are shocked when it does, but, in fact, they don't know who they are beforehand. Therefore, they're not able to go through it until it happens, at which time they are helpless.

As a matter of fact, they won't get coverage under these bills, most of them.

Then, Ms. Schroeder brings up the fact of the family unit, and everybody's putting in their part. There is something a little bit more legal that comes into that that has not been mentioned, namely, that the Internal Revenue Service allows us to file joint returns.

This, I assume, means that the moneys are considered joint. The fringe benefits, if they were taxable, would be considered joint. The parts that are withheld for insurance, which is not, necessarily, going to redound to the second person, are considered joint.

If they're not considered joint, then, in fact, the joint return is, in some sense—and I don't like to use the word, but, in some sense—well, let's say it's an illusion rather than a fraud. But somebody's using it to pay less income tax, when, in fact, none of it belongs to the spouse that stays at home.

And I think there's a legal justification there for saying it isn't just his because if he pays a certain amount out of his income to the pension fund, then, in fact, she has to live a little bit less well because she is filing that it is her income as well as his income.

I guess, really, that unless you have some questions—I don't know that I've covered everything I can. I've discovered that when people get me started I can go for hours on this, and there never seems to be an end.

I don't consider this the ideal bill for all people. I certainly realize that a lot of women who have already been affected are going to be left out.

There is evidence that a large proportion of women over 65 are living on under \$1,800 a year. There are statistics that show that after a divorce, in most cases the living standard of the man goes up, the living standard of the woman goes down.



Now, someday that may be switched. I don't want to see that switched. I don't happen to be—if I am a feminist—I don't happen to be the type of feminist, and I don't think I represent the type of feminist, that really wants a reversal of roles. I would like for people to be people, and whatever role you play you get a reasonable kind of equity out of it.

[The prepared statement follows:]

PREPARED STATEMENT OF SADA D. CHERNICK, WOMEN'S ALLIANCE FOR LEGAL OPPORTUNITY AND PROTECTION

I want to thank the Chair and the members of this committee for allowing me on behalf of the Women's Alliance for Legal Opportunity and Protection to testify today on H.R. 3951, a bill to provide that a former spouse of a civil servant who was married to such employee for 20 years or more shall be entitled to a portion of such employee's annuity and survivor benefits.

At the moment, the word "spouse" probably refers most often to a wife, but the changing lifestyles and antidiscrimination interpretations may soon make the word spouse most appropriate.

Before continuing, I would like to say that I am testifying on behalf of a group of women loosely organized under the title of Women's Alliance for Legal Opportunity and Protection, but I have been primarily involved with a subgroup calling itself Homemakers for Equal Retirement Security. This group includes wives and ex-wives of civil servants, members of the uniformed services, and foreign service officers.

There seem to be two primary factors operating which make a bill such as H.R. 3951 essential: (1) The assumption of any worker that after 20 years some pension will be there for the retirement years, and (2) The deterioration of the traditional family structure and the need to find ways of strengthening this structure or providing alternatives.

Retirement benefits are fought for by labor in their negotiations, and the Federal Government in various ways assumes the right of an employee to anticipate a reasonable retirement income, but the spouse who provides the homemaking and care of the family is omitted from such coverage. Is not homemaking an honorable and necessary occupation? If men are not willing to work on "trust" of an employer, should not homemakers be in the same position? Even if a divorced or separated spouse can find some kind of work, should not retirement benefits from the first job be provided? In jobs involving payment for work, changing jobs does not preclude retirement benefits after the required number of years of work. This same security, dignity, and respect should be accorded the homemaker.

A spouse is often expected to sign a joint income tax form, but no benefits are necessarily considered to be half hers. Despite the assumption that the income belongs to both, when retirement arrives, the income is considered as his, she was an unpaid worker, and the joint income tax form appears to be an emotional fraud—a tax loophole for married men?

In discussing the second factor, all statistics seem to agree that the divorce rate is on the rise and that the rate for longstanding marriages involving older persons is disproportionately high. When most women who currently have been married to one man for 20 years were at the accepted nuptial age, options were rare. Marriage and care of the family were the accepted societal norm. However, whether the norm was a good or a bad thing, with this unwritten law came the unwritten, and even written, law that a woman who so devoted her most productive and creative years would be taken care of in her later years. Various failures in financial affairs deprived some women of this guarantee, but it was only when the husband also suffered the same fate. Society has never openly intended that a man should benefit financially from a divorce.

Data gathered within the past 10 years indicate that in most divorce/separation situations, the men improved their economic status, while the income of women fell. These figures were adjusted relatively to family size. Even when adjusted for race, age, education, city size, and region, still the income of men rose while that of their ex-wives fell. (Demography, Vol. 14, February, 1977, pp. 67-77.)

With such a record, it would seem that all parents should train their daughters to prepare for some kind of work which pays a salary and carries with it some



kind of dignified retirement, as well as medical and hospital coverage. This should include putting her salaried job ahead of homemaking. How can a parent honestly counsel a daughter to devote herself to home and family when she may so easily find herself without funds, while her husband enjoys all the seniority, retirement, and fringe benefits denied her because her trust is not reinforced by the law? Even if a spouse is provided some alimony, no real security is conferred, since alimony ceases upon the death of the spouse providing the alimony. In the future, we may also find ourselves unable to counsel a son to become a homemaker, not because it would not be appropriate for him to do so, but because he might then find himself deprived of security in his later years and end up on the welfare rolls.

There have been calls to strengthen the family, but unless and until the laws of States and the Federal Government require responsible and sufficient credit for work performed in the home, weakening the family will be too easy. Some States have made efforts in this direction. A neighboring State lately passed a law which requires that the years of work in the home be considered in any settlement. Not all States have reached this point, and many States would consider Federal regulations an area outside of their province. For the Federal Government to assume that the home spouse was not contributing and did not earn any rights for the future is certainly a step in the wrong direction.

Cases of women who have been adversely affected by the current laws and circumstances could be cited, but rather than take time to tell of them, I instead offer to find you such women to talk to should any of you so desire.

The Federal Council on Aging reports 13 million women in this country are 65 or more years of age. Dr. Ethel Allen of the National Commission on the Observance of International Women's Year testified that 2.3 million of them were below the poverty line in 1974. The National Senior Citizens Law Center found that 50 percent of the single women over the age of 75 live on under \$1,800 a year. The numbers and the welfare demands will likely increase. One situation in which the taxpayer may end up with this burden, although it rightly belongs to the husband or ex-husband, is in the case of employees of the Federal Government.

This bill plainly puts the responsibility for the welfare of an older woman where it belongs, with the spouse who had the use of homemaking services for 20 or more years. These ex-spouses should not be living on substandard incomes or welfare, so long as the wage-earning member of a longstanding pair has accrued benefits during those years. The only cost to the government would be a small administrative one.

I strongly urge you to consider the contribution of the homemaker and the vulnerability of such people without this protection and to vote for this bill, which provides that a former spouse of 20 years or more shall be entitled to a portion of such civil servant's annuity and survivor benefits. The time is truly right for such an acknowledgement.

Thank you for your time and interest.

Ms. SPELLMAN. Don't worry about the women not writing letters; we've gotten an enormous number of them.

Ms. CHERNICK. Well, I got the word that a lot are coming from second wives.

Ms. SPELLMAN. Yes; a good many of them are coming from second wives who are very concerned.

Ms. CHERNICK. They're concerned that they don't want to have to share. I realize that since they won't be affected, and it's only going to be prospective, and I would say that prospective second wives, if you're really marrying him for the part that his first wife worked for, maybe you shouldn't.

Ms. SPELLMAN. On the other hand, it should be duly pointed out to them, that, if they should be married 20 years and something happened, you'd be protected.

Ms. CHERNICK. Some say the second wife should get it, and the first should just drop dead, but they don't do that.



Ms. SPELLMAN. Sometimes we get a second generation of letters saying, "Oh, well, now that's different. In that case I support it."

Ms. CHERNICK. Is there something else I can say?

Ms. SPELLMAN. Yes; in your statement you mentioned that a neighboring State requires that the work in the home be considered in any settlement. Which State is that?

Ms. CHERNICK. Virginia.

Ms. SPELLMAN. Virginia.

Ms. CHERNICK. I think this was in the last 3 to 6 months. I cannot give you the exact date, but I think I can find it if you want to know it. I can pass it on.

Ms. SPELLMAN. Do you know if other States have similar laws?

Ms. CHERNICK. I know there are some. I don't know whether I can get a list of those, but I can certainly try.

Ms. SPELLMAN. Update them if you can. We'll appreciate that, too.

Do you know how the law works, whether it's applied to all settlements, including those involving Federal employees? Are they attempting to do that?

Ms. CHERNICK. I'm not sure that all States work the same. Yes, it would include Federal employees.

Ms. SPELLMAN. Not just this particular fund.

Ms. CHERNICK. Right.

Ms. SPELLMAN. Public assets.

Ms. CHERNICK. Right; I'm not sure. I suppose it depends on the State and how it's written—how much property can be involved in that, and how much it can just be a matter of the amount of alimony.

I was asked by one person, "Why isn't the situation as we now have it adequate? Why isn't the allocation of alimony sufficient?"

One reason is that alimony has an innuendo which is unpleasant, but even if we were perfectly willing to accept that, if a man dies—the way the statistics are not they do—this may leave a woman anywhere from 3 to 30 years with no income unless she happens to be covered by social security. In the civil service situation she doesn't even get anything from his death from social security, so that she is literally left helpless unless she's young enough to start on her own.

I think, though, we're talking of women who have been married 20 years. All of them are in their forties and older. If anybody wants to go out and pretend he doesn't have a job and say, "I'm 45 to 60," and try to get a job at this point, you'll have a lot of fun, but you probably won't get a job.

So, it's really for the older person. This is extremely important.

Ms. SPELLMAN. Among the former wives of the Federal retirees, are there some that you know who are on public assistance?

Ms. CHERNICK. There are some. Surprisingly, many of them would try very hard not to, and work at low-paying jobs—often two or three of them—in order to try to survive. Most people don't seem, really, to be anxious to be on public assistance.

Ms. SPELLMAN. Just one other point; you know, of course, that the legislation will assist many women, but it makes no distinction between wives or husbands of retirees. How do you think a female Federal employee who retire—on a small pension would feel, if after being divorced after 20 years of marriage, she would have to share her pension? Is that going to create problems?



Ms. CHERNICK. I haven't been able to find a single formula that is not going to create some problems, and is not going to leave some things uncovered.

I've also been asked what if both are working; should she or he get, if one is a Federal worker and one is not—or if both are—should there still be this bill?

I don't know; I think this is the kind of thing that I, personally, would enjoy a long conversation on. I don't see any way of writing a bill that, in fact, takes care of every contingency unless we could, in some way, legislate equity and goodness. And since we can't, the best we can do is make a first stab at trying to find out what would work.

And if we find—I think if we find it is not working the way you want, then maybe it has to be amended—handle it. There may be a time when the bill will specify more clearly if the person has a certain income, and with inflation I don't know how you're going to set that, but it may be a percentage thing—that, in fact, with certain kind of income this wouldn't pertain, or it would pertain only under some given formula.

I'm sure, with all the mathematics and the formulas that are derived, we could come to one that would be more nearly equitable than we have now.

I'm not prepared to say what that would be, but I certainly feel that if it were reversed, and a man had to share his small pension with a woman, then it should be the other way around. I do feel that if he played that role, then he should get that reward, too.

Ms. SPELLMAN. We might have the situation where the husband is making a good salary but the wife has got to share that a little bit. Hopefully, the courts will take care of those kinds of inequities though.

