SOMEWHERE IN BETWEEN ALL-OR-NOTHING: SUGGESTIONS FOR ALTERNATIVES TO MARRIAGE IN SOUTH CAROLINA

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I. INTRODUCTION

The number of couples across the United States that are choosing to forego marriage is increasing and for a multitude of reasons; however, with this choice, couples are giving up the rights and protections that are afforded to them individually and as a pair when they secure a marriage license. In long-term, cohabitating relationships, the lack of legal protections can harm both individuals, but the absence of property distribution rights primarily harms the individual in the relationship who takes on a caretaker or stay-at-home role. A couple's failure to obtain a marriage license removes the opportunity of property distribution or alimony once the relationship ends. Take Victoria and Robert, for example.[1] While Victoria and Robert were both in college, Victoria became pregnant, and as a result, Robert told her that they would move forward together living as husband and wife.[2] Robert told Victoria that they did not need to have a formal ceremony in order to be

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1. *See generally* Hewitt v. Hewitt, 394 N.E.2d 1204 (Ill. 1979).
2. *Id*. at 1205.

married, and he told her that he would share his life, future, earnings, and property with her.[3] Victoria and Robert then went on to tell their parents that they were married, despite not having a formal ceremony or obtaining a marriage license, and they held themselves out to be husband and wife for fifteen years.[4] During their fifteen year relationship, Victoria and Robert moved to Illinois where Robert went to dental school while Victoria, relying on Robert's promise to share his life, future, earnings, and property with her, stayed at home taking care of their three children.[5] Later on in their relationship, Victoria worked in Robert's office, but her paychecks were placed in the couple's common fund.[6] Victoria's efforts in taking care of their home and their three children, as well as helping in Robert's office, resulted in Robert's ability to make over $80,000 a year and acquire large amounts of property.[7] When their relationship ended, Victoria sought to recover "an equal share of the profits and properties accumulated by the parties" during their fifteen year relationship.[8] Because the state that Victoria and Robert lived had previously abolished common-law marriage and had not replaced common-law marriage with any alternatives, Victoria was unable to recover anything from Robert once their relationship ended.[9] Had Victoria and Robert's story begun in South Carolina on or after July 25, 2019, Victoria likewise would be unable to recover anything.

In 2019, the South Carolina Supreme Court abolished the institution of common-law marriage in *Stone v. Thompson*, finding that "[t]he paternalistic motivations underlying common-law marriage no longer outweigh the offenses to public policy the doctrine engenders."[10] Among their reasoning for abolishing the institution, the court stated that it was following the modern trend of repudiating the doctrine and adopted the reasoning that drove Pennsylvania to abolish common-law marriages in 2003.[11] However, the court did not address how its decision to abolish common-law marriage would impact the individuals in the relationship, primarily women, who take on a caretaker or stay-at-home role.[12] The individual who takes on this role often

3. *Id.*
4. *Id.*
5. MARTHA M. ERTMAN, LOVE'S PROMISES: HOW FORMAL AND INFORMAL CONTRACTS SHAPE ALL KINDS OF FAMILIES 116 (2015).
6. *Hewitt*, 394 N.E.2d at 1205.
7. *Id.*
8. *Id.*
9. *See* ERTMAN, *supra* note 5, at 116.
10. Stone v. Thompson, 428 S.C. 79, 85, 833 S.E.2d 266, 269 (2019).
11. *See id.*
12. While the number of men that take on this caretaker or stay-at-home role is increasing, women still take on this role at higher rates than men. *See* Richard Fry, *Almost 1 in 5 Stay-At-Home Parents in the U.S. are Dads*, PEW RSCH. CTR. (Aug. 3, 2023), https://www.pewresearch

quits their job, fails to develop other sources of income, or cuts their hours in order to help take care of their home or children, allowing the other partner to work or work more hours than they would otherwise be able to.[13] Because common-law marriage has been abolished and other alternatives have not been adopted, the individual in the relationship who takes on this caretaking or stay-at-home role does not receive the protection of alimony or property distribution unless the parties formalize their relationship by obtaining a marriage license.

Through its decision in *Stone*, the South Carolina Supreme Court created an all-or-nothing regime, leaving statutory marriage as the only option available to couples looking to legally define their relationship. Couples in South Carolina must now obtain a marriage license to have a legally recognized relationship and receive the protections and rights that come along with being married.[14] However, as cohabitation increases and marriages rates decrease across the United States, the reality is that many Americans are starting to define their relationship somewhere short of marriage.[15] The South Carolina Supreme Court stated in *Stone* that they believed the right to remain unmarried is as "equally weighty" as the constitutional right to marry,[16] and with more Americans intentionally choosing to say "no" to marriage, "these decisions should be taken seriously,"[17] and alternatives to marriage should be explored. This article will explore the history of common-law marriage, dive into the all-or-nothing regime that South Carolina has created, outline the implications of such a regime, and offer alternatives, namely *Marvin* agreements and domestic partnerships, that should be adopted in order to provide some level of property or financial protection to the individuals in cohabitating, long-term relationships.

II. BACKGROUND

A. The Origins of Common-Law Marriage

Although the institution of common-law marriage has existed in South Carolina since 1832,[18] its roots can be traced back to pre-Reformation Europe

.org/short-reads/2023/08/03/almost-1-in-5-stay-at-home-parents-in-the-us-are-dads/ [https://perma.cc/7STT-9563].

13. *See* June Carbone & Naomi Cahn, *Nonmarraige*, 76 MD. L. REV. 55, 63 (2016).

14. *Stone*, 428 S.C. at 82, 833 S.E.2d at 267.

15. *See* Nat'l Ctr. for Health Stats., *Marriage Rates by State: 1990, 1995, and 1999-2021*, CDC (Feb. 10, 2023) https://www.cdc.gov/nchs/data/dvs/marriage-divorce/state-marriage-rates-90-95-99-21.pdf [https://perma.cc/64SP-DGJ40].

16. *Stone*, 428 S.C. 79 at 86, 833 S.E.2d at 269.

