

Committee on Ways and Means

Subcommittee on Human Resources

Hearing on Fatherhood

April 27, 1999

Statement Submitted for Consideration by the Committee

**Cory J. Jensen
Legislative Assistant**

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The Men's Health Network welcomes the opportunity to submit testimony on the issue of fatherhood. The Human Resources Subcommittee as well as the current Administration should be applauded for recognizing fathers as an integral part in their children's lives. As current fatherhood initiatives are being considered we must make efforts to reduce the barriers that keep fathers from becoming involved with their children. We at the Men's Health Network are concerned that any programs undertaken could be subject to fail due to problems caused by the Bradley Amendment.

Based on a brief survey which included responses from thirty-six states, fathers identified arrearages as a factor keeping them from becoming more involved with their children. Many of these arrearages accumulated due to illness, unemployment or underemployment. Such arrearages might be called "ghost arrearages," arrearages that would not exist if the child support order had been modified, based on the parent's actual income, to properly conform with the state's guidelines. These fathers want to be responsible and pay for their child support, but they simply do not have the means to pay. Once these fathers obtain a job that allows them to contribute to the upbringing of their children, they are already thousands of dollars in debt and financially ruined. The courts have recognized that child support often times needs to be modified in accordance with the father's ability to pay. Yet the court's ability to modify a child support order is hampered by the Bradley Amendment [PL 99-509 Subtitle B Sec. 9103].

Bradley Amendment Impedes Progress

Federal law requires that a child support ordered be adjusted (or modified) at the request of either parent, to match the parent's ability to pay either more or less child support. However, the Bradley Amendment passed Congress in 1986 and states that a child support order cannot be modified retroactively under any circumstances, except to the date that a modification was filed and the other party was served. In many circumstances, fathers are not aware that they can file to have their child support changed if they become unemployed or are unable to work due to a medical condition or injury. During an extended hospital stay, arrearages can accumulate to incredible levels. Unfortunately the court cannot modify these arrearages to the initial point a father's earning level is no longer adequate vis-à-vis his child support payment.

Amending the Bradley Amendment to allow judicial discretion would be strongly advised. Judges can determine the difference between a father that cannot pay his child support due to a legitimate reason and the father that willfully chooses to not pay his child support.

State Legislators Ask for Relief

Attached to this testimony are letters by state legislators which stress the problems that they have found in relation to the Bradley Amendment. For instance, the Oklahoma State Legislature has found the Bradley Amendment to be impeding on their ability to effectively pass their own laws.

- ◆ Jim R. Glover, Speaker Pro Tempore Emeritus, of the Oklahoma House of Representatives, wrote:

“...the Bradley Amendment superceded legislation that was intended to allow finding and establishing of truth and being fair in paternity cases, specifically a marriage where a wife had an adulterous affair that resulted in a child being born that was not her husband’s.

“...similar situations...because of the Bradley Amendment. A temporary child support order cannot be retroactively modified after a paternity determination finds an accused man not to be the father of an out-of-wedlock birth. ...where a parent was given their children to raise by the other parent, who never modified a child support order, only to be assessed the unpaid child support...at a later date. ...citizens who have paid child support through a non-official process, where the parent is then forced to pay a second time. ...other instances where an injured parent does not or cannot modify child support, who loses income, and then becomes recorded as another nonpayor with arrearages.

“Apparently the intention of this Federal Law is that it is more important to collect money from anyone as child support than allowing the truth to dictate what is fair.”

- ◆ Fellow State Representative Bill Graves also expressed his displeasure with the Bradley Amendment:

“I am hopeful that the Congress will repeal the Bradley Amendment involving child support matters ... the Bradley Amendment is not only unconstitutional, it is unwise and unrealistic.

- ◆ Oklahoma State Senator and Family Law Attorney, James A. Williamson indicated his experience of how the Bradley Amendment adversely affects the modification of child support:

“In those cases, when a non-custodial parent has, by agreement, taken over physical custody and there is no formal change of the Court Order, the modification of the child support should be effective as of the date of the change of custody. The Bradley Amendment currently prohibits that

effective date. I therefore respectfully suggest Federal Law be amended to allow for those circumstances.”

Case Examples

While the Bradley Amendment effectively ties the hands of state legislators, its largest impact is on the fathers and mothers that suffer unreasonable arrearages. These arrearages also have the effect of alienating the children from the parent saddled with such a large debt, discouraging marriage, and destroying 2nd families. Many of these fathers are candidates for the very fine fatherhood programs being contemplated by this committee or currently being implemented by the Administration.

Here is just a small sampling of the hundreds of responses received by the Men’s Health Network.

Arizona After downsizing at a major international airline, a father was forced to either take a job in a new location outside of the state or to find a new job and stay near his daughter whom he has joint-custody of. He chose to stay in Arizona and seek new employment. A reduction in child support was denied, as it was determined that he left his job voluntarily to seek a lower wage job. Over a three year period, arrearages have accumulated to over \$10,000.

