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MILITARY CHILD CUSTODY DISPUTES: THE NEED FOR FEDERAL ENCOURAGEMENT FOR THE STATES' ADOPTION OF THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

*Amy C. Gromek**

I. INTRODUCTION

When Michael Grantham, the primary physical custodian of his two children pursuant to a decree of dissolution, was called to active duty with the Iowa National Guard, he arranged for his children to reside with his mother.[1] The children's mother then filed a petition seeking permanent physical care of the children and temporary custody of the children pendente lite[2] while Michael was away for service.[3] Michael requested a stay of the custody proceedings under the applicable law until he returned to civilian status, but the Iowa District Court for Butler County denied the request.[4] Ultimately, with Michael in attendance, the district court ruled that permanent physical care of the children should be changed from Michael to his ex-wife.[5] The court of appeals reversed and emphasized how "[a]s a result of the judgment of the district court, a soldier, who answered our Nations [sic] call to defend, lost physical care of his children because he was 'obliged to drop [his] own affairs to take up the burdens of the nation.'"[6] The Iowa Supreme Court reinstated the district court's ruling, however, agreeing that circumstances had significantly changed since the entry of the dissolution decree and

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[1] *In re* Marriage of Grantham, 698 N.W.2d 140, 142–43 (Iowa 2005).

[2] Pendente lite is a Latin term for "while the action is pending." BLACK'S LAW DICTIONARY 1248 (9th ed. 2009).

[3] *Grantham*, 698 N.W.2d at 143.

[4] *Id.*

[5] *Id.*

[6] *In re* Marriage of Grantham, No. 4-468, 2004 Iowa App. LEXIS 1257, at *33 (Iowa Ct. App. Nov. 15, 2004), *vacated by In re* Marriage of Grantham, 698 N.W.2d 140 (Iowa 2005).

the children's mother was presently the most effective parent to both children.[7]

In February 2003, Eva Crouch, a member of the Kentucky National Guard, was ordered to report to active federal duty within seventy-two hours.[8] In this short time frame, she made arrangements to transfer physical custody of her child to her ex-husband for the duration of her active deployment—an arrangement that both parties intended to be temporary.[9] The ex-husband's attorney drafted an order to memorialize these intentions, and the order was entered at the state trial court.[10] Eva was then mobilized and deployed to Fort Knox, Kentucky for one year.[11] In 2004, she contacted her ex-husband to arrange for reassuming physical custody of their child.[12] Her ex-husband, however, refused to transfer physical custody without a court order.[13] At trial, the court instead entered an order finding that it was in the child's best interests to remain with the father.[14] After two years of litigation and about $25,000 in legal fees,[15] Eva ultimately prevailed in her custody battle when the Supreme Court of Kentucky held that the order made prior to Eva Crouch's deployment was temporary and, therefore, not a modification of the original permanent custody order.[16] In a subsequent comment to the media, Eva said, "I'd have spent a million [dollars]. My child was my life . . . I go serve my country, and I come back and have to go through hell and high water."[17]

These cases, along with several other stories documented in the news in recent years,[18] portray how child custody disputes involving

[7] *In re* Marriage of Grantham, 698 N.W.2d at 146–47.
[8] Crouch v. Crouch, 201 S.W.3d 463, 464 (Ky. 2006).
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Crouch*, 201 S.W.3d at 464.
[15] *Deployed Troops Fight for Lost Custody of Kids*, NBCNEWS.COM (May 5, 2007), http://www.msnbc.msn.com/id/18506417/.
[16] *Crouch*, 201 S.W.3d at 466. The Supreme Court of Kentucky upheld the court of appeal's determination. *Id.* at 464–65.
[17] *Deployed Troops Fight for Lost Custody of Kids*, *supra* note 15.
[18] *See id.*; *see also* Michelle Miller, *Military Parents Fight for Custody at Home*, CBSNEWS.COM (Dec. 12, 2009), http://www.cbsnews.com/2100-18563_162-5972251.html; David Kocieniewski, *Soldier's Service Leads to a Custody Battle at Home*, N.Y. TIMES (Aug. 31, 2009), http://www.nytimes.com/2009/09/01/nyregion/01guard.html?pagewanted=all; Ann Scott Tyson, *Deployment Being Used Against Parents in Child Custody Battles*, THE WASH. POST (Dec. 30, 2008),

members of the military service can become unpleasant and costly by-products of active military duty. Since October 2001, there have been unprecedented levels of deployment and increased reliance on Reserve and Guard members.[19] With the United States' ongoing involvement in conflicts in Afghanistan and Iraq, the inadequacies of legal protections for military servicemembers who are single and divorced, many of whom maintained physical custody of their children prior to deployment, have come to the forefront of discussion and political debate.[20] While some sources have drawn attention to the stories of servicemember-mothers involved in custody battles as a result of military deployment,[21] the problem is one that transcends gender lines. In effect, "single parents in uniform fight a war on two fronts: For the nation they are sworn to defend, and for the children they are losing because of that duty."[22]

The federal Servicemembers Civil Relief Act ("SCRA") provides procedural protections for servicemembers, such as staying child custody proceedings for at least ninety days if the active-duty servicemember meets particular conditions,[23] but it does not address the impact that a servicemember's deployment may have on future custody determinations. In the past several years, many states have implemented laws designed to protect servicemembers in child custody and visitation cases, but these laws are not consistent across the country.[24] In July 2012, the Uniform Law Commission[25] ("ULC")

http://www.washingtonpost.com /wp-dyn/content/article/2008/12/29/AR2008122902611.html.

[19] U.S. DEP'T OF DEF., REPORT ON THE IMPACT OF DEPLOYMENT OF MEMBERS OF THE ARMED FORCES ON THEIR DEPENDENT CHILDREN 1 (2010), *available at* http://www.militaryonesource.mil/12038/MOS/Reports/Report_to_Congress_on_Impact_of_Deployment_on_Military_Children.pdf.

[20] *Senators Still Skeptical of Federal Child Custody Protections*, AIR FORCE TIMES (June 25, 2012), *available at* 2012 WLNR 14268077.

[21] Rachelle L. Paquin, Note, *Defining the "Fit": The Impact of Gender and Servicemember Status on Child Custody Determinations*, 14 J. GENDER RACE & JUST. 533, 574–75 (2011).

[22] *Deployed Troops Fight for Lost Custody of Kids*, *supra* note 15.

[23] *See generally* Servicemembers Civil Relief Act, Pub. L. No. 108–189, 177 Stat. 2835 (2003) (codified as amended at 50 U.S.C. app. §§ 501–594 (2006)).

[24] *Deployed Parents Custody and Visitation Act Summary*, UNIF. LAW COMM'N, http://www.uniformlaws.org/ActSummary.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act (last visited Feb. 23, 2014).

[25] The ULC is a group of practicing lawyers, judges, legislators and legislative staff, and law professors who have been appointed by state governments to research, draft, and promote enactment of uniform state laws. *About the ULC*, UNIF. LAW COMM'N, http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC (last visited Feb. 23, 2014).

granted final approval to the Uniform Deployed Parents Custody and Visitation Act ("UDPCVA"), which all state legislatures could adopt to standardize custody rights for deployed servicemembers.[26] Since 2008, however, supporters of federal legislation have proposed that Congress should amend the SCRA to provide greater legal protection for servicemembers in child custody disputes.[27]

Parts II and III of this Comment examine military policy regarding single-parent service and state-court efforts to address child custody issues for single-parent servicemembers. Part IV describes the current SCRA and Congressman Michael Turner's proposed amendments to the federal legislation. Part V analyzes the benefits and shortcomings of the ULC's Uniform Deployed Parents Custody and Visitation Act. Part VI argues that Congress should defer to the approach proposed by the Uniform Deployed Parents Custody and Visitation Act, but that Congress should make funding for welfare contingent on states' adoption of the uniform law in order to encourage its adoption in all states.

II. BACKGROUND AND MILITARY POLICY REGARDING SINGLE-PARENT SERVICE

In addressing military child custody matters, it is first necessary to consider the military's underlying policies and regulations concerning single-parent service. Department of Defense Instruction 1304.26 provides in pertinent part: "The Military Services may not enlist married individuals with more than two dependents under the age of 18 or unmarried individuals with custody of any dependents under the age of 18."[28] The Air Force Recruiting Service has specifically emphasized that an unmarried applicant who has physical

[26] *Panel: Improve Child Custody Rules for Military*, USATODAY.COM (July 18, 2012), http://www.usatoday.com/news/military/story/2012-07-18/military-child-custody/56294984/1.

[27] Letter from Michael R. Turner and Robert Andrews, Members of Congress, to Leon Panetta, U.S. Sec'y of Def. (Mar. 29, 2012), *available at* http://turner.house.gov/uploadedfiles/hasc_child_custody_letter_to_secretary_panetta_-_3-29-12.pdf; *see also Senators Still Skeptical of Federal Child Custody Protections*, *supra* note 20.

