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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

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10/2/03
Date

2003 HOUSE JUDICIARY

HB 1152

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1152

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-21-03

Tape Number	Side A	Side B	Meter #
1		xx	18-40
Committee Clerk Signature <i>D. Penrose</i>			

Minutes: 12 members present, 1 member absent (Rep. Bernstein)

Chairman DeKrey: We will open the hearing on HB 1152.

Rep. Bellew: (see attached testimony) Support.

Rep. Delmore: Have you checked into a couple of things. What is the reason that people file using Irreconcilable Differences, even though in some cases, other things would be appropriate. If one of these things has to be claimed, rather than irreconcilable differences, what would that do to families when this is published, put in the newspaper.

Rep. Bellew: In answer to the first question, the answer is no. I don't know.

Rep. Klemin: If we took out irreconcilable differences, you were saying that you wanted to make it so that both spouses would have to consent to the divorce, if you didn't have irreconcilable differences in, then one of those spouses would have to agree that they're guilty of one of these other items even if they aren't in order to get a divorce.

Rep. Bellew: Yes.

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House Judiciary Committee
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Rep. Maragos: How many states currently use the irreconcilable differences as a reason for divorce.

Rep. Bellew: All 50 states.

Rep. Maragos: Are any other states that wishes to remove this as a reason.

Rep. Bellew: I am aware of movements in other states.

Chairman DeKrey: Thank you. Anyone else wishing to testify in favor of HB 1152. Anyone wishing to testify in opposition to HB 1152.

Carol Two Eagles: Opposed to HB 1152. Irreconcilable differences allows the parties a chance to survive divorce. It won't serve the children.

Chairman DeKrey: Thank you.

Sherry Mills Moore, State Bar Association of ND: Opposed (see attached testimony).

Rep. Eckre: Even if one of the other reasons existed, you would want to use the reason of irreconcilable differences.

Ms. Moore: Yes.

Rep. Klemin: What is the alternative dispute resolution provisions are and how they apply to divorce now.

Ms. Moore: There are alternate dispute resolutions solutions in place, and the courts allow people to discuss mediation is provided through the courts, or they can go to private mediation, or the courts can order them to mediation.

Rep. Galvin: If a couple came to you and wanted to use irreconcilable differences, would they have to explain what the differences were in detail or they just use the reason.

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Hearing Date 1-21-03

Ms. Moore: The court has to find irreconcilable differences, most typically they need to be presented with evidence. Sometimes the court isn't interested in the reasons.

Chairman DeKrey: Thank you. Anyone else in opposition.

Bonnie Palachek, ND Council on Abused Women: Opposed. With domestic violence, this would slow down the process, the situation could become life-threatening, since the abuser, may not agree to the divorce, the abuser would like to remain married.

Chairman DeKrey: Thank you. Anyone else wishing to testify? We will close the hearing. What are the committee's wishes.

Rep. Delmore: I move a Do Not Pass.

Rep. Kingsbury: Seconded.

Chairman DeKrey: Any further discussion.

10 YES 2 NO 1 ABSENT DO NOT PASS

CARRIER: Rep. Kretschmar

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Date: 1/21/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1152

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Rep. Delmore Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin		✓			
Rep. Grande		✓			
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 22, 2003 7:33 a.m.

Module No: HR-12-0881
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1152: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1152 was placed on the
Eleventh order on the calendar.

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10/2/03
Date

2003 TESTIMONY

HB 1152

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Diana Halladay
Operator's Signature

10/2/03
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**TESTIMONY FOR HB 1152
BY
LARRY BELLEW
REPRESENTATIVE DISTRICT 38
MINOT, ND**

HB 1097 dated 1/06/71 was introduced by Rep. Hilleboe adding the words irreconcilable difference as another cause for divorce.

Irreconcilable differences is defined in NDCC 14-05-09.1 as those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which makes it appear that the marriage should be dissolved. This bill gave North Dakota a "no fault divorce". The law was patterned after the California law.

