

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
March 20, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, March 20, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://www.leg.state.nv.us/App/NELIS/REL/78th2015). In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Ira Hansen, Chairman  
Assemblyman Erven T. Nelson, Vice Chairman  
Assemblyman Elliot T. Anderson  
Assemblyman Nelson Araujo  
Assemblywoman Olivia Diaz  
Assemblywoman Michele Fiore  
Assemblyman David M. Gardner  
Assemblyman Brent A. Jones  
Assemblyman James Ohrenschall  
Assemblyman P.K. O'Neill  
Assemblywoman Victoria Seaman  
Assemblyman Tyrone Thompson  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman John Ellison, Assembly District No. 33

Minutes ID: 518



**STAFF MEMBERS PRESENT:**

Diane Thornton, Committee Policy Analyst  
Janet Jones, Committee Secretary  
Jamie Tierney, Committee Assistant

**OTHERS PRESENT:**

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts  
Caleb Harris, representing Disabled American Veterans; Veterans of Foreign Wars  
Russ Murray, Private Citizen, Washoe City, Nevada  
Vicky Maltman, Private Citizen, Sun Valley, Nevada  
Steve Sanson, President, Veterans in Politics International, Inc.  
Jeanette Rae, Private Citizen, Reno, Nevada  
Marshal S. Willick, Attorney, Willick Law Group, Las Vegas, Nevada  
Roger Harada, Attorney, Reno, Nevada  
Melissa L. Exline, Attorney, Surratt Law, Reno, Nevada

**Chairman Hansen:**

[Roll was taken. Committee protocol and rules were explained.] We have two bills to be heard. We will start with Assembly Bill 97 and Mr. Graham.

**Assembly Bill 97: Revises provisions governing wills. (BDR 12-505)**

**Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:**

Historically, if a will is prepared and the person dies, there is a directive in statute—*Nevada Revised Statutes* (NRS) 136.050—that says if someone is aware of the will and knows that the person has passed, he must deliver the will to the clerk of the court. That applies whether you are an attorney, the person's representative, or a family member. In that way, the court knows there is a will, which might be the will that ultimately is admitted into probate. Probate is another formal process where you petition the court to establish a case, and a process where debts are paid and property is distributed according to the will. Often what happens is that a will may not be admitted or probate may not start. The clerk then has the will in his possession.

There was a delay in working on this legislation.

**Chairman Hansen:**

The bill's sponsor has just arrived.

**Assemblyman John Ellison, Assembly District No. 33:**

I was tied up in meetings, but I am here today to help sponsor Assembly Bill 97. Assembly Bill 97 clarifies the law regarding when a will of a deceased person becomes part of the permanent record maintained by the clerk of the court. By becoming part of the permanent records, those wills become public records. I will give you an example. A father dies and the children believe that the father had a local attorney draw up a will, but the lawyer, as sole practitioner, has passed away. The children go to the county clerk of the court and request their father's will. Currently, the clerk can refuse to let the children see it without a court order. The law is not clear whether the deceased father's will is considered a public document under NRS Chapter 239. Mr. Graham will present the bill and the friendly amendment from the Supreme Court of Nevada.

**Ben Graham:**

The amendment that we are proposing ([Exhibit C](#)) is one that was worked out after considerable discussion with Ms. Robin Sweet, who is the Director of the Administrative Office of the Courts. She ensures public records and various other documents are available for inspection. As such, the will would not be described as a public record, but it would be available for inspection, whether the will is admitted into probate or not. The amendment that we are offering should be on the Nevada Electronic Legislative Information System (NELIS) and basically says if a will is delivered to the clerk of a court in accordance with NRS 136.050, subsections 1 and 2, it becomes part of the permanent record maintained by the clerk whether there is a petition for probate or the will is filed. As part of the permanent record, the will is open to public inspection unless there is a sealing process. It is a lengthy process, and I would guess that it would be very rare that a will is ever sealed.

What should not have been a problem was. We did a survey of the 17 counties, and the clerks were looking at it in 16 different ways. This bill is an effort to clarify that it is open to public inspection without any formal procedures. We worked carefully with Mr. Ellison and the people who brought this to his attention. There is only one other addition on the amendment, which appears on the third page and makes this effective upon passage and approval.

**Assemblyman Jones:**

Can you please describe what circumstances there are when the will would be sealed, and how does that occur?

**Ben Graham:**

It is under Supreme Court Rules, Part VII, Rules Governing Sealing and Redacting of Court Records. It is pages and pages, but it would require a petition. The chances of it getting sealed, which would frustrate the purpose of this legislation, are pretty rare.

**Assemblyman Jones:**

Can you just give a practical overview from your experience? I am not experienced in probate court. What type of things occur when they seal it?

**Ben Graham:**

We have not seen that situation where a will has been sealed. There is a process if it is necessary. There is also a process for unsealing it. It has been a lot of years since I served as a personal representative, so I do not recall the sealing process. I am sorry that I did not research that more carefully.

**Assemblyman Elliot T. Anderson:**

I was wondering about a technical thing in your amendment. It might be better to put "by Supreme Court rule" rather than specifically citing the rule in case the court changes its rules later. Was there a problem that I missed? I was wondering about the onus of the bill, or the reason for the bill.

**Ben Graham:**

There had not been a problem for a while, but then there was a case where a clerk or two were refusing to allow an attorney—without seeking a court order—to see a will that had been deposited according to the statute. That would be a very expensive and lengthy process. From further research, we discovered that the process was not really uniform as it should be. That is why we worked with these amendments. The rules are somewhat fluid, so at some time if there was a change it would be in the current rules. If a person did want to seal something, they could go to the rules that exist at the time.

**Assemblyman Elliot T. Anderson:**

I thought we could say Supreme Court rule rather than that part of it in case they change the way the rules are organized; it would be a technical thing.

**Assemblyman Ellison:**

The problem we have been running into in some of the rural areas is that the clerks are requesting that you get an attorney, go to district court and try to get on the docket, and then get back to the clerk. It is taking a lot of time and a lot of money. That is what this is: a cleanup bill.

**Chairman Hansen:**

Is there anyone who would like to testify in favor of A.B. 97 at this time? [There was no one.] Is there anyone in opposition at this time? [There was no one.] Is there anyone neutral? [There was no one.] It looks like a clean bill. We will close the hearing on Assembly Bill 97. We will open the hearing on Assembly Bill 140. Mr. Wheeler will do the presentation.

**Assembly Bill 140: Revises provisions governing certain domestic relations matters involving veterans with a service-connected disability. (BDR 11-519)**

**Assemblyman Jim Wheeler, Assembly District No. 39:**

Thank you for allowing us to come back and speak about Assembly Bill 140. As you know, we had an abbreviated hearing on this bill that got messed up and the Chairman has graciously allowed us to come back and re-present the bill. With me today is Caleb Harris, who will present most of the bill. I will be here to read the sections of the bill and to answer questions.

**Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War:**

I am here on behalf of the more than 13,000 veterans I represent as the Legislative Co-Chair for both the Disabled American Veterans (DAV) as well as the Veterans of Foreign Wars (VFW). I am also the chairman of the United Veterans Legislative Council, and I am here on behalf of the numerous veterans in our ranks. We are here to encourage the passage of A.B. 140. [Read from written testimony ([Exhibit D](#)).]

**Russ Murray, Private Citizen, Washoe City, Nevada:**

I am in favor of A.B. 140 and here to encourage your passage of this important legislation. Here is my story. [Read from written testimony ([Exhibit E](#)).]

**Chairman Hansen:**

I know I speak on behalf of the entire Committee when we sincerely thank all of you for your many years of service and the time spent on behalf of all of us. I want you to know that we most sincerely do appreciate what you have done, and I thank you on behalf of the Committee.

**Assemblyman O'Neill:**

Let me give you a hypothetical situation if I could. You have a person in the military for ten years. He has been married for eight or nine years, basically the whole time he was in. They have children together. The military personnel suffers some injuries and is medically retired out of the service. He receives

a disability payment. Since he did not do the 20 years, he does not get any retirement benefits if I understand correctly.

**Caleb Harris:**

He can, but that can later be waived in lieu of disability. Initially, he would more than likely get some type of medical retirement benefits.

**Assemblyman O'Neill:**

He gets the disability payment. They get divorced after nine years. Can any of that be used for child support? I understand the alimony would be protected, but how about child support or anything else that judges may come up with? I have seen judges be rather liberal in their interpretations of issues for awarding fees. That is what I think we are trying to address, is it not?

**Caleb Harris:**

I will defer that question to Assemblyman Wheeler.