Ms. CHERNICK. Does the bill allow—would the bill allow the court to really consider what are the total assets—the total earning power?

Ms. SPELLMAN. Yes; because it is a contract.

Ms. CHERNICK. A contract; well, I guess the next thing would be to be sure that we have equitable judgments.

Ms. SPELLMAN. It is, and to get more women into courts.

Thank you very, very much.

Ms. CHERNICK. Thank you for having me. I appreciate it. Good luck on the bill.

Ms. SPELLMAN. Our next witness is the National Association of Retired Federal Employees, and we'll have Judy Park and Chuck Merin, legislative assistants, and Mr. McClelland.

Glad to see you.

Mr. McCLELLAND. Thank you.

**STATEMENT OF JOHN F. McCLELLAND, PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, ACCOMPANIED BY JUDY PARK AND CHARLES MERIN, LEGISLATIVE ASSISTANTS**

Ms. PARK. We're here to give testimony this morning on behalf of the National Association of Retired Federal Employees.

Our association, for 55 years, has represented the legislative issues affecting retired civil service employees. On behalf of national mem-



bership, I appreciate the opportunity this morning to voice our views on controversial provisions of H.R. 3951.

The issue of how to best care for those among us who are unable to make financial provisions for themselves is an important one. The Congress, in its deliberations over social welfare programs has searched for the most efficient and equitable vehicle to achieve that goal.

And this problem troubles the membership of our association as well as a great majority of the Nation's more than one-half million civil service employees.

However, the legislation pending before the subcommittee today, by virtue of its unique function and application, we feel raises a series of significantly different, yet no less complex questions.

The essential question raised by H.R. 3951 seems clear: What limitations, if any, exist upon the right of the Federal Government as an employer, to mandate benefit choice in a staff retirement system?

The question raises the correlative issue of the right of an employee to disperse benefit rights freely earned under a retirement program.

The language of the bill implies that the Federal Government has the right, as an employer, to usurp the privileges of personal choice and free election with which its employees have, historically, been entitled.

It is the intent of this testimony to show that the very guidelines which the Congress established to regulate private as well as public pension programs, support the principle of free will for employees in election of retirement benefits.

Title I, section 205 of the Employee Retirement Income Security Act—ERISA—enacted by the Congress in 1974 to regulate private pension programs, treats the matters of joint and survivor annuities in a fashion which recognizes the importance of free choice.

ERISA regulations state that if a retirement plan provides for the payment of benefits in the form of an annuity, joint and survivor benefits must be available if the participant was married throughout the 12-month period preceding the date on which annuity payments commence.

ERISA regulations further stipulate that the annuitant may elect to decline survivor coverage by so declaring in writing prior to receipt of the first annuity payment.

Through enactment of these provisions, Congress recognized the importance of flexibility in benefit provision, so as to maximize upon the unique circumstances surrounding every marital situation.

I might add here that the House just—I believe last week or 2 weeks ago—extended this further by passing legislation which would allow, in a second marriage, the continuation of original survivor—or a rescinding or that original election, and, several years ago, allowed election in the second marriage.

In the area of survivor benefits provision, civil service regulations exceed even the ERISA prescription. An automatic annuity reduction is in force for all civil service retirees to assure survivor benefits coverage for spouses.

This automatic reduction stands in effect unless specifically canceled in writing by the prospective annuitant. This has not always been so, but has been, I believe, for at least 12 or 15 years.



NARFE believes that H.R. 3951 compromises the original intent of the Congress in this matter. The bill's proposed changes in survivor benefit regulations ignore such important considerations as fault in a divorce, and gives no recognition to other forms of property settlement.

A well-recognized principle of American jurisprudence holds that domestic relation matters are, and should be, within the purview of State courts. In challenging that principle, the bill also compromises the important role out-of-court services, such as family counselors, have played in the amelioration of the settlement process.

We must seriously question the wisdom of Government interjection into one of the most difficult and trying of all human situations. H.R. 3951, through its arbitrary and inflexible mandate for payment to divorced spouses, would insure this unwarranted interjection by the Government.

NARFE's commitment to a retention of flexibility of choice does not compromise our belief in the inherent responsibility working individuals bear toward their spouse or family.

It is with this principle in mind, for example, that we support a pending Justice Department-Civil Service Commission proposal to implement garnishment legislation, inclusive of action against annuity payments, to permit action by Federal agencies against active or retired Federal personnel who fail to fulfill court-awarded child support or alimony responsibilities.

Support for this garnishment legislation is not inconsistent with the fundamental distinction which can be drawn between a responsibility to one's family, and the enactment of a Government mandate which violates the principle of free will in choice of benefits under a staff retirement program.

H.R. 3951 fails to accomplish its underlying goal of greater consideration for the interests of nonworking spouses. This goal can be achieved, while employee rights are preserved, through adoption of three new retirement procedures.

The first would be the adoption of a regulation which would require the signature of both spouses on a letter of intent to decline benefit coverage.

A major problem in the area of survivor benefits coverage, as we see it, involves the tragic realization that comes all too late, that their working mates failed to provide survivor benefits.

We have received a number of letters in our office. Such spouses very often have found, and especially with the older ones, that the husband was not aware of the decision being made at that time.

In recognition of this problem, we offer as our second recommendation the enactment of legislation which might just be Commission regulation, requiring the Commission to provide automatic written notification for all spouses of any survivor coverage provided.

Adoption of these two procedures would greatly alleviate the human suffering which so often arises from the confusion among spouses about the benefits provided them by their working mates.

Our third recommendation is to strongly advise that Federal statutes be amended to include Federal personnel under State court decisions dealing with domestic relation problems such as child support or alimony payment.



Garnishment of Federal wages or annuities is presently prohibited because legal action in a garnishment suit must be brought against an employer rather than an employee. The right of the Government to claim sovereign immunity impedes enforcement of court-ordered garnishment action. Remedy of this situation will help to reaffirm the role State courts play in the settlement process.

It is our belief that the concern we all feel for those in financial distress must not be allowed to invalidate the well-considered reasoning Congress gave staff retirement policies at their inception. We must, therefore, oppose enactment of H.R. 3951.

I thank you for this opportunity to appear this morning and will be happy to answer any questions.

And I might add at this point that we could see the same as is now given for insurable interest survivor, the allowance for survivors benefits to the divorced spouse, if the retiree wants to do this.

We, like you, have received letters from people who wished they had this choice to make.

Ms. SPELLMAN. As I went through your statement here, there were notes that I made for myself to ask you, and one was on page 3. Would you, then, agree that a spouse should sign off?

And then I find that you have covered that.

And then, on page 4, would you agree that the courts decisions ought to be able to be carried out? And you have gone into that.

And, this question of garnishment of Federal wages that is permissible.

Ms. PARK. That's right.

Ms. SPELLMAN. It's permissible; that would take care of it. At the moment it can occur for purposes of alimony and child support.

Ms. PARK. Yes; alimony and child support.

Ms. SPELLMAN. There is a problem in that alimony ceases upon the death of the individual.

Would you recommend then an expansion of the law which would enable the courts to make the decision now as to alimony and child support, and a sharing?

Ms. PARK. Yes; I think the courts come into play there, and the Government follow-up on the court decisions.

Mr. McCLELLAND. A problem also arises in this area—the present law—that in time of nonmarriage, full annuity as restored to the retiree certainly negates any survivor benefits.

Ms. SPELLMAN. That does create a problem.

Mr. McCLELLAND. That certainly does.

Ms. SPELLMAN. Once the divorce occurs, a decree must be mandated by the court, then the employee has a right to elect to take full benefits.

Ms. PARK. Elect to take full benefits.

Mr. McCLELLAND. Right.

Ms. SPELLMAN. What about survivors?

Mr. MERIN. This is one reason why we feel that the staff retirement system—the civil service retirement—should not be made grounds to adjudicate divorce proceedings. And I think this is what is happening.

Ms. PARK. I think the problem with the bill is the mandating of a certain amount of benefits for a spouse. I see a lot of problems coming in this, as you brought out with the previous witness.



If you're going to talk about the rights of women, I see so many of these women who could very well end up with less with the husband in private industry, say Bell Telephone. She may retire on a low annuity—most of them do—and be forced to pay "x" percent to him, getting nothing from him except an amount of social security, perhaps, which could be a lot less than what she is giving back to him. Therefore, a lot of these women could be in a worse situation than they would be without the bill.

I think that we might be creating monsters, and I don't know what the answer is to taking care of all the situations that might come about, but I have trouble with the mandating of these benefits.

Mr. MERIN. We have trouble with that. We recognize the human problem, and we want to try to ameliorate the problem, but we can't accept a mandated, inflexible, benefits choice. And that's the issue as we see it.

Mr. McCLUSKEY. But you would accept mandated court decree?

Mr. MERIN. Right.

Ms. SPELLMAN. I see myself moving in that direction as well. Hopefully, the courts will look into the full picture and come up with an equitable solution for all involved.

On the other hand, I cannot help remembering a letter that said, "My husband is a no-good drunk, and I've had to put up with him for all of these years. He now has a fine job but he isn't contributing to the family."

She is working to raise those children. The day that she retires, he will be eligible for half of her retirement earnings. There is a great injustice there.

We really need to be protecting the rights of as many people as we possibly can.

Ms. PARK. We have a letter, also, from a former couple—they are divorced now, but both signed the letter. The woman had, after 25 years, decided that she wanted no more, that she wanted to go to work. And they settled the situation between the property agreements and so forth.

She was saying, "I, now, am working." Now, this is not property in the case, but saying you do have it, I am working, I have other income, I don't want part of his, I've already made certain settlements, I've made certain concessions, why should this come into play, my getting half of his annuity?

And I think there are going to be a lot of these problems.

Ms. SPELLMAN. Many who have written in say my wife was a good wife for many, many years, and I hold no malice toward her. She raised our family, and she deserves my retirement benefits. But they can't give them.

Ms. PARK. That's right. If they did have an option, certainly it couldn't be a spouse option because they are no longer a spouse. But we do have the insurable interest provision in civil service retirement, that same, probably, feeling of insurable interest there.

Ms. SPELLMAN. It's not going to be an easy decision by any means, trying to do what is best.

Ms. PARK. It's an emotional situation.

Ms. SPELLMAN. More women are going to work now, so we've got to recognize that it can be a double-edged sword.



Mr. Leach?

Mr. LEACH. No questions.

Ms. SPELLMAN. You realize when talking about freedom of choice, and apparently, with your suggestion, promoting insurable interest, you realize there is a limited freedom of choice, and a Federal employee can't really designate whatever he wishes to.

Ms. PARK. Under insurable interest, yes. I was saying, though, that under present law—

Ms. SPELLMAN. Would you feel that that law should be changed?

Ms. PARK. I think that, probably, a lot of former spouses might look at the former spouse as a person with insurable interest, the ones, at least, that we've heard to say, "I'd like to be able to designate benefits there. The law prevents me from doing it."

Ms. SPELLMAN. If the court determined that they should be sharing, then the employee would not be permitted to accept benefits at retirement, or she would have to take the reduced benefits.

Ms. PARK. To the extent that the court—

Mr. MERIN. The signing off, I think, is an important item.

Ms. PARK. At the time of retirement, under military retirement, if you do not designate a survivor, survivor or spouse is notified at that time that they did not elect survivorship. I think it's fair.

Ms. SPELLMAN. That's very important, I think.

We thank you very much.

We will hold our next meeting on June 30, at which time we'll be hearing from the Civil Service Commission. Hopefully, they will have reconsidered their original stance at that point, and we will be coming up with a new and a valid assessment.

We thank you very much for attending.

