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Testimony of Edith McClure, Member, Executive Committee.
Family Law Section of the Connecticut Bar Association
House Bill 5538
An Act Concerning the Enforcement of Premarital Agreements
Judiciary Committee
March 3, 2006

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to appear before the committee to comment on House Bill No. 5538, An Act Concerning the Enforcement of Premarital Agreements.

My name is Edith McClure. I am a member of the Executive Committee of the Family Law Section of the Connecticut Bar Association and a Fellow in the American Academy of Matrimonial Lawyers. My practice, for over 25 years, has been concentrated in the area of family law. The CBA Family Law Section consists of over 700 members who have a great interest in bills affecting family law procedures and issues concerning dissolution of marriage. On behalf of the section, I respectfully request that the Judiciary Committee **not act** on House Bill 5538.

House Bill 5538 would eliminate the ability of a court to refuse to enforce a premarital agreement on the basis that the agreement is unconscionable when enforcement is sought. The bill would also change the existing statute (Connecticut General Statute Section 46b-36g) to create a presumption of enforceability.

On March 17, 1995, I testified before the Judiciary Committee on behalf of the Family Law Section in favor of An Act Concerning premarital agreements. In that testimony I outlined the drafting history pointing out that the Drafting Committee of the Family Law Section had reviewed Connecticut case law, the Uniform Premarital Agreements Act, judicial decision's of other states and various law review articles. I pointed out that the Connecticut Premarital Agreements Act was uniquely tailored to the Connecticut experience. House Bill 5538 would make a premarital

agreement essentially the same as a commercial contract, enforceable even if unconscionable when enforcement is sought as long as it was not unconscionable when made. In Connecticut, there are a number of appellate court decisions that emphasize the special relationship between spouses similar to a fiduciary relationship. It is logical that a premarital agreement should be treated differently from a commercial contract.

In addition, the current law recognizes that certain unforeseen events such as serious illness or disability could occur during a marriage which could make a premarital agreement unconscionable at the time that enforcement is sought.

The stated purpose of the bill is to strengthen the enforceability of premarital agreements. A review of case law regarding the enforcement of premarital agreements entered into under the Connecticut Premarital Agreements Act indicates that the Act has already accomplished this aim.

There are no appellate cases involving enforcement of premarital agreements entered into after 1995. Of the reported trial court cases, none have found premarital agreements unenforceable because they are unconscionable at the time that enforcement is sought. Two of the cases upheld premarital agreements which one party claimed were unconscionable at the time that enforcement was sought. The only three reported cases in which premarital agreements were found to be unenforceable turned on the lack of financial disclosure and/or the fact that one party did not have independent counsel.

The Connecticut Premarital Agreements Act as it currently exists has already created effective standards for enforceability.

Thank you for allowing me the opportunity to comment on House Bill 5538. The CBA Family Law Section respectfully requests that the Judiciary Committee **reject** the bill.

I would be happy to answer any questions that you may have.