

**MY COUNTRY OR MY CHILD?: HOW STATE
ENACTMENT OF THE UNIFORM DEPLOYED
PARENTS CUSTODY AND VISITATION ACT WILL
ALLOW SERVICE MEMBERS TO PROTECT
THEIR COUNTRY & FIGHT FOR THEIR
CHILDREN**

Comment

*Brittany A. Jenkins**

| | | |
|------|---|------|
| I. | BASIC TRAINING | 1011 |
| II. | INTO THE QUAGMIRE | 1014 |
| | A. <i>Following Orders</i> | 1015 |
| | 1. Troxel, May, LaFleur, Meyer, and Pierce | 1016 |
| | 2. PKPA, UCCJA, and UCCJEA | 1018 |
| | B. <i>Marching a Mile in Another’s Shoe</i> | 1023 |
| III. | A BATTLE WON, A WAR LOST | 1024 |
| | A. <i>Servicemembers Civil Relief Act</i> | 1025 |
| | B. <i>Texas-Sized Statutes</i> | 1028 |
| | C. <i>The Texas Way . . . in New Jersey: Faucett v. Vasquez</i> | 1029 |
| | D. <i>Heartbreak Warfare</i> | 1030 |
| IV. | FRIENDLY FIRE: STATE ACT VERSUS FEDERAL ACT..... | 1031 |
| | A. <i>“There never was a good war, or a bad peace.”</i> | 1032 |
| | B. <i>Servicemember Family Protection Act</i> | 1033 |
| | C. <i>Uniform Deployed Parents Custody and Visitation Act</i> | 1034 |
| | D. <i>Support the State? Hooah!</i> | 1036 |
| V. | ZONE(S) OF ACTION | 1037 |
| | A. <i>Follow the Feds?</i> | 1037 |
| | B. <i>Proposal: A Lone Star Solution</i> | 1038 |
| | C. <i>Leave It Be?</i> | 1039 |
| VI. | CONCLUSION: WE CAN DO IT! | 1040 |

I. BASIC TRAINING

Service members with children encounter no greater strife than deploying to dangerous combat zones to protect the country they love while

* B.B.A., Texas Lutheran University, 2011; J.D. Candidate, Texas Tech University School of Law, 2014; M.B.A. Candidate, Texas Tech University Rawls College of Business, 2014. To my friends and family, thank you for all your help and support.

knowing that their lives and their families may be in ruins when they return.¹ Upon return from his 2007 deployment, Navy Petty Officer John Moreno discovered that his wife had moved to another state with his newborn daughter and denied all of his requests to contact the beautiful baby girl he had been waiting months to meet.² Similarly, Captain Eva Slusher (Crouch) finished a year-and-a-half-long assignment with the National Guard only to find that her ex-husband refused to return her daughter without a court order.³ Marine Corporal Levi Bradley, Sergeant Mike Grantham, Private First Class Margaret Parish, Specialist Jasmine Williams, and thousands of other service members have suffered the same grave injustice—having their children ripped from their homes by the very legal system they have sworn to protect.⁴

In an incandescent world, service members would always return home safely and conflict would not force families to deteriorate.⁵ Unfortunately, the hardship of deployment is powerful enough to strain the strongest bonds and invoke the cruelest child custody battles.⁶ In 2010, there were 153,669 single-parent service members—approximately 75,000 of whom were actively deployed—and that number has only grown.⁷ The number of single parents in the military illuminates the fact that service members face more than one kind of battle while in the field.⁸ Distressingly, these concurrent battles pose a major hazard to service members—especially to those deployed—as family issues can create dangerous distractions when they should be completely focused on safety and national security.⁹

1. See *Deployed Troops Fight for Lost Custody of Kids*, NBCNEWS (May 5, 2007, 12:48 PM), http://www.nbcnews.com/id/18506417/ns/us_news-military/t/deployed-troops-fights-lost-custody-kids/#.UUd04uji5UM [hereinafter *Lost Custody of Kids*] (asserting that over 140,000 single parents in the military face difficulties in child custody proceedings).

2. See Kristin M. Hall, *US Panel: Improve Child Custody Rules for Military*, BIG STORY, (July 18, 2012, 6:36 AM), <http://bigstory.ap.org/article/us-panel-improve-child-custody-rules-military>.

3. *Lost Custody of Kids*, *supra* note 1; *Female Soldiers' Custody Battles*, OPRAH.COM (Oct. 13, 2010), <http://www.oprah.com/oprahshow/Fighting-for-Their-Children>.

4. See *supra* notes 1-3 and accompanying text.

5. See generally Kristen MH Coyne, Darren Myers & Susan H. Witting, *The SCRA and Family Law: More Than Just Stays and Delays*, 43 FAM. L.Q. 315, 316 (2009) (describing civilian difficulties service members face while deployed).

6. See *id.*

7. See PRESIDENT BARACK OBAMA ET AL., STRENGTHENING OUR MILITARY FAMILIES: MEETING AMERICA'S COMMITMENT 13 (2011), available at http://www.defense.gov/home/features/2011/0111_initiative/Strengthening_our_Military_January_2011.pdf.

8. See *Why States Should Adopt the Uniform Deployed Parents Custody and Visitation Act*, UNIFORM L. COMMISSION (2012), [http://www.uniformlaws.org/Shared/Docs/Deployed_Parents/UDPCVA%20Why%20States\(1\).pdf](http://www.uniformlaws.org/Shared/Docs/Deployed_Parents/UDPCVA%20Why%20States(1).pdf) [hereinafter *Why States Should Adopt the UDPCVA*].

9. See *id.* (declaring that the “resulting patchwork of [state family law codes] makes it difficult for the parents to resolve these important issues quickly and fairly, *hurts the ability of deploying parents to serve the country effectively*, and interferes with the best interest of children” (emphasis added)); Servicemembers Civil Relief Act, 50 U.S.C. app. § 502(1) (2006) (stating that the purpose of the Act is “to provide for, strengthen, and expedite the national defense through protection extended . . . to service members of the United States to enable such persons to devote their entire energy to the defense needs of the Nation” (emphasis added)).

State and federal statutes have been put in place in an attempt to protect and assist service members under difficult circumstances; however, those statutory regulations have not been enough to cure the majority of the transgressions a service member might encounter in a child custody dispute.¹⁰ The Uniform Law Commission (ULC) took notice of the difficulties service members face when fighting for child custody and promulgated the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) at the National Conference of Commissioners on Uniform State Laws on July 18, 2012, with hopes of easing the child custody dispute process.¹¹ Specifically, the ULC believes that states' enactment of the UDPCVA will help create uniformity in child custody decisions and dilute many of the complexities that threaten a fair custody order—mostly conflicts arising from interstate jurisdiction issues, notice complications, personal attacks by civilian parents, and the constant risk of deployments or reassignments.¹² Congressman Michael Turner also took action to protect service members facing child custody battles by proposing the amendments that formed the Servicemember Family Protection Act (SFPA), which would give federal courts jurisdiction over child custody suits when one or more parties to the dispute are service members.¹³ The SFPA would have been an extension of the Servicemember Civil Relief Act (SCRA), which protects service members by preventing the stress of civilian problems—such as those involving credit cards, loans, taxes, mortgages, and other issues causing a legal or financial disadvantage—that could result in undue distraction while they are on active duty or deployed.¹⁴

Though both state and federal legal bodies seek to protect service members and ensure fair custody orders, many support the ULC and insist that child custody matters should remain with the states so that these claims do not fall victim to the tangles of the federal court system.¹⁵ This

10. See Christopher Missick, *Child Custody Protections in the Servicemembers Civil Relief Act: Congress Acts to Protect Parents Serving in the Armed Forces*, 29 WHITTIER L. REV. 857, 858-59 (2008); *Deployed Parents Custody and Visitation Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last visited Apr. 17, 2013).

11. See Press Release, Unif. Law Comm'n, Uniform Deployed Parents Custody and Visitation Act Approved (July 23, 2012), <http://www.uniformlaws.org/NewsDetail.aspx?title=Uniform%20Deployed%20Parents%20Visitation%20and%20Custody%20Act%20Approved>.

12. *Why States Should Adopt the UDPCVA*, *supra* note 8.

13. See Press Release, Congressman Michael Turner, House Overwhelmingly Approves Turner's Military Child Custody Bill (May 30, 2012), <http://turner.house.gov/news/documentsingle.aspx?DocumentID=297678>.

14. See generally JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, JA 260, SERVICEMEMBERS CIVIL RELIEF ACT GUIDE 1-1, 1-2 (2006), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/lamp/downloads/SCRAguide.authcheckdam.pdf> (outlining the benefits and protections available to entering, active, and deployed service members).

15. See ABA Opposes Child Custody Provisions in House DoD Bill, A.B.A., http://www.americanbar.org/publications/governmental_affairs_periodicals/washingtonletter/2012/june/dodchildcustody.html (last visited Apr. 15, 2013).

