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# THE LEGISPRUDENCE OF FLORIDA'S ALIMONY REFORM: WHY DRACONIC FAMILY LAW CONTINUES TO PREVAIL IN A MODERN SOCIETY

*Joseph P. Formoso\**

## INTRODUCTION

This note analyzes Florida Statutes that govern alimony awards in legisprudential approach.<sup>1</sup> It addresses why Floridians, and Americans at large, have increasingly voted for a reformation of alimony laws; the arguments of both reform and anti-reform proponents; and why proposed legislation was recently nullified in a democracy that purports “justice shall be administered without [ ] denial.”<sup>2</sup> Notwithstanding the ameliorations innovative reform could bring to archaically permeated law, Governor Rick Scott’s gratuitous veto of the senate’s most recent bill—calling for vast renovation to Florida’s code—is quite possibly, the voice of the people going unheard.<sup>3</sup>

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<sup>1</sup> See Fla. Stat. §§ 61.08–09, 61.14, 61.19, 61.071 (2014).

<sup>2</sup> FLA. CONST. art I § 21; Fla. SB 718 (2013); Veto of Fla. SB 718 (2013) (letter from Gov. Scott to Sec’y of State Ken Detzner, May 01, 2013) (on file with Sec’y of State, The Capitol, Tallahassee, Fla.); see Memorandum from the Florida Alimony Reform, *What’s Wrong with Florida Alimony Laws?* (Sept. 03, 2013, 8:57 AM) [http://floridaalimonyreform.com/pdf/whats\\_wrong\\_with\\_florida\\_alimony\\_laws.pdf](http://floridaalimonyreform.com/pdf/whats_wrong_with_florida_alimony_laws.pdf); Gary Blankenship, *Family Law Section is a force in alimony debate*, THE FLORIDA BAR NEWS (Sept. 03, 2013, 8:47 AM) <https://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/925e9567add674c8852579e9004992cc!OpenDocument>; see also Jennifer L. McCoy, *Spousal Support Disorder: An Overview of Problems in Current Alimony Law*, 33 FLA. ST. U. L. REV. 501, 522 (2005); Lara Lenzotti Kapalla, *Some Assembly Required: Why States Should Not Adopt the Ali’s System of Presumptive Alimony Awards in Its Current Form*, MICH. ST. L. REV. 207, 208 (2004) (movements to reform state laws governing alimony awards are widespread in the United States—on a national level—not just in Florida).

<sup>3</sup> See Veto of Fla. SB 718 (2013) (letter from Gov. Scott to Sec’y of State Ken Detzner, May 01, 2013) (on file with Sec’y of State, The Capitol, Tallahassee, Fla.).

Amongst those echoed voices is predominately that of Alan Frisher (“Frisher”)—the corporate director and President of Family Law Reform, Inc., non-lawyer, author, and leading proponent of the Florida Alimony Reform (“FAR”) movement.<sup>4</sup> According to Frisher, his movement made “great headway towards reforming [Florida’s] antiquated alimony laws,” but truly, the battle for alimony reform has merely just begun.<sup>5</sup> Conversely, The Florida Bar was prepared to combat reform efforts once again in the 2014 legislative session via its Family Law Section (“FBFLS”) artillery.<sup>6</sup> FBFLS is the acrimonious rival of FAR and the grand protagonist for anti-reform.<sup>7</sup>

In sum, this note closely examines currently enacted Florida statutes that pertain to all things alimony; with a prerogative to weigh each argument in favor for and in opposition of legislative reform. This notation will objectively assess what codified language serves the public interest, at its very best, and how those codes—whether amended or unaffected altogether—will or could affect Florida’s legal profession. Specifically, it seeks to define to what extent reformation would likely impact the practicing family law attorney as well as the divorced citizen.

#### FLORIDA ALIMONY LAW

Alimony is “a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.”<sup>8</sup> The term connotes nourishment or sustenance.<sup>9</sup> It is a pecuniary payment, required by law, “to be made to a spouse from the other spouse’s estate for support or maintenance . . . where the fact of marriage is established and the right to a separate maintenance is proved.”<sup>10</sup> Therefore, alimony is essentially a financial obligation ordered upon a

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<sup>4</sup> Gary Blankenship, *Family Law Section is a force in alimony debate*, THE FLORIDA BAR NEWS (Sept. 03, 2013, 8:47 AM) <https://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/925e9567add674c8852579e9004992cc!OpenDocument>; CONTACT US – FLORIDA ALIMONY REFORM, *available at* <http://www.floridaalimonyreform.com/contact-us> (last visited Nov. 3, 2014).

<sup>5</sup> Alan Frisher & Wendy Scheuring, *Divorcing The System* 1803 of 2247 (Alan Frisher, Kindle For PC ed. version 1.10.6 (40500), (2013); *see generally* FLA. STAT. §§ 61.08–09, 61.14, 61.19, 61.071 (2014); *but c.f.* FLA. STAT. §§ 61.08–09, 61.14, 61.19, 61.071 (2010-2011) (demonstrating fairly recent amendments to Florida alimony statutes and the need-and-ability standard codified in section 61.08 of the Florida Statutes cited *infra* note 18).