**Assemblyman Wheeler:**

A lot of the misconception about this bill has to do with child support. If you read the bill, you will see that it says nothing about child support. The disability money is meant for the veteran to be whole again, but also to support his family. Once a divorce happens, the spouse is no longer part of the immediate family. The children are still part of the family. In *Rose v. Rose*, 481 US 619 (1987), a veteran was held in contempt for failing to pay his child support obligations. The question in front of the Supreme Court in Tennessee was whether his disability could be attached or included because of the United States Code. As it turned out, the veteran was held in contempt and that part of his disability was eligible for child support. There is case law throughout the country that says yes, even though it is not meant for alimony based on what the Secretary of the U.S. Department of Veterans Affairs (VA) has said. You can use it for child support and should, but not alimony. That is the misconception of this bill that the trial lawyers who make a lot of money off of divorces want you to think, but it is not true. It is in case law.

**Assemblyman Nelson:**

I have been reading all of these cases and all of the things from all of the lawyers, and I think I understand that child support is a totally different thing. We are not talking about that. We all agree that under the federal code disability payments cannot be attached, garnished, or levied. There is no question. The only issue we are looking at is whether a divorce court can consider that income as part of the entire picture when deciding whether to award alimony. Is that correct?

**Assemblyman Wheeler:**

As you said, we all agree that it cannot be attached. Therefore, it cannot be considered for alimony, but it can be for child support.

**Assemblyman Nelson:**

I think that is two different things. To say that it cannot be attached, that involves a creditor. The argument is that a spouse is not a creditor. The judge should be able to look at the entire universe of available money, not that the judge could ever take those VA payments away from the veteran and give them to the spouse, but they should be considered in the entire universe. If the VA disability payments are 90 percent or 50 percent of the entire community income, that should be considered. In the *Rose v. Rose* case—and I realize that was about child support—the court said that VA disability benefits are not provided to support the veteran alone, but to provide reasonable and adequate compensation for disabled veterans and their families. I understand that is distinguishable because it was child support, but that is the only U.S. Supreme Court decision we have on it, and the state courts seem to be split. There are decisions all over the board on this. I am not arguing with you as much as trying to understand exactly what issue we are looking at. I think this is a difficult, complex issue.

**Caleb Harris:**

I think the difference you are talking about is execution versus judgment. There is nothing that is going to be in place from the federal courts to implement how judgment is held out within the states in civil matters. The execution of the order, however, is if the judge makes the claim that this amount is to be paid, then they use that money as income to do that. Regardless of whatever judgment they come up with, they will never be able to actually execute it. If they cannot execute it, why should they be able to make the judgment in the first place on that particular money in the case of alimony?

**Assemblyman Nelson:**

I understand they cannot execute upon it. No one is arguing that. My point is this: we will say the disability income is \$2,000 a month, and the veteran is also getting \$1,000 a month from working part time. The spouse is also making \$1,000 a month. Are you saying that they are equal so there should be no compensation going either way?

**Assemblyman Wheeler:**

I see what you are getting at. What I am trying to get at is that we make those decisions; we make those laws. That is exactly what we are doing here today. What you said was that this is complex and you are right, but that is why

we are here. That is why they give us the big bucks. Are those two equal? In my eyes, they are. The original \$1,000 that goes to the veteran to help make him whole is the \$1,000 that may buy the ramp for the house or get him a different vehicle, or get him outside help for his post-traumatic stress disorder (PTSD). That is what it is for. Can he use it for his children? You bet, that is part of it. As far as the \$1,000 he makes on the side, if his wife makes \$1,000, according to federal law they are equal, and what we are trying to do is bring Nevada into line with federal law as other states are doing across this country.

**Assemblyman Elliot T. Anderson:**

At the last hearing on this, we were told it was straight codification of the federal law, but now it seems the intent is something beyond that. I was hoping you could get into that. I know some of this bill does codify federal law. *McCarty v. McCarty*, 453 U.S. 210 (1981), ([Exhibit F](#)), for example, gets into the fact that a veteran's benefits are not divisible as community property. Is your intent to go beyond codification?

**Assemblyman Wheeler:**

Our intent is not to go beyond codification. Our intent is to be in compliance, just as other states have done across the country.

**Assemblyman Elliot T. Anderson:**

Then I would have to say that I believe there are portions of this bill that go beyond federal law. If we are talking about a straight codification, I think there are a few of us that can get there, but I do not know how the new provisions would intersect with federal law so, that is something that I would be willing to work on with you.

**Assemblyman Wheeler:**

Thank you. We would like you to sit down with Mr. Harris and go over those. We would definitely be willing to listen to that.

**Assemblywoman Diaz:**

I just heard that the genesis behind the bill is for Nevada to be in compliance. Do we have case law that has been demonstrated time and time again that we are not complying with federal law?



**Caleb Harris:**

I do not have any case law in front of me, nor have I personally laid eyes on it. I do have an abundance of veterans coming to me explaining their stories. Granted, that is only one side of it and I understand that, but from the side that I am hearing, and I am talking specifically about disabled veterans who have no other income other than their VA disability or social security disability, they are having a large portion of their money being allocated for alimony. It is detrimental to their lifestyle. I do not have the actual evidence of those cases, but I can get them for you if you would like them.

**Assemblywoman Diaz:**

You will hear case after case; that is what these people are doing here. It has happened as you heard from Mr. Murray. As far as the numbers, we do not have those. We only have personal statements from people, and they will tell you what happened here in Nevada.

**Assemblyman Thompson:**

Before I ask this question, I want to say thank you all for your service. I see a few ladies here, but how many women are in this situation where the men are seeking alimony? I would like to hear both sides. I am not saying where I stand on this, but I would really like to know.

**Caleb Harris:**

There is obviously a differentiation as far as how many women and men are in the military. Predominantly, it would be a male issue, but I have had calls from female veterans that have difficulties with this. In fact, this is not in this state, but a personal friend of mine has custody of his children, but his wife's child support payments are being reduced based on his VA disability income. They are using his VA disability compensation as income to offset her child support payments. In that case, not only is he not getting child support as he should be, but the kids ultimately are suffering for it in this particular case.

**Assemblyman Thompson:**

Please clarify this for me because I thought in your opening remarks you said that this protection of disability income is exempt for child support enforcement.

**Caleb Harris:**

If everyone was following the rules, that would be the case. That is the reason we are here; to get everyone to follow the rules.

**Assemblyman Thompson:**

It is about alimony and not child support.

**Caleb Harris:**

That was just a particular case to show the income and how it could be used both ways. There was alimony in the beginning, but she does not get it any more. It was taken into consideration for her alimony in the beginning.

**Assemblyman O'Neill:**

When did the federal law go into effect? Out of these various cases that you have heard about where the veterans have been impugned by losing some of their benefits to alimony, how many have occurred since federal law went into effect?

**Caleb Harris:**

Military retirement benefits were divisible until overturned in 1981 by *McCarty v. McCarty*, at which time they became nondivisible and were not part of community property. Congress came out with 42 U.S. Code § 659 ([Exhibit G](#)), which overturned the judgment in *McCarty v. McCarty* that it was not divisible, and it said that retirement funds from that point on are divisible. However, in all of these processes and all of the case laws, none of them approached alimony alone.

**Assemblyman O'Neill:**

Basically, since 1981, it has been case law that disability benefits should not be considered in alimony. Is that what you are saying? We have a variety of instances where it has been considered, and that is why we need this law.

**Caleb Harris:**

Rather than case law, it is United States Code. It is a federal finding and we think, obviously, that federal code should dictate how that finding is spent. I do not know when the code was initiated. In the beginning, there was a portion of the retirement that was included and then excluded from being divisible and community property at some point. In 1981, it was overturned and was declared divisible, but only for retirement. It did not include VA disability. The VA disability compensation was left in the umbrella under Title 38, section 5301.

**Assemblyman Araujo:**

I want to thank all of our veterans here today. I have a warm heart when I see all of you here today because my grandfather is a three-Purple-Heart veteran for this country. Thank you all for the service that you provided us.

**Chairman Hansen:**

Is there anyone north or south who would like to testify in favor of A.B. 140?

**Vicky Maltman, Private Citizen, Sun Valley, Nevada:**

My husband is 100 percent service connected from gunshot wounds received in Vietnam lying in a rice paddy. His injuries have not gotten better; I knew that when I married him. I was not with him when he was shot. I did not have to spend the two years in the hospital that he did. Right now, we have a situation where we need some adjustments made to our home to help him. It is going to cost us \$800 each for the three estimates that the government requires. That is more than half of our monthly income. If I were to leave my husband today, I would never expect to get any portion of his disability. If you want to look at the retirement that he was eligible for, he might give me \$50 a month. I do not think it is my job or my intention to ever take anything away from him that makes him whole and keeps him going in his almost seventy-first year. He has dealt with his injuries for over 40 years. We have been together for 30 years. I do not see any reason—looking at federal law or case law—why his disability income should ever be considered in this. I have talked to a judge in Reno who feels that neither the woman nor the man—depending on who the money is coming from—can survive without a portion of it. He and I had a huge argument over this. I told him that he needed to read federal law. I know that he has ordered disability money for alimony. I do not know if that would be public law. I would not know how to determine who is a veteran. We have more female veterans coming home with PTSD, more female veterans coming home with injuries that their spouses may not be willing to deal with, and in no way should they ever have to give up a portion of the income they receive to help them with their disability.