California A father is arrested for failure to pay child support and arrearages. Arrearages accrued due to father’s inability to work after an automobile accident placed him in intensive care and subsequent nine-month recovery.

Connecticut A father accrued arrearages after he lost his job due to work-place restructuring. When seeking modification of child support order arrearages continued to accumulate due to court delays.

A father accrued arrearages after losing his job due to disability. Arrearages continue to accumulate at the level of his previous income, not at present level of disability payments.

Delaware Father on disability. His children received payments as a result of his disability. However, his child support was not modified and he was not credited for the children's share of his disability payments directly to their mother. As a result, he accrued unmanageable arrearages.

A father was laid off work at a refinery. Long term unemployment resulted in unmanageable arrearages.

Florida A father accrued arrearages after a hernia operation and subsequent inability to work.

A father accrued arrearages after child support order was not modified once he became the custodial parent.

A father placed on disability accrued arrearages.

Georgia

Several cases of fathers who have lost their jobs and fallen so far behind on child support that they could not make up their arrearages.

A father accrued arrearages after he became disabled and was jailed after he was unable to pay.

Illinois

A father injured from a serious auto accident is forced to find a less physically demanding and unfortunately, lower paying job and accrued arrearages that he could not pay.

Massachusetts

A divorced father lost his \$72,000 a year job and was forced to move to California to find work in a related field at \$20,000 less a year. Mother moved with children to Pennsylvania. Father accrued \$83,000 in arrearages due to period of unemployment and long delays from conflicting court jurisdictions while trying to get the support order modified.

A father accrued \$10,000 in arrearages due to an accounting error at the department of revenue.

A father accrued arrearages because child support was assessed at the non-custodial level even once the children came to live with him.

Michigan

A father accrued arrearages after the Friend of the Court based his child support payments on an income not in accordance with his actual income.

A father accrued arrearages while recuperating from back surgery.

Nevada

A father lost his job due to company downsizing. After finding a job that paid less he filed for a reduction in child support, but accrued arrearages in lieu of a court decision.

New Jersey

A father accrued arrearages due to court delays in assessing his child support order.

New York

A disabled father accrued arrearages when the deductions from his disability check were not credited toward his child support payments. Additional arrearages were accumulated due to improper coordination between the courts in New York and New Jersey, where his children live with their mother.

A father accrued arrearages due to illness and unemployment. After becoming ill with hepatitis, he was laid off due to unavailability of sick leave.

North Carolina

A disabled veteran had his child support order placed at the level of his "potential earnings" instead of at the current level of his disability

payments. Unable to pay the monthly support order, which exceeded his monthly income level, he was considered in contempt of court and sent to jail.

- Ohio A father accrued arrearages after being laid off. Additionally, child support order was based on child being placed in full time day care although the child is now older and attends school.
- Pennsylvania A father accrued arrearages while unemployed yet child support order was maintained at a level in accordance with his previous income.
- South Carolina A father accrued arrearages due to being laid off from job.
- Tennessee A father accrued arrearages due to inability to work after a work-related accident.
- Texas A mother accrued arrearages due to unemployment and health problems.
A father lost his job when the company he worked for closed. He accrued arrearages during his long period of unemployment.
- Virginia A father is held in contempt as he failed to pay his arrearages due to a broken collarbone and pending surgery.
A father accrued arrearages while unemployed even though he was the custodial parent.

Conclusion

While this is only a small sampling of cases, it demonstrates the problems inherent with the Bradley Amendment. Although these hearings do not specifically address the Bradley Amendment, we feel that members of Congress should know that the fine fatherhood initiatives being promoted by both the Administration and Congress cannot meet expectations as long as the men who participate in those programs are burdened with child support arrearages that are unreasonable and do not reflect their earning capacity during the period that the arrearages accrued.

Further, society's goal of encouraging marriage among this population is impeded when these fathers are burdened with "ghost arrearages," debt that would not exist were it not for the Bradley Amendment. Arrearages also hurt second families when this improper debt overcomes a struggling family's ability to cope with unemployment, illness, or injury. Courts need the flexibility to help create a family, but potential wives will be reluctant to marry a man, even if they have a child together, if it means that she is marrying an unmanageable debt.

To that goal, we are suggesting changes in the Bradley Amendment which will allow a court to modify an order retroactively unless the arrearage was accrued during a period when the person could have paid but willfully chose not to do so.



House of Representatives

STATE OF OKLAHOMA

April 22, 1999

Mr. Cory Jensen
Men's Health Network
P. O. Box 75973
Washington, D.C. 20013

Re: Committee on Ways and Means

Dear Mr. Jensen:

In my tenure as an elected member of the Oklahoma State House of Representatives and now holding the position and title of Speaker Pro Tempore Emeritus, there have been numerous instances where Federal Law has superceded the ability of the people of the State of Oklahoma to determine what is best for Oklahomans. Nowhere has this been more apparent than when it comes to laws that impacts the family, family dissolution, or instances where families never form after an out-of-wedlock birth. I have seen numerous instances where members of state agencies such as the Department of Human Services and the Division of Child Support Enforcement have interfered with, or opposed good legislation because of possible conflict with Federal Law.

