

## JUSTICE DELAYED BY DESIGN: THE HARMS OF OUR PROTRACTED DIVORCE SYSTEM

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### ABSTRACT

Divorce is the termination of a legal relationship. It is necessary for the enforceable division of property and debts between spouses as well as for remarriage. However, it's not simply a lawsuit. Instead, it most often involves a seismic shift in the very foundations of life and, as such, frequently provokes, exacerbates, and exposes insecurities, instabilities, and vulnerabilities. This legal process also involves a unique relationship between litigants who are former intimate partners—often co-parents—and who are largely unrepresented and therefore engaged in a new form of relationship as opposing parties to a lawsuit. Given these complex dynamics, one might hope that the legal process would be expedited to minimize trauma and to bolster financial stability. Instead, the legal process of divorce is complicated, time-consuming, and rife with procedural and substantive hurdles that result in the majority of divorces languishing in the court system. But unlike most legal system delays, the ponderous pace of the divorce system is not the result of inefficiencies or bugs in the system. To the contrary, many of the divorce system's delays are deliberate features. Most are expressly intended to slow the process, compel couples to reconsider their decisions, and ultimately, deter divorces. Others are intended to support pro se litigants, but instead, as implemented, often greatly disadvantage them.

Our society's traditional support for the institution of heterosexual marriage—which one can enter after little more than the mere submission of a form—has informed the structure of the divorce system and has resulted in a series of procedural hurdles to discourage divorce. This Article enters a conversation about the relationship between religion, morality, tradition, and the procedural impediments to divorce and begins a conversation about how those impediments most harm those

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located at the intersection of poverty and gender bias. These conversations are critically important now, as national political efforts to restrict access to divorce have reemerged. Specifically, this Article analyzes the procedural impediments to efficient divorce actions and the harm those impediments cause to all, but particularly to our system's most vulnerable litigants—disproportionately low-income women. After illustrating that these procedural delays have not resulted in preserving marriages and instead have enhanced the risk of harm, this Article analyzes a range of system changes that take into account the often-emergent nature of divorces, the unique relationship between the parties, and the support processes that would better meet the particular needs of divorce litigants and their families, as well as the court system generally. These statutory and procedural innovations seek to create an expeditious path to permanent resolution of divorce cases for all litigants. They include eliminating or greatly reducing waiting periods, shifting the presumption in divorce cases to limited discovery, providing expedited mediation opportunities, and creating the statutory right to expedited divorces for those for whom delay would cause particular harm. These statutes would operate much like domestic violence protection order statutes, acknowledging the particular vulnerabilities of those seeking protection and the unique nature of judicial intervention in the context of intimate family relationships.

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## INTRODUCTION

**D**IVORCE is the termination of a legal relationship. It is necessary for the enforceable division of property and debts between spouses as well as for remarriage. However, it's not simply a lawsuit. For most people, it represents a seismic shift in the very foundations of life, often provoking, exposing, and exacerbating instabilities, insecurities, and vulnerabilities. Although many civil lawsuits have the potential to implicate emotions and even trauma, divorces are unique in that the underlying relief at issue most often involves resources necessary for subsistence and child well-being. This legal process also engages litigants in a distinctive relationship who are former intimate partners—often co-parents—and who are overwhelmingly unrepresented,<sup>1</sup> and therefore newly-engaged in a different kind of relationship as opposing parties to a legal matter. In the District of Columbia, for example, more than 80% of plaintiffs and 93% of defendants in divorce and custody proceedings appear pro se.<sup>2</sup>

Access to divorce has also been recognized by the Supreme Court as an exceptional civil matter from a due process perspective because

our society has been so structured that resort to the courts is not usually the only available, legitimate means of resolving private disputes. Indeed, private structuring of individual relationships and repair of their breach is largely encouraged in American life, subject only to the caveat that the formal judicial process, if resorted to, is paramount.<sup>3</sup>

Given the emotional dynamics and destabilizing factors at issue,<sup>4</sup> as well as the recognized due process interests at play, one might hope that the legal process would be fashioned to facilitate access, minimize trauma, and bolster financial stability. Instead, the divorce system nationwide<sup>5</sup>

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1. See, e.g., THE D.C. ACCESS TO JUST. COMM'N, DELIVERING JUSTICE: ADDRESSING CIVIL LEGAL NEEDS IN THE DISTRICT OF COLUMBIA 4 (2019), [https://dcaccesstojustice.org/files/Delivering\\_Justice\\_2019.pdf](https://dcaccesstojustice.org/files/Delivering_Justice_2019.pdf) [<https://perma.cc/T9VE-SDHD>] (reporting that, in D.C. Superior Court in 2017, “83% of plaintiffs and 93% of respondents in divorce/custody/miscellaneous cases in Family Court” were unrepresented); see also Michael M. O’Hear, *Why Do So Many Divorce Litigants Represent Themselves?*, MARQUETTE UNIV. L. SCH. FAC. BLOG (June 9, 2010), <https://law.marquette.edu/faculty-blog/2010/06/why-do-so-many-divorce-litigants-represent-themselves/> [<https://perma.cc/Q3PZ-DA3F>] (reporting that a 2010 study shows that “43.9 percent of husbands and 37.7 percent of wives” in Waukesha, Wisconsin were unrepresented in divorce cases).

2. THE D.C. ACCESS TO JUST. COMM'N, *supra* note 1.

3. *Boddie v. Connecticut*, 401 U.S. 371, 375 (1971).

4. Divorce is considered one of the most destabilizing life events. See, e.g., Thomas H. Holmes & Richard H. Rahe, *The Social Readjustment Rating Scale*, 11 J. PSYCHOSOMATIC RSCH. 213, 216 (1967) (rating divorce number two on the scale of life events that can cause stress, following death of a spouse).

5. Divorce is governed by state law and therefore differs from state to state. See Michael J. Higdon, *If You Grant It, They Will Come: The History and Enduring Legal Legacy of Migratory Divorce*, 2022 UTAH L. REV. 295, 297–98 (discussing the difference between states with more restrictive divorce laws and states with less restrictive

is complex, time-consuming, and rife with procedural and substantive hurdles that result in most divorces languishing in the court system for at least a half year, and often much longer.<sup>6</sup> Most delays are expressly intended to slow the process, compel couples to reconsider their decisions, and ultimately, deter divorces. Others are intended to support pro se litigants, but instead, as implemented, often greatly disadvantage them. The system operates in a way that either deliberately slows things down or otherwise results in unnecessary and often damaging delay.

Our cultural and religious resistance to divorce<sup>7</sup> in general and to “quickie” divorces<sup>8</sup> in particular—while somewhat lessened by the current omnipresence of no-fault divorce<sup>9</sup> in the current legal system—remains embedded in procedural aspects of the divorce system and exacerbates

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divorce laws). However, the uniformity of delays is a characteristic of the system nationally.

6. Divorce can be an extremely lengthy process, especially in the case of contested divorce proceedings, but studies on the typical duration are few and far between. In the District of Columbia in 2023, the average length of time between filing and resolution for an uncontested divorce was 118 days. *See Data Request Response*, D.C. SUPERIOR CT. (2024) (on file with author). For contested divorces, the average was 563 days. *Id.* One study from 2009 found that in Wisconsin, a divorce took an average of about six and a half months from the filing of a divorce petition to reach a final judgment, with a majority of cases reaching finality within three to nine months. Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases*, 12 J.L. & FAM. STUD. 57, 74, 86 (2010). The same study showed that the divorce process took significantly longer when both spouses were represented by counsel. *Id.* at 74. Other polls on the topic with wider sample populations have found that uncontested divorces take an average of eight months to finalize, while the length of contested divorces increases based on the number and complexity of contested issues. Martindale-Nolo Rsch., *How Long Does Divorce Take?*, LAWYERS.COM (June 17, 2024), <https://legal-info.lawyers.com/family-law/divorce/how-long-does-divorce-take.html> [<https://perma.cc/K82K-TJ3J>]. Divorces with one contested issue took an average of twelve months to finalize. *Id.*; *see also* D.C. SUPER. CT. ADMIN ORDER NO. 14-23, REVISED CASE MANAGEMENT PLAN FOR THE DOMESTIC RELATIONS BRANCH (2014) [hereinafter D.C. ADMIN ORDER NO. 14-23] (setting 365 days as the goal for the resolution of 98% of contested divorce cases).

7. *See infra* notes 55–60 and accompanying text.

8. To work around stringent divorce laws and judicial paternalism in the fault-only divorce regime, couples began to seek “quickie divorces” in other jurisdictions. Higdon, *supra* note 5, at 306–07. Individuals seeking a quickie divorce would do so by traveling to states that liberally permitted divorces on multiple grounds and had a minimal residency requirement. *Id.* at 308–09. Indiana, Utah, the Dakota Territory, and Nevada became known as divorce mills because couples would migrate to that state for the purposes of obtaining quickie divorces. *Id.* This practice was best demonstrated in Reno, Nevada, where the term “‘Going to Reno’ became almost synonymous for getting a divorce.” Lawrence M. Friedman, *Dead Language: Divorce Law and Practice Before No-Fault*, 86 VA. L. REV. 1497, 1505 (2000). When divorce mill states experienced pushback from residents for encouraging this practice, stricter residency laws were enacted. Higdon, *supra* note 5, at 308–09, 311–12. Nevada complied at first, but after noting that discouraging divorce-seekers led to a significant drop in revenue, the legislature reduced the residency requirement to as low as six weeks. *Id.* at 313–14.

9. *Marriage and Divorce*, 24 GEO. J. GENDER & L. 671, 694 (2023) (stating and referring to original research that illustrates that every state and the District of Columbia authorizes no-fault divorce).

the delays and the resulting harms.<sup>10</sup> The ease of obtaining the legal right to marry in contrast to the right to divorce further belies the deliberate nature of the procedural hurdles.<sup>11</sup> In addition to the deliberate procedural hurdles embedded in the system, recent reforms aimed at reducing the emotional toll of divorce and the impact of the adversarial system on separating parents and their children have resulted, at times, in the unintended consequence of creating still more delays.

Illustrations of the harm wrought by delays in the divorce process are prevalent. In the District of Columbia, for example, Tonia<sup>12</sup> sought to divorce her husband of five years, with whom she did not have children. Her spouse refused to leave their marital home—an efficiency apartment with one bed—and she lacked the resources to move out for several years

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10. Currently, access to divorce is again under siege based on religious and moral beliefs. Conservative lawmakers are seeking to abolish no-fault divorces and, in some states, popularize covenant marriages. Caroline Bologna, *Conservatives Are Coming After This Type of Divorce — Here's Why*, HUFFPOST (May 31, 2024, 5:45 AM), [https://www.huffpost.com/entry/no-fault-divorce-laws-explained\\_1\\_66443b2be4b09a547999e713](https://www.huffpost.com/entry/no-fault-divorce-laws-explained_1_66443b2be4b09a547999e713) [<https://perma.cc/XXS9-RVJK>]. House Speaker Mike Johnson (R-La.) stated that no-fault divorce laws “were among the cultural shifts that gave rise to ‘a completely amoral society.’” *Id.* Some Republican states, such as Texas, seek to ban no-fault divorce completely. *Id.* Other largely conservative states, such as Nebraska, seek to limit no-fault divorces to couples who did not bear children together. *Id.* Senator Dusty Deever (R-Ok.) stated that rampant divorce in a society causes “social upheaval, unfettered dishonesty, lawlessness, violence towards women, war on men, and expendability of children.” Dusty Deever, *End “No Fault Divorce”*, AM. REFORMER (Dec. 2, 2023), <https://americanreformer.org/2023/12/end-no-fault-divorce/> [<https://perma.cc/XPL6-GJYU>]; see also Anna North, *The Christian Right Is Coming for Divorce Next*, VOX (June 13, 2024, 7:15 AM), <https://www.vox.com/to-day-explained-newsletter/354635/divorce-no-fault-states-marriage-republicans> [<https://perma.cc/VHS4-VAE2>]. Deever further stated, “[t]o devalue marriage is to devalue the family is to undermine the foundation of a thriving society.” Deever, *supra*. Samantha Chapman, the advocacy manager for the ACLU of South Dakota, stated that the “motivation behind this push is fueled by a desire to rewrite society to fit within conservative faith-based family values, where one man and one woman marry, have children, and remain married until death.” Bologna, *supra*.

11. See, e.g., *Getting Married in Massachusetts: Before the Wedding*, MASS.GOV, <https://www.mass.gov/guides/getting-married-in-massachusetts-before-the-wedding> [<https://perma.cc/3NCU-GTRA>] (last visited Mar. 5, 2025) (setting forth the requirement of the completion of basic paperwork and a three day waiting period, which can be waived upon application); *Marriage Licenses*, RAMSEY CNTY., <https://www.ramseycounty.us/residents/licenses-permits-records/marriage-licenses-records> [<https://perma.cc/B3TG-H7TB>] (last visited Mar. 5, 2025) (providing information about how to obtain a license with no mention of a waiting period before issuance); *California Marriage — General Information*, CAL. DEP’T OF PUB. HEALTH (Feb. 14, 2018), <https://www.cdph.ca.gov/Programs/CHSI/Pages/California-Marriage-License-General-Information.aspx> [<https://perma.cc/D8ME-KESG>] (setting forth the application requirements in a state where there is no waiting period to obtain a license).

12. This former client’s name and parts of her story have been swapped with other clients’ stories. Her narrative is accurate in relevant ways and reflects the process in the District of Columbia when her case was filed in 2021. Amalgamating client attributes and assigning pseudonyms are intended to protect client privacy. See, e.g., Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994) (discussing the complexity of using client narratives).

after she resolved to terminate the marriage. Nor did she have the money to buy her own food, foreclosing the option of living, as the law required to file for divorce, “separate and apart” for six months or one year.<sup>13</sup> Upon finally moving out and starting the clock tolling to entitle her to file for divorce, Tonia and her husband agreed informally that each would pay their own rent. Her spouse remained living in their marital home, on a month-to-month lease that extended from their original lease which was in both of their names. Her husband stopped paying rent.

By the time their case came to court for a contested hearing, three years had passed since their in-home separation had begun, two years had passed since Tonia had moved out, and \$24,000 was due in back rent for those two years that her spouse continued to live in the home alone. Tonia had done all that was required of her by the law and the courts. She had lived separate and apart for one year,<sup>14</sup> she attended required mediations, she appeared for countless hearings. At the final proceeding, the judge divided the rental debt 50/50, granted the divorce, and informed the parties that their divorce would not be final for thirty days—as required by D.C. law unless waived by both parties.<sup>15</sup> At the end of the court process, Tonia was in far more financial peril than she had been prior to divorce. She was exhausted and felt defeated as a result of merely pursuing the right to divorce.

Stories of others who have suffered while trapped in the quagmire of the divorce system are also easy to find in the media. *Fortune Magazine* profiled Dasha Kennedy, a mother of two who sought a divorce in Missouri.<sup>16</sup> The process, saturated with procedural delays, forced her into debt of \$20,000—the result of independently juggling housing, the cost of living without support, and the unpaid leave she had to take to attend endless court hearings.<sup>17</sup> *Fortune Magazine* also reported on Keri, who sought a divorce in North Carolina, where by statute, parties must live separate and apart for one year before filing for relief.<sup>18</sup> For the first seven months of their separation, Keri had no access to marital funds.<sup>19</sup>

Recently, another woman wrote about the stress imposed by waiting for a divorce after navigating statutory procedural hurdles like North Carolina’s waiting period requirement.<sup>20</sup> She observed bitterly that, in

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13. D.C. CODE § 16-904 (2025). See *infra* Part II for extensive discussion of this requirement and its history.

14. D.C. CODE § 16-904.

15. D.C. CODE § 16-920 (2025).

16. Rebecca Feinglos & Sophia Laurenzi, *‘It’s Hell’: How Divorce Laws Are Designed to Create Unnecessary Financial Hardship for Women*, *FORTUNE* (Aug. 23, 2023, 8:23 AM), <https://fortune.com/2023/08/23/divorce-laws-designed-create-unnecessary-financial-hardship-women-personal-finance/> [<https://perma.cc/VQ7R-W55H>].

17. *Id.*

18. N.C. GEN. STAT. § 50-6 (2025).

19. Feinglos & Laurenzi, *supra* note 16.

20. Rebecca Feinglos, Opinion, *North Carolina’s Divorce Law Is Clearly an Outlier. A Dangerous One.*, *CHARLOTTE OBSERVER* (May 3, 2023, 11:59 AM), <https://www.charlotteobserver.com/opinion/article274797851.html> [<https://perma.cc/R8SE-6R6Y>].

truth, divorce is not a personal choice; instead, the “state legislature gets to decide if I’m really ready to divorce.”<sup>21</sup>

Although some divorces can present complex financial and custody facts requiring extensive disclosures, forensic accounting, and custody evaluations, most divorces—particularly those involving couples who have limited assets and no children—are quite straight forward. There is, for better or worse, little to fight over even if the parties are primed for a fight.

This Article considers the substantive and procedural impediments to expeditious divorce resolutions and the harm those obstacles cause to all litigants, but particularly to the most vulnerable litigants—women—at the lowest income levels. Low-income women are most at risk due to the confluence of poverty, gender bias, and the impact of traditional division of labor in the home.<sup>22</sup> The turmoil of divorce disproportionately impacts these litigants, and the delayed resolution exacerbates those impacts.

This Article begins a novel conversation about the effect of procedural delays that are primarily system fixtures rather than bugs and illustrates the universal harm wrought by this system, where delays are grounded in religion and inflexible assumptions about the unambiguous value of marriage. The conversation is firmly rooted in the early work of Jacobus tenBroek<sup>23</sup> and more recent work by June Carbone and Naomi Cahn.<sup>24</sup> In the 1960s, tenBroek first observed and critiqued the dual system of family law that operates simultaneously to address legal matters of those who are economically self-sufficient and those who subsist on public assistance. tenBroek argued that for the latter group, the state controls the form and substance of the cases, the outcomes are crafted in the interest of the state and not the individual litigants, and the law itself reflects community norms that are not necessarily consistent with indigent litigants.<sup>25</sup> Carbone and Cahn’s work expanded the frame to consider a third system that involves families in the middle—not the affluent and not those who necessarily rely on public benefits.<sup>26</sup> This Article further continues the important conversation of Carbone and Cahn’s work that specifically considered the impact and role of gender on this third system.<sup>27</sup>

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21. *Id.*

22. For further discussion, see *infra* Part.III.

23. See generally Jacobus tenBroek, *California’s Dual System of Family Law: Its Origin, Development, and Present Status* (pts. 1–3), 16 STAN. L. REV. 257, 900 (1964), 17 STAN. L. REV. 614 (1965) (critiquing the system of family that effectively creates two separate procedures based on litigant resources).

24. June Carbone & Naomi Cahn, *The Triple System of Family Law*, 2013 MICH. ST. L. REV. 1185 (expanding the framework presented by tenBroek to acknowledge the needs of middle class families).

