COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Docket No. 11715

CHESTER CHIN
Plaintiff/Appellee

v.

EDITH E. MERRIOT
Defendant/Appellant

On Appeal from a Judgment of the
Franklin County Probate and Family Court

AMICUS BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

SECONDARY SOURCES

INTRODUCTION

The Alimony Reform Act, added by St. 2011, c. 124, §§ 1-7, is uniformly considered to have brought about the most dramatic changes to family law in decades. It has been hailed, by some, as the long-overdue panacea to correct the perceived "unfairness" to obligors of lifetime alimony obligations. While the Act does indeed fundamentally alter the legal landscape, Zaleski v. Zaleski, 469 Mass. 230 (2014), there is little consensus among trial court judges on its application, especially in the arena of cohabitation. At least one jurist has described the extant terrain as resembling the "wild west." (Kagan, J.). Clear guidance from this Court will be of wide public importance, extending far beyond the bounds of the instant case, and will help promote the consistency and predictability unquestionably envisioned by the Act's architects.

INTEREST OF AMICUS CURIAE

Amicus files this brief at the court's request. See Mass. R. A. P. 17. In July of 2014, the court solicited amicus briefs in the matter of Chin v. Merriot, in part, on the following question:

> Whether the provision of the Alimony Reform Act concerning suspension, reduction, and termination of general term alimony based on a recipient spouse's cohabitation with another applies to a divorce judgment that predates the act, where the cohabitation began before the effective date of the act and continues after the act became effective.[1]

Undersigned counsel, Richard M. Novitch and Maureen McBrien, practice domestic trial and appellate litigation in Massachusetts and have filed this brief in the spirit of helping promote the development of the law in Massachusetts. Charles P. Kindregan, Jr. is a distinguished Professor of Law at Suffolk University Law School and is the co-author, along with *amicus* Maureen McBrien, of the 4th Edition of Massachusetts Practice, Family Law and Practice.

ARGUMENT

In summary, the position of the *amicus* is that the Act's provisions for terminating or modifying the amount of alimony, which include cohabitation, are intended to be prospective in their application and the traditional material change in circumstances

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[1] The court also raised the issue whether the provision of the act concerning the termination of general term alimony when the payor spouse attains full retirement age applies to a divorce judgment that predates the act where the payor reaches retirement age after the effective date of the act. This brief does not address that issue.

standard applied to existing alimony judgments. The lone exception to the prospective nature of section 49's provisions is for existing alimony judgments that exceed the durational limits as defined in the Act. See St. 2011, c. 124, § 4(b); G.L. c. 208, § 49(b). There, payors can obtain relief solely based on the new law itself, unless deviation is warranted.

A. THE COHABITATION PROVISIONS OF THE ACT DO NOT, AND SHOULD NOT, APPLY TO EXISTING CONTRACTS.

1. The mere passage of the Act does not justify the modification of existing alimony judgments due to a recipient's cohabitation.

"As a general rule, the law existing at the time an agreement is made necessarily enters into and becomes part of an agreement." Feakes v. Bozyczko, 373 Mass. 633, 636 (1977). "In contrast, laws enacted ***after*** the execution of an agreement are not commonly considered to become part of the agreement unless its provisions clearly establish that the parties intended to incorporate subsequent enactments into their agreement." Id. (citations omitted; emphasis added). As the following cases illustrate, the mere passage of the Act, subsequent to an existing Judgment incorporating an agreement of the parties, does not in

and of itself compel the modification of agreements in effect prior to the Act.

In Orlandella v. Orlandella, 370 Mass. 225 (1976), this Court was confronted with the issue of whether to terminate a father's child support obligations based on a legislative amendment and redefinition of the age of majority -- years *after* the parties' divorce decree. At the time of their divorce, 21 was the established age at which parental authority, and the common law duty of support, ceased. Effective January 1, 1974, however, the age of majority was reduced to 18. After the parties' son turned eighteen in April, 1974, Father petitioned the court (seemingly in reliance on the subsequent change of the law) to determine whether the subsequent change in the age of majority terminated his support obligation. The trial judge reported the question to the Appeals Court and this Court transferred the case *sua sponte*. After canvassing decisions in other jurisdictions regarding the effect of subsequent statutory changes to prior agreements, this Court concluded:

> we think we carry out the legislative purpose if we hold that a support decree entered before [the effective date of the statutory

> enactment] was not automatically modified by the legislative redefinition of the age of majority.

Id. at 230.

Similarly, in Feakes v. Bozyczko, supra, the parties had executed a separation agreement prior to a legislative change in the age of majority. After a hearing, the trial judge "legally excused" father from having to pay child support after the child's 18th birthday. Id. at 633-634. This Court *vacated* the termination of father's support on the ground that "the judge erroneously placed reliance on a supposed retroactive effect of the statute reducing the age of majority to eighteen." Id. The Court notably reasoned "the [subsequent change in the] statute could not have been intended to alter the terms" of the parties' existing separation agreement. Id. at 638. Accord Manes v. Manes, 370 Mass. 235 (1976) (*vacating* trial court's modification of father's child support obligation in reliance on change in child support law subsequent to divorce); Holbrook v. Holbrook, 114 Mass. 568 (1874) (a "subsequent change in the law... cannot vary the effect of the former [divorce] decree").

Here, under the rationale of Feakes v. Bozyczko, supra, the law concerning cohabitation "necessarily entered into and became a part of" the parties' agreement and Judgment. It reasonably could be inferred that the parties (and/or their counsel) were aware of the law on the subject and negotiated the separation agreement based upon and/or around that law. There is little question that all litigants prior to the Act -- such as those in the extant case -- could have bargained for and addressed the issue of the recipient's potential future cohabitation in a surviving separation agreement. See Bell v. Bell, 393 Mass. at 23. Those, such as Chester and Edith, who did not should be entitled to rely on the law as it existed when their agreements were negotiated and approved.

As neither party had the benefit of anticipating such a broad, sweeping change in the legal landscape it would inequitable and unfair to apply the Act. Its passage alone did not modify the parties' agreement.

2. The Act, by its terms, is prospective only and does not constitute a material change of circumstances.

The Court's "primary duty in interpreting a statute is 'to effectuate the intent of the

Legislature in enacting it." Sheehan v. Weaver, 467 Mass. 734, 763 (2014). The best source of what the Legislature intended is the words of the Act -- both those used and those omitted. On that score, this Court teaches that its analysis should:

> begin with the language of the statute itself and presume. . .that the Legislature intended what the words of the statute say. In construing the Legislature's intent, [the court] may also enlist the aid of other reliable guideposts, such as the statute's progression through the legislative body, the history of the times, prior legislation, contemporaneous customs and conditions and the system of positive law of which they are a part.