17. Carbone & Cahn, *supra* note 13, at 58.

18. *See generally* Fryer v. Fryer, 9 S.C. Eq. 85 (1832).

and the growing "frustrations with the formal requirements of marriage."[19] During that time, marriage was traditionally believed to be a private affair, as opposed to something that the state had an interest in.[20] Because "[o]nly the upper class . . . had the means and the possibility of entering into ceremonial marriages,"[21] common-law marriage became an available alternative that would provide individuals the "societal recognition of [a] marriage while preserving the costs and formalities of a traditional marriage ceremony."[22] As an institution, common-law marriage "was this combination of the agreement of the parties, cohabitation, and community recognition of their status."[23] When the American colonies were formed, the idea of common-law marriage was brought over from Europe, and it spread due to the difficulty in accessing a minister or officer who could conduct the marriage ceremony[24] and government concern over single mothers that were dependent on government benefits to support illegitimate children.[25] During this time, couples would become married by consenting to marry, moving in together, and exchanging the husband's support for the wife's domestic services.[26]

After the American Revolution, some states adopted the institution of common-law marriage, while others did not.[27] The resulting two approaches taken by states became known as the New York approach and the Massachusetts approach, respectively.[28] A majority of states followed the New York approach and operated under the assumption that common-law marriages were valid.[29] The minority of states that followed the Massachusetts approach saw the passage of statutes regulating the method of entering into a marriage as abolishing the doctrine of common-law marriage.[30] However, in 1877, the United States Supreme Court adopted a view similar to the New York approach, holding that marriage was a common-law right.[31] Where states had passed statutes prescribing the manner in which couples could enter

19. Morgan E. Spires, Note, *Tying the "Not": The South Carolina Supreme Court's Prospective Abolishment of Common Law Marriage*, 71 S.C. L. REV. 905, 910 (2020).

20. *See* Cynthia Grant Bowman, *A Feminist Proposal to Bring Back Common Law Marriage*, 75 OR. L. REV. 709, 718 (1996).

21. GÖRAN LIND, COMMON LAW MARRIAGE: A LEGAL INSTITUTION FOR COHABITATION 135 (2008).

22. Spires, *supra* note 19, at 910.

23. Bowman, *supra* note 20, at 718.

24. Melody Breeden & Anne Kelley Russell, *From This Day Forward: The Abolishment of Common-Law Marriage in South Carolina*, 31-MAR S.C. LAW. 52, 54 (2020).

25. Spires, *supra* note 19, at 911.

26. ERTMAN, *supra* note 5, at 113.

27. Bowman, *supra* note 20, at 719.

28. *See id*.

29. *See id*. at 720.

30. *Id.*

31. *See id*. at 721.

into a marriage, such statutes were to be construed as directory instead of destructive of common-law marriage unless the legislature plainly expressed its intent to abolish the institution.[32]

B. Common-Law Marriage in South Carolina

In 1832, South Carolina became one of the many states to follow the New York approach by formally adopting common-law marriage in *Fryer v. Fryer*.[33] The South Carolina Supreme Court found that the law did not require anything "but the agreement of the parties, with an intention that that agreement shall, per se, constitute the marriage" and that "it is the agreement itself, and not the form in which it is couched, which constitutes the contract."[34] The adoption of common-law marriage in South Carolina "sought to 'legitimatize innocent children and adjust property rights between the parties who treated each other the same as husband and wife.'"[35] While common-law marriage was never codified in South Carolina, the institution was recognized as an "exception to the general requirement to obtain a marriage license."[36] Historically in South Carolina, the existence of a common-law marriage was a question of law, and no express contract was necessary to establish the marriage.[37] Courts looked at whether the parties contracted to be married, either expressly or implicitly, based on the circumstances.[38] In determining whether the parties involved had entered into a common-law marriage, courts used several factors.[39] Among these factors were the couple's tax returns, documents filed under penalty of perjury, introductions to the public, contracts, checking accounts, and whether any impediments to marriage existed.[40] The existence of a common-law marriage also required mutual assent.[41] Each party needed to intend to be married and understand the other individual's intent.[42] The individual asserting the existence of a common-law marriage had the burden of proving its existence by a preponderance of the evidence.[43] If the person arguing the existence of a common-law marriage proved that the parties were engaging in apparently

32. *See id*. at 721–22.
33. *See* Fryer v. Fryer, 9 S.C. Eq. 85 (1832).
34. *Id.* at 92.
35. Stone v. Thompson, 428 S.C. 79, 83, 833 S.E.2d 266, 268 (2019) (quoting Jeanes v. Jeanes, 355 S.C. 161, 168–69, 177 S.E.2d 537, 540–41 (1970)).
36. *Id*.; S.C. CODE ANN. § 20-1-360 (2014).
37. *See* Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005).
38. *See id.*
39. *See Stone*, 428 S.C. at 88, 833 S.E.2d at 270.
40. *Id.*
41. *Callen*, 365 S.C. at 624, 620 S.E.2d at 62.
42. *Id.*
43. *Id.* at 623, 620 S.E.2d at 62.

matrimonial cohabitation, and if while cohabitating, the parties had a reputation in their community as being married, a rebuttable presumption arose that a common-law marriage was created.[44] In order for the other party to overcome this presumption, a showing of strong, cogent, satisfactory, or conclusive evidence that the parties were not married was required.[45] However, the exact factors used to establish a common-law marriage varied from court to court across South Carolina, resulting in inconsistent results and confusion for parties involved.[46]

C. Stone v. Thompson

In July 2019, the South Carolina Supreme Court prospectively abolished the institution of common-law marriage in *Stone v. Thompson*.[47] In *Stone*, the Plaintiff and the Defendant met in the 1980s, and they began a romantic relationship with one another shortly after.[48] When their relationship began, the Defendant was married to another man, but she obtained a divorce in 1987.[49] The couple had their first child later in 1987 and later had their second child in 1989, at which point they started living together.[50] For approximately twenty years, the Plaintiff and the Defendant lived together, raised their children together, and managed rental properties together.[51] However, their relationship ultimately ended when the Defendant discovered that the Plaintiff was having an affair with a woman in Costa Rica.[52] After terminating the relationship, the Plaintiff filed a complaint, "seeking a declaratory judgment that the parties were common-law married, a divorce, and an equitable distribution of alleged marital property."[53] The case was bifurcated, and a trial was ordered on the sole issue of determining whether a common-law marriage existed between the parties.[54]

The South Carolina Supreme Court reversed the family court's decision, finding that there was no common-law marriage between the parties.[55] Upon review, the court stated that the evidence as presented by both parties was

44. *Id.* at 624, 620 S.E.2d at 62; *see also* Barker v. Baker, 330 S.C. 361, 368, 499 S.E.2d 503, 507 (1998).
45. Jeanes v. Jeanes, 255 S.C. 161, 167, 177 S.E.2d 537, 539–40 (1970).
46. Stone v. Thompson, 428 S.C. 79, 82, 833 S.E.2d 266, 267 (2019).
47. *Id.*
48. *Id.* at 89, 833 S.E.2d at 271.
49. *Id.*
50. *Id*. at 89–90, 833 S.E.2d at 271.
51. *Id*. at 90, 833 S.E.2d at 271.
52. *Id.*
53. *Id*.
54. *Id.*
55. *Id*. at 94, 833 S.E.2d at 274.