[28] U.S. DEP'T OF DEF., INSTRUCTION NO. 1304.26, QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION 8 (2005), *available at* http://www.dtic.mil/whs/directives/corres/pdf/130426p.pdf (emphasis added); *see also* U.S. DEP'T OF ARMY, REG. 601-210, ACTIVE AND RESERVE COMPONENTS ENLISTMENT PROGRAM 11 (2011); U.S. DEP'T OF NAVY, MCO P1100.72C, MILITARY PERSONNEL PROCUREMENT MANUAL, VOLUME 2: ENLISTED PROCUREMENT 3-37 (2004); AIR FORCE RECRUITING SERVICE, INSTRUCTION 36-2001, RECRUITING PROCEDURES FOR THE AIR FORCE 49 (2012).

or legal custody of a family member incapable of self-care "does not have the flexibility required to perform worldwide duty, short-notice [temporary duty], remote tours, and varied duty hours."[29] As such, an applicant falling into this category is ineligible for enlistment unless permanent physical and legal custody has been transferred by court order.[30]

Although this enlistment restriction exists across all branches of the armed services, married individuals who are already serving in the military sometimes become single parents, by way of divorce or death of spouse. As of 2009, there were a total of 74,754 single-parent active-duty members in the Army, Navy, Marine Corps, and Air Force combined.[31] There were 77,181 single parents serving in the Selected Reserves, which includes Guard components,[32] Reserve components,[33] and the Coast Guard Reserve.[34] According to 2010 data, single parents make up 17% of the servicemembers who deployed to Operation Enduring Freedom/Operation Iraqi Freedom.[35]

Considering the practical difficulties presented when military servicemembers are responsible for the care of dependents, the military has implemented ways to standardize the family care requirements for all of the military services. Department of Defense Instruction Number 1342.19 provides that "[a]ll Service members . . . shall plan for contingencies in the care and support of dependent family members, and shall develop and submit a family care plan within the timeliness set forth in this Instruction."[36] The Army, for example, emphasizes how plans must be made "to ensure Family members are properly and adequately cared for when the Soldier is

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[29] AIR FORCE RECRUITING SERVICE, INSTRUCTION 36-2001, *supra* note 28.

[30] *Id.*

[31] U.S. DEP'T OF DEF., DEMOGRAPHICS 2009: PROFILE OF THE MILITARY COMMUNITY 64 (2009), *available at* http://www.militaryonesource.mil/12038/MOS/Reports/2009_Demographics_Report.pdf.

[32] Guard "components" include the Army National Guard and Air National Guard. *Id.* at 128.

[33] Reserve "components" include the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve. *Id.*

[34] *Id.*

[35] REPORT ON THE IMPACT OF DEPLOYMENT OF MEMBERS OF THE ARMED FORCES ON THEIR DEPENDENT CHILDREN, *supra* note 19, at 13. Notably, the Department of Defense would likely never extend Instruction 1304.26 to cover servicemember parents who become single by divorce or death of a spouse because, along with conveying a severe lack of sensitivity, this measure would surely mean the actual loss of a considerable number of current servicemembers.

[36] U.S. DEP'T OF DEF., INSTRUCTION NO. 1342.19, FAMILY CARE PLANS 2 (2010), *available at* http://www.dtic.mil/whs/directives/corres/pdf/134219p.pdf.

deployed, on [temporary duty], or otherwise not available due to military requirements."[37] Despite the necessity of these plans for single military parents, the Family Care Plan ("FCP"), mandated under Instruction Number 1342.19, is not a legal document that can change a court-mandated custodial arrangement.[38] The FCP's "sole purpose" is to document for the military how soldiers plan to provide for the care of their family members when military duties call.[39] The FCP must include proof that the servicemember has obtained consent to the planned designation of guardianship from all parties with a legal interest in the custody and care of the minor child, or, alternatively, "proof that *reasonable efforts* have been made to obtain consent to such designation."[40]

In sum, because an FCP lacks overall legal enforceability, it is of little assistance if a custody dispute erupts between a deployed servicemember, who created the plan, and a non-military party with legally enforceable custody rights.[41] If the non-military, non-custodial natural or adoptive parent challenges the FCP and seeks to modify the custody status of the child in court, the FCP has no legally binding effect.[42] Some states, though, have made efforts to provide greater legal protections for the rights of deployed military personnel in the child custody context.[43] Part III explores these efforts and the associated problems and shortcomings.

III. STATE-COURT EFFORTS TO ADDRESS CHILD CUSTODY ISSUES FOR RETURNING SERVICEMEMBERS

Single-parent servicemembers who arrange for temporary custody of their children, often through FCPs, and plan to resume physical custody following deployment face certain legal complications. There is a tension at times between state family law's "best interests of the child" standard and the servicemember's interest in resuming custody of his or her child.

[37] U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY 5-5 (2008).
[38] *Id.*
[39] *Id.*
[40] *Id.* (emphasis added).
[41] Shawn P. Ayotte, Note, *Protecting Servicemembers from Unfair Custody Decisions While Preserving the Child's Best Interests*, 45 NEW ENG. L. REV. 655, 662 (2011).
[42] *See generally id.*
[43] *See* Jeffrey P. Sexton & Jonathan Brent, *Child Custody and Deployments: The States Step in to Fill the SCRA Gap*, 2008 ARMY LAW. 9, 11 (2008).

A. "Best Interests of the Child" Framework and Custody Modification

In 2000, the Supreme Court reaffirmed that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.[44] In general, courts aim to make decisions in accordance with the best interests of the child while remaining within constitutional parameters.[45] Courts will typically look to a variety of factors to determine what is in the child's best interests when making a custody determination.[46] The Uniform Marriage and Divorce Act, though enacted in only a handful of states, codifies factors that courts commonly rely upon in most jurisdictions.[47] These factors include, but are not limited to, the following:

> (1) the wishes of the child's parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest; (4) the child's adjustment to his home, school, and community; and (5) the mental and physical health of all individuals involved.[48]

Most courts will modify a custody decision only if there is a "substantial change in circumstances."[49] States vary, however, on the specific requirements to obtain a hearing and the standards used for modification.[50] For example, the Supreme Court of Florida has held that a two-part substantial change test applies to modification of all child custody agreements:[51] the movant seeking modification of custody must show both that the circumstances have substantially and materially changed since the original custody determination and that the child's best interests justify changing custody.[52] The substantial

[44] Troxel v. Granville, 530 U.S. 57, 65 (2000); *see also* Meyer v. Nebraska, 262 U.S. 390, 399 (1923) ("liberty" under the Due Process Clause includes the right of the individual to "establish a home and bring up children"); Pierce v. Soc'y of the Sisters, 268 U.S. 510, 534–35 (1925) (discussing "the liberty of parents and guardians to direct the upbringing and education of children under their control").

[45] WALTER WADLINGTON & RAYMOND C. O'BRIEN, FAMILY LAW IN PERSPECTIVE 7 (3d ed. 2012).

[46] JUDITH AREEN ET AL., FAMILY LAW CASES AND MATERIALS 768 (6th ed. 2012).

[47] *See* UNIF. MARRIAGE & DIVORCE ACT § 402 (amended 1973).

[48] *Id.*

[49] JUDITH AREEN ET AL., *supra* note 46, at 948.

[50] LINDA D. ELROD, CHILD CUSTODY PRACTICE AND PROCEDURE § 17:1 (2013).

[51] Wade v. Hirschman, 903 So. 2d 928, 932 (Fla. 2005).

[52] *Id.* at 931 n.2.

change must be one that was not reasonably contemplated at the time of the original judgment.[53] In Alaska, an award of custody of a child or visitation with the child "may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child."[54]

One risk associated with these standards in the context of military servicemember custody disputes is that "the court will view the servicemember's military profession, and the possibility of future deployments, as a detrimental factor when determining what custody solution would be in the 'best interest' of the child."[55] This can be attributed to the emphasis courts generally place on assuring continuity for the child,[56] and the fact that military service can involve mobilization and deployment that disrupts continuity and stability.[57] In recent years, state legislatures have enacted child custody protections for servicemembers,[58] some of which aim to address this potential risk and to provide greater protection for servicemembers' interests.[59] The ULC, however, has identified several persistent problems.[60]

B. State Variations in Child Custody Laws For Servicemembers

The ULC has identified significant variation in states' approaches to custody issues raised by a parent's deployment, including how some courts will grant custody to the other legal parent for the duration of the deployment, sometimes over the wishes of the deploying parent, while other courts will grant custody to the person that the servicemember wishes to designate as custodian (e.g., a grandparent).[61] Importantly, the ULC also notes that some courts will not overturn a "temporary" custody arrangement granted to the non-deployed parent when the servicemember returns "unless the child is shown to be significantly

[53] *Id.*
[54] ALASKA STAT. ANN. § 25.20.110 (West 2013).
[55] Sexton & Brent, *supra* note 43, at 9.
[56] JUDITH AREEN ET AL., *supra* note 46, at 769.
[57] *See generally* Ayotte, *supra* note 41, at 672.
[58] Christopher Missick, Comment, *Child Custody Protections in the Servicemembers Civil Relief Act: Congress Acts to Protect Parents Serving in the Armed Forces*, 29 WHITTIER L. REV. 857, 875 (2008).
[59] *See infra* notes 65, 66, 70 and accompanying text.
[60] *See Deployed Parents Custody and Visitation Act Summary*, *supra* note 24.
[61] *Id.*

worse off living with the non-deployed natural parent."[62] This standard, of course, presents extreme difficulties for most deployed parents to overcome. This is because, as one scholar put it, "[t]he soldier is at a disadvantage in a custody suit brought before the court either during or after deployment, because the other parent has often gained an advantage by being the custodial parent during the deployment."[63] The non-servicemember parent "is the last person to have created and maintained the child's home and community connections."[64]

A look at the laws of just a few states demonstrates the inconsistency among state laws on this complex issue. For example, Kentucky's statute provides that any court-ordered modification of a child custody decree based, in whole or in part, on the active duty of a parent deployed outside the United States or federal active duty shall be temporary and *revert back* to the previous child custody decree at the end of the deployment or federal active duty, as appropriate.[65] Noticeably, the statute does not address or prohibit deployment itself as a consideration during a best interests determination.

