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March 3, 2015

Assembly Judiciary Committee
Legislative Building
401 S. Carson Street
Carson City, NV 89701-4747

Re: AB 140

Pending before your committee is AB 140, which would greatly injure Nevada family law if passed.

Specifically, it would prevent courts from using the actual income of a small group of people – as opposed to everyone else who gets divorced – in setting alimony and possibly child support. It would also permit one party, after a divorce, to effectively put back in his own pocket property awarded by the divorce court as belonging to the other spouse. Again, this would apply unequally, to only the selected group proposing the legislation.

The American Academy of Matrimonial Lawyers (the most prestigious organization of family law attorneys in the world) has formally gone on record as saying this type of legislation should be rejected, because divorce courts should have the ability to consider ***all*** separate property income streams – including VA disability compensation – in determining the actual assets, income, and expenses of the parties when distributing the marital estate, and in setting spousal support and child support. The Academy also urges legislatures to reject any proposal, like this one, that would prevent State divorce courts from protecting their decrees and the parties in divorce cases.

The proposed provisions are either unnecessary (VA disability is already non-divisible as property upon divorce) or promote fraud, unjust enrichment, and wrongful deprivation. Ultimately, of course, former spouses who are deprived of their share of retirement benefits tend to become additional welfare recipients, consigned to an old age of destitution. This should be avoided.

Not only would this proposal tell the divorce courts to ignore the income of one party – but not the income of the other – in setting alimony, it would leave former spouses open to unilateral, retroactive

recharacterization of benefits awarded to them in divorce by stripping the courts of the power to protect decrees, and victims, from such actions. This would overrule decades of case law (in Nevada, the lead case is *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (Nev. 2003), in which the Nevada Supreme Court prevented a military member from taking back all of the payments stipulated and ordered to go to her in the divorce years earlier).

To illustrate why the proposed bill would be an unconstitutional violation of equal protection on its face, consider the facts of the *Brownell* case discussed in legal note # 53. Both parties were totally disabled; the former member received over $3,000 in monthly disability-based income, whereas his spouse received only $200 in food stamps. The member was outraged when the divorce court required him to prevent his former spouse from starving in the street by awarding some alimony.

If AB 140 was the controlling law, ***his*** income would have been rendered "invisible" to the divorce court, but ***her*** $200 in food stamp allowance would not – and would presumably have been split, giving him half of the food stamps in ***addition*** to the $3,000+ in cash. The proposed bill states on its face that no court would have any ability to rectify that inequity.

In short, AB 140 is bad in virtually every way a proposed modification to law can be bad. It would treat similarly situated people unequally, would allow one group of people to cheat another out of benefits awarded to them, would prevent courts from doing equity to the parties in litigation, and would almost certainly leave a number of former spouses (virtually all women) utterly destitute, without any valid reason in law or in equity. The bill should be rejected.

I would be happy to supply whatever further information, background, or assistance the Committee might request.

Sincerely yours,
WILLICK LAW GROUP

Marshal S. Willick, Esq.

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