25. Jacobus tenBroek, *California’s Dual System of Family Law: Its Origin, Development, and Present Status* (pt. 3), 17 STAN. L. REV. 614, 676–82 (1965).

26. Carbone & Cahn, *supra* note 24, at 1188–94.

27. *Id.* at 1191–92.



This Article forges new ground in moving from powerful critiques of specific aspects of the divorce system,<sup>28</sup> of the inapplicability of traditional family law to the changing needs of families,<sup>29</sup> and from theory and data about gender norms and bias in the family<sup>30</sup> and the workforce<sup>31</sup> toward a recognition of the failure of our divorce system to either deter divorces or to meet the needs of most litigants—particularly low-income women. It notes that even when low-income women can access to tenBroek’s private law system, their interaction often results in disparate harms. And ultimately, it proposes ambitious yet concrete and feasible avenues for addressing the harmfully slow pace of the divorce system. This conversation is critically important now, as efforts to render access to divorce more arduous have resurfaced in national politics.<sup>32</sup>

In Part I, this Article analyzes the factors that distinguish divorces from typical civil proceedings and surfaces the manifold circumstances that transform divorces into emergent proceedings with critical needs for expedited resolutions. Part II examines the statutory, regulatory, and procedural barriers to swift domestic relations resolutions, illustrating that many of these features are intentional impediments expressly designed to prolong the process and encourage reconciliation. In Part III, this Article then turns to the harms created and perpetuated by a divorce system that is rife with delay and procedural hurdles, looking particularly at the disproportionate impact on low-income women and their children. This Article concludes in Part IV with consideration of statutory and

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28. See generally JANE C. MURPHY & JANA B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION* (2015) (analyzing the impact of adversarial justice in family law); Claire P. Donohue, *Fifty Ways to Leave Your Lover: Doing Away with Separation Requirements for Divorce*, 96 S. CAL. L. REV. 77 (2022) (critiquing the impact of waiting periods and separate and apart mandates).

29. See generally Tianna N. Gibbs, *Paper Courts and Parental Rights: Balancing Access, Agency, and Due Process*, 54 HARV. C.R.-C.L. L. REV. 550 (2019) (critiquing the lack of due process afforded by “paper courts,” and advocating for responses that balance due process, parental agency, and informed consent); Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167 (2015) (analyzing the inapplicability of traditional parental rights doctrine to unmarried parents and advocating for extrajudicial resources to address this group of parents).

30. See generally Courtney G. Joslin, *Discrimination In and Out of Marriage*, 98 B.U. L. REV. 1 (2018) (chronicling the history of discrimination against married women); Deborah Zalesne & John Guyette, *Marriage Markets: How Inequality Is Remaking the American Family*, 64 J. LEGAL EDUC. 720 (2015) (book review) (analyzing the disparate impact of the new economy on the marriage for low-income and higher-income women).

31. See generally SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989) (theorizing about the impact on workforce gender disparities of traditional gender norms in heterosexual families).

32. See *supra* note 9 and accompanying text; Jessica Winter, *J.D. Vance’s Sad, Strange Politics of Family*, THE NEW YORKER (July 25, 2024), <https://www.newyorker.com/news/daily-comment/j-d-vances-sad-strange-politics-of-family> [<https://perma.cc/6589-DGFN>] (discussing the republican vice presidential nominee’s positions on marriage, which includes that access to divorce should be limited to preserve marriage).

procedural innovations to create an expeditious path to permanent resolution of divorce cases for all litigants that include eliminating or greatly reducing waiting periods, shifting the presumption in divorce cases to limited discovery, providing expedited mediation opportunities, and creating the statutory right to expedited divorces for those for whom delay would cause harm. These statutes would operate much like domestic violence protection order statutes, acknowledging the particular vulnerabilities of those seeking protection and the unique nature of judicial intervention in the context of intimate family relationships.

### I. WHAT RENDERS A DIVORCE DIFFERENT AND EMERGENT?

The marital relationship was conceived of as,<sup>33</sup> and is still largely considered to be, a basis for financial and emotional stability.<sup>34</sup> As Justice Kennedy in the *Obergefell v. Hodges*<sup>35</sup> majority explained, “Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations.”<sup>36</sup> It is touted and protected by law as an ordering principle that is key to our society, prompting Justice Kennedy to cite Confucius and declare that “marriage lies at the foundation of government.”<sup>37</sup> It follows, logically, that the unwinding or termination of a marriage can be deeply unsettling and often financially and emotionally catastrophic. However, our legal system largely treats it like any other civil legal action, failing to acknowledge either its *sui generis* or its often-emergent nature—one that frequently calls for a swift resolution more akin to a domestic violence action than to a breach of contract.

When one party to a marriage or in any intimate relationship is abusive, the law in all fifty states and the District of Columbia provides the opportunity to seek expedited relief to the non-abusive party.<sup>38</sup> That relief can include the temporary resolution of many financial, custodial, and property allocation issues.<sup>39</sup> The availability of this relief represents an acknowledgement that the separation of married parties or those in a

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33. See *Obergefell v. Hodges*, 576 U.S. 644, 657 (2015) (Ruling in favor of same-sex couples, Justice Kennedy wrote “[s]ince the dawn of history, marriage has transformed strangers into relatives, binding families and societies together.”).

34. *Id.* at 657.

35. 576 U.S. 644 (2015).

36. *Id.* at 657.

37. *Id.* (citing 2 LI CHI: BOOK OF RITES 266 (Ch’u Chai & Winberg Chai eds., J. Legge trans. 1967)).

38. See, e.g., *Domestic Violence*, 25 GEO. J. GENDER & L. 253, 279 (2020) (stating that all fifty states and the District of Columbia “permit warrantless arrests in cases of domestic violence when the arresting officer has probable cause to believe that the abuser has violated a restraining order or committed a criminal act against an intimate partner”); Laurie S. Kohn, *Why Doesn’t She Leave? The Collision of First Amendment Rights and Effective Court Remedies for Victims of Domestic Violence*, 29 HASTINGS CONST. L.Q. 1, 6–7 (2001).

39. See, e.g., D.C. CODE § 16-1005 (2025) (setting forth the relief available from a domestic violence protection order); GA. CODE ANN. § 19-13-4(a) (2025) (setting forth the relief available from a family violence protection order and approval of consent agreements).

mutually dependent relationship may necessitate an expedited resolution of family law issues. However, absent domestic violence, that acknowledgment has not translated to a recognition of the many emergent issues related to many divorces. This Part discusses the circumstances related to divorce that can and often do differentiate a divorce from an ordinary civil legal matter, rendering divorce a deeply chaotic emotional and financial transition necessitating expedited relief.

Divorce necessarily creates financial stress.<sup>40</sup> Dividing one household into two definitionally doubles housing costs. For low-income families, additional housing costs may be unsustainable for one or both parties, causing a full-scale housing crisis. The separation can also escalate child care, transportation, and subsistence costs. The legal process itself can additionally impact a couple's finances—whether or not they engage legal counsel.<sup>41</sup> Filing fees, missed work opportunities, time-off of work required to attend court hearings and mediations, and fees for professional custody and financial evaluators all can have a significant financial impact.

All the while, the chaos of divorce can wreak havoc on the parties' ability to earn income since child-care responsibilities and commutes might change radically.<sup>42</sup> In addition, divorce, as a major life change, often causes trauma that impacts a person's ability to find and show up for work.<sup>43</sup> Access to affordable housing may well be limited while a party remains legally married. Means-tested housing considers a spouse's

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40. See generally Tyler Lang, *The Financial Impact of Divorce*, FORBES (Oct. 20, 2022 7:30 AM), <https://www.forbes.com/sites/forbesfinancecouncil/2022/10/20/the-financial-impact-of-divorce/> [<https://perma.cc/VLN7-56PL>] (stating that “the average cost of a divorce is \$15,000 per person and can increase to \$100,000 for a more complicated situation, such as a custody dispute. In a study of economic data from 2004 to 2014, women over 50 who divorced faced a 45% drop in their standard of living, while a man's standard of living dropped by 21%.”); *Financial Barriers to Divorce Spouses Face and How to Overcome Them*, FARZAD L., <https://farzadlaw.com/financial-barriers-divorce#> [<https://perma.cc/DEM8-9B95>] (last visited Mar. 5, 2025) (stating “[m]ost people need to increase their income (or intake of money) by around 30% to maintain their standard of living after divorce. That is why it is sometimes said that maintaining the marital standard of living after a divorce is not practical.”).

41. See, e.g., Feinglos & Laurenzi, *supra* note 16 (detailing the financial burdens associated with divorce and the disparate impact on women); Ana Staples, *Divorce Hits Women Harder Financially: Here's How to Survive It*, CREDITCARDS.COM (Sept. 16, 2020), <https://www.creditcards.com/to-her-credit/surviving-divorce-financially/> [<https://perma.cc/DP2C-VS5M>] (noting “the average cost of divorce in the U.S. is \$12,900, including \$11,300 in attorneys' fees and about \$1,600 in expenses such as court costs and fees for child custody evaluators, tax advisors, real estate appraisers and other experts”).

42. See *infra* Section III.B.1 for further discussion of the financial impacts of separation and divorce.

43. Jennifer Billock, *How to Deal with Divorce Without Totally Failing at Work*, THE MUSE (June 19, 2020), <https://www.themuse.com/advice/how-to-deal-with-divorce-at-work> [<https://perma.cc/NS45-ZAKD>].

income and some benefits may be available only to single parents.<sup>44</sup> Access to other public benefits are similarly restricted.<sup>45</sup>

Frequently, parties possess unequal access to joint assets. One party can unilaterally cut off a spouse from bank accounts or can drain assets from a joint account to establish a sole bank account.<sup>46</sup> Keri, for example, chronicled by *Fortune Magazine*, did not have access to the couple's joint funds for seven months as their divorce was pending in North Carolina, causing her to lament, "Why is it okay that he can just have all this money, have all of our stuff, and I can't move on with my life or buy a house for my kids?"<sup>47</sup> While some states impose an automatic stay on the unilateral use of joint assets while a divorce is pending, many do not.<sup>48</sup> This actual or potential misuse of joint assets and opportunity for coercion can result in a financial emergency requiring court protection.

A divorce involving custody of children can also present circumstances requiring expedited court intervention. A divorce can be destabilizing for children.<sup>49</sup> A child's home may change, their day-to-day life may involve a different commute, a different school, and a different schedule. For children, the uncertainty of the transition period from an intact family to one involving two homes can be particularly distressing. In high conflict divorces, where children may be at the epicenter of the conflict, a speedy resolution may well be necessary to protect the health and wellbeing of children.<sup>50</sup> Delays of months or years as parties wait until they have a right to file for divorce or as a divorce languishes in the court system can be extremely consequential in the life of a child.<sup>51</sup>

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44. Li Zhou, *The Case Against Means Testing*, Vox (Oct. 15, 2021, 11:50 AM), <https://www.vox.com/2021/10/15/22722418/means-testing-social-spending-reconciliation-bill> [<https://perma.cc/LA8D-3VDD>] (discussing the negative impact that means-tested benefits can have on vulnerable individuals).

45. *Id.*

46. See Rebecca Feinglos & Sophia Laurenzi, *America Makes It Too Hard and Dangerous to Get Divorced*, TIME (Apr. 27, 2023, 7:00 AM), <https://time.com/6274819/us-accessible-divorce-unwanted-marriages/> [<https://perma.cc/QC2F-B63P>] (discussing one parties' ability to drain joint bank accounts).

47. Feinglos & Laurenzi, *supra* note 16.

48. See *infra* notes 174–177 and accompanying text.

49. See Paul R. Amato, *Life-Span Adjustment of Children to Their Parents' Divorce*, 4 FUTURE CHILD. 143, 145–47 (1994) (discussing the general disruption divorce causes for children); see also *infra* notes 139–141 and accompanying text. Recent research, contrary to the conventional wisdom, is that after the initial adjustment period, children of divorced parents fare better psychologically than children in high-conflict marriages. See, e.g., Sol R. Rappaport, *Deconstructing the Impact of Divorce on Children*, 47 FAM. L. Q. 353, 359 (2013) ("As the stressors decrease and children adjust to the changes in their lives, however, children's difficulties decrease. In fact, as children adjust to the divorce, they do better as compared to children of high-conflict, non-divorced families.").

50. Ann Gold Buscho, *Understanding the Effects of High-Conflict Divorce on Kids*, PSYCH. TODAY (Dec. 18, 2019), <https://www.psychologytoday.com/us/blog/better-divorce/201912/understanding-the-effects-high-conflict-divorce-kids> [<https://perma.cc/RNP5-MV5Q>].

51. While a party may file for custody at any time, many times married couples are unaware of the ability to separate the legal issues and pursue a cause of action

Finally, the psychological and emotional impact of divorce on the separating couple alone can create an emergent situation in need of expedited resolution.<sup>52</sup> The separation period—whether parties remain in the home while separated or maintain different homes—is found to be the most emotionally taxing time frame in the divorce process.<sup>53</sup> A 2011 Gallup poll of over 300,000 adults in the United States concluded that separated parties reported lower levels of overall mental health, including their outlook on life and their physical and emotional health, than parties who were fully divorced.<sup>54</sup>

All these scenarios can transform a divorce from a routine civil legal case into an emergent matter more akin to a domestic violence matter, necessitating expedited court intervention for temporary or final resolutions. And yet, the legal system is designed to slow rather than expedite the process.

## II. STATUTORY & PROCEDURAL BARRIERS TO EXPEDITIOUS DIVORCES

The valorization of marriage has been a constant since its inception as a legal institution.<sup>55</sup> Marriage has been touted as key to morality,<sup>56</sup>

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for custody. *See id.* (“Studies have concluded that children experience less anxiety and depression when their high-conflict, married parents divorce, and those children whose parents stay married with high-conflict experience higher levels of short- and long-term behavioral and mental health issues.”).

52. *See generally* Donohue, *supra* note 28, at 95–96 (citing the “substantial financial upheaval, the renegotiation of parenting relationships and co-parenting conflict, changes in friendships and social networks, moving locally or relocating cities, as well as a host of psychological challenges, including re-organizing one’s fundamental sense of self,” as material to parties’ mental health during divorce).

53. Ho-Po Crystal Wong, *Can’t Wait Any Longer? The Effects of Shorter Waiting Periods on Divorce and Remarriage*, 23 AM. L. & ECON. REV. 255, 263 (2021) (“Studies suggest that the waiting period is the most stressful phase of divorce for divorcees, and this experience can affect post-divorce adjustment.” (first citing Stan L. Albrecht, *Reactions and Adjustments to Divorce: Differences in the Experiences of Males and Females*, 29 FAM. RELS. 59 (1980); and then citing Deanna S. Pledge, *Marital Separation/Divorce: A Review of Individual Responses to a Major Life Stressor*, 17 J. DIVORCE & REMARRIAGE 151 (1992))).

54. *Id.* at 257.

55. *See, e.g.*, *Obergefell v. Hodges*, 576 U.S. 644, 657 (2015) (noting the philosophical application when referencing Cicero: “The first bond of society is marriage; next, children; and then the family.” (quoting M. TULLIUS CICERO, *DE OFFICIIS* 57 (W. Miller trans. 1913))). *See generally* NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (2000) (providing an overview of the origins of marriage in the U.S. and its role in American society).

56. *See generally* Scott Coltrane & Michele Adams, *The Social Construction of the Divorce “Problem”: Morality, Child Victims, and the Politics of Gender*, 52 FAM. RELS. 363 (2003) (discussing historical resistance to divorce and its roots in morality); W. Bradford Wilcox, *The Evolution of Divorce*, 1 NAT’L AFFS. 81 (2009); Shannon Quinn, *The American Divorce Colonies of the 1800’s*, HIST. COLLECTION (Aug. 2, 2018), <https://historycollection.com/the-american-divorce-colonies-of-the-1800s/> [https://perma.cc/2NDB-BL39] (discussing the historical view that marriage is a promise before God and breaking such a vow would be an affront to God); James Hardy, *The History of Divorce Law in the USA*, HIST. COOP. (June 21, 2022), <https://historycooperative.org/the-history-of-divorce-law-in-the-usa/> [https://perma.cc/Q6WM-NLBZ]

social ordering,<sup>57</sup> child welfare,<sup>58</sup> and economic stability.<sup>59</sup> Accordingly, divorce has been met with a strong degree of resistance.<sup>60</sup> Over time, however, that resistance lessened somewhat as evidenced by the inception fault-based divorce, which allowed a spouse to seek divorce based on extreme cruelty or adultery.<sup>61</sup> Although the tide began to turn with the recognition that fault-based divorces may have a damaging impact on children and couples<sup>62</sup> and no fault divorces became more prevalent,<sup>63</sup> efforts to deter divorces based in commitment to marriage as a social and religious institution did not disappear from the system. Instead, procedural barriers<sup>64</sup> have been built into the divorce process that are expressly intended to deter, slow, and diminish divorce.

This Part reviews and discusses the various procedural hurdles to divorce that slow its progress in the legal system—most of which are

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(noting the historical role that religion played in keeping divorce at a minimum); Brian L. Frye & Maybell Romero, *The Right to Unmarry: A Proposal*, 69 CLEV. ST. L. REV. 89, 101 (2020) (discussing the conservative viewpoint that divorce undermines the institution of marriage).

57. See generally Higdon, *supra* note 5 (“Puritans certainly did not encourage divorce, they nonetheless ‘feared that forcing all estranged couples to remain harnessed by law would eventually undermine the social harmony they were trying to achieve.’” (quoting GLENDA RILEY, *DIVORCE AN AMERICAN TRADITION* 10 (1991))).

58. See generally Coltrane & Adams, *supra* note 56, at 363 (discussing Judith Wallerstein’s 1970s research and arguments based on her research that divorce is detrimental to children); Wilcox, *supra* note 56 (noting that “[i]n the older, institutional model of marriage, parents were supposed to stick together for their sake. The view was that divorce could leave an indelible emotional scar on children, and would also harm their social and economic future.”).

59. See generally Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647, 1675 (2005) (“Citing the collapse of marriage as the primary cause of child poverty, intergenerational poverty, and emotional and behavioral problems among poor children, politicians pushed for and passed welfare legislation designed to strengthen marriage—as if it were obvious that marriage would cure these societal ills.” (footnotes omitted)); Jane Koppelman, *Promoting Marriage as Welfare Policy: Looking at a Public Role in Private Lives*, NAT’L HEALTH POL’Y F. (Feb. 15, 2002), <https://www.ncbi.nlm.nih.gov/books/NBK559763/> [<https://perma.cc/EMD2-TA4R>] (discussing the relationship between marriage promotion and welfare policy).

60. See generally Friedman, *supra* note 9 (discussing the history of divorce law before the introduction of no-fault divorce and the rigidity of the prior system).

61. *Id.* at 1501.