Comment will show that control of service member child custody disputes belongs to the states. Moreover, the enactment of the UDPCVA in each state, and subsequent denial of the SFPA by the Senate, was necessary to provide the protection that our protectors deserve.¹⁶ The UDPCVA cannot promise to end family disputes or make child custody battles simple because that is not possible, especially when they are as difficult as child custody disputes specific to service members. The Act merely serves to assist service members during difficult times—to protect their rights and their safety while deployed or on active duty—and that is more than enough reason to support it.¹⁷

Part I of this Comment broadly explains the current issue straining the already stressful lives of service members who are involved in child custody disputes while deployed or on active duty.¹⁸ Part II of this Comment will review the longstanding tradition within the legal realm that has allowed each state to control its family law matters.¹⁹ This Part will also address the roles of the Supreme Court and Congress in restricting the states' authority over family law issues as well as the procedural obstacles that states are forced to mitigate.²⁰ Part III will analyze the federal proposals and state statutes that have attempted to assist the court when making military child custody determinations and will show that those provisions have not been enough.²¹ Part IV will then explore the 2012 proposals from federal and state legal bodies, which could potentially change military child custody proceedings in the best and worst ways.²² Finally, Part V will integrate the aforementioned history and background information to show that the states must retain authority over military child custody claims in order to help our service members protect both their country and their children.²³ The overarching goals of this Comment are to emphasize the importance of (1) the enactment of the UDPCVA; (2) the denial of the SFPA; and (3) the protection of the states' authority over military child custody disputes.

II. INTO THE QUAGMIRE

Traditionally, states have held authority over family law matters.²⁴ The Supreme Court emphasized in *Rose v. Rose*, “The whole subject of the

16. See discussion *infra* Parts II-V.

17. See discussion *infra* Parts II-V.

18. See discussion *supra* Part I.

19. See discussion *infra* Part II.

20. See discussion *infra* Part II.

21. See discussion *infra* Part III.

22. See discussion *infra* Part IV.

23. See discussion *infra* Part V.

24. See, e.g., *Judicial Activism vs. Democracy: What Are the National Implications of the Massachusetts Goodridge Decision and the Judicial Invalidation of Traditional Marriage Laws?*:

domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”²⁵ Thus, each state follows its own statutory family law code that has been formed by combining common law, the constitution of the state, the U.S. Constitution, and the ideals of the elected legislature.²⁶ The ideals, and resulting statutes, span the spectrum from conservative to liberal and traditional to modern, depending on the political environment of the state.²⁷ Despite the sovereignty of each state and freedom to enact laws that best benefit its residents, as proscribed by the Tenth Amendment of the United States Constitution, all states must respect federal regulations and standards set by the Supreme Court as the highest authority.²⁸

A. Following Orders

As George Washington once said, “An army of asses led by a lion is better than an army of lions led by an ass.”²⁹ The strength of the American legal system is the result of the everlasting continuity of the United States Constitution, as interpreted by the Supreme Court.³⁰ The stature of the Constitution is flexible enough not only to respect the traditional values that this country was founded upon but also to adjust to meet the states’ needs in an ever-changing world.³¹ As Justice Brennan stated, “The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.”³² The freedom allotted to the states to adopt their own laws and interpret their own constitutions as they see fit

Hearing Before the Subcomm. on the Constitution, Civil Rights and Prop. Rights of the S. Comm. on the Judiciary, 108th Cong. 63 (2004) (statement of R. Lea Brilmayer, Howard M. Holtzmann Professor of International Law, Yale University School of Law), available at <http://www.gpo.gov/fdsys/pkg/CHRG-108shrg96924/html/CHRG-108shrg96924.htm>.

25. *Rose v. Rose*, 481 U.S. 619, 625 (1987) (alteration in original) (quoting *Ex parte Burrus*, 136 U.S. 586, 693-94 (1890)) (internal quotation marks omitted).

26. See Linda D. Elrod, *The Federalization of Family Law*, 36 A.B.A. HUM. RTS. MAG., Summer 2009, at 6, available at http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol36_2009/summer2009/the_federalization_of_family_law.html.

27. See generally Naomi Cahn & June Carbone, *Deep Purple: Religious Shades of Family Law*, 110 W. VA. L. REV. 459, 464-72 (2007) (analyzing the impact that conflicting religious and secular views have on the treatment of family law matters).

28. Elrod, *supra* note 26, at 6 (explaining that Congress and the Supreme Court have taken power away from the states by “federalizing” and “constitutionalizing” many areas of family law).

29. *George Washington Quotes*, QUOTE COLLECTION, <http://www.quotecollection.com/author/george-washington/> (last visited Apr. 15, 2013).

30. See generally William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491-95 (1977) (synthesizing the importance of balance between the United States Constitution and the individual states’ constitutions).

31. See *id.*

32. See *id.* at 491.

is paramount to the successful practice of family law.³³ In spite of the importance of state sovereignty, especially in family law claims, the Supreme Court has fought its way into state court boundaries, thereby influencing family law statutes.³⁴

Over the years, the decisions of the Supreme Court and Congress have gradually restricted the power of the states over child custody disputes and parental rights.³⁵ Whether directly or indirectly, the “principle of federalism in family law . . . has eroded under the pressure of expanded federal regulatory power, especially since the approval by the Supreme Court” of the following interpretations of the Full Faith and Credit Clause and the Due Process Clause.³⁶

I. Troxel, May, LaFleur, Meyer, and Pierce

The Supreme Court has utilized the force of the Full Faith and Credit Clause and the Due Process Clause to interject itself into family law matters in many states, thus affecting the way state courts decide child custody disputes and questions concerning parental rights.³⁷ In *Troxel v. Granville*, the Court affirmed the appellate court’s decision to deny grandparents visitation with their grandchildren, holding that the parents’ fundamental right to nurture and care for their children is protected by the Due Process Clause.³⁸ This holding invalidated the state’s grandparent and third-party visitation statute, forcing many states to reanalyze their own grandparent and third-party visitation statutes to ensure they were not unconstitutional as well.³⁹ As a result, *Troxel* created uncertainty about the excessive power given to parents.⁴⁰

Next, in *May v. Anderson*, the Supreme Court reversed an Ohio court’s decision to uphold a custody order granted in Wisconsin.⁴¹ The Court held

33. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

34. Elrod, *supra* note 26, at 6.

35. See Linda Henry Elrod, *Epilogue: Of Families, Federalization, and a Quest for Policy*, 33 FAM. L.Q. 843, 849-51 (1999).

36. See Lynn D. Wardle, *State Marriage Amendments: Developments, Precedents, and Significance*, 7 FLA. COASTAL L. REV. 403, 431 (2005) (footnote omitted) (noting the restrictions placed on states’ control of family law matters).

37. Elrod, *supra* note 26, at 6.

38. See *Troxel v. Granville*, 530 U.S. 57, 65-69 (2000).

39. See Emily Buss, *Adrift in the Middle: Parental Rights After Troxel v. Granville*, 2000 SUP. CT. REV. 279, 280-82. Section 26.10.160(3) of the Revised Code of Washington stated that “[a]ny person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.” *Troxel*, 530 U.S. at 61 (quoting WASH. REV. CODE ANN. § 26.10.160(3) (West 2005)) (internal quotation marks omitted). The Court held that this statute was too broad and encroached on the fundamental rights of parents. *See id.*

40. Buss, *supra* note 39, at 280-82.

41. See *May v. Anderson*, 345 U.S. 528, 534-35 (1953).

that the Full Faith and Credit Clause did not make a custody order that was granted to a father in Wisconsin enforceable against a mother living in Ohio.⁴² Further, in *Cleveland Board of Education v. LaFleur*, the Court emphasized that “freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”⁴³

Finally, in *Meyer v. Nebraska* and *Pierce v. Society of the Sisters*, the Supreme Court questioned the constitutionality of state statutes that allowed the legislatures to oversee and regulate the educational systems in their respective states.⁴⁴ In both cases, the Court held that the Due Process Clause prohibited the state from compelling a specific type of educational restriction on all citizens if it interferes with parents’ right to educate their children in the manner they see fit.⁴⁵

From case to case, each state was merely attempting to exercise its Tenth Amendment right to uphold its local laws and to interpret its constitution as family law demands changed.⁴⁶ Throughout the years, state courts grappled to adapt their standards to meet the changing definitions of family and family law in America.⁴⁷ Instead, states found themselves in violation of the Fourteenth Amendment.⁴⁸ For instance, the lower court in *Troxel* was acting in the best interest of the child, not trying to discourage the parents’ fundamental rights.⁴⁹ As Justice Kennedy remarked in his dissenting opinion, the traditional nuclear family is no longer a reality, and the state court was correct in acknowledging the evolution of the modern family in its decision.⁵⁰

In *May*, the Ohio court acted in the best interests of children whose parents were fighting over custody.⁵¹ More despairingly, the court in *May*

42. *See id.* at 533.

43. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974) (holding that a school district’s policy mandating that female teachers resign their positions at a particular time during pregnancy was unconstitutional).

44. *See generally Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding that a statute disallowing instruction of certain foreign languages infringed on the rights of parents to educate their children); *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925) (holding that a state cannot force children to attend public schools because choice of education is a right and responsibility that belongs to the parents).

45. *See Meyer*, 262 U.S. at 401-03; *Pierce*, 268 U.S. at 534-35.

46. *See infra* notes 48-55 and accompanying text (illustrating the pitfalls of the initial holdings in *Troxel*, *May*, *LaFleur*, *Meyer*, and *Pierce*, showing that each state based its reasoning and decisions on the interests of its residents).

47. *See infra* notes 48-57 and accompanying text (changing standards for family law matters as a result of new, distinct issues). The definition of “nuclear family” changed completely, as did the presence and importance of women in the workplace. *See infra* notes 48-57. States did what they could to adjust laws and regulations to meet these new changes, albeit some were misguided in other ways. *See infra* notes 48-54.

48. *See infra* notes 49-55 and accompanying text.

49. *See Troxel v. Granville*, 530 U.S. 57, 61-63 (2000).

50. *See id.* at 96-101 (Kennedy, J., dissenting).

