

Testimony of Quinnipiac University School of Law Civil Justice Clinic

**In Opposition to Raised Bill No. 5524**

Judiciary Committee

March 31, 2014

Good afternoon distinguished Committee Members. My name is Farah Benslimane, and I am a third-year law student at Quinnipiac University School of Law. I am also a student in the Law School's Civil Justice Clinic ("Legal Clinic"), which provides no-cost legal services to low-income individuals. Family law is one of several subject matters handled by the Legal Clinic. The Legal Clinic cares deeply about the disproportionate negative impact of divorce on economically vulnerable spouses—particularly women—whose contributions to marriage often go unrecognized and unpaid. Raised Bill No. 5524 would contradict and confuse current law, and would make things worse for many women. For these reasons, we oppose Raised Bill No. 5524, "An Act Concerning the Recommendations of the Law Review Commission with Respect to the Alimony Statutes."

**I. Alimony is an Important Safeguard Against the Feminization of Poverty**

Divorce statistics in the United States are sobering. According to the United States Census Bureau, about 50% of first marriages for men under age 45 may end in divorce, and between 44% and 52% of women's first marriages may end in divorce for these age groups.<sup>1</sup> In 2000, there were approximately 250,000 divorced people in Connecticut—including 148,000 women.<sup>2</sup>

Statistics detailing the economic impact of divorce on women, in particular, are devastating. According to the U.S. Census Bureau, "marital disruption results in much poorer economic circumstances for women than for men," with 21 percent of recently divorced women living below the poverty line, as compared to just 9 percent of recently divorced men.<sup>3</sup> "At the other economic extreme, 73 percent of recently divorced men had incomes at least twice the poverty level compared with 52 percent of recently divorced women."<sup>4</sup> The reason for this income differential between men and women has much to do with "heavily entrenched gender divisions of labor within the home. [Women's] lower earning power translates into women being more economically dependent on their husbands than husbands are on wives."<sup>5</sup>

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<sup>1</sup> U.S. Census Bureau, Rose M. Krieder & Jason M. Fields, Number, Timing, and Duration of marriages and Divorces: Fall 1996 (Feb. 2002), <http://www.census.gov/prod/2002pubs/p70-80.pdf> [hereinafter Krieder & Fields Report].

<sup>2</sup> U.S. Census Bureau, Profile of Selected Social Characteristics for Geographic Area of Connecticut: 2000, at [http://factfinder.census.gov/servlet/QTTTable?\\_bm=n&\\_lang=en&gr\\_name=DEC\\_2000\\_SF3\\_U\\_DP2&ds\\_name=DEC\\_2000\\_SF3\\_U&geo\\_id=04000US00](http://factfinder.census.gov/servlet/QTTTable?_bm=n&_lang=en&gr_name=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US00).

<sup>3</sup> Krieder & Fields Report at 14.

<sup>4</sup> *Id.*; see also Gail Frommer Brod, *Premarital Agreements and Gender Justice*, 6 YALE J.L. & FEMINISM, 229, 247-49 & nn. 91-100 (discussing empirical data supporting precipitous economic decline experienced by women after divorce).

<sup>5</sup> Leah Guggenheimer, *A Modest Proposal: The Feminomics of Drafting Premarital Agreements*, 17 WOMEN'S RTS. L. REP. 147, 148-49 (1996); see also INFORMATION PLEASE DATABASE, WOMEN BY THE NUMBERS, at

Contrary to the arguments of some supporters of Raised Bill No. 5524, alimony generally—and Connecticut’s alimony laws, more particularly—are not a relic of a bygone era. They are an important safeguard against the feminization of poverty, which, unfortunately, is still very much with us.

## II. Connecticut’s alimony laws reflect a careful balancing of families’ individualized circumstances.

The debate over Raised Bill No. 5524 is a narrow one. Supporters of the bill do not argue that alimony should be eliminated. Rather, reformers say, it should be allowed only in certain narrow circumstances. As the Connecticut Women’s Education and Legal Fund (CWEALF) 2013 empirical analysis demonstrates, alimony *is* being awarded in certain narrow circumstances—in approximately 19% of cases where a disparity in income and/or other individualized factors point toward an alimony award.<sup>6</sup>

The real disagreement, then, is not whether alimony should be awarded but rather, whether it should subsequently be modified. In the narrow slice of cases in which alimony is awarded, alimony reformers want the General Assembly to make it easier for alimony payors to reduce or terminate their alimony orders. Raised Bill No. 5524 accomplishes its mission; it makes modification much, much easier. But it does so by contradicting and confusing existing law to the detriment of economically vulnerable spouses. This testimony will address Raised Bill No. 5524’s proposed changes to Connecticut law’s cohabitation provision, C.G.S.A. § 46b-86(b). The Clinic defers to the testimony of other groups in opposition to Raised Bill No. 5524’s treatment of retirement as a presumptive basis for modification.<sup>7</sup>

### A. Connecticut statutes regarding cohabitation

In order to appreciate the magnitude of the changes wrought by Raised Bill No. 5524 in the context of cohabitation, a brief discussion of existing law is instructive. There are three statutory provisions in play: C.G.S.A. §§ 46b-82, 86(a), and 86(b).