"decidedly mixed."[56] While the Defendant filed her taxes as "single head of household" throughout their relationship, both parties filed documents under penalty of perjury claiming that they were married.[57] The parties signed some contracts jointly, while other contracts were signed individually by one party or the other.[58] Both parties presented evidence that they did or did not introduce themselves as married throughout the duration of their twenty-year relationship.[59] While the Defendant disputed the fact that the parties shared several checking accounts, they did share at least one.[60] Ultimately, the parties' "conduct in living together, raising children, and running the business" did not demonstrate that the parties "intended to be married and knew the other intended the same"[61] as the evidence presented by both parties tended to go in both directions. Because there was not mutual assent, the court did not find a common-law marriage to exist between the parties.[62] The South Carolina Supreme Court used this case to clarify the factors examined and the burden of proof used in determining the existence of a common-law marriage entered into prior to July 25, 2019, and to abolish common-law marriage prospectively.[63]

The South Carolina Supreme Court, in choosing to abolish the institution prospectively, looked at the modern national trend of abandoning common-law marriage.[64] Fewer than ten jurisdictions recognized common-law marriages at the time of the *Stone* decision, and South Carolina followed the approach taken by states who abolished it prospectively.[65] The court heavily relied on Pennsylvania's 2003 decision to abolish common-law marriage[66] and its reasoning for doing so, stating that the "paternalistic motivations underlying common-law marriage no longer outweigh the offenses to public policy the doctrine engenders."[67] In adopting Pennsylvania's reasoning, South Carolina relied on several specific reasons for abolishing common-law marriage.[68] One of the reasons the court relied on in making the decision to abolish the institution is that the right of a single parent to obtain child support is no longer dependent on their marital status, as there is now a statutory

56. *Id*. at 93, 833 S.E.2d at 273.
57. *Id*.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id*. at 94, 833 S.E.2d at 274.
62. *See id*.
63. *See id*. at 82, 833 S.E.2d at 267.
64. *See id*. at 87, 833 S.E.2d at 270.
65. *See id*. at 84, 833 S.E.2d at 268.
66. *See* PNC Bank Corp. v. Workers' Comp. Appeal Bd., 831 A.2d 1269 (Pa. Commw. Ct. 2003).
67. *Stone*, 428 S.C. at 85, 833 S.E.2d at 269.
68. *See id*.

obligation to pay child support,[69] and the failure to do so is a misdemeanor.[70] Additionally, marital status no longer determines the inheritance rights of the children due to statutory provisions regulating the passing of property to the children of the decedent.[71] Access to authorities for ceremonial marriage are more available, even in rural areas, and the process for obtaining a marriage license is simple with minimal costs.[72] The court also reasoned that societal acceptance is no longer conditioned on a person's marital status or the legitimacy of their children.[73] Ultimately, the South Carolina Supreme Court believed that abolishing common-law marriage would lead to predictability and judicial economy across the state as the requirement of a marriage license is clearer than the previous standards for determining the existence of a common-law marriage.[74]

III. THE MODERN REALITY OF MARRIAGE AND COHABITATION

The *Stone* decision resulted in an all-or-nothing regime in South Carolina, creating one distinct category of legally recognized relationships moving forward: matrimonial relationships. As a result of the court's decision, couples must either go all in and obtain a marriage license to receive the benefits and protections granted to them individually and as a couple under the law, or they can choose to maintain a nonmarital relationship and therefore miss out on those rights and protections. However, "the share of American adults who have never been married is at an historic high" as the number of people that are choosing to define their relationship somewhere along the middle of the married and unmarried spectrum continues to increase.[75] In *Stone*, the South Carolina Supreme Court acknowledged the reality that non-marital cohabitation has become more common and continues to become more common among Americans in all age groups.[76] From 2007 to 2016, the number of adults in cohabitating relationships went from fourteen million to eighteen million, and the number of cohabitating adults that are fifty years old

69. *See id.*; *see also* S.C. CODE ANN. § 63-5-20 (1976 & Supp. 2018).

70. § 63-5-20.

71. *See Stone*, 428 S.C. at 84–85, 833 S.E.2d at 269; *see also* S.C. CODE ANN. §§ 62-2-101109 (1976 & Supp. 2018).

72. *See Stone*, 428 S.C. at 84–85, 833 S.E.2d at 269; *see also* S.C. CODE ANN. §§ 20-1-210240 (1976).

73. *Stone*, 428 S.C. at 85, 833 S.E.2d at 269.

74. *See id*. at 86, 833 S.E.2d at 270.

75. Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married: As Values, Economics, and Gender Patterns Change*, PEW RSCH. CTR. (Sep. 24, 2014), https://www.pewresearch.org/social-trends/2014/09/24/record-share-of-americans-have-never-married/ [https://perma.cc/CZL9-2E4A].

76. *Stone*, 428 S.C. at 86, 833 S.E.2d at 269.

or older increased by 75% during that time.[77] Marriage rates have declined overall in the United States since 1990, and the same is true for South Carolina, where marriage rates have dropped from 15.9 per 1,000 in 1990 to 6.5 per 1,000 in 2021.[78] Women within the top 5% of incomes are the only "group in the entire country to have seen its marriage rates increase since 1970," while "the bottom third . . . has all but given up on marriage as a way of life."[79] In 1980, only 6% of forty-year-olds had never been married.[80] As of 2021, the percentage of forty-year-olds who have never been married had more than quadrupled, rising to 25%.[81] Around 40%of Americans are pessimistic to some degree about the institution of marriage and the idea of family when thinking about the future of the United States.[82] Low-income Americans are more likely to live together than Americans with a college education and middle-class incomes.[83] With the number of cohabitating couples increasing and the number of couples choosing to get married decreasing, "the time has come to *consid*er 'nonmarriage' as a distinct body of law on its own terms."[84]

Couples in the United States are choosing to not get married for a variety of reasons. There has been an increase in pessimism towards marriage.[85] Thirteen percent of first marriages end in divorce after the first five years.[86] High divorce rates make people cautious to the idea of a formal, legalized commitment, as "divorce is associated with an increased risk of living in poverty,"[87] and "[s]table unions have become a hallmark of privilege."[88]

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77. Renee Stepler, *Number of U.S. Adults Cohabiting with a Partner Continues to Rise, Especially Among Those 50 and Older*, PEW RSCH. CTR. (Apr. 6, 2017), https://www.pewresearch.org/short-reads/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older/ [https://perma.cc/M99C-RTLZ].

