LEGISLATIVE HEARING ON H.R. 3257, H.R. 3484, H.R. 3579, H.R. 3813, H.R. 3948, H.R. 3976, H.R. 4079, H.R. 4203, H.R. 4359, H.R. 4469, AND H.R. 4592

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

OF THE

COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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THURSDAY, FEBRUARY 25, 2010

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:07 p.m., in Room 334, Cannon House Office Building, Hon. Stephanie Herseth Sandlin [Chairwoman of the Subcommittee] presiding.

Present: Representatives Herseth Sandlin, Perriello, Adler, Teague, Boozman.

OPENING STATEMENT OF CHAIRWOMAN HERSETH SANDLIN

Ms. HERSETH SANDLIN. Good afternoon, ladies and gentlemen. The Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on pending legislation will come to order.

I would like to call attention to the fact that the Honorable Ron Klein of Florida, the National Military Family Association, the Pennsylvania Association of Private School Administrators, Student Veterans of America, the American Bar Association (ABA), and Ms. Stacy Bannerman, a citizen from the State of Oregon, have asked to submit written statements for the hearing record.

If there is no objection, I ask for unanimous consent that their statements be entered for the record. Hearing no objection, so entered.

[The statements appear in the Submissions for the Record, which appear on p. 90.]

I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and that written statements be made part of the record. Hearing no objection, so ordered.

Today we have a full schedule that includes 11 bills before us that would address the unique needs of our veterans population. The bills before us today seek to expand existing laws to provide certain family members with a leave of absence from work when a servicemember is called up for active-duty service, to modernize fees payable to institutions of higher learning for certifying student veterans, to expand education entitlements under title 38, reauthorize existing law to prevent the foreclosure of a veteran's home, amend on-the-job training (OJT) requirements to encourage businesses to hire military veterans in a tough economy, make avail-

able housing loans to construct or modify energy-efficient homes, to provide protections under the Servicemembers Civil Relief Act (SCRA) to servicemembers with child custody arrangements, and to create energy-related job opportunities for military veterans.

Included in today's hearing is H.R. 3484, which I introduced to reauthorize existing law that affords certain student veterans with a work study allowance while they are enrolled in school.

Under the current Work Study Program, veterans who qualify for the U.S. Department of Veterans Affairs (VA) Work Study Program are limited to working on VA-related work such as processing VA paperwork, performing outreach services, and assisting staff at VA medical facilities or the Offices of the National Cemetery Administration.

The current Work Study Program is scheduled to expire on June 30th, 2010. My legislation would simply reauthorize this important program to June 30th, 2014, allowing our student veterans to gain valuable skills in an approved work environment while completing their studies.

Providing our student veterans with work study opportunities is an issue that I take seriously.

Earlier this year, the House successfully passed H.R. 1037, a "Pilot College Work Study Programs for Veterans Act of 2009." This legislation includes language to direct the Secretary of the U.S. Department of Veterans Affairs to conduct a 5-year pilot project on expanding existing work study activities for veterans.

Rest assured, I will continue to push for enactment of this important legislation for the remainder of the 111th Congress.

I look forward to receiving feedback on all of the other bills before us today, and I now recognize the distinguished Ranking Member, Mr. Boozman, for his opening remarks.

[The prepared statement of Chairwoman Herseth Sandlin appears on p. 41.]

OPENING STATEMENT OF HON. JOHN BOOZMAN

Mr. BOOZMAN. Thank you, Madam Chair.

First of all, I want to thank you for including H.R. 4259, the "Warriors Adapting Residences with Mortgages for Energy Renovations Act," or for short, the WARMER Act, which I introduced with Congressman Walz as an original co-sponsor.

I introduced the WARMER Act as a result of concerns that were expressed by the building industry who pointed out several shortcomings in the way VA appraised properties with regards to energy-efficient improvements.

Besides some concerns with PAYGO issues, we really have a very good collection of bills to consider today. And I do appreciate the Members that have worked so hard again coming up with ideas, coming up with solutions to some of the problems that we have in regard to veterans' issues.

I do have a little bit of concern with a couple of the bills. First, H.R. 4079, which would waive the requirements that an employer increases the wages of veterans who are employed as apprentices under the title 38 Apprenticeship Program, there is a little bit of concern that H.R. 4079 is written without the unintended consequences such as lowering the apprentice's total wages over the

period of training because of the statutory reduction in the VA payment.

But against that concern, we must balance whether some jobs, even one with a declining wage, is better than no job at all. So, again, those are the things that we need to discuss today. I appreciate the bill's intent and hopefully, working to resolve that problem.

I also have a little bit of concern about H.R. 4592. I agree with the intent to put veterans in good-paying jobs. And I know Mr. Teague is willing to work. And, again, hopefully we can work out a few concerns with that bill.

Finally, we are also interested in hearing the testimony on H.R. 4469. It sounds to me like perhaps there are some technical, legal issues that are involved and we are going to hear a good collection of witnesses in that regard, including our colleague, Mr. Turner. So, again, I appreciate the fact that we have so many Members who are willing to step forward and come up with some good ideas.

And, again, I very much support your work study endeavor. I was a work study guy and know how important that is.

And so with that, I yield back.

[The prepared statement of Congressman Boozman appears on p. 41.]

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman.

Before we begin with our first panel, I would like to recognize the Subcommittee Members with legislation before us today. Mr. Teague from New Mexico is one of those Members. So I would like to recognize you now, Mr. Teague, to speak on the bill that we are considering today.

OPENING STATEMENT OF HON. HARRY TEAGUE

Mr. TEAGUE. Thank you.

Madam Chairwoman and Ranking Member, and fellow Subcommittee Members, thank you for allowing me to have the opportunity to speak on behalf on H.R. 4592.

This bill addresses three different issues that are vitally important to my district and to our country, energy, veterans, and jobs.

The latest survey of unemployed veterans by the U.S. Department of Labor show that the number of unemployed Iraq and Afghanistan veterans is now almost the same as the number of servicemembers currently deployed in support of those two wars.

When the unemployment rate hit 9.7 percent last fall, the veterans of Iraq and Afghanistan were unemployed at the rate of 11.3 percent. To combat the problem of unemployment among those who served our Nation in uniform, I drafted legislation to get energy jobs for veterans.

Under my bill, those who fought for us abroad would be able to continue their work for the security of our country when they return home by getting a job, producing our energy right here in America.

Energy independence is one of our Nation's foremost security imperatives and there is no one more suitable for or capable of filling every energy job in America than our veterans.

The national security and economic security of our Nation has been secured in large part by our veterans and it can only be main-

tained by freeing us from foreign energy sources and putting our citizens back to work.

The Energy Jobs For Veterans Act would direct the Secretary of Labor to award competitive grants to two States to establish the program to provide marketable energy job skills and employment experiences and lasting employment and well-paying energy jobs to veterans.

The program would provide to an energy employer up to 50 percent, not to exceed $20,000, of the salary paid to a veteran for a year of apprenticeship and on-the-job training.

Eligible energy employers are those involved in the energy-efficient building, construction, and retrofit industries, the renewable electric power industry, the biofuels industry, the energy efficiency assessment industry, the oil and gas industry, and the nuclear industry.

I hope that my colleagues in this Committee and the House would agree that this bill brings together three different issues in a way that creates a winning opportunity for our country.