62. See, e.g., Samantha Chapman, *Attacks on No-Fault Divorce Are Dangerous — Especially for Those Experiencing Domestic Violence*, ACLU S.D. (Oct. 20, 2023, 11:30 AM), <https://www.aclusd.org/en/news/attacks-no-fault-divorce-are-dangerous-especially-those-experiencing-domestic-violence> [<https://perma.cc/2536-DCYQ>] (explaining that fault based divorce is particularly dangerous for victims of domestic violence by “expos[ing] them to further harm, intimidation, and retaliation from their abusive partners, who may try to discredit or intimidate them during legal proceedings”). The author also states that proving fault “can also have a detrimental effect on children in abusive households [because] [c]ontentious and drawn-out legal battles can negatively impact children’s mental and emotional well-being through an already stressful and challenging time.” *Id.*

63. See generally Wilcox, *supra* note 56.

64. See generally Frye & Romero, *supra* note 56, at 101 (discussing the introduction of “cooling off” periods before the entry of a decree of divorce).

features of the system—designed specifically as detours and speed bumps. Other procedural delays discussed in this Part relate to a systemic unwillingness to distinguish divorce cases from other civil litigation in terms of procedure. And still some of the current procedural delays discussed within have developed not based on an intent to explicitly slow the process, but rather on well-meaning innovations initially conceived of to reduce the adversarial nature of divorce and to support pro se litigants.

#### A. *Procedural Delays Imposed Expressly to Slow and Deter Divorce Process*

Across the country, state law and procedure impose a series of waiting periods designed expressly to delay the final resolution of divorce actions. While some states have eliminated or reduced waiting periods<sup>65</sup> in recent years, many remain entrenched in statutes nationwide.<sup>66</sup> Given the high value placed on marriage as a social ordering, moral barometer, and financial safety net, these impediments to hasty divorce are intended to disincentivize divorce, encourage second guessing, and urge reconciliation.

Waiting periods intervene in the divorce process at three different points. First, some states require parties to live separate and apart prior to filing for divorce if the couple wishes to pursue a no-fault divorce.<sup>67</sup> For example, South Carolina grants fault-based divorce for adultery, desertion for a period of one year, physical cruelty, habitual drunkenness or use of narcotics, but allows a no-fault divorce if the parties have lived separate and apart without cohabitation for one year.<sup>68</sup> Louisiana law permits dissolutions of marriage based on fault or based on separation of 180 days if there are no children involved or a year if the parties have minor children.<sup>69</sup> Some states include separation as one of several

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65. See, e.g., D.C. CODE § 16-904(c) (2025) (amending the statute to eliminate mandatory separation periods and replacing the basis for divorce with an assertion that one or both parties do not wish to remain married); MD. CODE ANN., FAM. LAW § 7-103(a)(1) (West 2025) (recently changing the separation period required for a no-fault divorce from twelve months to six months).

66. See generally Donohue, *supra* note 28 (discussing separation requirements and their impact on divorcing spouses); Wong, *supra* note 53 (providing an overview of state statutes mandating separation and the impact of their elimination); Feinglos & Laurenzi, *supra* note 46 (discussing the presence of waiting periods in many states' divorce procedures); Xavier Walton & Devan Markham, *Divorce Rules Vary Across States, Stalling Separations*, NEWSNATION (May 1, 2023, 8:48 AM), <https://www.newsnationnow.com/health/divorce-rules-states-marriage-separations/> [<https://perma.cc/SGJ5-8SEQ>] (chronicling mandatory separation requirements and wait times for divorce).

67. ARK. CODE ANN. § 9-12-301(b)(5) (2025); LA. CIV. CODE ANN. art. 103.1 (2025); MD. CODE ANN., FAM. LAW § 7-103(a)(1) (West 2025); N.Y. DOM. REL. LAW § 170(5) (McKinney 2025); N.C. GEN. STAT. § 50-5.1 (2025); S.C. CODE ANN. § 20-3-10(5) (2025); VT. STAT. ANN. tit. 15, § 551(7) (2025); VA. CODE ANN. § 20-91(9)(a) (2025).

68. S.C. CODE ANN. § 20-3-10.

69. LA. CIV. CODE ANN. art. 103.1.

grounds for no-fault divorce, including other no-fault grounds such as “irretrievable breakdown of marriage.”<sup>70</sup>

Mandatory separation periods impose logistical, emotional, and financial burdens on divorcing couples. However, several states’ statutes provide flexibility to help spouses meet the requirement or avoid it altogether. For example, New York, Illinois, Maryland, and Ohio allow divorcing spouses to waive the separation period by mutual consent,<sup>71</sup> which can involve both spouses signing an agreement settling major issues in the divorce. Many states requiring separation periods also specify that living “separate and apart” can include living in the same household, provided the couple sleeps in separate rooms and maintains separate expenses.<sup>72</sup>

But the structural delays continue after filing, with mandatory waiting times dictating when hearings can be held and when divorce decrees become final. Some states enforce a waiting period that tolls from the time a complaint is filed to when an initial hearing may be held.<sup>73</sup> Other states impose a mandatory waiting period that tolls from the time of complaint to when the court may hold a final hearing or enter a final judgment or decree.<sup>74</sup>

70. See ALA. CODE § 30-2-1 (2025); CONN. GEN. STAT. §§ 46(b)-40(c) (2025); HAW. REV. STAT. § 580-41 (2025); OHIO REV. CODE § 3105.01 (2025); MD. CODE ANN., FAM. LAW § 7-103 (West 2025); MONT. CODE ANN. § 40-4-104 (2025); NEV. REV. STAT. § 125.010 (2025); 23 PA. CONS. STAT. § 3301(d) (2025); TEX. FAM. CODE ANN. §§ 6.001, 6.006 (West 2025); UTAH CODE ANN. § 30-3-1 (West 2025); W. VA. CODE § 48-5-202 (2025).

71. See N.Y. DOM. REL. LAW § 170(7) (McKinney 2025); MD. CODE ANN., FAM. LAW § 7-103(a) (3) (West 2025); OHIO R. CIV. P. 75(K).

72. At least half of mandatory separation states allow couples to satisfy the requirement without necessarily living in separate homes, including Delaware, Kentucky, Pennsylvania, and Vermont. See DEL. CODE ANN. tit. 13, § 1503(8) (2025) (stating that “separation may commence and/or continue while the parties reside under the same roof, provided, during such period, the parties occupy separate bedrooms and do not have sexual relations with each other”); KY. REV. STAT. ANN. § 403.170(1) (West 2025) (stating that “[l]iving apart shall include living under the same roof without sexual cohabitation”); *Buxton v. Buxton*, 527 A.2d 660, 663 (Vt. 1987) (holding that the parties were living separate and apart despite living under one roof).

73. See ALASKA R. CIV. P. 90.1(c); IDAHO CODE § 32-716 (2025); KAN. STAT. ANN. § 23-2708 (2025); KY. REV. STAT. ANN. § 403.044 (West 2025); MASS. GEN. LAWS ch. 208, § 1B (2025); MICH. COMP. LAWS § 552.9f (2025); MISS. CODE ANN. § 93-5-2(4) (2025); NEB. REV. STAT. § 42.363 (2025); OHIO R. CIV. P. 75(K); OKLA. DIST. CT. R. 8; S.C. CODE ANN. § 20-3-80 (2025); S.D. CODIFIED LAWS § 25-4-34 (2025); TENN. CODE ANN. § 36-4-103(c)(1) (2025); UTAH CODE ANN. § 81-4-402 (West 2025).

74. See ALA. CODE § 30-2-8.1(a) (2025); ARIZ. FAM. LAW PROC. R. 78(f)(2)(A); ARK. CODE ANN. § 9-12-310 (2025); COLO. REV. STAT. § 14-10-106(1)(a)(III) (2025); CONN. GEN. STAT. § 46b-44c(a) (2025); FLA. STAT. § 61.19 (2025); GA. CODE ANN. § 19-5-3(13) (2025); IND. CODE § 31-15-2-10 (2025); IOWA CODE § 598.19 (2025); LA. CIV. CODE ANN. art. 102 (2025); LA. CIV. CODE ANN. art. 103.1 (2025); ME. R. CIV. P. 113; MO. REV. STAT. § 452.305.1(1) (2025); MONT. CODE ANN. § 40-4-105(3) (2025); 23 PA. CONS. STAT. ANN. § 3301(c)(1) (2025); TEX. FAM. CODE ANN. § 6.702(a) (West 2025); WASH. REV. CODE § 26.09.030 (2025); WIS. STAT. § 767.335(1) (2025); WYO. STAT. ANN. § 20-2-108 (2025).



Even after the court grants a divorce, the system compels couples again to reconsider their decisions because many states impose a waiting period that begins after the entry of a final judgment and runs to the point that a divorce decree can become final.<sup>75</sup> These waiting periods range from thirty days in the District of Columbia<sup>76</sup> to 120 days in Massachusetts.<sup>77</sup>

In some states, the waiting period enlarges when there are minor children involved. For example, in Michigan, having minor children extends the waiting period from filing until a hearing from sixty days to six months.<sup>78</sup> In Louisiana, the presence of children extends the separation periods to entitle a party to file for or get a hearing from 180 days to a year.<sup>79</sup>

Further, aside from procedurally imposed waiting periods, judges can delay divorce cases by requiring reconciliation efforts. Many jurisdictions provide a statutory basis for judges to order parties to attend reconciliation counseling.<sup>80</sup> For example, courts may direct the parties to counseling when one party denies that the marriage is irretrievably broken, when the parties have not lived separately for the required

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75. See, e.g., CAL. FAM. CODE § 2339(a) (West 2025) (six months for judgment to become final); 15 R.I. GEN. LAWS § 15-5-23(a) (2025) (three months for a judgment to become final after a trial and decision); VT. STAT. ANN. tit. 15, § 554(a) (2025) (ninety days after entry of judgment for it to become absolute); S.D. CODIFIED LAWS § 25-4-34 (specifying that there is a sixty-day waiting period before a divorce decree can be finalized); MASS. GEN. LAWS ch. 208, § 1A (specifying a no-fault consent divorce cannot be finalized until 120 days after the judgment and a no-fault divorce contested divorce cannot become final until ninety days after judgment); D.C. CODE ANN. § 16-920 (2025) (unless waived, no divorce decree can be final until thirty days have passed); LEGAL AID OF NEB., DIVORCE HANDBOOK 9 (2017), <https://www.legalaidofnebraska.org/wp-content/uploads/2019/05/Divorce-Handbook-2018.pdf> [<https://perma.cc/VNX9-3WAP>] (divorce only becomes final thirty days after the judge signs the decree).

76. D.C. CODE ANN. § 16-920.

77. *Finalizing a Divorce*, MASS.GOV, <https://www.mass.gov/info-details/finalizing-a-divorce> [<https://perma.cc/2JKU-ZN8F>] (last visited Mar. 5, 2025) (“A [no-fault] divorce isn’t final until 120 days from the date of the judgment.”).

78. MICH. COMP. LAWS § 552.9f.

79. LA. CIV. CODE ANN. art. 102; LA. CIV. CODE ANN. art. 103.1.

80. See, e.g., ALASKA STAT. § 25.24.140(c) (2025) (“[T]he court may also order that the parties engage in personal or family counseling or mediation.”); FLA. STAT. § 61.052(2)(b) (2025) (stating “[w]hen there is a minor child of the marriage, or when the responding party denies by answer to the petition for dissolution that the marriage is irretrievably broken, the court may: . . . Order either or both parties to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi, or any other person deemed qualified by the court and acceptable to the party or parties ordered to seek consultation.”); TEX. FAM. CODE ANN. § 6.505(a) (West 2025) (“While a divorce suit is pending, the court may direct the parties to counsel with a person named by the court.”); MASS. GEN. LAWS ch. 208, § 1A (“Nothing in the foregoing shall prevent the court . . . from making temporary orders . . . as it deems appropriate, including referral of the parties and the children, if any, for marriage or family counseling.”); IOWA CODE § 598.16(2)–(3) (2025) (“The court may on its own motion or upon the motion of a party require the parties to participate in conciliation efforts for a period of sixty days or less following the issuance of an order setting forth the conciliation procedure and the conciliator.”).

amount of time, or when one party denies that the parties have lived separately for the requisite amount of time.<sup>81</sup> In some states, statutory language explicitly requires judges *sua sponte* to order parties to make efforts at reconciliation.<sup>82</sup> In other states, judges are either compelled or provided discretion to require divorce counseling upon motion of one party.<sup>83</sup> In Pennsylvania, for example, when the grounds for divorce are either mutual consent or irretrievable breakdown in marital relations or if either party requests counseling, the court is required to direct the parties to reconciliation counseling.<sup>84</sup>

If both parties elect for counseling, this practice might benefit litigants. However, if the judge imposes the mandate *sua sponte*, this requirement is saturated in morality and paternalism and delays the resolution of a matter at potentially great cost to the parties and their families. Permitting the referral to reconciliation counseling at the request of one party vests in that party the ability to stonewall the legal matter. Although other civil legal matters might be referred for mandatory mediation prior to resolution, divorces are unique in that judges can send parties against their will for psychological counseling to extinguish the basis for their cause of action. The legal system variously treats divorces as ordinary

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81. *See, e.g.*, FLA. STAT. § 61.052(b)(1) (2025) (noting “[w]hen there is a minor child of the marriage, or when the responding party denies by answer to the petition for dissolution that the marriage is irretrievably broken,” the court may order counseling); WASH. REV. CODE § 26.09.030(c)(ii) (2025) (stating “[i]f the other party denies that the marriage . . . is irretrievably broken the court shall . . . : (ii) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing.”); KY. REV. STAT. ANN. § 403.170(2)(b) (West 2025) (stating “[i]f one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall . . . : (b) Continue the matter for further hearing not fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court’s calendar, and may suggest to the parties that they seek counseling.”); VT. STAT. ANN. tit. 15, § 552(2) (2025) (stating “[i]f one of the parties had denied under oath . . . that the parties have lived apart for the requisite period of time or has alleged that reconciliation is reasonably probable, the court shall . . . : (2) continue the matter for further hearing not less than 30 or more than 60 days later, and may suggest to the parties that they seek counseling.”).

82. *See, e.g.*, CAL. FAM. CODE § 2334(a) (West 2025) (“If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for the dissolution of the marriage or for a legal separation of the parties for a period not to exceed 30 days.”); S.C. CODE ANN. § 20-3-90 (2025) (“In all cases referred to a master or special referee, such master or special referee shall, except in default cases, summon the party or parties within the jurisdiction of the court before him and shall in all cases make an earnest effort to bring about a reconciliation between the parties if they appear before him.”).

83. *See, e.g.*, IOWA CODE § 598.16(2) (2025) (allowing judge to order parties to conciliation counseling on the motion of either party); WIS. STAT. § 767.315(1)(b)(2) (2025) (permitting a judge to refer parties to conciliation counseling at the request of either party provided the parties have not lived voluntarily separate and apart for the required period or if only one party has stated that the marriage is irretrievably broken).

84. 23 PA. CONS. STAT. § 3302(a)-(c) (2025).

civil matters when it serves to delay the case and as exceptional when, again, it imposes delays or barriers to marital dissolution.

This seemingly endless road, rife with procedural delays such as these that are deliberately imposed to deter divorces, exacerbates the already slow process of divorce, extends the period of uncertainty, can put individuals at further risk of intimate partner violence, and defers resolution of financial, custodial, and asset distribution issues.

B. *Failure to Distinguish from General Civil Litigation  
Imposes Additional Delays*

Additional procedural delays emanate from a systemic failure to distinguish the procedures of family law from other areas of civil litigation. In most jurisdictions, divorces are governed by the Rules of Civil Procedure, which generally impose a procedural structure for conflicts solely between parties who either do not know each other or are in an arm's length relationship. Therefore, the rules rest on the assumption that the parties do not live together, do not currently raise children together, do not share access to information and documents, and will not have a long-term future relationship involving co-parenting.<sup>85</sup> These rules must, therefore, govern the proper procedures for notifying the parties and ensuring the structured, comprehensive exchange of and access to information. Generally, they do not prioritize the swift resolution of disputes except when necessary for efficiency. These rules—which are rarely adapted to the family law context—enhance needless delays, particularly in the areas of service of process and discovery.

1. *Service of Process*

Service of process is a constitutional mandate requiring notice of a hearing and an opportunity to be heard.<sup>86</sup> Parties to civil litigation must be provided service in a way deemed by the jurisdiction to achieve constitutionally sufficient notice.<sup>87</sup> Court rules specify what type of service satisfies that burden. In most jurisdictions, the rules for service in divorce cases are typically consistent with the civil rules requirements.<sup>88</sup> Without any adaptation, a pro se litigant in a divorce case must meet the same requirements that a business must meet in serving another business. This fails to recognize the *sui generis* nature of the dispute at issue in the family context.

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85. See generally Daniel F. Bousquet, *Repairing the Family Law Attorney*, 28 LEWIS & CLARK L. REV. 473 (2024) (discussing the harms inflicted by the adversarial nature of the family court system and advocating for a more reparative model of family law based on ethical obligations).

86. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950).

87. *Id.* at 314–15.

88. See, e.g., VA. CODE ANN. § 20-99.2 (2025) (cross-referencing the general civil remedies and procedures rules for service); MINN. R. 355 (governing service in all civil cases including matrimonial).

When the rules are not specifically adapted, they can create a significant burden for plaintiffs, impeding the court process and creating frustration. Service of process, with its arcane rules and specific requirements that frequently mandate the involvement of third parties, often itself precludes a divorce action. Delays due to lack of service are rampant—even when service is accomplished—since parties often take so long to accomplish the simple task of getting paperwork to another person due to the particularities of the requirements and to subsequently proving service to the court. For example, between June 2021 and June 2024, 340 Washington, D.C. domestic relations litigants were referred for service support from the court because they had been unable to achieve service when they appeared for their initial hearings.<sup>89</sup> This number underrepresents the actual problem because many litigants who remained befuddled by the mystery of service of process did not even appear for the initial hearing because they merely gave up. Service causes significant delays and often de facto extinguishes the opportunity to seek a divorce.

## 2. *Discovery*

In general, discovery in civil cases is liberally available and wide in scope: “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense . . . [R]elevant [i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.”<sup>90</sup>

In most states, discovery rules in divorce proceedings also mirror the general civil rules, even though many states handle divorce cases in their family courts.<sup>91</sup> In West Virginia and Hawaii, for example, the family

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89. The George Washington Family Justice Litigation Clinic-D.C. Superior Court Service Assistance Project launched in June 2021 and continues to operate at the time of publication. See *Family Justice Litigation*, GW LAW, <https://www.law.gwu.edu/family-justice-litigation> [<https://perma.cc/L4D4-WU2X>] (last visited Mar. 5, 2025).