The bill I am introducing is not an attempt to stop divorce, but to slow divorce down in our great state. It's an attempt to keep families together. The bill in front of you brings the law back to pre 1971. In other words, there would need to be a "cause" for divorce.

This bill, if passed, will require both partners in a marriage to agree to a divorce rather than just one. After all, it takes two to agree to a

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Deanna Hilleboe
Operator's Signature

10/2/03
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marriage, but under today's "no fault laws", it takes just one to end a marriage. According to Frank Furstenberg and Andrew Cherlin, the authors of Divided Families, some 80 percent of divorces are unilateral. One spouse usually wishes to keep the family together.

Enclosed you will find two documents from the North Dakota Department of Health. The first is North Dakota divorces and divorce rates from 1923-1970 and the divorces and divorce rates from 1971-2001. Remember "no fault divorce" became law in 1971. As you can see, since the law became effective, the divorce rate has skyrocketed in North Dakota. I also received an E-mail from the Department of Health that listed the causes of divorce in our state. As you can see, cause #7 which is irreconcilable differences, makes up slightly more than 99 percent of causes listed.

As I stated earlier, my goal here is not to eliminate divorce but slow it down. Whatever we can do to keep families together, we should do. This bill will make North Dakota an even more family friendly state.

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Donna Hall
Operator's Signature

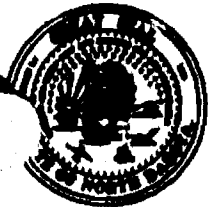
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Enclosed you will also find several articles on this subject that I found on the Internet. Thank you for your time and consideration.

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Dorena Ballarín
Operator's Signature

10/2/03
Date



**NORTH DAKOTA
DEPARTMENT OF HEALTH**
600 E. Boulevard Ave., Dept. 301
Bismarck, ND 58505-0200

ADMINISTRATIVE SUPPORT

December 23, 2002

Representative Larry Bellew
1309 25th Place NW
Minot, ND 58703

Dear Representative Bellew,

Your request for divorce data in North Dakota was forwarded from Mrs. Beverly Wittman to me for attention. I am enclosing 2 short tables containing the number of divorces and the calculated divorce rate for 1923 to 2001. 1923 is the earliest year that is available. The divorce rate is calculated per 1000 of the ND population.

If you have any further questions or statistical request, please contact me. My e-mail address is cbarth@state.nd.us and telephone number is (701) 328-2303.

Sincerely,

Carmell Barth

Carmell Barth
Research Analyst
Division of Vital Records

Enclosures (2)

cb

Accounting
(701) 328-2382

Human Resources
(701) 328-2382

Vital Records
(701) 328-2380

Printed on recycled paper

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Dorinda Bell
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12/2/03
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1923-1970 ND DIVORCES AND DIVORCE RATES

	Number of Divorces	Rate per 1000 of the ND population
1923	430	
1924	377	0.66
1925	462	0.68
1926	483	0.71
1927	506	0.75
1928	461	0.75
1929	564	0.71
1930	466	0.67
1931	487	0.68
1932	370	0.72
1933	481	0.64
1934	504	0.71
1935	504	0.74
1936	474	0.74
1937	536	0.70
1938	521	0.79
1939	488	0.77
1940	523	0.72
1941	527	0.81
1942	472	0.82
1943	507	0.74
1944	576	0.79
1945	745	0.90
1946	1051	1.16
1947	835	1.64
1948	684	1.36
1949	633	1.07
1950	589	0.99
1951	611	0.95
1952	585	0.99
1953	589	0.94
1954	554	0.92
1955	543	0.89
1956	488	0.88
1957	545	0.79
1958	515	0.88
1959	591	0.83
1960	596	0.95
1961	634	0.94
1962	631	1.00
1963	689	1.00
1964	758	1.09
1965	720	1.20
1966	759	1.14
1967	909	1.20
1968	868	1.44
1969	908	1.37
1970	985	1.44
		1.59