78. *See* Nat'l Ctr. for Health Stats., *Marriage Rates by State: 1990, 1995, and 1999-2021*, CENTS. FOR DISEASE CONTROL & PREVENTION (Feb. 10, 2023) https://www.cdc.gov/nchs/data/dvs/marriage-divorce/state-marriage-rates-90-95-99-21.pdf [https://perma.cc/64SP-DGJ40].

79. JUNE CARBONE & NAOMI CAHN, MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY 14 (2014).

80. *See* Richard Fry, *A Record-High Share of 40-Year-Olds in the U.S. Have Never Been Married*, PEW RSCH. CTR. (June 28, 2023), https://www.pewresearch.org/short-reads/2023/06/28/a-record-high-share-of-40-year-olds-in-the-us-have-never-been-married/ [https://perma.cc/8T9K-JZNQ].

81. *Id.*

82. Kim Parker & Rachel Minkin, *Public Has Mixed Views on the Modern American Family*, PEW RSCH. CTR. (Sept. 14, 2023), https://www.pewresearch.org/social-trends/2023/09/14/public-has-mixed-views-on-the-modern-american-family/ [https://perma.cc/PZJ3-3FSG].

83. ERTMAN, *supra* note 5, at 133.

84. Carbone & Cahn, *supra* note 13, at 58 (emphasis added).

85. *See generally* Parker & Minkin, *supra* note 82

86. U.S. CENSUS BUREAU, NUMBER, TIMING, AND DURATION OF MARRIAGES AND DIVORCES: 2016, 14 (2021).

87. *Id*. at 6.

88. CARBONE & CAHN, *supra* note 79, at 19.

While divorce is one reason for the decrease in marriage rates, individuals are also choosing to forego marriage because economic stability is no longer dependent on being married. In 2022, 39% of women had completed four or more years of college, compared to less than 4% of women in 1940,[89] and the participation rate of women in the labor force has increased overall since 1948.[90] Even where the individuals in a relationship would otherwise like to get married, there can be unwanted consequences to obtaining a marriage license that prevents the couple from formalizing their relationship. Such was the case for the parties in *Byrne v. Laura*.[91] In that case, Skip and Flo were childhood sweethearts who had been engaged when Flo was eighteen.[92] However, they ultimately parted ways and later married other individuals.[93] Skip's first marriage ended in divorce, and Flo's husband passed away.[94] Skip and Flo found their way back to each other and began dating in August of 1987, and Skip proposed to Flo later than year in December.[95] However, Flo turned down Skip's marriage proposal because her handicapped children "would lose insurance coverage from her deceased husband's employer if she remarried."[96] Despite Flo turning down Skip's proposal, the couple moved in together and lived together until Skip sadly passed away in 1993.[97] Although Skip repeatedly asked Flo to marry him during the years they lived together, she continuously turned down his proposals "out of the concern over the insurance for her handicapped daughters."[98] While Flo may have wanted to marry Skip, she was stopped by unfortunate consequences to obtaining a marriage license that were out of her control.

Whatever the reason may be that a couple has for choosing not to take the additional step of legally formalizing their relationship by obtaining a marriage license, the individuals in long-term, cohabiting relationships still face the issue of property rights and division if and when their relationship comes to an end. With the growing reality that more people are choosing to forego marriage and instead remain in long-term, cohabitating relationships,

89. Veera Korhonen, *Percentage of the U.S. Population Who Have Completed Four Years of College or More from 1940 to 2022, by Gender*, STATISTA (Jul. 21, 2023), https://www.statista.com/statistics/184272/educational-attainment-of-college-diploma-or-higher-by-gender/ [https://perma.cc/9CNJ-9GRU].

90. Christine Machovec, *Working Women: Data from the Past, Present, and Future*, U.S. DEPT. OF LABOR BLOG, (Mar. 15, 2023), https://blog.dol.gov/2023/03/15/working-women-data-from-the-past-present-and-future [https://perma.cc/CZ3E-8WTE].

91. *See generally* Byrne v. Laura, 60 Cal. Rptr. 2d 908 (Ct. App. 1997).

92. *Id*. at 911.

93. *Id.*

94. *See id*.

95. *See id*.

96. *Id*.

97. *See id*. at 912.

98. *Id*.

marriage should not be the only option available for people to choose from in order to receive rights and protections under the law. South Carolina, in its decision to adopt common-law marriage, sought to legitimize children and adjust the property rights between parties who treated each other as though they were in a marital relationship.[99] While the goal of legitimizing children has been resolved by statutes that require child support payments and ensure inheritance rights after a parent's passing, there is not a statutory provision that adjusts the property rights between individuals who are in a relationship that resembles a marriage but is missing the license.[100] South Carolina's mechanism for adjusting these property rights was the institution of common-law marriage, and with its abolishment, individuals, primarily women, who take on a caretaking role in their relationship have no recourse if and when the relationship comes to an end.

A. Coverture and Its Lingering Impact

Courts often "insulate the sphere of the home from that of the market, declar[ing] that the labor done within the former has no monetary value, and prevent[ing] the homemaker from accessing any property."[101] This approach by courts has its roots in coverture, a doctrine that has seemingly been abandoned[102] but still has an impact on nonmarital relationships.[103] Coverture is the idea that a man and woman would become one once they got married,[104] and once married, the woman's legal existence would be suspended.[105] The doctrine of coverture provides the legal basis for the assumption made by courts that caretaking services or services within the home are gratuitous unless proven otherwise.[106] "Coverture was explicitly a property regime,"[107] where the wife was prevented from acquiring property or retaining her earnings, and the husband had a duty to provide financial support for his wife.[108] A primary consequence of coverture was that "any work the wife expended on her family, either by raising children or maintaining control of

99. Stone v. Thompson, 428 S.C. 79, 83, 833 S.E.2d 266, 26*8* (2019) (quoting Jeanes v. Jeanes, 355 S.C. 161, 177 S.E.2d 537, (1970)).

100. *See* S.C. CODE ANN. § 63-5-20 (1976 & Supp. 2018); *see also* S.C. CODE ANN. §§ 62-2-101 to -109 (1976 & Supp. 2018).

101. Albertina Antognini, *Nonmarital Coverture*, 99 B.U. L. REV. 2139, 2145 (2019).

102. *See* Obergefell v. Hodges, 576 U.S. 644, 644 (2015).

103. *See* Antognini, *supra* note 101, at 2140.

104. *Id.* at 2142.

105. *Id.*

106. *See id.* at 2160.

107. *Id*. at 2156.