90. FED. R. CIV. P. 26(b).

91. *Juvenile and Domestic Relations District Court*, VA.’s JUD. SYS., <https://www.vacourts.gov/courts/jdr/home.html> [<https://perma.cc/JBV9-R4EQ>] (last visited Mar. 5, 2025); VA. R. SUP. CT. 4:1(b)(1); *id.* 4:1(b)(5) (“In any proceeding for divorce or annulment of marriage, a notice to take depositions must be served in the Commonwealth by an officer authorized to serve the same, except that, in cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, notices to take depositions may be served in accordance with Rule 1:12.”). Virginia Supreme Court rules apply to all civil actions in circuit courts. VA. R. SUP. CT. 3:1; *File Your Divorce Petition and Summons*, CAL. CTS. SELF-HELP GUIDE, <https://selfhelp.courts.ca.gov/divorce/start-divorce/file> [<https://perma.cc/4Z3R-T8HR>] (last visited Mar. 5, 2025); CAL. CIV. PROC. CODE § 2017.010 (West 2025); CAL. FAM. CODE § 210 (West 2025) (stating that, unless otherwise specified, procedures for civil actions apply to proceedings under the California Family Code as well); *Filing for Dissolution or Divorce—Ending Your Marriage*, ALASKA CT. SYS., <https://courts.alaska.gov/shc/family/shcstart.htm> [<https://perma.cc/KU5G-84NF>] (last visited Mar. 5, 2025); ALASKA R. CIV. P. 26(b)(1) (scope of discovery). Note that divorce proceedings are excluded from mandatory initial disclosures required of other civil actions under ALASKA R. CIV. P. 26(a). See ALASKA R. CIV. P. 16(g)(1); *How*

court rules specify that discovery is conducted pursuant to the Rules of Civil Procedure.<sup>92</sup> Similarly, while the South Carolina Family Court discovery rules encourage “the prompt voluntary exchange of information and documents by parties prior to trial,” they also note that formal discovery occurs according to the South Carolina Rules of Civil Procedure.<sup>93</sup> While a few states have adapted their discovery rules for divorce proceedings, this is not typical.

*C. Procedural Delays Are Exacerbated by Comparative Institutional Disrespect for Family Legal Matters*

Getting your day in divorce court comes with extraordinary delays—many of them due to limited court personnel. Although family law cases represent an increasing portion of all trial court matters,<sup>94</sup> family courts remain significantly under-resourced compared to other court divisions.

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*to File for Divorce in Louisiana*, LA. CT. RECS., <https://louisianacourtrecords.us/family-court-records/divorce/file-for-divorce/> [<https://perma.cc/VE48-XTH3>] (last visited Mar. 5, 2025); LA. CIV. CODE ANN. art. 102 cmt. (f) (1990) (stating that the Code of Civil Procedure “govern the procedures for obtaining a divorce”); LA. CODE CIV. PROC. ANN. art. 1422 (2025); *Introduction to Divorce Without Children*, MICH. LEGAL HELP, <https://michiganlegalhelp.org/resources/family/introduction-divorce-without-children> [<https://perma.cc/23SG-P767>] (last visited Mar. 5, 2025); *Introduction to Divorce with Minor Children*, MICH. LEGAL HELP, <https://michiganlegalhelp.org/resources/family/introduction-divorce-minor-children> [<https://perma.cc/2P7D-RZGN>] (last visited Mar. 5, 2025); MICH. CT. R. 2.302(B)(1); *Glossary of Legal Terms*, NYCOURTS.GOV, [https://ww2.nycourts.gov/divorce/glossary.shtml#Supreme\\_Court](https://ww2.nycourts.gov/divorce/glossary.shtml#Supreme_Court) [<https://perma.cc/E5X5-QECC>] (last visited Mar. 5, 2025); N.Y. C.P.L.R. § 3101 (McKinney 2025); *About Texas Courts: Frequently Asked Questions*, TEX. BRANCH JUDICIARY, <https://www.txcourts.gov/about-texas-courts/frequently-asked-questions/> [<https://perma.cc/GHV6-7LY6>] (last visited Mar. 5, 2025); TEX. R. CIV. P. 192.3(a); *File for Divorce*, WASHINGTONLAWHELP.ORG, <https://www.washingtonlawhelp.org/resource/divorce-forms-online> [<https://perma.cc/K9XF-42XF>] (Dec. 5, 2024); WASH. SUPER. CT. CIV. R. 26(b)(1); *Divorce*, MD. CTS., <https://www.mdcourts.gov/legalhelp/family/divorce> [<https://perma.cc/65DL-SYTC>] (Dec. 2024); MD. R. 2-402(a); *Which Florida County Should Your Florida Divorce Be Filed In?*, MILLER L.: FLA. FAM. L. & DIVORCE, <https://divorcehappens.com/faqs-about-divorce-in-florida/which-county-in-florida-divorce-be-filed/> [<https://perma.cc/FC9C-HG4U>] (last visited Mar. 5, 2025); FLA. R. CIV. P. 1.280(b); Jeffrey Johnson & Adam Ramirez, *Oregon Divorce Laws & How to File (2025 Guide)*, FORBES, <https://www.forbes.com/advisor/legal/divorce/oregon-divorce/> [<https://perma.cc/7MP2-LKNF>] (Feb. 10, 2023, 4:57 AM); OR. R. CIV. P. 36(B)(1).

92. W. VA. R. FAM. CT. R. 12; W. VA. R. CIV. P. 26; HAW. FAM. CT. R. 26(b)(1); *Facts About Getting a Divorce in Hawai‘i*, HAW. ST. JUDICIARY, [https://www.courts.state.hi.us/self-help/divorce/divorce\\_facts](https://www.courts.state.hi.us/self-help/divorce/divorce_facts) [<https://perma.cc/NQ8D-TCAB>] (last visited Mar. 5, 2025).

93. S.C. FAM. CT. R. 25.

94. In Maryland during fiscal year 2013, family cases made up 44% of the total trial court filings, exceeding the percentages of both criminal and civil court cases. Barbara A. Babb, *Family Courts Are Here to Stay, So Let’s Improve Them*, 52 FAM. CT. REV. 642 (2014). In 2023, New York family court cases saw the biggest inflation of any division, increasing by 26% as compared to an 18% increase in criminal cases. Jacob Kaye, *Lawmakers Call on State to ‘Fully Fund’ Family Court*, QUEENS DAILY EAGLE (Feb. 13, 2024), <https://queenseagle.com/all/2024/2/13/lawmakers-call-on-state-to-fully-fund-family-court> [<https://perma.cc/3KP8-FCV4>].

Across the country, family court dockets suffer from a tremendous backlog of cases accompanied by staff shortages, including judicial vacancies.<sup>95</sup> Fewer than one-third of states have judges dedicated to hearing solely—or even mostly—family court cases.<sup>96</sup> In New York City, a jurisdiction without dedicated family court judges, there were only fifty-six judges handling over 200,000 family court filings per year in 2019.<sup>97</sup> Family court judges are also often paid less than other divisional judges and the positions are generally considered less prestigious, making family court judicial openings harder to fill, enhancing judicial scarcity.<sup>98</sup> For example, New Jersey has reported having more than fifty judicial vacancies and even more judges are due for retirement.<sup>99</sup> New Jersey's Bar Association notes that while the wait times before the COVID-19 pandemic were long, with cases taking around one year, that wait was exacerbated by the post-pandemic world.<sup>100</sup> In one county, the backlog of cases has increased by 108%.<sup>101</sup> The *Economist* reported in 2023 that divorce cases had been pending for three or four years with no clear end in sight.<sup>102</sup> Other states, such as Maine, Louisiana, Missouri, Florida, North Dakota, and New York, have all faced a lack of resources to work through a pre-existing backlog of cases while judicial vacancies increase.<sup>103</sup> In some jurisdictions, the situation has become so dire that courts have to close

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95. *Judge and Staff Shortages Are Leaving Americans in Limbo*, THE ECONOMIST (July 13, 2023), <https://www.economist.com/united-states/2023/07/13/judge-and-staff-shortages-are-leaving-americans-in-limbo> [<https://perma.cc/YFV6-ZKVJ>].

96. JOSH WEBER, NAT'L COUNCIL OF JUVENILE & FAM. CT. JUDGES, *COURTING JUDICIAL EXCELLENCE IN JUVENILE JUSTICE: A 50-STATE STUDY 5* (2022), <https://csgjusticecenter.org/wp-content/uploads/2022/04/Courting-Judicial-Excellence-in-Juvenile-Justice-A-50-State-Study-2.pdf> [<https://perma.cc/W789-J5GW>].

97. Melissa Russo & Hilary Weissman, *NYC Family Courts in Crisis, New Report Says*, NBC N.Y. (Feb. 3, 2022), <https://www.nbcnewyork.com/investigations/nyc-family-court-in-crisis-new-report-says/3532144/> [<https://perma.cc/E958-DBFW>].

98. INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *THE MODERN FAMILY COURT JUDGE: KNOWLEDGE, QUALITIES, AND SKILLS FOR SUCCESS* (2016), <https://www.ncjfcj.org/wp-content/uploads/2019/08/endorsement-of-the-modern-court-judge-knowledge-qualities-and-skills-for-success.pdf> [<https://perma.cc/RRL4-BSAE>]; Todd Bookman, *Special House Committee to Look at How New Hampshire's Family Courts Operate*, N.H. BUS. REV. (Apr. 27, 2023), <https://www.nhbr.com/special-house-committee-to-look-at-how-new-hampshires-family-courts-operate/> [<https://perma.cc/X3V2-TNFK>].

99. Mark Koosau, *Getting Out of a Bad Situation Only Gets Worse: Long Delays for Divorce Hearings in Hudson County*, NJ.COM (Apr. 17, 2023, 4:43 PM), <https://www.nj.com/hudson/2023/04/getting-out-of-a-bad-situation-only-gets-worse-long-delays-for-divorce-hearings-in-hudson-county.html&subscribed=auth0%7C-65c43f7426a3df3469f1575e> [<https://perma.cc/C7GN-XNQE>]; see also Sophie Nieto-Munoz, *Legislature in Recess with Judicial Vacancies Still Higher than Court Officials Want*, N.J. MONITOR (July 5, 2024, 7:18 AM), <https://newjerseymonitor.com/briefs/legislature-in-recess-with-judicial-vacancies-still-higher-than-court-officials-want/> [<https://perma.cc/MR46-5LCA>] (noting that judicial vacancies remain high but do not pose an emergency).

100. *Judge and Staff Shortages Are Leaving Americans in Limbo*, *supra* note 95.

101. Koosau, *supra* note 99.

102. *Judge and Staff Shortages Are Leaving Americans in Limbo*, *supra* note 95.

103. *Id.*

down for periods of time due to staffing shortages.<sup>104</sup> This dearth of family court judges leads to an accumulation of cases, leaving court-involved families waiting unreasonably long to be heard and to get divorced. The lack of resources directed to family courts profoundly impacts wait times so that in many jurisdictions, the excruciating process of divorce is being dragged on for years.

D. *Some Reforms Developed to Support Pro Se Litigants  
Result in Procedural Delays*

Recently, advocates for access to divorce for low-income and pro se litigants have argued for reforms such as mandatory mediation and counseling, with the intention of supporting pro se litigants, demystifying the process, and reducing the psychological harm of family restructuring.<sup>105</sup> In some cases, these reforms have, themselves, unintentionally delayed the divorce process.

Over the last decade, court-based mediation has become far more prevalent in family court litigation.<sup>106</sup> The goal of this reform is to support pro se litigants by facilitating non-adversarial resolutions, expediting the court process, and relieving the court's docket of cases that have simple resolutions.<sup>107</sup> While in some jurisdictions these reforms have achieved their goals,<sup>108</sup> in many, the dearth of mediators available and the oftentimes excessive requirements imposed by the courts have exacerbated procedural delays rather than eased them. In Washington D.C., for example, a 2015 Administrative Order implemented a series of reforms to expedite matters and enhance access to justice. The order mandated that all parties be directed, after an initial hearing, to the Multi-Door Mediation Program (the Program).<sup>109</sup> In 2022, 1,396 cases

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104. *Id.*

105. See generally MURPHY & SINGER, *supra* note 28 (proposing widespread use of mediation in divorce proceedings); Jed D. Melnick, *Innovations in Justice: Experiments in Restorative Justice: Rethinking the Role of Courts in Resolving Family Conflicts*, 21 CARDOZO J. CONFLICT RESOL. 625 (2020) (reviewing proposals for family court reform).

106. MURPHY & SINGER, *supra* note 28, at n.2 and accompanying text.

107. See, e.g., D.C. ADMIN ORDER NO. 14-23, *supra* note 6 (implementing mediation programs in domestic relations cases with the goal of promoting access to justice and “[t]o promote earlier use of alternative dispute resolution (ADR) in appropriate cases involving children and families to resolve disputes in a non-adversarial manner and with the most effective means”).

108. See Adam Noakes, *Mandatory Early Mediation: A Vision for Civil Lawsuits Worldwide*, 36 OHIO ST. J. DISP. RESOL. 409, 413–20 (2020) (explaining the success of mandatory mediation programs throughout both federal and state court systems, as applied to the family law context as well as other contexts). The author also states, “In looking at these court-annexed mandatory mediation programs, the numbers show that whether purely voluntary or part of a mandatory regime, mediation is wildly successful.” *Id.* at 413; see also 1 SARAH R. COLE, CRAIG A. McEWEN, NANCY H. ROGERS, JAMES R. COBEN & PETER N. THOMPSON, *MEDIATION: LAW, POLICY & PRACTICE* § 4:3 (2024) (discussing the continued support for mediation practices in family-related issues, especially issues related to divorce and child custody, noting that “[t]he potential of cost savings for parties appears to be established”).

109. D.C. ADMIN ORDER NO. 14-23, *supra* note 6.

were referred to the Program scheduled for mediations.<sup>110</sup> The Program involves an initial intake with both parties and then subsequent sessions to resolve any contested issues and to develop a settlement agreement.<sup>111</sup> Typically, this process involves significant delays. Mediation cannot begin until both parties have completed an intake session. After that, a mediator must be assigned and the sessions scheduled at times that work for both parties and the mediator. Finally, the parties must reach a resolution.<sup>112</sup> At present, one mediator estimated that it can take up to four months from referral to the first mediation.<sup>113</sup> This process is successful in only 33% of cases.<sup>114</sup>

The D.C. system reflects the national landscape, which features widespread use of mediation services in family law cases—both mandatory and optional. Alabama, Alaska, Colorado, Indiana, Maryland, Massachusetts, Michigan, Montana, New Jersey, and Texas all feature procedures that permit judges to refer cases for mediation or to grant motions for mediation by litigants; however, those services are not required before the court will move forward with the case.<sup>115</sup> Many other jurisdictions, on the other hand, mandate participation in mediation before a case can

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110. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA MULTI-DOOR DISPUTE RESOLUTION DIVISION, 2022 PROGRAM SUMMARY 16 (2022), [https://www.dccourts.gov/sites/default/files/MultiDoor-PDFs/2022\\_Program\\_Summary.pdf](https://www.dccourts.gov/sites/default/files/MultiDoor-PDFs/2022_Program_Summary.pdf) [<https://perma.cc/2HPM-R2UF>] (last visited Mar. 5, 2025) [hereinafter D.C. MULTI-DOOR DISPUTE RESOLUTION SUMMARY].

111. *Mediation Matters: Family*, DCCOURTS.GOV, <https://www.dccourts.gov/services/mediation-matters/family> [<https://perma.cc/EY8D-5ZNZ>] (last visited Mar. 5, 2025).

112. D.C. MULTI-DOOR DISPUTE RESOLUTION SUMMARY, *supra* note 110, at 3–4, 10.

113. Interview with anonymous mediator from Multidoor Mediation Program (July 29, 2024).

114. D.C. MULTI-DOOR DISPUTE RESOLUTION SUMMARY, *supra* note 110, at 16.

115. ALA. CODE § 6-6-20 (2025); ALASKA STAT. § 25.24.060 (2025); COLO. REV. STAT. § 13-22-311(1) (2025); IND. R. ALTER. DISP. RES. 2.2; MD. CODE ANN., FAM. LAW § 9-205 (West 2025); MASS. SUPREME JUDICIAL CT./TRIAL CT. STANDING COMM. ON DISP. RESOL., A GUIDE TO COURT-CONNECTED ALTERNATIVE DISPUTE RESOLUTION SERVICES 6-7, <https://www.mass.gov/doc/a-guide-to-court-connected-alternative-dispute-resolution-services-pamphlet-size/download> [<https://perma.cc/277C-5V2W>] (last visited Mar. 5, 2025); *Probate and Family Court Approved Alternative Dispute Resolution (ADR) Programs*, MASS.GOV, <https://www.mass.gov/info-details/probate-and-family-court-approved-alternative-dispute-resolution-adr-programs> [<https://perma.cc/HX8S-X3B3>] (last visited Mar. 5, 2025); *Guide to Boston Divorce Mediation*, WILKINSON & FINKBEINER, <https://www.massdivorceattorney.net/boston-divorce-mediation/> [<https://perma.cc/544D-2QAP>] (last visited Mar. 5, 2025); MICH. CT. R. 3.216(C) (1); *The Ultimate DIY Guide to Divorce and Custody in Montana*, MONT. LAW HELP, <https://www.montanalawhelp.org/resource/ultimate-diy-guide-divorce-and-custody-montana> [<https://perma.cc/VB7N-UHHD>] (last visited Mar. 5, 2025); MONT. CODE ANN. § 40-4-301(1) (2025); MONT. CODE ANN. § 25-21-1(7) (2025); *Early Settlement Panels*, N.J. CTS., <https://www.njcourts.gov/courts/family/esp-directory> [<https://perma.cc/W277-4KKJ>] (last visited Mar. 5, 2025); *Economic Mediation in Family Law Cases*, N.J. CTS., [https://www.njcourts.gov/courts/family/family-econ-mediation?block\\_config\\_key=mediators\\_economic\\_aspects\\_family\\_law](https://www.njcourts.gov/courts/family/family-econ-mediation?block_config_key=mediators_economic_aspects_family_law) [<https://perma.cc/ZJB5-FCAF>] (last visited Mar. 5, 2025); TEX. FAM. CODE ANN. § 6.602(a) (West 2025).



proceed<sup>116</sup>—with exceptions for cases involving domestic violence.<sup>117</sup> In some jurisdictions, helpfully, mediation is capped at a maximum number of hours—such as six hours in North Dakota<sup>118</sup>—ensuring that mediation itself will not unduly delay a case that could be expeditiously handled in court.<sup>119</sup> Unless courts are sufficiently well-staffed to provide mediators who can expeditiously address cases and limits the hours parties must invest in unsuccessful mediations, these very well-intentioned policies can merely add delay and frustration to the divorce system, making divorce more fraught and less accessible to litigants—particularly those at the lowest end of the income spectrum.