By contrast, Arizona's statute covers similar, yet additional, ground.[66] According to the statute, if a parent with whom the child resides a majority of the time is deployed, a court shall not enter a final order modifying a preexisting order until ninety days after the deployment ends, unless a modification is agreed to by the deploying parent.[67] Moreover, a court "shall not consider a parent's absence caused by deployment or mobilization or the potential for future deployment or mobilization as the sole factor supporting a real, substantial and unanticipated change in circumstances pursuant to this section."[68] All temporary modification orders must include a specific transition schedule to facilitate a return to the pre-deployment order within ten days after the deployment ends, however, "taking into consideration the child's best interests."[69]

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[62] *Id.*

[63] Darrell Baughn, *Divorce & Deployment: Representing the Military Servicemember*, FAM. ADVOC., Fall 2005, at 8, 12.

[64] Ayotte, *supra* note 41, at 672.

[65] KY. REV. STAT. ANN. § 403.340(5)(2) (West 2013) (emphasis added).

[66] ARIZ. REV. STAT. ANN. § 25-411 (West 2013).

[67] *Id.* at § 25-411(B).

[68] *Id.* at § 25-411(C) (emphasis added).

[69] *Id.* at § 25-411(H).

South Dakota's statute[70] is comprehensive. There is a noticeable difference between its provision regarding assessment of past or future deployment in considering a substantial and material change of circumstances and Arizona's provision doing the same. Under the South Dakota statute, a servicemember ordered to deployment, who is the physical custodian of a minor, may delegate by a power of attorney to another person for a period of one year or less any of the powers regarding care and custody of the minor child.[71] Notably, "*[n]either* the execution of such a power of attorney . . . nor the deployment itself, may be considered a factor in considering a substantial and material change of circumstances, nor a factor in a best interest of the child determination for purposes of permanent child custody modification proceedings."[72] This contrasts with Arizona's statute, which states that a court shall not consider absence caused by deployment or the potential for future deployment as the *sole* factor supporting a real, substantial, and unanticipated change in circumstances.[73] South Dakota's statute also includes a provision for "an automatic stay of all proceedings seeking a permanent change in custody of a minor child where the parent with physical custody is a servicemember called to active duty for deployment."[74] Such a stay shall continue for the period of service due to deployment, unless waived in writing by the servicemember.[75] Furthermore, any temporary order modifying physical custody of the child automatically terminates when the servicemember returns from deployment and reverts back to the custody status in effect prior to the deployment.[76] If, however, upon the servicemember's return from the deployment either the servicemember or child "exhibits a substantial and material change in circumstances which adversely affects the servicemember's ability to adequately care for the child, the best interests of the child shall be determinative."[77] Thus, while

[70] S.D. CODIFIED LAWS § 33-6-10 (West 2012). Notably, as of early 2014, South Dakota's legislature was considering enacting the ULC's UDPCVA, but it is unclear whether or not it will successfully do so. As it currently stands, § 33-6-10 remains in effect. *See Deployed Parents Custody and Visitation Act*, UNIF. LAW COMM'N, http://www.uniformlaws.org/Act.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act (last visited Feb. 28, 2014).

[71] § 33-6-10.

[72] *Id.* (emphasis added).

[73] *See supra* note 68 and accompanying text.

[74] § 33-6-10.

[75] *Id.*

[76] *Id.*

[77] *Id.*

Kentucky and South Dakota both use the specific language "revert back," South Dakota's statute provides much more detail on when this should happen, whereas Kentucky simply states "as appropriate."[78]

As these three state statutes show, there is considerable variation among state attempts to provide guidance and, in some ways, greater protections for servicemembers who maintained physical custody of their minor children prior to deployment. Some states have not even adopted any statutes on this issue.[79] Overall, the variation in the states creates a "patchwork of laws,"[80] which, as the following Parts of this Comment discuss, is highly problematic.

IV. THE SCRA AND THE TURNER AMENDMENT: A FEDERAL ATTEMPT TO STRENGTHEN PROTECTIONS FOR MILITARY SERVICEMEMBERS

At the state level, there exists a serious lack in uniformity of legislation that addresses custody matters for single-parent servicemembers. This lack of uniformity in custody laws specifically addressing servicemembers is problematic due to the unique nature of military work. Military service is not only especially mobile in nature, but it is also necessary for national protection. Arguably, greater predictability and uniformity is needed for servicemember child custody laws because the states' variant laws make it "difficult for [military] parents to resolve these important issues quickly and fairly [and] hurt[] the ability of deploying parents to serve the country effectively[.]"[81] Unfortunately, current federal law also proves inadequate to fully address servicemembers' custody interests.

A. Problems with the Current SCRA

The Servicemembers Civil Relief Act ("SCRA") is federal legislation enacted in 2003 aimed at protecting certain legal rights of United States servicemembers.[82] Congress passed the SCRA to clarify

[78] *See supra* note 65 and accompanying text.

[79] *Deployed Parents Custody and Visitation Act Summary*, *supra* note 24; *see also* DAVID F. BURRELLI & MICHAEL A. MILLER, CONG. RESEARCH SERV., R43091, MILITARY PARENTS AND CHILD CUSTODY: STATE AND FEDERAL ISSUES 31–36 (2013) (citing Alabama, Minnesota, and New Mexico as having no state law provisions related to U.S. servicemembers and child custody).

[80] Missick, *supra* note 58, at 875.

[81] *Why States Should Adopt the Uniform Deployed Parents Custody and Visitation Act*, UNIF. LAW COMM'N, http://www.uniformlaws.org/Shared/Docs/Deployed_Parents/UDPCVA%20Why%20States(1).pdf (last visited Feb. 23, 2014).

[82] *See* Servicemembers Civil Relief Act, Pub. L. No. 108–189, 177 Stat. 2835

and revise the Soldiers' and Sailors' Civil Relief Act ("SSCRA").[83] The SSCRA essentially "gave trial courts discretion to grant relief when a litigant's military status would materially affect the servicemember's ability to protect his or her legal rights or comply with the obligation in question."[84] Under the current SCRA, the court shall, upon application by the servicemember, stay any civil action or proceeding, including any child custody proceeding, for a period of not less than ninety days if the particular application conditions are met.[85] An application must include a letter or other communication stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and a letter or communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance.[86] One of the stated purposes of the SCRA is "to provide for, strengthen, and expedite the national defense through protection extended by [the] Act to servicemembers . . . to enable such persons to devote their entire energy to the defense needs of the Nation."[87] The SCRA's protections apply to active-duty members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as National Guard members called to active service.[88]

Despite the procedural protection the SCRA provides for servicemembers, scholars have identified several pitfalls of the SCRA in its current state. First, the SCRA does not require courts to grant stays for the duration of a servicemember's deployment.[89] The language of the SCRA provides only "for a period of not less than 90

(2003) (codified as amended at 50 U.S.C. app. §§ 501–594 (2006)).

[83] Paquin, *supra* note 21, at 545.

[84] Sara Estrin, Article, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 LAW & INEQ. 211, 214 (2009) (quoting Mark S. Cohen, *Entitlement to a Stay or Default Judgment Relief Under the Soldiers' and Sailors' Civil Relief Act*, 35 AM. JUR. PROOF OF FACTS 3D 323, 333 (2007)).

[85] § 522. Notably, in 2008 Section 202(a) of the SCRA (now 50 U.S.C. app. § 522(a)) was amended by inserting, "including any child custody proceeding," after what had originally said only "civil action or proceeding." Similarly, Section 201(a) of the SCRA (now 50 U.S.C. app. § 521(a)), pertaining to protection of servicemembers against default judgments, was amended by inserting, "including any child custody proceeding," after "proceeding." National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110–181, § 584, 122 Stat. 3, 128 (2008); *see also* Missick, *supra* note 58, at 874.

[86] § 522.

[87] *Id.* at § 502.

[88] *Id.* at § 511.