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1971-2001 ND DIVORCES AND DIVORCE RATES

	Number of Divorces	Rate per 1000 of the ND population
1971	1172	1.99
1972	1309	2.12
1973	1435	2.32
1974	1611	2.61
1975	1726	2.79
1976	1880	3.04
1977	1976	3.20
1978	2081	3.37
1979	2112	3.42
1980	2142	3.28
1981	2319	3.55
1982	2202	3.37
1983	2336	3.58
1984	2249	3.45
1985	2295	3.52
1986	2261	3.54
1987	2258	3.53
1988	2345	3.70
1989	2229	3.49
1990	2320	3.63
1991	2167	3.39
1992	2285	3.58
1993	2230	3.49
1994	2197	3.44
1995	2220	3.48
1996	2258	3.53
1997	2138	3.35
1998	2281	3.57
1999	2127	3.33
2000	2188	3.41
2001	1857	2.89

SOURCE: VITAL RECORDS, NORTH DAKOTA DEPARTMENT OF HEALTH

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From: "Barth, Carmell R." <cbarth@state.nd.us>
Date: Mon Dec 30, 2002 02:25:22 PM US/Central
To: "The Bellevs" <thebellevs@ndak.net>
Subject: RE: Divorce Causes?

Representative Bellew,
The Health Department records the causes for divorce in our statistical
file. The Century Code specifically lists 7 causes in Chapter 14, Section
05-03.

The causes are:

1. Adultery
2. Extreme cruelty
3. Willful desertion
4. Willful neglect
5. Abuse of alcohol or controlled substances
6. Conviction of a felony
7. Irreconcilable differences. (Makes up slightly more than 99
percent of causes listed.)

If you have any other questions, please contact me.

Carmell Barth
Division of Vital Records

-----Original Message-----

From: The Bellevs [mailto:thebellevs@ndak.net]
Sent: Monday, December 30, 2002 2:02 PM
To: cbarth@state.nd.us
Subject: Divorce Causes?

Carmell,

Does the North Dakota Department of Health keep records on what was the
cause of a divorce? If you do, I would like a copy sent to me. Thank
you!

Rep. Larry Bellew
1308 25th Place NW
Minot, ND 58703

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"Only acts of war and the events of natural disasters are more harmful to a child's psyche than the divorce process."

"No two people become divorced at the same time."

--The Newsletter of the American Academy of Matrimonial Lawyers, Summer 1997

"Let's be blunt: If you hire a divorce lawyer today, there is a good chance you will hire a bankruptcy lawyer within two or three years."

-- From an article titled "After the Split" in the August 16, 1998 edition of *The Kansas City Star* MoneyWise section, written by staffer Gene Meyer, quoted by Diane Sollee on the Coalition for Marriage, Family and Couples Education, LLC (CMFCE) listserv

"Where you have minor children, there's really no such thing as no-fault divorce for fathers," says Detroit attorney Philip Holman, vice-president of the National Congress for Fathers and Children. "On the practical level, fathers realize that divorce means they lose their kids."

--"The faults of ending no-fault divorce" By Cathy Young / The Detroit News 3/19/96

70 % of divorces end "low-conflict" marriages

Wallerstein and others who stress the high cost of divorce raise hackles among those committed to the view that children are better off when a bad marriage ends. But a new study of family upheaval by sociologists Paul Amato of the University of Nebraska and Alan Booth of Pennsylvania State University underlines some important distinctions. According to their research, reported in their 1997 book *A Generation at Risk*, the worst situations for children are high-conflict marriages that last and low-conflict marriages that end in divorce. And it turns out that most divorces fall into the latter category: A whopping 70 percent of divorces end "low-conflict" marriages. "For children's sake," Amato and Booth conclude, "some marriages should not be salvaged. But in marriages that are not fraught with severe conflict and abuse, future generations would be well served if parents remained together until children are grown."

