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Vermont Alimony Reform Coalition
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Dear Senate Committee on Judiciary;

Divorce is an agonizing process for all parties involved. Vermont is widely acknowledged to be the worst state in the country for divorce. Cathryn Nunlist, a noted professor at Vermont Law School advises potential clients seeking divorce to go next door to New Hampshire, which is the easiest state for a divorce [1].

Among the reasons for this are the longest processing period and among the most expensive fees, but far more troubling are issues of the lack of consistency, predictability, and fairness in court decisions that result from inadequate legislative guidelines, excessive discretion of judges, a restrictive appeal process, and lax oversight over the judiciary.

Policy reform is necessary in several areas, but child custody and alimony are the most pressing. There is near-unanimous agreement among therapists, social workers, and legal experts that, in the absence of domestic violence or substance abuse, shared physical custody serves the needs and the best interests of the child [2]. Vermont is one of only six states in the country that allow one parent in a contested child-custody case to reject joint custody, creating a “winner-take-all” scenario in which divorcing parents parties have no incentive to act for the benefit of their child. Presumptive joint legal and physical custody would minimize custody battles and shorten divorce proceedings.

And, as you’ve learned from this morning’s testimony, the purpose of alimony should be to encourage self-sufficiency for the lower earning spouse within a reasonable amount of time after a divorce. The majority of states prohibit permanent alimony, limiting an award of temporary alimony either by duration or amount. Current alimony guidelines in Vermont fail to do this, leading to the kinds of illogical and egregious situations you’ve learned about.

Formulating legal standards for child custody, alimony, property division, and enforcement of prenuptial agreements are fundamental questions of policy that should fall under the purview of the legislature rather than the judiciary. Unbounded judicial discretion on a case-by-case basis creates major disparities in case law and discourages out-of-court settlement, as resolution is encouraged when the law provides some degree of guidance as to the direction of the court. Troubling recent decisions setting aside legally valid prenuptial agreements represent additional examples of erratic and speculative decisions in family court, decisions Susan B. Apel, a professor at Vermont Law School has found in error and without precedent or legal justification [3]. Sadly for most Vermonters there is effectively no opportunity to appeal unjust family court decisions, as the court of appeal is the Vermont Supreme Court, and the lengthy and expensive process of bringing an appeal to the higher court is prohibitive for all but a few Vermonters.

Vermont’s policy for the review of judges’ performance poses particular oversight challenges for the legislature. Judges in Vermont are chosen by assisted appointment, and after serving an initial term, are evaluated for retention, allowing the judge to be held accountable for their performance while serving on the bench. Vermont is the only state in the country where

justices are retained by decision of the state legislature rather than by a judicial performance review commission or by popular vote [4], imposing on the legislature the extraordinary responsibility to closely oversee the judiciary.

I ask you, as a member of the Senate Committee on Judiciary, to support the formation of a legislative task force to draft specific guidelines to achieve integrity, equality, and justice for all parties involved in every aspect of the divorce process. Until such guidelines are in place, I urge you to pledge closer oversight of the judges making consequential, divisive, and unprecedented decisions every day in Vermont family courts.

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- [1] <http://abcnews.go.com/Business/best-worst-states-divorce/story?id=14934693>
- [2] <https://www.bostonglobe.com/metro/2015/07/31/massachusetts-and-elsewhere-push-for-child-custody-reform/Xh4NOwx2qWyZ12VMuYYPf9J/story.html>
- [3] email communication to the my attorney, August 2014
- [4] [https://ballotpedia.org/Assisted_appointment_\(judicial_selection\)](https://ballotpedia.org/Assisted_appointment_(judicial_selection))