Id. (citations omitted); Redgrave v. Boston Symphony Orchestra, 399 Mass. 93, 98 (1987). The Act should be interpreted according to:

> all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.

Zaleski v. Zaleski, Slip. Op. SJC-11391 at 15-16 (internal quotation marks omitted). When attempting to construct, *ex post facto*, legislative intent, it is proper to consider un-codified provisions of the Act, see Murphy v. Department of Correction, 429 Mass. 736, 737-738 (1999) (un-codified portions of statute to be

construed and applied according to its terms), and "substantially contemporaneous statements or actions of concerned legislators." Harborview Residents' Committee, Inc. v. Quincy Housing Authority, 368 Mass. 425, 432 (1975).

With these fundamental precepts of statutory construction in mind, the Court must conclude, insofar as cohabitation is concerned, that the Act applies *prospectively* only to agreements and judgments that arise *after* March 1, 2012.

We begin with section 4(a), which speaks only to section 49 of the act -- which governs the conditions under which general term alimony terminates, or is reduced or suspended in the case of cohabitation. See St. 2011, c. 124, § 4(a). It distinguishes alimony judgments entered before March 1, 2012 from alimony judgments entered thereafter and unambiguously provides:

> Section 49 of chapter 208 of the General Laws shall apply *prospectively*, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

See St. 2011, c. 124, § 4(a) (emphasis added). "Prospective" is defined as "relating to or effective

in the future," likely to come about." Merriam-Webster Dictionary. "Prospectively" is the descriptive adverb that instructs how the law shall "apply," viz. to future "alimony judgments" that enter after March 1, 2012.

Floor debate prior to passage of the Act highlights that the Act was not intended to "go back and rewrite contracts." One representative stated:

> I respect and try to understand the fact that asking parties to go back and rewrite contracts is probably not correct...

(statement by Paul K. Frost (R), 7th Worcester). Another representative explained that:

> This bill is only prospective. It cannot go back and change agreements.

(statement by James M. Cantwell (D) 4th Plymouth). Yet another "concerned legislator" observed:

> Madame speaker, the bill is intended to be prospective. . . .

(statement by representative John V. Fernandez (D), 10th Worcester).

With respect to alimony judgments entered before March 1, 2012, § 49 does not mandate relief. Instead, section 4(a) provides three (3) circumstances under which those judgments can be judicially adjusted, viz. [1] they "shall terminate only under such judgments,

[2] under a subsequent modification or [3] as otherwise provided for in this act." See id. Taking section 4's three (3) options set forth for termination of existing alimony judgments in turn, and first with respect to alimony judgments terminating "under such judgments," alimony terminates if the underlying judgment provides for termination based on the occurrence of certain events. For example, alimony judgments can terminate upon cohabitation by express agreement of the spouses at the time of the divorce. If an underlying judgment provides as such, and if the terminating condition in fact occurs, then alimony terminates. See e.g. Bell v. Bell, 393 Mass. 20, 23 (1984) (terminating alimony upon the cohabitation of the alimony recipient in accord with cohabitation clause in separation agreement).

The rub in this case, and the opacity in many pending cases, is how to define "or as otherwise provided for in this act." Appellant latches onto this language of §4(a) as the fulcrum from which the judgment below must be reversed. If Section 4 ended with the foregoing phrase (and/or did not contain any prior reference to §49 applying prospectively), then the analysis might arguably end there too. But, there

is more to section 4, which must be read to its end to glean its entire intended meaning.

The following section 4(b) then elucidates what the Legislature meant with the phrase "as otherwise provided for in this act," and qualified its intended "prospective" application as follows:

> Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments;

The general, Legislative intent from this language was clearly that the Act itself shall not be a basis for modifying existing Judgments. This reading is consistent with the word "prospective" used in § 4(a).

> *provided, however,* [here comes the single exception to the general, Legislative intent] that existing alimony judgments that exceed the *durational limits* under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification. . . . Existing alimony awards which exceed the *durational limits* established in section 49 of chapter 208 shall be modified upon a Complaint for Modification *without additional material change of circumstance*, unless the court finds that deviation from the *durational limits* is warranted. St. 2011, c. 124, § 4(b) (emphasis and commentary added).

Section 49(d) governing cohabitation falls under the first clause of § 4(b), the clause stating that various sections of the Act *shall not* be deemed a material change of circumstance that warrants

modification of the amount of *existing* alimony judgments. Thus, with respect to existing alimony judgments, cohabitation "shall not" be and legislatively is not a change in circumstances that justifies the "modification of the amount of" an existing alimony obligation. While the Legislature did indeed carve out an exception to the Act's very passage operating to create a change in circumstances, a spouse's cohabitation was not one of them.

"[A]s otherwise provided for in this act" is not simply a catch-all provision that includes cohabitation along with all other grounds for relief set forth in section 49 of the Act. Such an interpretation is flawed, illogical and would render Section 4(a) internally contradictory since the resulting meaning would be as follows: "Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification, or as otherwise provided for in ~~this act~~ section 49." "As otherwise provided for in this act" means that a court may terminate an existing alimony judgment based on the language of Sections 4(b), 5 and 6, which provide

that alimony can be terminated if the durational limits have been exceeded.

3. The Act does not contain any carve out to its prospective application based on a recipient-spouse's cohabitation arising out of pre-March 1, 2012 Agreements and Judgments.

We find the lone exception to the "prospective" nature of subsection 4(a), and to the "not...a material change of circumstance" provision of subsection 4(b), in the second clause of § 4(b), which provides:

> ...*provided, however*, that existing alimony judgments that exceed the *durational limits* under section **49** of said chapter 208 shall be deemed a material change of circumstance that warrant modification of the amount of existing alimony judgments; provided, however, that existing alimony awards which exceed the *durational limits* established in section **49** of chapter 208 shall be modified upon a complaint for modification **without additional material change of circumstance**, unless the court finds that deviation from the *durational limits* is warranted.

(emphasis added). Here, it becomes apparent that the Legislature intended to craft an exception to the prospective language in § 4(a) for "existing alimony judgments that exceed the durational limits under section 49. . .[which] shall be" a material change "without additional changes." St. 2011, c. 124, § 4(b). Thus, existing alimony judgments that exceed the

durational limits are modifiable due to the law going into effect and fall under the "as otherwise provided for in this act" language of Section 4(a).