I would like to thank the Chairwoman and Ranking Member again for allowing this bill to come forward.

Also, I would like to thank the staff of the Economic Opportunity Subcommittee for their assistance, specifically Juan Lara, Javier Martinez, and Orfa Torres.

I would also like to thank Congressman Perriello for co-sponsoring this legislation with me.

Thank you once again, Madam Chair. This concludes my statement and I would be happy to answer any questions that my fellow Committee Members may have.

[The prepared statement of Congressman Teague appears on p. 42.]

Ms. HERSETH SANDLIN. Thank you, Mr. Teague.

Mr. Perriello, before we bring up our colleagues on the first panel, I wanted to give you and other Subcommittee Members who had bills for the Subcommittee an opportunity to speak on your respective bills. So I will now recognize you for 5 minutes.

Yes, Mr. Boozman.

Mr. BOOZMAN. I am sorry. Can I interject? I have got to run out in the hall for a second. But in regard to Mr. Teague, I just want to note that he is certainly one of our most active Members on the Subcommittee and does a tremendous job.

And we do appreciate you bringing forward your legislation. And I know that we on our side are going to look at that and work with you to try and see how we can again best put veterans to work.

Mr. TEAGUE. Very good. Thank you. I will be more than glad to work with you at any time and explain the particulars. Thank you.

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman.

Mr. Perriello.

OPENING STATEMENT OF HON. THOMAS S.P. PERRIELLO

Mr. PERRIELLO. Thank you, Madam Chair and Ranking Member Boozman, for holding this important hearing. I appreciate the opportunity to offer testimony in support of my two bills, H.R. 4079 and H.R. 3976.

Today unemployment amongst the Nation's 2.5 million veterans is at 15.8 percent or three times that of the general population. And for veterans of Iraq and Afghanistan, the rate of unemployment is a staggering 11.2 percent.

These numbers are unacceptable. After fighting on the front lines of freedom, this Nation's veterans should not have to return home only to bear the heavy burden of unemployment.

To that end, I am committed to introducing and supporting legislation aimed at creating, sustaining, and enhancing employment opportunities for our veterans.

H.R. 4079 would temporarily remove the statutory requirement that employers provide a mandatory wage increase for veterans enrolled in the Department of Veterans Affairs' On-the-Job Training Program.

Let me be clear. This legislation has only one purpose, to put veterans to work.

A survey recently completed by the National Association of State Approving Agencies (NASAA) found that 22 of 30 States that are active in the very important OJT Program have identified lost approval opportunities for veterans due to the wage increase requirement.

When applying for a job or OJT Program, our veterans should stand on equal, if not greater footing with those in the civilian workforce. But in today's economic climate, well-qualified veterans who seek employment with private employers through the VA's OJT Program find themselves at a competitive disadvantage due to the requirement that employers commit to providing a mandatory wage increase as a condition of program participation.

It is important to note that H.R. 4079 is only temporary and is scheduled to sunset. Moreover, existing law prevents employers from paying veteran employees a lesser wage than similarly qualified civilian employees.

H.R. 4079 is supported by the Chairman of the House Armed Services Committee, Ike Skelton, the Veterans of Foreign Wars (VFW), and the National Association of State Approving Agencies.

And while I have given strong consideration to concerns raised by the American Legion and the Iraq and Afghanistan Veterans of America (IAVA), I am not convinced that these concerns are sufficient to overcome the immediate concerns raised by the unprecedented level of unemployment experienced by this Nation's veterans.

The OJT Program provides an invaluable source of employment and training and I am committed to ensuring that the program remains a viable option for all eligible veterans.

I am also open to the idea that with the return of stronger economic times, we should certainly restore the core meaning of the bill, which is not only to provide great economic opportunities for our veterans but make sure that those employers are treating and compensating those veterans in the maximum way possible.

H.R. 3976, the "Helping Heroes Keep Their Homes Act," would amend the Housing and Economic Recovery Act of 2008 to extend through December 21, 2015, protections for servicemembers relating to mortgage and mortgage foreclosure. This common-sense bill will continue to ensure that our men and women in uniform receive

a fair deal on home loans and provide them adequate time to deal responsibly with possible foreclosure.

I strongly support the bill and I thank the veterans service organizations (VSOs) assembled for their support. And, again, I thank the Chairwoman for her leadership and her support on these efforts.

Ms. HERSETH SANDLIN. Thank you, both Mr. Perriello, and Mr. Teague, for the bills that you have introduced, other bills that we have been able to move through our Subcommittee which both of you have been original sponsors or co-sponsors. We appreciate your hard work, that of your offices and your level of activity on our Subcommittee on a variety of different issues related to veterans' education and employment issues.

We will now move to our first panel. Joining us to speak on their respective bills are the Chairman of the full Committee on Veterans' Affairs, the Honorable Bob Filner of California; the Chairman of the Subcommittee on Disability Assistance and Memorial Affairs, the Honorable John Hall of New York; the Honorable Adam Putnam of Florida; the Honorable Joe Sestak of Pennsylvania; the Honorable Adam Smith of Washington; and the Honorable Michael Turner of Ohio.

Gentlemen, welcome to the Subcommittee. We are pleased you are here. All of your written statements will be entered into the hearing record, we will recognize you in the order as I introduced you in the absence of Mr. Filner.

Mr. Hall, I appreciate your leadership on the Subcommittee and the bill that you have introduced that we are considering today. You are now recognized.

STATEMENTS OF HON. JOHN J. HALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK; HON. ADAM H. PUTNAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA; HON. JOE SESTAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA; HON. ADAM SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON; AND HON. MICHAEL R. TURNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

STATEMENT OF HON. JOHN J. HALL

Mr. HALL. Thank you, Madam Chair and Members of the Committee, Ranking Member Boozman, who I saw in the hall. I miss being on this Committee and I greatly appreciate the work that you do here.

I am here today to speak to you about my bill, H.R. 4203, which would require the Department of Veterans Affairs to pay GI benefits to student veterans by direct deposit into their bank accounts.

Recently too many student veterans have been left waiting for GI Bill educational benefits that they have applied for but have not yet received. The VA has authorized checks for those students, but they are required to travel to one of the VA's regional benefit offices with a photo ID, a course schedule, and an eligibility certificate before they can receive their benefits. In many cases, this is a time-consuming, expenses, and unnecessary burden.

In my district, for instance, in the Hudson Valley, veterans are required to travel to lower Manhattan to collect emergency education benefits. For an Orange County Community College student traveling from Middletown, the round trip cost to pick up their checks would be $35 and the trip would be more than 4.5 hours. For a Marist College student traveling from Poughkeepsie, the round trip cost would be more than $45 and the trip would be 4 hours and 15 minutes.

The New York Regional Benefit Office is only open from 8:30 a.m. to 4:00 p.m. Monday through Friday, school days. Getting to lower Manhattan during the hours that the VA's office is open would mean skipping work or class. Requiring veterans to travel from their homes to a Regional Office to receive their benefit is an onerous and unnecessary burden.

The fastest method, of course, would be to deliver this stipend via direct deposit the same way, by the way, that all other Veterans Benefits Administration (VBA) benefits are distributed. Eligible veterans receive their benefits all the time by direct deposit, so we are only asking for the same thing to be done with educational benefits. If necessary, the VBA could require that the veteran fax in the appropriate documentation allowing their funds to be released.