**Steve Sanson, President, Veterans in Politics International, Inc.:**

My group has several chapters throughout the country and the world. We endorse candidates to elected seats, champion veterans' rights, and we weed out corruption. Our group does not mince words or play the political backstabbing. [Read from written testimony ([Exhibit H](#)).]

I would give up the money to be free of the pain and suffering. The chronic fatigue and migraines are crazy. Every time I come to Reno, I have to give myself a shot in the leg because the elevation causes the migraines. The only people who are against A.B. 140 have never served in the military or do not have service-connected disability benefits.

**Assemblywoman Fiore:**

I want to thank all of you for being here. When you get paid from the military for your disability, does your check break down your normal pay in one amount and then another for the disability? Is it broken down to where, if you got divorced and your wife was entitled to child support and alimony, is it possible to have those fees come from your base salary and not the disability portion? Is it broken down?

**Steve Sanson:**

I am no longer on active duty. The only thing I get from the Treasury is my disability benefits.

**Assemblywoman Fiore:**

I need to understand this. First of all, the father of my children served in the military, so I have the upmost respect for each and every one of you, and I thank you for all that you do. I want to understand. If you are disabled, is your whole check a disability check or do you have a base salary and then disability?

**Caleb Harris:**

Your whole check is a disability check; however, there is a dependent allotment on that. When you are married, you get a certain dependent allotment. When you are separated or if you are married and end up living in separate residences, that dependent allotment goes away. That in itself suggests that, when you are no longer married, he or she is no longer your spouse and should not get a portion of that money. Even the federal government takes that allotment for that dependent away from you. There is a small allotment within your disability, but it is all a disability check.

**Assemblywoman Fiore:**

Let us say that you are disabled, you get a disability check, you are divorced, and you have two children. You were married for 20 years and you have a 10-year-old and an 11-year-old child. Your spouse has never worked, she moves out with the children, and you live separately. How do you determine child support and support for her?

**Caleb Harris:**

There is an avenue through the law. It is not through the court system, but there is an alternative route to approach for attaching wages for child support.

**Assemblywoman Fiore:**

If we create this law and say that you do not have to pay support with your disability check, what is this other route you are talking about and how would it work? Would you be going around that law? How would that work?

**Caleb Harris:**

United States Code 38.5301 dictates that it is possible to go through the VA Secretary who has the right to do what you are talking about, and he is the only third party who can. Through this avenue, you would apply through the Defense Finance and Accounting Service, and they would make the decision what to do. If he or she is not taking care of his or her family, there are other avenues in place within the law to use to attach those specific wages through the VA system. We do not oppose that in any way, shape, or form. One of the reasons we have not addressed the child support issue is because that avenue exists. Child support is available in that realm; they make exceptions specifically for it.

**Assemblywoman Fiore:**

To be clear, you said when you are married and have dependents, your check allots for dependents. If the child is under 18 years old and you are separated or divorced, does your check still allot for dependents?

**Caleb Harris:**

I am sorry. Say it one more time.

**Assemblywoman Fiore:**

You said that the military allots for dependents on your check if they are under 18 years old. If you are divorced and your children are under 18 years old, does that check allot for dependents?

**Jeanette Rae, Private Citizen, Reno, Nevada:**

I am a retired veteran service officer for the State of Nevada. I also retired from the VA Sierra Nevada Health Care System. Where we are getting mixed up a little is that the military is not paying any of these benefits. It is the VA that is paying these benefits, which is disability and not income. It is disability compensation, and even in the definition in Title 38, it is not considered income.

**Chairman Hansen:**

We can talk after the meeting because we are getting off topic.

**Assemblyman Ohrenschall:**

You have a veteran who has a service-related disability and she and her spouse have been married ten years, but upon retirement, the marriage goes south. There are no children involved; it is a straight alimony issue. It is a messy divorce and during the proceedings the veteran decides to convert retirement pay to disability pay. She opts for that as a retaliatory move. Would the bill, as written, allow that to be shielded when the veteran chooses to convert?

**Caleb Harris:**

Yes. There is something in place already, and this bill would cover that. It would be U.S. Code 42, section 659, and it distinguishes between retirement and VA disability compensation. If a person has retirement and he waives it for a portion of the disability, the specific portion he waived is still taxable, garnishable, and divisible. In doing so, it reiterates the fact that there is an umbrella over the possibility of being able to hide the VA disability compensation there. They recognized the issue of veterans trying to hide the money in that manner, and that is why the Social Security Act included that code.

**Assemblyman Ohrenschall:**

To be clear, and in your opinion, would federal law preclude a veteran from trying to retaliate against a spouse by converting retirement pay to disability?

**Caleb Harris:**

Yes, sir.

**Assemblywoman Seaman:**

You stated that it is not income; however, it is still allotted for taking care of the family, for child support. You are eliminating the spousal support, which is still part of taking care of the family. I think that is where the confusion is for some of us.

**Assemblyman Wheeler:**

Only the disability portion would not be used for spousal support, and would not be available in the calculations for spousal support. You are talking about supporting the family, but, as you know, going through a divorce splits the family. It is not a family any more. The spouse is no longer part of that calculation; the children are.

**Assemblyman Elliot T. Anderson:**

I want to follow up on Assemblyman Ohrenschall's question because I am looking at section 2, subsection 2—which is on page 2—and it appears to say the court shall not "Indemnify a veteran's spouse or former spouse for any prejudgment or postjudgment waiver or reduction in military retirement or retainer pay related to the receipt of federal disability benefits . . . ." Unless I am missing the meaning of the word indemnify, that means the court cannot protect the spouse if Assemblyman Ohrenschall's hypothetical comes up. I understand what federal law says, but I believe this goes beyond federal law because section 2, subsection 2 speaks to the court. That means the spouse is not held harmless in my opinion. Could you please comment on that?

**Caleb Harris:**

I do not have the bill in front of me.

**Assemblyman Wheeler:**

The intent of the bill is not as you have just presented it. I want to make sure I read that into the record. Someone trying to escape alimony by converting is not suddenly disabled because he is getting a divorce. Obviously, the judge needs to have some discretion.

**Assemblyman Elliot T. Anderson:**

We can work on an amendment.

**Caleb Harris:**

Toward the bottom it specifically lists service-connected disability. I think the issue you were getting to was the retirement pay that may be waived in lieu of. Is that correct?

**Assemblyman Elliot T. Anderson:**

Whether it is a waiver or a concurrent receipt issue that the veteran applies for, disability benefits already have a judgment based on the military retirement pay. When the pay is reduced, that is a conversion issue for whatever reason. Whether it was done for legitimate reasons or for bad faith reasons, I still think that is an issue that potentially goes beyond federal law.

**Caleb Harris:**

We do not oppose what you are saying. If for some reason the verbiage portrays something differently, we can look at that. As far as I understand the intent, it is to make sure that just the VA disability compensation itself is protected. I also understand that sometimes retirement is waived and winds up falling under that umbrella, but they specifically outline that the money has been

waived even though it is coming out as VA disability compensation. The portion of the retirement that they waived is absolutely still divisible. It is not protected like the disability compensation.

**Assemblyman Elliot T. Anderson:**

When it comes to family law matters, the federal law would allow it, but this bill would preclude it. When it comes to family law issues, if we have permissible authority from the federal government and we decide to change it or not exercise the authority that they have given us, this bill does not speak to Assemblyman Wheeler's intent. I think you will want to take a look at section 2, subsection 2.

**Caleb Harris:**

I am going to defer to Jeanette Rae.

**Jeanette Rae:**

The military retirement is only received in addition to compensation when you are rated at 50 percent or greater. The ability to now waive your retirement in order not to have your income taxed only relates to those individuals who are rated below 50 percent. They are currently still subject to concurrent receipt where dollar for dollar your military pay is offset by your compensation. It only relates to those individuals. Anyone 50 percent or over is receiving all of both benefits, so it would be separate. The verbiage may have gotten a little confusing in the bill, and may not have been completely thought out.

**Assemblyman Gardner:**

Hypothetically, we have a disabled veteran who earns \$2,000 a month. He has a spouse earning \$1,000 a month. The court, by federal statute and by law, cannot take his disability pay, but what they are doing is awarding alimony and saying they cannot separate them. We cannot give part of your disability pay away, but, in fact, we are giving part of your disability pay to the spouse. Is that what this law is supposed to be fixing?

**Assemblyman Wheeler:**

That is exactly what this law is supposed to be fixing. As you know, sometimes you spin things a little bit. What we are trying to fix is when they say they do not touch the \$500 that you are getting for disability, but the other \$1,500 we will take two-thirds of. That is what we are trying to fix; that cannot be used in the calculation.