While the phrase "*durational limits*" is not defined by the Act, its meaning is hardly opaque and can be determined, sensibly by "the ordinary principals of statutory construction" and review of other un-codified provisions of the Act. See Murphy v. Department of Correction, 429 Mass. at 737-738; Miles-Matthias v. Zoning Board of Appeals of Seekonk, 84 Mass. App. Ct. 778, 787 (2014). Looking at the Act itself, it is clear that the Legislature did not equate "*durational limit*" with cohabitation. Only ONE provision of the Act references "*durational limits,*" viz. G.L. c. 208, § 49***(b)***, which ties alimony to the mathematically quantifiable length of the parties' marriage. Neither §49***(d)*** (cohabitation) nor §49***(f)*** (full retirement age) make any reference to either cohabitation or retirement being included as a "*durational limit.*" Nor can a recipient's cohabitation logically be construed to be a "*durational limit.*" It, as is a payor's retirement, is most certainly a *status* -- not a limit. See In re: Marriage of Schroeder, 192 Cal.App. 3d 1154, 1159 (Cal.Ct. App.,

2d Dist. 1987) (referring to cohabitation as a "status"). To interpret or include cohabitation within the ambit of "*durational limit*" of Section 4(b) not only would be a strain in logic and statutory interpretation, but it also would pervert common sense and seemingly render superfluous the "retirement termination" provisions of SECTION 6. Cf. Connors v. Annino, 460 Mass. at 796.

SECTION 5 of St. 2011, c. 124 then provides meat to the bones of what the Legislature intended when it referenced "*durational limits*" in § 4(b). This provision details the phase-in for modification actions based on "*durational limits*," which mirrors c. 208, § 49***(b)***(1)-(4), as follows:

> Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the *durational limits* of **section 49** of chapter 208 of the General Laws, may only be filed under the following time limits:
>
> **(1)** Payors who were married to the alimony recipient 5 years or less, may file a modification action on or after March 1, 2013;
>
> **(2)** Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014;
>
> **(3)** Payors who were married to the alimony recipient 15 years or less, but more

than 10 years, may file a modification action on or after March 1, 2015;

(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.

Reading Sections 4 and 5 together with G.L. c. 208, §49, *amicus* submit that it is reasonable to conclude that the Legislature intended only to authorize modifications of "existing Judgments" for those who had been paying alimony for a *duration* longer than permitted under § 49***(b)***.

Section 4(b) is entirely silent as to the impact of cohabitation on existing alimony judgments, even though the cohabitation provisions are in the same Section 49 as are durational limits. Thus, the only exception to the Act operating prospectively is with respect to obligations that exceed the durational limits. By implication, in other circumstances, including cohabitation, a payor must prove a change in circumstances to obtain relief and the passage of the Act alone is not enough to warrant relief. This limits the scope of "a subsequent modification" of existing alimony judgments to a modification based on a material change of circumstance other than the passage of the Act (with the exception of the durational

limits). Courts from around the country that have considered similar factual issues have refused to modify the obligor's alimony. See e.g. King v. King, 82 So.3d 1124 (Fla. App. 2 Dist. 2012)(reversing reduction of alimony due to cohabitation pre-divorce); Gil v. Gil, 563 A.2d 624 (Vt. 1989) (*affirming* denial of obligor's request to terminate alimony where recipient was cohabitating at time of divorce and thus there was *no change*); Cermak v. Cermak, 569 N.W.2d 280 (N.D. 1997) (same); Haag v. Haag, 609 A.2d 1164 (Me. 1992) (*vacating* and *reversing* trial court's modification of obligor's alimony where recipient's subsequent cohabitation not unanticipated).

4. As a matter of policy, decisional law illustrates that the Act should not apply to existing Judgments.

The case of Hay v. Cloutier, 389 Mass. 248 (1983) is instructive. There, this Court was called on to consider whether to *retrospectively* apply the then newly re-written G.L. c. 208, § 34 to divide property of spouses who had been divorced PRIOR to the subsequent changes to § 34. The parties had divorced in 1971. Three years later, in 1974, G.L. c. 208, §34 was substantially revised. See St. 1974, c. 565, which

became effective on October 17, 1974. Relying on the subsequent change in, and amendments to, § 34, in 1980 the wife filed a Complaint for Modification seeking a division of assets. After trial, a judge of the Probate Court agreed with the wife and divided the marital estate. Id. at 249-250. This Court *reversed*. Notwithstanding that it was "clear" that the Legislature enacted St. 1974, c. 565 to "correct and remedy" inequities caused by earlier versions of § 34, and established "new substantive right[s]," the Court observed:

> the general rule of interpretation is that all statutes are prospective in their operation, unless an intention that they shall be retrospective appears by necessary implication from their words, context or objects when considered in the light of the subject matter, the pre-existing state of the law and the effect upon existent rights, remedies and obligations. Doubtless all legislation commonly looks to the future, not to the past, and has **no retroactive effect unless such effect manifestly is required by unequivocal terms.**

Id. at 253 (citations omitted, emphasis added).

Section 34 just did "not indicate an intention of the Legislature to have the amended Section 34 apply retroactively in this regard," and as a result, this Court concluded that the trial court erroneously divided the assets of spouses who were divorced prior

to the enactment of the new law. Id. at 254. Accord Crete v. Crete, 29 Mass. App. Ct. 531 (1990)(*affirming* dismissal of post-divorce complaint seeking division of military pension notwithstanding subsequent enactment of federal legislation dealing with pension where it had been considered at time of divorce); Stylianopoulos v. Stylianopoulos, 17 Mass. App. Ct. 64, 65 (1983)(*reversing* judgment, concluding Probate Court lacked power to act on ex-wife's complaint to divide assets pursuant to subsequently amended § 34). See also Hanscom v. Malden & Melrose Gaslight Co., 220 Mass. 1, 4-6 (1914) (marshalling cases that applied statutes prospectively).

While the Act, like the 1974 amendment to §34, was enacted to "correct and remedy" a variety of inequities caused by the then existing state of the law, it does not contain any "unequivocal terms" requiring its retroactive application to "existing alimony judgments" except with respect to judgments which exceed legislatively proscribed "durational limits." In fact, as detailed above, the contrary intent appears evident from its plain terms. See St. 2011, c. 124, § 4(a).