From

Barbara Dafoe Whitehead

Ms. Whitehead, who is not divorced, spoke openly of family life in the United States. She noted that 20 years ago Americans began acting as if they had changed their minds about the foundation of family life. "We decided in the 1970s, out of a sense of optimism about the future, that we were going to reengineer family relationships in a way that made them more productive of our own individual satisfactions, and that it was okay to give up on an unhappy marriage and move on. That was a big change in thinking. And the second part was that children would bounce back. That was such a pervasive idea in the literature [of] the 1970s. Well, who would refuse a deal like that? And then, sadder but wiser, we now stand in the 1990s-and we realize that that optimistic scenario hasn't been played out" (*Ladies' Home Journal*, March, 1995, p. 73).

--From

"In extending serial monogamy to everyone as part of the unlimited riches available to middle-class

<http://patriot.net/~crouch/quotes.html>

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Americans after 'the War,' did we underestimate the price of 'temporary' marriage? Did we overlook the economic and psychosocial effects of essentially encouraging people to end an intimate and supposedly lifetime relationship simply because they got bored?"

—Ira Lurvey, Chair, American Bar Association Family Law Section (Quoting him here does not imply that he favors restricting no-fault. He does not. I believe he does not object to Covenant Marriage, however.).

"It is incomparably better that individuals should suffer than that an institution, which is the basis of all human good, should be shaken or endangered."

—Timothy Dwight, quoted by Florence King

"These no-responsibility divorces have been great for guys. And women are just dumped."

—Tina Brown, editor of the *New Yorker*, *Vanity Fair* and *Talk*

On May 27, 1996, The Los Angeles Times ran a front-page story on current efforts to reform "no fault" divorce laws. According to The Times, in approximately 20 states, "it is easier to break the marriage contract than it is to fire an employee or back out of buying a car."

—From

"My mother ... woke up this morning to find the word D-I-V-O-R-C-E written in mirror writing on her forehead with a big black felt pen. Of course she didn't know the word was there ... until she stepped into the bathroom to brush her teeth and looked in the mirror ...

"Well, I think to myself, *fatherless again*. ... And once again ... I feel like the front doors to my house have been opened and the parents have announced to the children inside, *Whoops! Sorry, but we just lost you in a poker game. We're afraid you'll have to be clearing out now.*"

—*Shampoo Planet*, a novel by Douglas Coupland, Pocket Books 1992; pp. 1-2

(A collection of quotes on the MTV generation's reaction to their parents' divorces can be found in *13th Gen.*, a book that's made up to look like Coupland's *Generation X*.)

"If we want less government, we must have stronger families, for government steps in by necessity when families have failed."

— Jimmy Carter. GOVERNMENT PRINTING OFFICE, A STATEMENT IN NEW HAMPSHIRE, AUG. 3, 1976 in *THE PRESIDENTIAL CAMPAIGN, 1976: Jimmy Carter 463* (1978). Cited in Sean E. Brotherson and Jeffrey B. Teichert, "Value of the Law in Shaping Social Perspectives on Marriage", 3 U. of Utah Jnl. L. & Fam. Stud. 23, at 51.

"I have to start with a confession: This isn't the book I set out to write. ... For example, I started this project believing that people who suffer over an extended period in unhappy marriages ought to get out. ... I thought that striking down taboos about divorce was another part of the ongoing enlightenment of the women's, civil- rights, and human potential movements of the last twenty-five years. ... To my utter befuddlement, the extensive research I conducted for this book brought me to one inescapable and irrefutable conclusion: I had been wrong."

Dr. Diane Medved in her book, *The Case Against Divorce*, quoted in

"All around us, every day, we see the bitter fruit of the breakdown of the family. ... I believe the breakdown of the family is a direct result of our "no-fault" laws. ... Why should a couple invest in a marriage when it can be dissolved for no reason at all?"

<http://patriot.net/~crouch/quotes.html>

1/2/2003

Diana Medved
Operator's Signature

1/2/03
Date

Ga. State Rep. Brian Joyce,

"We must make individual self-fulfillment secondary to the health of the family."