**Chairman Hansen:**

Is there anyone else who would like to testify in favor of A.B. 140 at this time? Seeing no one, we will open it up to opposition. Does anyone want to speak in opposition to A.B. 140 at this time? We will go down south first.

**Marshal S. Willick, Attorney, Willick Law Group, Las Vegas, Nevada:**

I have been studying military and divorce matters for over 30 years. I have written the textbook on the subject. I regularly teach the Judge Advocate General's (JAG) Corps and private practice lawyers everywhere. I have been highly involved in this issue for a very long time.

To make it clear, because there have been statements from people who do not entirely understand how things work, disabilities occur in all lines of work, in the public and private sectors, military, police, firefighters, teachers, et cetera. In all circumstances in family law, disability income that someone receives for a disability suffered is separate property. That has been the law in Nevada for over 50 years. It is always separate property. The question, however, is what a divorce court should do when people with all of the various circumstances that they might have present themselves before the court for the administration of justice. Family law should always be based on the truth. Those who put on the uniform swear to protect American values, and possibly the most important is equality under the law. The proposal as drafted—and I am familiar with the people who originally drafted it and why they did so—does not seek to achieve equal rights. It seeks superior rights, literally, a state license to lie, cheat, and steal: to lie to the court about what income they are receiving, to cheat the spouse and children they swore to provide for, and to steal postdivorce property already awarded to someone else.

To answer Assemblyman Gardner's question, the bill does two things and was drafted specifically to do those two things: to prevent the court from seeing the truth as to who is receiving what at the time that a divorce is in process, and to allow someone postdivorce to reach backward in time and recharacterize money already awarded to someone else as being in a different category. Therefore, they are taking it out of that person's pocket and putting it in their own postdivorce, blocking the ability of the court to do anything about it. There has, unfortunately, been some misinformation.

I have been copied on some of the submissions to this Committee, and there have been some personal attacks. Briefly, let me clear up some misconceptions of motivations or any allegations that spin. No attorney in the state of Nevada to my knowledge has done more for military members in family law protecting their legitimate interests than I have. In my private practice, I have represented many hundreds of military members, including now, in every kind of case.

I helped create the Uniform Deployed Parents Custody and Visitation Act, which this body adopted two years ago. It protects military members from having custodial decisions made against them based on their military service. I am a founding member of the Military Pro Bono Project. I found out last week that I have just been named the American Bar Association's Attorney of the Year for the amount of pro bono work that I do for military members. I am a participant in Operation Stand-by, which helps military officers throughout the world at bases all over the planet. I advise military members of their legal rights and responsibilities related to family law. Last week I helped a Marine in California. My father is a disabled veteran, and I employ two disabled veterans. I get the subject.

To answer Assemblywoman Diaz's question, no, there are no cases of veteran disability benefits being divided in divorce court. It does not happen. If it did happen, I would know about it because no one studies these issues more closely than I do. The *McCarty* case has nothing to do with the subject. It is irrelevant.

To answer Assemblyman Nelson's question, the only quibble I have is that courts are not all over the map on this. The case law is uniform. Unless the game has changed, unless the state chooses to rig the game, the cases are absolutely uniform throughout the United States. I have already supplied this Committee with a recitation of case law ([Exhibit I](#)) following *Rose* from all over the United States for the last 30 years. To the best of my knowledge there is no notable alternative authority. There is no authoritative expert opinion in opposition. All of the experts in the United States are in complete agreement on this subject. I know them all: they come from all walks of life, have various political persuasions, come from various states, and all of them are in full agreement on this subject.

It is important that the members of this Committee understand what this bill actually seeks to do. The first speaker quoted policy, but appears not to understand it. Disability benefits are not divisible, but a family court should always know the truth. A family court should always know who is actually receiving what dollars per month. It is the only way to do substantial justice to the people in front of them. The very first thing that this bill seeks to do is hide the truth from the court. The second thing this bill seeks to do is allow someone post-divorce to change the game, and that should not be allowed either. The United States Supreme Court has explained that child support and alimony are not attachments or levies. Everyone who knows the subject is in full agreement on that.

To answer Assemblywoman Fiore's question, yes, in many cases there can be both community property retirement and separate property disability payments going to the same person. Community property is divisible as property and the separate property is acknowledged as separate property income of the person who is getting it no matter why that person is getting separate property income, whether it is because of a military disability or a slip-and-fall at work or that person is a trust-fund baby. Whatever the reason that there is a separate property income stream going to a party, that information is before the court as a fact of the reality of the economic circumstances of the parties and it should never be hidden. There should never be a situation where the poorer person can be compelled to pay money to the richer person, or a party can unilaterally undo a court order by retroactive recharacterization. That is what this bill seeks to do. Apportionment is available under current law for both child support and alimony if a state court orders it. What the bill seeks to do is prevent the state court from ever being able to make the order. It is important for the Committee to understand what the bill actually intends.

To answer Assemblyman Ohrenschall's and Assemblyman Anderson's questions, yes, you have it exactly. The point of drafting the legislation the way it was drafted was to specifically allow for postdivorce recharacterization of what was a property allocation into disability after the divorce and then prevent the court from doing anything to protect the party who has been ordered to receive a portion of the property. That would undo existing Nevada case law.

Answering Assemblywoman Seaman's question, yes, all income is to be considered by a divorce court, from whatever source. That is the only way substantial justice can be done. I would be pleased to answer any technical questions as to what is really being done; what the law actually is nationally or in Nevada. It is important for the Committee to understand how it works before it allows anyone to alter the balance of equities and the ability of the court to do justice to the parties before it.

**Assemblyman Gardner:**

First, I disagree with your comments regarding personal attacks. Reading your opposition, all 28 pages, you called proponents of this bill "whack-jobs," "nut-jobs," "opportunistic reprobates," "snake oil salesmen," and "fanatics" among others that I read. I would call those personal attacks.

As far as the bill, go back to one of the examples you were talking about to put it in simple terms. A man is receiving \$2,000 in disability pay. His wife is a stay-at-home mom. If they get divorced right now, the divorce would look at both parts. What we are saying is that disability income is not divisible, so they

would then say that he has to pay a certain amount of alimony. Is that correct? Would that not be taking a portion of that disability pay, dividing it, and giving it to the spouse?

**Marshal Willick:**

First, in terms of the matter that you cited, that is an article from years before this bill was drafted having to do with people in another state. Those people threatened my life, threatened my family, and did not like the academic work that I had been posting, publishing, and teaching for the last 20 years and came after me, my office, my family, and my employees personally. I finally had to sue them to stop the death threats. It has very little to do with the people who are in this room right now.

Turning to the issue of the specific question that you asked, all income from all sources is considered in balancing the equities between husbands and wives. Let us suppose you have an unemployed spouse and the only income available to the family is disability income. Then, yes, it can be looked at. With due respect to Assemblyman Wheeler's comment, just because you choose to divorce does not lessen the status of your spouse as family. That is how the court can apportion matters to make sure everyone stays alive. There is the published case from New Hampshire a couple of years ago which is on point. The disabled military veteran was receiving several thousand dollars a month in disability income. The spouse, who was also totally disabled, had no income of any kind other than food stamps. The effect of this bill if passed would be that the only thing the divorce court would be able to see or could take knowledge of is the food stamps. In that circumstance, the military member would keep the several thousands of dollars a month. The spouse would get half of the food stamps, and the other half would be given to the military member in addition to the several thousand dollars a month. The spouse would starve in the streets. That is the intent of this legislation and the reason it should not be passed.

**Assemblyman Gardner:**

That means, in the hypothetical I put out there, the court would be able to look at the disability benefit and would be able to give a portion of that to the spouse. Is that correct?

**Marshal Willick:**

I am sorry if I was unclear. No. The benefits themselves are nondivisible. There is no property interest for the spouse. The fact is, one party has several thousands of dollars a month in income and, despite what anyone in this room says, income is income is income. It does not matter how it is labeled or what it is called. If you are receiving money on a monthly basis, from any source, for

family court purposes it is income and is to be taken into account by a court in figuring out how to keep everyone alive. There are never sufficient resources in these cases. In that circumstance where one party and only one party has several thousands of dollars of disability income, the court cannot divide that benefit but can order spousal support payments if otherwise justified under law. Support, whether it is child support or spousal support, is part of the core function of the family court, part of the divorce court's reason for existing. The discretion of the judge to be able to provide for the survival of everyone involved should never be taken away. In this circumstance and under Nevada law, child support guidelines would be a couple hundred dollars a month. If the person who has custody of that child has no income, both that person and the child would be on the streets.

**Assemblyman Elliot T. Anderson:**

I want to talk about Assemblyman Wheeler's intent, which was codification. I was hoping you would give us your opinion on what portion of the bill codifies and what portions of the bill go beyond. My reading is that section 2, subsection 1, codifies as it relates to disability and being divisible for purposes of community property. Beyond that, I am struggling to see where it codifies. Can you give us your opinion?