5. As a matter of fundamental fairness, the Act should not apply to existing contracts.

A deal is a deal.

At the outset, it is important to review some basic rules of contract law. As this Court has explained:

> the general rule of our law is freedom of contract. That principle rests on the premise that it is in the public interest to accord individuals broad powers to order their affairs through legally enforceable agreements.

Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 320 (1996) (internal quotation marks and citations omitted). The freedom of contract extends to married couples and unmarried cohabitants alike. Indeed, this Court has observed that "a marital relationship need not vitiate contractual rights between parties," Ansin v. Craven-Ansin, 457 Mass. 283, 288 (2010), and has reasoned "it [is] important to respect [spouses'] freedom to contract and that such agreements may serve a useful function in permitting the parties to arrange their financial affairs as they best see fit." Id. at 288-289. See Osborne v. Osborne, 384 Mass. 591 (1981) (*prenuptial* agreement may be specifically enforced), DeMatteo v. DeMatteo, 436 Mass. 18 (2002) (same); Ansin v. Craven-

Ansin, supra (postnuptial/marital agreements, enforceable). A separation agreement, and even memoranda of understanding entered into between divorcing spouses, may be specifically enforced.[2] Those agreements are "not...ordinary contract[s], but [are]...judicially sanctioned contract[s] setting forth the allocation between former spouses of rights, responsibilities, and resources." Bell v. Bell, 393 Mass. at 26 (Abrams, J., dissenting).

At its most basic level, the formation of a contract -- including those between spouses -- requires a bargain in which there is a manifestation of mutual assent to the exchange and consideration. See Quinn v. State Ethics Com'n, 401 Mass. 201, 216 (1987). To constitute consideration, a performance or a return promise must be bargained-for. A performance or return promise is bargained-for if it is sought by the promisor in exchange for his/her promise and it is given by the promisee in exchange for that promise.

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[2] See Breyan v Breyan, 54 Mass. App. Ct. 372 (2002) (memorandum of understanding, contemplating more formal agreement, enforceable); Knox v. Remick, 371 Mass. 433 (1976) (written *separation* agreements contemplating divorce, enforceable); Dominick v. Dominick, 18 Mass. App. Ct. 85 (1984) (oral *separation* agreement read into record enforceable).

Restatement (Second) of Contract, § 71 (1979). "The bargain must be determined by a meeting of the minds as to the essential terms before there can be a contract." Conos v. Sullivan, 250 Mass. 376, 378 (1924).

Here, as in thousands of cases that predated the Act, the parties exercised their "freedom of contract" and reduced their bargained-for exchange and "meeting of the minds" in a negotiated separation agreement, the terms of which merged in the judgment. 7-15. Inferentially, all essential terms were contained in the agreement, which the trial Court approved and sanctioned as fair and reasonable. Bilateral consideration was given and received, and there appears no serious question that the parties negotiated their financial affairs to one another and relied on both the division of assets and allocation of support in ordering their future, financial affairs and post-divorce lives.

While the nature of the merged agreement enables Chester and all other similarly-situated payors to attempt to modify the bargained-for exchange, Bercume v. Bercume, 428 Mass. 635 (1999), teaches trial judges and practitioners alike that:

> it is nevertheless appropriate for a judge to take heed of the parties' own attempts to negotiate terms mutually acceptable to them. A judge who modifies a divorce judgment does not write on a tabula rasa. To the extent possible, and consistent with common sense and justice, the modified agreement should take into account the earlier expressed desires of the parties.

As useful as the Act may be to some, it did not (and surely cannot be held to) rewrite decades of Massachusetts jurisprudence.

Here, the parties desired and expressly intended to allow for the termination of alimony only upon the death of either party or Edith's remarriage. (11;193). Neither of these events has happened. While some jurists take the view that Edith and every alimony recipient *could* have negotiated for a surviving term of alimony, there is equally no question that Chester (and all alimony payors) equally were free to "bargain for," negotiate and/or contractually insist upon a *surviving* anti-cohabitation provision within the framework of their agreement. As this Court explained in Gottsegen v. Gottsegen, 397 Mass. 617, 624 n.8 (1986):

> The judge's lack of discretion to order alimony terminated on mere cohabitation does not prevent a divorcing couple from including such a provision in a separation agreement

that survives the entry of the divorce judgment.

And, had Chester done so there is equally little question that it would have been specifically enforceable. Bell v. Bell, 393 Mass. at 23. For reasons only he and his attorney know, Chester made the decision and chose not to negotiate for such a provision [and Edith and her attorney apparently made a similar tactical decision]. In the words of Justice Gants in Pierce v. Pierce, if Chester (and every other payor prior to the Act) "had wanted his alimony obligation to end on [cohabitation], he could have negotiated such a provision in the separation agreement, which might have affected the division of marital property and the amount of alimony to be paid between divorce and [cohabitation]." Pierce v. Pierce, 455 Mass. 286, 302 (2009).[3]

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[3] See also Greenberg v. Greenberg, 68 Mass. App. Ct. 344, 353 (2007) (*affirming* trial court which declined to terminate alimony on husband's retirement where separation agreement did not so provide); Gurski v. Quinn, 71 Mass. App. Ct. 1101 (2007) (Memorandum and Order Pursuant to Rule 1:28) (*affirming* dismissal of complaint for modification, noting trial court found "retirement [as a basis to terminate support] is conspicuously absent from the parties' agreement although the option to add it was there when the parties originally negotiated their agreement"); Huddleston v. Huddleston, 51 Mass. App. Ct. 563, 567-568 (2001) (*reversing* termination of alimony on supporting

As a matter of policy, it appears fundamentally unfair to apply the Act's provisions to impact retrospectively existing Agreements where doing so disproportionately benefits (and burdens) one party to the bargained-for transaction. Agreements, especially judicially sanctioned ones, should represent something more than a mere aspiration. Nor does it appear equitable to hold as a matter of policy that fortuitous changes in the law may disproportionately burden one party to a preexisting contract where each lacked the ability to expect such sweeping changes in the legal landscape and reasonably plan for her future and/or negotiate a different deal. Compare comments made by Senator Cynthia S. Cream, State House News Service (Senate Sess.), July 28, 2011 ("Under this bill, people are provided with the ability to plan for their future.") The Act should not be construed as a "safety net" or "get out of jail free card" to *retrospectively* resurrect negotiation points payors, such a Chester, could have but failed to raise previously. As a matter of policy, the public should be entitled to reasonably expect that a "deal is a

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spouse's attainment of 65 when merged separation agreement expressed contrary intent).

deal." The Act, if applied to existing Judgments, assuredly does not give any cohabitating recipients the "ability to plan for their future" as seemingly envisioned by Senator Cream. Instead, if applied retrospectively, it could judicially eviscerate countless alimony recipient's financial futures.