108. *See id*. at 2151.

the home, was considered her 'wifely' duty, which she owed to her husband."[109]

With the passage of the Married Women's Property Act during the nineteenth century, wives became able to own property in their own name, and husbands no longer had a formal duty to provide financial support for their wives.[110] However, courts have continued to perpetuate the idea that caretaking services, services that were typically performed by the wife under coverture, do not lead to any property rights.[111] Although courts will deny property rights for such caretaking services, courts will typically distribute property for services that are unlike those expected of a wife under coverture.[112] Ultimately, the caretaking services that are performed are often considered gratuitous, devaluing the work done in the home, and "the ultimate effect of marking down the value of the homemaking services is to prevent access to material wealth for the individual who engaged in housework."[113] When a nonmarital relationship ends and the individual in the caretaking role seeks a property distribution, "[g]enerally, when the plaintiff is a woman, courts explicitly reason that the individual seeking property should have married,"[114] which ultimately contradicts the idea that the right to remain unmarried is as weighty as the constitutional right to marry. On the other hand, courts routinely determine whether contributions to a nonmarital relationship resulted in an increase in property values or create property rights, but only when "the relationship was coupled with marriage at some point—before marriage, in between multiple marriages, or after marriage."[115] By denying property rights for services rendered in a strictly nonmarital relationship, marriage is promoted as the property-providing status.[116]

Under the doctrine of coverture, it was women who would take on the caretaking role while the husband was under a duty to provide for their wife.[117] However, more men are beginning to take on the caretaking role,[118] and devaluing the caretaking services performed by an individual hurts them whether they are male or female, as seen in *McLane v. Musick*.[119] In this case, Howard and Loretta began dating in 1990 while they were living in the Florida Keys.[120] After they began dating, Howard moved in with Loretta and her

109. *Id*. at 2144.
110. *See id*. at 2142.
111. *See id*. at 2145.
112. *See id*. at 2169.
113. *Id*.
114. *Id*. at 2149 n.37.
115. *Id*. at 2199.
116. *See id*. at 2162.
117. *See id*. at 2151.
118. *See id.* at 2172; FRY, *supra* note 12.
119. 792 So.2d 702 (Fla. Dist. Ct. App. 2001); *see also* Antognini, *supra* note 101, at 2171.
120. *See McLane* at 704.

parents until he and Loretta later moved upstate.[121] The title to the trailer and the land on which they lived were both in Loretta's name.[122] Later on in their relationship, Loretta was diagnosed with breast cancer, and Howard's $70,000 inheritance, which had been deposited into the couple's joint account, helped pay for Loretta's doctors, drugs, hospital stays, and their living expenses.[123] Howard also cut back on his work in order to be able to take Loretta to her chemo and radiation treatments.[124] After Loretta passed away, Howard was left with nothing because her family took both the trailer and land that had been in her name.[125] Howard sued for reimbursement of Loretta's medical bills and for the time spent nursing Loretta, as well as for the work he did to improve the land they had lived on.[126] Ultimately, the court only recognized his actions in excavating the land and ignored the actions taken by both Howard and Loretta that seemed to create a partnership the law should recognize.[127] Howard and Loretta's failure to obtain a marriage license resulted in Howard's inability to receive any of her property upon her passing.

IV. ALTERNATIVES TO THE *STONE* ALL-OR-NOTHING REGIME

South Carolina's goal in adopting common-law marriage in 1832 was to "legitimatize innocent children and adjust property rights between the parties who treated each other the same as husband and wife."[128] It is true that children are now legitimized through South Carolina statute,[129] rendering common-law marriages unnecessary to do so. However, the *Stone* decision fails to discuss how property rights are adjusted between parties who treat each other as though they were husband and wife now that common-law marriages have been abolished. South Carolina should recognize alternatives to marriage, namely *Marvin* agreements and domestic partnerships, that would grant some protections to the parties in cohabiting relationships. As the California Supreme Court explained in *Marvin v. Marvin*, in 1976, "the structure of society itself largely depends upon the institution of marriage, and nothing we have said in this opinion should be taken to derogate that institution."[130] Marriage remains the optimal arrangement for many

121. *Id.*
122. *Id.*
123. *Id.*
124. ERTMAN, *supra* note 5, at 139.
125. *Id.* at 140.
126. *See McLane,* 792 So. 2d at 704; *see also* ERTMAN, *supra* note 5, at 140.
127. *McLane,* 792 So. 2d at 704; *see also* ERTMAN, *supra* note 5, at 140.
128. Jeanes v. Jeanes, 355 S.C. 161, 168–69, 177 S.E.2d 537, 540–41 (1970).
129. *See* S.C. CODE ANN. § 63-5-20 (1976 & Supp. 2018); *id.* § 62-2-109 (1976 & Supp. 2018).
130. Marvin v. Marvin, 557 P.2d 106, 122 (Cal. 1976).

couples,[131] and the governmental preference for marriage is reflected in the rights and protections afforded to married couples. When a couple obtains a marriage license, they receive rights and protections in several areas, including but not limited to taxes, inheritance and property rights, spousal privileges, hospital visitation rights, workers' compensation benefits, and health insurance.[132] Neither *Marvin* agreements nor domestic partnerships would grant individuals or couples all of these rights and protections that are afforded to couples when they choose to marry. However, the rights and protections extended would ensure that the individual in the relationship who takes on a caretaker role has some form of property protection if and when the relationship comes to an end.

A. Marvin *Agreements*

One of the alternative approaches that South Carolina should adopt now that common-law marriage is no longer available to adjust the property rights between parties is adopting ta statute that would honor living-together contracts. These types of contracts are commonly known as "*Marvin* agreements" or "palimony agreements," and they would function to provide a certain level of protection to the individual who has taken on the caretaker or stay-at-home role in their relationship.[133]

The term *Marvin* agreement originated from *Marvin v. Marvin*, a California Supreme Court case from 1976.[134] In this case, the Plaintiff and the Defendant lived together for seven years, but the Defendant's sixteen year marriage to another woman prevented the parties from getting married.[135] The couple entered into an oral agreement that the Plaintiff would leave her career to become a fulltime "companion, homemaker, housekeeper, and cook" to the Defendant in exchange for him providing for her "financial support and needs for the rest of her life."[136] After the parties had lived together for seven years, the Defendant kicked the Plaintiff out of his home, and he stopped providing financial support approximately a year after that.[137] This act led to the Plaintiff bringing an action against the Defendant for breach of contract.[138] The court held that the Plaintiff and other unmarried individuals could sue their partner for property division when their relationship ended, stating that "[t]he fact that a man and woman live together without marriage, and engage in a sexual