51. *See May v. Anderson*, 345 U.S. 528, 533 (1953).

actually made its decision based on a misguided interpretation of the Full Faith and Credit Clause, inadvertently violating the Fourteenth Amendment in the process.⁵² Another misconception reached the Supreme Court in the *LaFleur* dispute, which was the result of the state's attempt to adjust to having pregnant women in the workplace.⁵³ As Justice Rehnquist relayed in his dissent, the state regulation was attempting to draw a line—albeit, an arbitrary line—to prevent physical impairment that could occur after a certain stage of a woman's pregnancy; the regulation was not trying to penalize women for choosing to pursue both careers and families.⁵⁴ Finally, in *Meyer* and in *Pierce*, the states hoped to provide an educational structure that they believed would be most beneficial for children residing in those states.⁵⁵ With each decision, the states' sovereign powers diminished under the expanding interpretation of the Fourteenth Amendment.⁵⁶ In the end, the states lost much of their control over child custody matters.⁵⁷

Of course, this analysis is not to show that the aforementioned holdings were wrong or abusive because each was necessary under the circumstances—such an analysis would extend beyond the scope of this Comment.⁵⁸ This Section only seeks to exemplify instances in which the Supreme Court made decisions that changed the way state courts could handle child custody disputes in light of parental and fundamental rights.⁵⁹ The Supreme Court, however, is not the only body that participated in the evolution of child custody claims.⁶⁰

2. PKPA, UCCJA, and UCCJEA

Once traditional families became rare and Americans became more mobile, family law matters became a major concern for Congress and various legal organizations.⁶¹ Specifically, Congress and the ULC enacted legislation and regulation to standardize jurisdictional issues in child custody disputes because they believed the states alone were not well

52. *See id.* at 529.

53. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974) (holding that the state's mandated maternity leave was a denial of due process).

54. *See id.* at 659-60 (Rehnquist, J., dissenting).

55. *See Meyer v. Nebraska*, 262 U.S. 390, 398 (1923); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 530-31 (1925).

56. Elrod, *supra* note 26.

57. *See id.*; *supra* notes 37-45 and accompanying text.

58. *See supra* notes 49-55.

59. *See supra* notes 36-45.

60. *See* discussion *infra* Part II.A.2.

61. *See* Kelly Gaines Stoner, *The Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA)—A Metamorphosis of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 75 N.D. L. REV. 301, 301 (1999).

equipped to handle such issues.⁶² Many agreed that the growing mobility of society—especially after the demand for voluntary service members increased due to the 9/11 attacks—made interstate child custody disputes more complex and required some kind of system to establish national consistency.⁶³ State courts struggled to gain personal and subject matter jurisdiction over both parties to a child custody dispute and further tussled with the application of the Full Faith and Credit Clause to custody orders granted in other states.⁶⁴ Two of the most prominent regulations pertaining to these issues are the Parental Kidnapping Prevention Act of 1980 (PKPA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).⁶⁵

Of the many issues arising from interstate child custody disputes, forum shopping and unfair modification were the most prevalent.⁶⁶ At the time, a parent could effectively kidnap his or her own child, travel to another state to modify the custody agreement, and obtain a more favorable custody order.⁶⁷ Congress took charge and promulgated the PKPA to establish national standards for determining jurisdiction in child custody issues, giving priority to the child's home state rather than the parent's chosen home state.⁶⁸ To prevent forum shopping, § 1738A(b)(4) of the PKPA defines the home state as

the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons.⁶⁹

Thus, by restricting jurisdiction to the home state under these standards, the federal regulation prevented one parent from frivolously choosing to file a claim in a particular state in order to receive a more favorable custody

62. See Ann T. Wilson, *The Parental Kidnapping Prevention Act: Is There an Enforcement Role for the Federal Courts?*, 62 WASH. L. REV. 841, 842-43 (1987) (explaining the reasons behind legislation that attempted to create consistency among interstate child custody disputes).

63. See Stoner, *supra* note 61, at 301. After the terrorist attacks on 9/11, the number of voluntary service members called into duty and sent overseas increased dramatically. See AMY BELASCO, CONG. RESEARCH SERV., R40682, TROOP LEVELS IN THE AFGHAN AND IRAQ WARS, FY2001-FY2012: COST AND OTHER POTENTIAL ISSUES 4 (2009), available at <http://www.fas.org/sgp/crs/natsec/R40682.pdf>. According to the Congressional Research Service, in June 2001, approximately 26,000 troops were deployed in Afghanistan, Iraq, and neighboring areas. *Id.* Since the 9/11 attacks and the two wars that ensued, the number of troops called into battle increased exponentially, and the number of deployments jumped to more than 3.3 million by the end of 2008. *Id.* The number increased further when Obama ordered more troops overseas through 2012. *See id.*

64. See, e.g., Stoner, *supra* note 61, at 305.

65. *Id.* at 304; Wilson, *supra* note 62, at 843.

66. Wilson, *supra* note 62, at 843.

67. *See id.*

68. See Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A (2006).

69. § 1738A(b)(4).

order.⁷⁰ Further, the PKPA added protection against unfair modification by applying full faith and credit to custody determinations of other states so long as the custody order met the requirements listed by the statute.⁷¹

Though created with the best intentions, the language of the PKPA conflicted with the ambiguous language of the Uniform Child Custody Jurisdiction Act (UCCJA) and became more of a burden than a benefit.⁷² In response to this issue, the ULC drafted the UCCJEA, the “new and improved” version of the UCCJA, which was approved by the American Bar Association (ABA) in 1998.⁷³

70. § 1738A.

71. § 1738A(c)-(h). The statute reads,

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State

(i) is the home State of the child on the date of the commencement of the proceeding, or

(ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)

(i) it appears that no other State would have jurisdiction under subparagraph (A), and

(ii) it is in the best interest of the child that a court of such State assume jurisdiction because

(I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and

(II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and

(i) the child has been abandoned, or

(ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)

(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and

(ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

§ 1738A(c).

72. See Brett R. Turner, *From the UCCJA to the UCCJEA: Recent Case Law on Jurisdictional Issues in Child Custody Cases*, 19 DIVORCE LITIG., March 2007, at 33. The UCCJA outlined four different provisions pertaining to jurisdiction—any one or all provisions could be used in a case. *Id.* The creative application of the provisions rendered consistent and predictable resolutions impossible because each court was free to manipulate and apply the rules as it saw fit. *Id.*

73. *Id.*

The UCCJEA was necessary to clarify the ambiguities of its predecessor, the UCCJA, and to fix the conflicting language of the PKPA.⁷⁴ The ULC hoped the UCCJEA would create uniformity and consistency among interstate child custody disputes.⁷⁵ Further, the ULC wanted to ensure that the language of the UCCJEA harmonized with other child custody and family-law-related acts to minimize the chance of inconsistency or misinterpretation.⁷⁶

Because the UCCJEA was drafted by the ULC and approved by the ABA, enactment and adoption by each state was discretionary.⁷⁷ This posed a slight problem because some states rushed to approve the UCCJEA immediately whereas others waited as long as fourteen years.⁷⁸ The results of this delay proved contrary to the initial purpose of the UCCJEA—to promote consistency throughout the states and ease some of the difficulties of interstate child custody disputes—because national consistency could not be easily achieved if the UCCJEA was only applicable in specific states at a certain time.⁷⁹ Thus, while the ULC was successful in eliminating

74. Stoner, *supra* note 61, at 305. The UCCJA did not set a hierarchy or preference for finding jurisdiction, so courts found ways to manipulate the provisions that created a jurisdictional loophole. *Id.* Further, the UCCJA did not require full faith and credit, so a court could effectively ignore another state's ruling. *Id.* at 303; *see also* Patricia M. Hoff, *The ABC's of the UCCJEA: Interstate Child-Custody Practice Under the New Act*, 32 FAM. L.Q. 267, 268 (1998) (explaining that the Act also added provisions for international custody disputes and addressed issues concerning violence against women).

75. Compare Stoner, *supra* note 61, at 305 (describing the UCCJEA's adoption process), with Turner, *supra* note 72 (discussing the background and purposes of the UCCJA).

76. Hoff, *supra* note 74, at 268; Stoner, *supra* note 61, at 305. The UCCJEA also clarifies issues concerning battered women and domestic abuse. *See* Hoff, *supra* note 74, at 268.

77. Hoff, *supra* note 74, at 296-99. As the ULC notes, the "commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It must be emphasized that the ULC can only propose—no uniform law is effective until a state legislature adopts it." *About the ULC*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Apr. 3, 2013). It is up to each state to enact the uniform law at its discretion. *See id.*

78. *See Legislative Fact Sheet-Child Custody Jurisdiction and Enforcement Act*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Apr. 14, 2013). The states and the territories that have approved the UCCJEA, in order of enactment date month and year, include the following: Alaska (9/1998), Oklahoma (11/1998), Arkansas (3/1999), Montana (3/1999), North Dakota (3/1999), Iowa (5/1999), Tennessee (6/1999), Oregon (7/1999), Texas (9/1999), North Carolina (10/1999), Alabama (1/2000), California (1/2000), Maine (1/2000), Minnesota (1/2000), Colorado (7/2000), Connecticut (7/2000), Idaho (7/2000), Kansas (7/2000), Utah (7/2000), Arizona (1/2001), District of Columbia (4/2001), Georgia (7/2001), New Mexico (7/2001), Virginia (7/2001), Washington (7/2001), West Virginia (9/2001), Michigan (4/2002), New York (4/2002), Delaware (9/2002), Florida (10/2002), Hawaii (1/2003), Rhode Island (7/2003), Nevada (10/2003), Illinois (1/2004), Nebraska (1/2004), Kentucky (7/2004), Mississippi (7/2004), Pennsylvania (8/2004), Maryland (10/2004), New Jersey (12/2004), U.S. Virgin Islands (3/2005), Wyoming (4/2005), Guam (4/2005), Ohio (4/2005), South Dakota (7/2005), Wisconsin (3/2006), South Carolina (6/2007), Indiana (7/2007), Louisiana (8/2007), Missouri (8/2009), New Hampshire (12/2010), and Vermont (7/2011). *UCCJEA Adoption Table*, LAW OFFS. DAVID A. BLUMBERG, <http://www.uccjea.net/resources/adoptions.shtml> (last visited Apr. 13, 2013).