[89] Sexton & Brent, *supra* note 43, at 9–10.

days,"[90] meaning that if a servicemember is deployed for more than ninety days a court could technically move forward with legal proceedings while the servicemember is deployed.[91] Further, though the SCRA purports to *stay* custody proceedings for a period of not less than ninety days, case law has shown that courts have "sidestepped the SCRA" by issuing temporary custody orders despite the SCRA's mandated stays.[92] For example, in a Pennsylvania case, *Tallon v. DaSilva*, a mother and father shared physical custody of their child.[93] When the father was deployed on active military service, he executed a power of attorney to assign his custody rights to his mother (the child's grandmother).[94] In an emergency motion, the mother requested that the court enter an interim order awarding her primary physical and legal custody pending the father's return from deployment.[95] The court acknowledged that the stay provision of the SCRA necessarily applies to custody cases.[96] The court then asserted that "a child does not exist in 'suspended animation' during the pendency of any stay entered pursuant to the SCRA" and that "the issue of the child's custody during a parent's deployment must perforce be addressed."[97] The court awarded temporary primary custody to the mother while the father was deployed.[98]

Similarly, in *Lenser v. McGowan*, a mother and father were living separately, but they were not yet divorced.[99] The paternal grandmother was caring for the child when the circuit court entered a temporary custody order awarding custody to the mother.[100] The circuit court actually entered this temporary custody order before it entered the SCRA stay for the servicemember father.[101] The Supreme Court of Arkansas, however, held that even if the stay had been in place when the circuit court considered temporary custody, it would not have prevented the circuit court from issuing the order.[102] It

[90] § 522.
[91] *See generally* Sexton & Brent, *supra* note 43, at 9–10.
[92] Ayotte, *supra* note 41, at 670.
[93] Tallon v. DaSilva, No. FD02-4291-003 (Ct. Com. Pl. Allegheny Cnty., Pa. 2005), reprinted in 153 PITTSBURGH LEGAL J. 164, 165 (2005).
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] Lenser v. McGowan, 191 S.W.3d 506, 507 (Ark. 2004).
[100] *Id.*
[101] *Id.* at 509.
[102] *Id.* at 511.

reasoned that the stay of the SCRA "does not freeze a case in permanent limbo and leave a circuit court with no authority to act at all."[103]

While a temporary order of custody in favor of the non-servicemember may not seem especially unfair to the servicemember parent, these temporary orders are increasingly likely to become permanent.[104] This is because "stability" and "connection" often carry significant weight in a subsequent custody battle.[105] As one scholar put it, "[t]he end result is that the non-servicemember parent is able to use the servicemember parent's absence to initiate proceedings for temporary custody that ultimately culminate in a permanent custody order."[106] Additionally, despite the SCRA's procedural protections, in some states a servicemember's past or future deployment itself may have a substantive impact on future custody determinations if it is considered as a "best interest" factor.[107] Some may argue that this is necessary, particularly where, for example, the child was very young when the parent was deployed and it would be destabilizing to change the custody arrangement.[108] There is a difference, however, between using a servicemember's past or future deployment *itself* as a sort of automatic strike against the servicemember in a best interests determination and a consideration of any *significant impact* on the best interests of the child of the parent's past or possible future deployment. A servicemember parent is at least given a chance at establishing that there has been no significant impact on the child with the latter option, whereas with the former this chance is absolutely precluded.

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[103] *Id.* at 509. Notably, these two cases, *Tallon* and *Lenser*, were decided prior to the 2008 amendment of Section 202(a) of the SCRA (now 50 U.S.C. app. § 522(a)) to state, "including any child custody proceeding," after what had originally said only "civil action or proceeding." *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110–181, § 584, 122 Stat. 3, 128 (2008). Both courts recognized, however, that the SCRA included a stay provision that was applicable in custody cases.

[104] Ayotte, *supra* note 41, at 670.

[105] *Id.* at 672.

[106] *Id.* at 673. The non-servicemember parent also might already have temporary custody through the agreed upon FCP. Still, there is the same potential that the temporary arrangement will become permanent upon the servicemember's return.

[107] Sexton & Brent, *supra* note 43, at 11; *see also Child Custody Bill Executive Summary*, CONGRESSMAN MICHAEL TURNER, http://turner.house.gov/uploadedfiles/turner_one_page_executive_summary_on_child_custody_bill_final.pdf (last visited Feb. 23, 2014).

[108] *See generally* Ayotte, *supra* note 41, at 672.

B. Amendment Proposal for the SCRA

Congressman Michael Turner (R-Ohio) has proposed a bill to amend the SCRA.[109] In doing so, he has expressed the following viewpoint:

> It's a disservice to our military personnel to think their leadership does not value their commitment enough to provide needed federal child-custody protection while on active duty . . . . Penalizing a service member for their [sic] performance of duty is unfair and a dishonor to our military parents who freely give so much to this nation.[110]

As described in Congressman Turner's Executive Summary, his bill initially aimed to (i) prohibit state courts from using past deployments or the possibility of deployment against servicemembers when making child custody determinations, (ii) prohibit courts from permanently altering custody orders during a parent's deployment, and (iii) require pre-deployment custody to be reinstated unless that is not in the best interest of the child.[111]

C. Political Hurdles

Since 2008, legislative language addressing this issue has passed the House of Representatives six times as part of the House version of the National Defense Authorization Act (Fiscal Years (FY) 2008–2013).[112] The language has also passed the House as a stand-alone bill (H.R. 6048) by voice vote in 2008.[113] All versions of the proposed legislation, however, have failed to pass in the Senate.[114] Most recently, Congressman Turner introduced another legislative effort to amend Title II of the SCRA, H.R. 1898, to the House on May 8, 2013.[115] H.R. 1898 was referred to the Subcommittee on Economic

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[109] *Child Custody Bill Executive Summary*, *supra* note 107.

[110] Michael R. Turner, Op-Ed., *Ensuring Child-Custody Protection*, WASH. TIMES (Oct. 8, 2009), http://www.washingtontimes.com/news/2009/oct/08/ensuring-child-custody-protection/.

[111] *Child Custody Bill Executive Summary*, *supra* note 107. The language of the bill has subsequently been altered. *See infra* note 129 and accompanying text.

[112] BURRELLI & MILLER, *supra* note 79, at 3; *see also* Press Release, Congressman Michael Turner, House Overwhelmingly Approves Turner's Military Child Custody Bill (May 30, 2012), *available at* http://turner.house.gov/news/documentsingle.aspx?DocumentID=297678.

[113] BURRELLI & MILLER, *supra* note 79, at 3; *see also* Letter from Michael R. Turner and Robert Andrews, *supra* note 27.

[114] BURRELLI & MILLER, *supra* note 79, at 3.

[115] *Id.* at 1.

Opportunity on May 24, 2013, but no action has been taken since.[116]

Despite previous passage of the proposed legislation in the House, the Senate Armed Services Committee has seemingly remained unconvinced of the need for a federal legislative amendment.[117] In a June 2012 report responding to the House version of the FY 2013 National Defense Authorization Act, the Senate Armed Services Committee asserted that "[a] federal legal standard would preempt the efforts of the States over a matter traditionally left to State courts."[118] The Senate Armed Services Committee directed the Secretary of Defense to request the "views and recommendations" of the Council of Governors regarding legislative proposals to amend Title II of the SCRA or "otherwise to establish federal law that would prohibit State courts from considering the absence of a service member by reason of deployment, or the possibility of deployment, in determining the best interest of the child in cases involving child custody."[119] The Senate Armed Services Committee requested the Secretary to ensure that the views and recommendations of the Council of Governors would be submitted to the Committees on Armed Services and Committees on Veterans' Affairs of the Senate and the House of Representatives no later than March 1, 2013.[120] This request from the Senate Armed Services Committee was not included in the final Senate version of the FY 2013 National Defense Authorization Act (S. 3254) and, therefore, was not included in the final version of the FY 2013 National Defense Authorization Act (P.L. 112–239).[121]

The Department of Defense has also opposed federal child custody protections for servicemembers.[122] A Department of Defense ("DOD") statement from 2009 asserted the following:

> The Department of Defense opposes efforts to create Federal child custody legislation affecting Service members . . . . By encouraging each State to address the issues within the context of their already-existing body of

[116] *Id.* at 21; *see also H.R. 1898*, CONGRESS.GOV, http://beta.congress.gov/bill/113th-congress/house-bill/1898 (last visited Feb. 26, 2014).

[117] *Senators Still Skeptical of Federal Child Custody Protections*, *supra* note 20.

[118] S. COMM. ON ARMED SERVICES, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013, S. REP. NO. 112–73, at 119 (2012).

[119] *Id.* at 118–19.

[120] *Id.* at 119.

[121] BURRELLI & MILLER, *supra* note 79, at 10.

[122] Michael R. Turner, Op-Ed., *supra* note 110.

