

Resolution 4

Urging the Congress to Respect Separation of Powers and Principles of Federalism with Regard to Enacting Legislation to Address Child Custody

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators, in fulfilling their leadership role for state judicial systems, have traditionally taken positions to defend against proposed policies that threaten principles of federalism or that seek to preempt proper state court authority; and

WHEREAS, historically, the federal government has deferred to state law in matters involving domestic relations; and

WHEREAS, in recent years, federal legislation has been introduced that would amend the Servicemembers Civil Relief Act (Public Law 108-189) to address child custody arrangements for parents in the Armed Forces who are deployed or anticipated to be deployed in support of a contingency operation; and

WHEREAS, in the 112th Congress, H.R. 1540 would have: (1) restricted temporary custody orders based solely on deployment or anticipated deployment; (2) excluded parental absence based on deployment or possible deployment in determining the best interests of the child in permanent orders to modify custody; (3) made clear that a federal right of action is not created; and (4) not preempted state law if the applicable state law involving a temporary order provides a higher standard of protection for the servicemember; and

WHEREAS, federal efforts to legislate matters of child custody would preempt state family law and potentially discourage state efforts to enact broader and more helpful state laws; and

WHEREAS, family law cases are complex and states are in the best position to balance the interests of deployed servicemembers and their family members within the context of their own domestic relations laws; and

WHEREAS, at least 30 states have already enacted state law that addresses the special circumstances of parents who are serving in the military; and

WHEREAS, the Department of Defense continues to work with the other states, through its State Liaison program, to enact specific child custody legislation and to redraft its Family Case Plan Instruction to emphasize the importance of child custody planning before deployment;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and Conference of State Court Administrators urge the Congress to ensure that: (1) during its consideration of such legislation, the Congress take all available and reasonable steps to obtain meaningful and timely input from appropriate state government branches and agencies with respect to principles of federalism and separation-of-powers; and (2) a federalism assessment of the proposed legislation be included in every pertinent committee and conference report; and

BE IT FURTHER RESOLVED that the Conferences urge the Congress to continue to reject legislative proposals to preempt state family law.

Adopted as proposed by the CCJ/COSCA Government Affairs Committee at the 2012 Midyear Meeting on February 1, 2012.