79. *See supra* note 78 and accompanying text. (showing that some states rushed to enact the uniform law proposal while others waited years). Because the Act fell under state authority, it could not

inconsistent interpretations in the states that approved the UCCJEA, it was unsuccessful in eliminating the inconsistency that continued to stall interstate proceedings among states that did not approve the UCCJEA.⁸⁰

Similarly, as states adopted the UCCJEA, they continued to fight for jurisdiction over certain cases where each court could technically claim jurisdiction under the rules.⁸¹ Besides the procedural issues, some states created more competition by bending interpretations of the UCCJEA.⁸² For instance, in *Scott v. Somers*, two states could claim proper jurisdiction under the UCCJEA—an unfortunate loophole that was only corrected by applying the PKPA, which, as a federal statute, trumps the states' own UCCJEA provisions.⁸³ While a state should exercise discretion in implementing laws that will best serve its residences, changing a uniform standard or law defeats the purpose of adopting such a standard and longer postpones national uniformity.⁸⁴ Contrary to the original goal, when trying to apply the supposedly standard rules, courts were still forced to sift through conflicting standards and search for the best way to apply the substantive laws.⁸⁵ Consequently, state participation was not the only issue following the introduction of the UCCJEA.⁸⁶

be properly applied in interstate disputes if one state did follow the uniform law and the other did not. *See supra* note 78 and accompanying text.

80. *See* Robert G. Spector, *Memorandum: Accommodating the UCCJEA and the 1996 Hague Convention*, 63 OKLA. L. REV. 615, 616 (2011).

81. *See generally* Powell v. Stover, 165 S.W.3d 322 (Tex. 2005) (discussing the difficulty when asserting jurisdiction between two states); *In re Burk*, 252 S.W.3d 736 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) (analyzing the home state requirement outlined in the UCCJEA and the conflicts that arise when two states can technically claim jurisdiction). The UCCJEA requires that the home state is the state (1) where the child resided for the last six months and (2) where the original complaint was filed, meaning that two states could claim jurisdiction over the child in extraordinary circumstances. *See In re Burk*, 252 S.W.3d at 739.

82. *See generally* Scott v. Somers, 903 A.2d 663 (Conn. App. Ct., 2006) (explaining the appropriate use of the UCCJEA and PKPA when two states are competing for jurisdiction). Here, two states resolved one custody dispute in two very conflicting manners. *Id.* at 664-66. Courts in both Connecticut and Florida claimed that the UCCJEA granted each the jurisdiction over the custody dispute, but the wording of the PKPA prevented either state from upholding either ruling as both were rendered void. *Id.* Instead, the PKPA awarded Florida jurisdiction but required that the court's holding be remanded and the case retried. *Id.*

83. *See id.* at 668-69 (holding that the circumstances of the case demanded that the PKPA's federal authority was to be applied over the guidelines of the states' UCCJEA statutes). The provisions of the UCCJEA are complicated in civilian suits, and the extenuating circumstances of a service member party only add more difficulty. *See, e.g., In re S.J.A.*, 272 S.W.3d 678 (Tex. App.—Dallas 2008, no pet.); *In re Burk*, 252 S.W.3d 736; *In re Lewin*, 149 S.W.3d 727 (Tex. App.—Austin 2004, no pet.); *In re McCoy*, 52 S.W.3d 297 (Tex. App.—Corpus Christi 2001, pet. denied).

84. *See generally* Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Looking at Interjurisdictional Recognition*, 43 FAM. L.Q. 923 (2010) (examining a spectrum of family law issues).

85. *See id.*

86. *See* discussion *infra* Part IV.B.

B. Marching a Mile in Another's Shoe

By prioritizing the child's home state in the initial stages of an interstate custody dispute, rather than choosing between the parents' domiciles, the UCCJEA eliminated much of the confusion that resulted from attempting to procure proper jurisdiction over parties.⁸⁷ Further, by focusing on subject matter jurisdiction rather than the personal jurisdiction of the parties, the courts gained more flexibility in proceedings without causing inconsistency among the participating states.⁸⁸ Regardless of the UCCJEA requirements and standards, however, the Due Process Clause still requires that a court have personal jurisdiction over the parties involved in the dispute.⁸⁹ Luckily, careful analysis of the standards established in *International Shoe v. Washington* and other landmark cases reveals a helpful exception to minimum contacts and the personal jurisdiction requirement.⁹⁰

In *International Shoe*, the Court held that systematic and continuous activity in the state was sufficient to meet the minimum contacts requirement necessary to gain personal jurisdiction over a party to a dispute.⁹¹ Then, when analyzing the facts of *Shaffer v. Heitner*, the Court found an applicable exception to the aforementioned analysis from *International Shoe*.⁹² This exception was based on the "status" determinations—or "status theory"—that the Court made in *Pennoyer v. Neff*.⁹³ In *Pennoyer*, the Court held that the "jurisdiction which every State possesses to determine the civil *status* and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory."⁹⁴

Next, the Court in *Shaffer* applied the definition of "status" established in *In re Marriage of Leonard*, which stated that a "relationship between two persons, which is not temporary in its nature, is not terminable at the mere will of either and with which the State is concerned."⁹⁵ Finally, in applying the determination made in *Williams v. North Carolina*, the Court stated, "[E]ach state by virtue of its command over its domiciliaries and its large interest in the institution of marriage can alter within its own borders the

87. Hoff, *supra* note 74, at 279.

88. *See id.* at 279-81.

89. *See* U.S. CONST. amend. V ("[N]or shall any state deprive any person of life, liberty, or property, without due process of law.").

90. *See infra* discussion accompanying notes 91-97.

91. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317-21 (1945).

92. *See Shaffer v. Heitner*, 433 U.S. 186, 209-16 (1977).

93. *See id.*; *Pennoyer v. Neff*, 95 U.S. 714, 733-35 (1877), *overruled in part on other grounds by Shaffer*, 433 U.S. 186.

94. *Pennoyer*, 95 U.S. at 734 (emphasis added).

95. *Shaffer*, 433 U.S. at 201-02 (quoting *Leonard v. Leonard (In re Marriage of Leonard)*, 175 Cal. Rptr. 903, 908 (Cal. Dist. Ct. App. 1981)) (internal quotation marks omitted).

marriage *status* of the spouse domiciled there, even though the other spouse is absent.”⁹⁶ Thus, because the court in a child custody dispute will make a decision changing the status of the child in the custody hearing, it can do so without having personal jurisdiction over both parties despite the adversarial opinions.⁹⁷

In spite of the protections and corrections included in the UCCJEA, there are still major issues in interstate child custody disputes.⁹⁸ The primary issue is the poor treatment of service members who are forced to fight custody battles while on active duty or deployed.⁹⁹ This encompasses not only jurisdictional and procedural issues but also unfair treatment of military status in custody order determinations.¹⁰⁰ The propensity of family law courts is to use past or future deployment history as a factor in determining a parent’s fitness to obtain custody.¹⁰¹ Federal and state legislatures have attempted to fix this problem, but those models have not been enough.¹⁰²

III. A BATTLE WON, A WAR LOST

From a Texan’s standpoint, there are two possible paths to follow when facing a concurrent child custody dispute and deployment: a federal route and a state route.¹⁰³ If a service member chooses the federal route, that person can follow the standards outlined in the Servicemember Civil Relief Act (SCRA) and hope that the limited provisions are enough to stay proceedings until the deployment ends.¹⁰⁴ Otherwise, if a service member chooses the state route, that person can follow the standards outlined in the family law code of the state where the claim is filed and hope that the civilian parent does not attempt to sneak around the system while the service member is absent.¹⁰⁵

96. *Williams v. North Carolina*, 317 U.S. 287, 298-99 (1942) (emphasis added).

97. *See id.* at 298-99. The Texas Family Code outlines the eight major ways the state can obtain personal jurisdiction over a party to a child custody dispute. TEX. FAM. CODE ANN. § 159.201 (West 2008). Of course, the application of status theory and personal jurisdiction requirements in interstate child custody disputes, like the numerous other factors described in this Comment, is inconsistent from state to state. *See infra* Part III.

98. *See Elrod & Spector, supra* note 84, at 943-46.

99. *Why States Should Adopt the UDPCVA, supra* note 8.

100. *See id.*

101. *See infra* Part III.C (analyzing *Faucett v. Vasquez*, 984 A.2d 460, 461-62 (N.J. Super. Ct. App. Div. 2009)).

102. *Why States Should Adopt the UDPCVA, supra* note 8; *see also* discussion *infra* Part III.

103. *See infra* Parts III.A-B.

104. *See* MARK E. SULLIVAN, A JUDGE’S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT, <http://apps.americanbar.org/family/military/scrjudgesguidecklist.pdf> (last visited Apr. 13, 2012) (following the model outlined by Mark E. Sullivan, Chairman of the ABA Family Law Section’s Military Committee and author of the ABA’s MILITARY LAW HANDBOOK).