[Whereupon, at 10:35 a.m., the hearing was adjourned.]



## ANNUITY PROVISIONS FOR FORMER SPOUSES

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THURSDAY, JUNE 30, 1977

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,  
*Washington, D.C.*

The subcommittee met at 10:10 a.m., in room 304 of the Cannon House Office Building. Hon. Gladys Noon Spellman presiding.

Ms. SPELLMAN. The subcommittee will come to order.

The subcommittee has reconvened today for its final day of public hearings on H.R. 3951, a bill to provide that a former spouse of a Federal employee who is married to such employee for 20 years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee.

Before calling on the administration's witness for today, I want to thank everyone for their tremendous support of this bill and all the witnesses that have appeared, pro and con, for what I consider to be superb testimony.

I think both sides can agree though, and I hope the administration is convinced after reviewing all our testimony, that marriage should be viewed as a partnership of coequals and that such a view is a reasonable expectation of the parties. Neither Federal nor State law should provide havens or exemptions for those who would evade or avoid marital obligations and public policy should be tightened so that divorce court orders are enforceable in toto. Such a policy is of tremendous social importance because the American citizen is more apt to be exposed to the judicial system in a divorce or family law matter than any other type of legal proceeding, with the possible exception of the traffic court. The public's reaction to the administration of justice and general respect for law and the legal process depends in no small measure upon how the divorce process functions and whether or not it is fair and equitable.

Our witness for today is Mr. Thomas A. Tinsley, Director, Bureau of Retirement, Insurance and Occupational Health, U.S. Civil Service Commission.

Mr. Tinsley, we look forward with anticipation to what you have to say. Hopefully it is very different from what has been said in the past.



STATEMENT OF THOMAS A. TINSLEY, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE AND OCCUPATIONAL HEALTH, U.S. CIVIL SERVICE COMMISSION

Mr. TINSLEY. I am not quite sure.

Thank you, Mrs. Chairwoman.

If it pleases the Chair and the subcommittee, I have a prepared statement which I would suggest be incorporated in the record.

Ms. SPELLMAN. It will be made part of the record in its entirety.

[The statement follows:]

PREPARED STATEMENT OF THOMAS A. TINSLEY, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE AND OCCUPATIONAL HEALTH, U.S. CIVIL SERVICE COMMISSION

Madam Chairwoman and members of the subcommittee, I appreciate this opportunity to appear before the subcommittee to discuss the Commission's views on H.R. 3951, which would provide a former spouse of a Federal employee who was married to that employee for twenty years or more a portion of the employee's annuity and, subsequent to the employee's death, a portion of the annuity of any surviving spouse of the employee.

In its formal report dated June 9, 1977, the Commission gave its views on this bill. With your permission, I would like to request that this report be incorporated in the record of this subcommittee's proceedings.

Briefly, H.R. 3951 would provide a former spouse with up to 50 percent of a retired employee or Member's earned annuity during the employee or Member's lifetime. The former spouse would also receive a full survivor benefit unless there was a surviving spouse entitled to a survivor benefit.

In such a case, the former spouse would be limited to up to 50 percent of the legal survivor's benefit. The former spouse would also be entitled to 50 percent of a lump sum refund or of accrued annuity and/or the unexpended balance if a lump sum becomes payable after the death of the employee. If the benefit to the former spouse terminated because of remarriage prior to age 60, it could be restored upon dissolution of the marriage.

H.R. 3951 is a rather complex bill. We have prepared our detailed analysis of the provisions of this bill which I will furnish to the Subcommittee for the record.

Let me say at the outset that we are sympathetic to the problems, both economic and social, that individuals face as a result of the dissolution of long term marriages and believe that some fair equitable solution should be found to ameliorate or solve them.

However, we do not believe attempting to use a retirement system is either a proper approach or the appropriate vehicle for providing a solution to these problems.

The Civil Service Retirement System is a staff retirement system based on an employer-employee relationship between the Federal Government and the individual employee. Its goals, objectives and basic provisions are not unlike those of pension plans found in the private sector. The benefits provided are based on this relationship and are part of the payment or reward for the employee's service to the employer.

Under the Civil Service Retirement System, as under many other private pension plans, the employer, the Government in this case, assumes a limited obligation to contribute to the support of certain dependents of the retiree or employee in the event of that person's death. These dependents are limited by law to an eligible spouse, widow, widower and/or eligible children. These benefits are also based on an employer-employee relationship between the Federal Government and its employees. No benefit is payable to the otherwise eligible surviving spouse of a retired employee or Member unless he or she has elected to take a reduction in annuity in order to provide a survivor benefit. H.R. 3951 or a similar bill would, in our view, improperly shift emphasis from the staff retirement principle and would involve the Government as an employer in the marital relationships of its employees and the disposition of their property in the settlement of domestic disputes without either due process or any consideration of the facts or circumstances involved. This would be contrary to the retirement system's goals as embodied in the Federally enacted Civil Service Retirement Law.



State laws and state courts have always controlled in matters of domestic relations and property rights. These courts are specifically geared to determine such questions as an individual's obligation to a former spouse. Such determinations are made by a court on an individual case basis after considering many factors such as the financial status of both parties, property settlements, children involved, and the reasons for the divorce. Federal law now provides for the garnishment of annuities for former spouses of Federal employees when a court-determined obligation is not fulfilled. Accordingly, it is our opinion that the Civil Service Retirement System should not be used as a substitute for the judicial system in an attempt to obtain equity for former spouses.

H.R. 3951, in attempting to achieve equity for former spouses, would be highly inequitable in many cases and would be highly discriminatory in all cases involving a Federal employee and/or his (her) legal survivor. If the Subcommittee wishes, I can furnish a number of examples either for the record or following my prepared remarks which I believe demonstrate that rather than achieving the purpose this bill is designed to accomplish it could result in some rather undesirable situations by producing an inequity and undue hardship not only on the individual it is intended to help but on others, such as children and spouses who were or may have been innocent parties with no direct involvement in the problem or dispute that produced the dissolution of the marriage.

It should also be noted that in many cases the individual responsible for a divorce would benefit while benefits for the injured party would be reduced.

The Commission firmly believes that an individual's obligation to a former spouse is a matter for determination by the courts and that this obligation is the personal responsibility of the individual concerned. To preempt the proper function of the courts by statutorily confiscating up to  $\frac{1}{2}$  of a Federal employee's earned annuity in order to pay a benefit to a former spouse, regardless of the facts and circumstances involved in the divorce, the party responsible, the age or need of the former spouse, or of the circumstances or other current obligations of the annuitant, would in our opinion be both arbitrary and unjustified. In addition, it would also ignore the terms of any previous settlement approved by a court.

However, the Commission is aware that the courts cannot now control disposition of survivor annuity and that the married retiring employee has an option to provide such annuity only for the legal spouse, but not for a former spouse. The Commission also recognizes that there are valid social and equitable concerns respecting the former spouse of a deceased employee or annuitant, who was the spouse during most of the Federal career.

Accordingly, we can assure the committee that the Commission plans to give serious consideration to this complicated issue. Such consideration must involve factor such as: the proper role of the courts with respect to the survivor option; the basic right of the employee to exercise that option free of coercion: the primary rights of the legal spouse: the dispersion of a generally limited survivor annuity (average of \$366 a month for optional retirements) among the legal spouse and one or more former spouses where all shared nearly equal portions of the employee's career; the dual entitlement of some employees, and thus, their divorced spouses, to social security; and possibly other issues.

We believe these issues must be addressed, and the cost impact of various solutions on all Federal retirement systems assessed, before legislation can be considered.

Furthermore, the implementation of H.R. 3951 would be administratively difficult as we have detailed in our official report on this bill.

In conclusion, while the Commission appreciates the plight of certain former spouses, for the reasons stated and those contained in our report, we feel that we are constrained to oppose the enactment of H.R. 3951.

I thank you for giving me the opportunity to present the views of the Civil Service Commission on this pending legislation. I will be glad to try to answer any questions you may have.

Mr. TINSLEY. Let me say that H.R. 3951 is a rather complex bill and we have prepared a detailed analysis of the provisions of the bill which I will furnish to the subcommittee for the record, and let me say at the outset that certainly the Commission and the administration is extremely sympathetic to the problems, both social and economic, that individuals face as a result of the dissolution of long-term marriages



and believe that some fair and equitable solution should be found to ameliorate or solve them.

We certainly view marriage as a partnership, including an economic partnership. However, at present, we do not believe that attempting to use a retirement system alone is either a proper approach or the appropriate vehicle for providing solutions to these problems.

Basically, the civil service retirement system, unlike the social security system, is a staff retirement system. It is not unlike those pension plans found in the private sector. H.R. 3951 or a similar bill would, in our view, improperly shift the emphasis from a staff retirement principle and would involve the Government as an employer in the marital relationships of its employees and the disposition of their property in the settlement of domestic disputes without either due process or any consideration of the facts or circumstances involved.

State laws and State courts have always controlled in matters of domestic relations and property rights. These courts are specifically geared to determine such questions as an individual's obligation to a former spouse and such terms are made by a court on an individual case basis after considering many factors.

We, therefore, would view that if there is a solution at the moment for the disposition of retirement income, it should lie under the laws of the State and in accordance with the State judicial system and processes.

That basically, Mrs. Chairwoman, is the Commission position. As we indicated in our report, and again in my prepared testimony, the Commission has been looking into this problem as have others in the administration. It is going to take a considerable amount of study before we would be able to propose appropriate legislative action to resolve it.

Thank you.

Ms. SPELLMAN. Thank you very much, Mr. Tinsley.

Let me ask you this: can you tell me if H.R. 3951 was considered by the full Civil Service Commission?

Mr. TINSLEY. To my knowledge, it was.

Ms. SPELLMAN. It was?

Mr. TINSLEY. Considered by the Office of Management and Budget and we were informed this is the administration position on this bill.

Ms. SPELLMAN. The administration, then, is saying that it recognizes that divorce settlements arrived at by the parties to the divorce and/or through the courts should be honored by the Commission, is that right?

Mr. TINSLEY. That basically is what we are saying.

Ms. SPELLMAN. That is helpful.

You state in your prepared statement that you're sympathetic to the problems which the bill attempts to address. Can you suggest any other methods which might be of help to the parties concerned?

Mr. TINSLEY. The problem in terms of suggesting a solution—I think the problem is twofold. One, we may be looking at the problem somewhat in terms of what you do and in terms of the Federal family, the Federal employer, and the Federal Government as an employer. That just gets at a part of what really the basic problem is here.

Others within the administration are looking at the overall problem and an overall solution. While something in the nature of this



bill might help a small number of people, there are vast numbers of people who are faced with the results of dissolution of marriage and the disposition of property.

The view, I believe, the broader view is possibly the real solution to the problem rather than picking on bits and pieces in our efforts to solve it, and then create more problems for ourselves in the process.

Ms. SPELLMAN. When you speak of the small number of people versus the large number, I am not sure I differentiate what it is you're referring to.

Mr. TINSLEY. Unfortunately, at the moment we do not have any solid data on the makeup of the Federal work force from the standpoint of marriage, number of children, how many marriages have been dissolved, and things of that nature, but certainly the divorce rates have been increasing; divorce rates vary depending on what section of the country you're in, and overall I think the latest figures I have seen, they run between 9 and 11 percent, depending on the area of the country.

Within the past few months, the Bureau of Labor Statistics published results of some of their studies that relate to this problem in the overall work force. The committee might find some of that information rather interesting.

I won't go through the whole thing, but I would be glad to submit it for the record. But there are some rather interesting figures in there concerning the increase over the past few years in the number of divorced or separate individuals in the overall labor force in terms of their employment. There has been an increase over the years in those numbers, both in terms of the women going back to work or being employed, even with small children.