The current process is an unnecessary hassle and delay. We should do everything possible to help our vets get the education they need to succeed after they have served our country so honorably.

So in closing, I appreciate your consideration of this bill and I ask for your support to ensure that our student veterans are able to receive the benefits that they have earned and deserve in a timely and painless fashion.

I look forward to answering any questions you might have and thank you again for allowing me to testify about this bill.

[The prepared statement of Congressman Hall appears on p. 42.]

Ms. HERSETH SANDLIN. Thank you, Chairman Hall.

Mr. Putnam, you are now recognized.

STATEMENT OF HON. ADAM H. PUTNAM

Mr. PUTNAM. Thank you, Madam Chairwoman.

I understand there may be another meeting going on in this town at the other end of Pennsylvania Avenue, so I appreciate you all skipping that one to be here with us as we look for new and improved ways to help our Nation's veterans.

It is a pleasure to have the opportunity to give this testimony today on behalf of our Test Prep for Heroes Act. It is a bipartisan bill that we have introduced with my colleague from Florida, Mr. Klein, and 27 other co-sponsors, including Mr. Teague, and we are grateful for your support, and Mr. Boozman.

In crafting this, we understand that it is—we certainly understand the important role that Congress has in meeting the needs of those who have so bravely served our Nation. And while we acknowledge that this is a modest proposal, I do believe that the Test Prep for Heroes Act does provide an important benefit to those men and women in uniform who return home with dreams of attending college, law school, med school, and other advanced educational ob-

jectives that inevitably end up accruing to the benefit of our economy and our Nation.

Under current law through the Post-9/11 GI Bill, they are entitled to a reimbursement of up to $2,000 for the cost of licensing and certification tests, but it does not provide reimbursement for prep classes that are often needed to help you pass those exams.

So this bill would simply allow the $2,000 that is already allowable under the law to be used for one test and one prep course. We did not change the overall funds available to each veteran, but simply allow them to be reimbursed for those preparatory classes to help cover subject matter that they may not have been exposed to for a number of years.

As we all know, a lot of these tests are geared towards someone who may have just come straight out of school and if there is a time gap, if they did serve in one of the services, a lot of the more academic subjects have gotten a little rusty to them and preparatory classes are necessary and helpful.

It is important to note that the Montgomery GI Bill does allow for the reimbursement of $2,000 for prep courses and tests, so this would help provide the veterans returning home now with the same benefit available to those who served before them.

Madam Chair, a veteran who served in Iraq or Afghanistan has the ability to be reimbursed for the cost of an SAT if he or she is wanting to attend college. As you know, the costs of those tests are minimal. It is the cost of these preparatory courses, a comprehensive approach to better understanding that material that has not been covered for a number of years that is out of reach for many of our young veterans.

So Congressman Klein and I introduced this legislation to provide our young veterans with the best possible tools to be successful. We are not asking for an additional allocation or even a substantial change in the law, just that we better equip these young men and women by providing them access to courses that will help them achieve better results in their dreams to receive a higher education.

Again, I appreciate your work and your devotion to our Nation's men and women in uniform and thank you for the opportunity to testify today.

[The prepared statement of Congressman Putnam appears on p. 43.]

Ms. HERSETH SANDLIN. Thank you, Mr. Putnam.

Mr. Smith, you are now recognized.

STATEMENT OF HON. ADAM SMITH

Mr. SMITH. Thank you, Madam Chair. I appreciate the opportunity to come and testify before this Committee.

The bill that you have before you is the Military Family Leave Act of 2009. It attempts to give the family members of our troops who are deployed some of the same benefits that are received under the Family Leave Act more broadly available to all workers.

We have made efforts to do this in the past. There was a bill passed in 2008 to attempt to expand some of the Family Medical Leave Act provisions to members of the service and their families. At that time, the bill focused on different circumstances that would

give rise to being allowed to have family medical leave because in many of the circumstances that are traditionally thought of, which you are given family medical leave for, which would be having a child, adopting a child, major illness in the family.

That was not necessarily the circumstances that would apply in the case of the military families. In their case, they are being deployed. They are trying to deal with that or if they come back wounded and have to deal with that as well. That helped in some regards.

Unfortunately, that bill is limited to the already qualifying aspects of the Family Medical Leave Act. You have to work for the same employer for over a year, for instance. There are various other requirements in there that do not always fit for the members of the military. It has to be an employer with more than 50 employees.

So in many instances, the family members of our military families were not eligible for those benefits. They move frequently. They might not have been on the job for 12 months. They may work for a smaller employer than 50 minimum employees and they may not have had the sufficient number of hours. I think it is 1,200 hours that you have to put in each year.

So what this bill would do is it would give 2 weeks of family medical leave to any spouse, child, or parent of a deployed member of the military or any member of the military coming back who is injured and needs care. So it would apply across the board to any job that a member of the military's family has to give them that benefit.

This is all part of the broader effort. And I want to commend this Committee. In just listening to the legislation today, this Committee is doing a fantastic job of trying to understand and help military families with the specific and peculiar needs that will come up when you are deployed and deployed as often as so many members of the military have been since 9/11.

It is a complex problem and the needs of the families crop up in ways that surprise us as policymakers, but this Committee has been consistently responsive to update the law, to try to do everything we can to help our military families and give them the support they need. It is a supreme sacrifice that is made not just by those who serve but by their families.

Imagine if your spouse or son or daughter was just all of a sudden going away for a year and everything that would have to be done to make that work. It is very difficult. We need to be as responsive as possible to meeting those needs. I think this bill helps by giving the families of our military servicemembers the 2 weeks of leave regardless of their circumstances in addition to the other family medical leave that they might qualify for under existing law.

So I would urge the Committee to support this. And, again, I applaud all of your efforts to support those who served in the military and every little bit as importantly their families. Thank you for the chance.

[The prepared statement of Congressman Smith appears on p. 45.]

Ms. HERSETH SANDLIN. Thank you, Mr. Smith. Thank you for your comments regarding the work of our Subcommittee and the variety of issues that come before our jurisdiction.

Again, I appreciate all of the bills that each of our witnesses on this panel have introduced. These are important in so many different respects, as a more holistic approach not only to our servicemembers, but their families, active-duty and veteran status.

Mr. Sestak, you are now recognized.

STATEMENT OF HON. JOE SESTAK

Mr. SESTAK. Thank you, Madam Chair.

I wanted to speak about the GI Bill and one aspect of it that used to be in the Montgomery Bill, which my fellow colleague spoke about in a different area, but it is not in the GI Bill, and that is that those who desire as they get out of the military not to pursue a 2- or 4-year college degree, post-secondary education, but rather to have a certification, perhaps a trade from an apprentice school or from a vocational tech school, that they cannot use their GI benefits for that.

I think this is an area that can readily be fixed and I think it would be quite helpful.

When I joined up in the military during the Vietnam era, my very first job was to help the electricians, the machinist's mates, the lathe operators, the interior communication men. And these were the artisans, the ones that really made a go of it on the ship.