Ga. State Rep. Brian Joyce,

Divorce is "a cure ... worse than the disease"—

"The meeting ..was addressed by Dr. Donnacha O hAodha, who felt that the cure was worse than the disease. He said that Ireland was fortunate to have the evidence of other countries to help us going down the same tragic road.

Australian Study: Protect marriage contract

A think tank study reported in the *Sydney Morning Herald* called for recognizing marriage as a contract and bringing back "public, moral condemnation of irresponsibility and unacceptable conduct ..." as well as compensation for damages from such conduct. The study claimed that "The possibility that marital failures and misconduct will be taken seriously by the law would be a powerful incentive for reducing them." The article is a source of many useful quotations, which, however, may not be used on the internet. (Quotations here are from the study itself)

The study also alluded to the gap between people's beliefs and expectations about the sanctity of marriage and the law's hostility to marriage. It also points out that children are third-party beneficiaries of the marriage contract.

Study title: "Wedlock and Well-Being" Author: Barry Maley of the

—The study, a small pamphlet, can be ordered inexpensively over the net from

—The article describing the study is

The *Herald* article is

not to be quoted on the internet.

"Getting married in America is like doing business in Russia. Everything is up for grabs, everything is constantly renegotiated, and nobody has to keep their word. I think that makes for a lot of unhappy marriages, even though no-fault was supposed to take care of that".

—John Crouch,

"The unparalleled disaster caused by uniform and compulsory no-fault divorce is reaching the consciousness of the broader population. There was always the risk that the sheer numbers of people forced into divorce, crushed by laws that stripped them of very basic Constitutional rights and property, would be so bad, that the response is simple: Rescind the bad law." ...

"On every philosophical, moral and intellectual grounds, divorce statutes should underscore that marriage IS a contract, yet one that can be broken. But as in all contracts, breaking it comes with a penalty."

—Phyllis H. Witcher, testifying before a Pennsylvania legislative committee

Divorce reform is not government coercion

"So as we evaluate this legislation, we must remember what has happened in our political culture even as we discuss the need for mentoring, fathering, character-shaping charity, community empowerment, and curbing divorce. Public policy has shifted away from our decades-long impulse to

<http://patriot.net/~crouch/quotes.html>

1/2/2003

Keeping a marriage together can be one of the hardest jobs we face. And when a relationship hits stormy waters, "divorce" may seem like the right "solution" to the problem---at least, for one of the spouses involved.

Divorce is a harsh and demoralizing way to resolve issues that have not been tackled in other ways. Many people file for divorce before trying other options that can repair damaged relations.

Research shows that up to 80% of divorces are filed by "low-conflict" couples who have not learned the skills needed to maintain a healthy relationship. Learning these skills is a "solution" so much less destructive than going through a divorce.

And most important, if you have children, you need to consider how the "loss of an intact family" will affect your children.

The idea offered here --- in a sense --- is plowing new ground. The mission is to offer hope, to instill courage, and to give direction to those trapped in an unwanted divorce....or to those who have been left by a spouse.

The first step is saying "No" to an unwanted divorce. Since no-fault divorce was enacted, most spouses believe it means "no way to stop it" --- but that is changing..... Your job is to be strong enough to stand up and say "No" to the divorce - to everyone.

New books:

You can write to
Judy Parejko at

or leave a message
on the voice mail service
715-664-6137

<http://www.divorceresourcecenter.com/>

Page 1 of 1

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Why No One Is Married

Marriage today is no more than "registered cohabitation" because no-fault divorce was misinterpreted as "no cause & no proof" divorce. If you can divorce without true cause--then you were not truly married in the first place. You were merely cohabiting, as in ages past, regardless what name it's called.

You could always walk away from a disagreeable cohabitation, but marriage was *defined* in its protection by law. You couldn't get out of a marriage just because you wanted out. You had to have true cause: abuse, adultery, abandonment, or the like. And not only cause, but genuine proof of it.