This year the Oklahoma House of Representatives passed unopposed a bill that would clarify paternity establishment and afford protection to a husband who knew a child born in marriage was not his. This bill was killed in Senate Committee after a letter was received from a Federal Child Support Enforcement Official from the Dallas Regional Office who sent a threatening letter to cut off Federal Funding for Social Programs in Oklahoma. It was later discovered that three words in the bill needed to be changed and these words were to clarify retroactive modification of child support because of the Bradley Amendment. The impact of this letter and the Bradley Amendment (P.L. 99-509, Subtitle B, Sec. 9103) superceded legislation that was intended to allow finding and establishing of truth and being fair in paternity cases, specifically a marriage where a wife had an adulterous affair that resulted in a child being born that was not her husband's. Apparently the intention of this Federal Law is that it is more important to collect money from anyone as child support than allowing the truth to dictate what is fair.

Apparently similar situations of being unable to correct an injustice can exist in many other instances because of the Bradley Amendment. A temporary child support order cannot be retroactively modified after a paternity determination finds an accused man not to be the father in an out-of-wedlock birth. I have heard plenty of

Mr. Cory Jensen
April 22, 1999
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instances where a parent was given their children to raise by the other parent, who never modified a child support order, only to be assessed the unpaid child support plus arrearages at a later date-effectively paying twice and to a parent who did not provide support. There have been citizens who have paid child support, through a non-official process, where the parent is then forced to pay a second time. There are other instances where an injured parent does not or cannot modify child support, who loses income, and then becomes recorded as another non-payer with arrearages.

It is time to let the State of Oklahoma decide when it is appropriate to give judges discretion to retroactively modify child support so that it can be fair to all. It is time for Congress to give the State of Oklahoma the autonomy to determine what is in the best interest of the citizens of Oklahoma.

Sincerely yours,



Jim R. Glover
Speaker Pro Tempore Emeritus
House District 65

JRG/pcm

Reply to: House of Representatives, State Capitol Building, 2300 N. Lincoln Blvd., Room 408,
Oklahoma City, Oklahoma 73105



BILL GRAVES

State Representative
District 84

House of Representatives

STATE OF OKLAHOMA

April 22, A.D. 1999

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Community and Family
Responsibilities

Mr. Cory Jensen
Men's Health Network
P.O. Box 75973
Washington, D.C. 20013

REF: COMMITTEE ON WAYS AND MEANS

I am hopeful that the Congress will repeal the Bradley Amendment (P.L. 99-509, Subtitle B, Sec. 9103) involving child support matters. First, under the Constitution, Congress has no powers in regard to domestic relations matters. Under Article 1, Sec. 8 of the Constitution, the Congress has only certain enumerated powers. James Madison, the so-called Father of the Constitution, said the Federal government had only certain enumerated powers and that all the rest were left to states. This is made clear by the 10th Amendment to the Constitution which provides: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the States respectively, or the people."

Thus, for Congress to legislate in the matters of child support or child custody, such as the Bradley Amendment does, is an unconstitutional use of powers. Congress should not interfere with the rights of the States to decide matters in this area through their own elected state legislators.

In addition to the foregoing, the Bradley Amendment creates problems in cases where a non-custodial parent has, by agreement, taken over physical custody of the child even though there is no formal change of court order. The Bradley Amendment prohibits a modification of child support in this circumstance being effective as of the date of the change of custody. Thus, the Bradley Amendment is not only unconstitutional, it is unwise and unrealistic.

Very truly yours,

BILL GRAVES
State Representative, Dist. 84

BG/by

Oklahoma State Senate

STATE SENATOR
DISTRICT 35
TULSA - JENKS

STATE CAPITOL
2300 N. LINCOLN BLVD.
OKLAHOMA CITY, OKLAHOMA 73105-4808

OKC (405)-521-5726



JAMES A. WILLIAMSON

April 22, 1999

Mr. Cory Jensen
Men's Health Network
P. O. Box 75973
Washington, DC 20013

Committee on Ways and Means

I have been requested to submit a letter indicating my experience as a Family Law Attorney with the issue of modification of child support.

I have been in Family Law practice 23 years in Oklahoma and I have found that many times parties make post-decree agreements which are not reduced to a Court Order. In those cases, when a non-custodial parent has, by agreement, taken over physical custody and there is no formal change of the Court Order, the modification of the child support should be effective as of the date of the change of custody. The Bradley Amendment currently prohibits that effective date.

I therefore respectfully suggest Federal Law be amended to allow for those circumstances.

Sincerely,

A handwritten signature in cursive script that reads "James A. Williamson". The signature is written in black ink and is positioned above a horizontal line.

JAW/bb

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