B. APPLICATION OF THE ACT TO EXISTING AGREEMENTS WOULD RUN AFOUL OF THE CONTRACTS CLAUSE OF THE U.S. CONSTITUTION.

Even if the Act is interpreted to retrospectively authorize the modification of preexisting negotiated and judicially sanctioned divorce agreements due to an alimony recipient's cohabitation, this court should nevertheless decline to apply the Act to Judgments that entered prior to March 1, 2012. The Act, if so applied, would violate section 10, Article I of the U.S. Constitution and alimony recipients of property without due process of law, in violation of the Fourteenth Amendment to the U.S. Constitution, and of the comparable provisions of Articles 1, 10 and 12 of the Declaration of Rights of the Massachusetts Constitution.

"[I]t is [this Court's] duty, if reasonably possible, to interpret statutes in a manner that

avoids unnecessary decision of a serious constitutional question." Beeler v. Downey, 387 Mass. 609, 613 (1982)(citations omitted). Article I, § 10 of the U.S. Constitution provides: "No State shall. . .pass any. . .Law impairing the Obligation of Contracts." The Act, as applied to this case and all divorce agreements that predate the Act, would do just that. As the U.S. Supreme Court has explained for purposes of determining whether a change in State law violates Article I, § 10, a reviewing court must generally inquire whether:

> **(1)** there is a contractual relationship,
>
> **(2)** a change in law that impairs that contractual relationship, and
>
> **(3)** the impairment is substantial.

General Motors Corp. v. Romein, 503 U.S. 181, 186 (1992).

There is no question that not only is there **[1]** a contractual relationship between these parties inferentially negotiated by counsel -- but that contract also was sanctioned by the trial court as fair and reasonable. The trial court's imprimatur cannot be ignored or cast aside lightly. The public's perception of the colloquy (including the trial

court's conclusion that the parties' agreement was fair and reasonable), and of the judicial protections put in place for divorcing spouses' benefit are important. The public must understand that the process is not simply a meaningless formality.

There is equally no question that **[2]** the subsequent enactment of the Act, which serves as the primary basis of Chester's argument, could fundamentally "impair" Edith's and all alimony recipients' contractual rights. And, if enforced retrospectively as demanded by Chester, the Act would eviscerate contractual rights to receive alimony that were bargained-for in light of pre-Act statutory and decisional law.

As Justice O'Connor explained for a unanimous Court in General Motors v. Romein:

> The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. . . **If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract.** A change in the remedies available under a contract, for example, may convert an agreement enforceable at law in to a mere promise, thereby impairing the contract's obligatory force. **For this reason, changes in**

> **the laws that make a contract legally enforceable may trigger Contract Clause scrutiny if they impair the obligation of pre-existing contracts, even if they do not alter any of the contracts' bargained-for terms.**

Id. at 189 (citations omitted).

A similar argument also was made in Vartelas v. Holder, 132 S.Ct. 1479 (2012). There, Justice Ginsburg explained:

> The presumption against retroactive legislation...embodies a legal doctrine centuries older than our Republic. Several provisions of the Constitution...embrace the doctrine, among them, the *Ex Post* Facto Clause, the Contract Clause, and the Fifth Amendment's Due Process Clause. Numerous decisions of this Court repeat the classic formulation Justice Story penned for determining when retrospective application of a law would collide with the doctrine. It would do so, Story stated, ***when such application would take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability, in respect to transactions or considerations already past.***

Id. at 1486-1487 (emphasis added). Accord Mulligan v. Hilton, 305 Mass. 5, 9-10 (1940) (observing "[a] statute cannot constitutionally impose an obligation with respect to a transaction that at the time it took place gave rise to no obligation.").

A Contracts Clause claim also was made, and substantiated, in Pennoyer v. McConnaughy, 140 U.S. 1 (1891). There, after having sold some swamp land

(later transferred to another and sold to yet another), the State of Oregon passed a law that attempted to avoid (or had the effect of avoiding) prior agreements related thereto. The ultimate buyer of the swamp land, whose contractual rights were impaired as a result of the subsequent change in Oregonian law, sued and the trial court enjoined Oregon from enforcing the subsequently enacted law. The U.S. Supreme Court *affirmed*, reasoning that since the buyer had partially performed under the contract he had "acquired a vested right to" the swamp land which could not "beyond all doubt" be impaired by Oregon's subsequent enactment. Since the "effect [of the new law] was to destroy valuable property, rights and privileges belonging to" the purchaser, the Court concluded that the change in the law was "therefore violative of the Constitution of the United States, Art. 1, § 10." Id. at 24-25.

Here, alimony recipients such as Edith were entitled to rely on the laws in existence at the time their divorce agreement was negotiated and approved, especially with respect to how their potential future and/or existing and continuing cohabitation might

impact their alimony payments.[4] Moreover, unlike General Motors v. Romein, a recipient's contractual *right* to continuing alimony payments [and a payor's *duty* to make those payments] are unquestionably "central to the bargained-for exchange" embodied in their court-approved separation agreement. Controlling precedent -- both pre- and post-Alimony Reform Act -- teach that "[a]limony and equitable division [of assets] are interrelated remedies." See Casey v. Casey, 79 Mass. App. Ct. 623, 630 (2011) ("Alimony and equitable division are interrelated remedies"); Green v. Green, 84 Mass. App. Ct. 1109 (Memorandum and Order Pursuant to Rule 1:28)(Aug. 30, 2013) (The Alimony Reform Act "recognize[d] the interrelationship between alimony and property division.").

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[4] See and compare Gottsegen v. Gottsegen, 397 Mass. 617, 624 (1986) (Probate Court may not order the termination of alimony on the occurrence of an event, such as her cohabitation, unrelated to the recipient spouse's need for alimony or the supporting spouse's ability to pay), and Levine v. Levine, 394 Mass. 749 (1985) ("judge may not place limitations on alimony...on the basis of moral judgments of the recipient's living arrangements") (judgment permitting wife to remain in marital home until she lives with an unrelated male was beyond court's discretion), with Bell v. Bell, 393 Mass. at 23-24 (parties can lawfully negotiate surviving agreement that terminates alimony upon cohabitation regardless of need).