These are the same types of individuals that sometimes get out and just want the next step up in their certification, not necessarily a whole 2-year degree, in order to have that certification to go down to the local Philadelphia Naval Shipyard, now Aker Shipyard, and get a job.

I bring that out because I spent Veterans Day, this last Veterans Day in a prison. It was, harkening back to my sailor days, it was—I wanted to visit the vets that were in prison and served our Nation, but very few members go in to visit them. And one-third of all our vets, actually 47 percent in Pennsylvania are there because of a substance abuse issue that has landed them in prison. And this is a medium-size correctional facility.

Many of these individuals will now get out, but they just need a trade, not necessarily a 2 year. And this included vets that have come home that I visited from these wars that are ongoing today.

Just down the road about 4 or 5 miles away is the former Philadelphia Naval Shipyard where they are importing from outside of Pennsylvania and have for 3 years 180 welders. When I helped welders in the Navy, you flipped your helmet, you lit the arc, and you laid the bead.

Today for those who have gone to see how welders do their job, you literally have to sit at a computer, have a higher level of science and math in order to construct the bead and the sophisticated welded needed to be done down at this shipyard. And these are the kinds of individuals that could just go 5 miles down if they were able to get that certification.

So I would ask the Committee in all the great work it is doing to think about a simple fix for these types of often young enlisted men and women that are transitioning out and really do not want

to go to a 2 year. I mean, it could be our cooks in the military that just want the next baker type of certification to go into a New York City restaurant and say I have got this certification.

And so I would appreciate the consideration of this for my fellow vets. And I very much thank you for your time.

[The prepared statement of Congressman Sestak appears on p. 44.]

Ms. HERSETH SANDLIN. Thank you, Mr. Sestak, for your testimony on Mr. Putnam's and Mr. Hall's bills, which focus on the Post-9/11 GI Bill, common-sense changes that many of our colleagues are proposing to make it work better for more veterans returning home. I certainly appreciate your unique perspective from your years in the military. We thank you for that.

Mr. Turner, you are now recognized.

STATEMENT OF HON. MICHAEL R. TURNER

Mr. TURNER. Thank you, Chairwoman Herseth Sandlin and Chairman Boozman.

As a former Member of the Committee, I certainly am aware of your great leadership on the issue of veterans and I thank both of you for your service and dedication. And I also appreciate your consideration of this important bill, H.R. 4469.

H.R. 4469 will amend the Servicemembers Civil Relief Act to protect the custody arrangements of servicemembers during their deployment as well as prohibit the use of deployment as a factor in determining the best interest of a child in custody cases.

Madam Chair, the stories are too clear and all too frequent. A servicemember, many times a single mom, is called to serve her country and is given a short time to wind down her personal business and deploy. She makes temporary custody arrangements for her children, usually with her ex-spouse, sometimes in the form of a nonbinding family care plan. Then upon return from deployment and she goes to pick up her child finds that the ex-spouse will not relinquish custody without a court order.

Sometimes the story is even worse. A servicemember in fighting for custody in court has their custody rights terminated by a judge simply because of deployment or even the possibility of deployment. Deployed parents serving our country in places like Afghanistan or Iraq need protections from courts disrupting these established family arrangements.

We cannot have one branch of government asking American men and women to serve while another branch of government punishes them for their service. In the absence of consistent guidance, some States have become aware of this issue and some have taken action.

In 2005, the State of Michigan passed a law to provide protection provisions to military personnel similar to the language introduced in this bill. I commend those states who have taken action on this issue.

However, almost half of all States have not passed protections for military parents and for States that have, their protections vary even if they exist at all. A national standard is required.

This is why I have introduced H.R. 4469 to amend the SCRA to provide custody protections for military parents.

Madam Chair, our men and women serve in a Federal military that is regulated by the Federal Government. Now, these men and women sometimes reside in one State but are stationed in another State, have a marriage license from one State and are divorced in another. Disputing custody arrangements should not be an opportunity to shop for the best forum to take a child away from a military parent.

H.R. 4469 has passed the House on four separate occasions, three times as part of the National Defense Authorization Act (NDAA) and once as a stand-alone bill.

As a stand-alone bill, this legislation was passed by virtue of a voice vote on suspension with support from the Chairman of this Committee. Additionally, every single member of the House Armed Services Committee, both Democrat and Republican, have expressed their support of this legislation.

Through the years, I have tried to resolve any concerns with the legislation and have inserted language that prohibits a Federal right of action for custody cases and expressly allow States to create an even higher standard of protection for servicemembers.

Much is asked of our servicemembers and mobilization can disrupt and strain relationships at home. The basic protection is needed to provide them peace of mind that the courts will not undermine judicial proceedings concerning their established custody rights while they are serving valiantly in contingency operations.

Every one of these stories is one too many and it is justification for taking action. A parent's service to their country should not be used as a weapon against them. This amendment protects them and protects their children.

Again, I want to thank our Chair and Ranking Member. And with your consent, I would like to introduce into the record support letters that we have when the bill has previously moved through House and also a Law Review article that goes through issues that I think most affect the subject matter of this bill.

Ms. HERSETH SANDLIN. Hearing no objection, so entered.

Mr. TURNER. Thank you.

[The prepared statement and attachments of Congressman Turner appear on p. 46. Some of the attachments are being retained in the Committee files.]

Ms. HERSETH SANDLIN. Thank you, Mr. Turner.

Well, I thank each of you for your testimony.

I would recognize the Ranking Member and any of my other colleagues on the Subcommittee for any questions they may have of our colleagues on this first panel.

Mr. Boozman.

Mr. BOOZMAN. I do not have any questions. Again, I appreciate you guys. These are all very, very good ideas and something that we will take to heart and be working with you as we go forward.

I want to thank you, Congressman Sestak. You helped me with the sub vets thing earlier in the year where we honored the World War II submarine vets. And I cannot tell you what that—well, you know what it meant to them. It was the first time it had ever been done.

And the way it came about, I had a group in Arkansas that were decommissioning a group because they literally were getting too old

to attend the meetings anymore. And so it was a very, very nice thing and we do appreciate your help in that regard.

But thanks to all of you for your hard work for veterans.

Ms. HERSETH SANDLIN. Any other questions for our colleagues? [No response.]

Ms. HERSETH SANDLIN. Thank you for the commitment each of you have demonstrated not only in your testimony on the bills that you have introduced today but time and again during your service in Congress.

Mr. Putnam, we will miss you as you seek to head back to the State of Florida full time. Thank you again for being here, for your work during your time here in the Congress, and to each of you for your dedication on behalf of our Nation's veterans and, again, your recognition of the work of the Subcommittee.

We are very proud of the work of this Subcommittee and it is always nice to have these legislative hearings where we can hear directly from our colleagues who have introduced such important bills. We look forward to working with each of you based on the recommendations we hear from subsequent panels to move the bills forward. Thank you.

We would now like to invite panel two to the witness table. Joining us on our second panel of witnesses is Mr. Robert Madden, Assistant Director of the National Economic Commission for the American Legion; Mr. Justin Brown, Legislative Associate for Veterans of Foreign Wars (VFW); Mr. Timothy Embree, Legislative Associate for the Iraq and Afghanistan Veterans of America (IAVA); Mr. James Bombard, Legislative Director for the National Association of State Approving Agencies; and Mr. Mark Sullivan of the Law Offices of Mark Sullivan.