> State law, these cases will proceed quicker and more smoothly with less likelihood of lengthy appellate review. We strongly believe that Federal legislation in this area of the law, which has historically and almost exclusively been handled by the States, would be counterproductive.[123]

Moreover, pursuant to language in the FY 2010 National Defense Authorization Act (P.L. 111–84, sec. 572), the DOD submitted to the Committees on Armed Services of the Senate and House a report on child custody litigation involving servicemembers.[124] Among its many conclusions, this DOD report stated that "[t]here is no evidence of any trend in family courts to remove custody of minor children from servicemembers *solely* as a result of deployment or the prospect of deployment."[125]

Nevertheless, in 2011, then-Secretary of Defense Robert Gates reportedly sent a letter to Congressman Michael Turner indicating a changed position.[126] Turner stated in his February 18, 2011 press release that Gates wrote that he believed the Department of Defense should change its position to one that was "willing to consider whether appropriate legislation can be crafted that provides Service members with a federal uniform standard of protection in cases where it is established that military service is the sole factor involved in a child custody decision involving a Service member[.]"[127]

In a March 29, 2012 letter to then-Secretary of Defense, Leon Panetta, Congressmen Michael Turner and Robert Andrews enclosed the letter from Secretary Gates and stated that they looked forward to

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[123] U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE POSITION 1 (2009), *available at* http://www.cbsnews.com/htdocs/pdf/DOD_position_child_custody.pdf.

[124] BURRELLI & MILLER, *supra* note 79, at 11.

[125] U.S. DEP'T OF DEF., REPORT ON CHILD CUSTODY LITIGATION INVOLVING SERVICE OF MEMBERS OF THE ARMED FORCES 29 (2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/legalservices/lamp/downloads/child_custody_report_14_may_2010.authcheckdam.pdf (emphasis in original). Notably, the House Armed Services Committee later expressed concern with the DOD report, concluding that "there is not sufficient data available to ascertain the full scope of how many members of the Armed Forces experience the loss of child custody as a result of their service." H. COMM. ON ARMED SERVICES, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2011, H. REP. NO. 111–491, at 285 (2010).

[126] Karen Jowers, *Gates Now Supports Law to Protect Child Custody*, ARMY TIMES (Feb. 17, 2011), http://www.armytimes.com/news/2011/02/military-child-custody-gates-021711w/.

[127] Press Release, Congressman Michael Turner, Gates Joins Turner in Fight for Service Member Child Custody Rights (Feb. 18, 2011), *available at* http://turner.house.gov/news/documentsingle.aspx?DocumentID=225787.

the same level of support.[128] Secretary Panetta reportedly sent Congressman Turner a letter in April 2012 with input on how the proposed legislation could be revised.[129] During Secretary Panetta's testimony before a Joint House Armed Services and Veterans' Affairs Committee Hearing on July 25, 2012, Turner raised the legislation to Secretary Panetta, who replied, "As I indicated to you in my letter, I support the efforts that you've made. You've provided tremendous leadership on this issue, and I will do the same with regards to the amendments on the Senate side."[130] With Chuck Hagel now serving as Secretary of Defense,[131] however, the current level of support from the Department of Defense for Congressman Turner's proposal is unclear.[132]

Meanwhile, opinions from some expert associations and individuals have been particularly critical toward Congressman Turner's proposed legislation.[133] Many of these concerns are grounded in federalism. For example, Patricia Apy, on behalf of the American Bar Association ("ABA"), provided a submission for the record to the House Committee on Veterans' Affairs in 2010 regarding the ABA's opposition to the bill. Her submission included the argument that by amending the SCRA to accomplish its aims, the bill "will unintentionally but surely introduce federal litigation to a matter reserved to the states and in which the federal government has no expertise."[134] Expressing similar sentiments in his witness

[128] Letter from Michael R. Turner and Robert Andrews, *supra* note 27.

[129] BURRELLI & MILLER, *supra* note 79, at 13–14. Secretary Panetta suggested incorporating the language "as the sole factor," which has been incorporated into the most recent legislative proposal, H.R. 1898. *Id.* at 14; *see also* H.R. 1898, 113th Cong. § 208(b) (2013).

[130] *Back from the Battlefield: DOD and VA Collaboration to Assist Service Members Returning to Civilian Life: Hearing Before the H. Comm. on Armed Services and H. Comm. on Veterans' Affairs*, 112th Congress (2012), *available at* http://armedservices.house.gov/index.cfm/hearings-display?ContentRecord_id=d6cf0b67-de1b-468e-8114-4152fdae2122&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=41030bc2-0d05-4138-841f-90b0fbaa0f88&MonthDisplay=7&YearDisplay=2012.

[131] *Chuck Hagel: Secretary of Defense*, U.S. DEP'T OF DEF., http://www.defense.gov/bios/biographydetail.aspx?biographyid=365 (last visited Feb. 23, 2014).

[132] BURRELLI & MILLER, *supra* note 79, at 14.

[133] *See infra* notes 134–136.

[134] *Hearing on H.R. 4469 Before the Subcomm. on Economic Opportunity of the H. Comm. on Veterans' Affairs*, 111th Cong. (2010) (submission for the record of Patricia E. Apy, Chair of the ABA Family Law Section Military Law Committee, American Bar Association). The ABA has at other times recorded its opposition to this federal child custody legislation, including in a White Paper posted in 2013 and in ABA

testimony to the House Committee on Veterans' Affairs, Retired Army JAG Colonel Mark E. Sullivan[135] asserted that "[t]he passage of an overarching gridwork of Federal law in a field which has always been reserved for the states will completely destroy the initiative of those states which are considering initial legislation or thinking about improving their current laws to protect military members and their children."[136] Other associations that have maintained opposition to federal legislation regarding this topic include the National Governors Association, the Adjutants General Association of the United States, and the National Military Family Association.[137]

Ultimately, though Congressman Turner's proposed SCRA amendment is well intentioned, it is highly unlikely that his approach will ever be successful due to the political impasse. Since 2008, Congressman Turner's proposed legislative language has passed in the House many times, yet it has always been subsequently rejected in the Senate.[138] Without sufficient support in Congress and from family law experts for the amended SCRA, servicemembers' legal proponents must find a more realistic solution.

V. ANALYSIS OF THE UNIFORM LAW COMMISSION'S PROPOSAL: THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

Given concerns about an amendment to the SCRA, some critics have instead endorsed the ULC's recent proposal.[139] The ULC has set forth the Uniform Deployed Parents Custody and Visitation Act ("UDPCVA") to address the states' "patchwork of rules."[140] The ULC consists of more than 300 commissioners, including lawyers and judges, who are appointed by state governments to draft and propose statutes in areas of the law where uniformity among the states is

Resolution 106 passed in 2009. *See White Paper on Federal Military Custody*, AM. BAR ASS'N (2013); ABA Res. 106 (2009).

[135] Mark E. Sullivan is the author of *The Military Divorce Handbook* and has helped state legislatures and bar associations with military custody and visitation bills in several states. *Hearing on H.R. 4469 Before the Subcomm. on Economic Opportunity of the H. Comm. on Veterans' Affairs*, 111th Cong. (2010) (witness testimony of Mark E. Sullivan, Colonel, USA (Ret.)).

[136] *Id.*

[137] BURRELLI & MILLER, *supra* note 79, at 15–16.

[138] *See supra* notes 112–115 and accompanying text.

[139] Mark E. Sullivan, *The Uniform Deployed Parent Custody and Visitation Act*, FAM. LAW., Sept. 27, 2012, *available at* http://familylawyermagazine.com/articles/the-uniform-deployed-parent-custody-and-visitation-act.

[140] *Why States Should Adopt the Uniform Deployed Parents Custody and Visitation Act*, *supra* note 81.

desirable.[141] The Commission approved and recommended the UDPCVA for enactment in all the states at the National Conference of Commissioners on Uniform State Laws' annual conference held July 13–19, 2012.[142]

A. The Proposed UDPCVA

The UDPCVA, as proposed by the ULC, is organized into five articles.[143] Article 1 provides that in a proceeding for custodial responsibility of a servicemember's child, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.[144] Articles 2 and 3 address two distinct possible scenarios. Article 2 provides a procedure for parents who agree to a custody arrangement during deployment and enter into a "temporary agreement."[145] Article 3 establishes that, in the absence of such an agreement, a court may issue a temporary order granting custodial responsibility after a deploying parent receives notice of deployment and during the deployment.[146] Under Article 3, however, a court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.[147] Article 4 addresses return from deployment. The article contains procedures for when the parents agree that the temporary custody agreement formed pursuant to Article 2 should be terminated, procedures for when the parents agree that the temporary custody order formed pursuant to Article 3 should be terminated, and procedures for when there is no parental agreement regarding the termination of the temporary custody arrangement.[148] Lastly, Article 5 contains

[141] *About the ULC*, *supra* note 25.

[142] UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT §§ 101–504 (2012), *available at* http://www.uniformlaws.org/shared/docs/Deployed_Parents/2012_DPCVA_Final.pdf.

[143] *Id.*

[144] *Id.* at § 107.

[145] *Id.* at § 201.

[146] *Id.* at § 302.

[147] *Id.*

[148] UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT §§ 401–404 (2012), *available at* http://www.uniformlaws.org/shared/docs/Deployed_Parents/2012_DPCVA_Final.pdf.