<sup>6</sup> *See* Blankenship, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> BLACK’S LAW DICTIONARY 32 (9th ed. 2009).

<sup>9</sup> *See id.*

<sup>10</sup> BLACK’S LAW DICTIONARY, *supra* note 8 (citing 27B C.J.S. *Divorce* § 306, at 102–03 (1986)).

party to compel the payment of money to his or her spouse.<sup>11</sup> Albeit, alimony is most commonly ordered as a means of financial support, Florida courts have ruled that it may also be used to balance inequities of final property distributions.<sup>12</sup>

Under Florida statutory law, trial courts have the authority to award temporary alimony (*alimony pendente lite*) to either a husband or wife while the parties' divorce ("dissolution") action is pending.<sup>13</sup> Common law rationale cites that the intent of the legislature was to furnish the recipient not only with support, but also, to prevent persons from becoming public charges of the state during the course of litigation.<sup>14</sup> Moreover, the Florida legislature empowers trial courts to award alimony in final judgments for marital dissolutions or whenever the married couple is living separated from one another—the latter being known as "alimony unconnected with dissolution of marriage" or a "separate maintenance" proceeding.<sup>15</sup>

#### *Types of Alimony*

Not including nominal or temporary support, there are four primary types of alimony codified, statutorily, by Florida Law: (1) bridge-the-gap, (2) rehabilitative, (3) durational, or (4) permanent.<sup>16</sup> Each type is concisely defined and explicated by statute as follows:

**Bridge-the-gap** alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony shall not be modifiable in amount or duration.

**Rehabilitative alimony** may be awarded to assist a party in establishing the capacity for self-support through either:

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<sup>11</sup> *See id.*

<sup>12</sup> BRENDA M. ABRAMS & MATHEW BENDER, FLORIDA FAMILY LAW § 31.13(2)(b) (2013); *See Hamlet v. Hamlet*, 583 So. 2d 654, 656 (Fla. 1991).

<sup>13</sup> ABRAMS & BENDER, *supra* § 31.01(1)(a); *See* FLA. STAT. § 61.071; *see generally* BLACK'S LAW DICTIONARY, *supra* note 8 (*alimony pendente lite*, Latin for "temporary alimony").

<sup>14</sup> *Grace v. Grace*, 162 So. 2d 314, 320 (Fla. 1st DCA 1964).

<sup>15</sup> *See* FLA. STAT. § 61.08(1), 61.09 (2014); ABRAMS & BENDER, *supra* note 12 §§ 31.01(1)(b), 31.01(2).

<sup>16</sup> FLA. STAT. § 61.08(1); *see* Florida Alimony Reform, *infra* note 45 (denoting six types of alimony including nominal and temporary).

1. The redevelopment of previous skills or credentials; or
2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

...

...

**Durational alimony** may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of *short or moderate duration or following a marriage of long duration* if there is no ongoing need for support on a permanent basis. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. . . . However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.

**Permanent alimony** may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of *long duration* if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.<sup>17</sup>

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<sup>17</sup> FLA. STAT. § 61.08(5)–(8) (emphasis added).

*How Alimony is Awarded in Florida*

To determine whether to award alimony or maintenance, the court must first make specific factual findings as to “whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay.”<sup>18</sup> Once a court makes a determination that both a need and the ability to pay are present, it will consider multiple relevant factors to assess the type of alimony a party should be awarded.<sup>19</sup> Those factors include, but are not limited to, at least ten—as codified by Florida statute—which include:

- (1) The standard of living established during the marriage.
- (2) The duration of the marriage.
- (3) The age and the physical and emotional condition of each party.
- (4) The financial resources of each party, including the non-marital and the marital assets and liabilities distributed to each.
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (6) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (7) The responsibilities each party will have with regard to any minor children they have in common.
- (8) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- (9) All sources of income available to either party, including income available to either party through investments of any asset held by that party.

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<sup>18</sup> *Id.* § 61.08(2).

<sup>19</sup> *Id.*

([10]) Any other factor necessary to do equity and justice between the parties.<sup>20</sup>

“[A] short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater.”<sup>21</sup> Therefore, as it pertains to the duration of marriage factor, a party married for seven (7) years or less could be eligible to plead for bridge-the-gap, rehabilitative, or durational alimony; however, permanent alimony is typically reserved for marriages of “long duration.”<sup>22</sup> Moreover, the respective statute provides that Florida courts are permitted to award any combination of these forms of alimony and that alimony payments can be ordered periodically, in lump sum, or both.<sup>23</sup>

#### THE ALIMONY REFORM MOVEMENT

It is said that alimony in earlier decades served the plain and intelligible purpose of providing support for wives living apart from their husbands and has been granted in the United States from the earliest colonial times to the present day.<sup>24</sup> Alimony was first constructed in a society where most women were homemakers, when divorce was based on fault, and when wives were financially dependent on their counterparts.<sup>25</sup> It was a mechanism designed to protect women, but as the years progressed, disparity between a man and woman’s ability to be self-supportive has notably decreased.<sup>26</sup> Today “women are educated, employed, and said to be equal to their male-counterparts in their ability to be self-supportive”—with many women out-earning their partners.<sup>27</sup>

Conceptually, it is asked if, “[i]n a modern society, where the family dynamic has changed the very reason alimony was originally devised, do the same underlying themes for awarding alimony still apply?”<sup>28</sup> Perhaps not because alimony reform is taking place across the United States—with substantial reform movements present in

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<sup>20</sup> *Id.* § 61.08(2)(a)–(j).