Either by statute or court rule, many jurisdictions permit judges to also mandate that parties attend parenting classes when custody is at issue.<sup>120</sup> The courses are intended to educate parents about co-parenting

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116. See *A Guide to Mediation in the Family Court: Mediation FAQ*, DEL. CTS. JUD. BRANCH (Aug. 2019), <https://courts.delaware.gov/forms/download.aspx?id=30268> [<https://perma.cc/67UJ-AWKY>]; DEL. FAM. CT. R. CIV. P. 16.1(a)(1), (b)(1); *When Is Mediation Required in an Illinois Divorce Case?*, LAW OFF. OF RUSSELL D. KNIGHT (Sept. 7, 2016), <https://rdklegal.com/when-is-mediation-required-in-an-illinois-divorce-case/> [<https://perma.cc/GF3L-PF77>] (“Apart from statutory authority, some judicial circuits provide for mediation by local rule, apparently pursuant to their inherent authority to regulate their dockets and calendars. Such rules typically give trial courts broad discretion to order mediation, but only after an initial determination that it would be in the parties’ best interests or that mediation would be appropriate in solving a particular problem.” (quoting *In re Marriage of Aleshire*, 652 N.E.2d 383 (Ill. App. Ct. 1995))); *Alternative Dispute Resolution (ADR) / Mediation*, MINN. JUD. BRANCH, <https://www.mncourts.gov/Help-Topics/AlternativeDisputeResolution.aspx> [<https://perma.cc/Q9UG-YLTG>] (last visited Mar. 5, 2025); MINN. R. 310.03(a); MONT. CODE ANN. § 25-21-1(7); *Custody Mediation*, N.C. JUD. BRANCH, <https://www.nccourts.gov/help-topics/family-and-children/custody-mediation> [<https://perma.cc/S7VP-EEQF>] (last visited Mar. 5, 2025) [hereinafter *N.C. Custody Mediation*]; S.C. BAR, <https://www.schar.org/public/get-legal-help/common-legal-topics/alternative-dispute-resolution-adr/> [<https://perma.cc/4WVG-CPM3>] (last visited Mar. 5, 2025); S.C. CT. R. ADR 3(a), 3(d) (requiring ADR generally); *Divorce Mediation Program*, UTAH STATE CTS., <https://www.utcourts.gov/en/about/miscellaneous/mediation/divmed.html> [<https://perma.cc/53AM-UCCH>] (last visited Mar. 5, 2025); WIS. STAT. § 767.405(5) (a) (2025).

117. See, e.g., DEL. FAM. CT. R. CIV. P. 16.1(a)(5), (b)(7) (carving out an exception for cases in which there is a history of domestic violence); N.D. R. CT. 8.1(c)(4)(D) (excepting cases in which there is or has been an order of protection unless certain conditions are met).

118. N.D. R. CT. 8.1(c)(5).

119. See, e.g., MD. R. 9-205(g)(1) (noting that a Maryland judge “may require parties to attend a maximum of four hours in not more than two mediation sessions”); *Divorce Mediation*, PEOPLE’S LAW LIBR. MD., <https://www.peoples-law.org/divorce-mediation> [<https://perma.cc/R634-LTCU>] (Jan. 30, 2024, 2:22 PM); *N.C. Custody Mediation*, *supra* note 116 (requiring an orientation and then a maximum of two hours of mediation).

120. ARK. CODE ANN. § 9-12-322(a)(1) (2025); D.C. CODE § 16-914(d)(3) (2025); DEL. CODE ANN. tit. 13, § 1507(h) (2025); GA. R. SUPER. CT. 24.8(B); IOWA CODE § 598.15(1) (2025); KAN. 19TH DIST. CT. R. 18(B)(1); MD. CODE ANN., FAM. LAW § 9-204(a) (West 2025); MINN. STAT. § 518.157(3)(a) (2025); NEB. REV. STAT. § 43-2928(1) (2025); OHIO REV. CODE ANN. § 3109.053 (West 2025); OKLA. STAT. tit. 43, § 107.2(B) (2025); PA. 39TH JUD. DIST. R.C.P. 39-1920.3(c); TENN. CODE ANN. §§ 36-6-404(a), 36-6-408(a) (2025); TEX. COMAL/HAYS/CALDWELL CNTY. DIST. CT. R. 8;

and communicating with their children regarding the separation.<sup>121</sup> Frequently, judges have the authority to waive mandatory parenting education programs for good cause.<sup>122</sup> While some courses are only approximately four hours long,<sup>123</sup> scheduling and attending classes add another procedural hurdle to an already slow process with seemingly endless requirements. Failure to attend also can have consequences on the outcome of the case. For example, in the District of Columbia, “[t]he judge may consider the unexcused failure of a party to attend and complete the PAC program when making a final custody determination.”<sup>124</sup> Although parenting counseling seems rationally related to better outcomes for children, there is little evidence these courses have any impact.<sup>125</sup>

A tapestry of deliberate structural delays, failures to differentiate the procedures for family law cases from other civil litigation, and well-meaning reforms has created a system that prolongs the often traumatic breakup of a family, has not resulted in reducing hasty divorces,<sup>126</sup> and renders illusory an efficient road to recovery.

### III. IMPACT OF DELAYS AND THEIR DISPARATE IMPACT ON LOW-INCOME WOMEN

Procedural impediments to divorce negatively impact litigants and their children without either providing meaningful support for litigants or delivering outcomes that strengthen families. The harmful effects of prolonging the divorce process disproportionately hurt women who are located at the intersection of gender bias and poverty, rendering them particularly vulnerable.

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VA. CODE ANN. § 16.1-278.15(A) (2025); WASH. CLALLAM SUPER. CT. L.C.R. 95(B); WASH. SPOKANE SUPER. CT. L.S.P.R. 94.03; WASH. JEFFERSON SUPER. CT. L.S.P.R. 95; WIS. STAT. § 767.401(1)(a) (2025); Mass. Prob. & Fam. Ct. Standing Order No. 3-23; Co-Parenting Education Course for Married and Unmarried Parents (Feb. 12, 2025), <https://www.mass.gov/doc/probate-and-family-court-standing-order-3-2023-effective-february-12-2024/download> [<https://perma.cc/77S8-A8BU>].

121. See, e.g., LA. DIST. CT. R. APPENDIX 29.3 (explaining that their program, entitled Helping Children Cope with Divorce, “is designed to make the parties more aware of the effects of separation and divorce upon their children”).

122. *Id.*; IOWA CODE § 598.15(1) (2025); VA. CODE ANN. § 16.1-278.15(A) (2025); TENN. CODE ANN. § 36-6-408(d) (2025); NEB. REV. STAT. § 43-2928(1) (2025).

123. See, e.g., D.C. ADMIN ORDER No. 14-23, *supra* note 6 (capping the program at four hours, online); PA. 39TH JUD. DIST. R.C.P. 39-1920.3(c) (requiring a four-hour course). *But see* TENN. CODE ANN. § 36-6-404(a) (2025) (setting a minimum of four hours).

124. D.C. ADMIN ORDER No. 14-23, *supra* note 6, at 5–6.

125. Amanda Sigal, Irwin Sandler, Sharlene Wolchik & Sanford Braver, *Do Parent Education Programs Promote Healthy Post-Divorce Parenting? Critical Distinctions and a Review of the Evidence*, 49 FAM. CT. REV. 120 (2011).

126. See *infra* Section III.A for a discussion of the impact of separation periods and other procedural hurdles on the divorce rate and on marriage preservation.

The negative impacts of divorce are experienced disproportionately by low-income couples generally because they are overrepresented in the population of divorce-seekers.<sup>127</sup> Recently, divorce rates based on socioeconomic status have become increasingly stratified. The marriage rate for wealthier couples has increased while the divorce rate has decreased.<sup>128</sup> This is not by chance. Having one or two steady and substantial incomes is hypothesized to help lower divorce rates.<sup>129</sup> On the other hand, those living at middle and lower income levels have seen a steady decline in marriage rates in recent years.<sup>130</sup> Simultaneously, these groups have also experienced a rising divorce rate—one that is substantially higher than that of wealthier families.<sup>131</sup> Specifically, almost half of adults ages eighteen to fifty-five who live at a lower socioeconomic status have been divorced;<sup>132</sup> yet, less than a third of those in a higher socioeconomic status have been divorced.<sup>133</sup>

This Part analyzes the various ways and contexts delays in the divorce system are harmful to all parties, with particular emphasis on detrimental effects to low-income women and their children. First, this Part considers the general negative impact of prolonging the divorce process on all parties and their children. Second, this Part focuses on the ways in which gender bias and poverty coalesce to create specific harms to poor women during both a protracted separation period and in the period of a delayed final resolution.

#### A. *General Harms of Prolonging Divorce Process vs. Negligible Positive Effects*

The complexity and prolonged duration of the divorce process create substantial negative repercussions for married and divorcing couples with little evidence of positive effects. As discussed above, to the extent

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127. See Benjamin R. Karney, Jeffrey B. Wenger, Melanie A. Zabar & Thomas N. Bradbury, *State Minimum Wage Increases Delay Marriage and Reduce Divorce Among Low-Wage Households*, 84 J. MARRIAGE & FAM. 1196 (2022). In reviewing the study, Stuart Wolpert notes that it cites “previous studies, [and] notes that when poorer people get married, they tend to marry earlier and are about twice as likely to divorce.” Stuart Wolpert, *Study Shows How to Lower Divorce Rate Among Poor Americans: Raise the Minimum Wage*, UCLA NEWSROOM (Apr. 21, 2022), <https://newsroom.ucla.edu/releases/raising-minimum-wage-lowers-divorce-rate> [<https://perma.cc/6UBK-Q6PN>].

128. See Naomi Cahn & June Carbone, *The Economics of Family Behavior*, INST. FOR FAM. STUD. (Feb. 8, 2018), <https://ifstudies.org/blog/the-economics-of-family-behavior> [<https://perma.cc/AFD5-NFQB>].

129. See Richard V. Reeves & Christopher Pulliam, *Middle Class Marriage Is Declining, and Likely Deepening Inequality*, BROOKINGS (Mar. 11, 2020), <https://www.brookings.edu/articles/middle-class-marriage-is-declining-and-likely-deepening-inequality/> [<https://perma.cc/CU7R-PYX7>].

130. *Id.*

131. See BRAD WILCOX & WENDY WANG, AM. ENTER. INST., *THE MARRIAGE DIVIDE: HOW AND WHY WORKING-CLASS FAMILIES ARE MORE FRAGILE TODAY* 5 (2017), <https://www.aei.org/wp-content/uploads/2017/09/The-Marriage-Divide.pdf?x85095> [<https://perma.cc/L2X9-XPL3>].

132. *Id.* at 16 fig. A8.

133. *Id.*

the inaccessibility of divorce is a deliberate feature of the system, it is intended to deter the termination of marriages and protect the institution of marriage. Data illustrates that the procedural delays fail to lower the divorce rate,<sup>134</sup> and instead cause harm to families as well as put pressure on the court system, which must process cases that needlessly languish on dockets for months and years without resolution.

Divorce marks a major life transition for most couples. It is not just the termination of a romantic relationship, but it is also a decision that reorders and reorganizes nearly every given in one's personal life.<sup>135</sup> Transitions are notoriously anxiety-provoking because they extinguish stability and propel people into the unknown.<sup>136</sup> Therefore, it follows that prolonging a transition period can be deeply unsettling and cause more damage than hastening the process would. According to a 2011 Gallup poll involving more than 350,000 adults in the U.S., "separated individuals had lower levels of overall well-being—including their outlook on life and their physical and emotional health—than divorcees."<sup>137</sup> This research strongly suggests that the period of uncertainty is more unsettling than the period following the final legal resolution. Further, a later study found that "during the waiting period, fathers report experiencing significant stress when deciding whether to stay in the family home. For those that do remain in the home, rebalancing their roles as a spouse and parent is harder, which might exacerbate the emotional conflict

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134. In fact, divorce rates have dropped as the procedural and statutory hurdles to marriage have been reduced. See Esteban Ortiz-Ospina & Max Roser, *Marriages and Divorces* (July 2020), <https://ourworldindata.org/marriages-and-divorces> [<https://perma.cc/W239-LTSR>] (illustrating the declining divorce rate since 1990); see also William J. Doherty, Brian J. Willoughby & Bruce Peterson, *Interest in Marital Reconciliation Among Divorcing Parents*, 49 FAM. CT. REV. 313, 318–19 (2011) (reporting in a study of divorcing couples and noting that only one in ten of them included two parties who were open to reconciliation); Georgina Binstock & Arland Thornton, *Separations, Reconciliations, and Living Apart in Cohabiting and Marital Unions*, 65 J. MARRIAGE & FAM. 432, 434 (2003) (reporting on a study from 1990s that found that 12–15% of separations end in reconciliation); Daniel Olivias, *Tennessee Considers Adopting the Louisiana Covenant Marriage: A Law Waiting to Be Ignored*, 71 TENN. L. REV. 769, 793 (2004) ("[P]rolonging a marriage in situations in which reconciliation is unlikely to occur aggravates discord and leads to 'a more contentious divorce and complicated settlement negotiations.' Moreover, delay allows for the continued accumulation of marital property, giving the couple more to fight over when the couple finally gets to court." (footnote omitted) (quoting Chauncey E. Brummer, *The Shackles of Covenant Marriage: Who Holds the Keys to Wedlock?*, 25 U. ARK. LITTLE ROCK L. REV. 261, 293 (2003))); Adam M. Galovan, Alan J. Hawkins, Steven M. Harris & David M. Simpson, *What Are They Doing? A National Survey of Help-Seeking and Relationship-Repair Behavior of Individuals Who Are Thinking About Divorce*, 48 J. MARITAL & FAM. THERAPY 371 (2021).

135. See LYZ LENZ, *THIS AMERICAN EX-WIFE: HOW I ENDED MY MARRIAGE AND STARTED MY LIFE* (2024) (framing divorce as a tool or women to take back the power and reshape their lives).

136. See generally Holmes & Rahe, *supra* note 4, at 216 (constructing a social readjustment scale that measured stressful life events and scoring divorce as the second most destabilizing life event, following the death of a spouse).

137. Wong, *supra* note 53, at 257.

between divorcing spouses.”<sup>138</sup> One scholar, analyzing the impact of statutorily required waiting periods prior to divorce, noted, “prolonged waiting periods can equate to additional stress and hassle for separating spouses and might even escalate their existing conflicts.”<sup>139</sup>

Prolonging the divorce process also detrimentally affects children.<sup>140</sup> Researchers have concluded that the divorce itself is less impactful than the “prolonged conflict and tension between the parents.”<sup>141</sup> Additionally, a prolonged divorce process financially harms children by diminishing resources and assets that could have otherwise been spent toward the children’s needs.<sup>142</sup>

The inaccessibility of divorce has not been shown to preserve marriages. In fact, a recent analysis of census data suggests the opposite. “Studies have shown there are unexpected positive ripple effects when laws make divorce easier and quicker . . . .”<sup>143</sup> The research illustrated that with more liberal divorce laws, the number of marriages increased by around 9%.<sup>144</sup>

Further, separation periods have not been shown to save marriages. One large longitudinal study of more than 7,000 people nationwide, for example, found that only 5% of couples who separate try to reconcile at some point during the separation, prior to divorce.<sup>145</sup> The rest either later divorce or remain separated.<sup>146</sup> This study also showed a further disparate impact on low-income families and traditionally marginalized

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138. *Id.* at 263 (quoting Elena Moore, *Delaying Divorce: Pitfalls of Restrictive Divorce Requirements*, 37 J. OF FAM. ISSUES 16 (2016)).

139. *Id.*

140. See *In re Marriage of de Koning*, 364 P.3d 494, 499 (Colo. 2016) (“Prolonging divorce litigation is particularly undesirable because it increases the emotional toll on parties and their children.”); Fredrick Cabell Jr., *From Two Years to One: Finally?*, PA. LAW., Nov./Dec. 2016, at 60 (chronicling the advocacy efforts to reduce the waiting period for divorce in Pennsylvania and noting that “[t]he argument that a prolonged divorce process has a detrimental impact on children really resonated with legislators. No one could deny that the longer two parents fight about financial matters, the more harm is inflicted upon the innocent children vicariously experiencing such battles.”).

141. Kelly Caperton Fischer, *How to Minimize the Negative Effects of Divorce on Children*, GBM FAM. L. BLOG (Oct. 11, 2024), <https://gbfamilylaw.com/child-custody-visitation/minimizing-the-negative-impact-of-divorce-on-children/> [https://perma.cc/9ZZF-ZBE5].

142. Jeffrey Evans Stake, *Mandatory Planning for Divorce*, 45 VAND. L. REV. 397, 408 (1992).

143. Misty L. Heggeness, *The Up Side of Divorce? When Laws Make Divorce Easier, Research Shows Women Benefit, Outcomes Improve*, U.S. CENSUS BUREAU (Dec. 18, 2019), <https://www.census.gov/library/stories/2019/12/the-upside-of-divorce.html> [https://perma.cc/8NXJ-CQA5].

144. Wong, *supra* note 53.

145. See AM. SOCIO. ASS’N, *Marital Separations an Alternative to Divorce for Poor Couples*, EUREKALERT! (Aug. 19, 2012), <https://www.eurekalert.org/news-releases/564346> [https://perma.cc/RZ3P-8HXH].

146. *Id.*

couples.<sup>147</sup> Many of these disadvantaged couples were more likely to remain separated and never get divorced as it is commonly seen as a “low-cost, do-it-yourself alternative.”<sup>148</sup> The cost and procedural hassle, therefore, can result in indefinite separations, hindering the couples’ ability to remarry and obtain the benefits of marriage or even to possibly effectively re-couple. In these circumstances, the procedural and statutory hurdles to divorce can entirely extinguish the option of divorce for some couples, while failing to strengthen marriages or succeed at inducing families to remain intact.

### B. *Disparate Negative Impacts on Low-Income Women*

Gender bias, traditional notions of family ordering, and poverty coalesce to create specific harms to poor women during both a protracted separation period and in the time following a delayed final resolution.

#### 1. *Impacts and Vulnerabilities During Separation Period*

The intersection of gender bias and poverty render a prolonged separation period prior to divorce particularly detrimental to women living at the lowest income levels. Most fundamentally, repeated court hearings and procedural requirements have a greater impact on low-income spouses who are more likely to be hourly employees and have less capital at work.<sup>149</sup> In the context of the family, women are more likely than men to experience a diminution in earning power and less control of family assets, leaving them disparately more vulnerable than men when the couple separates. In the U.S. and abroad, there remains a dramatic wage gap between men and women.<sup>150</sup> While the gender wage gap between

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147. *Id.* (stating that “[a]lmost 75 percent of those who remained separated, or who separated and then reunited, were black or Hispanic. Those who remained separated were more likely than those who divorced to have a high school or lower education.”).