When the well-meaning no-faulters tried to take adversarialism out of the divorce process, to make it friendly, it failed. The door swung wide open to "no cause & no proof" divorce. Meanwhile, adversarialism went right back into the property and custody battles.

The old "fault" laws needed overhaul to bring spousal equality, and to make the system friendlier, but no-fault's "no cause & no proof" divorces, administered by warring lawyers, was the wrong *implementation*. The law should have required that spouses be *taught* how, and *helped*, to settle differences as co-equals, to deliberate justly and fairly, with self-control, while honoring their partner and the vows they made for a permanent union.

Beforehand, almost any man could rule his wife and settle disputes by physical force. But spousal equality demands at least a little education, a working knowledge of civilized diplomacy and reasoned compromise--for both genders.

The no-fault laws did not train the partners to solve any problems. The laws simply--and grievously--empowered the courts to settle all their *problems* for them, in one grand sweep, by divorce, no matter how whimsical or trivial the disagreement. No-fault did not elevate the status of *partners* as co-equal family managers. It lowered the status of both spouses, while it elevated the courts as the new, and not-so-charitable, family managers.

The no-fault divorce system, *as implemented*, funded divorce. It channeled money from troubled families to divorce lawyers, now at hourly rates in three digits, in exchange for dividing children and property. The court's officers were hired and paid to terminate marriages, not to save them.

The no-fault legal system, *as envisioned*, was to be a family *hospital*, to comfort the hurting spouses and bandage the wounded marriages. Instead, it became a family *morgue*. It promised to give relief from the former hostilities of the "fault" legal system, but it became more hostile than ever.

Reconciliation dollars, facilities, and assistance were promised, but they never materialized. A generation and a half later, we know that the experiment did not work as planned.

In truth, our no-fault laws, *as implemented*, abolished true marriage. After many years of no-fault, we no longer even respect the solemn covenants that partners make between themselves and God. Instead, we respect the solemn covenants that lawyers make between themselves and a judge.

Although cohabitation is handicapped in many ways, it unfortunately has one important advantage: *ordinary* cohabitation keeps government out of the home. In contrast, the *registered* cohabitation that we still call marriage invokes the jurisdiction of government officers. They receive authority to manage the lives of both spouses and their children with legal force.

No wonder people cohabit. No wonder we have so many broken homes. Partners can walk away from the slightest inconvenience, at any time, with court assistance. They don't ever have to conciliate, or swallow their pride and say they are sorry, or try to please anyone but themselves.

divorce was made into a guaranteed certainty, it became an easy way out of hard times. Partners knew they would no longer be pressed by pressing questions about covenants and faithfulness, as they moved on to their next cohabitation. Nor could they be stopped.

The fundamental attribute, the unique defining characteristic, the earmark, that always distinguished true marriage from cohabitation, is legal security--protection by law--protection by divorce law.

Today, that protection is gone. Genuine proof of true cause was always required for divorce, and anything else--but that--should have changed in the wake of divorce law.

It is one thing to let spouses decide, without intrusion, for their own private reasons, whether to live together, or to live apart indefinitely. But it is another thing altogether, for government not to question the cause, when government has already intervened, when government is asked to destroy a marriage, totally and permanently.

The legal security of true marriage cannot be a chain. But neither can it be a thread. It must be a sturdy fabric, a flexible but tough canvas, to weather the gales of life.

That's why true marriage is so secure and stable for mates. When spouses cannot easily shake off their yoke, they soften it by mutual accommodation. In other words: *spouses don't stay together because they get along; they get along because they stay together.*

And that's why true marriage is so secure and stable for children. True marriage is underwritten by law. Children can rest assured that no passing storm will carry either of their parents away. They know that the whole force of government stands as a benevolent guard to protect their homes and both of their providers.

We are not in the midst of a divorce crisis. It is a marriage crisis.

No one is married, and no one can marry. The right to marry was taken away.