<sup>21</sup> *Id.* § 61.08(4).

<sup>22</sup> *Id.* § 61.08(5), (7), (8).

<sup>23</sup> FLA. STAT. § 61.08(1) (2014).

<sup>24</sup> Robert Kirkman Collins, *The Theory of Marital Residuals: Applying an Income Adjustment Calculus to the Enigma of Alimony*, 24 HARV. WOMEN’S L.J. 23, 30 (2001).

<sup>25</sup> Diane L. Danois, *Is Alimony Offensive to Today’s Modern Woman or Modern Man?*, THE HUFFINGTON POST (Nov. 4, 2013, 2:21 PM), [http://www.huffingtonpost.com/diane-l-danois-jd/do-you-think-alimony-offe\\_b\\_4168545.html](http://www.huffingtonpost.com/diane-l-danois-jd/do-you-think-alimony-offe_b_4168545.html).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

Connecticut, Massachusetts, New Jersey, Oregon, and in South Carolina.<sup>29</sup> For example, the Massachusetts Alimony Reform Act of 2011 provided at least ten very significant overhauls to alimony awards—which include: (1) new alimony term limits; (2) second wife’s husband’s income and assets are to be excluded in calculations; (3) cohabitation suspends, reduces, or terminates alimony support; (4) child support—gross income—is now excluded from alimony; (5) child support—alimony term—is to be co-terminus with child support; (6) alimony amount is limited; (7) a second job or overtime income is not included in alimony modification calculations; (8) payment of health insurance and/or life insurance reduces alimony payment; (9) alimony term extensions are limited and require clear and convincing evidence; and (10) alimony ends with the remarriage of the alimony recipient.<sup>30</sup>

However, FAR reports that present permanent alimony laws are still forcing divorced couples to remain in a constant state of financial entanglement because parties have the ability to return to divorce court and renegotiate alimony at any time—thus driving up the costs of litigation even well after the parties have divorced.<sup>31</sup> Florida reform activists aver that “the psychological costs to all family members” are even more taxing.<sup>32</sup> Most significantly, FAR maintains:

Among the most egregious problems with [Florida’s] current law is that **alimony payers do not have the right to retire**—even if the retirement is forced—and have their payments lowered or ended, without costly returns to court. In many cases, awards are not lowered or are lowered insignificantly, even when the recipient makes more money than the payer—and even when the payer is in his 70s or 80s, and/or living entirely on Social Security.<sup>33</sup>

Alimony is completely different from child support because when the child becomes emancipated, a child support obligation ends; however, permanent alimony awards are “only guaranteed to end with the death or remarriage of the recipient.”<sup>34</sup> If there are dependent minor children in a divorce, then the first amount to be determined is the

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<sup>29</sup> *National Alimony Reform Movements across the US: FLORIDA ALIMONY REFORM*, <http://www.floridaalimonyreform.com/alimony-reform-links/> (last visited Sept. 03, 2013).

<sup>30</sup> Mass. Gen. Laws Ann. 208 §§ 49–55 (2012).

<sup>31</sup> Florida Alimony Reform, *What’s Wrong with Florida Alimony Laws?* (Nov. 2011), [http://www.floridaalimonyreform.com/pdf/whats\\_wrong\\_with\\_florida\\_alimony\\_laws.pdf](http://www.floridaalimonyreform.com/pdf/whats_wrong_with_florida_alimony_laws.pdf).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* (emphasis added).

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



alimony obligation and that can be as high as fifty percent (50%) of the payor's post-tax income (after taxes have been deducted).<sup>35</sup> According to FAR, "[t]he amount of the custodial parent's alimony is considered in determining the child support obligation."<sup>36</sup> However, once the child support obligation ends, recipients may return to court and ask that the amount be converted to "**permanent** [life-long] **alimony**."<sup>37</sup> Therefore, if granted, the payor has no justiciable relief and no ability to make long term financial retirement plans.<sup>38</sup>