In the interest of time and courtesy to all of our panelists here today, we ask that you limit your testimony to 5 minutes focusing on your comments and recommendations. Your entire written statement has been entered into the Committee record.

I also ask for unanimous consent that Congressman Turner, a former Member of the Committee as you all know, be permitted to participate in this hearing. Hearing no objection, so ordered.

Mr. Madden, we will begin with you. Welcome back to the Subcommittee and you are now recognized.

STATEMENTS OF ROBERT W. MADDEN, ASSISTANT DIRECTOR, NATIONAL ECONOMIC COMMISSION, AMERICAN LEGION; JUSTIN BROWN, LEGISLATIVE ASSOCIATE, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; TIMOTHY S. EMBREE, LEGISLATIVE ASSOCIATE, IRAQ AND AFGHANISTAN VETERANS OF AMERICA; JAMES BOMBARD, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES, AND CHIEF, NEW YORK BUREAU OF VETERANS EDUCATION; ACCOMPANIED BY CHAD C. SCHATZ, VICE PRESIDENT, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES, AND DIRECTOR, VETERANS' EDUCATION AND TRAINING SECTION, MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION; AND COLONEL MARK E. SULLIVAN, USA (RET.), LAW OFFICES OF MARK E. SULLIVAN, P.A., RALEIGH, NC

STATEMENT OF ROBERT W. MADDEN

Mr. MADDEN. Thank you very much.

Good afternoon, Madam Chairwoman and Members of the Subcommittee. The American Legion appreciates the opportunity to present our views on the bills being considered by the Subcommittee today. We have provided written testimony addressing all 10 bills, but my oral remarks this afternoon will be limited to H.R. 3948, H.R. 3813, and H.R. 3976.

The American Legion believes that all aspects of education should be included under the Post-9/11 GI Bill to include preparatory classes for higher education. In other words, if a student has completed their undergraduate education and has considered getting their MBA, then the Post-9/11 GI Bill should assist in paying for a preparatory class for the graduate management admission test or GMAT.

The American Legion understands that these classes are expensive, but they are part of student education and should, therefore, be covered under the Post-9/11 GI Bill. Getting prepared for higher education or graduate school is a very important part of the educational process and this bill seeks to remedy and defer the cost of the classes from the student to educational costs covered by the Post-9/11 GI Bill.

Staying competitive in the education arena is very important and these classes have proven to increase the chances of a student veteran being accepted into a certain educational program due to their hard work and diligence in taking a preparatory class. These classes are expensive and as a student, most veterans cannot afford the initial cost of these classes. By adding this benefit, veterans are more likely to be successful in the preparatory test and, therefore, have a better chance of being a success in life.

The American Legion has also been a vocal proponent for making changes to the Post-9/11 GI Bill. The American Legion has recommended that the current law be amended to allow nondegree-granting institutions to receive Post-9/11 GI Bill benefits. This would include vocational, correspondence, on-the-job training, and flight training courses that are not given at an institute of higher learning.

Although the Post-9/11 GI Bill has given a new generation of military members a new way to succeed in life with education and employment, it has left some disparities in the educational and employment path that veterans may choose. Nondegree-granting institutions such as vocational schools provide job placement upon graduation as the graduate has a specific skill set is readily employed.

This bill would reestablish the definition of an education path and allow those veterans who attend institutions such as vocational schools to receive the highest in-state tuition, the housing allowance and book stipend as well.

Currently those veterans who seek education through vocational schools are denied the housing allowance and book stipend and they only receive a fraction of what their tuition costs are. This change will allow those veterans who are looking to choose a more traditional path to employment the opportunity to finish school and become gainfully employed in a quicker amount of time.

Not all veterans attend college and they are searching for other means of employment which include the above-mentioned means of education. They may have families and are looking to become employed as soon as possible in order to properly care for themselves and their families.

The American Legion believes this bill would remedy the disparities between those individuals who are attending an institute of higher learning and those who choose education through a vocational, correspondence, on-the-job training, or a flight training program through a nondegree-granting institution.

The American Legion believes it is the veteran who has the right to choose what his education and employment path should be, not limited only to attending the bricks and mortars, degree-granting college or university in order to receive the full Post-9/11 GI Bill benefits.

The American Legion supports efforts to enhance benefits received by servicemembers to retain their home during any housing crisis. Servicemembers serve multiple deployments to combat zones and should be afforded the relief in order to stay in their current homes where they and their families reside.

In order to maintain quality of life while deployed, it is imperative for servicemembers and their families to be afforded all opportunities to continue their way of life and in their current residence. Servicemembers and their families have sacrificed enough and should not be forced to undergo the additional stress of possible foreclosure to their home.

The American Legion fully supports H.R. 3976.

In closing, the American Legion has 2.5 million members. Our ardent support is to provide education benefits for individuals who are attending nondegree-granting institutions. This will grant veterans who seek other means of employment the same benefits that the Post-9/11 GI Bill benefits afford student veterans.

Secondly, veterans are also due the benefit of being properly prepared for all aspects of employment, including going back to school, apprenticeship and preparatory classes for those veterans who are seeking alternate means of employment. The American Legion supports granting these veterans the chance to gain success in the choice of education and employment paths.

Thirdly, the American Legion supports granting servicemembers and their families the choice to stay in their current home and to avoid foreclosure. In order to keep a cohesive family environment, it is important to keep a family in their home during stateside duty or during an active deployment.

This concludes my statement, Madam Chairwoman. I would be happy to answer any questions you or any Members of the Subcommittee may have.

[The prepared statement of Mr. Madden appears on p. 67.]

Ms. HERSETH SANDLIN. Thank you, Mr. Madden.

Mr. Brown, you are now recognized.

STATEMENT OF JUSTIN BROWN

Mr. BROWN. Thank you, Madam Chairwoman.

Madam Chairwoman, Ranking Member Boozman, and Members of the Subcommittee, on behalf of the 2.1 million members of the Veterans of Foreign Wars and our auxiliaries, I would like to thank this Committee for the opportunity to testify. The issues under consideration today are of great importance to our members and to the entire veteran population.

For America's newest veterans, the likelihood of unemployment continues to rise. In January 2009, 100,000 Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) veterans were unemployed. Today there are roughly 213,000 unemployed OEF/OIF veterans in the United States with an unemployment of 12.6 percent.

Yesterday the U.S. Senate approved a jobs measure. Despite having more than 1,100,000 unemployed veterans, the 60 page package failed to mention veteran or veterans once.

The VFW finds it unconscionable that America's veterans who have left their families, risked their life and limbs, and left civilian career pursuits behind to answer the Nation's call do not have the attention of Congress for this important matter.

Unemployment impacts all Americans, but America's newest veterans face multiple disadvantages in returning to employment after their service. They are returning to an economy that offers few employment prospects while also potentially dealing with physical and mental disabilities, a lack of experience with interviews and resume writing and a lack of local networks and contacts that so many civilians enjoy. We must do more. And currently Congress has the opportunity to help alleviate the situation.

There are more unemployed Iraq and Afghanistan veterans than there are servicemembers fighting in those wars and they are being passed over in this jobs package. The VFW asks that this Committee insist that the jobs package be amended to include provisions to help America's heroes find employment and we have three suggestions for inclusion.