131. *See* ERTMAN, *supra* note 5, at 125.
132. *See* Spires, *supra* note 19, at 909.
133. *See* ERTMAN, *supra* note 5, at 116.
134. *See generally Marvin,* 557 P.2d 106.
135. *See* ERTMAN, *supra* note 5, at 116
136. *Marvin,* 557 P.2d at 110.
137. *Id.*
138. *See id*. at 111.

relationship, does not in itself invalidate agreements between them relating to their earnings, property, or expenses."[139] A contract between nonmarital parties would be unenforceable only when it expressly rested on the "immoral and illicit consideration of meretricious sexual services."[140] The California Supreme Court held that contracts made in contemplation of creating or continuing a nonmarital relationship will not be invalidated merely on those grounds.[141]

Unfortunately, the couple in *Marvin* was not a unique case. Take Eugene Costa for example. Eugene lived with Catherine for twenty four years, and during their time living together, Eugene was a stay-at-home dad who focused on homeschooling their daughter while Catherine focused on building her business.[142] Catherine "put all the property in her name, so when they separated, Eugene had no right to anything" because Illinois at that time did not recognize *Marvin* agreements.[143] In South Carolina, Eugene would only be able to recover some of the property if he could show by clear and convincing evidence under the new *Stone* standards that the parties had a common-law marriage.[144] Had their relationship started in South Carolina on or after July 25, 2019 – the day following the *Stone* decision – Eugene would not be entitled to anything because he and Catherine never obtained a marriage license.[145] Creating a law that recognizes written *Marvin* agreements would protect individuals in Eugene's position where the couple chose not to obtain a marriage license but rather decided to settle some of the terms of their relationships in writing.

South Carolina should adopt a law that recognizes *Marvin* agreements in order to adjust the property rights between couples who are in cohabitating relationships but do not obtain a marriage license. South Carolina would not be the first state to recognize such agreements as a majority of the United States recognizes *Marvin* or palimony agreements.[146] For predictability and judicial economy, one of the primary concerns which led to the abolition of common-law marriage,[147] South Carolina should follow the example of states such as New Jersey[148] and New York[149] and require that these agreements be put into writing. The statutory provision in New Jersey that recognizes these

139. *See id*. at 113.
140. *See id*. at 112.
141. *See id*. at 113.
142. *See* ERTMAN, *supra* note 5, at 116.
143. *Id*.
144. Stone v. Thompson, 428 S.C. 79, 83, 833 S.E.2d 266, 268 (2019).
145. *See id*. at 82, 833 S.E.2d at 267.
146. *See* Ryan Sammy, *Guide to Palimony Law,* LAWSUIT.ORG (last visited Dec. 20, 2023), https://lawsuit.org/family-law/palimony-law-guide/ [https://perma.cc/8CPE-S3X9].
147. *See Stone,*428 S.C. at 84, 833 S.E.2d at 268–69.
148. *See* Albertina Antognini, *The Law of Nonmarriage,* 58 B.C. L. REV. 1, 16 (2017).
149. *See id*. at 34.

types of agreements was amended "to hold that a claim for palimony could only be actionable if the agreement was in writing," requiring that "[f]or the law to recognize the value of the services provided, the exchange must be express, and the parties represented by counsel."[150] New York allows unmarried couples to form a contract relating to domestic services, so long as the contract is express.[151] Adopting a statute recognizing written M*arvin* agreements would essentially revive the common-law marriage institution without requiring that the couple hold themselves out as married, which often leads to "decidedly mixed" evidence as seen in *Stone*.[152]

Recognizing written *Marvin* agreements would allow for couples to contractually agree to take on rights and duties like property sharing, and decide what each party is entitled to in the event that the relationship terminates.[153] Often times, the difference between these couples and couples who marry is "merely the difference between obtaining a marriage license and failing to do so."[154] When couples choose to marry and the marriage later ends, "all states allow spouses […] to access property to equal and equitable distribution."[155] Cohabitating couples often acquire property together as a couple, and by recognizing *Marvin* agreements, individuals have a way to ensure that the property is equitably divided when the relationship comes to an end.

Beyond the division of property acquired during the relationship, *Marvin* agreements provide protections to the individual in the relationship who maintained a caretaker role in exchange for financial support by providing a cause of action for breach of contract, as in the original *Marvin* case. Under coverture, when a couple entered into a marriage contract, the wife implicitly agreed to perform caretaking services for her husband without being paid.[156] Due to the lingering effects of coverture, caretaking services are often found to be uncompensable and "free, furnished based on the love and affection" of the relationship.[157] Where courts do not presume that the services were provided gratuitously, courts often found that they have been repaid over the course of the relationship.[158] However, after *Marvin*, "'the services of a homemaker, housekeeper cook and companion' have a quantifiable value."[159]

150. *Id*. at 16.
151. *See id*. at 34.
152. *See Stone*, 428 S.C. at 93, 833 S.E.2d at 273.
153. ERTMAN, *supra* note 5, at 116–17.
154. Antognini, *supra* note 148, at 19.
155. Antognini, *supra* note 101, at 2142.
156. *See id.* at 2152.
157. *Id.* at 2153.
158. *See id.* at 2173.
159. Antognini, *supra* note 148, at 26 (quoting *In re* Marriage of Leib, 145 Cal. Rptr. 763, 766 (Ct. App. 1978)).

By choosing to stay home and take care of the house or children, the individual is helping contribute to the accumulation of property.[160] Had the person not taken on the caretaking role, he or she would have likely been able to obtain employment and help contribute to the couple's finances and their own individual finances.[161] Adopting a statute that recognizes express *Marvin* agreements as valid contracts allows for couples to decide amongst themselves the value of such services and how they should be repaid in the event that the relationship ends.