I think that would be very helpful to the committee in taking a look at what the overall problems and what the makeup is, at least of the private work force. I have no reason to believe that the Federal work force would be much different.

Right now in the white-collar field, we do know that in excess of 35 percent of the work force are women. Unfortunately, we do not inquire into their marital relations and as a result, we do not know what the status of these women are.

Ms. SPELLMAN. As a matter of fact, we sometimes in order to get information for one purpose go contrary to our thinking about gathering those kinds of statistics where other things are concerned.

We are saying that there should be no discrimination because of marital status, and so we prefer not to ask that question to make sure there will be no discrimination. On the other hand, now we might want to know about that for this particular purpose.

Do I take it that the administration is saying that it feels that settlements made in the courts or by the parties involved should be honored and that there would be no time limit, no factor, time factor as to the length of time people have been married?

Mr. TINSLEY. That basically is what we are saying.

Ms. SPELLMAN. We will take out that 20-year provision regardless of how long they have been married.

Mr. TINSLEY. We view marriage as an economic partnership. I don't know that 20 years is a magic number.



Ms. SPELLMAN. We will be coming up with a bill shortly and I understand that you will be ready to testify on the new bill.

Mr. TINSLEY. Either I, or the chairman, or some other representative of the Commission.

Mr. McCLUSKEY. Mr. Tinsley, you stated to the Chair that the administration would support the concept of honoring State court decrees. Would that be by regulation or does that mean the administration would support a proposed bill?

Mr. TINSLEY. In order to accomplish that, you would need legislation. You need to amend the retirement act. Based upon the views expressed, both in the report and in my prepared testimony, we have just about said that what we would support is something along the nature following the State law and the State court, and view it as appropriate.

Right now garnishment is applicable only to alimony and child support. I don't say that there is much difference between alimony and child support.

Ms. SPELLMAN. There is a difference in that alimony and child support cease at the time of the death of the employee.

Mr. TINSLEY. That's correct.

Ms. SPELLMAN. So we are not talking about another factor here.

Mr. TINSLEY. You're adding the most difficult factor as to how you can handle the problem of a survivor benefit.

Ms. SPELLMAN. No point in making it easier.

Mr. McCLUSKEY. Are you aware, Mr. Tinsley, of any other country that authorizes or supports division by government law of private sector retirements?

Mr. TINSLEY. In most of the Western European countries their systems are coordinated systems. Their social security systems are much broader than our social security systems. As a result the base in those countries for all of their social insurance programs is rather broad, even to the point of providing by government payment, payments directly to the support of children.

Our system in this country of compartmentalizing everything and having a variety of programs to accomplish in part almost the same objective is a little bit different than you will find in most Western European countries.

Ms. SPELLMAN. I might say that we have talked both with Chairman Campbell and with OMB Director Lance, about the proliferation of different systems that we have. Is it 56 in the Federal Government?

Mr. TINSLEY. Depending on how you want to count the retirement systems, I guess you could come to 56. I have heard the figure 51 and also 56. I think in those 51 or 56 figures there are a few one-man retirement systems.

Ms. SPELLMAN. I see. We have all agreed that the whole matter needs to be addressed and hopefully we will be moving together into those areas next.

Mr. TINSLEY. I don't think there is any doubt about moving together.

Mr. McCLUSKEY. It's come to the attention of the subcommittee this morning that Loyola Law Review wrote an article on the United States' participation in international agreements providing rights of women and it was noted there, the article points out further that the United States delayed ratification of the convention of political rights



of women until late 1976, 22 years after it came into force on July 7, 1954, with ratification by the necessary 35 countries. One of those countries already ratified, and that was the Soviet Union.

I feel that this country is slowly coming around to the realization that there shouldn't be a distinction based on sexism, and I feel that this subcommittee has done its small part in protecting equalization of rights.

I note that this whole convention, Madame Chairman, their declaration has yet to be ratified by the Senate. Perhaps the step that you have taken will help this further in the Senate.

Ms. SPELLMAN. Thank you. I think we are moving toward it.

It is interesting that one of the things that one hears over and over again in Red China is the statement by Chairman Mao that women hold up half the sky. I hope that someday here in the United States we will recognize that women hold up at least half the sky.

There are more views, I suspect, and we are doing a bigger job than half. But we will settle for a recognition that women hold up half the sky.

Thank you very much for your testimony. I appreciate your working as closely with us as you have been doing.

Mr. TINSLEY. Thank you.

Ms. SPELLMAN. There will be a markup of this bill on July 18.

The subcommittee is adjourned.

[Whereupon, at 10:30 a.m., the hearing was adjourned.]

[The statements which follow were received by the subcommittee for inclusion in the record:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
SOCIAL SECURITY ADMINISTRATION,  
Baltimore, Md., April 28, 1977.

Mr. RONALD P. MCCLUSKEY,

*Staff Director and Counsel, Subcommittee on Compensation and Employee Benefits, House of Representatives, Washington, D.C.*

DEAR MR. MCCLUSKEY: This is in reply to your request for information regarding the experience of the Social Security Administration in administering the divorced wife and surviving divorced wife provisions of the Social Security Act.

As agreed in conversations you have had with Gary Good of our office of Program Evaluation and Planning, I am sending you this letter in lieu of my personal testimony at the hearings on H.R. 3951, a bill to provide that a former spouse of a Federal employee who is married to such employee for 20 years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employer. I also understand that you will not construe this letter as the statement of a position on H.R. 3951 by the Social Security Administration, the Department of Health, Education, and Welfare, or the Administration.

In summary, the Social Security Administration has experienced no major problems in administering the divorced wife or surviving divorced wife provisions of the Social Security Act.

We note that H.R. 3951 provides that a former spouse of a Federal employee who is married to the employee for 20 years or more may be entitled to a portion of the employee's annuity. Under the social security provisions, this is not the case. Social security benefits payable to divorced spouses and surviving divorced spouses are not subject to the social security family maximum (the total amount of monthly benefits that can be paid to all the beneficiaries entitled on one worker's social security earnings record). As a result, such entitlement does not affect the benefits due other beneficiaries. It probably eliminates the potential for negative reaction from other beneficiaries, as well as the concomitant administrative complexity that would be involved. Whether such a provision would be appro-



prate under the civil service retirement system would, of course, be a matter you would want to discuss with the Civil Service Commission.

The Social Security Act provides that, in order to qualify for monthly social security benefits as a divorced wife or surviving divorced wife, the parties must have been married for a period of 20 years immediately before the divorce became effective. Our regulations provide that this requirements can be met if the couple were "married" in some part of each of 20 consecutive years. The applicant for benefits is required to provide proof of the marriage and the divorce.

As of March 30, 1977, there were approximately 21,000 divorced wives and 28,000 surviving divorced wives receiving social security benefits. These beneficiaries represent less than 0.2 of 1 percent of the total beneficiary population.

I hope that this information will be helpful to the Subcommittee.

Sincerely yours,

JAMES B. CARDWELL,  
*Commissioner of Social Security.*

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STATEMENT BY LAWRENCE S. HITCHCOCK, CITIZEN OF THE UNITED STATES AND  
RESIDENT OF ROCKVILLE, MD.

I am a retired male federal employee now receiving an annuity.

While I believe divorce settlements and separation agreements can protect the rights of a former spouse in the annuity of a living retired Government employee, present law and Civil Service regulations deny a former spouse any share of a survivorship annuity. I believe this should be changed to the benefit of a former spouse, as I understand is now the case for Social Security benefits, when the marriage endured for at least twenty of the years during which annuity deductions were being made from salary or annuity was being paid.

We should regard the annuity in these cases as a type of joint property acquired by joint savings during marriage. The deductions from an employee's salary to establish an annuity are as much joint savings as mortgage payments on a home, to both of which a spouse of twenty years has made substantial contributions, whether by his/her earnings making possible reservations from current income for these purposes, or by other less measurable contributions. And the survivorship is an essential part of the annuity, rights to which, accumulated during marriage, should not be wiped out by termination of the marriage.

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TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE  
BENEFITS BY THE NATIONAL WOMEN'S POLITICAL CAUCUS

Many distinguished experts have appeared before this Subcommittee to present convincing testimony supporting H.R. 3951 entitling a former spouse, married to a Federal employee for twenty years or more, to a prorata share of the employee's retirement annuity and death benefits. The plethora of data now before you shows that the divorce rate has increased in the past ten years by one hundred percent. Alimony awarded in these cases has simultaneously decreased and is now granted in only fourteen percent of divorces. Even the award is no guarantee of payment. The growth of no-fault divorce has further complicated the problem. Minority, older, and low-income women have been subjected to even greater hardships based on their ability to find employment and pay the extensive legal fees to collect alimony fallen into arrears. Additionally these women are beset by insecurity resulting from the sudden loss of pension health plan benefits and the general financial stability they had counted on for most of their adult lives.

These alarming facts have been documented by previous witnesses before the Subcommittee, and in submitting this testimony, it is not our purpose to review the data. The severity of the problem is best underscored by the many letters the National Women's Political Caucus has received from its members. These women are unable to come before the Subcommittee personally to present their views, and they have asked us to relate their situations to you.

A member in California, seeking a divorce after twenty six years of marriage, presents a striking picture of the trauma and insecurity brought about by the inability of older, divorced women to obtain medical insurance. She writes that she "... sought to obtain private medical insurance from numerous com-



panies, but has been turned down repeatedly because of psychiatric problems that have been increasingly magnified by my inability to obtain medical coverage for the future . . . I personally have had and am having . . . continuing intimidation simply because of the financial devastation I face in a future without medical coverage. This intimidation has been going on for some time, both during my emotional illness and now during my present convalescent stage. Preying on this basic human need of mine . . . the latest form this intimidation is taking is that my husband would 'agree' to a 'legal separation' provided I surrender many of my legal rights in addition to providing him with an immediate cash settlement which I cannot afford . . ."

Younger women who suddenly find themselves the sole support of children are hard-pressed for solutions. These women choose to remain at home to fulfill the roles expected of them, homemaker and parent, but in doing so, they had no guarantee of financial security if their marriage ended in divorce. The gamble they took was further complicated because our society places homemaking in a position of low economic value and status. The homemaker, as a laborer, does not receive the benefits that other laborers expect today. Legislation such as the Former Spouse bill would greatly enhance the status of the homemaker by recognizing the value of her work, thereby providing greater security for millions of women.

The bill would ease the problem faced by a member in New Mexico who writes, "I am a mother with a mildly handicapped child . . . My former husband walked out on me seven years ago . . . and upon finalization of our divorce I was awarded \$70 a month in child support. Upon my husband's retirement he took it upon himself . . . to lower the child support payments to \$20 a month . . . I am living with my mother who is widowed and totally blind and in very poor health. I have to do all the running around for our household so the suggestion of a full time job is out of the question. My son needs special help because of his handicap . . . and I find the going very tight financially . . ."

Another member in Michigan, married for thirty five years, summarizes the fears and needs of those women who have written to us. "The concept of future security is the crucial issue. I am presently 60, and have been employed full-time for only about seven years. Because of my age, and some chronic health problems, there is some question about my ability to continue working indefinitely to support myself, and I am very anxious about a situation that seems to hold no means of assuring my own future economic security. This anxiety and lack of assurance is a stark reflection of the fact that while some remedies do exist in both law and applicable policies, it is virtually impossible to ensure that they are implemented via the ponderous and jurisdictionally complex process of individual litigation."