Moreover, it is FAR's position that alimony laws, as written, are gender neutral, but the facts and application of the law in Florida's judicial system are not.<sup>39</sup> Even though permanent alimony is considered to be commonly awarded in Florida, alimony itself is said to be very rare across the country.<sup>40</sup> FAR maintains that "according to the IRS, only .03 percent of taxpayers (less than ½ of 1 percent[ ]) receive alimony (IRS statistics for 2008)[, and] [i]t is estimated that approximately 8 percent of those payers [live] in [Florida.]"<sup>41</sup> FAR purports, statistically, that women actually initiate about seventy percent (70%) of all divorces, nationwide, and ninety-seven percent (97%) of alimony payers are males (even though women make up half the workforce).<sup>42</sup> In Florida, "the percentage of male alimony payers may be closer to 99 percent." and "the tiny percentage[s] of women who pay alimony [are paying] a lower percentage of their income."<sup>43</sup> Further, "women payers tend to have temporary alimony awarded to them, rather than permanent obligations."<sup>44</sup>

Cumulatively, Florida law actually defines six types of alimony according to FAR: permanent periodic (including nominal), rehabilitative, bridge-the-gap, lump sum, and temporary.<sup>45</sup> Of these, Florida's permanent alimony law appears to have invoked the greatest onset of reform activism.<sup>46</sup> FAR maintains that recipients who receive permanent alimony rarely remarry because if they did so, their alimony award would end.<sup>47</sup> The reform initiative predominantly argues

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Florida Alimony Reform, *supra* note 31.

<sup>38</sup> Florida Alimony Reform, *supra* note 31.

<sup>39</sup> Florida Alimony Reform, *supra* note 31.

<sup>40</sup> Florida Alimony Reform, *supra* note 31.

<sup>41</sup> Florida Alimony Reform, *supra* note 31.

<sup>42</sup> Florida Alimony Reform, *supra* note 31.

<sup>43</sup> Florida Alimony Reform, *supra* note 31.

<sup>44</sup> Florida Alimony Reform, *supra* note 31.

<sup>45</sup> Florida Alimony Reform, *supra* note 31.

<sup>46</sup> See Florida Alimony Reform, *supra* note 31.

<sup>47</sup> Florida Alimony Reform, *supra* note 31.

“[p]ermanent alimony creates glaring inequalities between ex-spouses” because:

in 2010 and 2011, the state legislature made several small changes to the alimony statute, F.S. 61.08. While these changes take small steps in the right direction, they are nowhere near sufficient to correct these [ ] problems. Among the many remaining problems, the new amendments do not grant any relief ever to those whose divorces took place before the new changes to the law were enacted, thus creating two classes of citizens, living under two separate sets of laws. By contrast, Massachusetts’ new alimony statute, passed in September 2011, permits alimony payers with older divorces to return to court in a specific period of time to gain relief afforded by the new law.<sup>48</sup>

FAR successfully lobbied for the introduction and filing of Senate Bill 718, “Florida’s Alimony Reform Bill,” in early 2013 (“SB718 Legislation”).<sup>49</sup> The bill attempts to completely change how alimony is calculated in Florida with the use of calculation guidelines. It additionally provides for the priority of bridge-the-gap alimony, and provides that the income and assets of an obligor’s subsequent spouse or person with whom the obligor is residing are generally not relevant to modification proceedings, amongst other amendments to Florida statutes.<sup>50</sup>

#### CONSEQUENCES OF PERMANENT ALIMONY AWARDS

FAR provides the public with case information to at least thirty-three documented cases that evidence why Florida’s alimony laws are draconic: some of the specific examples excerpted here provide real life stories of disparity that payors of permanent alimony are faced with.<sup>51</sup> One of those stories is that of a Florida man who pays his ex-wife fifty (50) percent of his income in alimony, while his ex-wife has lived with a paramour for the last seven (7) years: the ex-wife and her boyfriend wear wedding rings and are reported to be each other’s beneficiary in case of death.<sup>52</sup> This gentleman was ordered to keep a one million dollar life

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<sup>48</sup> Florida Alimony Reform, *supra* note 31.

<sup>49</sup> Fla. SB 718 (2013) available at [http://www.flsenate.gov/Session/Bill/2013/0718/BillText/\\_/PDF](http://www.flsenate.gov/Session/Bill/2013/0718/BillText/_/PDF); see also Florida Alimony Reform, *2013 Alimony Reform Bill in the Florida Senate, SB 718, Has Been Filed* (last visited Sept. 03, 2013).

<sup>50</sup> See Fla. SB 718 (2013) available at [http://www.flsenate.gov/Session/Bill/2013/0718/BillText/\\_/PDF](http://www.flsenate.gov/Session/Bill/2013/0718/BillText/_/PDF).

<sup>51</sup> Florida Alimony Reform, *Shame on Florida: Alimony Horror Stories from the Sunshine State*, available at [http://floridaalimonyreform.com/pdf/florida\\_alimony\\_horror\\_stories.pdf](http://floridaalimonyreform.com/pdf/florida_alimony_horror_stories.pdf) (last visited Sept. 03, 2013) [hereinafter *Shame on Florida*].

<sup>52</sup> *Id.*

insurance policy, naming his ex-wife as his beneficiary: the payor's family members report:

My father-in-law pays her \$3000 per month—50 percent of his income. In the divorce, she received 100 percent of his retirement (\$150,000), which she has spent, and is the sole beneficiary of his \$1 million life insurance policy, even though he has remarried. After her son turned 18 and the child support ended, she took him back to court and had the child support rolled into alimony.

