

[Draft letter to Member of Congress – edit where shown at **]

Dear Senator/Representative ___:

I am writing as a constituent and as a Raleigh lawyer. [**edit for city of the writer] I am a Board-Certified Specialist in Family Law, and a Fellow of the American Academy of Matrimonial Lawyers (AAML). The AAML Fellows nationwide are some of the most highly regarded and skilled domestic relations attorneys and negotiators. [**edit for qualifications of the writer]

Several times the AAML and the American Bar Association have reaffirmed their position in resolutions and in Congressional testimony that state divorce court judges should have the authority to divide all marital and community property, and to provide fair, just and equitable results to the parties when dissolving their marriage.

The AAML has specifically addressed military retirement benefits and military related divorce matters, including detailed position papers submitted to Congress in 2001 and 2010 regarding changes to the Uniformed Services Former Spouses Protection Act. Its most recent resolution is enclosed.

It now appears that certain members of Congress want to rewrite the Uniformed Services Former Spouses' Protection Act (10 U.S.C. § 1408) to cut back the pension share for the military spouse by granting more to the military member. This will scrap the grand compromise reached in 1982 at its passage, namely, the federal government agreeing to let military pensions be divided with strict limits on jurisdiction and garnishment, in exchange for the states continuing to write the rules on how pensions are divided.

The proposed change is in Section 642 of S. 2943, the FY 2017 DoD Appropriations Act. This and the House version, H.R. 4909, Sec. 625, would torpedo pension division rules in the majority of states by requiring all courts nationwide to follow a single rigid federal rule in dividing military retired pay by freezing the benefit to be divided according to the rank and years of service at the time of the order, rather than the actual retired pay, which is how defined benefit plans are presently divided in over 40 states.

Even where the pension division is done by agreement, which happens in over 90% of the cases, this proposal would block the door and their agreement would be forbidden. The congestion in state courts (when parties are not allowed to agree on how to settle their cases) would increase substantially.

If enacted, this legislation cause great harm for military spouses (most of whom are women) in a majority of the states. That military spouse would be denied the benefit of dividing the actual retirement toward which she and her husband worked. This controversial bill would cut back the benefit that's divided to only a frozen hypothetical benefit from many years prior to the retirement. It would ignore reality – the actual amount of retired pay – in favor of a flawed fiction, that which might have been the military member's retired pay if he'd retired on the day of divorce. That almost never happens, and yet this new rule would carve it into stone for over 40 states. And it would do so even though every other division of a defined benefit plan – for the CIA, federal civil service, the Foreign Service, state government, city and county government, IBM, General Electric and other private companies – use the “actual retired pay” in pension division.

By virtue of their accompanying the military member from base to post to station in the United States and around the world, many of these spouses have been unable to earn a pension of their own. And, in an ironic and cruel twist, if they *have* earned a pension, it will be divided in the “usual way,” that is, measured against the actual pension, even while her share of the military pension is based on a “frozen benefit” from years before. Thus this proposed change would give the military member a greater interest in her benefits than she has in his.

Is this unfairness what the proposal intended? Do you support this unfair and controversial proposal?

I am asking that you *oppose* the inclusion of these controversial sections of the FY 2017 DoD Appropriations Act that destroy the ability to divide pensions as state court judges have done (and done fairly) for years. Thank you for your kind attention to this request.