It is an overwhelming call for immediate action that we have received from our members across the country. They view this piece of legislation as a source of economic security. We believe that as the government recognizes the value of work within the home and the contribution of homemakers in the economic partnership of marriage, the ultimate benefit of this legislation, the strengthening of the family unit, will be realized.



TO: Subcommittee on Compensation and Employee Benefits,  
Gladys Spellman, Chair  
Committee on Post Office and Civil Service

FROM: Elizabeth S. Thurston, mother, homemaker, wife and  
full-time partner-without-pay for more than 30 years  
in husband's diplomatic career

SUBJECT: Testimony on Schroeder-Spellman Bill, H.R. No. 3951,  
submitted for entering into the official record

DATE: July 10, 1977

For the past seven years I have devoted myself entirely to a study of the division of marital property upon divorce and related subjects. My emphasis has been on federal retirement laws in the United States and in other countries. I have concluded that our present laws unjustly exclude divorced wives of federal employees of their fair share of retirement benefits, denigrate the dignity and worth of the human persons thus deprived, and are subject to challenge on constitutional grounds. In my view, the inscription on the face of the Supreme Court building--EQUAL JUSTICE UNDER LAW--can be achieved in this area only after the Congress demonstrates its own integrity and commitment to this sacred maxim by starting at home, so to speak, and passing the following imperative changes in federal retirement laws:

1. The pro-rating of a non-employee divorced spouse's interest in a federal annuity, as in H.R. No. 3951, is obviously equitable and should become law, minus, however, the inequitable requirement of a marriage of 20 years or more. Benefits earned by the non-employee spouse, during a marriage of one year or more, should remain the property right of that individual, recorded in that individual's name and carried throughout life, in recognition of marriage as a partnership of co-equals.
2. A survivor annuity should be mandatory where an annuitant has been married for any period during the earning of an annuity. This should be so even where an annuity was not vested during the marriage.
3. The non-employee divorced spouse's pro rata share of an annuity or pro rata share of a lump sum credit should be assigned at the time of dissolution and be payable directly by the Treasurer of the United States, immediately if matured, otherwise, when maturity occurs.  
The non-employee spouse's share of an annuity must not



only be definite, but payment must be certain, for as a part owner of an annuity, the non-employee divorced spouse must not be reduced to the status of a judgment creditor.

4. The non-employee divorced spouse's pro rata share of an annuity should be made payable from maturity until death of the non-employee divorced spouse, with the term "survivor annuity" used only to refer to the interest of a spouse or spouses acquired after retirement. If any divorced wife or husband, or if a spouse entitled to retirement benefits, widow or widower, remarries before the age of 60, retirement benefits should not be revoked. The present law is based on the outmoded common law rule that it is the husband's duty to support and the wife's duty to serve, whereas statutes in one-third of the states require either spouse to support the other, depending on the need of one and the ability of the other to pay. Earned benefits must not be forfeited by remarriage at any age.
5. A spouse married to a divorced annuitant after an annuity has matured and still married to the annuitant at his death should be entitled to a survivor annuity only where the annuitant was unmarried during part of his federal service, with the surviving spouse and former surviving spouse acquired after retirement, if any, receiving a pro rata share of a survivor annuity based upon the annuitant's "uncommitted" years. If the amount of retirement benefits a divorced annuitant can bestow upon a spouse acquired after retirement is an important consideration, upon request the prospective spouse should be provided with the annuitant's record showing the pro rata share, if any, still subject to distribution.
6. A limitation should be placed on the number of years a survivor annuity may be paid to a spouse or spouses acquired by an annuitant, based on the ratio of the difference in their ages and their life expectancies. In such cases the benefit is unearned; life expectancy may make inequitable charges on the Fund; the surviving spouse may inherit the whole estate, or by law cannot receive less than one-third, and receives favored treatment under tax laws; a primary annuity may have been earned, a survivor annuity under a private, municipal or state plan may have matured, social security benefits may have been earned directly or gained previously as a surviving spouse or as a surviving divorced spouse; and present employment alone may have established financial security, with continuing employment contemplated. A further consideration is that young widows of annuitants can no longer be expected to remarry before the age of 60 and forfeit the annuity (should that rule remain), regardless



of their living arrangements.

7. If an employee is separated from government service with entitlement to a deferred annuity and dies before having established his claim to an annuity, a surviving wife married to the employee for at least one year before separation from government service and any surviving divorced wife married to the employee for at least one year during the earning of retirement benefits should be entitled to annuity payments in accordance with the above rules at the time the annuity matures.
8. The above changes should be retroactive in cases where a divorced spouse was married to an employee during the earning of retirement benefits and in the division of marital property did not receive his pro rata share of an annuity, or was not fully compensated for loss of his pro rata share, including the survivor annuity, by offsetting awards of property, or by an equitable award of support based upon an ability to pay which took fully into account the retirement benefits, whether matured or not; retroactive application should also be made in cases where a divorced spouse acquired after retirement would have been entitled to a survivor annuity under these rules.  
The Supreme Court has consistently held that retroactive statutes are unconstitutional only where, upon a balancing of the considerations on both sides, they are felt to be unreasonable. Federal retirement laws have from their inception unconscionably deprived a non-employee divorced wife of the fruits of her labor.
9. The law should note that spouses are free to contract with each other, before and after marriage, and as often as they desire, for a different distribution of retirement benefits; if they make no different choice the above rules would apply.  
This is in keeping with the privilege of a choice different from the legal regimes in Germany, France, Mexico, and in both the community property and common law jurisdictions in the United States.

\* \* \*

A brief analysis of the intolerable inequities in present federal retirement laws, challenges to their constitutionality, and their varying treatment under state statutes dealing with the distribution of marital property upon divorce follows.



With great interest I have studied the testimony on H.R. No. 3951 already given before this subcommittee. The witnesses in favor of the proposed legislation have all stated sociological truths regarding the indefensible economic deprivation of most divorced wives of federal employees, and the consequent loss of social contacts and even health, especially after a long marriage. This bill has been drawn up in response to the many letters and other reports from divorced wives pleading for relief from the unwarranted financial insecurity or outright poverty in which they are left after divorce from a federal employee or annuitant.

Although the bill provides for a pro rata sharing of a federal annuity with a divorced wife or husband, my testimony will deal mainly with the non-employee wife's situation, for as the Chair pointed out in her opening statement, it is the wife, mother, and homemaker who is presently in greater need of protection.

Law, custom and religion have fostered unequal sex-role stereotypes and denied women full equality in the marriage relationship, upon entering, during, and at dissolution by divorce. With rapidly changing mores and with the courts finding classifications based on sex suspect, laws governing the distribution of marital property upon dissolution are becoming more equitable. Still, in approximately one-half of the states the law does not provide for the wife any interest in the separate property of her husband, or makes her interest dependent upon a variety of factors, the most important of which is the wife's innocence and the husband's guilt. However since 1970 no-fault divorce has swept through 48 jurisdictions, assuring dissolution upon unilateral demand. Thus even the innocent wife is left with no defense, either to dissolution or to a share of the marital property. The testimony of Professor Henry H. Foster, Jr. of New York University, and his cautioning article entitled "Divorce Reform: Brakes on Breakdown?" ((13 J. Fam. Law 443 (1973-74))), point out the grossly unfair results of the hasty enactment of no fault divorce laws before the enactment of new laws requiring an equitable distribution of the marital assets and putting to rest the historically unjust double standard.



The divorced wife of a federal employee or annuitant can be left with no share of her former husband's annuity, whether matured or not, even in cases where, as in my own, the law of the matrimonial domicile provides for its equitable distribution. Few women understand the legal meaning of domicile and its effect on their property rights. Most likely to suffer from this lack of knowledge are the wives of Foreign Service and military employees, whose work requires frequent changes of residence. In all cases the divorced wife loses her membership right in employee health and medical plans. And she can find herself either without a share of the other assets accumulated by the parties' joint efforts, or with a grossly inequitable share.

Even alimony or support, which almost always ceases with the death of the former husband, or upon remarriage, has in the past been granted in less than 10 percent of the divorce cases. ((Nagel and Weitzman, Women as Litigants, 23 Hastings L.J. 189-91 (1971).) Often "child support" is labeled as "alimony" so that the husband can take a tax deduction. The wife is then required to pay the tax. The deception distorts the records and true alimony is granted in still fewer cases. The percentage of women who actually receive awards is further reduced by their inability to afford the cost of enforcing delinquent payments. Although most states still hold the husband responsible for alimony, the legal promise is an illusion and alimony a myth which women could never have propagated. The fact is a woman's "right" to support and security for her family depends upon the goodwill of her husband both during marriage and at divorce. The legal protection of the wife under the wing and cover of the husband, as put by Blackstone, in reality exists only as long as the husband chooses.

Furthermore, alimony is not a fair substitute for a pro rata share of accumulations of the marriage, especially where a federal annuity is involved. With the unprecedented rise in the cost of living and the emergence of a new economy based on laws not yet fully identified or understood a divorced wife who is left without her just share of a federal annuity loses the financial safeguard of automatic income increases. Regardless of age, health, the length of her marriage and the spouses' standard of living she has no assurance that even her minimal needs for survival will be met.



In proposing new legislation in response to criticisms of alleged deficiency or inequity of existing law, it is important to review the concepts on which the law was based and ask whether they are applicable to attitudes and life styles today, or are likely to be so in the future. No other society in history has been required to adjust to the avalanche of drastic changes that have descended on us in the last 50 years. And within only the last 10 years the attitude toward marriage, the foundation and "parent of society" ((Estate and Guardianship of Moxey 2 Caf. 369 (1903))), has left most of us in shock.

The number of divorces in this country in 1976 was more than twice the number a decade ago, with 10 consecutive rate increases bringing the 1976 rate to twice the rate in 1965 and 1966. (Nat. Center for Health Stats., Monthly Vital Stats. Rpt. Mar. 8, 1977.) Marriage is dissolved in one of three ways: By death, divorce, or annulment. "For every two marriages in the United States this year, there will be a divorce." (Wash. Post June 5, 1977, C6, statistics from Nat. Center for Health Stats.) It is inevitable that many more marriages will be dissolved by divorce than by death, yet a wife's financial future is infinitely more secure if she becomes a widow rather than a surviving divorced wife. Testimony Before Joint Hearings of the Matrimonial Law Committees of the New York County Lawyers' Association and the Association of the Bar of the City of New York, at page 3, January 14, 1972 records that of Doris L. Sassower:

"What are the wife's legal rights in the property her efforts helped the husband acquire? . . . (T)he shocking answer is that (if they divorce) she has none. Gone also are her rights to inherit from his estate, her right to elect against his will, employment benefits of health and survivor's insurance, as well as retirement benefits which might have been hers were she upon his death his widow rather than his ex-wife."

Some sociologists have explained the upsurge in divorce among middle-aged and older persons from the man's point of view, noting that liberalized divorce laws have, for the first time, given him new opportunity to leave a marriage without bearing a heavy financial burden. However even before the present fail-safe no-fault divorce action, the husband has almost always had the advantage of a male judge, who would tend to identify with the husband. In 1922, which is the



last year the Census Bureau kept national alimony data, alimony was granted in 15 percent of a nationwide sample of decrees, as pointed out by P. Jacobson, American Marriage and Divorce 126 (1959). This low percentage occurred just two years after the Civil Service Retirement Act came into effect, in 1920. As stated before, the percentage is now lower, with fewer than one out of 10 divorced wives receiving alimony, for any length of time.

Thus with the data clearly mandating corrective legislation to protect a divorced wife's investment in the marriage, the Congress failed to do anything for 50 years. The current wife of an employee continued to take all regardless of the length of the marriage and whether or not the employee had a surviving divorced wife. Then, acting conversely, the Congress passed legislation effective on January 8, 1971 which bestowed upon a wife acquired after retirement--as a gift--the whole of the survivor benefits which were the proper expectation of the wife whose contribution to the "earning power" of the husband may have extended over his entire government career.