She would not settle for a reduction of alimony, so based on F.S. 61. 14 [the new cohabitation law], they went to court. My husband and his brother testified. We watch him struggle while she goes on extravagant vacations (California, Vegas, and a 5-day cruise—all in 4 months). She had a brand-new home built and then remodeled. Her boyfriend's Crown Victoria is paid for. She makes \$11 per hour working 25-30 hours a week. The boyfriend makes \$30,000. The ruling went to the ex-wife. So he is still paying \$3000 a month and now he is responsible for her attorney's fees, \$10,000. This poor man is supporting not only his ex-wife but her boyfriend, and the courts are allowing it.<sup>53</sup>

Another horror involves the case of a seventy-six (76) year-old Martin County senior citizen (herein referred to as "Dee") who was ordered to pay alimony to his ex-wife who deserted him with five (5) children back in 1982.<sup>54</sup> Dee collects no Social Security income and is forced to work; he said, "I have 5 children who, in 1982, were ages 5 through 12, all girls. The oldest girl lost her sight between her 6th and 8th birthday. The children's mother took off and essentially deserted them, seeking fame and notoriety in Washington D.C." and goes on to report that "[t]he court that granted me custody of my 5 children also ordered me to pay permanent lifetime alimony. The children's mother was not required to pay any child support despite the fact that she had a good job in D.C."<sup>55</sup> Dee said he went back to court and asked for child support but it was denied, and "to add insult to injury" he was further ordered to pay opposing counsel's attorney's fees for bringing the child support action.<sup>56</sup> When the youngest reached eighteen (18), Dee was again hauled into court and was ordered to pay more alimony on the pretense that he no longer was responsible for the children, so more money must be contributed towards the alimony payment: it is now

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

twenty-eight (28) years later and Dee states, “I am still . . . forced to pay alimony . . . to a capable woman, a woman who in 1986 was a candidate for Lieutenant Governor for the State of Florida” and goes on to say his ex-wife “told the people of Florida that she was capable and qualified to be their governor but told the court that she could not take care of herself. The present system permits this.”<sup>57</sup>

Finally, a troubling example was reported to FAR by a middle-aged woman from Palm Beach County (herein referred to as “Sarah”) who says she refuses to marry the man she loves (herein referred to as “Peter”) because he is currently ordered to pay lifetime alimony.<sup>58</sup> Sarah reported that she fears her own income and personal assets could be used to pay alimony to Peter’s ex-spouse.<sup>59</sup> Sarah reported to FAR that:

P[eter] is a professional and we have been together for 13 years. He was already separated when we met. His ex-wife was verbally abusive to him and he was waiting for his children to finish high school as he was worried about becoming estranged from them. We would love to get married but have not done so because of P[eter]’s ex-wife. I do not, in any way, want to have my assets available for alimony or for her support or legal scrutiny.<sup>60</sup>

Peter reportedly pays approximately sixty-thousand-dollars (\$60,000.00) a year in permanent alimony, was required to pay a lump sum distribution of ninety-thousand (\$90,000.00), and \$20,000 of his ex-wife’s attorney’s fees.<sup>61</sup> Moreover, Peter’s ex-spouse was ordered to receive one half of Peter’s pension amongst other assets.<sup>62</sup> Furthermore, Peter was ordered to keep a permanent \$500,000 life insurance policy in benefit of his ex-wife.<sup>63</sup> Sarah claims, Peter “purchased a term policy with a guaranteed 20-year rate good until he is 69. After that, he will not be able to afford the premium.”<sup>64</sup> Within the context of Peter’s final judgment for dissolution of marriage, the court made findings that determined his ex-wife was not able to work.<sup>65</sup> However, after the divorce was granted, Sara claims Peter’s ex-wife started her own business and later began to work at a local supermarket.<sup>66</sup> Over the past few years Peter’s ex-wife has been reportedly working as a teacher,

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<sup>57</sup> Shame on Florida, *supra* note 51.

<sup>58</sup> Shame on Florida, *supra* note 51.

<sup>59</sup> Shame on Florida, *supra* note 51.

<sup>60</sup> Shame on Florida, *supra* note 51.

<sup>61</sup> Shame on Florida, *supra* note 51.

<sup>62</sup> Shame on Florida, *supra* note 51.

<sup>63</sup> Shame on Florida, *supra* note 51.

<sup>64</sup> Shame on Florida, *supra* note 51.

<sup>65</sup> Shame on Florida, *supra* note 51.

