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A Proposal to the State of Florida Legislature for a Reform of Alimony Laws

Comparison of Texas and Florida

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Our group proposes that the Florida Legislature consider providing the state's judiciary with guidelines on the dissolution of a marriage here in our state. At present, marital dissolution is done without legislative oversight. Cases are decided on prior case decisions or legal precedence established without any legislative direction. A sort of *stari decisis* form of decision making that we believe has resulted in grossly unfair decisions affecting some Florida residents. Prior legislative bodies have recognized this situation with some limited solutions: see (SB 0152) or the Siplin cohabitation bill. This paper proposes that it is the responsibility of the state legislature to provide direction to the judiciary. Using Texas law as a model for the state of Florida, this position paper will provide the rationale for choosing Texas as a model with a recognition that it is the responsibility of the legislature to create laws with a minimal impact on the state's budget while minimizing or eliminating unwanted side effects in its attempt to create just and reasonable legal code.

Why Texas

Statistical Evidence

The State of Texas and the State of Florida share many statistical similarities. Our group proposes that our state would benefit from mirroring Texas 15 year old statute.

State of Florida vs. State of Texas

Demographics: [Texas](#) vs. [Florida](#) (census.gov)

Demographically, Texas and Florida are very similar in their population distribution with similar ethnic and gender bias. Age distribution shows a much higher percentage of 65 and older in Florida. This indicates that any alimony law changes will be less likely to affect the Florida population than the Texas population. Alimony awards based on retirement income are affected by IRS laws of distribution of social security. Non-social security retirement funds are covered by distribution of assets at divorce which are not the subject of our alimony reform proposal. In other words, if a marriage is dissolved after retirement, that retirement funds collected by the couple are evenly divided as an asset, not an alimony award.

Texas		Florida	
Median household income, 2007	\$47,563	Median household income, 2007	\$47,804
Female persons, percent, 2008	50.1%	Female persons, percent, 2008	50.9%
Persons 65 yrs and older 2008	10.2%	Persons 65 yrs and older 2008	17.4%
White persons, percent, 2008*	82.4%	White persons, percent, 2008*	79.8%
Black persons, percent, 2008	11.9%	Black persons, percent, 2008	15.9%

Impact on Economy: [Texas](#) vs. [Florida](#) (statehealthfacts.org)

One of the major concerns in reforming alimony is the fear that many alimony recipients will be forced onto state assistance. In comparing Texas to Florida, one sees that the ratio of male to female residents in poverty is identical. There is a higher overall percentage of male and female residents in Texas vs. Florida (most recent data 2007) but the difference is very similar. This means that the Texas alimony laws do not affect the poverty rate in Texas and thus the state assistance needed to support them. *IF* alimony laws were a factor ([90% of alimony is awarded male to female and 10% female to male](#)) then there would be a much lower percentage of males in poverty because the alimony payment ended, and a much higher percentage of females compared to males because they lost their support and were unable to rise above the poverty line.

Texas(% in poverty)

Male 17%:Female 20%

Florida(% in poverty)

Male 14%:Female 16%

* - includes Hispanic origin: Texas and Florida are identical with 15.4% of total population Latin or Hispanic within this White category

State of Florida vs. State of Texas (cont.)

History of Alimony Law-

Like the state of Florida, the state of Texas had no legislative direction to their dissolution of marriage. During the tenure of Ann Richards (1990-94), the present legislation we are proposing to mirror was created. Thus there is a successfully working 15 year legislative solution to guide us. A Democratic female governor helped create a spousal support legislation that limits alimony to a rehabilitative tenure of 3 years unless there is a disability that prevents the supported spouse from working. This indicates that the Texas law cuts across party lines and should be used as a framework for Florida.

Why Reformation is Needed:

Burden on the Payor

Permanent alimony creates an undue burden on the payor. Permanent alimony in the state of Florida can not be bankrupted, and modification for any reason other than permanent disability of the payor is nearly impossible. Practically, the amount of time a couple needs to be married has shrunk to a few as 13 years for permanent alimony to be a standard option to the payor. The following bullet points illustrate some of the problems created by this system:

- You were married 13-15 years... you are responsible for lifetime alimony
- Married at 22, divorced at 37... pay alimony until death (50+ years?)
- You will pay 35% of your gross income...so you can not retire until 67
- It does not matter if your ex-spouse is capable of working, you pay FOREVER
- It does not matter if your ex-spouse makes a good living wage, you pay FOREVER
- It does not matter if your ex-spouse was unfaithful, you pay FOREVER
- It does not matter if your ex-spouse abused drugs or alcohol, you pay FOREVER
- It does not matter if your ex-spouse abused you, you pay FOREVER
- It does not matter if you re-marry, you will pay the first spouse FOREVER
- Even if you are married the second time longer than the first, you pay FOREVER
- Don't pay your alimony, even if you don't have the money, you can be put in jail
- At 67, you will have your retirement garnished to fund your ex-spouse's retirement
- Like the IRS, you can not bankrupt your permanent alimony debt

1. Floridians must be able to end their marriage with a well defined goal of minimal intrusion by the state and that the intrusion has a well defined and reasonable time limit.

