OUTLINE: TESTIMONY ON AB 140

I. INTRO

A. Name is _____, and I've practiced family law in Nevada for _____. I was [some quick recitation of experience or expertise].

B. Enacting AB 140 would be very poor public policy, and would cause a great deal of harm to innocent parties.

II. MILITARY MARRIAGES

A. Majority of people getting VA benefits don't have any retirement benefits – the VA benefits are often the only income stream available to either party.

B. Where MRBs do exist, are almost always the single largest asset involved in a military marriage, and both parties usually give up a lot in exchange for them.

1. Congress, the Pentagon, and even the Military Officer Association are on record as recognizing "frequent relocations that disrupt spousal earnings."

2. Bottom line is that the income stream is the largest asset, and often the ONLY asset of such a marriage.

3. To get VA benefits, it USED to be that a member had to give up a taxable dollar of retired pay to get a dollar of Untaxable disability.

a. Now a bit more complicated – in many cases, a member can get BOTH the full retired pay AND disability pay; in those cases, the spouse has no claim to any part of the disability pay.

b. For cases where the retired pay has already been divided as property, a conversion to disability effectively takes every converted dollar out of the spouse's pocket and redirects it to the member, essentially gutting the divorce court order.

4. This proposal would treat this one kind of retirement benefit divided at divorce differently from every ***other*** asset – houses, bank accounts, the spouse's 401(k) – for all of those, once divided the member keeps ***his*** half forever no matter what he or the spouse do in the future.

C. The short version is that any action to deprive a spouse of her share of the retirement benefits usually results in her growing old in poverty.

1. For those spouses who DO manage to accrue pension or other benefits, they

are completely divisible upon divorce with the military member.

2. So really, the current proposal is for the member to get half of everything the spouse has, and keep everything he has as well.

III. REAL WORLD EXAMPLES ARE ALL AROUND US

A. *Brownell* case (Mass., in legal note 53) hardly unique.

1. 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.

B. A Las Vegas divorce lawyer asked for help in a case where the couple lived entirely off the wife's income during their 20 year marriage, until she developed Alzheimer's in 2011. The husband got frustrated with her.

1. At the age of 70, the husband moved her into an apartment, where she was found by a friend 9 days later, confused and deteriorated. Now in an assisted care facility.

2. All of the wife's income and assets were consumed during the marriage; the husband did not work. The only income today is Social Security and the husband's VA benefits, and the husband wants to make sure the wife gets no alimony to support her for the rest of her life.

3. That would be the result if AB 140 was enacted, and the wife would die in total destitution, after working to support the household until her health failed.

4. This is ***exactly*** the kind of thing that divorce courts are for – to weigh the relative equities between parties, taking the entirety of ***both*** of their actual situations into account.

IV. ANALOGIES AND ARGUMENTS

A. Just like Social Security – VA benefits are not assignable, but of ***course*** they were and are intended for both the worker and his dependents (*Rose* case, USSCT).

B. [AZ: if brought up]

1. *Priessman*, 266 P.3d 362 (Ariz. Ct. App. 2011).

a. CRSC division not barred.

b. Facts showed voluntary change from CRDP to CRSC just to injure former spouse.

c. Facts found that he voluntarily quit his job in bad faith to avoid alimony.

2. *Downing*, 265 P.3d 1097 (Ariz. Ct. App. 2011)

a. After a 19-year marriage, member ordered to pay $1,000 for 5 years; at the end of that time it was reduced to $500

b. After the AZ statute passed, member moved to eliminate alimony; by rendering the bulk of his income invisible, the parties' "disclosed" incomes were only $200 apart.

(1) In other words, court had to use the fantasy that his much larger income did not actually exist.

(2) Footnote says: "We are not unmindful of the troublesome fiction created by § 25-530 requiring a court, as L Vancha points out, to "pretend" title 38 funds do not exist for the purpose of determining a spouse's income and his or her ability to pay, or need for, spousal maintenance. The legislature, however, has made clear that this is precisely what the court is to do. Until the statute's clear language is modified in some way, it is the court's responsibility to follow the law as written."

(3) In other words – it's unfair, but that is what the legislature passed.

V. REASONS WHY THE PROPOSAL IS A BAD IDEA

Leaving 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).

Brownell – 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.