<sup>66</sup> Shame on Florida, *supra* note 51.

making a known salary range of at least thirty-five-thousand (\$35,000.00) and upwards to forty-five thousand (\$45,000.00) annually.<sup>67</sup> Peter is now in his sixties and wishes to soon retire.<sup>68</sup>

#### ARGUMENTS PERPETUATING THE STATUS QUO

On April 3, 2013, the Tampa Bay Times (“Times”) newspaper published a headline entitled *Florida Alimony-Reform Bill Draws Fire*; wherein David Manz (“Manz”), a Marathon lawyer and immediate past chairman of the Family Law Section of the Florida Bar (also known as “FBFLS”), was quoted calling the recent bill for alimony reform “antifamily” and “antiwoman.”<sup>69</sup> Manz was reported to say that the bill for reform punishes women who stay at home by pushing them back into the workforce in the aftermath of a divorce.<sup>70</sup> Manz said, “People have entered into agreements in which they gave up property in order to receive alimony benefits . . . [t]o take those rights away would be unconstitutional.”<sup>71</sup>

FBFLS’ Section Chair, Carin M. Porras (“Porras”), wrote in its seasonal commentator that “the biggest challenge the Family Law Section faced [in 2013] came with the filing of an alimony reform bill by a group known as Florida Alimony Reform.”<sup>72</sup> Porras claims that FBFLS has tried to work with FAR in good faith over the last several years but has been unable to reach an agreement on several issues.<sup>73</sup> According to Porras, the 2013 bill included “drastic changes” to Florida’s alimony laws.<sup>74</sup> Those changes were namely ones the FBFLS could not support; such as, the elimination of permanent alimony and limitations as to the amount of alimony a party could claim.<sup>75</sup> FBFLS maintained that “the length (no longer than half the length of the marriage) made the bill unacceptable to the Executive Council of the Family Law Section.”<sup>76</sup> Moreover, the provisions which allowed current alimony payors to go

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<sup>67</sup> Shame on Florida, *supra* note 51.

<sup>68</sup> Shame on Florida, *supra* note 51.

<sup>69</sup> Kathleen McGrory, *Florida Alimony-Reform Bill Draws Fire*, TAMPA BAY TIMES (April 3, 2013), available at <http://www.tampabay.com/news/courts/civil/bill-to-end-alimony-draws-acrimonious-debate/2112996>.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Carin M. Porras, *The Year in Review*, THE FLA. BAR FAMILY LAW SECTION COMMENTATOR, at 3, (Summer 2013) available at <http://www.familylawfla.org/newsletter/pdfs/Fam-2013-Spring-web.pdf>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

back and “undo” agreements or final judgments is what “rendered the bill completely unworkable” for FBFLS.<sup>77</sup>

In attempts to debunk several myths, or perhaps alimony reform propaganda, FBFLS invites public readers to view Florida’s current alimony statutes in order to “separate the facts from the myths” after reading FBFLS’ take on dispelling reform.<sup>78</sup> According to FBFLS’ second listed myth-buster, “MYTH: Permanent alimony is always permanent,” FBFLS debunks, in part, by citing “truth[fully]” that before awarding permanent alimony, section §61.08, Florida Statutes, requires that the courts make a finding which demonstrates that no other form of alimony, besides permanent, would suffice in the parties’ suit.<sup>79</sup> Further, “that an award of permanent alimony may follow a marriage of long duration if appropriate, of moderate duration if clear and convincing evidence exists, or of short duration if exceptional circumstances exist;” but that, generally speaking, permanent alimony is primarily awarded in long-term marriages where the requesting party needs the support relief requested and the opposing party has the present ability to pay it.<sup>80</sup> What is more, FBFLS cites, is that permanent alimony is often not permanent because it terminates automatically if the recipient spouse remarries.<sup>81</sup> However, “*unless the parties specifically agreed to a non-modifiable alimony award [ ],*” the courts can and often will reduce or terminate a permanent alimony award based upon “substantial changes in the circumstances of either the payor or the recipient spouse.”<sup>82</sup>

Finally, in addressing, at least, one of the many arguments FAR has voiced in support of alimony reform, Porras—on behalf of FBFLS—expressly rebutted it by stating:

[M]embers of the Florida Alimony Reform Group and some legislators voiced their opinion that the Family Law Section opposed the legislation because it would reduce the amount of attorney’s fees. Several legislators openly expressed their dislike of family law lawyers – categorizing all of us as money grubbing and greedy. But if you reviewed Senate Bill 718, you saw that it would actually cause a tremendous influx of new litigation and

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<sup>77</sup> *Id.*

<sup>78</sup> Family Law Section of The Florida Bar, *About*, available at <http://www.truthaboutflalimony.com> (last visited Sept. 03, 2013).