First, increase and expand the work opportunity tax credit. Currently the credit applies to veterans who separated within the past 5 years and pays $2,400 for hiring a nondisabled veteran and $4,800 for hiring a veteran with a disability. Double it.

Also, the majority of unemployed veterans do not fit this criterion and OEF/OIF veterans that separated before February 25th, 2005, are also excluded. We ask that you extend eligibility at minimum to September 11th, 2001.

Last, the credit requires a veteran to be unemployed for 4 weeks before becoming eligible. This arbitrary requirement should be removed.

Second, modernize the Vocational Rehabilitation and Employment (VR&E) Program. In 2009, VR&E served more than 32,000 disabled veterans by training, educating, and assisting them in finding gainful employment. Improve this program's effectiveness by providing higher education stipends on par with the Post-9/11 GI Bill, eliminate the arbitrary delimiting date for usage of the program, and provide additional family services such as child care to these veterans.

Last, increase opportunities for veteran business owners and veterans interested in starting a business. For veterans to be a vital component of America's recovery, we need small business training and education. We need access to capital and we need compliance with existing laws and statutes. To do anything less will be a missed opportunity for our veterans and, more importantly, for the well-being of our country.

Yesterday at a business roundtable, President Obama stated that the jobs bill now working through Congress is designed to be targeted and temporary. We hope to see the jobs bill temporarily target America's veterans who are at high risk of unemployment. After serving two or three deployments in many cases, meaningful employment in the country they fought to defend is the least we can provide our veterans.

We have submitted our views on the bills in question, Madam Chairwoman. This concludes my testimony and I will be pleased to respond to any questions you or the Members of this Subcommittee may have. Thank you.

[The prepared statement of Mr. Brown appears on p. 69.]

Ms. HERSETH SANDLIN. Thank you very much, Mr. Brown.

Mr. Embree, you are now recognized.

STATEMENT OF TIMOTHY S. EMBREE

Mr. EMBREE. Madam Chairwoman, Ranking Member, and Members of the Subcommittee, on behalf of Iraq and Afghanistan Veterans of America's 180,000 members and supporters, I would like to thank you for the opportunity to testify before your Committee today.

As a special note, I am new to the IAVA team and to Washington, DC. This is my first appearance in front of the Subcommittee and, in fact, my first Congressional testimony. I am honored to be here.

My name is Tim Embree and I served two combat tours in the United States Marine Corps Reserve in Iraq. During my time in uniform, I saw many fellow deployed Marines struggle with strained family relationships and wrestle with the transition from military life back to civilian life.

I remember coming back to the FOB, heading over to the phone tent to wait hours in line to call home. There was no privacy. And while waiting, I would often hear heart-wrenching conversations throughout the tent. I would watch men cry, begging their wife not to leave them. I would see the anguish on a Marine's face talking

to her young child, her knowing that the kid is confused because they do not recognize their mother's voice.

I did not like going to the phone tent, not because I did not want to call my family and tell them I was okay, but because I could not stand seeing all the horrible stories play out in front of me. The Marines in that phone tent need to be focused on their mission, but too often were worried about a mortgage payment back home or a failing marriage.

Much of the legislation being considered today will profoundly affect veterans of Iraq and Afghanistan and their families. These bills will help the folks in the phone tent, and I appreciate this opportunity to offer our feedback.

IAVA supports the Military Family Leave Act, H.R. 3257. Imagine having the chance to see your husband, wife, son, or daughter for only 2 weeks every year and then working the 8-hour day shift when they are home. When you are deployed, the little time you see your family is more valuable than gold. We want to spend every waking moment with our families. It is hard enough to say goodbye after such a short period of time, but it is tragic to deny families a single hour during those 2 short weeks.

This bill will also help the spouse left at home who must fill the role of both mom and dad, find the time for all the unexpected tasks, errands, and responsibilities that come up during a deployment.

IAVA also sees an opportunity to care for our men and women in uniform by supporting H.R. 4469, amending the Servicemembers Civil Relief Act. We constantly receive letters from veterans telling us that their service deployments are being used against them in child custody disputes. By protecting deployed parents, we will help ensure servicemembers are focused on the mission at hand and not whether their service will come between them and their child.

We are pleased that this Committee is working on a broad spectrum of issues from servicemembers and their families to upgrading the wildly popular Post-9/11 GI Bill.

The Post-9/11 GI Bill has helped so many veterans and their families, but there is still more to be done. For that reason, IAVA enthusiastically supports H.R. 3813, also known as the Veterans Training Act.

It is unfair and confusing that a veteran is reimbursed under the Post-9/11 GI Bill for studying to be an emergency medical technician (EMT) at their local community college, but they cannot take the same courses at a vocational school.

The other day, I received an e-mail from Daniel in Nevada about this very issue. Daniel is an OIF vet and wants to train to become an EMT at the National College of Technical Instruction. Without this change to the Post-9/11 GI Bill, Daniel cannot afford to go to school to become an EMT.

IAVA believes veterans like Daniel must have the opportunity to return to public service in their community. We know that veterans are always looking for opportunities to continue their service, so much so that student veterans assist their school certifying officials processing GI Bill paperwork and mentoring other veterans. Therefore, IAVA proudly supports H.R. 3484 to reauthorize the VA Work Study Allowance Program for another 4 years.

The Post-9/11 GI Bill is so important to our transitioning veterans. Therefore, we also support H.R. 3948, otherwise known as the Test Prep for Heroes Act.

Currently veterans can use the Post-9/11 GI Bill to cover the cost of a single licensing or certification test up to $2,000, but must pay out of pocket for their prep course. And we know these prep courses do make a difference. It would irresponsible to show up to take the bar without taking a prep course. We need to further improve this benefit by not penalizing veterans whose career path requires multiple certification tests.

For example, a future mechanic is currently only reimbursed for one of their many needed certifications which can cost around $25 each while an aspiring attorney could receive full reimbursement for their one bar exam which can cost upwards of $1,200. Including multiple licensing and certification tests will level the playing field and provide a more equitable benefit for veterans.

Our men and women are still in the phone tents and dangerous places around the world with more responsibility and stress weighing on their shoulders than most people will ever understand, the weight of war, the weight of what is waiting when they come. We must pass these important bills to help these men and women and their families.

I appreciate this opportunity to speak to you today and welcome any questions you may have. Please remember I am a Marine, great at land navigation and weapons systems, but I do struggle with big words and long questions. So thank you very much for your time today.

[The prepared statement of Mr. Embree appears on p. 71.]

Ms. HERSETH SANDLIN. Thank you for your testimony, Mr. Embree.

Mr. Bombard, you are now recognized. I want to acknowledge I know that you are accompanied by Mr. Chad Schatz from the State of Missouri's Department of Elementary and Secondary Education and may direct some of the questions to Mr. Schatz. You are now recognized for your opening statement.

STATEMENT OF JAMES BOMBARD

Mr. BOMBARD. Thank you, Madam Chair, Ranking Member Boozman, Members of the Committee, for providing this opportunity for the National Association of State Approving Agencies to present to your Committee.

The National Association of State Approving Agencies has provided input and supports the following bills:

H.R. 3813 would expand the Post-9/11 GI Bill to include approved programs offered at noncollege-degree educational institutions. On returning to civilian life, many servicemembers are interested in hitting the ground running. Short-term certificate and diploma programs can be a critical part of their successful transition.