148. *Id.*

149. See Jane C. Murphy, *Rethinking the Role of Courts in Resolving Family Conflicts*, 21 CARDOZO J. CONFLICT RESOL. 625 (2020) (noting that family courts disproportionately harm low-income families by exposing them to the risk of incarceration and economic hardship, including lost wages due to required time off work and increased childcare costs, while failing to adequately address their needs); see also D. James Greiner, Ellen Lee Degnan, Thomas Ferriss & Roseanna Sommers, *Using Random Assignment to Measure Court Accessibility for Low-Income Divorce Seekers*, PNAS (Mar. 30, 2021), <https://www.pnas.org/doi/full/10.1073/pnas.2009086118> [<https://perma.cc/8552-MPTQ>] (citing 2006 study data to show that waiting periods will particularly frustrate the efforts of low-income divorce seekers to pursuing a marital termination).

150. See, e.g., Greater Phila. Chamber of Com. v. City of Philadelphia, 949 F.3d 116, 122 (3d Cir. 2020) (“According to the 2015 census, women in Pennsylvania earned 79 cents for every dollar earned by similarly situated men.”); Boyer v. United States, 97 F.4th 834, 842 (Fed. Cir. 2024) (“As pointed out by amici and not contradicted by the government, ‘the gender wage gap has hardly narrowed over the last 15 years.’”); see also *The Gender Pay Gap Situation in the EU*, EUROPEAN COMM’N, <https://commission.europa.eu/strategy-and-policy/policies/justice-and->

married men and women has been narrowing as of late, a recent study illustrates that men in heterosexual relationships still out-earn their wives. In 55% of such couples, men made more money or were the sole breadwinner in the couple.<sup>151</sup> In non-college educated couples, women are even less likely to earn more than their husbands.<sup>152</sup>

This wage gap particularly impacts mothers. The 2021 Census Bureau Current Population Study reported that full-time working mothers were paid 74 cents for every dollar paid to fathers.<sup>153</sup> One commentator points out that “[o]ver the course of a year, this amounted to \$18,000 in lost earnings—enough to afford nine months of rent, five months of groceries and three months of child care.”<sup>154</sup> And this data paints a bleaker picture for mothers of color who earn even less on the dollar than their father counterparts.<sup>155</sup>

This disparate earning power flows from gender bias in the workplace and is compounded by gender role expectations in the home that result in women more often taking on the role of primary caretaker. As theorized by Susan Moller Okin in *Justice, Gender, and the Family*, traditional gendered division of labor in the heterosexual family impacts a range of inequalities outside of the home.<sup>156</sup> Writing in 2019 to reinforce the accuracy and the importance of Okin’s work, a commentator wrote that “her claim is that *the idea* of a traditional gendered division of labor structures expectations about men’s and women’s behavior.”<sup>157</sup> Okin noted “two commonly made but inconsistent presumptions: that women are primarily responsible for the rearing of children; and that serious and committed members of the work force (regardless of class) do not have primary responsibility, or even shared responsibility, for the rearing of children.”<sup>158</sup> She further theorized that the salience of those traditional notions of family division of labor renders women far more vulnerable in

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fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu [https://perma.cc/FL25-UJ37] (last visited Mar. 5, 2025).

151. See Richard Fry, Carolina Aragão, Kiley Hurst & Kim Parker, *In a Growing Share of U.S. Marriages, Husbands and Wives Earn About the Same*, PEW RSCH. CTR. (Apr. 13, 2023), <https://www.pewresearch.org/social-trends/2023/04/13/in-a-growing-share-of-u-s-marriages-husbands-and-wives-earn-about-the-same/> [https://perma.cc/5VLE-SUHS].

152. *Id.* (“In comparison, 11% of wives who have not completed a high school diploma are breadwinners.”).

153. See Maria Manansala, *Moms’ Equal Pay Day Spotlight: Single Mothers, Poverty, and the Wage Gap*, NAT’L P’SHP BLOG (Aug. 15, 2023), <https://nationalpartnership.org/moms-equal-pay-day-spotlight-single-mothers-poverty-wage-gap/> [https://perma.cc/856B-F7PW].

154. *Id.*

155. See *id.* (“Latina mothers were paid 51 cents for every dollar paid to white, non-Hispanic fathers, Native American mothers were paid 49 cents and Black mothers were paid 53 cents. In a single year, the wage gap robbed them of a whopping \$37,000, \$38,000 and \$35,000, respectively.”)

156. See OKIN, *supra* note 31, at 5.

157. Michael L. Ferguson, *Vulnerability by Marriage: Okin’s Radical Feminist Critique of Structural Gender Inequality*, 31 HYPATIA: J. FEMINIST PHIL. 687, 692 (2016).

158. See OKIN, *supra* note 31, at 5.

divorce: “the asymmetric dependency of wives on husbands affects their potential for satisfactory exit, and thereby influences the effectiveness of their voice within the marriage.”<sup>159</sup> Although the prevalence of the traditional gender division of labor in the family has lessened since Okin published *Justice, Gender, and the Family*, the pandemic illustrated how the deep prominence of the model remains the dominant structure for caretaking within the family.<sup>160</sup> Both the division of labor in the home and gender bias in the workplace impact women’s earning power prior to the divorce and that remains unresolved, unaddressed, and exacerbated during the separation and post-divorce periods.

The impact of gendered division of labor in the home results in vulnerabilities that impact earning power because women are more likely to take years off of work to raise children and to need time off for child care responsibilities.<sup>161</sup> Absences from the workforce mean a slower work trajectory and lower earnings capacity, which, as one economics professor pointed out to *CBS News*, “effects them forever, basically.”<sup>162</sup> Again, the economic impact of parenthood on women’s earning power has been shown to be particularly pronounced for low-income women and in fact, on divorced low-income women, who are disproportionately more likely to be parents than not.<sup>163</sup> In an analysis of the impact of gender, education, and divorce, researchers observed: “Regarding gender, lower educated women more often specialize in unpaid housework than higher educated women. The resulting depreciation of their human capital renders them particularly vulnerable to divorce, suggesting that the negative educational gradient in divorce vulnerability is stronger among women than men.”<sup>164</sup>

In analyzing the impact of more accessible divorces, researchers concluded that greater access to divorce and a less burdensome divorce system may increase women’s earnings within a marriage as well as their

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159. *Id.* at 167.

160. See generally Thomas Lyttelton, Emma Zang & Kelly Musick, *Parents’ Work Arrangements and Gendered Time Use During the COVID-19 Pandemic*, 85 J. MARRIAGE & FAM. 657 (2022) (reporting on a large-scale study showing mothers in heterosexual relationships devoted more time to childcare and household tasks during the pandemic despite the presence of both parents in the home).

161. See generally Carmen Reinicke, *Divorce Can Devastate Women’s Retirement Savings. Here’s How to Rebuild*, CNBC (Sept. 21, 2021 12:36 PM), <https://www.cnbc.com/2021/09/21/divorce-can-devastate-womens-retirement-savings-how-to-rebuild.html> [<https://perma.cc/UA89-Q4XL>] (stating that “[w]omen often take time away from work to raise children or care for other family members, which can mean they make less over time”). See also U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-699, RETIREMENT SECURITY: WOMEN STILL FACE CHALLENGES 1 (2012) (stating that women are more likely to leave the workforce for a period of time to care for children or parents, making saving for retirement more challenging).

162. Reinicke, *supra* note 161.

163. See *id.* (noting that “divorced women are more likely to have children” than not).

164. Bram Hogendoorn, Thomas Leopold & Thijs Bol, *Divorce and Diverging Poverty Rates: A Risk-and-Vulnerability Approach*, 82 J. MARRIAGE & FAM. 1089, 1092 (2019) (citation omitted).



bargaining power. They concluded that with more liberal divorce laws, “[w]omen start working more outside of the home—up to 7 percentage points more—increasing their economic clout in a marriage by bringing income that they control into the home.”<sup>165</sup> Further, they determined that access to expeditious divorces were material in women gaining bargaining power within the marital relationship.<sup>166</sup> “Threats of divorce are more credible when the process promises to be quick rather than take a year or more to finalize.”<sup>167</sup>

Further, the gender income inequality in marriage is not merely a feature that makes women more vulnerable during the separation period and beyond; it has been theorized to be a cause of divorce. One commentator recently posited that “it is women’s sense of subordination and devaluation in marriage and their growing distaste for marital inequality that has been the primary impetus for a phenomenon . . . [that] women initiate two-thirds to three-quarters of divorces in the United States.”<sup>168</sup>

Finally, gender bias and traditional notions of gender roles further disadvantage women heading into divorce because men are more likely to control, manage, and have insight into family finances.<sup>169</sup> Although data shows that women have been gaining more authority in this realm, control is still relatively skewed,<sup>170</sup> leaving lower-income women less likely to exert authority and have as much knowledge about household assets, bank accounts, and debts.<sup>171</sup> In a recent study of married heterosexual women—women from relatively affluent couples—56% reported deferring to men on financial decision-making in their marriages.<sup>172</sup> The study further suggested that younger women are even more likely to abdicate financial decision-making to their husbands, with 61% of millennials doing so.<sup>173</sup>

To protect the party who has less control of family finances in divorce, many states have implemented procedures that enjoin parties from concealing or disposing of property at issue in the divorce while the proceedings are ongoing. For example, some states require the court to

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165. Heggeness, *supra* note 143.

166. *Id.*

167. *Id.*

168. Karin Carmit Yefet, *Divorce as a Substantive Gender-Equality Right*, 22 UNIV. PA. J. CONST. L. 455, 506 (2020).

169. See generally Worthy Staff, *Building a Financial Fresh Start: A Study of Divorced Women by Worthy*, WORTHY BLOG (June 9, 2018), <https://blog.worthy.com/knowledge-center/insights/financial-study-on-divorced-women/> [<https://perma.cc/V9GX-P2WF>] (reporting on a study of approximately 1,700 divorced heterosexual women and finding that 22% abdicated all responsibility for managing long-term family finances to their husbands during marriage).

170. See *id.*

171. See *id.*

172. OWN YOUR WORTH: HOW WOMEN CAN BREAK THE CYCLE OF ABDICATION AND TAKE CONTROL OF THEIR WEALTH, UBS (2018), <https://www.ubs.com/content/dam/Wealth-ManagementAmericas/documents/2018-37666-UBS-Own-Your-Worth-report-R32.pdf> [<https://perma.cc/BZ2P-JNKV>] [hereinafter UBS].

173. *Id.* at 1, 8.

order an automatic economic injunction as soon as divorce papers are filed.<sup>174</sup> Statutes typically mandate the issuance of a temporary order enjoining the parties from “transferring, encumbering, hypothecating, concealing, or in any way disposing of, any property.”<sup>175</sup> Additionally, a number of states provide statutory authority for the judge to order economic restraints against the parties, either upon motion by one party or at the court’s own discretion.<sup>176</sup> However, almost half of the states and D.C. do not offer any protection from such financial behavior during a divorce case, leaving one spouse—typically women in a heterosexual relationship—more vulnerable.<sup>177</sup>

Delays in the divorce process have further been shown to have a particularly negative impact on women’s mental health. A study of census data in 2019 illustrated that easier access to divorce has positive ripple effects on women’s health, showing a decrease between 8–16% in female suicides and a decrease in domestic violence of approximately 30% when impediments to divorce are lessened. Victims of intimate partner violence are, of course, at a much greater risk when impediments to divorce preclude or delay physical separation.<sup>178</sup>

The impact of gender bias, traditional gender role expectations, and poverty leaves low-income women particularly vulnerable during a prolonged separation period prior to resolution of the heterosexual divorce. If a woman cannot access court intervention, she is precluded from both seeking or being awarded financial relief. During this period without relief, a mother may well find herself in a dire situation. The financial and child care pressures that impacted the pre-divorce family but were spread across the household now fall only on the woman, who is more likely to have children in her separate home enhancing her need for resources and her inability to devote hours at work.<sup>179</sup> Because of the

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174. These states include Arizona, California, Delaware, Hawaii, Maine, Massachusetts, Montana, Oklahoma, Oregon, Rhode Island, and South Dakota.

175. This language is similar among many state statutes. *See* ARIZ. REV. STAT. ANN. § 25-315 (2025); CAL. FAM. CODE § 2040 (West 2025); DEL. CODE ANN. tit. 13, § 1509 (2025); ME. STAT. tit. 19, § 903 (2025); MONT. CODE ANN. § 40-4-126 (2025); OKLA. STAT. tit. 43, § 110 (2025); OR. REV. STAT. § 107.093 (2025); S.D. CODIFIED LAWS § 25-4-33.1 (2025); *see also* HAW. REV. STAT. § 580-10.5 (2025); MASS. PROB. & FAM. CT. SUPP. R. 411; 15 R.I. GEN. LAWS § 15-5-14.1 (2025).

176. These eighteen states include Alabama, Alaska, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, Texas, Washington, West Virginia, and Wyoming.

177. These jurisdictions include Arkansas, Connecticut, D.C., Florida, Idaho, Iowa, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, and Wisconsin.

178. *See generally* Melissa Russo & Hilary Weissman, *NYC Family Court in Crisis, New Report Says*, NBC N.Y. (Feb. 3, 2022), <https://www.nbcnewyork.com/investigations/nyc-family-court-in-crisis-new-report-says/3532144/> [https://perma.cc/25PB-FRZW].

179. *See generally* Zawn Villines, *Family Courts and Child Custody Are Biased Against Women, Not Men*, LIBERATING MOTHERHOOD (Dec. 1, 2022), <https://zawn.substack.com/p/family-courts-and-child-custody-are> [https://perma.cc/6KS6-M84P].

disproportionate access and insight into joint property, she is also less likely to be able to access those assets. As observed in an analysis of census data, “[c]reating laws that make divorce easy and quick can redistribute resources to the most vulnerable within families.”<sup>180</sup>

## 2. *Post-Divorce Impacts on Low-Income Women*

Women continue to struggle in the aftermath of divorce, and disproportionately so, due largely to the compounded impact of gender inequality during the marital relationship and the continuing bias of traditional gender roles in the post-divorce landscape. Delays in the divorce process not only render a low-income woman’s finances more dire during the separation period, but also defer her opportunity to start the recovery process.

Recovery from divorce is generally more difficult for women than men because of wage income gap and child care inequalities. It is also that much harder for low-income women because of their often critical need for housing and access to basic resources. Women’s post-divorce vulnerabilities include their likelihood of being granted a disadvantageous financial settlement and primary or sole physical custody of children, the resulting impact on their cost of living and earning power, and the insufficiency of child support for most low-income women.

Women are more likely to have gotten an unfavorable financial settlement in divorce. As reported on CNBC, “[s]pouses who handled the majority of the finances during marriage have an advantage over the other spouse . . . . Be aware of everything that is owned as a couple, including the value, location and tax implications of these assets.”<sup>181</sup> In a recent study of heterosexual divorced and widowed women, 56% reported being surprised by finances upon the termination of their marriages.<sup>182</sup> Surprises that involve debts are particularly troublesome because women often find themselves responsible for half of the couple’s debts.<sup>183</sup> Further, in a divorce settlement, due to the pressures of child care, women are far more likely to seek assets that yield less advantageous

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180. Heggeness, *supra* note 143.

181. Reinicke, *supra* note 161.

182. UBS, *supra* note 173; *see also* U.S. Gov’t ACCOUNTABILITY OFF., GAO-12-699, RETIREMENT SECURITY: WOMEN STILL FACE CHALLENGES (2012); U.S. Gov’t ACCOUNTABILITY OFF., GAO-19-342T, THE NATION’S RETIREMENT SYSTEM: A COMPREHENSIVE RE-EVALUATION NEEDED TO BETTER PROMOTE FUTURE RETIREMENT SECURITY (2019) [hereinafter GAO-19-342T]; Worthy Staff, *supra* note 169 (reporting on a study of approximately 1,700 divorced heterosexual women and finding that 59% of women in the midst of divorce had been met with financial surprises).

183. *See* UBS, *supra* note 172, at 1 (stating that some women “even found unwelcome surprises from their former spouses, such as high debt, outdated wills, and hidden accounts. With the wisdom of hindsight, nearly 60% of widows and divorcees regrettably wish they had been more involved in long-term financial decisions while they were married.”).

returns in the long run, such as family homes, while men are more likely to select assets like retirement funds.<sup>184</sup>

Just as women are more likely to be the primary parent during a heterosexual marriage, they are also disproportionately more likely to be granted primary or sole custody in a divorce.<sup>185</sup> The 2017 census data show that while women across the spectrum are more likely to have sole or primary custody of children, they are even more likely in lower income brackets.<sup>186</sup> The census data determined that 62% of women in moderate to high income brackets had sole or primary custody over children,<sup>187</sup> whereas 90% of mothers who were involved with the child support system had sole or primary custody over children.<sup>188</sup>

Primary or sole custody each has deep and wide financial implications for women in a post-divorce household. Caring solely for a child interferes with a parent's earning power and job prospects. She must juggle and often pay for child care, attend work at hours that are consistent with the school day, and take off time unexpectedly to care for sick children.<sup>189</sup> Data lays out the disparate economic impact of divorce on the incomes of men and women. The Government Accounting Office in 2017 concluded that women's household income fell by an average of 41% following a divorce; whereas men's income fell by only 23%.<sup>190</sup> Earlier studies found an even more striking differential, observing an inverse relationship between divorced men's and women's post-divorce income. One study, conducted on married parents who separated in the late 1980s or early 1990s, showed that financial well-being declined for mothers by 36% and for fathers improved by 28%.<sup>191</sup>

Further, a custodial mother's household requires more resources after divorce than the noncustodial father's household because more

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184. GAO-19-342T, *supra* note 182.

185. See Hogendoorn, Leopold & Bol, *supra* note 164, at 1092 (citing studies to show that sole and primary custody are more often granted to women in a divorce).

186. See U.S. Census Bureau Releases 2013-2017 ACS 5-Year Estimates, U.S. CENSUS BUREAU (Dec. 6, 2018), <https://www.census.gov/programs-surveys/acs/news/updates/2018.html> [<https://perma.cc/F65Q-KMHE>] (reporting that nearly 89% of all custodial parents in the U.S. are mothers).

187. ELAINE SORENSON, OFF. OF CHILD SUPPORT ENF'T, CHARACTERISTICS OF CUSTODIAL PARENTS AND THEIR CHILDREN (2021), [https://www.acf.hhs.gov/sites/default/files/documents/ocse/characteristics\\_cs\\_and\\_their\\_children.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/characteristics_cs_and_their_children.pdf) [<https://perma.cc/7VUQ-A535>]; U.S. Census Bureau Releases 2013-2017 ACS 5-Year Estimates, *supra* note 186.

188. *Id.*

189. See generally Hogendoorn, Leopold & Bol, *supra* note 164, at 1092 (concluding the "vulnerability gradient" for economic hardship is "most negative among mothers, less negative among childless men and women, and least negative among fathers" in a post-divorce home).

190. U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-111SP, THE NATION'S RETIREMENT SYSTEM: A COMPREHENSIVE RE-EVALUATION NEEDED TO BETTER PROMOTE FUTURE RETIREMENT SECURITY (2017).