<sup>79</sup> Family Law Section of The Florida Bar, *Truth v. Myth*, available at <http://www.truthaboutflalimony.com> (last visited Sept. 03, 2013).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* (emphasis added).

an increase in litigated cases. And, if that is true, and we are greedy lawyers, wouldn't we promote the bill in that case?<sup>83</sup>

FBFLS, therefore, claims that it only opposes alimony reform because it would have disastrous effects on many of Florida's families.<sup>84</sup> Citing that FBFLS, and its members, represent both men and women in divorce litigation—both of which are both alimony payors and recipients.<sup>85</sup> FBFLS is said to represent parties who are both defending and pursuing modifications of alimony.<sup>86</sup> In total, FBFLS argued that it opposed the SB718 Legislation because it “expect[s] our laws to be fair to all those we represent—laws developed in the best interests of the public.”<sup>87</sup>

#### THE MYOPIC VETO

Subsequently, on April 24, 2013, the Times issued yet another newspaper article on the matter.<sup>88</sup> This editorial said that the 1950s are long past, and men and women are now considered to be more economically equal, but that SB718 Legislation goes too far in taking alimony support from the “lower-earning spouses and stay-at-home parents” who are still, today, overwhelmingly women.<sup>89</sup> The Times reported that, albeit, Florida law governing divorce is ripe for reform, “the Legislature has gone too far” because lawmakers have approved a new set of rules that “unfairly rebalance the alimony scales to free higher earners of their long-term obligations.”<sup>90</sup> Moreover, The Times contends Florida Governor, Rick Scott, should veto SB718 Legislation because:

It's not fair, and the governor should veto the bill.

Abolishing permanent alimony has been a long-standing goal of advocates for primarily divorced men and their new spouses. The group, Family Law Reform [(also known as Florida Alimony Reform (“FAR”))], says judges in the state sometimes provide permanent alimony in marriages that last as little as 15 years. This shackles the divorcing spouses to each another for life and

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<sup>83</sup> Porras, *supra* note 72.

<sup>84</sup> Porras, *supra* note 72.

<sup>85</sup> Porras, *supra* note 72.

<sup>86</sup> Porras, *supra* note 72.

<sup>87</sup> Porras, *supra* note 72.

<sup>88</sup> *Editorial: Gov. Scott Should Veto Alimony Bill*, TAMPA BAY TIMES (April 24, 2013 5:30 AM), available at <http://www.tampabay.com/opinion/editorials/gov-scott-should-veto-alimony-bill/2117210>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

may provide little incentive for alimony-receiving spouses to re-enter the workforce or remarry.

The group has a point. There are abuses. But the bill's pluses don't outweigh its minuses. The legislation dictates a series of formulas and unreasonably limits judicial discretion. What is fair in divorce is highly dependent on individual circumstances.<sup>91</sup>

The Times wrote, according to the SB718 Legislation, alimony would be based almost entirely on the duration of the marriage without giving due weight to the needs of the parties; there would be a presumption against any alimony awards for marriages that are fewer than eleven years; and if alimony is to be awarded, it could be for no more than fifty (50%) percent of the length of the entire marriage, unless the facts of a specific case warrant departure from the general rule under the authority of judicial discretion.<sup>92</sup>

On May 1, 2013, Florida Governor, Rick Scott, vetoed SB718 Legislation, stating, in part "I cannot support this legislation because it applies retroactively and thus tampers with the settled economic expectations of many Floridians who have experienced divorce."<sup>93</sup> The rationale seemingly justified in the Governor's veto was that "retroactive adjustment of alimony could result in unfair, unanticipated results" because Florida law currently provides for the adjustment of alimony if and when the parties have not entered into a non-modifiable agreement of it.<sup>94</sup> The Governor reasoned that Florida law already ensures that "spouses who have sacrificed their careers to raise a family do not suffer financial catastrophe upon divorce," and SB718 Legislation should not punish lower-earning spouses because "Floridians have relied on this system post-divorce and planned their lives accordingly."<sup>95</sup>

#### REFORM OBTIATION

On March 6, 2014, FAR made a press release to the Times announcing that there will be no renewed alimony reform legislation

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<sup>91</sup> Editorial: Gov. Scott Should Veto Alimony Bill, *supra* note 88.

<sup>92</sup> Editorial: Gov. Scott Should Veto Alimony Bill, *supra* note 88.

<sup>93</sup> Veto of Fla. SB 718 (2013) (letter from Gov. Scott to Ken Detzner, President, Fla. Senate, May 1, 2013) (on file with Sec'y of State, The Capital, Tallahassee, Fla.) available at <http://www.flgov.com/wp-content/uploads/2013/05/Veto-Letter-SB-718.pdf>.

<sup>94</sup> *Id.*; Editorial: Gov. Scott Should Veto Alimony Bill, *supra* note 88; see Family Law Section of The Florida Bar, *supra* note 77.

<sup>95</sup> Veto of Fla. SB 718, *supra* note 93.



filed during the 2014 session.<sup>96</sup> The news source reported that “[t]he bill likely fell victim to election-year politics” because “[i]ts passage in the House and Senate infuriated women’s groups in 2013.”<sup>97</sup> It was speculated that Governor Scott’s earlier veto was an attempt to win over female voters because he will still need feminist support heading into the November 2014 election.<sup>98</sup>

FAR reasoned “great legislation gets lost and simply doesn’t see the light of day” because reform activists, in the 2014 legislative session, were “victims of election year politics.”<sup>99</sup> To summarize the rationale of the legislature, Frisher wrote to provide explanation of the 2014 abandonment of SB718:

