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**IMPACT OF THE MILITARY WIDOWS PENALTY  
IN NORTH DAKOTA**

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**PREPARED FOR REP. EARL POMEROY**

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## EXECUTIVE SUMMARY

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Every year, hundreds of thousands of spouses of deceased military veterans lose millions of dollars in benefits because of the Military Widows Penalty. Military retirement benefits, available to veterans who have served in the military for at least 20 years, include survivor benefits for spouses and dependents. These benefits are designed to “insure that the surviving dependents of military personnel who die in retirement after becoming eligible for retirement will continue to have a reasonable level of income.” Presently, approximately 270,000 spouses of deceased military veterans receive these benefits.

There is, however, an obscure provision of military retirement law that reduces these benefits by approximately 40% at age 62. This reduction in benefits, known as the Military Widows Penalty, poses a tremendous hardship for surviving military spouses, costing an estimated 200,000 surviving spouses over \$650 million in benefits every year.

This report, conducted at the request of Rep. Earl Pomeroy, analyzes the effect of the Military Widows Penalty in North Dakota. The analysis finds that the Military Widows Penalty has a significant impact on surviving military spouses in the state. Specifically, it finds that:

- **Hundreds of surviving military spouses in North Dakota are subject to the Military Widows Penalty.** Statewide, 238 surviving military spouses in North Dakota lose military retirement benefits due to the Military Widows Penalty. An estimated three out of every four surviving military spouses in the state (70%) are subject to the penalty.
- **The Military Widows Penalty costs surviving military spouses in North Dakota hundreds of thousands of dollars annually.** Statewide, surviving spouses subject to the Military Widows Penalty lose \$630,000 in benefits annually. This is an average of \$2,630 per affected survivor in the state.
- **Legislation supported by Rep. Pomeroy to end the Military Widows Penalty would help surviving military spouses.** Rep. Pomeroy has supported legislation that would eliminate the Military Widows Penalty for all surviving military spouses, and he has signed a “discharge petition” that would force Republican House leaders to allow a vote on this legislation. Passage of this bill would end the Military Widows Penalty, restoring full benefits to surviving military spouses.

**THE MILITARY WIDOWS PENALTY**

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Veterans who have served for at least 20 years in the military receive standard retirement benefits from the Department of Defense. These benefits are determined by multiplying 2.5% of the service member's final basic pay by the number of years of service. Thus, a service member who has served for 20 years would receive annual retirement benefits equal to 50% of their final basic pay. There are presently an estimated 1.4 million retirees from active duty, 90,000 disabled retirees, and 260,000 retirees from the reserves who qualify for retirement benefits.<sup>1</sup> Average benefits are approximately \$22,000 annually.<sup>2</sup>

In addition, under the Military Survivor Benefit Plan, surviving spouses and dependents of deceased military retirees are eligible for benefits. This plan was designed to "insure that the surviving dependents of military personnel who die in retirement after becoming eligible for retirement will continue to have a reasonable level of income."<sup>3</sup> Under the plan, a military retiree can have a portion of his or her monthly retired pay withheld in order to provide a monthly survivor benefit at the time of his or her death.<sup>4</sup> Presently, an estimated 300,000 surviving spouses and dependents receive these benefits.<sup>5</sup>

Under the Military Survivor Benefit Plan, survivor benefits are supposed be equal to 55% of the benefit of the deceased military retiree. However, there is a reduction in benefits that occurs when the surviving spouse reaches age 62. At this point, benefits are reduced to 35% of the benefit of the deceased retiree. This reduction in benefits is known as the Military Widows Penalty.

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<sup>1</sup> Congressional Research Service, *Military Retirement: Major Legislative Issues* (Mar. 10, 2003). Retirees with less than 20 years service can receive disability retirement benefits if they have (1) completed at least 8 years of creditable military service and received a physical disability rating of 30% or greater from an evaluation board or (2) incurred a disability resulting from active duty.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Defense, *Military Compensation Background Papers* (1996). Cited in Congressional Research Service, *The Military Survivor Benefit Plan: A Description of Its Provisions* (2002).

<sup>4</sup> The amount withheld is equal to 2.5% of the first \$547 of retired pay, plus 10% of the remaining amount of base retired pay. Congressional Research Service, *supra* note 3, at 4.