191. See Pamela J. Smock, Wendy D. Manning & Sanjiv Gupta, *The Effect of Marriage and Divorce on Women's Economic Well-Being*, 64 AM. SOCIO. REV. 794, 808-09 (1999).

people are living in the home, and the parties have lost the economies of scale that redound to an intact family household.<sup>192</sup> In theory, that slack should be resolved by child support payments. Child support is intended to transfer resources from one household to another to equalize the financial burden of supporting children and to accommodate income differences.<sup>193</sup> However, child support payments are often merely a mirage; and even when the payments are made, they are often far too low to meet the needs of the children.<sup>194</sup> According to the US Census Bureau, “the average child support received by custodial parents [in 2017] from their non-custodial counterparts was \$286 per month.”<sup>195</sup> The percentage of mothers who received all of the child support they were owed was a mere 46%<sup>196</sup>—and most of it was collected by women in higher income brackets.<sup>197</sup>

Even when custodial mothers receive all or some of the child support or other economic support due from their ex-spouses, that money is rarely enough to compensate for the loss of a second income in the custodial home and the likely diminution in the employment income of the custodial mother.<sup>198</sup> These effects of divorce and gender sorting result in particular vulnerabilities for low-income women who are already living closer to the margin and often without community safety nets. As one social science analyst explains, “women experience sizable drops in household income, per capita income, and income-to-needs ratios. As a consequence, many women, especially mothers, fall into poverty following divorce.”<sup>199</sup> The sooner women have proof of single parenthood and can adjust to their new lifestyle, the sooner they can begin seeking the government benefits they need, and in essence, the recovery process.

Finally, a prolonged divorce process further disparately impacts low-income women by negatively affecting their reproductive capability and re-marriageability—and consequently, the potential to regain a stable second household income. Men’s reproductive window, far wider

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192. See generally Hogendoorn, Leopold & Bol, *supra* note 164, at 1090 (discussing the financial impact of the loss of economies of scale).

193. See, e.g., *What Is Child Support and When Does It Occur in Virginia?*, VA. CT. REC., <https://virginiacourtrecords.us/family-court-records/divorce/child-support/> [<https://perma.cc/HP4X-D3GN>] (last visited Mar. 5, 2025); Andrea D. Leslie-Merchain, *The Good, the Bad and the Ugly Duties of Parenthood: Giving Children Your Love and Your Inheritance*, 42 U. LA VERNE L. REV. 94, 100 (2021).

194. See Hogendoorn, Leopold & Bol, *supra* note 164, at 1090 (discussing insufficiency of child support received by women).

195. Marija Lazic, *30+ Divisive Child Custody Statistics*, LEGALJOBS, <https://legaljobs.io/blog/child-custody-statistics> [<https://perma.cc/6KN3-GLYT>] (May 20, 2023).

196. TIMOTHY GRALL, U.S. CENSUS BUREAU, P60-269, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2017, 19 app. tbl. 3 (2020).

197. *Id.*

198. See Hogendoorn, Leopold & Bol, *supra* note 164, at 1090 (discussing the insufficiency of child support received by women).

199. *Id.*

than women's,<sup>200</sup> puts less pressure on men to recouple after divorce. Further, society's disparate value accorded to the relationship between women's youth and attractiveness may result in a greater impact on women's marriageability.<sup>201</sup>

Although a slow divorce process has a generally negative impact on all litigants, the intersectional impact of poverty and gender results in greater burdens of a prolonged and complex divorce process on low-income women than on any other demographic. These effects are felt at all stages of the divorce process—contemplation, separation, and post-judgment.

#### IV. MOVING TOWARD SYSTEM EFFICIENCIES AND EQUITIES

Although the pathway should be accessible, divorce—a deeply unsettling life event and legal process—should not be embarked upon on a whim. But concerns that accessible divorces will open the floodgates to impetuous divorces are overblown. Research shows that vague thoughts of marital termination are unlikely to catapult someone into divorce.<sup>202</sup> Instead, very few individuals who express dissatisfaction with their marriages move toward any kind of reparative or other action at the contemplation stage.<sup>203</sup>

In fact, of those in a study who said they had had thoughts of divorce during the prior 6 months, only 5% reported they were done with the marriage.<sup>204</sup> The rest wanted to work on the marriage or otherwise remained committed.<sup>205</sup> The procedural delays that characterize the U.S. divorce system have not resulted in repairing marriages and retaining happy home. Instead, the delays have rendered women more vulnerable to domestic violence, poverty, mental health challenges, and made all spouses and children more prone to depression and financial injury.<sup>206</sup> Reducing the average duration of a divorce to well under six months is

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200. Tracey Bushnik, Jocelynn L. Cook, A. Albert Yuzpe, Suzanne Tough & John Collins, *Estimating the Prevalence of Infertility in Canada*, 27 HUM. REPROD. 738, 742 (2012).

201. For an in-depth discussion of the impact of divorce on women, see Karin Carmit Yefet, *Divorce as a Formal Gender-Equality Right*, 22 U. PA. J. CONST. L. 793, 796 (2020) (“Women’s reproductive capacity and—arguably their marriageability—declines far more rapidly than men’s as they age. Consequently, divorce regimes that make women wait impair their post-divorce prospects of remarrying and having children. Moreover, the feminization of poverty renders burdensome—and therefore prohibitively expensive—divorce procedures particularly detrimental for women and may force some to forgo divorce altogether.” (footnotes omitted)).

202. See, e.g., Galovan, Hawkins, Harris & Simpson, *supra* note 134, at 386 (reporting on a study in which they found only 6% of those thinking about divorce were engaged in any action related to those thoughts).

203. See *id.*

204. See Alan J. Hawkins & Sage E. Allen, *How Many Married People Have Thought About Divorce?*, INST. FOR FAM. STUD. (Nov. 2, 2015), <https://ifstudies.org/blog/how-many-married-people-have-thought-about-divorce> [<https://perma.cc/AC6U-H6LC>] (reporting on the study).

205. See *id.*

206. See *supra* notes 175–178 and accompanying text.

likely to minimize some of the negative impacts of divorce on couples and families while precluding spiteful or impulsive marital dissolutions.

Statutory and procedural fixes to the divorce system could greatly reduce delays in the division of assets, allocation of custody, and the ultimate dissolution of marriages when parties have chosen to divorce. A more truncated process could minimize the burden on courts as well as the emotional and financial toll on parties and families while not opening floodgates to divorce. First, because waiting periods have been shown to hurt rather than help couples, and because they are based on antiquated notions of family preservation, waiting periods should be reduced or eliminated nationwide. Second, jurisdictions should provide single-session same-day mediations for divorcing couples to try to resolve issues before parties become too entrenched in their differences. Third, a series of procedural reforms to the rules of procedure in domestic relations court could also dramatically decrease the impediments to an efficient divorce process, while complying with all constitutional mandates. Finally, this Article proposes innovative legislation to establish causes of action for expedited divorces in cases in which delays would pose economic, health, or mental health risks to the parties or their children. These statutes would operate much like domestic violence protection order statutes, which acknowledge the particular vulnerabilities of those seeking protection and the unique nature of judicial intervention in the context of intimate family relationships.

#### A. *Reduce or Abolish Excessive Waiting Periods*

As discussed in Section III.A, statutorily prescribed waiting times have not been shown to reduce divorces or foster healthier marriages.<sup>207</sup> Instead, those hurdles primarily cause emotional distress, financial hardship, and administrative burden.<sup>208</sup> They may even foreclose the option of divorce for low-income couples, as the data suggest, forcing them into indefinite separations that can breed uncertainty and preclude remarriage.<sup>209</sup> The trend in the U.S. is headed in a positive direction regarding waiting periods prior to filing for divorce. At present, all states have eliminated the grounds of living separate and apart for a requisite period of time as the sole ground for divorce.<sup>210</sup>

However, as discussed above, some states still require separation as the only ground for no-fault divorce, compelling divorcing spouses to

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207. See *supra* notes 132–146 and accompanying text.

208. See *supra* notes 132–146 and accompanying text.

209. Wong, *supra* note 53, at 263.

210. Most recently, in 2024, Washington D.C. amended its divorce statute, which previously provided the only ground for the divorce to be separation from bed and board, to allow for parties to merely plead their intention to not remain married. D.C. CODE § 16-901 (2025); Ellie Silverman, *New D.C. Law Eliminates Waiting Period Prior to Divorce*, WASH. POST (Feb. 4, 2024), <https://www.washingtonpost.com/dc-md-va/2024/02/04/dc-divorce-law-domestic-violence/> [https://perma.cc/K8ZD-VFPY].

choose between alleging fault or delaying their divorce and incurring the harms of the delay.<sup>211</sup> The litigant then must decide between making a bad situation worse—alleging fault can inflame animosity, create a higher-conflict divorce, and prolong the legal case—or delaying the divorce due to the required separation and facing the harms related to prolonging the process. Many states also still impose extensive waiting periods between the time of filing and then again between the final resolution of the case and the entry of the divorce decree.<sup>212</sup> On the back end, states like California require parties to wait six months from the resolution of the case until the issuance of the final decree of divorce.<sup>213</sup> Most court procedures that set times for docketing and the resolution of cases in other types of civil and criminal cases are intended to expedite matters rather than delay them.<sup>214</sup> The exceptionalism in the docketing of divorce cases and the mandatory separation periods prior to even filing derive from moralistic notions about the propriety of divorce, and at this point, merely hurt parties—especially low-income families and women.<sup>215</sup> Waiting periods should be repealed or gravely reduced to allow cases to move forward more expeditiously given the interests at stake and the ineffectiveness of the delays at even achieving their original goals.

#### B. *Expedited Mediation Opportunities*

Although mediation, as discussed in Section II.D, provides pro se litigants an opportunity to resolve the case in a non-adversarial setting, oftentimes mandatory mediation merely prolongs the divorce process without providing a mediated settlement. The delay generally emanates from the dearth of resources to meet the demand for mediation and from requirements of extensive mediation efforts without regard to litigant preferences or the nature of the cases. Mediation at the discretion of litigants or upon motion should remain an option as it is in many

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211. See *supra* note 66 and accompanying text.

212. See, e.g., LA. CIV. CODE ANN. art. 102 (2025); LA. CIV. CODE ANN. art. 103.1 (2025) (requiring parties to live separate and apart for 180 days if they do not have children, or one year if they have children prior to filing for a divorce or the same period of time after filing but before a hearing); D.C. ADMIN ORDER NO. 14-23, *supra* note 6 (prohibiting judges from setting a divorce matter for trial fewer than 210 days after the filing).

213. CAL. FAM. CODE § 2339(a) (West 2025).

214. For examples of court procedures setting time limits, see N.M. R. CIV. P. Dist. Ct. 1-054.1 (requiring judgment be entered within sixty days after the court takes the matter under advisement). See generally Nicolas Kyriakides, Arunima Shrikhande & Lexi Stefanatos, *The Rocket Docket System: A Model for Active Case Management in Countries Facing Judicial Delays*, 34 N.Y. INT'L L. REV. 79, 89 (2021) (describing features of an efficient judicial system, including “early scheduling of conference and pre-trial procedures” and “certain and early trial dates”); NAT’L CTR. FOR STATE CTS., MODEL TIME STANDARDS FOR STATE TRIAL COURTS 35 (2011) (describing uniform goals and practices for efficient state court procedures).

215. See, e.g., S.C. CODE ANN. § 20-3-90 (2025) (requiring judges to “make an earnest effort to bring about a reconciliation between the parties” in all cases).



states.<sup>216</sup> However, the significant number of jurisdictions that mandate mediation<sup>217</sup> without regard to the wishes of the litigants as a routinized step in the litigation process should reconsider their policies and, instead, join the other jurisdictions that offer, but do not require, dispute resolution. When parties do not want to engage in mediation, they may refuse to enroll, attend an intake session, or might stonewall sessions—all further delaying the process. Mediation with one or two recalcitrant parties is unlikely to succeed and instead, will merely add to the procedural delays of what is already set up to be a prolonged process.<sup>218</sup>

Mediation can provide an excellent alternative to adversarial justice and might expedite divorces.<sup>219</sup> However, courts must be sufficiently well-staffed to provide mediators who can expeditiously address cases, and jurisdictions must impose reasonable limits that cabin the hours that parties must invest in unsuccessful mediations. Brief mediations, in which trained mediators search for common ground and incentivize parties to move from entrenched positions in the interest of expedience and harmony, can effectively resolve cases before they become trapped in pretrial and do so with a limited time commitment. For example, in Washington, D.C., cases can be referred to attorney negotiators, who are employed by the court and conduct brief mediations for domestic relations parties—either virtually or in person.<sup>220</sup> If successful, parties referred to this program are able to appear immediately or soon thereafter in court for the entry of their consent divorce orders. This program has been extremely successful at resolving cases expeditiously; sessions typically last two hours.<sup>221</sup> In 2023, 74% of those cases referred to the program were resolved.<sup>222</sup> The chasm between the 33% success rate of the longer-term mediations<sup>223</sup> required in D.C. Superior Court's Multi-Door Mediation Program discussed above and this program's success rate suggests the greater likelihood that non-compelled and shorter format mediations in this context are more likely to succeed. Other studies have shown that extended mediation processes do not correlate with success.<sup>224</sup> Programs such as these reify the promise of non-adversarial

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216. See *supra* note 113 and accompanying text.

217. See *supra* note 114 and accompanying text.

218. See *Divorce Mediation*, *supra* note 119 (suggesting parties consider litigation instead of mediation when one partner is unwilling to discuss available choices).

219. Lori Anne Shaw, *Divorce Mediation Outcome Research: A Meta-Analysis*, 27 CONFLICT RESOL. Q. 447, 451 (2010).

220. See, e.g., D.C. ADMIN ORDER NO. 14-23, *supra* note 6.

221. See *The Family Justice Litigation Clinic Developed Collaborations with Courts and Local Law School Clinics to Improve Access to Justice for Litigants*, GW LAW (Feb. 14, 2022), <https://www.law.gwu.edu/family-justice-litigation-clinic-developed-collaborations-courts-and-local-law-school-clinics> [<https://perma.cc/R5E5-BGR8>].

222. D.C. SUPER. CT., 2023 FAMILY COURT ANNUAL REPORT 23 (2024), <https://www.dccourts.gov/sites/default/files/divisionspdfs/2023-Family-Court-Annual-Report.pdf> [<https://perma.cc/4C8S-8EUD>].

223. D.C. MULTI-DOOR DISPUTE RESOLUTION SUMMARY, *supra* note 110, at 16.

224. See Peter Kaiser, Gerald Eisenkopf, Andrej Marc Gabler & Felix Lehmann, *Qualities and Long-Term Effects of Mediation*, 16 INT'L ASS'N CONFLICT MGMT. 132,

options to family law litigation and, at the same time, can expedite the legal process, reducing the period of damaging purgatory that so many litigants find themselves in.

C. *Adaptation of the Procedural Rules to the Context of Family Litigation*

Some of the delays in the divorce system derive not from the imposition of deliberately cumbersome procedural hurdles, but rather from an inattentiveness to the unique relationship between the parties that renders the procedural rules excessively complex and burdensome. As discussed above, few jurisdictions have adapted their general civil procedure rules for domestic relations court to acknowledge that the parties are not in an arm's-length relationship. Given their relationship as former intimate partners and often as current co-parents, the parties are often in contact and frequently share mutual access to documents that renders, in particular, the ordinary service and discovery rules inapposite.

As discussed above in Section II.B.1, service of process may confound a pro se litigant, and many times an experienced attorney. Some jurisdictions have already adapted their rules in family court in order to reduce service delays, acknowledging the different nature of the marital relationship and the range of alternative reliable methods of service. For example, in the District of Columbia, whereas the rules of civil procedure specify service only by the marshal service, registered or certified mail, personal service, or first class mail with a signed acknowledgment,<sup>225</sup> the domestic relations rules permit other methods of service without leave of court, such as service by email or other electronic means and any other method to which the party consents in writing.<sup>226</sup> Other adaptations could also facilitate service in divorce cases, taking into account

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155 (2023) ("We were surprised to find that the number of *hours* had little, and the number of *sessions* had no long-term effect. Needs-based appreciative negotiation can save a lot of time if the parties feel more accepted and therefore express less emotional resistance and concern."); Barry Edwards, *Renovating the Multi-Door Courthouse: Designing Trial Court Dispute Resolution Systems to Improve Results and Control Costs*, 18 HARV. NEGOT. L. REV. 281, 315 (2013) ("While subsequent attempts appear to settle at a slightly higher rate, it may be the result of chance. Moreover, when we attempt to introduce the number of attempts to mediate a case as an independent variable alongside other case factors, it lacks statistical significance in any specification. The data on repeated mediation attempts suggests that subsequent attempts to mediate a given case are no more or less likely to yield settlement than the initial session. . . . Additional sessions appear no more or less useful than initial mediation attempts." (footnote omitted)); Robin H. Ballard, Amy Holtzworth-Munroe, Amy G. Applegate & Brian D'Onofrio, *Factors Affecting the Outcome of Divorce and Paternity Mediations*, 49 FAM. CT. REV. 16, 20, n.2 (2011) ("It is unclear whether the number of mediation sessions is actually a predictor of mediation outcome, as it could also be conceptualized as a measure of progress being made in mediation. In other words, if mediation is taking longer (more than one session) because the couple is having difficulty reaching agreement, then length of mediation is better viewed as a reflection of mediation process and would likely be highly related to mediation outcome (i.e., whether or not an agreement is reached).").

225. D.C. SUPER. CT. R. CIV. P. 4(c)(2)-(5).

226. D.C. SUPER. CT. DOM. REL. R. 4(c)(2)-(3).

the more intertwined relationship of the parties. For in-person service, many jurisdictions require that a non-party serve process in a divorce case, necessitating a litigant to either ask a friend or hire a process server to serve.<sup>227</sup> Some court rules permit personal service by the plaintiff when accompanied by a signed acknowledgement of receipt by the opposing party.<sup>228</sup> This method substantially facilitates service and obviates the need to involve third parties in what can be an intimate matter.<sup>229</sup> However, most jurisdictions that permit this form of service require that the acknowledgement of service be notarized—a requirement that can involve expense and time—before filing.<sup>230</sup> Permitting methods of service that can be accomplished without involving third parties or additional expenses would simplify service of process for pro se litigants and reduce unnecessary delays in initiating a case.

Formal discovery, as authorized under the general civil rules, is often inappropriate in a divorce case as discussed in Section II.B.2. First, in many cases, both parties will have equal access to financial and custodial records, obviating the need for discovery. Second, in cases in which parties do not have equal access to such records, courts could facilitate exchange in a far less adversarial and time-consuming way. For example, courts could implement rules requiring automatic disclosures of all financial and property records for distribution in a settlement or at trial.