[FAR’s] proposed bill was good law. It protected our citizens; men, women, and families. It addressed inconsistencies in the law and corrected them. It would have enabled more predictability in the law from one county to the next and would have helped thousands of families throughout our State with practical, affordable solutions to current problems surrounding alimony and other issues of family law. The Family Section of the Florida Bar was simply protecting their own pocketbooks by opposing our proposal and/or coming up with their own self-serving alternative agenda. Unfortunately, no matter how much right was (and is) on our side, we were assured of battling with the Family Section in, what would have been perceived as a very controversial bill at a time when controversy is not what our Governor needs or wants.<sup>100</sup>

#### A LEGISLATIVE SOLUTION

SB718 Legislation is heavily criticized for its formula-based alimony award because it is skewed to strictly benefit payors of alimony.<sup>101</sup> However, Florida statutes require courts to base the amount of an alimony award on the ten aforementioned factors prior to ordering

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<sup>96</sup> Kathleen McGrory, *There will be no Florida alimony reform bill in 2014*, TAMPA BAY TIMES (March 6, 2014), available at <http://www.tampabay.com/news/politics/legislature/there-will-be-no-florida-alimony-reform-bill-in-2014/2168959>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Florida Alimony Reform, *Major News – No Alimony Reform Possible in 2014* (February 24, 2014), <http://www.floridaalimonyreform.com/major-news-no-alimony-reform-possible-in-2014/>.

<sup>100</sup> *Id.*

<sup>101</sup> See Family Law Section of The Fla. Bar, *supra* note 79 (see “MYTH: Alimony payors would benefit from a formula-based alimony award”).

any set award.<sup>102</sup> Florida case law prohibits alimony awards that exceed a payor's ability to pay.<sup>103</sup> FBFLS wrote, "[a] strict formula would eliminate the discretion the courts need to properly address the relevant factors. Few states follow formulas; the vast majority require the courts to consider factors on a case by case basis."<sup>104</sup>

Anti-reform efforts are damned with allegations that divorce lawyers act overtly zealous, and with greed, to enforce alimony awards.<sup>105</sup> However, to FBFLS' Section Chair, Carin M. Porras' candid point, SB718, if passed, would undoubtedly cause a tremendous influx of new litigation and a viable increase in cases to be litigated in future modification proceedings.<sup>106</sup> Even though FAR claims "[t]he experience of our FAR members is that alimony provides a great amount of litigation, family unrest and unfair judgments or coerced settlements," there is no documented truth to assert all "[a]ttorneys make money off injustice because people will go to court to right a wrong."<sup>107</sup>

In conclusion, and after an extensive review of SB718 Legislation, as currently proposed, Floridians would undeniably benefit from the enactment of this bill, in light of reported cases of inequity and especially in considering the gravamen of retroactive modifiability of permanent alimony agreements. However, there are no empirical studies or data compilations published to inspire pecuniary motivations by FBFLS in its anti-reformation efforts of Florida's alimony laws. Therefore, as a whole, the bill should have some modification as it pertains to the formula-based allocation of alimony awards because stagnant calculation graphs, without full regard to the discretionary power of the court in assessing—

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<sup>102</sup> FLA. STAT. § 61.08(2)(a)-(j); *see also* Family Law Section of The Fla. Bar, *supra* note 79.

<sup>103</sup> *See* Vega v. Vega, 877 So. 2d 882, 883 (Fla. 3d DCA 2004); Gandul v. Gandul, 696 So. 2d 466, 468 (Fla. 3d DCA 1997) (70 percent of net \*883 income excessive); de Armas v. de Armas, 471 So. 2d 185, 185-86 (Fla. 3d DCA 1985) (80 percent of net income excessive); Parham v. Parham, 385 So. 2d 107, 108 (Fla. 3d DCA 1980) (60 percent of net income excessive), *see also* Lambertini v. Lambertini, 817 So. 2d 942 (Fla. 3d DCA 2002); Gomez v. Gomez, 659 So.2d 705, 706 (Fla. 3d DCA 1995) (excessive imputation of income; award exceeds ability to pay); Schwartz v. Schwartz, 427 So. 2d 232 (Fla. 3d DCA 1983) (reversing under Parham and Blum); Scott v. Scott, 408 So. 2d 1089, 1090 (Fla. 3d DCA 1982) (excessive awards); Blum v. Blum, 382 So. 2d 52, 55 (Fla. 3d DCA 1980) (award left husband \$50 per week); *see also* Family Law Section of The Fla. Bar, *supra* note 78.

<sup>104</sup> Family Law Section of The Fla. Bar, *supra* note 78.

<sup>105</sup> *See id.*

<sup>106</sup> Porras, *supra* note 72.

<sup>107</sup> Florida Alimony Reform, *Florida's Lawyers Must Serve the Citizens of Florida, Not the Legal Profession!: FAR's Proposed Legislation is FAIR*, <http://www.floridaalimonyreform.com/floridas-lawyers-must-serve-the-citizens-of-florida-not-the-legal-profession> (last visited Sept. 03, 2013).

objectively—the prescribed factors of each case, could unfairly tilt what are highly individualized circumstances into predictable injustices.