**Marshal Willick:**

There is no portion of this bill that intends to codify or does codify federal law. Existing federal law is quite clear and, to my knowledge, is applied everywhere in the state of Nevada. I know of no contrary cases; none have been brought to my attention. I have a significant appellate practice, so if there were such cases, presumably, people would be seeking me out to challenge them. None have ever been brought to my attention. In section 2, subsection 1, the somewhat surreptitious word is "consider." The point of the legislation is not to prevent the division of disability benefits, which is already prohibited under both state and federal law. As I said, disability—whether it is military, police, fire, state, private sector—is all separate property; it is nondivisible as community property by definition of Nevada law. This seeks to block the court from ever knowing that someone is receiving the money in question. If that party is making \$3,000 a month in disability and both parties have \$1,000 in income, from the court's point of view—and the proponents admitted this—they want that money to be invisible. They do not want the courts to know about it. They want the court to falsely believe that he has \$1,000 a month to live on, and she has \$1,000 a month to live on, when the reality is that it is \$4,000 to \$1,000.

**Assemblyman Elliot T. Anderson:**

I am trying to understand how the bill, as written, would technically work inside a family law context. I would imagine that you have to disclose everything when you go into court. This bill does not seem to operate that way. It seems to say that you disclose everything coming in and the judge just ignores it. Is that how you see the bill operating, or would you read this to not disclose at all upon going into family court?

**Marshal Willick:**

Yes. This would prevent disclosure or the court taking any knowledge of it. I do not know whether it would be on the forms and then ignored, or not be on the forms at all. I am not sure that makes any difference. In the one place where this has actually been litigated, Arizona, where the genesis of this bill comes from, an opinion that came out in 2011 interpreting this legislation says,

We are not unmindful of the troublesome fiction created by (the legislation) requiring a court as (the spouse points) out to "pretend" the 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 that is precisely what this 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.

The intent of the legislation—and that provision is identical to this provision—is to prevent the court from seeing, knowing, acknowledging, or using the truth.

**Assemblywoman Diaz:**

We have been focusing a lot on the perspective, or the assumption that, when there is a divorce proceeding, the spouse usually wants to take money from the veteran. I want you to share the other side. I am sure there are instances where the spouse is independent and has her own income. If this law were to go into effect, in those situations where the spouse does not need to be financially supported and the veteran does not have as much income as the spouse, will this law block the veteran's disability income from being contemplated in the equation and would that spouse have to pay more alimony?

**Marshal Willick:**

Precisely. If the spouse had an independent income of \$2,000 a month and the military veteran was receiving disability income of \$2,000 a month, this would make the \$2,000 that the veteran is receiving invisible to the divorce court. Under this legislation, the military veteran would be able to say that the only income the court is allowed to acknowledge is the \$2,000 a month that his

spouse receives. He could say, "I want half of her income because it is necessary for my support, and you are not entitled to consider the income that I am receiving as a reason why I should not have it." In other words, this legislation can easily be used, not just as a shield, but as a sword.

**Assemblyman Nelson:**

In the hypothetical situation that you were talking about, and let us say the veteran is getting \$2,000 a month in disability and the spouse has no income at all—like the New Hampshire case but without the food stamps—the way the law is right now is that the disability income would not be divisible or attachable. Correct?

**Marshal Willick:**

If I understand your question correctly, it is not divisible or attachable, but it can be considered as income going to one of the two parties in the marriage.

**Assemblyman Nelson:**

It can be considered, but it cannot be taken by the court. The court could not order that the veteran pay any of that to the spouse.

**Marshal Willick:**

That money is not specifically identified. The point is that the court takes into consideration the full panoply of both parties' financial circumstances. If one party has \$2,000 per month and the other party has zero dollars per month, then, yes, a spousal support, alimony, or child support order can be made based on the reality that one party has more money than the other party from a separate property source.

**Assemblyman Nelson:**

I understand that, but what I am saying is if the entire universe of money is that disability payment, I thought you said that everyone agrees that it is exempt. The court will not order the veteran to pay any of that to the spouse even though it could consider it.

**Marshal Willick:**

That money is not specifically divisible. Again, we have to separate what is property versus what is support. A support order is nonspecific as to the source of the funds. It simply says that you, sir, for whatever reason, have whatever money you have and this person does not have money. You are ordered to pay this person some money for support of either spouse or child. It does not make any difference why that person has that money, or whether the source of that money was a previous community property source or a prior separate source. The reality of the situation is that one party, and only one

party, has any funds at all; the other party has nothing. The only way the court can prevent someone from starving in the street is to order one party to support the other. That is part of the function and purpose of the divorce court's existence.

**Assemblyman Nelson:**

I understand that, but I thought the disability funds are not available. The court could make a support order, but it could not enforce it against disability funds. Is that correct?

**Marshal Willick:**

No. That is not correct. That was the point of the *Rose* case and the fifty cases that I gave you in the legal note analyzing the law of alimony following up on the *Rose* case.

**Assemblyman Nelson:**

I probably used the wrong word. Let us focus on alimony; forget child support. It is my understanding that—notwithstanding the *Rose* case which was a child support case—if we are just talking about alimony, the court would not force the veteran to use disability payments to pay alimony.

**Marshal Willick:**

The court does not force anyone to turn to any particular source. The reality is that, if the only money in the possession of the party happens to have come from disability as opposed to any other separate property income source, the party will use that money or will get other money. It does not make any difference for the purposes of family law why a party has funds. The point to the family court's order is that one party has resources and the other party does not. That court's charter is to make sure both parties survive. It does not make any difference where the money came from or why the money is in that party's possession. It is not an attachment for a levy. That is what the lay people who testify do not understand. A spouse or a child is not a creditor, it is not an attachment for a levy. When the United States Supreme Court said it is for the support of the veteran and his family, they mean the people who are before the divorce court. That is existing law.

To answer a question that was asked earlier, this did not come from 1981; this has been the case for over 60 years. The federal provisions in question go back pre-World War II, and they have simply been recodified over and over. This is the way it has been for a very long time. Disability awards, whether military, private sector, or state, are separate property, but they are income. It is figured by the court and by court order if necessary for enforcement for contempt if a party with resources refuses to obey a court order to support a spouse or



a child who has no resources. That is the purpose of the courts having the power to enforce their orders, but part of this legislation is to prevent courts from having that authority.

**Chairman Hansen:**

Is there anyone else down south who would like to testify in opposition at this time? Seeing no one, we will come back up north.

**Roger Harada, Attorney, Reno, Nevada:**

I believe we are going to go in order.

**Melissa L. Exline, Attorney, Surratt Law, Reno, Nevada:**

We are working together on this, and I want to start with where we agree. I am not here personally to spin anything. I am just an attorney who goes on both sides of this issue. If you had ever told me that I would be sitting in a room with a lot of veterans behind me—given my upbringing—and that I would be here to technically oppose something they were proposing, I would not have believed you.

**Chairman Hansen:**

You might want to give us your background. Some accusations have been made that people who oppose this bill are people who have no interest in veterans. Put this on the record.

**Melissa L. Exline:**

I testified very briefly from Ely when we had a short time to speak. I have not served, and I am not going to pretend that I can stand in the shoes of a veteran. My father served in the United States Army for 23 years. Most of that time was spent in the Special Forces—Green Beret—and I understand that he served five tours in Vietnam voluntarily. He retired as an E-8 master sergeant. I can see this issue as a daughter of the spouse who was married to that veteran, as well as the daughter of a veteran. I am here as a family law practitioner who can look at and appreciate both sides of the issue. I do appreciate the service of our veterans.

Protecting our military service members is extremely important, and we strongly believe common ground exists related to A.B. 140. Common ground means we agree on keeping in place that service disability should not be garnished, seized, or levied; that is the law. In speaking with Mr. Harris prior to this hearing, we agreed that the *Shelton* case [*Shelton v. Shelton*, 119 Nev. 492; 78 P.3d 507 (2003)] should remain intact. With that common ground as we look at some of the nuances of A.B. 140, we talked through the various issues that can take

place as the bill is written today. Starting from that common ground is important because judges make mistakes, and we can help educate them.

There are very specific factors that the courts must consider when they are looking at alimony. It says, under *Nevada Revised Statutes* (NRS) 125.150, that the court shall consider the financial condition of each spouse; the nature and value of the respective property of each spouse; contribution of each spouse to any property held by the spouses; duration of the marriage; income, earning capacity, age, and health of each spouse; standard of living during the marriage; the career before marriage; any specialized education or training or the level of marketable skills obtained by each spouse during the marriage; contribution of either spouse as homemaker; the award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony; and physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse. When you look at these factors—and we have not delved into these specific factors—one of the words that has been bantered around quite a bit today and there has been a lot of discussion on, is what the court shall consider in looking at the issue of alimony versus the ability to execute, levy, and tap a specific disability award. What does that mean? The alimony factors were lengthy. These issues already weigh in favor of the veteran if, in fact, the court is doing it right.