105. *See* TEX. FAM. CODE ANN. §§ 153.701-03 (West 2011 & Supp. 2012) (outlining the definitions under “military duty,” standards for service members under temporary orders, processes for designating

A. Servicemembers Civil Relief Act

The SCRA was enacted in 1940; however, the changes that Congress adopted in 2003 and later proposed amendments will be the focus of this Section.¹⁰⁶ The SCRA, as adopted in 2003, only allows certain protections for service members involved in custody disputes.¹⁰⁷ Accordingly, the purpose of the SCRA is to protect service members from civilian issues causing legal or financial disadvantage while they are on active duty or serving a deployment—not to involve the federal government in child custody disputes.¹⁰⁸ Although the House approved the amendments adding family law matters to the statute and creating federal review of military custody battles, the Senate was adamant about leaving the authority over family law issues with the states.¹⁰⁹

Under § 521(d) of the SCRA, a service member must file for a “stay,” which essentially pauses any current proceedings until he or she returns from active duty or deployment.¹¹⁰ There is no guarantee that the judge will grant the stay, so the service member is forced to accept the gamble (and hope for the best outcome as his time until deployment decreases).¹¹¹ Even then, a court can choose to deny the motion to stay proceedings for reasons including an “unreasonable” request for staying the proceedings longer than the ninety-day allotment—a request that should not necessarily be considered unreasonable when acknowledging the extended length of

a conservator while active, and options for additional periods of possession after conclusion of deployment). The UCCJEA, PKPA, and Code of Federal Regulations also control interstate child custody disputes in Texas. *See* TEX. FAM. CODE ANN. § 152.001(a)-(d) (West 2008 & Supp. 2012); Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A (2006); 32 C.F.R. § 584.2 (2012).

106. *See* Servicemembers Civil Relief Act, 50 U.S.C. app. § 521(d) (2008). The Soldiers’ and Sailors’ Civil Relief Act of 1940, first enacted in 1918, was in place to protect service members from legal disadvantages while they were on active duty or serving deployment. *See id.* § 510. The 2003 revision, when the act was renamed the Servicemembers Civil Relief Act, added amendments to implement stays in child custody proceedings. *See id.* §§ 501-593; *see also* Shawn P. Ayotte, *Protecting Servicemembers from Unfair Custody Decisions While Preserving the Child’s Best Interests*, 45 NEW ENG. L. REV. 655, 662-63 (2011) (explaining the necessity of the SCRA and suggesting numerous alternatives to improve the treatment of service members in child custody disputes).

107. *See* § 521(d); *see also* Soldiers’ and Sailors’ Civil Relief Act—Amendment, Pub. L. No. 108-189, 117 Stat. 2835 (2003) (adding provisions to allow a service member to stay child custody proceedings while on active duty or serving a deployment—a stay that lasts only ninety days unless the service member can prove an extended time period is necessary).

108. *See* §§ 502, 521(d).

109. *Compare* Press Release, *supra* note 13 (explaining Turner’s actions and campaign), with Tom Philpott, *Military Update: House Again Passes Useless Custody Bill*, DAILY PRESS (June 11, 2012), http://articles.dailypress.com/2012-06-11/news/dp-nws-milupdate-0611-20120611_1_custody-cases-service-members-house-floor-debate (analyzing Turner’s plan and congressional action); Patricia Campbell, *Servicemember Family Protection Act*, L. OFFS. PATRICIA N. CAMPBELL LLC (July 18, 2012), <http://ohfamilyattorney.com/2012/07/18/servicemember-family-protection-act/>.

110. *See* 50 U.S.C. app. §§ 502, 521(d).

111. *See* Ayotte, *supra* note 106, at 669-71.

deployments since the 9/11 attacks.¹¹² Moreover, the SCRA does not provide protection of custody orders already in place, which gives civilian parents the freedom to petition the court for a custody modification with the benefit of an adversary-free hearing.¹¹³ Without the threat of legal repercussions, civilian parents are otherwise able to break the custody schedule that was agreed upon in the order because the service member parent is not available to contest the other's actions.¹¹⁴ Third parties—like grandparents—may challenge the fitness of the civilian parent, but it is the inclination of the court to find for the natural parent if that parent is declared fit.¹¹⁵ Therefore, unless the civilian parent is declared unfit, the court is unlikely to award any kind of custody or visitation to a third party.¹¹⁶

Another fault of the SCRA includes the stringent set of prerequisites that service members must meet and prove to gain assistance.¹¹⁷ The prerequisites are complex and add difficulty to an already stressful process.¹¹⁸ Proponents of federal control believe that reforming the SCRA

112. See 50 U.S.C. app. §§ 502, 521 (2008). In the army alone, the average length of deployment is twelve months. *About the Army: Active Duty and Army Reserve*, U.S. ARMY, <http://www.goarmy.com/about/service-options/active-duty-and-reserve-duty.html> (last visited Apr. 14, 2013). This is far beyond the ninety-day allotment that is considered “reasonable” when a service member files a request to stay proceedings. *Id.* Even with time allowed for leave, which is generally up to two weeks of freedom out of that minimal twelve-month period, the service member cannot possibly meet the requirements for the SCRA. *Id.* Thereafter, service members are left without reasonable options or support, which further emphasizes the fact that neither the SCRA nor the amendments to the Act are the appropriate foundation for assisting service members. See *id.* The SCRA is a federal act, and the federal system is not equipped to handle family law issues; therefore, child custody disputes should remain under state jurisdiction. See *infra* notes 124-27 and accompanying text.

113. Ayotte, *supra* note 106, at 661-62.

114. See *id.*

115. See *Landry v. Nauls*, 831 S.W.2d 603, 603-05 (Tex. App.—Houston [14th Dist.] 1992, no writ) (holding that a grandparent does have the right to intervene in a custody dispute but that this right, standing alone, is not enough); *In re Barrera*, 531 S.W.2d 908, 910-11 (Tex. Civ. App.—Amarillo 1975, no writ).

116. See *Troxel v. Granville*, 530 U.S. 57, 72-74 (2000); see also *Faucett v. Vasquez*, 984 A.2d 460, 467 (N.J. Super. Ct. App. Div. 2009) (denying a mother's request to modify child custody arrangement while her ex-husband was deployed because she was unfit and did not deserve the “parental presumption”).

117. See generally *In re Walter*, 234 S.W.3d 836 (Tex. App.—Waco 2007, no pet.) (denying the service member's motion to stay proceedings). Cf. *In re H.S.J.*, No. 03-10-00007-CV, 2010 WL 4670564, at *2-3 (Tex. App.—Austin Nov. 16, 2010, no pet.) (mem. op.) (reversing the lower court's decision to deny the service member's motion to stay proceedings); see also 50 U.S.C. app. § 522(b)(2). Section 522(b)(2) allows the court to grant a stay of proceedings under the SCRA so long as the service member can meet the following requirements:

An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

118. Ayotte, *supra* note 106, at 662.

will provide more protections to service members.¹¹⁹ Congressman Michael Turner, the main supporter of reform, has consistently proposed amendments that would introduce service member child custody claims into the federal court system.¹²⁰

Though each proposal has been denied thus far, Congressman Turner continues to push major issues including the following: (1) restrictions on courts when asked to modify the original custody arrangement while the service member is already deployed; (2) reinstatement of the original custody order once deployment is completed; and (3) exclusion of military service as a factor in the court's "best interest of the child" determination.¹²¹ If the Senate had passed these amendments, military child custody claims would join the ranks of other claims that span the SCRA.¹²² Thereafter, military child custody claims would be taken away from state court tribunals and would follow federal law, forcing service members to navigate the winding maze of the federal court system as well.¹²³

It is imperative that child custody proceedings, especially military child custody proceedings, remain a state court issue.¹²⁴ Thankfully, the Senate denied Congressman Turner's 2008 bill, making it clear that the Senate did not (and will not) support his initiative to place military child custody claims under federal jurisdiction.¹²⁵ In fact, the Department of Defense studied Congressman Turner's assertions at the Senate's request and found that

[t]he custody disputes in which servicemembers are involved simply never turn on one issue—they are as complicated as every other custody battle. Moreover, it is abundantly clear that the legislatures of the states are the appropriate venue for balancing the competing equities of the deploying servicemember and the best interests of the child. Federal legislation in this area would be counter-productive at best and harmful at worst.¹²⁶

119. Press Release, *supra* note 13.

120. *See id.*; H.R. 6048, 110th Cong. (2008).

121. *See* H.R. 6048 (proposing amendments to the Servicemembers Civil Relief Act, which were denied because the Senate did not believe military child custody disputes had a place in the federal court system).

122. *See* H.R. 4201 § 2, 112th Cong. (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4201rfs/pdf/BILLS-112hr4201rfs.pdf>.

123. *See id.*

124. *See* discussion *infra* Part IV.

125. *See* Campbell, *supra* note 109; Philpott, *supra* note 109.

126. *See* U.S. DEP'T OF DEF., REPORT ON CHILD CUSTODY LITIGATION INVOLVING SERVICE OF MEMBERS OF THE ARMED FORCES 28 (2010) [hereinafter REPORT ON CHILD CUSTODY LITIGATION], available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/lamp/downloads/child_custody_report_14_may_2010.authcheckdam.pdf.