South Carolina has not previously awarded palimony to a cohabitating couple, but the opportunity remains open for express *Marvin* agreements to be recognized. The only comparable case in South Carolina is *Grant v. Butt*.[162] In *Grant*, Mamie and William met, and William fell in love with Mamie.[163] He asked Mamie to marry him, but she refused because South Carolina law forbid interracial marriages at the time.[164] In the complaint, Mamie alleged that an oral contract was made between her and William, agreeing that she would not marry anyone while he was alive and would give him "the full benefit of her presence, companionship, care and assistance, and the absolute freedom of her home."[165] In return, he agreed to give her his affection and companionship, give her money to maintain herself, her home, and her children, take out a life insurance policy and make her the beneficiary of said policy, assign certain assets he owned to her, and make a will giving her "one-half of his estate if she survived him and kept her agreements."[166] After William passed away, Mamie was unable to find a will that would allow her to enforce the contract, and she brought an action against his estate, alleging that she was contractually entitled to half of William's net assets.[167]

The South Carolina Supreme Court refused to enforce the contract, finding that the contract "not only violates the law of the land […], it defies the basic moral principles upon which family relationships exist and upon which the social order of the State must of necessity rest."[168] The court reasoned that the primary consideration of the contract between Mamie and William "was that she would live with the intestate and submit herself completely to his adulterous embraces," and such consideration rendered the contract void.[169] However, at the time that *Grant* was decided, "gender

160. *See* Antognini, *supra* note 101, at 2182.
161. *See id*.
162. 198 S.C. 298, 17 S.E.2d 689 (1941).
163. *See id.* at 298, 17 S.E.2d at 690.
164. *Id.*
165. *Id*.
166. *Id*.
167. *See id.* at 298, 17 S.E.2d at 691.
168. *Id.* at 298, 17 S.E.2d at 693.
169. *See id.* at 298, 17 S.E.2d at 692–94.

influences, meretricious consideration, and a general revulsion against cohabitation were the primary concerns of the court."[170] The societal opinion of cohabitation has changed as cohabitation rates continues to increase, and written *Marvin* agreements would relate to their earnings, property, and expenses, not the sexual relationship between the parties.[171] As articulated by the California Supreme Court in *Marvin*, "a man and woman liv[ing] together without marriage, and engag[ing] in a sexual relationship, does not in itself invalidate agreements between them" which relates to how they choose to split their earnings, property, and/or expenses.[172] South Carolina should adopt a statute recognizing written *Marvin* agreements, allowing couples to choose how they wish to manage their relationship when it comes to finances and property.

B. Domestic Partnerships

Another alternative to marriage that South Carolina could implement is adopting a process that allows couples to register a domestic partnership as an alternative to marriage. While some states now offer domestic partnerships to both same-sex and opposite-sex couples, domestic partnerships were originally created as a way for same-sex couples to receive legal recognition of their relationship during a time when most states did not allow same-sex marriages.[173] The effort to gain state recognition of same-sex relationships began in the 1970s.[174] As the number of same-sex couples participating in both formal and nonformal marriage ceremonies increased, "[i]t was thus inevitable that, despite general public hostility to gay people, some lesbian and gay male couples would be bold and determined enough" to try and demand a marriage license from their city clerk.[175] During the early 1970s, almost a dozen same-sex couples tried to demand a marriage license, and after their state governments refused, three couples filed a lawsuit in response.[176] However, all three lawsuits were unsuccessful.[177] Other same-sex couples tried taking different approaches to securing legal recognition of their

170. Spires, *supra* note 19, at 940.

171. Juliana Menasce Horowtiz et al., *2. Public Views of Marriage and Cohabitation,* PEW RSCH. CNTR. (Nov. 6, 2019), https://www.pewresearch.org/social-trends/2019/11/06/public-views-of-marriage-and-cohabitation/ [https://perma.cc/328T-MVV8].

172. Marvin v. Marvin, 557 P.2d 106, 113 (Cal. 1976).

173. *See* David L. Chambers, *Couples: Marriage, Civil Union, and Domestic Partnership*, *in* CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS 281, 282 (John D'Emilio et al. eds., 2000).

174. *Id.*

175. *Id*. at 283.

176. *See id.* at 283–87.

177. *See id.* at 288.

relationships, such as going to court and adopting their partners.[178] While these adoption attempts were often approved, they were not an appealing alternative to most couples, both because of the parent-child symbolism in adoption and because adoption only secured some of the legal benefits that marriage offers to couples.[179]

In 1997, Hawaii became the first state to adopt some form of partner registration, although the couples were referred to as reciprocal beneficiaries rather than domestic partners.[180] The adoption of this system was the result of a case known initially as *Baehr v. Levin*.[181] Ninia Baehr, in her early thirties, met and fell in love with a woman named Genora, and Genora asked Ninia to marry her.[182] Ninia said yes, but they were both stunned when their life insurance companies would not allow them to name one another as beneficiaries.[183] The couple then applied for a marriage license with the Hawaii Department of Health in 1990 and were formally denied a year later, at which point their attorney filed a suit.[184] Their claims were initially dismissed by the trial court, but in 1993, the Hawaii Supreme Court reversed, holding that the state statute "presumptively denied the plaintiffs equal protection of the laws under the Hawaii constitution because it discriminate[d] on the basis of sex," requiring the state to demonstrate a compelling reason for limiting marriage to opposite-sex couples.[185] On remand, the trial court ruled that the state failed to demonstrate a compelling reason for limited marriage, and in response, Hawaii adopted the Reciprocal Beneficiaries Act in 1997.[186] This Act allowed same-sex couples to register with the state and obtain some of the rights afforded to married couples.[187] *Baehr* and the registration system that resulted from it inspired couples in other states to consider filing suit in their own courts.[188] While most of the cases that were prompted by the success in Hawaii ultimately ended unsuccessfully, a case in Vermont became the first decision by a state appellate court to hold a marriage statute unconstitutional.[189] In *Baker v. State*, the court held that Vermont "must extend all the legal benefits and responsibilities of married persons to

178. *See id*. at 299.
179. *See id*.
180. *See id*. at 301.
181. *See id*. at 290.
182. *Id.*
183. *Id.*
184. *See id*. at 290–91.
185. *Id*. at 291.
186. *See id.* at 292–93.
187. *Id.* at 293.
188. *Id.*
189. *Id.* at 296.

same-sex couples," either by allowing them to marry or by creating a parallel institution, such as domestic partnerships.[190]

In *Obergefell v. Hodges*, the United States Supreme Court held that the right to marry is a fundamental right, and under the Fourteenth Amendment, same-sex couples cannot be deprived of such a right.[191] While same-sex couples are now afforded the constitutional right to marry, some states have continued to recognize domestic partnerships as an alternative to marriage available to both same-sex and opposite-sex couples.[192] South Carolina should adopt a registration process allowing couples to register for a domestic partnership as an alternative to obtaining a marriage license, and the domestic partnership should give individuals rights and protections when it comes to property distribution at the end of the relationship.