Because alimony cannot be viewed apart from an "order for division of property," see Grubert v. Grubert, 20 Mass. App. Ct. 811, 818 (1985), and "[a] final and equitable property division under § 34...is not modifiable," D.L. v. G.L., 61 Mass. App. Ct. 488, 501 (2004), it appears manifestly unfair to deprive a recipient of legitimate and reasonable contractual expectations by not just "impairing" but destroying her vested, bargained-for, judicially-approved right to receive alimony but also contemporaneously precluding her from re-dividing the marital estate. Stated differently, application of the cohabitation provisions of the Act to Judgments, which predate the Act would not just ignore the clear Legislative intent detailed above, but would also cause the Contracts Clause to "lose its anchoring purpose" by ***"attaching a new disability" to all recipients' rights to receive alimony whilst eliminating payors' corresponding duty*** to pay it simply by a stroke of luck in the passage of a new law. Cf. General Motors Corp. v. Romein, 503 U.S. at 190. That the separation agreement merged into the Judgment, as opposed to survived as an independent contract, should be inapposite: both parties should equally benefit, and be burdened, by the terms of

their Agreement. Adopting similar reasoning in Hanscom v. Malden & Melrose Gaslight Co., 220 Mass. at 10-11, which concluded that a legislative enactment subsequent to transfer of deed could not permissibly impair that transaction to the harm of one party thereto, the Act:

> would not be a mere change in practice or modification of remedy. It would transfer a vested property right from one person [alimony recipient] to another [alimony payor] by the pure fiat of the Legislature. This is contrary to the guarantees of both the state and the federal Constitutions. It would be a taking of property without due process of law. The law as to the enforcement and effect of a contract at the time it is made ***cannot be changed to the detriment of either party.*** Such law enters into the terms of the contract and becomes a part of its obligation.

C. THERE ARE OTHER REMEDIES AVAILABLE.

Declining to apply the Act to existing Judgments, which predate the Act, does not leave a segment of litigants without recourse. A trial court still may properly consider a pre-Act alimony recipient's cohabitation, together with a material change in the recipient's economic circumstances, as a basis to modify a prior Judgment. As explained in Gottsegen v. Gottsegen, 397 Mass. 617, 625 (1986):

> if the supporting spouse shows that, as a result of cohabitation, the recipient spouse's

> economic circumstances have materially changed, then the court may alter or eliminate alimony. However, a judge may not modify a judgment solely on the basis of a finding of cohabitation.

Likewise, an obligor obtained a one-half reduction of his alimony obligation where recipient was cohabitating where many expenses paid by the cohabitor were "duplicative of those intended to be covered by the wife's alimony." See Freedman v. Freedman, 29 Mass. App. Ct. 154, 155 (1981). Litigants who entered into agreements prior to the passage of the Act can rely on the financial impact of cohabitation and the "economic needs" test established in Gottsegen and Freedman when seeking a modification. Litigants who enter into agreements post passage of the Act can rely on the new statutory law with respect to the impact of cohabitation on alimony obligations.

CONCLUSIONS

For the reasons set forth above, the Judgment of the Franklin County Probate & Family Court dismissing Appellant's Complaint should be affirmed.

RULE 16(K) CERTIFICATION

The undersigned certify that this brief complies with the Massachusetts Rule of Appellate Procedure.

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ADDENDUM

Eugene L. O'Flaherty (D), 2nd Suffolk	I know everyone is busy today. Thank you. I believe that almost everything we do around here is very important. We started this process many many years ago. When I first became chair of the judiciary this issue was pending in committee. The complexity surrounding alimony and alimony reforms has been pending for a long time because of the complexity of the subject matter because of how much we were investigating. I have to confess I wanted to understand from the perspective of a litigant or a practitioner how this piece of legislation is taking so long to get on the floor. I asked a task force to deal with this particular area of public policy. I asked them to put an independent determination to put into prose on this vexing issue. This is a good piece of legislation for you to consider and when I appointed this task force and the gentleman from Milford stood out during the process and did an incredible job working with various people.
James R. Miceli (D), 19th Middlesex	I have a great deal of respect for the chairman. He has done a great job for the record. I want to read you here a letter that goes into the record from a constituent. It puts a little chink in what we've got in front of us. ?Dear Jimmy, My daughter is a divorced woman who received alimony. She made a contract with her husband in which she gives her husband $300,000 and she gets the family home. To do this but she works in a school system and makes $13,000 and has been in debt for 30 years. To lose alimony she would be forced into poverty. The judge said both parties have a contract and it cannot be changed. The questions I have, is what she saying true and he can come back and adjust alimony. She is almost living in poverty and even though they thought they were doing what was best.? For the chairman: would this put her in a real situation? Madame chair, would this individual be put in a precarious position because of this bill?
Eugene L. O'Flaherty (D), 2nd Suffolk	I appreciate the Gentleman's question. The succinct answer to the gentleman's question is no. We are allowing parties to seek changes to their party's agreements and there are parameters for what they are able to do. Could this woman's situation become worse? Yes. But the judge would have to hear both sides.

John V. Fernandes (D), 10th Worcester

I rise in support of this bill. In part the answer to this question. The answer is not 100% certain. The modifications we allow are based on modification. And the one factor we know is missing from the letter was the duration of the marriage. Let me try and address the bill itself. Alimony is a problem in Massachusetts. Q (from the floor): If I vote for this bill today, am I risking constituents their livelihoods that have already been taken care of in the court system? I am hearing both answers are maybe, Fernandes: Madame speaker, the bill is intended to be prospective. Now, agreements made between the parties that are made and are subject to modification provisions. We are not making any changes to that. To the problem of alimony today, and the basis upon need and the payor's resources. This is antiquated. It does not address or encourage what we seek when particles go into a court for divorce. This only ends up in separation. Our public policy encourages termination of relationship and separation. Judges in other states have other options. Massachusetts has only general term alimony based on their order to pay today. And that order will stand permanently. The most important thing in terms of litigation is consistency. And many decisions here in the commonwealth have left parties confused or even lead to judge shopping. In Pearce v. Pearce the court ruled that retirement is not allowed to a be a cause for termination of alimony. Another upside down thing is the relationships that come later for both payor and payee because any new marriage affects payments. Our public policy today discourages marriage. The public policy in the Commonwealth whether there is a previous marriage or not, should encourage it. I want to thank the gentlelady from and the gentleman from Lynn. What we did was put out the bill in its complete form and the bill has been available to many associates throughout the state. Let me tell you what the bill does: the goal of the bill is to address the wrongs I explained earlier. Instead of having the one size fits all alimony, we have rehabilitation alimony, which is basically short-term alimony such as providing education. We have reimbursement alimony, which would allow a spouse who would work two jobs while the other may decide to go to law school. We have a softer transitional alimony, which should allow people to get out into the world. We provide guidance to the court on multiple topics including duration, limits and other related topics. All four forms of alimony mentioned are important because it gives judge?s ability and impetus to do things they couldn't do before. We can put up four walls here, but we have also allowed for deviation factors where judges can talk about our guidance and then introduce their different changes to the case. It also allows for termination of alimony on retirement. It does not allow for existing amounts or modification of alimony awards in the past. The only thing it would allow is a modification to the duration of an existing alimony award, which may go on forever. That's what this bill does. I think it?s a great bill. Not because I wrote it, but because it was written by experts and participants who understand how this thing works.