The happy voices of the bride and the bridegroom are gone from our land.

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ncellito, JD

20180 Ponde Lane
Porter, TX 77365
pursuejustice@lycos.com
Phone: 281-354-4642

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Dannan Baller
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10/2/03
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FAMILY NEWS FROM DR. JAMES DOBSON

September 2002

Dear Friends:

Greetings from Focus on the Family! If there's a nip in the air in some parts of the country and the days are getting shorter, it must be September. Children everywhere are gathering their supplies, strapping on their backpacks and heading back to school. Other folks might be taking advantage of the last few weeks of warm weather to engage in some outdoor activities before the cold winds start to blow. Whatever you're doing during the transition from summer to fall, I trust that this letter finds you and your loved ones well.

This month I would like to discuss an important report that was released over the summer titled, "Does Divorce Make People Happy?" The study, which was conducted by the Institute for American Values in New York, reveals what we have observed clinically, but which has now been documented by research. The findings are noteworthy, because they debunk the modern myth that someone in a troubled marriage is faced with a choice between either staying in a miserable relationship or getting a divorce to be more happy.

Using data from the National Survey of Family and Households (a nationally representative survey with a wide-ranging data set looking at all kinds of family outcomes, including happiness,) the research team studied 5,232 married adults who were interviewed in the late 1980s. Of these individuals, 645 reported being unhappily married. Five years later, these same adults—some of whom had divorced or separated and some of whom had stayed married—were interviewed again.¹

The results of these interviews were astounding. They revealed that a full two-thirds of the unhappily married spouses who stayed married were actually happier five years later! Among those who initially rated their marriages as "very unhappy," but remained together, nearly 80 percent considered themselves "happily married" and "much happier" five years later.²

Surprisingly, the opposite is found to be true for those who divorced. The Institute for American Values study confirmed that divorce frequently fails to make people happy because, while it might provide a respite from the pain associated with a bad marriage, it also introduces a host of complex new emotional and psychological difficulties over which the parties involved have little control. They include child-custody battles, emotionally scarred children, economic hardships, loneliness, future romantic disappointments, and so on. This helps explain why of all the unhappy spouses in the initial survey, only 19 percent of those who got divorced or separated were happy five years later.³

Among those who initially rated their marriages as "very unhappy," but remained together, nearly 80 percent considered themselves "happily married" five years later.

In the words of Dr. Linda J. Waite, a sociology professor at the University of Chicago and lead author of the study, "Staying married is not just for the children's sake . . . results like these suggest the benefits of divorce have been oversold."⁴ And indeed, the pain of divorce extends beyond parents and children to create heartache and distress for other extended family members. The 2000 census revealed that, as a result of divorce and several other factors, there are currently 2.4 million grandparents who act as the primary caregivers for their grandchildren.⁵ Many of these senior citizens are ill-equipped, both physically and financially, to care for children on a full-time basis.⁶ They thought they had completed their parenting responsibilities, but found themselves strapped again with the difficult responsibilities better handled by younger people.

Dr. Scott Stanley, another of the study's authors and co-director of the Center for Marital and Family Studies at the

Colorado Springs, CO 80995

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STATE BAR ASSOCIATION OF NORTH DAKOTA

TESTIMONY ON HB 1152

Sherry Mills Moore

On behalf of the State Bar Association of North Dakota I want to offer some thoughts for your consideration. For 23 years I have been practicing family law in North Dakota. In that time I cannot remember a divorce granted on grounds other than irreconcilable differences. It is not because of sentiment that I do not want to see this removed as the basis for divorce, but because of compassion. This bill would make families fight.

Divorce does not, of itself, create family dysfunction, family disharmony, family friction. When a family is already fractured, issues arise which have to be resolved, and that is the function of the court. The courts and legislature do not create those family disputes any more than oncologists create cancer. And to carry that analogy further, removing irreconcilable differences as the basis for a divorce, is akin to banning chemotherapy as a treatment because it has some nasty side effects. Finally, of course, we have to presume that at some level, grown up people probably need to make their own decisions about their marriage.