To reiterate, the Department of Justice found not only that federal legislation would be “counter-productive” but also that it is “abundantly clear” the power should remain with the states.¹²⁷

With the Department of Justice’s findings and the objections raised by the Senate, it was clear that the states would continue to hold jurisdiction and authority.¹²⁸ Furthermore, it is reasonable to believe that both the Senate and the Department of Justice will not support Congressman Turner’s future mission to grant the federal system authority over military child custody claims; however, this did not prevent Turner’s proposal of similar amendments in 2012.¹²⁹ Accordingly, states—like Texas—took initiative and began adding special provisions to their family law codes to protect and aid service members in child custody disputes.¹³⁰ Unfortunately, the new protections in state family law codes added more confusion to interstate child custody disputes as each state followed different—sometimes conflicting—substantive laws and procedures.¹³¹ Texas has outlined guidelines that pertain to service members, but they do not necessarily cover the spectrum of possible conflicts.¹³²

B. Texas-Sized Statutes

Texas enacted a number of statutes into its family law code hoping to end much of the confusion surrounding military child custody disputes—or at least those based within the state.¹³³ These protections are skewed, as one party must meet the domicile and residency requirements, and the service member must satisfy a set of prerequisites that can be rigorous.¹³⁴ To begin the proceedings, the court will need to know that the person requesting assistance will be on military duty at the given time.¹³⁵ Then, the Texas Family Code’s definitions of military duty and temporary military duty would lead one to believe that the Code will support the service member under any circumstances.¹³⁶ But, the next section, § 153.702 of the Code, reveals that “if a conservator is ordered to military deployment, military mobilization, or temporary military duty that involves moving a

127. *See id.*

128. *See id.*

129. *See id.*; discussion *infra* Part IV.C (reviewing Congressman Turner’s 2012 proposal).

130. *See* discussion *infra* Part III.B.

131. *See* TEX. FAM. CODE ANN. §§ 153.701-.705 (West Supp. 2012).

132. *See* discussion *infra* Part III.B.

133. FAM. §§ 153.701-.705.

134. *See id.*

135. *See* FAM. § 153.701(2), (4) (defining “military deployment” as “the temporary transfer of a service member of the armed forces of this state or the United States serving in an active-duty status to another location in support of combat or some other military operation” and “temporary military duty of a service member” as “to a different location, usually another base, for a limited time for training or to assist in the performance of a noncombat mission”).

136. *See id.*

substantial distance from the conservator's residence . . . either conservator may file for an order . . . without the necessity of showing a material and substantial change of circumstances" other than the deployment, mobilization, or duty.¹³⁷ Fortunately, a closer analysis of § 156.105 further reveals that

the military duty of a conservator who is ordered to military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701, does not by itself constitute a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child except that the court may render a temporary order¹³⁸

These statutes indicate that a showing of active military duty will not solely satisfy the § 8.057 requirements that demand a material and substantial change in circumstances to alter the original child custody order.¹³⁹ Regardless, the court is allotted the ability to "render a temporary order to appoint a designated person to exercise the exclusive right to designate the primary residence of the child during" deployment, mobilization, or temporary duty, which is expected to terminate once the service member's duties have concluded, but there is no guarantee.¹⁴⁰ Subsequently, major conflicts arise when a state does not have statutes pertaining to service members involved in child custody disputes.¹⁴¹

C. The Texas Way . . . in New Jersey: Faucett v. Vasquez

In *Faucett v. Vasquez*, the child's mother petitioned the court for a custody modification because the father was called to deployment.¹⁴² In that case, the father and his new wife had custody of the child, and the mother believed that his new wife was not entitled or equipped to continue

137. See FAM. § 153.702(a).

138. See *id.* § 156.105 (West 2008 & Supp. 2012).

139. See *id.* § 156.101(a)(1) (stating that a "court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and . . . the circumstances of the child, a conservator, or other party affected by the order have *materially and substantially changed*" since the original or previous child custody order (emphasis added)).

140. See *id.* § 153.703(a) (West Supp. 2012). Section 153.702 states, "[T]emporary orders . . . terminate and the rights of all affected parties are governed by the terms of any court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty." *Id.* But see *id.* § 153.3162 (explaining that the court can award additional periods of possession of the child even after the service member's deployment has concluded).

141. See discussion *infra* Part III.C.

142. See *Faucett v. Vasquez*, 984 A.2d 460, 461-62 (N.J. Super. Ct. App. Div. 2009).

acting as a custodial parent during the father's deployment.¹⁴³ Because New Jersey lacked military-specific provisions in its family code, the court looked to Texas's Family Code for guidance.¹⁴⁴ Though the court held that "a parent's military deployment and absence from the home for a significant period of time is sufficient for the Family Part" to make a modification, it also held that military deployment cannot be the sole basis, which is "not to say that the non-deploying parent is necessarily entitled to modification."¹⁴⁵

The court's decision in *Faucett* reiterates the fact that family courts will always consider the best interest of the child standard¹⁴⁶ when making custody determinations, as "a temporary modification of the existing custody order is only warranted when the judge determines it is in the child's best interests."¹⁴⁷ Congruently, the *Faucett* opinion also illuminates the fact that many state courts do not have military-specific provisions to aid family law courts when making child custody determinations.¹⁴⁸ As mentioned previously, Texas took action to protect service members facing child custody issues.¹⁴⁹ But even when states do have statutes pertaining specifically to military child custody proceedings, the substantive laws and procedures can conflict with each other when the claim crosses state boundaries—resulting in inconsistent and unpredictable determinations.¹⁵⁰

D. Heartbreak Warfare

As previously mentioned, the UCCJEA removed the best interest determination from its list of elements, but the Texas Family Code still places a heightened importance on the best interest of the child standard.¹⁵¹ The disparity in procedures and standards further demonstrates the magnitude of differentiating standards among states and allows insight into the negative impact that a conflicting set of laws and procedures can have on family law courts.¹⁵² One state might overcompensate, adding more complexity to regulations, while others might underestimate the potential

143. *See id.* at 462.

144. *See id.* at 474. The court also had to reference the family codes in Kansas, Arizona, and California in order to handle the circumstances of the claim. *Id.*

145. *See id.* at 472-73.

146. *See* TEX. FAM. CODE ANN. § 153.002 (West 2008 & Supp. 2012).

147. *See Faucett*, 984 A.2d at 475.

148. *See generally id.* at 474-75 (making note of the Texas and Kansas Family Code statutes that outline each state's procedure when handling a military child custody claim, showing that one particular state's laws were not enough to guide family law courts in this situation).

149. *See* TEX. FAM. CODE ANN. §§ 153.701-.705 (West Supp. 2010).

150. *Why States Should Adopt the UDPCVA*, *supra* note 8.

151. *See* FAM. § 153.002 (emphasizing that "[t]he best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child").

152. *Why States Should Adopt the UDPCVA*, *supra* note 8.

complications and lack the guidance necessary to make proper decisions.¹⁵³ Even further, states may differ on their definitions for the eligibility of a service member, the extent of activity necessary to be on active duty, or the type of service the statute actually protects.¹⁵⁴ These major differences leave courts in interstate disputes at a loss and cause harsh inconsistencies in custody determinations across the country.¹⁵⁵ A uniform set of substantive laws enacted by all states and territories of the United States would help solve this issue by adding guidance and consistency to the military child custody process, thus creating a more efficient and effective system.¹⁵⁶

Furthermore, the uniformity and consistency of law and procedure would ease the process for service members who may not be familiar with family law.¹⁵⁷ When considering the frequency of service member relocation and temporary mobility, the most plausible solution to assist in interstate disputes is uniformity across the country. Taken together, a uniform set of laws would ease the procedural struggle of family courts and service members alike.¹⁵⁸ Establishing a uniform set of laws that would guide courts facing military child custody proceedings is necessary; of course, both (1) how that new set of laws will affect the current system and (2) the ramifications of the chosen method must be considered before beginning the transition.¹⁵⁹ Those two factors, along with the provisions outlined in the two acts promulgated by the separate bodies, make up the final analyses illustrating the importance of the UDPCVA.¹⁶⁰

IV. FRIENDLY FIRE: STATE ACT VERSUS FEDERAL ACT

Since July 18, 2012, federal and state bodies have been fighting for control over military child custody disputes.¹⁶¹ Both the House of Representatives and the ULC have promulgated ambitious strategies that

153. *See id.*

154. *See* FAM. §§ 153.701-.705. Terminology differences are at the heart of the issue. *Id.* Though Texas extends protection to those serving their country, other states only include certain types of service work in their protection provisions, like excluding reservists or members of the National Guard. *Id.* Thus, a person who meets the service member criteria in Texas may still be excluded for ineligibility in another state. *Id.* Further, even Texas puts certain limits on the length of service time or retirement status. *Id.*

155. *See id.*

156. *Why States Should Adopt the UDPCVA*, *supra* note 8.

157. *See id.*

158. *See* discussion *infra* Part IV.

159. *See* discussion *infra* Part IV.

160. *See* discussion *infra* Part IV.