It is the duty of the Congress to act for the good of all the people, even when it requires the Members to share their own annuity with a divorced spouse. In 1966 they recognized the needs of divorced wives and surviving divorced wives of wage earners entitled to Social Security benefits by entitling them to benefits, full and equal, to those of a present wife or widow. The only qualification is a marriage of at least 20 years, now that the administratively unworkable condition that the wage earner have been responsible for at least one-half of the former wife's support has been rescinded. The requirement of a marriage of 20 years is inequitable and discriminatory on the basis of sex in this system, just as it is in the Schroeder-Spellman Bill. Since the maximum period a wage earner must contribute to be entitled to benefits under Social Security is 40 quarters, the interest of a divorced wife should vest within the same limits, regardless of the number of marriage partners involved in totalling her quarters of contribution.

A federal employee's right to retirement benefits vests after five years of employment. Neither moral, ethical or public interest grounds can sustain the requirement of contributions for a period four times as long, as a minimum, before a divorced wife would have a right



to any share of the annuity, an asset which is rapidly becoming the most substantial of the marital accumulations, or even the only asset. With the requirement of a marriage of 20 years or more a woman can have contributed to the "earning power" of two or more federal employees only to find that with divorce her hard work of a lifetime was of "no value"--to her, under a law which would authorize her former husbands to take with them the entire retirement package. The fruits of her labor would partially mature as a former husband retired, with full maturity occurring at his death, providing he was married at the time. The same would be true of other annuities to which she contributed her working years, and in all cases the last wife in line would be, under sanction of law, "confiscating" the benefits earned by her predecessor if married to the annuitant for at least one year.

Furthermore, under the present law and under the proposed law the wife deprived in such a situation has no way of protecting her investment. If her husband wants the marriage to terminate she cannot maintain her status as wife. In Women in Divorce 133 (1965) W. Goode found that it was more often the husband than the wife who first wanted to break up the marriage, and that most of the wives felt "sinned against." But once the husband wanted a divorce, Goode found that he typically adopted a line of behavior, whether consciously or not, that forced the wife to suggest a divorce as an appropriate solution. And although women are more likely to file for the divorce one may not infer that they want the marriage to end. With increased longevity, the average couple that stays together will have many more years of life together and will share as many as 25 years after their children leave home. This is a new phenomenon in human history, for in the past people did not live long enough to reach it. One spouse or the other died long before the youngest child had left home. These changes have been explained by Laurence Kubie in this way:

"Divorce today is accomplishing some of the reshuffling of marriages which only a few years ago occurred through death. . . . Apparently, longevity has now exposed the fact that the human race never has been mature enough for enduring marriages, a fact which used to be obscured by early deaths." (Kubie, "Psychoanalysis and Marriage," in Neurotic Interaction in Marriage (V. Eisenstein ed. 1956.)

For at least the last 20 years sociologists have been



describing the marriage pattern in the United States as serial monogamy. Yet the law assumes that every marriage is a first marriage and the surviving wife the only wife the deceased ever had had. It also assumes the husband alone is responsible for the support of the family and the wife for child-care and household chores. We know these roles are no longer so strictly stereotyped, but as Professor H. Clark observed "(a) reading of contemporary judicial opinions leaves the impression that these roles have not changed over the last two hundred years." ((H. Clark, The Law of Domestic Relations 181 (1968).)

Apart from no-fault divorce, which has become the law of the land within seven years except for Illinois, Pennsylvania, and South Dakota, the laws regulating marital relations and property have remained static in many areas in spite of their inappropriateness in today's world. In reality, they have never been appropriate, or constitutional, for in all but the eight community property states they establish the legal inferiority of married women--as a class. Apparently it is human nature that most of those benefitting from the degradation of married women will strive to maintain the "rights" which were never equitably theirs, regardless of the inhuman consequences.

The state of servitude assigned to a married woman even today accounts for her economic deprivation and consequent loss of dignity as a human person. In 1974 the Citizens' Advisory Council noted:

"The legal structure in the United States is based on a generally held societal assumption that a woman should secure an adequate standard of living through pleasing her husband and through womanly wiles. If the marriage fails, fault may be ascribed to her lack of femininity or skills in being a good wife and mother regardless of the circumstances."  
(Citizens' Advisory Council on the Status of Women, Recognition of Economic Contribution of Homemakers and Protection of Children in Divorce Law and Practice 6.)

Stuart Walzer, a divorce lawyer in the community property state of California, quotes one judge as saying:

"Marriage is a woman's business. When the marriage is bankrupt, the woman is bankrupt."  
(Walzer, Divorce and the Professional Man, 4 Fam. L.Q. 364 (1970).)

The above statements reflect the historical subjugation of women, and the latter is in direct conflict with California Civil Code Section



4800, which states:

" . . . the court shall . . . divide the community property and the quasi-community property of the parties, including any such property from which a homestead has been selected, equally." (Emphasis in original.)

Despite the law giving them an equal share, women in community property states may nevertheless have difficulties in obtaining an equal share of property upon divorce. ((Cf. Retirement Pay: A Divorce in Time Saved Mine, 24 Hastings L.J. 347 (1973); Bodenheimer, The Community Without Community Property: The Need for Legislative Attention to Separate-Property Marriages Under Community Property Laws, 8 Calif. W.L. Rev. 381 (1972).)

How can a civilized society permit such a miscarriage of justice? The answer is simple--our society is not civilized. To civilize means to humanize, and in the United States women have not been recognized legally as human persons equal to men. The United States ratified the United Nations Charter in 1945, but has ratified only one of its numerous covenants on the rights of women. Although it provided no new rights for women, the Convention on Political Rights for Women was ratified by the United States only in late 1976--following International Women's Year--and 22 years after it had come into force on July 7, 1954 with ratification by the necessary 35 countries, and after it had been ratified by the Union of Soviet Socialist Republics. The consent of the Senate to ratification of the International Covenant on Civil and Political Rights, adopted by a resolution of the General Assembly in 1966, would require the United States to "insure equality of rights and responsibilities of spouses as to marriage, during marriage and at dissolution" and "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex." In the United States the denigration of women continues, and is most complete in the marriage relationship.

The common law of England established the fiction that the husband and wife had a single identity--that of the husband. Under this protective doctrine a married woman lost control of her real property as well as ownership of her chattels, in return for support for life. Her duties were to serve, performing domestic chores and caring for children. She became a slave in the very real sense of that word. She was



owned by her husband, who through control of the family finances not only determined the quality of support but ensured for himself her continuing free services. If she worked outside the home, her wages were the property of her husband. His name became her name, depriving her of a continuing identification throughout life. Her domicile became that of her husband.

This legal system based upon an inferior status for women was adopted in the United States in all but the eight community property states. In actual family living, however, spouses largely ignore the laws governing their relationship, provided they know anything at all about them. No longer is it realistic to assume that husbands alone are responsible for family support or that the location of the homestead is determined by the husband's work. Wives participate in both these areas, yet the law continues to ignore the wife's equal interest either during marriage or at its termination. Where the law makes the husband solely responsible for family support it assumes the economic incapacity of the wife, as pointed out by Professor H. Kay in Sex-based Discrimination in Family Law (1974 at 140-41:

"(T)he support laws embody the legal view that a married woman is an economically nonproductive person dependent upon others for the necessities of life. . . . (T)he married woman continues to be treated as a legal dependent, like the children and insane persons with whom the law formerly classified her."

The services the law requires a woman to perform, without pay, were recently enumerated in *Rucci v. Rucci*, 23 Conn. Supp. 221, 224, 181 A2d 125, 127, where the court said the wife's duty to her husband is

"to be his helpmate, to love and care for him in such a role, to afford him her society and her person, to protect and care for him in sickness, and to labor faithfully to advance his interests. . . . She must perform her household and domestic duties, . . . without compensation therefor. A husband is entitled to the benefit of his wife's industry and economy." (1972)

No description of a wife's duties could more clearly spell out a partnership--in theory. Yet recognition of the homemaker's contribution to the marriage, her role in building family wealth and property, is ignored upon dissolution in most states. When the partnership profits are divided the wife's contribution is devalued in all but the eight community property states and Virginia, which has just enacted legislation to compensate the wife for her services as homemaker.



This unfair result follows "logically" from the legal obligation of a wife to provide domestic services for her husband. During the marriage courts have refused to honor contracts between the spouses in which the husband agreed to pay the wife for her services, even when they were "extras" like working in the husband's business or doing farm labor. If the husband had paid for his wife's services, he could recover in court. The reasoning is that if a wife already owes these services to her husband, a contract in which she is to be paid for them is void for lack of consideration. (H. Clark, The Law of Domestic Relations (1968) at 227.)

With the prediction that soon one out of two marriages will be terminated by absolute divorce it is totally unrealistic and intolerably unjust to require married women to live under archaic laws. The Congress has the power--and the duty--to amend the federal retirement systems so that an equitable share, that is, a pro rata share of the benefits is made the vested, irrevocable right of a divorced wife. At the very minimum, this right must without further delay be granted to the divorced wife whose contribution was wholly or principally that of homemaker. To avoid a charge of sex discrimination the term "spouse" should be substituted for the term "wife" above, although because of the legally imposed inferiority of married women, as a class, the use of the term "wife" would accurately describe almost every case.

Justice demands that the benefits be made retroactive, at least where the divorced spouse's only retirement benefits were those that had derived from the marriage relationship. There is no eternity ahead during which these imperative changes can come about. And it is the finiteness of life that gives it value. Being realistic in language, the woman who has contributed to the growth of her husband's career in the federal government during the marriage must be retroactively compensated. Treating the partnership as a one-man business upon dissolution and cheating the wife out of a fair share for her half of the effort has served no useful social purpose. In fact society is the poorer for the practice of singling out the divorced wives of federal employees as the only class not covered by social insurance. An Internal Revenue Service publication entitled "Understanding Taxes", 1976 Edition describes the Social Security Act, in part, as follows:



"One of Roosevelt's major domestic achievements in his first term was the Social Security act, which was passed in 1935. The new law provided several types of benefits. There were old-age retirement payments, financed by a payroll tax on both employer and employee. Jobless workers received financial compensation during fixed periods. And there was aid for the needy, the blind, the aged, and neglected." (Chapter 1, page 3.)

The United States was on the way to becoming civilized by Simone de Beauvoir's apt definition in *The Coming of Age*, at 275:

"In our days we know that 'old and poor' is almost a tautology. Although it may do away with passions, old age makes needs all the worse because of its inability to satisfy them: old people feel hunger and they feel cold: they die of them. It is the void alone that sets them free from their bodies, and until then their bodies have a cruel existence in the form of suffering and frustration. In no other aspect of life does the indecency of the culture we have inherited show itself more nakedly." (Emphasis added.)

In 1966 the compassion of Congress for the divorced wives and surviving divorced wives of wage earners entitled to social security benefits led to their retroactive inclusion in benefits full and equal to those of a wife or widow, provided the marriage had lasted at least 20 years. As stated earlier, this provision is inequitable, and should be corrected by passage of the Fraser Bill, which would enable divorced spouses to carry quarters earned during marriage in their own name. Only by following such a procedure in all government programs intended to provide some measure of financial security in retirement can even a young worker, either in the home or outside, be assured of the benefits the law promises. Federal annuities should not be excepted.