> If an agreement between the parties to terminate a temporary order for custodial responsibility under [Article] 3 has not been filed, the

miscellaneous provisions, such as an effective date provision and a transition provision.[149]

B. The Advantages of Adopting the UDPCVA

The UDPCVA approach will help to provide greater protections for and fairness to servicemembers in custody matters. The UDPCVA provides that a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child, but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.[150] A comment to the UDPCVA provides greater insight into what is meant by "significant" impact:

> The term 'significant' is meant to exclude the court's considering trivial impact of a parent's deployment, such as the need to enroll a child in a different school. Under this standard, the court may only consider impacts that are material or substantial. For example, the court may consider that the child has bonded closely with step-siblings while in a temporary custody arrangement during a deployment, or that the child does not adjust well to new situations and therefore will likely have difficulty relocating if a parent is deployed in the future.[151]

Accordingly, the UDPCVA is helpful to servicemembers because using deployment itself as a best interests factor necessarily works against the servicemember. The court may still consider "any significant impact" of the deployment on the best interests of the child.[152] The court, however, may not consider any trivial impact of a parent's deployment,[153] which again works to the advantage of the servicemember.

Under Article 4 of the UDPCVA, in the event that the parents do not agree on whether to terminate a temporary custody arrangement established by court order, the custody arrangement terminates sixty

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> order terminates [60] days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

Id. at § 404.

[149] *Id.* at §§ 501–04.

[150] *Id.* at § 107.

[151] *Id.* at § 107 cmt.

[152] *Id.*

[153] UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT § 107 cmt. (2012), *available at* http://www.uniformlaws.org/shared/docs/Deployed_Parents/2012_DPCVA_Final.pdf.

days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.[154] As the ULC's comment points out, concerns about the child's best interests "resulted in rejection in the UDPCVA of an immediate, automatic reversion to the previous custody order following the service member's return."[155] The "time lag" allows the other parent time to contest the reversion of custody under other state law if the parent believes the reversion is not in the best interest of the child.[156] This section can be viewed as an attempt to balance fairness to all parties. Altogether, the UDPCVA seeks to "ensure that parents who serve their country are not penalized for their service, while still giving adequate weight to the interests of the other parent, and, most importantly, the best interest of the child."[157]

The states' adoption of the UDPCVA is preferable to amendment of the SCRA for several reasons. First, the UDPCVA is more explicit in its protections for servicemembers. Both the UDPCVA and the SCRA amendment prohibit courts from considering a servicemember parent's past deployment or possible future deployment in itself as an automatic strike against the servicemember in a child custody determination.[158] Congressman Turner's proposed SCRA amendment, however, requires pre-deployment custody to be reinstated "unless the court finds that such a reinstatement is not in the best interest of the child . . . ."[159] The UDPCVA, on the other hand, allows courts to consider any "significant impact" on the best interest of the child of the parent's past or possible future deployment.[160] Arguably, a "significant impact" on the best interests of the child is a clearer and higher standard than simply "not in the best interest of the child."[161] It is possible there could be situations where a servicemember would

[154] *Id.* at § 404.
[155] *Id.* at art. 4 cmt.
[156] *Id.*
[157] *Id.* at §§ 101–504 prefatory note.
[158] The proposed SCRA amendment uses the term "as the sole factor" and the UDPCVA uses the term "in itself," though both convey the same meaning. H.R. 1898, 113th Cong. § 208(b) (2013); UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT § 107 (2012), *available at* http://www.uniformlaws.org/shared/docs/Deployed_Parents/2012_DPCVA_Final.pdf.
[159] H.R. 1898, 113th Cong. § 208(a) (2013).
[160] UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT § 107 (2012), *available at* http://www.uniformlaws.org/shared/docs/Deployed_Parents/2012_DPCVA_Final.pdf.
[161] *Id.*; H.R. 1898, 113th Cong. § 208(a) (2013).

resume physical custody under the UDPCVA because there was no "significant impact" but may permanently lose physical custody under the proposed SCRA amendment's vaguer standard. Even situations like those of Michael Grantham and Eva Crouch may play out differently depending on the applicable law, with a potentially greater likelihood under the UDPCVA that the servicemembers would achieve the return of their children.[162] Additionally, the UDPCVA approach will likely placate federalist concerns. As noted *supra*, critics' concerns have been grounded in the idea that an amended SCRA will introduce federal litigation to a matter reserved to the states and in which the federal government has no expertise.[163] The ABA, for example, has specifically stated, "[i]t is not the province of federal law to provide detailed and specific instructions on how to handle child custody cases . . . ."[164] The UDPCVA, though of course intended to provide uniformity across the states, ensures that child custody laws remain *state* law, rather than *federal* law.[165]

Furthermore, the UDPCVA avoids altogether an argument regarding a federal right of action. The Supreme Court has previously emphasized how "federal courts . . . lack the close association with state and local government organizations dedicated to handling issues that arise out of conflicts over divorce, alimony, and child custody decrees."[166] Earlier versions of the SCRA amendment bill have stated that "[n]othing in [the] section shall create a Federal right of action."[167] Nevertheless, critics were still able to argue that there were other ways counsel could get a case involving federal rights into federal courts.[168] These include the removal procedure under 28 U.S.C. § 1442(a) and possibly a declaratory judgment suit in federal court under 28 U.S.C. § 2201.[169] The

[162] *See supra* Part I. Ultimately, Eva Crouch did regain custody, but her case proceeded all the way to the Kentucky Supreme Court. Crouch v. Crouch, 201 S.W.3d 463, 466 (Ky. 2006).

[163] *See supra* Part IV.C.

[164] *White Paper on Federal Military Custody*, *supra* note 134, at 2.

[165] *See infra* Part VI for a discussion of how the UDPCVA should be implemented and why the approach should not raise federalism concerns.

[166] Ankenbrandt v. Richards, 504 U.S. 689, 704 (1992).

[167] *See, e.g.*, H.R. 4201, 112th Cong. (2012); H.R. 4469, 111th Cong. (2010).

[168] *Hearing on H.R. 4469 Before the Subcomm. on Economic Opportunity of the H. Comm. on Veterans' Affairs*, 111th Cong. (2010) (witness testimony of Mark E. Sullivan, Colonel, USA (Ret.)).

[169] 28 U.S.C.A. § 1442(a) (2012) ("A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States . . . in respect to which he claims any right, title, or authority under a law of the

language of the most recent version of the SCRA amendment bill, H.R. 1898, attempts to quiet previous criticisms by explicitly stating that, "[n]othing in this section shall create a Federal right of action or otherwise give rise to Federal jurisdiction or create a right of removal."[170] Perhaps this bill language would be effective at preventing any of these custody cases from reaching federal court. A more certain way to address concerns regarding the potential for federal custody litigation, however, would be the adoption of the UDPCVA, since the UDPCVA would necessarily become state law once enacted in each state.

C. Problems with the Proposed UDPCVA

While the ULC has the authority to propose laws, no uniform law is effective until a state legislature adopts it.[171] The uniform law commissioners work toward enactment of ULC acts in their home jurisdictions,[172] but all fifty states may not choose to adopt the ULC's suggested acts. As of early 2014, a few states have adopted the UDPCVA.[173] These states include Colorado, Nevada, North Carolina, and North Dakota.[174] Nevertheless, given the ULC's previous shortcomings in compelling all fifty states to adopt particular uniform laws, it remains unlikely that all the states will adopt the UDPCVA without some greater impetus to do so.[175]

Indeed, several other of the ULC's proposed schemes, in the family-law context and otherwise, have failed to provide the intended uniformity. Within the family-law context, the 2002 Uniform Parentage Act addresses parentage determinations, including genetic testing and assisted conception provisions.[176] Only a few states and the District of Columbia have adopted it.[177] The Uniform

United States respecting the armed forces thereof . . . may at any time before the trial . . . be removed for trial into the district court of the United States[.]"); 28 U.S.C.A. § 2201 (2012). ("In a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.").

[170] H.R. 1898, 113th Cong. (2013).

[171] *About the ULC, supra* note 25.

[172] *Id.*

[173] *Deployed Parents Custody and Visitation Act, supra* note 70.

[174] *Id.*

[175] *See infra* notes 176–179 and accompanying text.

[176] *See* UNIF. PARENTAGE ACT §§ 101–905 (amended 2002).

[177] *Parentage Act*, UNIF. LAW COMM'N, http://www.uniformlaws.org/Act.aspx?title=Parentage%20Act (last visited Feb. 23, 2014).

Comparative Fault Act, which provides a system of allocating damages in personal injury actions, is another example among the many proposed uniform schemes that the states have failed to enact.[178] According to the ULC's website, the only states to have enacted the Uniform Comparative Fault Act are Kentucky and Missouri.[179]

VI. A PROPOSED SOLUTION: THE FEDERAL GOVERNMENT MUST ENCOURAGE STATES' ADOPTION OF THE UDPCVA

Although many of the ULC's proposals have not been widely adopted, there are instances in which uniform laws have gained traction because the federal government has conditioned the receipt of federal funds upon the states' adoption of the proposed law. Congress is able to attach conditions to the states' receipt of federal funds because of its Spending Power under the United States Constitution.[180] Though the Spending Power is subject to some limitations, Congress has routinely employed this power to ensure states' compliance with certain laws and directives.[181] Accordingly, the best way to ensure that *all* the states adopt the UDPCVA is to condition the states' receipt of welfare funds upon their adoption of this uniform law.