Maine, for example, directs that when there is a dispute about property or spousal support in divorce proceedings, “each of the parties shall exchange and file a financial statement.”<sup>231</sup> According to the advisory notes to the rules on discovery, “discovery without court approval is limited to financial issues.”<sup>232</sup> Discovery for other issues, not financial, can occur “only with court approval for good cause shown.”<sup>233</sup>

Nevada also has specific rules in the divorce context, requiring that certain discovery disclosures are mandatory in divorce actions.<sup>234</sup> These mandatory requirements include financial disclosure forms and evidence of property, income, and earnings.<sup>235</sup> A party may be exempt from the rule’s mandatory prejudgment discovery if the court finds good cause, which may include instances “where the parties have negligible assets and debts together with no minor children of the parties.”<sup>236</sup>

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227. See, e.g., VA. CODE ANN. § 8.01-320(b) (2025); TEX. R. CIV. P. 103 (requiring nonparty, in person service before allowing any other form of service).

228. See, e.g., UTAH R. CIV. P. 4(d) (3).

229. For a discussion of shame in the court system and particularly in intimate partner cases, see A. Rachel Camp, *Pursuing Accountability for Perpetrators of Intimate Partner Violence: The Peril (And Utility?) of Shame*, 98 B.U. L. REV. 1677, 1701–07 (2019).

230. See, e.g., VA. CODE ANN. § 20-99.1:1 (A) (2025).

231. ME. R. CIV. P. 108(c).

232. ME. R. CIV. P. 112 advisory committee’s note to 2008 amendment.

233. *Id.*

234. NEV. R. CIV. P. 16.2.

235. NEV. R. CIV. P. 16.2 (c)-(d).

236. NEV. R. CIV. P. 16.2 (b) (2).

Finally, to prevent the cumbersome and often unnecessary process of discovery from delaying the resolution of cases, jurisdictions should implement a rebuttable presumption against discovery. This distinction in domestic relations cases is merited due to the heavily pro se docket, the likelihood of equal access to most records, the history between the parties and their likelihood of enduring contact as co-parents, the risk that one party will use the process to harass the other party, the undue burden, and the enormous delays caused by formal discovery.

#### D. *Expedited Divorce Processes*

Finally, parties should have the right to seek and obtain expedited procedures in divorce cases that merit quick resolutions either because they present few or no contested issues or because delay threatens the parties or their children with harm. Although the general right to seek temporary emergency relief is universally available in the court system,<sup>237</sup> temporary orders solve some problems but can merely perpetuate the delay. Instead, court systems should develop and make accessible procedures to move uncontested or barely contested divorces through the system as quickly as possible. Further, for cases that involve more court intervention, legislatures should create the right to an expedited process for a marital dissolution based on the risk of harm created by delay.

Once a divorce case is filed, parties can seek temporary orders and request, for example, spousal support or a custodial determination during the pendency of the litigation.<sup>238</sup> Hearings on those motions do not typically occur in an expedited fashion; they merely happen at the court's convenience or at the next scheduled hearing. Alternatively, a party can file an emergency motion for an expedited hearing. Generally, a hearing on such a motion will be held quickly if the court deems it to be an emergency—often on the same day as filing.<sup>239</sup> But frequently, proving an emergency is such a high bar that courts decline to hold an expedited hearing. Instead, courts will hold a hearing on the temporary issues at a later date, which then, in turn, can further delay the ultimate resolution of the case.

If the opportunity of having an emergency hearing is to be more than a chimera, then standards need to be implemented in family law cases that set the bar at a level that can be met when parties or children are facing serious financial, safety, educational, or mental health consequences during the purgatory of the divorce process. In the District of

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237. See generally *Temporary Custody*, 24A AM. JUR. 2D *Divorce and Separation* § 804 (2d ed. 2024) (suggesting widespread use of temporary custody orders in divorce proceedings); *Alimony, Maintenance, and Other Spousal Support*, THOMSON REUTERS (2023) (showing through a fifty-state survey that over half of all states have provisions for temporary orders for alimony, maintenance, and other spousal support in divorce proceedings).

238. TEX. FAM. CODE ANN. § 6.502 (West 2025); 750 ILL. COMP. STAT. 5/501 (2025); N.H. REV. STAT. ANN. § 458:16 (2025).

239. See, e.g., D.C. ADMIN ORDER NO. 14-23, *supra* note 6, at 7–8.

Columbia, for example, the court issued a standard for domestic relations cases by administrative order that permits emergency hearings only when there is “a child in imminent danger, a child who has been kidnapped, a complete denial of access to a child, and other extraordinary situations that the court deems appropriate.”<sup>240</sup> In one case in which the plaintiff mother alleged that the father had taken the eight-year-old child for twenty days, was refusing to disclose to his whereabouts, and caused the child to miss fifteen days of school, the judge denied the motion as being non-emergent.<sup>241</sup>

Other states have similar standards, though some like California’s extend the scope to adults as well as children, empowering judges to issue emergency orders to “help prevent an immediate danger or irreparable harm to a party or to the children involved in the matter.”<sup>242</sup> In a divorce case, California judges may issue an *ex parte* emergency ruling if the plaintiff can “make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief without notice or with shortened notice to the other party.”<sup>243</sup> However, these orders will only be granted upon a substantial showing of need based upon irreparable harm or immediate danger.<sup>244</sup> These standards set the bar extremely high.

Instead, given the often highly emergent issues related to access to joint finances, the family home, and other assets, litigants should be able to access expedited hearings based on a showing of immediate hardship without court intervention. While this would strain judicial resources, it might well obviate the need for extensive hearings later on and could greatly reduce conflict between the parties, leading to more settled cases.

To reduce delays for cases that are uncontested, courts should have well-established policies to expedite cases that are filed as uncontested as well as for those that reveal themselves to be uncontested or minimally contested early in the process. Several states already have procedures that expedite uncontested cases.<sup>245</sup> Such procedures should

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240. *Id.*

241. Order Denying Request for Emergency Hearing and Setting Status Hearing for Next Monday, Nov. 23, 2020, Deville v. Parris, 2020 DRB 2125, D.C. Superior Court (D.C. Super. Ct. Nov. 11, 2020).

242. CAL. R. CT. 5.151(b)(1).

243. CAL. R. CT. 5.151(d)(2).

244. *In re Marriage of Manning*, 2024 WL 1083311, at \*3 (Cal. Ct. App. Mar. 13, 2024).

245. COLO. REV. STAT. § 14-10-120.3 (2025) (decree upon affidavit by either or both of the parties); CONN. GEN. STAT. § 46b-44a (2025) (uncontested dissolution of marriage); DEL. CODE ANN. tit. 13, § 1517 (2025) (if uncontested, parties can choose whether or not to have a hearing and court may grant divorce based just on filing); FLA. STAT. § 61.052(2)(a) (2025) (simplified dissolution of marriage if there are no children); 750 ILL. COMP. STAT. 5 / 452 (2025) (upon joint petition for simplified dissolution if marriage lasted less than eight years, there are no children, no fault, and both parties are willing to waive spousal support); IND. CODE § 31-15-2-13 (2025) (decree upon agreement on all issues); MINN. STAT. § 518.195 (2025) (court may grant summary dissolution or a dissolution by joint petition if marriage lasted

be universally implemented to avoid tying cases and families up in bureaucratic, needless processes for months or years when the parties are in agreement on all essential issues.

While attorneys may be well-versed in how to file an uncontested case, most pro se parties are unaware that complaints can be filed along with an answer and identified at filing as uncontested. Courts that do not already host self-help domestic relations centers<sup>246</sup> or pro se litigant virtual resources should create such resources to make available information about how to proceed with an uncontested case. Once a case is in the system and a judge determines that the case, while filed as contested, is uncontested, clear procedures should dictate an expeditious resolution of the case. This might include referrals to an expedited mediation session or other court personnel who can help the parties draft a settlement agreement. At a minimum, courts should designate judges who can add uncontested divorces to their calendars with little delay.

Ultimately, the most effective way to protect at-risk parties from excessive harms related to a prolonged divorce process and, at the same time, preserve full procedures for parties who are not vulnerable to injury caused by delays and whose cases are in need of substantial pretrial procedures, would be to establish a right to expedited marital dissolutions for parties that can show undue burden or potential harm. The law recognizes this need in analogous contexts. For example, as discussed earlier, all fifty states and the District of Columbia have long offered expedited causes of action for protection from intimate partner and domestic violence.<sup>247</sup> Legislatures have created causes of action for final injunctions based on the acknowledgement of emergency circumstances surrounding the underlying facts and the potential for harm that delay would cause.<sup>248</sup> Protection orders are not temporary injunctions; the causes of action permit the court to impose a final order—and one that,

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fewer than eight years, there are no children, no property, among other criteria); MONT. CODE ANN. § 40-4-131 (2025) (court may grant joint dissolution); NEV. REV. STAT. § 125.181–184 (2025) (summary divorce by joint petition); OHIO REV. CODE ANN. §§ 3105.08, 3105.63 (West 2025) (dissolution upon joint petition); S.C. CODE ANN. § 20-3-10 (2025) (uncontested divorce after one year of separation); S.D. CODIFIED LAWS § 25-4-17.2 (2025) (stipulated divorce); TENN. CODE ANN. § 36-4-103 (2025) (agreed divorce granted as long as no spouse is pregnant and couple doesn't own property together nor have shared retirement benefits); VT. STAT. ANN. tit. 15, § 592(a)(4) (2025) (stipulated divorce allowed).

246. See, e.g., *Family Law Self-Help Center*, MONTGOMERY CNTY., MD. CIR. CT., <https://www.montgomerycountymd.gov/cct/family-law-self-help-center.html> [<https://perma.cc/4NXP-GGKT>] (last visited Mar. 5, 2025).

247. *Domestic Violence*, *supra* note 38, at 506–07; Kohn, *supra* note 38, at 8–9.

248. See generally Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1071–72, 1082 (2014) (discussing benefits of injunctions, especially permanent injunctions, and state implementation of injunctions for survivors of domestic violence); Tamara L. Kuennen, “No-Drop” Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN’S L.J. 39, 87 (2007).

in many jurisdictions, can have extremely long-term consequences.<sup>249</sup> And yet, these cases are summary adjudications. By statute cases must be heard within a short time frame<sup>250</sup> and pretrial procedures are limited.<sup>251</sup>

In another context, legislatures have acknowledged that economic harms to landlords can merit summary adjudications for evictions. Since the early days of common law, the possessory interests of tenants have been granted lower value than the ownership and pecuniary interests of landlords.<sup>252</sup> Grounded in the criminal law of trespass, landlords were able to use “self-help” methods to remove problematic tenants, so they were not required to go through the lengthy ejectment process.<sup>253</sup> As landlord self-help measures were gradually prohibited, summary eviction proceedings were introduced in their stead—providing “an efficient, equitable, and timely means to recover possession of real property.”<sup>254</sup> Summary eviction statutes exist in some form in all fifty states and the District of Columbia,<sup>255</sup> with many states requiring as few as three days between service of an eviction notice to the tenant and the finalization of proceedings.<sup>256</sup> Summary eviction proceedings, held constitutional despite their limited scope and procedures,<sup>257</sup> focus on who is entitled to possession of the property.<sup>258</sup> Once the issue of possession has been

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249. See, e.g., MISS. CODE ANN. § 93-21-15(2)(b) (2025) (stating that “a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate”); MD. CODE ANN., FAM. LAW § 4-506(c)(3) (West 2025); N.Y. FAM. CT. ACT § 842 (McKinney 2025).

250. See, e.g., GA. CODE ANN. § 19-13-3(c) (2025) (specifying that an order for temporary relief may be granted upon filing of a verified petition, a hearing must be scheduled within thirty days); OKLA. STAT. ANN. tit. 22, § 60.4(B)(1) (2025) (mandating courts schedule a full hearing on the petition for a protective order within fourteen days of filing).

251. See, e.g., D.C. SUPER. CT. DOM. VIO. R. 8 (specifying that pretrial discovery is extremely curtailed, requiring a showing of good cause and prohibiting depositions); D.C. SUPER. CT. DOM. REL. R. 65(b)(2) (specifying that a temporary restraining order may last for no more than fourteen days).

252. Kathryn Ramsey Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 391, 397 (2022).

253. *Id.*

254. Moshe B. Nachum, *The Landlord Blues: Inequity, Inefficiency, and Untimeliness of Summary Proceedings in New York City*, 61 N.Y. L. SCH. L. REV. 509, 510 (2017).

255. *Eviction Laws and Forms: 50-State Survey*, JUSTIA, <https://www.justia.com/real-estate/landlord-tenant/eviction-forms-50-state-resources/> [<https://perma.cc/3P6C-QFSQ>] (Feb. 2023).

256. See ARK. CODE ANN. 18-60-304(3) (2025); CAL. CIV. PROC. CODE § 1161.2 (West 2025); CONN. GEN. STAT. § 47a-23(a) (2025); FLA. STAT. § 83.56(2)(b) (2025); IDAHO CODE § 6-303(2) (2025); IOWA CODE § 562A.27(2) (2025); KAN. STAT. ANN. § 58-2564(b) (2025); MONT. CODE ANN. § 70-24-422(1) (2025); N.M. STAT. ANN. § 47-8-33(D) (2025); N.D. CENT. CODE § 47-32-02(4) (2025); OHIO REV. CODE ANN. § 1923.04(A) (West 2025); TEX. PROP. CODE ANN. § 24.005(a) (West 2025); UTAH CODE ANN. § 78B-6-802(1)(c) (West 2025); WYO. STAT. § 1-21-1003(a)(i) (2025).

257. See *Lindsey v. Normet*, 405 U.S. 56, 64 (1972).

258. Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 137 (2000).

summarily decided, the landlord, if victorious, may immediately evict.<sup>259</sup> This short turnaround time and the summary nature of the proceeding illustrates the legislatures' recognition of the emergent nature of property rights disputes. While the propriety of such summary proceedings is greatly in dispute, their existence illustrates the potential of creating such a process in divorce cases.

Similarly, a divorce can present emergent issues and significant potential for harm caused by delay such as financial, mental health, and housing injuries as discussed in Part III above. The insight that divorces are not merely civil causes of action but, in fact, are often the turbulent reordering of a family system involving children, housing, property, and other assets, justifies treating cases differently from ordinary civil matters. As such, statutes or court rules allowing parties to seek summary adjunctions of divorces based on a showing of imminent harm would be more consistent with the realities facing low-income couples.

Three states have adopted procedures that allow for expedited handling of divorces under emergent circumstances. In Kansas, divorce actions generally are not scheduled until sixty days have passed since the petition has been filed.<sup>260</sup> However, judges may enter an order declaring "the existence of an emergency, stating the precise nature of the emergency, the substance of the evidence material to the emergency and the names of the witnesses who gave the evidence."<sup>261</sup> If the judge finds that an emergency exists, the divorce itself as well as any pending temporary orders may be heard by the court immediately.<sup>262</sup> In Delaware, the judge may grant an early scheduling request for a divorce upon consideration of "(1) the nature of the controversy; (2) the relief sought at a priority hearing; and (3) the facts under which the Court may conclude that unless the priority scheduling request is granted, substantial and irreparable harm will result."<sup>263</sup> Similarly, in Arizona, a judge may grant an accelerated hearing if a motion "(1) sets forth the specific relief requested and the specific facts that support that relief; and (2) provides specific facts that establish why an emergency or accelerated hearing is required."<sup>264</sup>

Emergency divorce procedures should be available nationwide to parties that can prove that delay would pose an undue burden or risk extensive financial, mental health, or wellbeing harms to parties, their children, or both. Judges could determine eligibility for summary hearings based on the pleadings and schedule matters within thirty days for trial. Cases that fail to meet the standard would be placed on the

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259. Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 792 (1993).

260. KAN. STAT. ANN. § 23-2708 (2025).

261. *Id.*

262. *Id.*

263. DEL. FAM. CT. R. CIV. P. 65.2(c).

264. ARIZ. R. FAM. L. P. 48(a)(1)-(2).



regular docket. Not only would such a system provide expedited divorces to those in most need, but it would most likely relieve the family court docket of cases that linger for far too long and result in procedural delays and multiple hearings.

#### CONCLUSION

Marriage and divorce are significant relationship transitions. They have cultural and emotional significance, and nearly uniformly impact the very foundations of everyday life. Both marriage and divorce also bear legal significance, accruing both rights and responsibilities to both parties to the union or impending disunion, as well as impacting entitlement to government benefits and to certain tax statuses. Yet, our legal system regulates each transition very differently, informed by traditional notions of the religious, cultural, and moral value of marriage. Few states require parties to wait even a day to receive a marriage license and regulate access to marriage only minimally to prevent bigamy and incest and underage unions.<sup>265</sup> Parties seeking to divorce, on the other hand, must navigate a gauntlet of statutory requirements and procedural hurdles that require stamina and persistence. Our society's scorn for divorce informs many of these impediments, resulting in deliberate delays designed to deter dissolution and encourage reconciliation. Waiting periods and the judicial right to mandate that parties attend reconciliation counseling are specifically intended to encourage reflection and reconsideration. The data illustrates that such efforts do little to salvage marriages. The delays are exacerbated by the failure of our system to acknowledge the *sui generis* nature of divorce and to differentiate procedures from general civil litigation. Still other delays emanate from system innovations designed to increase access to justice but which, when unsuccessful, only further complicate and impede the progress of an already slow and complex system.

While the delays impact all litigants and their children, low-income women particularly suffer the harms. The intersection of poverty, gender bias, and traditional division of labor in the home renders a prolonged divorce process most fraught for mothers living near or in poverty. The vulnerabilities surfaced by a family rupture and the attending financial implications differentially impact low-income women. Prolonging the separation period and the ultimate resolution only enhance their risk of injury.

At a time when the right to make decisions about personal autonomy are under assault,<sup>266</sup> attentiveness about access to divorce is critical.

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265. *Zablocki v. Redhail*, 434 U.S. 374, 392 (1978) (Stewart, J., concurring); *id.* at 399 (Powell, J., concurring); *id.* at 404 (Stevens, J., concurring). See *supra* note 11 for examples of state procedural delays in obtaining a marriage license.

266. See generally *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (curtailing constitutional protection for abortion rights); Emily Wax-Thibodeaux, *The Issues of No-Fault Divorce, a Target of JD Vance and Conservatives*, WASH. POST (Aug. 4,

Because impediments of divorce have been unsuccessful in reducing the incidence of divorce and repairing families, and because the myriad harms that are enhanced by delays are evident, the time has come to fortify expeditious pathways to divorce for all litigants who seek them. Reducing or eliminating waiting periods, adapting procedural rules to the nature of the relationship between the parties to a divorce, providing efficient, effective mediation services and judicial docketing for uncontested cases, and finally, creating a right to expedited divorces when necessary and feasible all will minimize the harm wrought by the legal system on parties who are already facing a traumatic life change that inherently impacts the fabric of their lives.

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2024), <https://www.washingtonpost.com/nation/2024/08/04/no-fault-divorce-jd-vance-women/> [<https://perma.cc/6YT9-G5GE>] (“With his elevation to Republican vice-presidential nominee, Sen. JD Vance’s provocative views about divorce—that people do it too easily, shifting ‘spouses like they change their underwear’—have turned the spotlight on a bubbling movement to end what is known as no-fault divorce.”).