Further retroactive legislation was passed a little later, the so-called Prouty Amendment, which provided benefits for those of a certain age who had not contributed to the Social Security Fund, <sup>and were not covered</sup> either as wage earner or as the wife of a wage earner. The Foreign Service Retirement Act has been amended to include a class referred to as Grantee Widows, those whose husbands had not taken <sup>they</sup> a reduction in the primary annuity to provide survivor benefits, and <sup>they</sup> were retroactively enabled to receive a continuing annuity. Whatever distinctions may be drawn between social security benefits and federal retirement benefits, certain principles of law must hold for both: if it is lawful to apply an amendment to the Social Security Act retroactively to include divorced wives and surviving divorced wives, it is lawful to return to



divorced wives of federal employees the fruits of their labor, their pro rata share of the retirement benefits, so unconscionably denied in the first instance.

The Schroeder-Spellman Bill requires that the benefits be earned during the marriage before a divorced spouse is entitled to benefits, a marriage of not less than 20 years. Although I have no quarrel with the earned during the marriage requirement, for this follows community property law and is fair, the Social Security Act makes no such requirement. As a consequence, even a greater number of divorced wives and surviving divorced wives are receiving social security benefits than would such categories under the proposed changes in the federal retirement system. Furthermore, social security checks to divorced wives and surviving divorced wives are sent to every country in the world except for three communist countries, the exceptions based on a determination that those particular governments would not ensure delivery to the designated person. And in many countries these checks buy three or four times the goods they buy in the United States--for beneficiaries who are most unlikely ever to become our public charge.

In the light of the unequal treatment of divorced wives and surviving divorced wives under social security laws and federal retirement laws, it appears that selfish motives on the part of approximately half the Members (domiciled in those states that cling tenaciously to outmoded laws denying women their just share of retirement benefits) is the only reasonable explanation of the discrepancy. They owe their highest duty to their spouse--upon, during, and at dissolution by divorce. When this primary responsibility is not met, it reflects upon the whole of our society. Our image in the world is debased and our right to demand that other countries treat their citizens better than we do certain of our own is hollow and filled with deceit. President Carter has asked for the advice and consent of the Senate for ratification of the United Nations Covenant on Civil and Political Rights. Ratification by the United States of this convention providing for rights for both men and women would require the Congress to enact legislation more far-reaching than the present bill in order to make an equal division of the marital assets upon divorce. Can our chosen representatives act in the interest of all human persons?



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

JUN 8 1977

Honorable Robert N. C. Nix  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives  
Suite 309 Cannon House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to the Committee's request for the views of this Office on H.R. 1703, "To provide that a former spouse of a Federal employee who is married to such employee for twenty years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee."

The purpose of this bill is to grant the former spouse of a Federal employee, who was married to the employee for at least twenty years, an absolute, statutory right to specified portions of the employee's unreduced annuity; and of the survivor annuity payable to the legal surviving spouse of an employee or annuitant, up to a maximum of half the amount of such annuities in each case.

In its report and testimony on H.R. 3951, an identical bill, the Civil Service Commission states its reasons for strongly opposing enactment of the bill. The Commission states that the bill would preempt the proper function of the courts by statutorily confiscating up to half the employee's earned annuity to benefit a former spouse, without regard to the age or need of the former spouse, or of the circumstances and obligations of the annuitant.

The Commission also notes that the bill raises complex issues which should be addressed before legislation can be considered. These include not only the social and equitable concerns for a former spouse who was the spouse during most of the Federal career, but also the traditional role of the courts in



domestic relations matters, the rights of the employee and of the legal spouse, and the possibility of dual benefits.

We concur in the views expressed by the Civil Service Commission and, accordingly, strongly recommend against enactment of H.R. 1703 or H.R. 3951.

Sincerely,

*James M. Frey*  
James M. Frey  
Assistant Director for  
Legislative Reference



UNITED STATES CIVIL SERVICE COMMISSION  
WASHINGTON, D.C. 20415

June 9, 1977

Honorable Robert N.C. Nix  
Chairman, Post Office  
and Civil Service Committee  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

This is in further reply to your request for the Commission's views on H.R. 3951, a bill "To provide that a former spouse of a Federal employee who is married to such employee for twenty years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee."

H.R. 3951 defines former spouse for the purposes of the bill as an unmarried former wife or husband of an employee or Member who was married to the employee or Member not less than 20 years.

H.R. 3951 would entitle a former spouse to an annuity commencing on the later of the day after the employee or Member retires or the first day of the month in which the individual becomes a former spouse. This annuity would be payable during the remaining lifetime of the retired employee or Member unless the former spouse remarries before attaining age 60 or otherwise becomes entitled to a survivor annuity under section 8341 of title 5, United States Code.

If the former spouse was married to the employee or Member through all the period of his (her) creditable service the annuity would be equal to 50% of the annuity to which the employee or Member is entitled. If not married to the employee or Member during all his (her) creditable service this amount (50%) would be prorated on the same ratio as the number of years of creditable service during which the former spouse was married to the individual bears to the total number of years of creditable service.

Under the provisions of H.R. 3951 the former spouse would be entitled to up to 50% of an employee's or Member's lump sum retirement fund credit in case of a refund, or of accrued annuity and/or unexpended balance in case of death where a lump sum becomes payable. Furthermore the former spouse can designate a beneficiary for that portion of a lump sum payment which would be payable to a former spouse. If the former spouse was not married to the employee or Member during all his (her) creditable service, the amount of lump sum credit would be prorated in the same manner as for the former spouse annuity.



The bill apparently intends that a former spouse share in any increased annuity to which a retired employee or Member might become entitled because of reemployment since the Commission would be required to prescribe regulations to apply section 8344 of title 5 United States Code to former spouses.

Finally, the bill would amend section 8341 of title 5, United States Code to provide survivor annuities to former spouses of deceased employees or Members who die in service or after retirement.

In such case, if there is also a spouse, widow, or widower entitled to a survivor annuity, the former spouse would be entitled to up to 50 percent of the survivor annuity payable. If married to the former employee or Member for less than all his (her) creditable service the survivor annuity payable to the former spouse would be prorated in the same manner as the former spouse annuity payable during the lifetime of the retired employee or Member. If there is no other spouse, widow, or widower entitled to a survivor annuity, the former spouse would apparently be entitled to a full survivor benefit of 55% of the employee's or Member's earned benefit or any lesser amount elected at retirement. This section is not entirely clear but it appears that the only time an employee or Member would have any control over whether or not a former spouse would receive a benefit after his (her) death would be when the employee or Member was married at the time of retirement and signed a statement that he (she) did not wish any spouse surviving him (her) to receive an annuity.

This election is not available to unmarried retirees and the married employee or Member could only exercise it at the cost of denying any survivor benefit to his or her current spouse.

Former spouses would receive cost-of-living increases under section 8340 of title 5, U.S.C. and in the event a former spouse survivor benefit terminated because of remarriage before age 60 the benefit could be restored upon termination of the remarriage.

The Civil Service Retirement System is a staff retirement plan designed to provide annuities for career Federal employees in amounts directly related to the time spent in the employ of the United States Government and to the employee's peak earning capacity during that time. During employment, the Federal worker has retirement contributions deducted from his (her) salary. The rate is presently 7 to 7 1/2 percent of total salary. Under the Civil Service Retirement System, no benefit is payable to the spouse, during the lifetime of the annuitant; moreover, for the surviving spouse to be eligible for a benefit after the annuitant's death, the annuitant must have elected to take a reduction in annuity in order to provide a survivor benefit.



An eligible surviving spouse receives a benefit equal to 55% of the former employee or annuitant's earned benefit or of whatever lesser amount the annuitant selected at retirement as a survivor base.

The annuity of a retired Federal employee is fully taxable under Federal tax laws.

Under the Civil Service Retirement System the Federal Government assumes a limited obligation to contribute to the support of certain dependents of the retiree or employee in the event of that person's death. These dependents are limited to an eligible spouse, widow, widower and/or eligible children.

The Commission is strongly opposed to enactment of H.R. 3951 or any similar bill because it would distort the entire concept of the Civil Service Retirement System and would constitute interference with the marital and civil rights of Federal employees. Benefits under the Civil Service Retirement System are based on an employer-employee relationship between the Federal Government and its employees, and the Federal employee, male or female, is in the best position to determine how those benefits, including survivor benefits, should be used in his (or her) case.

H.R. 3951 would, in our opinion improperly shift emphasis from the staff retirement principle to one which favors social factors, a circumstance which we would view as undesirable in light of the retirement system's expressed goals.

State laws and state courts have always controlled in matters of domestic relations and property rights. They are specifically geared to determine such questions as an individual's obligation to a former spouse. Such determinations are made by a court on an individual basis after considering many other factors such as the financial status of both parties, property settlements, children involved, the reasons for the divorce, etc. Moreover, for former spouses of Federal employees and annuitants, the avenue of garnishment is available when a court-determined obligation is not fulfilled. The Civil Service Retirement System should not be used as a substitute for the judicial system in obtaining equity for former spouses. In our opinion, enactment of H.R. 3951 or similar legislation would not serve the purposes of equity but would be highly inequitable and in all cases would be highly discriminatory against the Federal employee and/or his (her) legal survivor. For example, in many cases, the individual responsible for the separation would be the one to benefit.

The Commission firmly believes that an individual's obligation to a former spouse is a matter for determination by the courts and that such obligation is the personal responsibility of the individual concerned. To preempt the proper function of the courts by statutorily confiscating



up to 1/2 of a Federal employee's earned annuity in order to pay a benefit to a former spouse, regardless of the age or need of the former spouse, or of the circumstances or other current obligations of the annuitant would, in our opinion, be both arbitrary and unjustified.

The implementation of a bill such as H.R. 3951 would be both administratively difficult and costly. It would require revised applications for refund, retirement, and death benefits under the Civil Service Retirement System to indicate whether or not there might be a former spouse entitled to share in those benefits. It would further require verification of the marriage and divorce of the former spouse as well as verification for all the creditable service of the employee (even in payment of a refund) in order to determine the amount of benefit to which the former spouse is entitled. The Commission would be required to maintain an additional annuity roll for former spouses and to police those rolls for remarriage before age 60.

In death cases where there is already a legal surviving spouse entitled to annuity and there is some indication that there may be a former spouse entitled to benefit, the Commission, in order to avoid overpayment, would have two choices: (1) hold up payment to the eligible survivor or (2) pay a reduced benefit pending development and verification of the former spouse's entitlement. This could be time consuming especially if the whereabouts of the former spouse is not known.

The Commission has no way of knowing how many Federal employees or Members have been divorced or have former spouses who would benefit from enactment of H.R. 3951 but in view of our nation's divorce rate the number would be substantial. It appears that the only instances in which the benefit would add to the unfunded liability of the Civil Service Retirement and Disability Fund is when an employee with a former spouse is unmarried at the time of retirement and remains unmarried, or dies in service with no eligible widow or widower. (All other benefits cost only the annuitant or the survivor annuitant.)

In conclusion, the Commission is very strongly opposed to enactment of H.R. 3951, not only on the basis of administrative difficulty and cost to the Civil Service Retirement System, but also on the principle that the bill is improperly involving the system in problems which are, and should remain, under the jurisdiction of the courts. Additionally, the bill would penalize the Federal employee (or his or her survivor) because a former marriage didn't last (regardless of which party was at fault),



However, the Commission is aware that the courts cannot now control disposition of the survivor annuity and that the married retiring employee has an option to provide such annuity only for the legal spouse, but not for a former spouse. The Commission also recognizes that there are valid social and equitable concerns respecting the former spouse of a deceased employee or annuitant, who was the spouse during most of the Federal career.