Programs such as truck driving, policeman, policewoman, firefighting academies, aviation maintenance people, cosmetologists, barbers, construction trades, allied medical programs are not normally available at degree-granting institutions.

Since all institutions' institutional programs must be approved by the State Approving Agencies, there is a detailed review by a

government agency to ensure all State and Federal requirements are met.

Nondegree institutions have been included in other GI bills since the time the GI Bill was instituted in 1944. We support this legislation.

H.R. 4079 would remove the requirement for private employers to increase wages for veterans enrolled in on-the-job training programs. This change is necessary due to the difficult economic times that contribute to the wage freezes or wage reductions in the private sector.

The quality of a training program is not predicated on wage increases. The wage increase requirement for public sector employees was removed several years ago based on the same rationale as State and county and municipal budgets flatlined.

The passage of this bill will allow eligible veterans and individuals to use their earned benefits during these difficult economic times and programs that are approved by the State Approving Agency.

H.R. 3948 would include the payment of Chapter 33 benefits for test preparatory courses for a test that is required or used for admission to an educational institution. Currently Chapter 33 eligible individuals can use their benefits for only one licensure or certification test reimbursement.

This bill would expand the opportunities and permit veterans to use their earned benefits in obtaining admissions to educational institutions.

H.R. 3579 would increase the reporting fees paid to institutions for their role in administering the GI Bill. The current fee structure has been in force for over 30 years. Currently it is $7 a certification.

These certifying officials are key players to the success of the GI Bill, have the most contact and interaction with our veterans. It is time to raise the reporting fee.

H.R. 3484 would extend the authority for veterans to use the Work Study Program. The Work Study Program has been successful and not only provides eligible veterans a method to increase their income while in school but also provides a substantial amount of workers for the Department of Veterans Affairs' State Approving Agencies and the VA.

H.R. 4203 would ensure veterans have the opportunity to use direct deposit. We heard Congressman Hall address that issue and it is definitely a hardship. And I can attest to veterans coming into the regional office in Manhattan from far away and it is difficult to get to pick up a check. So we support that also.

If you have any questions, please feel free to ask myself or Mr. Chad Schatz who is an expert on OJT and apprentice programming.

[The prepared statement of Mr. Bombard appears on p. 76.]

Ms. HERSETH SANDLIN. Thank you very much, Mr. Bombard.

Mr. BOMBARD. Thank you.

Ms. HERSETH SANDLIN. Mr. Sullivan, welcome to the Subcommittee. You are now recognized for 5 minutes.

STATEMENT OF COLONEL MARK E. SULLIVAN, USA (RET.)

Colonel SULLIVAN. Madam Chairwoman, Ranking Representative Boozman, and Members of the Subcommittee, thank you for inviting me to this hearing.

And I in turn want to extend this warm invitation to you. "Welcome to Federal Court." The cause for celebration is H.R. 4469. Far from closing the door on Federal litigation on custody, this bill will provide a huge opening for litigants to make a Federal case out of it when they are dissatisfied with their rights and results in State Court. I will explain how in a minute.

I am a retired Army Judge Advocate General Colonel practicing family law in Raleigh, North Carolina. And unlike those who create legislation in the House or the Senate, I try cases. Custody cases. Military custody cases. And when your troops, your constituents need help, they come to lawyers like me.

I have handled military custody litigation for over 30 years. I have helped draft and pass military custody legislation in over a dozen States.

Military personnel do not have a lot of money to spend on litigation. They do not have money to spend on two courts battling over the same matter and they never have the funds for Federal Court litigation, yet that is where this bill would land them, right in the Federal Courthouse.

Some say that H.R. 4469 is buttoned up and bulletproof because Section 208(d) says, "Nothing in this section shall create a Federal right of action." They are wrong.

There are several existing laws which creative lawyers can use to get a custody case into Federal Court if this bill is passed. And since it has not been reviewed by the House Judiciary Committee, nobody has really thought through the issue of Federal Court jurisdiction.

Frustrated litigants in State Court will overflow into Federal Court. They will petition to remove the case to Federal Court. They will sue in Federal Court under the Declaratory Judgment Act. They will file civil rights lawsuits in Federal Court if H.R. 4469 is violated.

My written testimony explains in detail. Do we want Federal judges trying custody cases, Federal marshals getting children from school to testify? Who will represent these servicemembers? If you think these cases are expensive now, wait until you start talking to your constituents who have been hauled into Federal Court because of this bill.

Do your colleagues on the House Judiciary Committee know of this expansion of Federal jurisdiction? Federal law should not provide detailed instructions on military custody cases. This is the responsibility of State laws and courts. We have no national standard for child support in military cases or for military pension division upon divorce. Let us not start with military custody.

The States are rapidly passing laws to protect the rights of servicemembers, men and women in uniform. About two-thirds of the States, 32 of them, have already done so and 10 have bills pending as we speak. This bill would stifle the initiatives States are enacting to protect servicemembers in uniform and parents.

They are significantly better for military personnel than this bill: electronic testimony, expedited dockets for servicemembers, delegation of visitation rights to family members, coverage of mobilization for Guard and Reserve personnel, and temporary duty or TDY, not just contingency operations, and the availability of children for visitation during periods of leave.

This bill has been proposed four times since 2007 and on four occasions, Congress said no. Leading opposition was Senator John McCain, Defense Secretary Robert Gates, the American Bar Association, and the National Military Family Association.

This bill attempts to create a solution to a nonexistent problem, an ill-conceived solution. While there are stories about military parents who face custody battles, and these have been reported in the media, I have examined each one of them. Not one of these would be solved through the enactment of this bill. You should reject it.

Thank you.

[The prepared statement of Colonel Sullivan appears on p. 78.]

Ms. HERSETH SANDLIN. Thank you, Mr. Sullivan.

I had a consultation with Mr. Boozman. The Ranking Member and I will forego our questions until after our colleagues who have joined us on the Subcommittee and the dais here have had an opportunity to pose theirs.

I would like to recognize Mr. Perriello. While you are recognized for 5 minutes, we will probably have another round of questions. So, I will go ahead and recognize you for 5 minutes, but knowing that you have a couple of bills here you may want to get questions to Members of this panel.

Mr. PERRIELLO. Right.

Ms. HERSETH SANDLIN. Mr. Perriello.

Mr. PERRIELLO. First of all, Mr. Brown, thank you for the words about H.R. 3976 and thank you for everything from the American Legion.

Mr. Brown, I was very pleased to hear your outrage about the Jobs Bill that has been offered. It is nice to see that the Senate has discovered bipartisanship, but that cannot be at the expense of bad policy.

And there are a whole lot of issues we could talk about, but certainly the historic unemployment rates for our returning veterans right now is something that cannot be ignored and anything that calls itself a Jobs Bill.

So I certainly appreciate that and know that many of us are working and trying to be creative in every possible way about ways that we can address that double digit unemployment for our returning veterans.

Mr. Embree, welcome to the Committee. Congratulations on great testimony and thank you for bringing this back to the phone tent for us. It means a lot.

The main thing I would like to address is that I know that your great organization as well as the American Legion has expressed concerns about the issue of H.R. 4079 and I would really love us to try to solve the problem.

