

Testimony of Rick Fleming

Senate Judiciary Committee

April 12, 2019

Good morning Senators,

I want to thank you for extending myself and Vermont Alimony Reform the opportunity to testify today on House Bill H512.

I would like to begin by stating that Vermont Alimony Reform is encouraged to see that the Senate Judiciary is addressing two of the Spousal Support and Maintenance Task Force's recommendations from their report of November 2017.

These important first steps include:

First: The Legislature should replace the statutes reference to "permanent" with "long term".

Vermont Alimony Reform supports the Senate Judiciary's change in H512.

Second: The Legislature should consider adding the impact of retirement of either the payor or the payee as a factor in determining the duration or amount of an alimony award.

Vermont Alimony Reform supports the Senate Judiciary's change in H512 however, this change need to be made with care to ensure the change aids in clarity, consistency, and predictability in spousal maintenance awards, allowing for guidelines and structure to be the standard, with room for judicial discretion where necessary in the interest of justice in unique cases.

We are concerned that in the current version of H512, the terms rehabilitative and permanent/long-term alimony have no definitions, so by adding a construct for retirement, in this instance only for rehabilitative and not long-term, without clear definitions, we are potentially creating more confusion than clarity. H512 should also define the term and use of use of compensatory spousal maintenance. Compensatory alimony has been defined by case law and its term and definition need to be addressed by the Legislature and put into statute.

Therefore, we strongly advocate that the stated retirement definitions encompass all alimony, not just one or the other, particularly in light that definitions for such do not currently exist in the statute. (S99 revisions propose these definitions).

Furthermore, the "equalization" of Social Security payments needs further work as well. While the current Social Security rules provide for either half of the larger wage earner's SSA payment for the lesser wage earning spouse or the calculated benefit of the lower wage earner based on that person's

earnings, whichever is higher, it does not take into account, 1) the payroll taxes paid by the higher wage earner over time, and 2) the income tax burden of the high benefit earner. These details need to be encompassed in provision for "equalization."

As I have stated earlier, Vermont Alimony Reform appreciates the Committee addressing the important issue of retirement in H512, however, the following is a list of other issues that need to be addressed to bring Vermont's Spousal Maintenance statutes into the 21st century. If these items cannot be addressed in H512, Vermont Alimony Reform supports the Judiciary's Committee's continued work on S99 to make these changes a reality:

1. The standard of living established during the civil marriage should not be a factor in determining a spousal maintenance award. As I have stated previously, when two individuals work together as one, as in a marriage, they will be able to maintain a certain level of lifestyle, however, when they have to maintain two households, as in divorce, it is usually a fact of life that the lifestyles of both parties will change, usually downward. It is not fair when one party is financially crippled for a windfall for the other party. Spousal maintenance should be based upon the need and ability to pay, and not be used as a reward or entitlement. Fairness and equity for both parties should be the rule of law. Vermont Alimony Reform support the removal of this from our existing statutes. It is simply outdated and unrealistic.

2. The use of the guideline matrix should be used presumptively in determining the amount of a spousal maintenance award. Deviations from the matrix should occur only in the interest of justice and the other factors listed in the present statute should be used in determining any deviation. This will create consistency, predictability and fairness in all spousal maintenance awards. Vermont Alimony Reform encourages the Committee to consider this change.

3. Spousal maintenance awards should end at the remarriage or cohabitation of the payee. Under our present statutes, spousal maintenance doesn't stop when your ex-spouse has remarried or is cohabitating. Vermont is one of a handful of states that does not terminate spousal maintenance upon remarriage. Not only are you paying for your ex-spouse but their new spouse and family too. This is an injustice that has to stop and Vermont Alimony support this provision of the bill. The law has not been updated by the Legislature in decades and does not recognize the modern day familial changes that have occurred since the existing statutes were created.

4. What constitutes a real, substantial and unanticipated change of circumstances? Under present statute, this determination is left completely up to the discretion of the presiding judge. There needs to be clear definitions defined in statute by the Legislature. With the revisions that Vermont Alimony Reform has provided to the Committee for S99 we have attempted to bring clarity and predictability to this issue.

Finally, in the revised version of H512 it states that "the application of the guidelines set forth under section 752(C) shall not, on its own, merit a modification of an existing maintenance order". Vermont Alimony Reform strongly disagrees with this section of the bill. On the one hand H512 recognizes the injustice of lifetime spousal maintenance awards and will allow for awards to stop at a payor's

retirement for those divorces that occur after the passage of the bill. Yet on the other hand by not allowing individuals to use this new provision of the statute to end maintenance at retirement, you are sentencing existing lifetime spousal maintenance payors to a lifetime of indentured servitude. This is not only unfair but cruel. Massachusetts addressed this issue and their legislative intent (per the Task Force and the Legislature) was to allow individuals to modify existing lifetime alimony awards based upon a staggered modification schedule. However, selective judicial interpretation has slowed the process, and made this inconsistent across the state. Massachusetts Alimony Reform is working with their Legislature to correct this misinterpretation.

The concern by Judge Grearson that by allowing individuals the opportunity to end spousal maintenance for past divorces will tie up the courts as those individuals will seek modification should not be a concern. Judge Grearson's own words state that contested divorces are just a small number of divorce cases that come before the courts in Vermont. The number of lifetime permanent awards are a smaller subset of that group. Spousal maintenance reform has been desperately needed in Vermont for decades. Please allow lifetime payors the opportunity to seek justice and remove this provision in H512.

Before I end I just wanted to say that today is my birthday and the best birthday present that I could receive is the present of retirement. Since my divorce I have had a cloud over my head thinking that I was going to have to work for the rest of my life to be able to afford to pay my alimony. H512 gives me a glimmer of hope that this will not be case. I urge the committee to address our concerns for H512 but to also continue to move S99 forward to address the additional concerns that our member have with Vermont's existing spousal maintenance statues.

Thank you for your time and for listening to our concerns. I would be glad to answer any questions.

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