<sup>5</sup> *Id.* In addition to surviving spouses, surviving dependent children under the age of 18 and dependent, disabled children of any age (provided that they were disabled before the age of 18) are also eligible to receive survivor benefits.

## IMPACT OF THE MILITARY WIDOWS PENALTY IN NORTH DAKOTA

The rationale for the Military Widows Penalty is ostensibly that at age 62, the surviving spouse qualifies for Social Security. However, the penalty has a perverse effect: it means that surviving spouses who are younger than 62 and able to work get a larger benefit than older spouses who cannot support themselves. Survivor benefits under other government programs, including Social Security and the federal employees retirement system, either increase or stay the same as the surviving spouse ages. The Military Widows Penalty is unique in penalizing surviving spouses when they need help the most.

On a national basis, the penalty poses a tremendous hardship to survivors. Overall, 200,000 surviving spouses of military retirees lose benefits worth over \$650,000,000 each year due to the Military Widows Penalty.<sup>6</sup> The penalty impacts three of every four surviving spouses of deceased military retirees.

Legislation to end the Military Widows Penalty over a four-year period, the Military Survivor Benefits Improvement Act of 2003 (H.R. 548), currently has the support of 336 members of Congress, including Rep. Pomeroy.<sup>7</sup>

Despite this support, Republican leaders have refused to allow a vote on ending the penalty. In response, on March 30, 2004, Democratic leaders in the House introduced a “discharge petition” that would force a vote on the issue. If the discharge petition receives the signatures of 218 House members (a majority of the House), House rules require a vote on the legislation. To date, 200 Democratic members and one independent member of the House have signed the discharge petition. Rep. Pomeroy has signed the discharge petition.

### **OBJECTIVE AND METHODOLOGY**

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Rep. Earl Pomeroy represents North Dakota in the U.S. House of Representatives. Rep. Pomeroy requested this report in order to determine the impact of the Military Widows Penalty on surviving military spouses in the state.

To conduct this analysis, the Special Investigations Division obtained data from the Office of the Actuary of the Department of Defense. The data includes zip code–level information on the total number of military survivors receiving survivor benefits, as well as the total number of surviving military spouses who are forced to pay the Military Widows Penalty. It also includes data on the

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<sup>6</sup> Department of Defense Actuary, *Military Survivor Data* (Mar. 2004).

<sup>7</sup> On May 13, 2004, the House Armed Services Committee passed an amendment to the National Defense Authorization Act for FY2005 (H.R. 4200) that would phase out the Military Widows Penalty in a manner similar to H.R. 548. The final status of the legislation, and the Military Widows Penalty provision, is unclear.

monthly cost of the penalty. Using this database, the Special Investigations Division analyzed the impact of the Military Widows Penalty in North Dakota.

## **FINDINGS**

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### **The Military Widows Penalty Affects Hundreds of Surviving Military Spouses in North Dakota**

There are 338 surviving military spouses in North Dakota who receive military survivor benefits. Of these surviving military spouses, 238 — 70% — lose benefits to the Military Widows Penalty.

### **The Military Widows Penalty Costs Surviving Military Spouses in North Dakota Hundreds of Thousands of Dollars Annually**

Statewide, the Military Widows Penalty costs surviving military spouses \$52,180 each month in lost benefits. This is equivalent to \$630,000 million annually. The Military Widows Penalty costs each of the 238 affected surviving military spouses in North Dakota an average of \$2,630 annually.

### **Legislation To Eliminate the Military Widows Penalty Would Have Significant Benefits in North Dakota**

Rep. Pomeroy has cosponsored legislation that would eliminate the Military Widows Penalty for all surviving military spouses. He has also supported a “discharge petition” that would force Republican House leaders to allow a vote on this issue. Passage of legislation to eliminate the Military Widows Penalty would result in increased benefits for 238 surviving military spouses in North Dakota. These survivors would receive an increase in benefits of \$630,000 annually.

## **CONCLUSION**

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Current law penalizes military spouses who receive survivor benefits by reducing their benefits at age 62. This analysis finds that 238 surviving military spouses in North Dakota are forced to pay this Military Widows Penalty. Legislation supported by Rep. Pomeroy would eliminate the Military Widows Penalty for these survivors.