A. The Uniform Interstate Family Support Act and the Uniform Child Custody Jurisdiction and Enforcement Act: A Roadmap for the UDPCVA

In other notable instances, Congress has used its Spending Power to induce states into adopting the ULC's recommendations. The Uniform Interstate Family Support Act ("UIFSA") and the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") are two examples of uniform laws that nearly all fifty states[182] have enacted in exchange for federal assistance and funding.[183] The UIFSA, first promulgated in 1992,[184] provides uniform

[178] *See* UNIF. COMPARATIVE FAULT ACT §§ 1–11 (1977).

[179] *Comparative Fault Act*, UNIF. LAW COMM'N, http://www.uniformlaws.org/Act.aspx?title=Comparative%20Fault%20Act (last visited Feb. 23, 2014).

[180] *See* U.S. CONST. art. 1, § 8, cl. 1.

[181] South Dakota v. Dole, 483 U.S. 203, 206–07 (1987).

[182] All fifty states have enacted the UIFSA. Patricia W. Hatamyar, *Interstate Establishment, Enforcement, and Modification of Child Support Orders*, 25 OKLA. CITY U. L. REV. 511, 512 (2000). Forty-nine states have adopted the UCCJEA. JUDITH AREEN ET AL., *supra* note 46, at 1190.

[183] WADLINGTON & O'BRIEN, *supra* note 45, at 3.

[184] Hatamyar, *supra* note 182, at 514.

rules for the enforcement of family support orders by setting jurisdictional standards for state courts and "by determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding, by establishing rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions, and by providing rules for modifying . . . another state's child support order."[185] In 1993, only two states had enacted the UIFSA, Arkansas and Texas.[186] By the summer of 1996, this number totaled thirty-five states.[187] That year was significant in the history of the UIFSA because the ULC then set forth significant amendments to the Act.[188] Even more significantly, Congress passed "welfare reform" legislation in August, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), which mandated that the states enact the amended UIFSA in order to receive federal funding for child support enforcement.[189] As one scholar put it, in using the PRWORA to compel states to adopt the amended UIFSA, Congress "assured that nationwide acceptance of the amended Act was virtually certain."[190] Indeed, by 1998, all fifty states had enacted the UIFSA.[191]

The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") is a second example of a uniform law that the states have adopted in response to Congress's strategic use of its Spending Power.[192] The ULC promulgated the UCCJEA in 1997, but there were other related acts prior to its enactment.[193] First, the ULC promulgated the Uniform Child Custody Jurisdiction Act ("UCCJA") in 1968 with the purpose of "1) establish[ing] jurisdiction over a child custody case in one state; and, 2) protect[ing] the order of that state from modification in any other state, so long as the original state

[185] *Interstate Family Support Act Amendments (2008) Summary*, UNIF. LAW COMM'N, http://www.uniformlaws.org/ActSummary.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008) (last visited Feb. 23, 2014).

[186] John J. Sampson & Barry J. Brooks, *Uniform Interstate Family Support Act (2001) with Prefatory Note and Comments (with Still More Unofficial Annotations)*, 36 FAM. L.Q. 329, 337 (2002).

[187] *Id.*

[188] *Id.*

[189] *Id.* at 338.

[190] *Id.* at 337–38.

[191] *Id.* at 338.

[192] WADLINGTON & O'BRIEN, *supra* note 45, at 3.

[193] *Child Custody Jurisdiction and Enforcement Act Summary*, UNIF. LAW COMM'N, http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act (last visited Feb. 23, 2014).

retain[ed] jurisdiction over the case."[194] States were very slow, however, to adopt the UCCJA.[195] Only forty-three states had adopted some form of the UCCJA by the time Congress enacted the Parental Kidnapping Prevention Act ("PKPA") in December 1980.[196] The PKPA was "an effort to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act."[197] Eventually, by 1984, all states adopted a version of the UCCJA,[198] but differences between the UCCJA and the PKPA regarding applicable jurisdictional principles remained apparent.[199] Therefore, in 1997, when the ULC finally promulgated the UCCJEA, it reconciled UCCJA principles with the PKPA and it also addressed interstate civil enforcement for child custody orders.[200] Importantly, Congress conditioned the states' receipt of federal assistance for children under the PRWORA on their adoption of the new UCCJEA.[201] In response to Congress's prompt, forty-nine states adopted the UCCJEA.[202] The majority of states did so within four years.[203] Overall, these two examples, the UIFSA and the UCCJEA, demonstrate that federal compulsion can be necessary for the states to efficiently adopt proposed uniform laws.

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[194] *Id.*

[195] Ann T. Wilson, Comment, *The Parental Kidnapping Prevention Act: Is There an Enforcement Role for the Federal Courts?*, 62 WASH. L. REV. 841, 843 (1987).

[196] *Id.* at 843 n.21.

[197] *Child Custody Jurisdiction and Enforcement Act Summary*, *supra* note 193.

[198] Linda M. Demelis, *Interstate Child Custody and the Parental Kidnapping Prevention Act: The Continuing Search for a National Standard,* 45 HASTINGS L.J. 1329, 1330 (1994).

[199] *Child Custody Jurisdiction and Enforcement Act Summary, supra* note 193.

> The UCCJA [did] not give first priority to the 'home state' of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply state[d] that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists.

Id.

[200] *Id.*

[201] WADLINGTON & O'BRIEN, *supra* note 45, at 3.

[202] A bill is pending in Massachusetts for the UCCJEA's adoption. JUDITH AREEN ET AL., *supra* note 46, at 1190; *see also* H. 31, 188th Leg. (Ma. 2013), *available at* https://malegislature.gov/Bills/188/House/H31.

[203] *See UCCJEA Adoptions,* UNIF. LAW COMM'N, http://uniformlaws.org/Shared/docs/UCCJEAadoptions.pdf (last visited Feb. 23, 2014); *see also UCCJEA Adoption Table*, THE LAW OFFICES OF DAVID A. BLUMBERG, http://www.uccjea.net/resources/adoptions.shtml (last visited Feb. 23, 2014).

B. The Best Approach: The UDPCVA and Contingent Federal Funding

Though the UDPCVA is substantively the best approach to provide greater protections for servicemember parents in custody proceedings,[204] its effectiveness as a uniform law will be eclipsed if all states do not adopt it. Only four states have enacted the UDPCVA since the ULC approved it in mid-2012.[205] Therefore, Congress must establish a plan now to ensure that all states adopt the UDPCVA in a timely manner. The states' adoption of the UIFSA and the UCCJEA demonstrates that Congress can successfully use its Spending Power to achieve the states' adoption of uniform laws.[206] Accordingly, Congress should use its Spending Power in this instance, too. One way Congress can validly do so is to make funding for welfare contingent on the states' adoption of the UDPCVA. Since its creation under the PRWORA in 1996, Temporary Assistance for Needy Families ("TANF") has been a block grant program that provides states federal funds each year to develop and maintain their welfare programs.[207] TANF provides billions of dollars to the states each year.[208] Thus, if Congress were to condition the receipt of TANF funds on the states' adoption of the UDPCVA, the states would surely and efficiently adopt the uniform law.[209]

C. Possible Disadvantages of the Proposed Approach

In advocating for this approach, it is necessary to address its few potential disadvantages. From a critic's perspective, the first concern may be that states will adopt the uniform law with variations. The UCCJEA has been adopted in forty-nine states, for example, but the language of the states' statutes varies.[210] Nevertheless, this variation is arguably minor. For instance, the ULC's UCCJEA defines "commencement" of a child custody proceeding as "the filing of the

[204] *See supra* Part V.B.

[205] *See supra* notes 173–174 and accompanying text.

[206] *See supra* Part VI.A.

[207] *Policy Basics: An Introduction to TANF*, CTR. ON BUDGET AND POLICY PRIORITIES 1, *available at* http://www.cbpp.org/files/7-22-10tanf2.pdf; *see also About TANF*, OFFICE OF FAMILY ASSISTANCE, http://www.acf.hhs.gov/programs/ofa/programs/tanf/about (last visited Feb. 23, 2014).

[208] *See generally Policy Basics: An Introduction to TANF*, *supra* note 207, at 2.

[209] Notably, because an almost identical approach has been successfully implemented previously in the family law context, including with the UIFSA and the UCCJEA, it is highly unlikely that this would constitute unconstitutional "strong arming." *See supra* Part VI.A.