That is where we have common ground. We want to ensure that veterans with service-related disabilities are potentially given their due and acknowledged. We do not want to do it the wrong way. When I am talking before this body about not doing it the wrong way, I am talking about some of the odd scenarios where we might be improperly pretending like an asset does not exist. I do not want to delve into some esoteric mundane minutia of all of these various factors, but there are odd situations that can be created that I do not think we want to create in Nevada. I think we recognize that service members offer a lot and, often, so do their spouses. The spouse can be a huge support system for the member of the military who may be deployed or out in the field providing for his family. Sometimes they are the unsung heroes in these deployments because they are there for their spouses.

I do not know the nuances of why one particular couple may or may not get divorced. We have a no-fault state. The reality is when you balance the alimony factors the correct way, the likelihood that the VA disability or any of the service-related disabilities are going to be tapped is probably lower because that veteran is coming to the table with a disability. He or she has less ability to work and make a living. It is not about going after the money that the veteran needs to live on. I want to make that clear. I do not have a dog in this

fight. I do not necessarily want to make it so that there is a situation that the service member who needs that money to live on cannot, but we do not want to have it the other way either. When a spouse has these factors weighing in their favor, a court might say that there is \$3,000 on this side of the equation and there is hardly anything on the other side. It is the right thing to do to possibly contemplate that this is the only reality that exists for this family in front of me. I am saying to this body do not hamstring the courts, let them make the right decisions. We have to do that in a full and fair way, and I think the specific questions that have been asked highlight the body here and that this Committee understands the issues. We are here and ready to talk through the issues in a hypothetical that highlights the issues very specifically. We are here to make it known that there is common ground on this bill, and there are things that can be done to fix what we perceive as oddities in the way the bill is written and to talk through those in a meaningful way.

**Roger Harada:**

I am speaking on behalf of myself as a family law practitioner and a veteran. I can tell this Committee with complete honesty that I have no agenda to go after the veterans in any unfair way. I do not believe the legislation being proffered is fair. That is why I have come before you to speak against it.

I am the middle generation of three generations of Harada men who have served in the United States Army. My father served in World War II. He got to the war late, so fortunately he did not see the action that he might have seen when he was initially assigned to the 442nd Regimental Combat Unit, which is the most highly decorated combat regiment in U.S. Army history. He is Japanese American and was initially interned during World War II. His whole family was displaced from their farm in California to an internment camp in Colorado. The entire time that I knew my father—he died some years back—he never spoke ill against his country or being interned. He just did not talk about it or the war.

I served in the 1980s during the Grenada campaign, so I am not really a war veteran. I served for four years in military intelligence and was a paratrooper. I served my last 15 months at Fort Bragg jumping out of planes and making myself shorter than I was before I joined the Army.

My son, Ken Harada, served for five years recently. He was an infantryman and served for a year in Afghanistan. He was in a vehicle that was blown up by an improvised explosive device (IED). Fortunately, he was able to escape from it relatively unscathed. It was a vehicle designed to withstand IED attacks. His fellow troopers did not fare as well—one of them lost his leg—but none of them died. It was an interesting call that I got from the Army. The first thing

out of the Army representative's mouth was that my son was all right. It was interesting. A few days later I heard from my son who let me know that he was okay.

The last thing I would ever want to do is to have my testimony hurt veterans. I want to make that clear. My veteran's benefits paid for my education. I was able to go through undergraduate school and even save a little for my first year of law school. I got veteran's benefits during that time that helped support me, my wife, and my two children while I was going through law school, so I am very grateful for my benefits which enabled me to have an education to speak intelligently about what is going on here.

I have been practicing law for 20 years, and 12 of those years have been almost exclusively domestic relations—family law. In my 20 years of practice, especially the last 12 years, I have never had a client or heard of an opposing party ever say they love paying alimony. Nobody loves paying alimony. It seems to be a divisive issue in family courts. What is going on here is one thing and one thing only, and I do not want any of you to misconstrue this. I do not believe this group of veterans speaks for every group of veterans. This group of veterans in support of this legislation is doing one thing and one thing only, the one thing they do very well—go to war. I am very proud of their service to our country, but they are going to war on alimony. Do not make a mistake about it, no one likes paying alimony and none of these people here want to pay alimony, and frankly, I do not blame them. If it ever comes down to me getting divorced and I have to pay alimony, I will not like it either. But the reality is that all income should be considered in the analysis by a judge in determining alimony.

To make one thing clear, and to distinguish myself from Mr. Willick, who is a very esteemed colleague of mine and a friend and mentor—I have learned so much from him—I personally have never benefited by going against a veteran where that veteran was ever assessed increased alimony because they get VA disability benefits. I have never had a case like that. I have no agenda when I say there are problems with this law.

You may have previously been given a hypothetical ([Exhibit J](#)), maybe electronically. That hypothetical is a little off as to the numbers. In this hypothetical, the inequities of what this law intends to do speaks very clearly. Let us make no mistakes about it, A.B. 140, especially subsection 3, seeks to legislatively reverse the Supreme Court of Nevada's decision in *Shelton*. *Shelton* is a case that has been mirrored in many other states, at least a dozen that I can think of. It is meant to address the inequities created that are

highlighted in this hypothetical. In this hypothetical a service member and a wife were married for 23 years. [Read from written hypothetical ([Exhibit J](#)).]

The husband made a claim with the VA for disability and ultimately received a 40 percent disability rating resulting in \$587 a month in disability compensation. Since it was 40 percent, I want to make it clear that this particular hypothetical only applies to cases where the rating is 40 percent or less. If the disability rating is 10, 20, 30, or 40 percent, this happens. If a veteran gets a disability rating of 50 percent or higher, what happens is what I believe truly happens in all cases. This is where I am on the veteran's side because the war should not be occurring here; it should be occurring in Washington, D.C. In a case where veterans get over 50 percent, that benefit is added on top of their retirement if they get retirement. Like a personal injury action, if anyone were run over by a car by someone being negligent, and you received money for that personal injury action, that would be your separate property under Nevada law. [Continued to read from written hypothetical ([Exhibit J](#)).]

I am going to set aside the obvious disparate impact on women because of the nature of the military service equal protection argument and try to give you three quick hypotheticals on why this is unfair, absurd, and impractical. Two wives, in identical situations, were married to retired military. The veterans get the same amount of money. One veteran's spouse gets disability and the other one does not. The money is the same. The wife who is married to the nondisabled veteran will get less money. That is problematic.

Two Nevada doctors went to the University of Nevada Medical School. One went into the service and gets VA disability, while the other had private disability insurance as a benefit from his hospital. Both of them have the same injury and receive the same amount of money. The doctor who is not a veteran will pay more alimony because this law says the doctor who is a veteran does not have that extra income.

There were two men, one a veteran getting VA disability and one who received a personal injury award and is not a veteran. Personal injury awards are separate property. The person who got the personal injury award, which is compensation for a loss, is going to pay more alimony in the same situation than the veteran because this law says we have to ignore that income.

What I am trying to point out is how this legislation is absurd and unfair. The law in the State of Nevada under *Shelton* says—we do not need to codify federal law because the *Shelton* case states what federal law is—disability benefits are not community property. It cannot be divided and cannot be taken

or attached; federal law precludes it, that is the law. What this legislation seeks to do is to put a blindfold on a judge and say this income that you receive cannot be considered for alimony purposes. Assemblyman Nelson's question earlier hit it on the nose: all this law is trying to do is take away the disability income from alimony calculations. Assembly Bill 140 attempts, in a very broad stroke, to put a blindfold on our district court judges. Justice should be blind, but our judges should not be.

**Assemblyman Gardner:**

If you take the same hypothetical regarding retirement, but instead of it being recharacterized because of a disability, we will say the VA screwed up and they were giving him too much. I have seen this happen where the VA says they were giving you \$1,200 a month but should have been giving you \$800 a month. How would the court deal with that now, where the money from the VA went down? Would the veteran who got his retirement reduced still have to keep paying what was put in the divorce?

**Roger Harada:**

No, because of the change of circumstances, he would have grounds to reduce the alimony award. If his income is down, that has to be readjusted just as in a child support case. If you were paying child support and all of a sudden you lost your job—and you are not making the same amount of money—you could go back to the court and tell them that you are not making the same amount of money and your child support should go down.

**Assemblyman Elliot T. Anderson:**

I want to get into how alimony works. Are any other sources of income not considered by a judge now? Are you aware of anyone having to pay alimony indefinitely? My understanding of alimony is that, generally, it stops after a spouse has time to get her career back on track. If she was a homemaker for a while after giving up her career, that is not an indefinite benefit is it? It is not like child support that goes until the child is 18 years old. Do you know the average time an alimony award lasts?