- First, C.G.S.A. § 46b-82 authorizes courts to order alimony, and it lists a number of factors that courts must consider in fashioning an alimony award. These factors include: “the length of the marriage,” the cause of the dissolution of the marriage, “the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties,” and, “in the case of a parent to whom the custody of minor children has been

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[www.infoplease.com/spot/womencensus1.html](http://www.infoplease.com/spot/womencensus1.html) (stating that in 2006, only 18% of women earned at least \$5,000 more than their husbands).

<sup>6</sup> See CWEALF, *Marriage Dissolution in Connecticut, Working Analysis*, at 1 (Dec. 2013) [hereinafter *CWEALF Working Analysis*]; see also Testimony of Catherine Bailey, Legal and Public Policy Director of CWEALF, to Alimony Commission of the Law Review Commission (Jan. 29, 2014), at 2 [hereinafter *CWEALF 2014 Testimony*].

<sup>7</sup> Cf. *CWEALF 2014 Testimony*, *supra* note 6, at 2 (“[O]nly 14% of all divorces cases” in Connecticut have “an indefinite term.”); Testimony of Arnold H. Rutkin, President, American Academy of Matrimonial Lawyers, in *Opposition to Raised Bill No. 5509*, at 5 (March 19, 2012) (rejecting statutory presumption that full retirement age should terminate alimony obligations).

awarded, the desirability of such parent's securing employment."<sup>8</sup> As CWEALF found in its 2013 empirical analysis of over 2,500 divorce cases in Connecticut, courts do not award alimony all that often. According to CWEALF, only 19% of all Connecticut divorce cases involve an award of (non-token) alimony.<sup>9</sup> In the minority of cases in which courts *do* award alimony, there is almost always a disparity in income, particularly between male payors and female payees. According to CWEALF, those awarded alimony are almost always women (98%), they are often employed (69%), and they generally earn approximately 25% less than those paying alimony.<sup>10</sup>

- Second, C.G.S.A. § 46b-86(a) authorizes courts to modify an alimony (or child support) order. Specifically, it states that an alimony order can be subsequently modified—up or down—if the court finds that there has been a “substantial change in circumstances” of either party. If the court determines that there has been a substantial change in circumstances, the court is not *required* to modify an order. When a court finds a substantial change in circumstances, a court must look to the 46b-82 factors to determine “what modification of alimony, *if any*, is appropriate.”<sup>11</sup>

- Third, and most importantly, C.G.S.A. § 46b-86(b) adds a gloss to C.G.S.A. § 46b-86(a) by singling out the financial impact of cohabitation as a reason for courts to modify an alimony order. Specifically, when a payor is able to show that a payee's new “living arrangements cause *such a change of circumstances as to alter the financial needs* of th[e payee],” a court “may” modify the alimony order.<sup>12</sup> C.G.S.A. § 46b-86(b) therefore sets forth a two-prong test that must be met

“before the payment of alimony can be modified or terminated . . . First, it must be shown that the party receiving the alimony is cohabitating with another individual. If it is proven that there is cohabitation, the party seeking to alter the terms of the alimony payments must then establish that the recipient's financial needs have been altered as a result of the cohabitation.”<sup>13</sup>

As the Connecticut Supreme Court stated in *DeMaria v. DeMaria*,<sup>14</sup> the second prong of this test, which relates to the payee's changed financial needs, is essential. “[L]iving with another person *without* financial benefit,” the Court stated, “d[oes] *not* establish sufficient reason to refashion an award of alimony.”<sup>15</sup> That is why “the legislature imposed the additional requirement that the *party making alimony payments prove* that the living arrangement has

<sup>8</sup> C.G.S.A. § 46b-82(a).

<sup>9</sup> See CWEALF Working Analysis, *supra* note 6, at 1; see also CWEALF 2014 Testimony, *supra* note 6, at 2.