2. Alimony statutes must be limited in duration which will conform them with other family entitlements:

- a. The state only allows adult Floridians to receive unemployment compensation for 59 weeks
- b. Child support payments stop when the young adult turns 18 (less likely to have job skills that an older adult who in most cases had received a significant equitable distribution at the termination of the marriage).

3. All references to marital lifestyle and marital contribution must be removed from alimony statutes to ensure both parties receive equal protection under the law

- a. Florida is a no-fault divorce state. For better or worse, issues such as infidelity, abuse or falling out of love are private matters and not in the realm of the state. It is in the state's interest to keep a marriage together, but there is no impact on the state if alimony is rehabilitative. In fact, having another taxpayer working instead of living off the fruits of another's labor makes the state more productive. Permanent alimony removes all incentive to become productive and better themselves.
- b. Half of permanent alimony payers are the "victim" in the dissolution of the marriage. Thousands of payers of permanent alimony were not the ones that instituted the divorce. In a no fault state, that is irrelevant in the divorce but is the practical outcome of a permanent alimony structure that assumes that the primary wage earner should be punished for the remainder of their lives
- c. Loss of a large permanent alimony payment through marriage discourages the payee from marrying again. Permanent alimony also discourages the formation of new families by putting a permanent financial burden (35% of net pay) on the payor. This has led the Florida legislature to try and resolve cohabitation issues where the payee lives with, but does not marry their current partner (Siplin cohabitation bill 2005). Unfortunately, with a permanent alimony "duty", judges (without legislative guidance) are reluctant to end the alimony payments because there is no clear path to reassign them. The net result is that few cohabitation suits are allowed, and high court costs in the tens of thousands of dollars are incurred. The result is that the very thing that helps stabilize a state (marriage) is discouraged through the award of permanent alimony.

4. Unbridled judicial desecration must be removed from alimony statutes

- a. Criminal courts do not have unrestrained judicial discretion, why do civil courts? Convicted criminals have protected rights but not citizens who are only trying to dissolve their marriage.

5. Alimony must fall under the existing laws pertaining to monetary debt

- a. Alimony is an entitlement created by the state and treated as a duty of the primary wage earner to the other spouse. Because the Florida courts call alimony a “duty” and not a debt, they can incarcerate Floridians for failure to fulfill a court ordered “duty.” The Florida Courts thereby avoid the Florida Constitutional ban on imprisonment for debt (Art I sec 11 Florida Constitution). There is no limit or restraint on this incarceration.

6. Alimony must not be calculated or used to supplement a child support order

- a. Florida courts have been manipulating child support payments (lowering child support and raising alimony). This forces higher lifetime alimony payments with lower child support (terminated) payment. Codification of child support was addressed by Rep. Flores and her attempts to codify child support in 2009 (CS/HB 467 - Spousal and Child Support).

7. There is no compelling state interest for permanent alimony

- a. As previously discussed, permanent alimony discourages marriage. Further, if there was a compelling interest to the state, all marriages with a financial disparity in incomes would assign permanent alimony at divorce regardless of the length of the marriage. Further, since 70% of divorces are filed without the aid of an attorney, and those who dissolve their marriages amicably would be forced to assign permanent alimony due to an overriding state need. This is just not the case.
- b. Because all citizens have an equal opportunity for a job, there are no individual right infringements in a divorce that need state protection. Alimony was originally designed to protect the women in a job market where men had all the job opportunities and women were restricted from the board room and managerial positions. This is simply not the case in 2010. Rehabilitative alimony provides for those that need time to establish a career, and there should be no other obligations beyond division of assets and child support between former spouses.

8. There are compelling state interests for eliminating permanent alimony

- a. As mentioned previously, permanent alimony discourages re-marriage. Marriage being the foundation of a stable society, present laws are in conflict with this belief
- b. Further, if the former spouse receiving alimony engages in a homosexual relationship after dissolution of the marriage, there is ample evidence to challenge the Florida constitutional ban on gay marriages. Those citizens paying alimony to a former spouse when the former spouse is in a gay relationship lose their Equal Protection Rights in that they will never have the chance to be free of the permanent alimony since the former spouse is prohibited by the constitution from marriage.

- c. Encouraging personal development rewards the state with more productive citizens. Presently, it is not in the interest of the payer or receiver of permanent alimony to work harder. Payors of the alimony can have their alimony increased through modification at any time during their working life. Effectively this discourages the payor from becoming more productive since taxes and alimony increases (and the court costs associated with the modification) would take 50% or more of the increased fruits of their labor. The payee also is discouraged for the same reason. Their increased income could lead to decreased alimony payments.

In conclusion, the need for permanent alimony has passed. Cogent and logical arguments presented here show that not only is it not in the states interest to continue this practice, but that it is in the state's interest to eliminate it in all cases except where there is a physical inability to work. There is no evidence that eliminating permanent alimony will increase the financial burden on the state, and a compelling argument has been made that 2 people working to their full potential is more beneficial than 2 living off the fruits of 1 worker. Further, the discouragement of marriage that accompanies permanent alimony creates legal and moral problems that serve only to enrich the legal system with no legislatively defined outcome to go by. It is our argument that it is the job of the state legislature to pass an alimony reform law that ends this practice, and that the state of Texas provides us with a proven and time tested solution.