**Melissa L. Exline:**

The court generally looks at all sources of all assets. Right now as it stands, this law does not clearly address disclosure, but it would likely be disclosed. From there, the court would have to act like the asset did not exist. That is a separate issue. With respect to alimony, there are a couple of types of alimony: rehabilitative alimony and a long-term alimony. Nevada does not have a formula like other states—California for example—where you plug in the information and it spits out a number. We have factors that the court shall consider in addressing what makes sense for an alimony award.

The rehabilitative alimony looks more to the issue of what the cost of reeducation, school, getting back on your feet, and is it going to take a year or two to do that. It is very fact specific. The way the statute is written, it gives the court flexibility to address it. I would say there is no rule of thumb per se, but many practitioners think if you get 25 percent or a third, that is the ballpark that alimony lands in generally speaking. It can eke up higher depending on the case and the specific instance.

**Roger Harada:**

I would like to answer the question also and involve Mr. Willick. I know of no circumstance where there is any kind of income that will not be considered by a court. The only case is *Metz, Metz v. Metz*, 120 Nev. 786 (2004), that distinguishes between Supplemental Security Income (SSI) and Social Security Disability (SSD), but I think that is for property purposes. Mr. Willick, do you know if SSD is a type of income that cannot be considered for alimony? I do not think it is.

**Marshal Willick:**

Yes. The *Metz* case makes a distinction between SSD and SSI. They are two different kinds of federal benefits and the program of SSD indicates that it is different from SSI. One of them is considered and used as income from any source for Nevada child support purposes and the other is not. *Metz* was a child support case and not an alimony case. As I tried to make clear earlier, child support and alimony are analyzed identically in terms of what is and is not before the court. Anything that would not be income under federal law for child support purposes would also not be income for alimony purposes. The case law that I submitted to this Committee indicates that military disability benefits are an entirely different category. They are not SSD; they are not SSI. There is a specific federal law which sets these benefits up and every single known federal and state case analyzing it properly has indicated that they are to be considered for both purposes.

**Assemblyman Elliot T. Anderson:**

Part of my question was answered, but I am still waiting for the average time that you would expect an alimony award to continue.

**Roger Harada:**

There is no fixed formulary approach to alimony. Alimony is really looked at by the judges as needs and ability to pay.

**Assemblyman Elliot T. Anderson:**

I understand that. I am looking for anecdotes.

**Roger Harada:**

As a general rule, we are talking about a marriage of some substantial number of years, typically at least four or five years. The more years, the more likelihood there would be alimony if there is a disparate opportunity to earn income. Generally speaking, I have found the courts fall somewhere in the ballpark of one-third to one-half the number of years of marriage. If you have a 20-year marriage, alimony will probably last around 10 years. There are exceptions.

**Assemblyman Jones:**

To me, it seems there are two viewpoints of fundamental fairness. The veterans believe if you have a disability, that is something that cannot be taken away. If they could give it back, they would be willing to, but they cannot. You believe, on the other end of the spectrum, that it does not matter that they have income that needs to be split so the spouse gets a percentage of it. In your analogy you said there were two people in the military for a number of years. One has a disability and the other does not. The wife whose spouse has the disability, under this law, would not get it. Would it not be in your analogy that the disability would be on top of the retirement? If there are two servicemen and one gets injured so he gets disability, would not his money then be, say \$1,000 plus \$500 for the disability, and the other one would just get \$1,000? Your analogy is not true to character, is it?

**Roger Harada:**

If his disability rating is 50 percent or more, then it is a bonus, as it should be in all instances, like a personal injury case. If I were a victim of a personal injury case and I got an annuity for that injury, that annuity would be considered by the court in determining alimony because that was income to me even though it is compensation for personal injury. There is a distinction between community property and income. The problem with the legislation is that it is trying to blur that distinction and I am trying to clarify it. In both cases, the disability and the personal injury award would be separate property, but they would still be income. In your hypothetical, if the veteran has a rating of 50 percent or over, it is additional income. The reality is that the veteran has more money and, therefore, there is a possibility in those two circumstances that the veteran would probably pay more spousal support.

**Assemblyman Jones:**

The truth is, if there is a disability of 50 percent or more, it is on top of what the retirement would be. The veterans would still have to divide the retirement, but the disability—my leg is missing, or I have huge migraines that prevent me from working—money is so they can function or be recompensed for that specific disability, not the retirement. That is completely different.



Your analogy was trying to say that they are bunched together, but they are not really. Your fairness is saying that it does not matter that they have a disability, that is just more income that they have so they should divide the bigger pot. Although you cannot specifically attach the disability income, they still need to divide the bigger pot. Fundamentally, do we believe it is fair if someone has a disability that is paid to them that it should be considered for their use only, or the money is part of a big pot, so let us divide it?

**Melissa L. Exline:**

I think you are zeroing in on the issue pretty clearly. The hypothetical that I would propose is that you have two spouses and one is a police officer and the other is a military service member and they are both injured. They both get shot in the line of duty. They both have a disability. As this is written, they are both getting \$2,000 a month from their disability, but one is not considered at all by the court; it does not exist. The other is considered by the court, even though they are both disabilities. There is a fairness issue on how that is looked at. I want to make it clear that we are not saying at any point that the disability should be taken. Whether or not an alimony award is given is fact specific and based on need. The need goes both directions. If the veteran or the military service member has need for that money, and it is eaten up by that need, the court should do the right thing and not give that money over in any way, shape, or form. The intent is to give some protections and to do something good for the veteran. When you have two potential disability positions before a court, the way the bill is written, one exists and one does not; one can be considered in the broad scheme of what can and should be considered, and one is not. We can see the situation that creates a lopsidedness. In trying to do something potentially good for a veteran, we may create an odd situation where we have the nonveteran bearing and shouldering more of the burden than is appropriate under the circumstances. That is the concern that we are coming to the table with. We want to make sure the Committee understands that we are potentially and needlessly blindfolding the judge because we are concerned that they will overstep. If the improper cases come down—and I will not say that does not happen—we are legislating for that fringe element. The way the alimony factors are written, it addresses the situation and does not make it so that we should do that in this case.

**Assemblyman Jones:**

You gave your analogy outside of the bill. First of all, we were talking about veteran versus veteran and now you turned it into veteran versus police officer. That is completely different. We are not dealing with police officers; we are dealing with veterans right now. If you want to sponsor a bill for police officers, we can discuss police officers. Right now we are dealing with veterans so I addressed the specific veteran-veteran, which I thought was

inauthentic because you were using facts which do not really characterize what is going on, and that is why I tried to address Mr. Harada. To change to something else is inauthentic, as well. That was what I was trying to get to, the authenticity of the actual analogy. The question was not really answered.

**Chairman Hansen:**

We are getting out into the weeds on the hypotheticals. Let us go back to Assemblyman Anderson for one more quick question.

**Assemblyman Elliot T. Anderson:**

My concern is similar, and I do not know every factual situation that comes up. There is a clear rule of law that says disability benefits are not divisible. However, the court is forced to make a division of property under the law because we are a community property state. Alimony, as it is now, is already discretionary and is not ordered in every case. It is harder to make a clear rule of law and say you cannot consider certain facts when it is discretionary in the first place. My concern is what happens in a situation that we have not contemplated. It is hard to put ourselves in the judge's place as we can see here while talking about hypotheticals and trying to get our heads around it. Traditionally, the trial courts have been given the discretion to consider the facts. I feel like we are saying that they can consider some facts but not others. This is where my worry is. I want to try to get there and work with Assemblyman Wheeler, but we have to ensure that the court has some discretion, otherwise we are opening ourselves up to the unknown.

**Chairman Hansen:**

Is there anything absolutely new that you have to add?

**Roger Harada:**

I wish to follow up because I would have answered the question slightly different. I want to speak to what Assemblyman Anderson was saying. I can tie that up. What I am talking about and trying to emphasize is the concept of equal protection. Essentially, equal protection should be two people similarly situated coming before the court with identical situations and being treated the same. When they are treated differently, that is unfair. I do not think it is an inappropriate analogy that Ms. Exline used when she gave us the situation with a veteran and a law enforcement officer. They are both getting disability for being injured in the line of duty, yet the law enforcement officer is going to pay a greater amount of alimony because his disability income is going to be considered by the court. This legislation would render the judge blind to this veterans disability income. What Mr. Willick was trying to say earlier is that A.B. 140 seeks to give the veterans this extra special treatment that nobody else gets. That is what is problematic about this law.

