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SERVICEMEN AND THEIR FAMILIES

Eight bills have been introduced in Congress to overturn the U.S. Supreme Court decision in McCarty v. McCarty handed down last July. The holding in McCarty reversed a state court which had awarded up to half of a serviceman's pension to his divorced wife, as required by that state's family property law since they had been married 18 years.

Relying on the Supremacy Clause and the doctrine of preemption, the Supreme Court held that Federal military retirement statutes and state community property rights conflicted and that the Federal interests must prevail. This result was reached despite the fact that family property law is traditionally in the domain of the states.

The Supreme Court decision has been widely criticized. It is the only issue on which the feminist women's movement and the traditional women's movement are known to agree. So it is hard to understand why Congress is moving so slowly to remedy the problem.

This is not an issue of sex discrimination at all because both the statute and the Court ruling are sex-neutral. A servicewoman's divorced husband is treated just as badly as a serviceman's divorced wife.

But it is a matter of family discrimination. Those really hurt by the decision are the longtime wives who have faithfully followed their military husbands from post to post, and then are left in dire financial straits after he replaces her with a younger woman.

S. 888 introduced by Senators Dave Durenberger (R-MN) and Mark Hatfield (R-OR) and H.R. 3039 introduced by Rep. Pat Schroeder (R-CO) would set up guidelines for state courts to divide military pensions of personnel who have been married for at least ten years. H.R. 1711, introduced by Rep. Kent Hance (D-TX), would authorize compliance with state court orders.

S. 1814, introduced by Sen. Roger Jepsen (R-IA), and H.R. 4902, introduced by Rep. William Whitehurst (R-VA), also authorize compliance with state court orders, but those orders must comply with state law. These bills attempt to balance the state family interests with the Federal military interests.

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In his statement to Congress when he introduced his bill, Jepsen said that his "fundamental approach is to give state courts the right to deal with retired pay just as with any other family asset in accordance with the law of the state, while limiting that right only to the extent necessary to preserve legitimate Federal and national defense interests."

S. 1453 introduced by Sen. Dennis DeConcini (D-Az) authorizes compliance with state law, but does not authorize direct payment to the former spouse by the armed forces. S. 1772 introduced by Sen. Pete Domenici (R-NM) authorizes compliance by the armed forces with the requirements of state law.

Congress should hold immediate hearings to evaluate the different provisions and move with all deliberate speed to overturn the Court's wrong decision in McCarty.

At the same time, Congress should overturn another 1981 anti-family decision handed down by the Supreme Court in Ridgway v. Ridgway. This miscarriage of justice allowed a serviceman to evade his responsibility to provide for his minor children.

The Servicemen's Group LIfe Insurance Act of 1965 gives servicemembers the right to choose their insurance beneficiaries. As part of his freely negotiated divorce settlement, Ridgway agreed to retain his children as his insurance beneficiaries. Four months after his divorce, Ridgway remarried; six days later he changed the beneficiary to his new wife in defiance of the state court order; shortly thereafter, he died.

The Supreme Court let Ridgway get away with his fraud and breach of trust on the ground that the Federal law must take precedence. Yet, it was obvious that Ridgway was consciously evading his obligation to support his minor children.

The real problem posed by these cases is that the easy, no-fault divorce laws adopted in recent years have made it possible for a husband to walk out on his wife and children without financial penalties. Both McCarty and Ridgway provide new incentives to divorce because they allow a serviceman to evade his obligation to support his family.

The Supreme Court in both cases recognized the injustice of these results and expressly invited Congress to remedy the situations if it chooses. Congress should accept this challenge and move speedily to overturn both decisions.

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