<sup>10</sup> Compare CWEALF 2013 Empirical Analysis, at 2 (stating that those awarded alimony “had a lower average weekly income (\$462) as compared to \$620) than those not awarded alimony”), *with id.* (stating that, in cases with no alimony awards, “parties had more similar incomes (Females = \$582 weekly/\$30,264 annually; Males = \$663 weekly/\$34,476” annually).

<sup>11</sup> C.G.S.A. § 46b-86(a); see *Woodcock v. Woodcock*, 2013 WL 3315841, at \*2 (Conn. Super. Ct. 2013) (“[E]ven after the required factual showings [to modify or terminate alimony within the scope of § 46b-86(b)] the ultimate decision is still entrusted to the *discretion* of the trial court.”) (emphasis in original) (quoting *Kaplan v. Kaplan*, 186 Conn. 387, 389, 441 A.2d 629 (1982)).

<sup>12</sup> C.G.S.A. § 46b-86(b).

<sup>13</sup> *Lehan v. Lehan*, 985 A.2d 378, 385 (Conn. App. Ct. 2010).

<sup>14</sup> 724 A.2d 1088 (1999).

<sup>15</sup> *Id.* at 1091 (emphasis added).

resulted in a change in circumstances that alters the financial needs of the alimony recipient. . . . [T]his additional requirement, in effect, *serves as a limitation*. Pursuant to § 46b-86(b), the nonmarital union must be one with *attendant financial consequences* before the trial court may alter an award of alimony.”<sup>16</sup> Finding no “compelling reason to ignore the legislative consideration of financial impact and thus truncate the analysis after simply having found a change in living arrangements,” the court held that altered financial needs must be considered in determining whether to modify alimony in the context of cohabitation.<sup>17</sup>

Importantly, the payor’s burden of proof in cohabitation cases is not a high one. As Connecticut courts have routinely stated, “in cases involving the cohabitation statute, subsection [46b-86](b) *lowers the threshold predicate for the modification of alimony* to situations where the court finds cohabitation and a change in circumstances so as to alter the needs of the party. The . . . burden required . . . is lowered when there is cohabitation . . . [Section] 46b-86(b) ‘requires only a change of circumstances *not a substantial change as required by § 46b-86(a)*.’”<sup>18</sup>

#### B. Connecticut case law regarding cohabitation

Connecticut case law demonstrates Connecticut’s carefully balanced approach to alimony modification in cohabitation cases. For example:

- In *Nation-Bailey v. Bailey*, the Connecticut Appeals Court ordered the trial court to terminate an alimony order because the “[payee] and her then fiance . . . had executed a lease together and . . . they had cohabited from December, 2007, through late March, 2008, with [the fiance] sharing some of the [payee’s] living expenses during that period, thus altering her financial needs.”<sup>19</sup>
- In *Boccuzzio v. Boccuzzio*, the Connecticut Super Court terminated an alimony order because “the [payee] began cohabiting with [a third party] in a marriage-like relationship on December 28, 2005. The parties are living together, and have been for a substantial period of time, in a sexually intimate relationship in a home where they share their lives together. The [payee’s] financial circumstances have been altered by [the third party] making weekly payments to her of \$100.”<sup>20</sup>
- In *Peltzer v. Peltzer*, the Connecticut Superior Court terminated an alimony order because “the [payee’s] living arrangement [with a third party] has created financial consequences to the [payee]. . . . Because of the living arrangement between her and [the

<sup>16</sup> *Id.* (emphasis added); *see id.* (“Section 46b-86(b) was an express grant of authority to modify or terminate alimony ‘upon [a] showing that the receiving party is living with another person and that such living arrangements result in a change of circumstances that *alter the financial needs of such party*.’”) (quoting 20 S. Proc., Pt. 7, 1977 Sess., p. 2793, remarks of Senator Salvatore DePiano.) (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> *Gervais v. Gervais*, 882 A.2d 731, 740 (Conn. App. Ct. 2005); *see also D’Ascanio v. D’Ascanio*, 678 A.2d 469, 472 (Conn. 1996) (“Section 46b-86(b) requires only a change of circumstances, not a substantial change as required by § 46b-86(a)”) (internal quotation marks omitted).

<sup>19</sup> 74 A.3d 433, 435-36 (Conn. App. Ct. 2013).

