

Resolution 1
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, H.R. 4469, now pending in Congress, would amend the Servicemembers Civil Relief Act (Public Law 108-189) to address child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation; and

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

WHEREAS, although the goal of the legislation is laudable, states are in the best position to balance the interests of deployed servicemembers within the context of their own domestic relations laws; and

WHEREAS, over thirty 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 is proactively addressing this important issue by working 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 the Conference of State Court Administrators urge the Congress to reject legislative proposals to preempt state family law; and

BE IT FURTHER RESOLVED that the Conferences urge the Congress to ensure that: (1) during its consideration of H.R. 4469 and similar legislation, the Congress take all available and reasonable steps to obtain meaningful and timely input from appropriate branches and agencies of state governments with respect to the federalism or separation-of-powers implications of any such legislation; and (2) a federalism assessment of the proposed legislation be included in every pertinent committee and conference report.

Adopted as proposed by the CCJ/COSCA Government Affairs Committee at the 2010 Annual Meeting on July 28, 2010.