[210] *See* Kevin Wessel, *Home Is Where the Court Is: Determining Residence for Child Custody Matters Under the UCCJEA*, 79 U. CHI. L. REV. 1141, 1149 n.55 (2012).

first pleading in a proceeding."[211] By contrast, Wisconsin's UCCJEA states that "commencement" means "the filing of the first pleading in a proceeding, provided that service is completed in accordance with the applicable provisions of ch. 801."[212] As such, it is arguable that Wisconsin's definition of "commencement" is slightly more restrictive than the ULC's definition, but this is a minor distinction. Similarly, Mississippi's UCCJEA exemplifies slight deviation from the ULC's version. The ULC's UCCJEA establishes that exclusive jurisdiction can be lost in two ways, one of them being that "a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not *presently* reside in this State."[213] Mississippi's exclusive jurisdiction section uses the term "*currently* do not reside."[214] It is unclear, however, that there is any significant difference between the language. Overall, despite minor linguistic variations in the states' versions, the UCCJEA still has been successful at achieving a high level of uniformity.[215]

In the four states that have enacted the UDPCVA, each state's statute does, in fact, contain some linguistic variation from the UDPCVA the ULC has proposed.[216] North Dakota and North Carolina have notably eliminated the ULC's UDPCVA Section 107, but the rest of each statute very closely mirrors the ULC's UDPCVA.[217] The Nevada and Colorado laws also closely approximate the ULC's UDPCVA, with only slight language variations.[218] Even if the

[211] UNIF. CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT § 102 (1997), *available at* http://www.uniformlaws.org/shared/docs/child_custody_jurisdiction/uccjea_final_97.pdf.

[212] WIS. STAT. ANN. § 822.02(5) (West 2013).

[213] UNIF. CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT § 202 (1997), *available at* http://www.uniformlaws.org/shared/docs/child_custody_jurisdiction/uccjea_final_97.pdf (emphasis added).

[214] MISS. CODE. ANN. § 93-27-202 (West 2013) (emphasis added); *see also* Wessel, *supra* note 210, at 1149 n.55.

[215] *See generally Acts: Child Custody Jurisdiction and Enforcement Act*, UNIF. LAW COMM'N, http://www.uniformlaws.org/Act.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act (last visited Feb. 23, 2014).

[216] *See* NEV. REV. STAT. §§ 125C.010–125C.250 (West 2013); COLO. REV. STAT. §§ 14-13.7-101–504 (West 2014); N.D. CENT. CODE ANN. §§ 14-09.3-01–26 (West 2013); N.C. GEN. STAT. ANN. § 50A-350–396 (West 2013); *see also* UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT §§ 101–504 (2012), *available at* http://www.uniformlaws.org/shared/docs/Deployed_Parents/2012_DPCVA_Final.pdf.

[217] *See* N.D. CENT. CODE ANN. §§ 14-09.3-01–26 (West 2013); N.C. GEN. STAT. ANN. §§ 50A-350–396 (West 2013).

[218] *See* NEV. REV. STAT. §§ 125C.010–125C.250 (West 2013); COLO. REV. STAT. §§

remaining states adopt the UDPCVA with slight variations or changes in language as well, the UDPCVA's mandated adoption in order to receive welfare funding will at least ensure that states that do not currently have any protections implement some. Moreover, this proposed approach works to ensure the states' adoption of the vast majority of the *core precepts* of the UDPCVA, and that in itself would contribute to greater uniformity among the states.[219]

It is unlikely that Congress would ever condition federal funding on the states' adoption of the exact language of the UDPCVA because of federalism concerns, mainly the still prevalent notion that family law should in some way be left to the states.[220] Notably, critics may argue that a uniform law with a federal requirement that states adopt it or lose federal funding still poses federalism problems. The notion that the states have the autonomy to make slight changes to the language of their adopted uniform acts, however, helps to dispel federalist critique but still preserves the needed level of uniformity. Additionally, the ULC's member composition suggests that the states were represented in a meaningful way when the ULC drafted and approved the UDPCVA. The ULC's members include lawyers, judges, legislators, and law professors who have been appointed by state governments to research, draft, and promote enactment of uniform state laws.[221] While some may argue that the states are similarly represented in Congress in debate over the SCRA, Congressman Turner's bills consistently fail to garner Senate support.[222] Therefore, the SCRA amendment lacks from state representatives what the UDPCVA has—sufficient approval.

Another concern may be that a state could still refuse to adopt the UDPCVA, as Massachusetts has done in failing to adopt the UCCJEA.[223] Although Massachusetts has not yet adopted the UCCJEA, a bill to enact it is currently pending in its Legislature.[224]

14-13.7-101–504 (West 2014).

[219] Admittedly, Section 107 is a core precept of the UDPCVA; the fact that North Dakota and North Carolina have not adopted this provision, however, is mitigated by the fact that these states have adopted the rest of the UDPCVA essentially word for word. *See* N.D. CENT. CODE ANN. § 14-09.3-01–26 (West 2013); N.C. GEN. STAT. ANN. § 50A-350–396 (West 2013).

[220] *See supra* Part IV.C.

[221] *About the ULC*, *supra* note 25.

[222] *See supra* note 138 and accompanying text.

[223] *See* JUDITH AREEN ET AL., *supra* note 46, at 1190; *see also* Julie A. Morley, Note, *A Silver Lining in Domestic Turmoil: A Call for Massachusetts to Adopt the UCCJEA's Emergency Jurisdiction Provision,* 43 NEW ENG. L. REV. 135 (2008).

[224] H. 31, 188th Leg. (Ma. 2013), *available at*

Additionally, a similar scenario with the UDPCVA, though admittedly possible, is unlikely given the financial and social consequences a state would face if it failed to adopt the UDPCVA.[225] The withholding of welfare funds that would result if a state did not adopt the UDPCVA is severe enough that most, if not all, states would buckle to the Congressional demand.

In sum, making funding for welfare contingent on states' adoption of the UDPCVA would not be a brand new approach to uniform laws within the family law realm. Instead, it would be an appropriate approach given the success and ubiquity of other uniform laws pertaining to family law through the same type of Congressional encouragement.

VII. CONCLUSION

With a large number of single parents serving in the military[226] and increased deployments in the past several years,[227] an abundance of reports have surfaced that many military servicemembers face battles overseas and return home to a battle for custody of their children.[228] A servicemember may make temporary custody arrangements for his or her child, sometimes with the non-servicemember parent, through a non-binding Family Care Plan only to return from deployment to find that the non-servicemember parent will not relinquish custody. Alternatively, a non-servicemember parent may gain custody through a temporary order while a servicemember is deployed, despite the SCRA's mandated stays, with the result that the temporary order becomes permanent upon the servicemember parent's return home. Also, there remains the possibility that in some jurisdictions "deployment" itself or the

http://www.malegislature.gov/Bills/188/House/H31.

[225] It is unclear what the consequences have been to Massachusetts for failing to enact the UCCJEA thus far. There have been attempts in Massachusetts to pass the UCCJEA since around 2001, which perhaps suggests that the federal government may have held off on funding consequences to Massachusetts due to the state's seeming proactivity in this area. *See generally* Fern L. Frolin, *Uniform Child Custody Jurisdiction Enforcement Act: A Better Child Custody Jurisdiction Law for Massachusetts*, 6 SECTION REVIEW 1, 17–19 (2004), https://www.massbar.org/publications/section-review/2004/v6-n3; *see also* S. 872, 183rd Leg. (Ma. 2005), *available at* http://www.mass.gov/legis/184history/s00872.htm; *see also* H. 1657, 185th Leg. (Ma. 2007), *available at* http://www.mass.gov/legis/bills/house/185/ht01pdf/ht01657.pdf.

[226] *See supra* note 31 and accompanying text.

[227] *See supra* note 19 and accompanying text.

[228] *See supra* note 18 and accompanying text.

"potential for future deployment" will be used in the court's best interests determination.

Some have argued that the legal landscape for military servicemembers facing child custody issues "could potentially impact the welfare of military children and the ability of servicemembers to effectively serve their country."[229] Other concerns in the media and elsewhere, however, are perhaps fueled by the inherent injustice the current legal system poses to military servicemembers. The possibility that military servicemembers *could* lose custody of their children simply for doing their job, a job necessary for the protection of the United States, provides a compelling explanation for why change in this particular area of family law is so needed.

In recent years, some states have taken steps to implement laws that provide greater protection for servicemembers in the context of child custody disputes. These laws are varied though, and in some states they do not exist at all. There are also serious inadequacies in the current SCRA. There have been multiple attempts at passage of an amendment to the SCRA, but the lack of support in the Senate and criticism from other fronts indicate that a strictly federal approach is not likely to succeed. In the face of this void, the ULC has proposed the UDPCVA, which aims to standardize custody rights for military parents in child custody cases. Though the UDPCVA is not guaranteed to assist every military servicemember fighting for his or her custodial rights, it strikes a balance that moves toward a much more consistent application of law in the country that these military servicemembers bravely serve. Additionally, the UDPCVA will largely avoid the problems posed by SCRA amendment, including critic's concerns grounded in federalism.

State legislatures are not required to adopt uniform law proposals. Nevertheless, the states undoubtedly will adopt the UDPCVA if the receipt of welfare funds is made contingent on its adoption by the states. As a result, the problem that the ULC seeks to address—a lack of uniformity among the states—could be ameliorated with the strategic encouragement of the federal government.

[229] BURRELLI & MILLER, *supra* note 79, at 2.