<sup>20</sup> 2007 WL 2390692, at \*3 (Conn. Super. Ct. 2007).

third party], [the payee] purchased another expensive house in the neighborhood where she had lived with [her daughter]. As a result, she expended capital and increased her debt. Her testimony that the house was purchased for other reasons is not credible. The purchase of the house constitutes a change in her financial circumstances resulting from her residence with another person.”<sup>21</sup> Notably, the court ruled in favor of the payor without even hearing from the third party, who was never called to testify.<sup>22</sup>

- In *DiStefano v. DiStefano*, the Connecticut Appeals Court affirmed the trial court’s denial of a motion to modify alimony because, although the payor had proven that a third party “had been living in the [payee’s] basement for the past three months [at no charge] and had moved his possessions to that basement,” the payor “had not satisfied the additional requirement of proving that there was an alteration of the [payee’s] financial needs.”<sup>23</sup>

### III. Raised Bill No. 5524 radically alters existing law at the expense of economically vulnerable women by completely removing the requirement of showing changed financial circumstances.

Raised Bill No. 5524 does not merely alter the requirement of showing a change in financial circumstances as a prerequisite for modification in a cohabitation case; it *removes that requirement altogether*. This is unprecedented, unnecessary, and fundamentally at odds with Connecticut law and the interests of economically vulnerable women.

#### A. Raised Bill No. 5524 would overrule the Connecticut Supreme Court’s decision in *DeMaria v. DeMaria*, which requires a showing of altered financial needs.

As the Connecticut Supreme Court’s decision in *DeMaria* makes clear, modification in the cohabitation context requires the moving party to show both: (1) the payee’s changed living arrangements; and (2) the payee’s altered financial needs.<sup>24</sup> Not so under Raised Bill No. 5524. By removing the second prong of this test, Raised Bill No. 5524 allows the modification of alimony orders without any showing of financial impact whatsoever. According to Raised Bill No. 5524, all a payor must show is that a payee has been living with someone else for over six months in a “marriage-like” relationship.<sup>25</sup> Once the payor makes this minimal showing, it then falls to the payee to prove a negative—i.e., that she has not been living with a person in a “marriage-like” relationship for over six months. If she cannot do so, her alimony order can be modified by the court—all without ever considering whether the allegedly new living arrangements altered her financial needs.<sup>26</sup> Raised Bill No. 5524 thus overrules *DeMaria* by

<sup>21</sup> 2005 WL 589622, at \*3 (Conn. Super. Ct. 2005).

<sup>22</sup> See *id.* at \*2.

<sup>23</sup> 787 A.2d 675, 677 & n.2 (Conn. App. Ct. 2002).

<sup>24</sup> See *DeMaria*, 724 A.2d at 1091.

<sup>25</sup> “Marriage-like” is undefined, but it is reasonable to assume that this term will be interpreted as “restat-ing] a cohabitation provision in gender neutral terminology.” *Boccuzzio v. Boccuzzio*, 2007 WL 2390692, at \*2 (Conn. Super. Ct. 2007) (“[T]he court sees no reason to read this language as requiring a greater emotional commitment to one another or some greater indicia of marriage to find that cohabitation exists in this case.”).

<sup>26</sup> Assuming that the payee is not able to prove that she has not been living in a marriage-like relationship for over six months, it is unclear whether the payee must then show: that there has been no substantial change in

doing exactly what the court refused to do in that case—“truncate[ing] the analysis after simply having found a change in living arrangements” and doing so “[i]n the absence of a compelling reason.”<sup>27</sup> As CWEALF noted in its January 29, 2014 testimony to the Alimony Commission, this truncated approach ignores whether the cohabitants share expenses, bank accounts, and household responsibilities, whether that sharing reduces or increases the recipient’s need for support, and the type and seriousness of the relationship involved.<sup>28</sup>

B. Raised Bill No. 5524 would severely reduce an already low burden of proof and create incoherence in the law.

By removing the requirement of showing a change in financial circumstances, Raised Bill No. 5524 severely reduces an already low burden of proof and creates incoherence in the law. According to Connecticut courts, the cohabitation provision under § 46b-86(b) imposes a lower burden of proof than the general modification standard under § 46b-86(a). The former “requires only a change of circumstances”—“not a *substantial change* as required by [the latter].”<sup>29</sup> Remarkably, Raised Bill No. 5524 would reduce this burden of proof even further by removing the requirement of showing a change in circumstances altogether. Not only is this unnecessary, it also appears to contradict § 46b-86(a), which requires at least some showing of a change in circumstances before a court modifies an alimony award.

C. Raised Bill No. 5524 Invites Harassment of Women and Fishing Expeditions into Their Personal Lives.

By making modifications turn on a mere showing of a “marriage-like” relationship for over six months, Raised Bill No. 5524 encourages the frivolous—and, in some cases, the abusive—filing of modification motions. A car parked outside of the payee’s home with some frequency is sufficient for a payor to litigate the personal life of a payee. According to Raised Bill No. 5524, it does not matter that the payee is paying her own way—all that matters is that the payee is under the same roof as someone else for six months or more. By painting with such broad brush strokes, Raised Bill No. 5524 provides domestic abusers with a powerful new tool to harass and hurt the women who leave them. According to the National Women’s Law Center, 1 in 12 women will be stalked in their lifetime<sup>30</sup>—oftentimes by a former intimate partner.<sup>31</sup> Connecticut is no stranger to domestic violence.<sup>32</sup> Raised Bill No. 5524 would make things worse for women after divorce.