Equal protection is an important concept. At one point in time, we used to treat two men similarly situated differently, and it was legal to do so for one purpose and one purpose only. The depth of pigmentation of one person's skin being darker and deeper meant that they would be treated differently. That is when equal protection was used to strike down those kinds of laws. I am of the belief that equal protection would be used to strike down this law. There is a very real reason why cases like *Shelton*—and there are a lot of cases around the United States just like it—have been appealed to the United States Supreme Court and certioraris have been denied. Contrary to what was alleged earlier, California has not adopted, as far as we know, any similar legislation. Mr. Willick has not been able to find it and neither have I. Two states, Wyoming ([Exhibit K](#)) and Arizona ([Exhibit L](#)), have passed legislation somewhat similar to this. In Arizona, their law is unique in that it is simpler and not such an attack on alimony. I have looked at the case law in Arizona and they have had four appeals of that piece of legislation where it has been argued that this particular piece of legislation would be applied. Two reported decisions and two unreported decisions, and in all four cases the Supreme Court basically ruled against the legislation. Reading between the lines and reading those cases, I think the Arizona Supreme Court is looking for a case where they can point out the equal protection problem and strike the legislation down. I would think it would be a waste to have this legislation pass by the Legislature only to have the Supreme Court see the inequity of it and later strike it down. It then becomes a war between the Legislature and the Supreme Court in doing what is fair and right.

**Chairman Hansen:**

We could have a very interesting conversation on equal protection laws on a lot of different levels.

**Assemblyman Nelson:**

In the *Shelton* case, one of the factors was the recharacterization. What if it had not been recharacterized? What if it had been disability income from the start? Would that have changed things?

**Roger Harada:**

In the sense of property division, yes, it absolutely would have changed things. If the veteran's disability had been in place before, that would not be a divisible asset. The income would still be considered for alimony purposes, but it is not divisible per se. There is no ability to execute against the statement that I am getting disability income, but it is being taken away from me. There would be a distinction because the disability that existed before would not be dividable.

**Chairman Hansen:**

Is there anyone else who intends to testify in opposition in the north? Seeing no one, we have already checked in the south.

**Assemblyman Ohrenschall:**

We have a lot of bills in this Committee where we have to be careful about creating two classes of litigants. There is a sign in the courthouse that says "Equal justice under law." I think we have to tread carefully. Earlier, the proponents said if a veteran sought to recharacterize his retirement pay as disability pay, federal law already does not allow that shielding of assets. Do you agree with that or is there a misunderstanding of current federal law?

**Melissa L. Exline:**

There is not a federal law right now that says you cannot address a recharacterization. Right now, we have very specific Nevada law that says you can address a recharacterization. I would like to point this out because I think it is important where we have consensus. Going back to where I started my discussion, we actually have some agreement. When you heard Mr. Harris speaking earlier, he conceded on the issue we were focusing on in subsection 3 and the indemnity issue. If there is a recharacterization postdivorce like the hypothetical that was put forward, there is some opening for dialogue on addressing the concern. The intent, as I understand it in speaking with the proponents of this bill, is not to bar a spouse who is getting a property division from keeping her intact rights. We can bridge that gap. Right now, as it stands, federal law does not prohibit that. When we talk about just codifying the federal law, if that was all we were talking about, we would not be here. The problem is that A.B. 140 goes beyond federal law.

**Chairman Hansen:**

We will conclude the opposition testimony. Is there anyone here to testify in the neutral position? Seeing no one, Assemblyman Wheeler would you like to come back up and tie things up?

**Assemblyman Wheeler:**

I am here to say that I am tired of being lied to or about. Mr. Willick, for instance, says that the attacks were not personal, yet he said them to us anyway, so apparently they were.

**Chairman Hansen:**

Hold up. Talk about the bill.

**Assemblyman Wheeler:**

I am perfectly willing to sit down and work with the opponents of this bill to make good policy. We are not here to make statements; we are here to make policy. We are willing to do that, but I was a little upset about the outright falsehoods that came out from people who basically make their living by how big of a judgment they get. If Mr. Anderson would like to sit down with us, I would be very happy to do it and see what we can do to make good policy.

**Chairman Hansen:**

We made those offers to both parties. I have a conference room in my office, and we intend to have that conversation. Mr. Harris has already agreed to that.

**Caleb Harris:**

I submitted as evidence the California bill ([Exhibit M](#)) regarding what we are similarly trying to pass here, so it does exist. They said that it does not exist in law currently, and it does. It is in federal law for the waiver in lieu of retirement. It is absolutely in law, 42 U.S. Code § 659 ([Exhibit G](#)), Consent to Support Enforcement, says,

by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation.

That was specifically listed to be included. To not be included specifically lists "of periodic benefits under title 38." So this code actually does exist for the reasons she was talking about.

I would like to briefly touch on inequality. It would be unfair to take away from a person money that was given to him to try to make him a whole person. Obviously, I believe it is outside the realm of possibility to attach, levy, or seize and that falls within the law. If we take from that person so that they are less apt to be able to care for themselves, build ramps, or have a special vehicle to get to doctor's appointments, that would be a disparity. That would be an inequality, and that is the reason why the federal government has set these codes in place. [Submitted but not discussed are ([Exhibit N](#)), ([Exhibit O](#)), ([Exhibit P](#)), ([Exhibit Q](#)), ([Exhibit R](#)), ([Exhibit S](#)), ([Exhibit T](#)), and ([Exhibit U](#)).]

**Chairman Hansen:**

We will close the hearing on A.B. 140. We will open this up for public comment. There is no one, so we will close the public comment period.

Committee business is a bill introduction at this time. We will have a bill draft request (BDR) today.

**BDR 10-1093**—Enacts the Uniform Voidable Transactions Act. (Later introduced as [Assembly Bill 420](#).)

I will entertain a motion at this time.

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE  
BDR 10-1093.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will recess for five minutes because we have some more BDRs to introduce. No, everyone is leaving so we will reconvene before everyone leaves.

**BDR 3-1084**—Revises provisions relating to constructional defects. (Later introduced as [Assembly Bill 418](#).)

I will entertain a motion at this time.

ASSEMBLYWOMAN DIAZ MOVED TO INTRODUCE BDR 3-1084.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**BDR 10-1104**—Clarifies the applicability of the Uniform Unclaimed Property Act. (Later introduced as [Assembly Bill 419](#).)

I will entertain a motion at this time.

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE  
BDR 10-1104.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Is there any other business that needs to be brought before the Committee at this time? Seeing no one, this meeting is adjourned [at 10:35 a.m.].

RESPECTFULLY SUBMITTED:

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Janet Jones  
Recording Secretary

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Transcribing Secretary

APPROVED BY:

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Assemblyman Ira Hansen, Chairman

DATE: \_\_\_\_\_

| <b><u>EXHIBITS</u></b>                               |                |   |   |
|--|----------------|---|---|
| <b>Committee Name:</b> <u>Committee on Judiciary</u> |                |   |   |
| <b>Date:</b> <u>March 20, 2015</u>                   |                | <b>Time of Meeting:</b> <u>8 a.m.</u>   |   |
| <b>Bill</b>  | <b>Exhibit</b> | <b>Witness / Agency</b>   | <b>Description</b>                                |
|  | A              |   | Agenda  |
|  | B              |   | Attendance Roster                                 |
| A.B. 97  | C              | Ben Graham, Administrative Office of the Courts   | Proposed Amendment                                |
| A.B. 140   | D              | Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War                                    | Written Testimony                                 |
| A.B. 140   | E              | Russ Murray, Private Citizen, Washoe City, Nevada   | Written Testimony                                 |
| A.B. 140   | F              | Assemblyman Elliot T. Anderson and Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War | Supreme Court case <i>McCarty v. McCarty</i>      |
| A.B. 140   | G              | Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War                                    | 42 U.S. Code §659                                 |
| A.B. 140   | H              | Steve Sanson, Veterans in Politics International, Inc.  | Written Testimony                                 |
| A.B. 140   | I              | Marshal Willick, Willick Law Group  | Letter in Opposition, Case Law, and Documentation |
| A.B. 140   | J              | Roger Harada, Attorney, Reno, Nevada  | Hypothetical Situation                            |
| A.B. 140   | K              | Roger Harada, Attorney, Reno, Nevada  | Wyoming State Law                                 |
| A.B. 140   | L              | Roger Harada, Attorney, Reno, Nevada  | Arizona State Law                                 |



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|----------|---|---|--|
| A.B. 140 | M | Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War                | California Law S.B. 285                                      |
| A.B. 140 | N | Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War                | Written Testimony  |
| A.B. 140 | O | Jack Fleeman,<br>Jessica Anderson,<br>Kenneth M. Roberts<br>Gayle Nathan<br>Gary R. Silverman | Miscellaneous Letters of Opposition                          |
| A.B. 140 | P | William Fox   | Information from the Department of Health and Human Services |
| A.B. 140 | Q | William Fox   | Title 38-Veteran's Benefits                                  |
| A.B. 140 | R | William Fox   | Written Testimony  |
| A.B. 140 | S | American Bar Association  | <i>Mansell v. Mansell</i>                                    |
| A.B. 140 | T | American Bar Association  | Information on Family Law                                    |
| A.B. 140 | U | Steve Sanson, Veterans in Politics International, Inc   | Will you let our disabled vets die?                          |