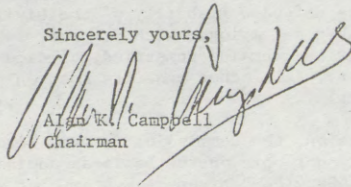
Accordingly, we can assure the committee that the Commission plans to give serious consideration to this complicated issue. Such consideration must involve factors such as: the proper role of the courts with respect to the survivor option; the basic right of the employee to exercise that option free of coercion; the primary rights of the legal spouse; the dispersion of a generally limited survivor annuity (average of \$366 a month for optional retirements) among the legal spouse and one or more former spouses where all shared nearly equal portions of the employee's career; the dual entitlement of some employees, and thus, their divorced spouses, to social security; and possibly other issues.

We believe these issues must be addressed, and the cost impact of various solutions on all Federal retirement systems assessed, before legislation can be considered.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

  
Alan W. Campbell  
Chairman



95TH CONGRESS  
1ST SESSION

# H. R. 3951

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1977

Mrs. SCHROEDER (for herself and Mrs. SPELLMAN) introduced the following bill;  
which was referred to the Committee on Post Office and Civil Service

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## A BILL

To provide that a former spouse of a Federal employee who is married to such employee for twenty years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That (a) section 8331 of title 5, United States Code, relat-  
4       ing to definitions for purposes of civil service retirement, is  
5       amended by adding at the end thereof the following new  
6       paragraph:

7               “(22) ‘former spouse’ means an unremarried  
8       former wife or husband of an employee or Member who

I—O



1        was married to such employee or Member for not less  
2        than twenty years.”.

3        (b) Such section 8331 of title 5, United States Code,  
4        is further amended—

5            (1) by striking out “and” at the end of paragraph  
6        (20), and

7            (2) by striking out the period at the end of para-  
8        graph (21) and inserting “; and” in lieu thereof.

9        SEC. 2. (a) Subchapter III of chapter 83 of title 5,  
10       United States Code, relating to civil service retirement, is  
11       amended by inserting after section 8338 the following new  
12       section:

13       **“§ 8338A. Former spouse annuity**

14            “(a) A former spouse of an employee or Member  
15       retired under this subchapter is entitled to an annuity—

16            “(1) if married to the employee or Member  
17       throughout his period of creditable service, equal to 50  
18       per centum of the annuity (determined without regard  
19       to the reduction under section 8339 (n) of this title)  
20       to which such employee or Member is entitled, or

21            “(2) if not married to the employee or Member  
22       throughout the period of his creditable service, equal  
23       to the amount which bears the same ratio to the annuity  
24       to which such former spouse would have been entitled  
25       in paragraph (1) of this subsection applied as (A) the



1        number of years of creditable service during which such  
2        former spouse was married to the employee or Member  
3        bears to (B) the total number of years of such service.

4        An annuity under this section is subject to section 8340 of  
5        this title.

6        “(b) The annuity of a former spouse commences on the  
7        later of the day after the employee or Member retires under  
8        this subchapter or the first day of the month in which the  
9        individual becomes a former spouse. Such annuity and the  
10       right thereto terminate on the last day of the month before—

11                “(1) the former spouse dies or remarries before  
12                becoming sixty years of age;

13                “(2) the former spouse becomes entitled to an  
14                annuity under section 8341 of this title; or

15                “(3) such employee or Member dies.”.

16        (b) Section 8339 of title 5, United States Code, relating  
17        to annuity computation, is amended by adding at the end  
18        thereof the following new subsection:

19                “(n) The annuity of an employee or Member computed  
20        under this section is reduced by the amount of an annuity  
21        under section 8338A of this title of any former spouse of  
22        such employee or Member.”.

23        (c) (1) Section 8342 (a) of title 5, United States Code,  
24        relating to lump-sum benefits, is amended by striking out “is



1 entitled" and inserting in lieu thereof "(and a former spouse  
2 of such employee or Member)" before "are entitled".

3 (2) Section 8342 of title 5, United States Code, is  
4 amended—

5 (A) in subsection (b), by inserting after "employee  
6 or Member" the following: "(and any former spouse  
7 of the employee or Member)", and

8 (B) in subsections (c) and (d), by inserting after  
9 "employee or Member" each place it appears the fol-  
10 lowing: "(or any former spouse of the employee or  
11 Member)",

12 (C) in subsections (f) and (g), by inserting after  
13 "annuitant" the following: "(or any former spouse of  
14 the annuitant)",

15 (D) by adding at the end thereof the following:

16 "(j) If the employee or Member has a former spouse,  
17 the lump-sum credit of the former spouse shall be—

18 "(1) if the former spouse was married to the em-  
19 ployee or Member throughout his period of creditable  
20 service, 50 per centum of the lump-sum credit such  
21 former spouse would be entitled in the absence of this  
22 subsection, or

23 "(2) if such former spouse was not married to the  
24 employee or Member throughout the period of his  
25 creditable service, an amount which bears the same



1 ratio to the lump-sum credit to which such former em-  
 2 ployee would have been entitled if paragraph (1) of  
 3 this subsection applied as (A) the number of years of  
 4 creditable service during which such former spouse  
 5 was married to the employee or Member bears to (B)  
 6 the total number of years of such service.

7 The lump-sum credit of the employee or Member shall be  
 8 reduced by the amount of the lump-sum credit payable to the  
 9 former spouse.”.

10 (d) Section 8344 of title 5, United States Code, relat-  
 11 ing to annuities and pay on reemployment, is amended by  
 12 adding at the end thereof the following new subsection:

13 “(d) The Civil Service Commission shall prescribe  
 14 regulations to provide for the application of this section in  
 15 any case in which an annuitant has a former spouse entitled  
 16 to an annuity under section 8338A of this title.”.

17 (e) The table of sections for subchapter III of chapter  
 18 83 of title 5, United States Code, is amended by inserting  
 19 after section 8338 the following new item:

“8338A. Former spouse annuity.”.

20 SEC. 2. (a) Section 8341 (b) of title 5, United States  
 21 Code, relating to survivor annuities, is amended—

22 (1) in paragraph (1), by inserting “or by a former  
 23 spouse” after “after retirement”, and

24 (2) by striking out “or widower” the second and



1       each succeeding place it appears and inserting in lieu  
2       thereof "widower, or former spouse".

3       (b) Subsections (d), (e), and (g) of section 8341 of  
4       title 5, United States Code, are each amended by striking out  
5       "spouse" each place it appears and inserting in lieu thereof  
6       "spouse or former spouse".

7       (c) Section 8341 of title 5, United States Code, is  
8       amended by adding at the end thereof the following new  
9       subsection:

10       "(h) In the case in which both a former spouse and a  
11       spouse, widow, or widower are entitled to an annuity under  
12       this section, the former spouse's annuity shall be—

13               "(1) if the former spouse was married to the em-  
14       ployee or Member throughout his period of creditable  
15       service, 50 per centum of the annuity to which such for-  
16       mer spouse would be entitled in the absence of this sub-  
17       section, or

18               "(2) if such former spouse was not married to  
19       the employee or Member throughout the period of his  
20       creditable service, an amount which bears the same ratio  
21       to the annuity to which such former spouse would have  
22       been entitled if paragraph (1) of this subsection applied  
23       as (A) the number of years of creditable service dur-  
24       ing which such former spouse was married to the em-



1        ployee or Member bears to (B) the total number of  
2        years of such service.

3        The annuity of the spouse, widow, or widower is reduced  
4        by the amount of the annuity payable to the former spouse.”.

5        SEC. 3. The amendments made by this Act shall only  
6        apply with respect to employees and Members, as defined  
7        in section 8331 of title 5, United States Code, who retire  
8        on or after the date of the enactment of this Act.



[The article which follows was ordered placed in the record.]

[From the Washington Post, Apr. 5, 1977]

## OLDER WOMEN HAVE SPECIAL PROBLEMS

(By Richard Cohen)

Usually when they call, they begin with a formal introduction, telling you their name and the name of their organization and then, because they have learned the hard way that they must not stop, they plunge on, telling you why their cause is so good and why you have to write about it. More often than not the caller is a woman and more often than not the conversation is kept general. They will talk of "the people" who need help, or "those people" or "our people"—that sort of thing. It is never "I" or "me" or "us," and they never say, as the lady finally did the other day, that they are talking about themselves and that life has suddenly become very perilous. She blamed it on being a woman—an aging woman.

Normally, I start to doodle on my pad when I get these calls. There comes a time when you get tired of causes—tired of yet another oppressed, deprived group. There seem to be so many lately that you want to say after a while that, yes, life is tough, but really I don't think that Maine should be returned to the Indians and I don't think that being nonwhite is requisite enough for admission to law school—that sort of thing. But the groups that really get you are the groups you didn't think had a case at all.

Women are probably the best example of that, and it took some time, frankly, to see things from their point of view—understand that the most protested and pampered group among us could also be among the most exploited.

So here was this lady on the phone with a new cause—aging women. Not old women or old ladies or women wasting away on the shaded porches of nursing homes, but aging women, whoever they might be, and how the world was picking on them. What they needed, she said, were laws—laws that guaranteed them a piece of their husband's pensions in the event of divorce. That was just for starters. She continued and I recalled some of the aging women I had seen around. I saw them sitting on park benches, wearing the minks of yesteryear, calling each other darling and dearie and I didn't feel in the least bit sorry for them. But then something the lady said jarred me.

I had been to a party and there had been a lady there named Kay McGrath who had once run for the City Council from the wealthiest part of town. I had a bone to pick with her and it had to do with the fact that her area is always asking for money. She counterattacked. She told me not to be deceived by the figures. There were people in her area who were very poor. Mostly, she said, they are the old and what she asked me to do, more or less, was close my eyes and recall those times in the Safeway or the Giant when you see an old lady come slowly down the aisle, pick up an item like it was made of fine glass, find the price and then put it down because it has gone up a penny or two.

But for me the old lady who came to mind was the one who once lived down the hall. She was rich and her apartment was huge and every year or so, we were told, she bought herself a new mink. Then she would sit in the mink and rock herself in a chair and fall asleep smoking, buring holes in the fur. One day someone came and tried to collect on a bill and then someone else tried to collect and then it was discovered that the old lady had no money at all. So they took her away to some home and then someone came and put red tags on the furniture. They sold it all. She had some magnificent stuff.

Anyway, that was something like what the lady on the phone was talking about and so I asked her about the old ladies—the old ladies on shrinking budgets and fading hopes. Could she find me one? And this is what she said. She said she was one of them. She told me that she had been affluent once, a housewife once, the wife of a foreign service officer who had played by the rules. She had a master's degree and a head on her shoulders, but she had given up her career to set



a table and mix drinks and now in her 58th year, they were divorced. She got some things and he got some things, but one of the things she did not get was a piece of his annuity. The law here says she does not have to get it and her husband would not let her have it.

Now her voice was no longer matter-of-fact and official sounding. Instead, there were pauses and what sounded like gulps of air. She told me how much she lives on and while it is not exactly poverty, it is also not the affluence she had come to know—not the nice and secure life she had every reason to expect. And then she got to the worst part. There was no margin for sickness—no insurance. One illness, one slip on the cold winter's ice and she really would be poor.

"I was a depression child," she said, "and now I've come full cycle—not poverty, actually \* \* \*" She broke off the sentence there and then she said, "The thing is, I'm terribly insecure. Poverty. I see that ahead of me."

By now the pauses were no longer and the breaths deeper and so now it was I who wanted to get this thing back on a business-like footing. So I asked for her phone number and then I repeated her name to make sure I had it right and sometime before I hung up I called her Mrs. Her Voice stiffened. "Ms.," she said.

She's earned it the hard way.

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