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circumstances under 46b-86(a); that there has been a substantial change under 46b-86(a) but that there should nevertheless be no modification; or some combination of the two.

<sup>27</sup> *DeMaria*, 724 A.2d at 1091.

<sup>28</sup> CWEALF 2014 Testimony, *supra* note 6, at 4.

<sup>29</sup> *Gervais*, 882 A.2d at 740.

<sup>30</sup> NATIONAL INSTITUTE OF JUSTICE, CENTERS FOR DISEASE CONTROL AND PREVENTION, STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, at 3 (April 1998), <https://www.ncjrs.gov/pdffiles/169592.pdf>.

<sup>31</sup> THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, 2010 SUMMARY REPORT, at 32, at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf#page=47](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf#page=47).

<sup>32</sup> See generally C.G.S.A. §§ 53a-181c, d, e (Connecticut stalking laws).

**IV. Even if Raised Bill No. 5524 shifts to the payee the showing of changed financial circumstances, it is still unprecedented and unnecessary.**

Some supporters of Raised Bill No. 5524 suggest that the bill would merely “place the burden of establishing the financial impact of cohabitation . . . on the cohabitating ex-spouse.”<sup>33</sup> For the reasons discussed above in subsection III, Raised Bill No. 5524 appears to remove the requirement of showing changed financial circumstances altogether, not shift the burden of such a showing to the payee. But even assuming that the bill shifts the burden of showing changed financial circumstances to the payee, this is still unprecedented and unnecessary. Raised Bill No. 5524 is unprecedented because it turns 46b-86(a)’s modification standard on its head. For the first time, a non-moving party must prove that there has *not* been a substantial change in circumstances in order to defeat a motion for modification of alimony, rather than the moving party having to prove that there *has* been a substantial in change in circumstances in order to prevail on a motion for modification of alimony.

Raised Bill No. 5524 is also unnecessary. According to supporters of Raised Bill No. 5524, shifting the burden to payees will allow the alimony payor to “get[] a true picture” of the alimony payee and third party cohabitor’s joint finances.<sup>34</sup> As subsection II’s discussion of Connecticut statutes regarding cohabitation makes clear, the burden of showing a change in financial circumstances is not a high one.<sup>35</sup> And as current case law makes clear, alimony payors have ample means to get the information they need to make such a showing—namely, by filing a motion for modification, subpoenaing adverse parties’ financial records, and obtaining their sworn testimony on cross-examination.<sup>36</sup> If an alimony payee and third party cohabitor lie under oath, fail to produce requested records, or otherwise “collude[] and conceal,”<sup>37</sup> the payor can pursue judicial remedies. Raised Bill No. 5524 would not discourage the bad acts of payees; it would only encourage the bad acts of payors.

**V. Neither Raised Bill No. 5524 nor existing law provides that alimony will be reinstated if cohabitation ends; such language should be added to existing law.**

Regardless of whether the General Assembly passes Raised Bill No. 5524, the Assembly should consider adding language to C.G.S.A. § 46b-86(b) explicitly stating that an original alimony order may be reinstated upon the termination of cohabitation.<sup>38</sup>

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<sup>33</sup> Testimony of Attorney Robert M. Shields, Jr., Horton, Shields & Knox PC, to Law Review Commission (Jan. 29, 2014), at 2 [hereinafter Shields Testimony].

<sup>34</sup> *Id.* at 3.

<sup>35</sup> See *supra* § II.A.

<sup>36</sup> See *supra* § II.B.

<sup>37</sup> Shields Testimony, *supra* note 33, at 3.

<sup>38</sup> See M.G.L.A. 208 § 49(d)(2) (“[A]n alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient’s common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.”); see also S.B. 488, 216<sup>th</sup> Leg. (N.J. 2014), [ftp://www.njleg.state.nj.us/20142015/S0500/488\\_11.HTM](ftp://www.njleg.state.nj.us/20142015/S0500/488_11.HTM) (“[T]he award may be reinstated upon termination of the cohabitation relationship; however, if reinstated the duration of the award shall not extend beyond the termination date of the original order.”).

Thank you very much for your time and for the opportunity to present this testimony.

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