Eliminating irreconcilable differences as grounds would not cure family dysfunction.

If it were eliminated, for a couple to divorce they would need to allege and prove one of the other grounds. One of the two of them has to be found to have committed adultery, been extremely cruel, deserted or neglected the family, abused alcohol or drugs, or been convicted of a felony.

Far fewer cases would settle.

A settlement is premised upon agreement of the parties, including agreement as to the grounds. I really can't imagine any of my clients voluntarily agreeing that he or she has committed one of these grounds. If a parent admits he has been extremely cruel, that impacts on custody decisions, now and in the future. If a mother agrees she has abused alcohol, then she impacts employment, insurance, and custody issues, now and in the future. The same is true for neglect and desertion.

Before we had irreconcilable differences, divorces sometimes occurred through a sham, a pretend act of cruelty or adultery. That simply reflected the desperation of people trapped in a bad marriage. The

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choice became that of remaining in a terrible marriage, creating a fiction for the court, or publicly airing and proving that one of the two of the parties is bad.

Fewer settlements means much more litigation.

If the parties can't agree to the grounds the matter will need to go to trial, even if they can agree to all the other terms of the marriage -- custody, support, and property division. The estimate is that somewhere between 80 to 95% of all divorces are settled by agreement. The burden on the judicial system to try these would be very serious. What now takes a court probably 15 minutes to review would take somewhere between two to four days to try.

The burden on the families would be worse. In hearing about the benefits to mediation, we are told, again and again, that a family who is able to divorce by agreement is far more likely to provide a healthy family in the future. A healthy divorced family means less damage to children. If we can't settle a case because the grounds are too limited, we force families to fight.

More litigation means more expense -- financial and emotional -- for the families.

Litigation costs significantly more than settlement to the parties as well as the court system. Families of wealth will be able to litigate, but families who do not have the means, will not. Families who are already under financial strain because of their family dissolution will be further stretched by the cost of litigation. Without question, families who have to undergo litigation, rather than agreement, heal rarely if at all. Their ability to deal with each other courteously in the future is gone.

Divorce is not easy, even with irreconcilable differences as the basis. If the idea is that families divorce because it is so easy, I cannot agree. Families now may not have to prove that one of them was evil to get a divorce, but they still have to go through a very painful, disruptive, and frankly, slow process. I cannot think of a time that I thought that my client was divorcing on a whim, or impulse. Oh, they may come in for an initial visit on impulse, usually created from of anger or betrayal or fear. But they don't stay the course through this kind of misery without having their own very real reasons for doing so.

My father practiced law in the "good old days" before irreconcilable differences, and used to tell this story. He represented a woman who had been shot by her husband and the grounds she alleged for divorce

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was extreme cruelty. Although dad presented the bullet as evidence and got the husband to admit that he had shot her, the judge denied the grounds as insufficiently cruel.

Why would we reinstate this kind of system? You cannot legislate love, you cannot legislate maturity, you cannot even very easily legislate morality. If a family has come to the conclusion that they cannot any longer go on together, I really think that their decision should be honored with as much dignity and humanity as we can muster. Yes, the state has to be the one to step in and resolve the dispute, but not to deny it exists.

Ridding the law of irreconcilable differences will no more rid families of turmoil and anger and harm to their children, than banning food stamps would rid us of hunger. Help families by getting to some of the core problems which plague them. Fund counseling for families, gaming addictions, substance abuse and domestic violence. Support efforts to strengthen the court system, including the mediation services and custody investigators. Keep family finances manageable by wise taxing and wiser spending. Give them economic strength. Support the parenting classes for divorcing families. Do all the things you already do as legislators to shore up their chances at living a healthy life. But when it does not work, don't make their lives worse.

If I can answer any questions, please feel free to ask and if any arise in the future you may either contact me at my office at 222-4777, or through my e-mail at esther@btinet.net. Thank you.

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