161. *See* H.R. 4201 § 2, 112th Cong. (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4201rfs/pdf/BILLS-112hr4201rfs.pdf>; NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT § 104 (Proposed Official Draft 2012) [hereinafter Proposed Official Draft of the UDPCVA], available at http://www.uniformlaws.org/shared/docs/deployed_parents/2012am_dpcva_approvedtext.pdf.

seek to cure the injustices against service members who have to fight multiple battles while deployed or on active duty.¹⁶² Custody disputes are difficult and painful enough for any person—further penalizing those on active duty and deployment because of their service adds insult to injury. The beliefs expressed at the National Conference of Commissioners on Uniform State Laws would be the strongest, most effective way to aid service members involved in child custody disputes, and a powerful number of legal minds agree.¹⁶³ Even so, Congressman Michael Turner and his supporters are determined to add military child custody protections to the SCRA.¹⁶⁴ Nevertheless, they seem to ignore the major implications of granting federal courts jurisdiction over matters that have always been left to the states.¹⁶⁵ While there are similarities between the two acts, the ULC's proposals substantially outweigh Congressman Turner's amendments.¹⁶⁶

A. *"There never was a good war, or a bad peace."*¹⁶⁷

In 2012, Congressman Michael Turner once again pushed a bill proposing amendments to the SCRA.¹⁶⁸ In the same year, the National Conference of Commissioners of Uniform State Laws promulgated the UDPCVA.¹⁶⁹ The two proposals emphasize the same basic goal: to protect and to assist service members involved in child custody disputes when on active duty or when deployed.¹⁷⁰ The consideration for service members is not the main issue; rather, the issue is the execution and procedure to obtain protection.¹⁷¹ The UDPCVA is intended as a standard tool for states to use when family law courts wade through the murky issues complicating military child custody disputes.¹⁷² By giving the states the opportunity to enact the uniform law, the UDPCVA protects the ultimate power of each individual state and allows each state to maintain control of military child custody law.¹⁷³ In fact, the UDPCVA is formulated to create consistency while working in line with the UCCJEA and the states' individual laws.¹⁷⁴

162. See discussion *infra* Part IV.A-B.

163. Campbell, *supra* note 109; *Why States Should Adopt the UDPCVA*, *supra* note 8.

164. See, e.g., Campbell, *supra* note 109.

165. See H.R. 4201; see also discussion *supra* Part II.A (discussing the conflicts states encounter when conforming to federal judicial mandates concerning child custody disputes).

166. See discussion *infra* Part IV.A.

167. Letter from Benjamin Franklin to Josiah Quincy (Sept. 11, 1773), available at <http://www.toinspire.com/author.asp?author=Benjamin+Franklin>.

168. See H.R. 4201.

169. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

170. See *id.*; H.R. 4201 § 2.

171. *Why States Should Adopt the UDPCVA*, *supra* note 8.

172. See *id.*

173. See *id.*

174. See *id.*

The SFPA, however, would usurp state courts of their authority, thus requiring that service members wander through the federal court system and demanding that federal judges adapt to family law procedure.¹⁷⁵ It is important to analyze and compare the two acts to illustrate the strength of the UDPCVA over the SFPA.¹⁷⁶

B. Servicemember Family Protection Act

The bulk of the SFPA proposal is contained in two provisions.¹⁷⁷ First, a court that makes a temporary order changing the custodial responsibility for a child “based solely on a deployment or anticipated deployment of a parent who is a servicemember . . . shall require that upon the return of the servicemember from deployment, the custody order that was in effect immediately preceding the temporary order shall be reinstated.”¹⁷⁸ Second, “[i]f a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, *no court may consider the absence of the servicemember by reason of deployment, or the possibility of deployment, in determining the best interest of the child.*”¹⁷⁹ These two provisions, if enacted, would assist federal judges faced with making temporary custody determinations.

Provisions, however, will not clarify terminology differences, resolve eligibility issues, or fix any other statutory conflicts.¹⁸⁰ Furthermore, the provisions will be applied by inexperienced federal judges—in family law matters, that is—who may not have ties to the local communities they are serving.¹⁸¹ To sit as a family court judge, one must have a genuine desire to help the families and juveniles he or she will encounter.¹⁸² With the overwhelming caseload and propensity for parties to make multiple appearances, the judge must remain compassionate while enforcing efficient time-management practices.¹⁸³ Essentially, the judge needs to

175. See H.R. 4201 § 2.

176. See discussion *infra* Part IV.B-C.

177. See H.R. 4201 § 208(a)-(e).

178. See *id.* § 208(a).

179. See *id.* § 208(b) (emphasis added).

180. See *id.* § 208(a)-(b).

181. REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28. As explained in the U.S. Department of Defense’s *Report on Child Custody Litigation Involving Service of Members of the Armed Forces*, federal legislation would be “counter-productive,” and it is “abundantly clear” that family law should remain with the states. *Id.*; see also H.R. 4201 § 208(d) (suggesting that the Act would apply without taking authority from state courts, even though the Servicemember Family Protection Act would fall under federal jurisdiction); *cf.* H.R. 6048, 110th Cong. (2008) (integrating child custody matters into the Servicemembers Civil Relief Act, which would create federal jurisdiction over service member child custody disputes).

182. *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

183. See Tim W. Smith, *Experts Criticize Bill on Military Child Custody Cases*, TENN. DIVORCE L. BLOG (June 22, 2012), <http://www.tennesseedivorcelawblog.com/2012/06/experts-criticize-bill-on-military-child-custody-cases.shtml>.

have both a relationship with the community the judge serves and extensive personal experience with family law matters.¹⁸⁴ Combining all of those requirements, it is implausible to act as if the federal court system could replace a state's family court system without hurting future parties in the process.¹⁸⁵ To create federal review would be "ensuring high-conflict litigation in the courts with the least experience or services to handle such cases."¹⁸⁶

Judges would need to adjust to the new dispute types, attorneys would need to adjust to the new system, and service members would have to trust an entirely new way of resolving child custody disputes. Moreover, the federal court system would make military child custody disputes far more expensive and would extend the time it takes to resolve any issues.¹⁸⁷ As the ABA reported, the SFPA would allow federal jurisdiction of "military child custody cases, creating uncertainty and extraordinary expense for military members and the families."¹⁸⁸ Even worse, "each attempt to seek federal jurisdiction in a custody case would delay final resolution by months and potentially create a changing body of law affecting custody laws in every state."¹⁸⁹ Several legal organizations believe enactment of the SFPA is unnecessary because pushing these child custody disputes through the federal system would (1) unduly increase costs, (2) extend the dispute process beyond a reasonable time frame, and (3) overcomplicate the child custody process even further.¹⁹⁰ The transition would not be easy or smooth; instead, it would create more confusion than there was before.¹⁹¹ Conversely, the UDPCVA manages to implement change without creating more conflict.¹⁹²

C. Uniform Deployed Parents Custody and Visitation Act

The UDPCVA lists provisions 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."¹⁹³ Generally, the Act aims to resolve the major discrepancies of previous laws and statutes—terminology differences, eligibility inconsistencies, and outstanding statutory conflicts.¹⁹⁴ First,

184. *See id.*

185. *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

186. *See id.*

187. Smith, *supra* note 183.

188. *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

189. *See id.*

190. *Id.*; Smith, *supra* note 183.

191. *See* Smith, *supra* note 183.

192. *See* discussion *infra* Part IV.C.

193. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

194. *See id.*

consistent with the SFPA, the UDPCVA “declares that no permanent custody order can be entered before or during deployment without the service member’s consent[,]” and it “*guard[s] against the possibility that courts will use past or possible future deployment as a negative factor in determining custody by service members without serious consideration of whether the child’s best interest*” is at stake.¹⁹⁵

Here, provisions will prevent courts from rendering unfair custody determinations solely or partly based on the party’s status as a service member—an occupation that no one should be penalized for.¹⁹⁶ Also, those provisions will ensure that the civilian parent cannot modify the current custody order while the service member is deployed or on active duty.¹⁹⁷ In this sense, the UDPCVA guards against the same injustice that the SFPA would quash but would still allow state courts to retain authority, as they should.¹⁹⁸ The UDPCVA then goes a step further to define terms including deployment, deploying parent, custodial responsibility, and decision-making authority to clarify the terminology conflicts that repeatedly stifle courts when making decisions in these disputes.¹⁹⁹

The UDPCVA further seeks to protect individual parties to a dispute, as it “[e]ncourages and facilitates mutual agreement between parents to a custody arrangement during deployment” and “[p]rovides a set of expedited procedures for entry of a temporary custody order during deployment.”²⁰⁰ Then, the Act addresses the grandparent and third-party issue referenced earlier by “[a]llow[ing] the court, at the request of a deploying parent, to grant the service member’s portion of custodial responsibility . . . to an adult nonparent who is either a family member or with whom the child has a close and substantial relationship when it serves the child’s best interest.”²⁰¹ Allowing a grandparent or close third party to retain a portion of the custodial responsibility will not only prevent the civilian parent from ignoring the court’s temporary order but also protect the service member’s wishes.²⁰² Finally, the sections outlining terminology and procedure will guide courts through the dispute process, whereas courts would previously be burdened by deciphering the terms and procedures of multiple states.²⁰³ Harmonizing terms and procedure across the country will undoubtedly assist courts and service members alike.²⁰⁴

195. *Id.* art. 3 cmt.; *id.* § 107 cmt. (emphasis added).

196. *Why States Should Adopt the UDPCVA*, *supra* note 8.

197. *See id.*

198. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

199. *See id.* §§ 102-105.

200. *Why States Should Adopt the UDPCVA*, *supra* note 8.

201. *See id.*

202. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 102-201.