The American Law Institute defines domestic partners as two individuals who are not married but who share a primary residence and live life together as a couple for a significant period of time.[193] The requirement of continuously living together for a long period of time ensures that the couple has the "necessary prerequisite to recovery for nonmarital partners."[194] The American Law Institute suggests that three years of continuous cohabitation would be a reasonable length of time for a couple without children to be considered domestic partners.[195] However, the American Law Institute recommends that no bright line time requirement would be established, "suggesting instead that 'the greater the change wrought by the relationship on the life of either or both parties, and the greater the losses associated with dissolution of the relationship, the shorter the period of time necessary to satisfy the requirement" should be.[196] This recommendation that states not adopt a bright line rule allows for the courts to have some flexibility in determining whether a domestic partnership existed.[197]

The American Law Institute's factors for determining that a domestic partnership existed are similar to the ones used to establish the existence of a common-law marriage, such as the parties' oral or written statements, the degree that their finances were intermingled, and their reputation in the

190. *Id.* at 298.

191. Obergefell v. Hodges, 576 U.S. 644, 675 (2015).

192. *See e.g.*, Oregon Center for Health Statistics, *Oregon Registered Domestic Partnership*, OR. HEALTH AUTH., https://www.oregon.gov/oha/ph/birthdeathcertificates/registervitalrecords/pages/dp.aspx [https://perma.cc/N6FG-KB4V].

193. Mark Strasser, *A Small Step Forward: The ALI Domestic Partners Recommendation*, 2001 BYU L. REV. 1135, 1137 (2001).

194. *Id*. at 1138.

195. *Id.* at 1138 n.22.

196. *Id.* at 1138–39 (quoting A.L.I., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS & RECOMMENDATIONS (Tentative Draft No. 4, Apr. 10, 2000) § 6.01 cmt. a)).

197. *Id.* at 1139.

community.[198] However, as seen in many common-law marriage cases, evidence of these factors typically tends to lean in both directions when the issue is brought to court. South Carolina should adopt a process for registering a domestic partnership, similar to the ones seen in New York City, San Francisco, and Oregon. The requirements in New York City include that: (1) both individuals live within New York City or that at least one individual be employed by the city, (2) both individuals be eighteen years or older, (3) neither individual be married or related by blood in a way that would bar their marriage within the state of New York, (4) both have a close and committed personal relationship and live together for a continuous basis, (5) both individuals be able to state an identical address on the application, and (6) neither individual be in another domestic partnership.[199] San Francisco's requirements differ slightly, requiring that couples be in an intimate, committed relationship, share a place to live (even if one party also has a separate place elsewhere), agree to be responsible for one another's basic living expenses during the course of the domestic partnership, be eighteen years old or older, not be related, not be married, and not be in a different domestic partnership.[200]

While these examples are on the city level, domestic partnerships are also recognized on the state-level, such as in Oregon.[201] In Oregon, both parties must be eighteen years old or older, one party must be a resident of the state, and neither party can be in a marriage or registered domestic partnership.[202] While the requirements vary between New York City, San Francisco, and Oregon, each location's requirements are both clear to couples seeking to register a domestic partnership and clear to the city or state in reviewing such applications. South Carolina should adopt a domestic partnership registration system with the commonly seen requirements, requiring individuals to be at least eighteen years old, residents of South Carolina who live together, and who are not in other registered marriages or domestic partnerships.

Registration of a domestic partnership creates a bright line way for courts to determine if one existed between the parties, and upon registration, South Carolina should give property distribution rights to the parties registered. Once a domestic partnership is registered, "individuals . . . may be subject to claims for support or property division when their relationship ends."[203] In

198. *Id.* at 1137.

199. *See* Office of the City Clerk, *Domestic Partnership Registration*, THE CITY OF N.Y., https://www.cityclerk.nyc.gov/content/domestic-partnership-registration [https://perma.cc/JT96-6LFE].

200. *See* City and County of San Francisco, *Register as Domestic Partners*, S.F. GOV'T, (Apr. 28, 2023), https://www.sf.gov/register-domestic-partners [https://perma.cc/359S-97EQ].

201. *See* Oregon Center for Health Statistics, *supra* note 192.

202. *See id*.

203. Strasser, *supra* note 193, at 1139.

recognizing domestic partnerships, South Carolina would not be "recognizing a new form of marriage and would not be forced to extend benefits to a new set of beneficiaries," but instead would be requiring "the distribution of assets acquired during the relationship rather than permitting the shrewd party to keep the assets and forcing the less sophisticated party to seek public assistance."[204] However, beyond property distribution, South Carolina may choose to extend some of the rights or protections that are afforded to married couples as other cities and states have. For example, New York City authorizes the mayor to provide awards to domestic partners of first responders who are killed in the discharge of their duty, provides health insurance coverage to the domestic partner of a first responder who is killed as a result of an accident or injury sustained from their duties, and grants domestic partners visitation rights when those rights are given to spouses or next-of-kin at a hospital.[205] Creating a domestic partnership registration system would provide individuals in cohabitating relationships with an alternative to marriage, ensuring that individuals in a caretaking role are still afforded property protection.

V. CONCLUSION

On July 24, 2019, the South Carolina Supreme Court abolished the institution of common-law marriage, resulting in an all-or-nothing regime where individuals must choose to get married in order for their relationship to be recognized by the law.[206] Since doing so, South Carolina has failed to implement any other alternatives to marriage despite the fact that more individuals are choosing to be in cohabitating relationships while marriage rates continue to steadily decrease. While some of the driving concerns for adopting common-law marriage have been resolved through state statutes,[207] the lack of marriage alternatives in South Carolina harms individuals in cohabitating relationships who, either through circumstances or by choice, takes on a stronger caretaking role. By reducing their working hours or leaving their job entirely, they are able to dedicate their time to taking care of their home or children, enabling the other partner to work or work more hours. The work that comes with being the caretaker in the relationship has a quantifiable value that couples should be able to define amongst themselves through *Marvin* agreements, and South Carolina should adopt a statute recognizing these express agreements between the parties. In the alternative, South

204. *Id*. at 1140.

205. *See* Office of the City Clerk, *supra* note 200.

206. *See* Stone v. Thompson, 428 S.C. 79, 82, 833 S.E.2d 266, 267 (2019).

207. *See, e.g.*, S.C. CODE ANN. § 63-5-20 (1976 & Supp. 2018); *id.* §§ 62-2-101 to -109 (1976 & Supp. 2018).

Carolina should adopt a domestic partnership registration system that would give couples the same property distribution rights that are given to couples who obtain a marriage license. Without the adoption of marriage alternatives that function to adjust property rights between couples in nonmarital, cohabitating relationships, individuals in the caretaking role will continue to be harmed as cohabitation rates continue to rise. With the right to remain unmarried being as important as the right to marry,[208] alternatives to marriage should be adopted to protect the parties who decide to exercise their right to remain unmarried.

208. *See Stone*, 428 S.C. at 86, 833 S.E.2d at 269.