James R. Miceli (D), 19th Middlesex	He said you could go back at any time and modify alimony. That answers my question.
Sheila C. Harrington (R), 1st Groton - Amendment #1	As a member of the judiciary I cannot thank enough the people that serve on this commission to come up with this alimony reform act. It brings up equity and justice in a somewhat flawed system that exists today. We had 10.5 hours of alimony testimony that ranged from the ridiculous to the egregious. I support all members who put forth this legislation. I do however ask along with Rep. Winslow that there be a small but very significant change to the bill before it hopefully passes. The terms merger and survival will help us understand the way judges have discretion over decisions. The way that our law is today our laws do discourage marriage. Many people are now choosing to live together based on financial considerations. Rep. Fernandes outlined those situations. We heard outrageous situations for where sometimes for 20 years a cohabitation relationship is allowed while alimony is being paid to them. This amendment would thwart people's efforts to get alimony while cohabiting. It is believe that when one is remarrying that there is a change in household income. But this bill deals with modifications of prior orders in terms of cohabitation. People need to understand that if they are cohabiting with someone else they should give up their right to alimony. One man came before us with this story despite his handicap and his age, he said it was too late for him, and he wanted to help others since he was forced to continue paying alimony. Another gentleman was having a judge force him to pay alimony on credit and when his credit was close to running out the judge told him, ?call me when you run out of alimony and I'll put you in jail.? This is a serious change in the essence of justice and equity that we extend the exact same language to all recipients of alimony.
John V. Fernandes (D), 10th Worcester - Amendment #1	I ask the defeat of this amendment. We have revisited this issue over and over. It is a thorny issue, divorce. Divorce judgments are unusual than normal judgments. Judgments are usually made and are done. But with divorce, the agreements of the parties, and divorce law is very different, because they get merged into the judgment of the court which gives the authority to the court to reach back into the agreement and make changes. That exception there is that when the parties negotiate they can choose which things they want to not be negotiated. They have also a surviving agreement, which is a separate private agreement, which shall prevent changes to certain things. The unanimous consent of the task force was that the power to do such we would not prospectively give to the judges to do this.
Paul K. Frost (R), 7th Worcester - Amendment #1	Under the law through the survival of these contracts, is it possible through their agreement to make cohabitation an issue of justly discontinuing the alimony? Or can we in the future make sure to put those in any new agreements?

John V. Fernandes (D), 10th Worcester - Amendment #1	Madame speaker to the gentleman?s question, yes. Parties to the surviving agreement can set their conditions that include cohabitation. There is the ability of the payor to have alimony suspended based on cohabitation policies until the payee may have it address in a court. We want to encourage marriage and not cohabitation. We would like these options also to available to the judges.
Sheila C. Harrington (R), 1st Groton - Amendment #1	I can tell you right now I have personally tried to put in language limiting alimony and cohabitation situations and linking them together and the judge will not accept it because they say the language is vague. However you can go back to the probate court and have something enforced. Since this new bill outlines for us the terms of common household relationship and the judges will have more access to guidelines and information then they should be able to but may not and are not required to use this information. The judge that may get your case, when they sit on the bench, and you can likely not get another case and you may not get another judge. You will have no relief through this bill if you live in a cohabitation relationship. I ask that we treat it in case of mergers and survivors that it be seen as remarriage.
Daniel B. Winslow (R), 9th Norfolk - Amendment #1	I support the amendment and the original bill. I think we can make the bill better. This bill ends unfairness and ends imbalance and ends injustice in half the alimony in kinds of cases. It only highlights the deficiencies of the current law. For that reason, the amendment would make the amendment prospective only. We have no obligation as the General Court to protect people from their ?bad deals.? But judges will hopefully do the right thing. But it would be better to order them to rule in certain cases.
Colleen M. Garry (D), 36th Middlesex - Amendment #1	Looking at the language I see online, a lot of family members are living with family members. Perhaps the bill will not deal with this adequately that the prohibition of a common household between friends or family members.
John V. Fernandes (D), 10th Worcester - Amendment #1	With respect to the amendment before us, we spent of the eight 4-5 hour meetings, we took up the issue of cohabitation at 4 of those meetings. By the factors contained in the bill we are not talking about brother/sister relationship and not family relationships or roommates.
Russell E. Holmes (D), 6th Suffolk - Amendment #1	If this handles only half of the cases, but with all the special contracts, how can half of these people really fall into one category? With regard to special contracts, is it clearly defined that their situation does not fall within the general confines of divorce?

John V. Fernandes (D), 10th Worcester - Amendment #1	Madame speaker I actually don't know the number of cases. They are recognizing that it will be an honored contract not subject to modification not including modification in the future. We should not be reaching into those contracts and we should not say prospectively that we should be giving judges these cases in the future. I think with the amendment we are forcing people to deal with this issue.
Christopher E. Fallon (D), 33rd Middlesex	I'm quite concerned with the first amendment. I understand the object and I would ask the chairman of the judiciary to give this some serious consideration because I understand all the hard work put in. Here is my issue: and where it is dealt generally, we are going to handicap all judges and attorneys because judges will automatically be seeing the language of cohabitation as vague. We are giving too much discretion to these judges. We have boxed ourselves in, but I allow that the first amendment be adopted.
James M. Cantwell (D), 4th Plymouth - Amendment #1	To the gentleman from Malden: this will give direction to the judges and attorney in surviving. The issues that change are related to health insurance and social security. In some cases, before, decisions were made sharply. But I oppose this amendment. I agree with where you are coming from. This bill is only prospective. It cannot go back and change agreements. I think the amendment would encourage more litigation overall rather than decrease it.
Paul K. Frost (R), 7th Worcester - Amendment #1	I'm not an attorney and I do not play one on TV. I'm not divorced, nor do I intend to be. I do not know the intricate details of divorce. I feel like I am in an objective point of view of both the bill and the amendment. What I gather from the debate so far, having this further amendment accepted, by making something proactive rather than going backwards, that going forward when someone signs an agreement that terms of cohabitation will be recognized as similar to marriage in these contracts. I respect and try to understand the fact that asking parties to go back and rewrite contracts is probably not correct. The lady from Groton was correct. We need some clarity when we go into the process, if not common sense. The only argument I really heard was that the task force wouldn't support it. I respect those efforts of the task force and the gentlemen from Chelsea and Milford. I intend to support the underlying bill. But just because the task force cannot unanimously agree with something does not mean that our purpose of being a legislative body should stop.