203. *See id.*

204. *See id.*

Of course, the most fatal difference between the two acts is the controverted best interest standards. The wording of the SFPA focuses the court's analysis on the best interest of the parent, whereas the UDPCVA focuses on the best interest of the child.²⁰⁵ Texas, like most other states, prioritizes the best interest of the child standard when making child custody determinations.²⁰⁶ Focusing otherwise could threaten the safety and care of the child, which is contrary to all child custody standards.²⁰⁷ Though the similarities of the two acts are identifiable, the UDPCVA stands out far beyond the SFPA.²⁰⁸

D. Support the State? Hooah!

The similarities of the two proposals are apparent, but the added protections of the UDPCVA are clear.²⁰⁹ The UDPCVA will not only better assist service members and courts but also protect the state courts' authority over family law matters.²¹⁰ In fact, "states are encouraged to add any state-specific terminology to the definitions of the specific terms used in the Act, without replacing the Act's specific terms or deleting the existing definitions of those terms."²¹¹ Hence, the UDPCVA protects consistency and efficiency as well as state sovereignty.²¹²

Though there is no way to make child custody disputes—especially those in multiple states—any easier or less painful, there are ways to simplify the dispute process. Like the positive results of the UCCJEA, enactment of the UDPCVA will guide service members and courts through the processes and create consistency that was not possible before.²¹³ That consistency may be possible under the SFPA; however, the confusion and complication caused by moving these child custody disputes from state courts to the federal court system will overshadow the consistency.²¹⁴ That confusion and complication will only add to the hazardous distraction service members face in the field while on active duty or deployed—the dangerous distraction the UDPCVA seeks to eliminate, or at least

205. *See id.*; H.R. 4201 § 208(b), 112th Cong. (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4201rfs/pdf/BILLS-112hr4201rfs.pdf>.

206. *See* TEX. FAM. CODE ANN. § 153.002 (West 2008 & Supp. 2012).

207. *See id.*

208. *See* discussion *infra* Part IV.D.

209. H.R. 4201 § 2; Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

210. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

211. MILITARY & VETERANS LAW SECTION, STATE BAR OF GA., LEGISLATIVE PROPOSAL FOR 2013 GENERAL ASSEMBLY SESSION FOR REVIEW AND ENDORSEMENT BY STATE BAR OF GEORGIA 20 (2012), <http://gabar.org/committeesprogramssections/programs/leg/upload/2012-Winter-ACL-Proposal-Military-Veterans-Revised-Legislative-Proposal-UDPCVA.pdf>.

212. *See id.*

213. *See id.*

214. *See* H.R. 4201 § 2, 112th Cong. (2012) available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4201rfs/pdf/BILLS-112hr4201rfs.pdf>.

mitigate.²¹⁵ These factors, in congruence with the factors mentioned previously, illustrate why it is imperative to support and enact the UDPCVA over the SFPA.²¹⁶

The arguments favoring state law over federal law indicate that the UDPCVA is the better choice for the states, court systems, and potential parties as a whole.²¹⁷ Then, looking at the provisions within the UDPCVA and the SFPA, it is clear the UDPCVA is better equipped to assist service members and courts alike.²¹⁸ Together, these two arguments support the enactment of the UDPCVA, and the subsequent denial of the SFPA by the Senate, in order to protect the states' authority over service member child custody disputes and to ease the struggle faced by service members who are involved in child custody disputes while on active duty or while deployed.²¹⁹

V. ZONE(S) OF ACTION

The current atmosphere in Texas is a hazy one. The obstacles that impede military child custody disputes in Texas stretch beyond the state's borders, disrupting interstate disputes and interfering with the family court's ability to make predictable, consistent decisions.²²⁰ State and federal authorities took notice of these issues and sought out solutions.²²¹ In doing so, three possibilities emerged.²²²

A. Follow the Feds?

Under the SFPA, military child custody disputes would shift from state authority to federal review.²²³ By granting federal jurisdiction, these disputes would gain more consistency throughout the nation.²²⁴ As a result, the new procedures may facilitate correction of some minor issues affecting service members.²²⁵ Despite those limited improvements, the major complications that would unfold could drastically debilitate the interstate

215. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

216. *See* discussion *supra* Part IV.

217. *See supra* Part IV.C-D.

218. *See* discussion *supra* Part IV.A-D.

219. *See* discussion *supra* Part IV.A-D.

220. *See* discussion *supra* Parts III-IV.

221. *See* discussion *supra* Part IV.

222. *See* discussion *infra* Part V.A-C.

223. *See* REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28.

224. *See* H.R. 4201, 112th Cong. (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112-hr4201rfs/pdf/BILLS-112hr4201rfs.pdf>.

225. *See id.*

child custody process.²²⁶ Costs would increase, time to solve disputes would increase, and confusion over a new process could be fatal.²²⁷

The ABA and the National Military Family Association agree that the SFPA “would create an unnecessary right of federal court review in military custody cases.”²²⁸ And the Department of Defense agreed, stating that “[f]ederal legislation in this area would be counter-productive at best and harmful at worst.”²²⁹ Nonetheless, the idea of creating national consistency through federal statutory control was appealing enough that the House voted in its favor in 2012, so it had some value (however slight).²³⁰ Of course, this option is contingent on the SFPA surviving the Senate—the chances of which are slim to none.²³¹

B. Proposal: A Lone Star Solution

Under the UDPCVA, service members stand to gain protections they never had before.²³² Protections listed in the provisions would not only help guard against unfair custody orders but also assist state courts when deciding military child custody disputes.²³³ Most importantly, the UDPCVA would guard states’ authority over these disputes while easing the dispute process as much as possible.²³⁴ Basically, states would remain sovereign without depriving service members of adequate assistance during such difficult times.²³⁵ Some might argue that a discretionary law would not create consistency as quickly as would a federal statute, like the UCCJEA, but that is not the only consideration.²³⁶

The Department of Defense found that “it is abundantly clear that the legislatures of the states are the appropriate venue for balancing the competing equities of the deploying servicemember and the best interests of the child.”²³⁷ In agreement, Tim Robinson III, President of the ABA, went so far as to say that “[t]hese custody rights can best be assured by state laws enforced in state courts that are already equipped to provide the protections

226. REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28; *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

227. *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

228. Smith, *supra* note 183. Other organizations that disapprove of the SFPA include the Conference of Chief Justices and State Court Administrators, the American Academy of Matrimonial Lawyers, and the National Council of Juvenile and Family Court Judges. *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

229. REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28.

230. Press Release, *supra* note 13.

231. REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28; *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15.

232. Proposed Official Draft of the UDPCVA, *supra* note 161, §§ 101-102.

233. *See id.*

234. *See id.*

235. *See id.*

236. Press Release, *supra* note 13.

237. REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28.

needed.”²³⁸ He even emphasized that “ABA policy supports state laws providing that military service alone, including deployment or the threat of deployment[,] may not be used to permanently deny custody to a military parent or to change parental custodial rights.”²³⁹ Furthermore, the Supreme Court’s opinion in *Rose v. Rose* stressed that “[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States.”²⁴⁰ For the benefit of the state and service members alike, Texas should support the enactment of the UDPCVA instead of the SFPA—as should each other U.S. state and territory.²⁴¹

C. *Leave It Be?*

In several instances, legal professionals have argued that service members would face the same difficult child disputes with or without specially tailored laws.²⁴² As troubling as it is, child custody disputes will never be easy or simple—whether the parents are civilians or service members.²⁴³ Addressing the fitness of one parent over the other will always be highly stressful and painful, regardless of the extenuating circumstances.²⁴⁴ Some would even go so far as to say that the court determinations in these disputes would not be any different after implementing federal or state regulations.²⁴⁵ Because of this emotional attachment, and the volatile behavior that may follow in any child custody disputes, many argue that the authority over disputes—for civilians or service members—should remain with each individual state.²⁴⁶ Although this plan of action would not necessarily solve the current issues, it would not lead to any unexpected obstacles either.

238. *ABA Opposes Child Custody Provisions in House DoD Bill*, *supra* note 15 (quoting a letter from Wm. T. (Bill) Robinson III, President of the Am. Bar Ass’n, to The Honorable Carl Levin, Chairman of the Armed Servs. Comm., and The Honorable John McCain, Ranking Member of the Armed Servs. Comm. (May 22, 2012), available at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2012may22_ndaamilitarychildcustody_1.authcheckdam.pdf) (internal quotation marks omitted).

239. *See id.*

240. *Rose v. Rose*, 481 U.S. 619, 625 (1987) (quoting *Ex parte Burrus*, 136 U.S. 586, 593-94 (1890)) (internal quotation marks omitted).

241. *See* discussion *supra* Parts III-IV.

242. REPORT ON CHILD CUSTODY LITIGATION, *supra* note 126, at 28.

243. *See id.*

244. *See id.*

245. *See id.*

246. *See id.*

VI. CONCLUSION: WE CAN DO IT!

While child custody disputes can be extremely difficult for all those involved, none should bow down before the barriers or hindrances. Instead, states should have the fortitude to acknowledge their current impediments and seek any avenue to correct those injustices. The overreaching goal of this Comment was to illuminate the importance of the enactment of the UDPCVA, the subsequent denial of the SFPA, and the resulting protection of the states' authority over service member child custody disputes.²⁴⁷ Each factor mentioned is crucial to achieve the ultimate goal of this Comment—to propose a solution to ease the struggle faced by service members who are involved in child custody disputes while on active duty or deployed.

There is support for the SFPA, but the legislative history, the tradition within the legal system, the results of previous state-versus-federal conflicts, the state attempts at protection, and the legal opinions all necessitate the enactment of the UDPCVA. Congressman Turner's bill proposal passed the House, but legal experts, the Senate, and the Department of Defense all believe in the authority of the states.²⁴⁸ Likewise, the benefits of the UDPCVA grow more apparent after combining the state protections with the Act's additional provisions, which are not included in the SFPA.²⁴⁹ Here, it is unduly apparent that Texas should push for enactment of the UDPCVA in order to protect those like Navy Petty Officer John Moreno, Captain Eva Slusher (Crouch), and the thousands of other single parents who should not have to choose between protecting their country and fighting for their children.

247. See discussion *supra* Parts III-IV.

248. See discussion *supra* Part III.A.

249. See discussion *supra* Part IV.A-D.