Sheila C. Harrington (R), 1st Groton - Amendment #1	I think one of the most important factors when discussing surviving agreements is that they can exist after a new marriage. What we're trying to say is that if we are recognizing marriage and cohabitation as the same thing, it should be the case in all marriages. I ask the speaker for the call of the yeas and nays.
Eugene L. O'Flaherty (D), 2nd Suffolk	This is a very complex issue, which affects many families across the commonwealth. I think this bill will greatly change and affect for our laws for the better. I ask that when this bill is voted on it be taken by a count of the yays and nays.

Cynthia Stone Creem (D), 1st Middlesex and Norfolk - Amendment #1

The guidelines that we have created and the time limits we have created do not change anyone's agreements who have been married for more than 50 years. We thought about it and worked hard on it. We have also given the courts a lot of discretion in this matter.

Eileen Donoghue (D), 1st Middlesex

I rise in support. I want to thank the leadership on this issue. This is a bill where it is obvious about how much work has gone into this issue and how much time was spent on it. The bill is fact-driven also despite the issue eliciting such strong emotional responses whether it is the payors or payees. Some issues I've had to deal with regard people who are retirement age who cannot retire because they must continue paying alimony. That is fundamentally unfair and the way the law is today nothing can change that.

Cynthia Stone Creem (D), 1st Middlesex and Norfolk

This is a major reform in family law. I am an attorney and I practice family law and some cases of divorce. With that resume I doubt that I could win a popularity contest. It is my background and experience outside of the this building here that allowed me to file this bill last year, namely the knowledge of the inability of judges to impose time limits on how long alimony should be paid. It is somewhat ironic that afterwards [submitting this bill] I was appointed to be the chair of the committee that would make these decisions. After sitting through my first hearing, it became clear that through testimonies it exposed the inequities of our current law. There was however no simple solution. We formed a task force, and rolled up our sleeves, yet some questioned whether the force would be biased because we ought not to have the judges or lawyers on the force. This force needed representation from those people who knew the most about the issue and deal with it all the time. The force worked hard and created a good plan. Particularly Senator Candaras. She really puts one foot in front of the other and gets things done. This bill is balanced. There are some parts I would like to change and other parts that you may want to change. Some of you have come to me with suggestions, but in the end we have to see the bill is like a chain, if you move a link of the chain then the entire thing falls apart. I hope we can pass it as it is written today.

Gale D. Candaras (D), 1st Hampden and Hampshire

I rise in support. This area of law is intricate, complicated, and elicits strong emotional response. As such it is Is difficult to maintain the delicate balance between fair play and equity in the probate court. My friend and colleague from Chelsea convened a thorough review and under her charge they went forward as commanded. I want to thank those on the task force who really made this piece of legislation possible, especially Representative Fernandes, Kelly Layton, Attorney Fern Froland, David Lee, Denise Scolanti, Rachel Bascardi, Steve Hitner, Paula Carey. This bill is fair, consistent, clear, comprehensive, and good public policy. The original law has not been touched in 21 years and the world has changed 1000 times since then. What this bill does not affect is child support or child custody in any way shape or form or change in any way to file for a modification or seek other relief currently afforded by the probate court. It provides clear conduct for judges seeking guidance to deviate from our principles. The bill delineates the various kinds of alimony: transitional, general term, rehabilitative and reimbursement. We have allowed a system where the alimony can be modified, suspended or terminated based on cohabitation standards and economic dependence and interdependence. It increases fairness in regards to payor's remarriage so that the new spouse income will not be taken away and used as an alimony adjustment amount. It gives judges the guidance needed and gives them the power to terminate alimony and grant the relief of finality. The bill provides for reasons of deviation that judges may follow, and since these cases are fact driven we need to understand that it is imperative that the judge may deviate. There will be a new schedule that shall prevent the probate court from being overwhelmed with modification requests with protections for certain groups. This bill has been worked over and over many times, and every single word is a compromise of many interests and views.

James B. Eldridge (D), Middlesex and Worcester

I also rise in support. I want to congratulate all the members of the task force and especially the reform group headed up by Steve Hiltner. In terms of some considerations, after this bill is passed, we need to consider a few further things. The homemaker or raiser of the children, who is still statistically primarily a female, they give up certain skills or abilities to raise the kids, and that person may not have the skills to make a living. As a legislator, we need to advocate for everyone that needs a fair chance or equal chance to earn a decent living. In 2009, there was a 23% living gap in wages, for every woman that made 77 cents for every $1 made by a man. This gap is actually slowing down. Moving on. It is a concern of mine about growing inequality. We can work on passing the bill by the lady from

Somerville about equal pay. Industries dominated by women are less likely to have paid sick days. Many mothers could benefit from this because they are the ones taking what few days they have not to care for themselves but for a sick child or relative. We should work on passing the paid sick leave bill as well. I also want to discuss child care. That can be a barrier to parents or for women trying to go out into the workforce and get an education. Alimony reform speaks to a lot of pain and inequality, but there are other things that everyone in the Senate can do no matter what happens.

CERTIFICATION UNDER RULE 16 OF MASS.R.A.P.

Now comes Maureen McBrien, Amicus Curiae, and hereby certifies that the Amicus Brief submitted herewith complies with the Rules of Court that pertain to the filing of briefs, including, but not limited to: including, but not limited to, Mass.R.A.P. Ser16(a)(6), Mass.R.A.P. 16(e), Mass.R.A.P. 16(f), Mass.R.A.P. 16 (h), Mass.R.A.P. 18, and Mass.R.A.P. 20.

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