I think we all have the same goal here. We really think this is a program that works well. It is helping to get veterans hired. And

there may be some magical point that is the right thing that makes it attractive enough for businesses to not want to disengage from the program.

You know, my issue here is we want businesses to participate in hiring veterans. One of the things that I hear so much in my own district is the idea that businesses used to go out of their way to hire a veteran and now they seem to go out of their way to avoid it.

These are extraordinary economic times and I think the idea of mandatory pay increases is daunting to employers right now.

So I guess the question is really, to put it back on you a little bit, how can we solve this? How can we figure out a way to make sure businesses want to participate?

Mr. Bombard, I know you have some expertise in this area as well. How can we get this right, because the goal here is obviously to—the intent of it was to try to remove barriers to businesses participating so that we get people hired?

With that, I would just turn it back to you for a suggestion.

Mr. EMBREE. Well, sir, being it is my first time, I will jump in. Thank you very much, sir, for this bill and for being willing to talk with us about this today.

IAVA does agree in principle on H.R. 4079. We think expanding the OJT Program is the right thing to do. Unfortunately, we just feel it cannot be done on the backs of the vets that will receive lower wages.

Now, we would support it if the GI Bill OJT rates did not decrease every 6 months. We see that as a nice solution to this problem. So we do not oppose lowering the threshold as long as there is increase in the GI Bill OJT rates.

Mr. MADDEN. Again, I want to thank you for the question as well.

The American Legion believes as a kind of second source is that OJT should be a part of the Post-9/11 GI Bill at chapter 33, which would in turn bring about a larger benefit for the veterans themselves and would allow more individuals who are looking into OJT programs to enter into the programs themselves.

Mr. PERRIELLO. Well, I am certainly a big believer in expanding the OJT Program. And, you know, I have a Vet Works Bill that looks to do that. Mr. Sestak presented a view today. I honestly do not care whose bill goes forward and gets credit for it, but I do think we see this as an area, that 6 to 24 month training programs that make the difference between, you know, minimum wage and a living wage to support a family.

There is also, though, the immediate issue where we have the political realities of how quickly we can get an ideal fix through versus other things that we may be able to do.

And maybe, Mr. Bombard, if you could just speak some to what you see from the—I know your organization has done a lot of these interviews and getting the feedback. What do you see is that barrier to participation and what is your recommendation for it?

Mr. BOMBARD. Well, I think we need to pass this legislation. I am sure we could find a common ground to make it acceptable to all. But without this legislation, we are denying new veterans who

are seeking opportunity to use their benefits at OJT and apprentice and we are denying the ability to do that.

Chad Schatz from Missouri is a nationally recognized expert on the issue and has more experience than I do. And I would like to have him comment.

Mr. SCHATZ. Again, thank you for your consideration to our comments.

One of the things that we learned historically when we produced VA Circular 2206–12 and that was about 5 years ago when we had a situation where city, county, State governments had flat budgets. And, for example, police officers, firefighters were not able to get their GI Bill because the city, the county, the State had a flat budget and no increases and, therefore, no approvals.

We learned from that. And as 2206–12 provided, these folks were able to get those public jobs working for city, county, or State and they receive their VA benefits. And that has flourished. And there was not any massaging of the benefit rates or anything as such.

And to my way of thinking that this would work in the private sector as well.

Mr. PERRIELLO. Well, I see that my first 5 minutes is up, but just know that we will continue to want to work through this. I think we all have the end goal here and we look forward to working and seeing both the parallel track of how we fix the current barrier that exists that is preventing businesses from participating and also the ideal fix which is to get more investment in this program, more investment in OJT within the new GI Bill.

So thank you very much for the feedback.

Ms. HERSETH SANDLIN. Mr. Turner, you are now recognized.

Mr. TURNER. Thank you, Madam Chair.

First off, I want to thank each and every one of you for the issues that you have brought forward. You through your organizations are an incredible source of eyes and ears for the important work that we have both of intended consequences of actions and of inaction that we have. And so I want to thank you for your dedication.

Your bringing these issues forward allow us to act appropriately. And there are a number of issues, I know, that you have brought forward that will be very important for us to take action on.

Mr. Embree, I want to thank you for your endorsement of the custody bill. It certainly is one that, I think, will make a difference.

Just recently today, the Armed Services Committee had a hearing where John McHugh, Secretary of the Army, was talking about the importance of families and how we can support the families and, of course, lower stress of our men and women who are serving. And there is no greater area where stress and our families intersect than the issue of custody of our children. And I appreciate your endorsement. As I mentioned in my comments, we have a long list of those that have endorsed it.

And I appreciate Mr. Sullivan in treating the issue of the Judiciary Committee because, in fact, the Judiciary Committee has looked at this bill. In fact, Chairman John Conyers waived jurisdiction in support of the bill upon review by the Committee as we brought this bill to the floor where it was passed as a stand-alone bill.

Mr. Sullivan, I do want to ask you one question. I do appreciate, you know, your stated expertise. I do not have your bio, so I am not quite certain in all the areas that you practice, but you did make a relatively broad statement of your expertise in litigation. And I assume that that applies to custody.

Do you handle custody cases?

Colonel SULLIVAN. Yes, sir, all the time.

Mr. TURNER. Okay. And so you are here before us obviously because you have some expertise in the custody area.

I wonder if you would tell me how the Indian Child Welfare Law, in specific the areas of their child custody provisions that are in chapter 25, Section 1901 apply from Federal Court and State Court and Tribal Court and how those conflicts have been resolved.

Colonel SULLIVAN. Be happy to. The issue of the Indian Tribal Indian Child Welfare Act is a false analogy, ladies and gentlemen. This is not a custody statute in any way comparable to H.R. 4469. The Indian Child Welfare Act deals exclusively with State action in the life of a Native American child. It is applicable only to foster care, to adoptive placements, and the determination of parental rights. It is not applicable as H.R. 4469 would be to child custody proceedings and divorce litigation between private litigants. It imposes a higher burden of proof for State action in intervening in the life of a Native American child. Rather than the usual burden of proof in a TPR case, that is termination of parental rights case, which is clear and convincing evidence, it imposes a "beyond a reasonable doubt" standard.

Deference is also given to extended family placements pursuant to the Native American Tribal Law in Native American courts and proceedings involving children in Tribal courts under Tribal Law. It is based upon the sovereignty of Native Americans as a sovereign nation as opposed to intrusion and trampling of State laws as H.R. 4469 is. It does not specify a particular remedy which H.R. 4469 does and it does not take away evidence from the court as H.R. 4469 does.

Mr. TURNER. Okay. Well, that was a great description. I appreciate it. I am glad that you are familiar with it because my question to you is, how have Federal Courts interpreted the jurisdictional issue, because you made a very broad statement which I do not think is correct?

You made the statement in opposition to this bill, including you held up your little card that said welcome to Federal Court, that it would give people access for their child custody cases to be determined in Federal Court.

These statutes, with respect to the Indian Tribe as you are familiar with, had a similar challenge and also had the Congressional statement that it does not provide Federal jurisdiction over those cases. And as you, I am sure, can affirm for us, it was upheld as not providing Federal action, which this bill that I proposed would not either.

Are you familiar with the cases that interpret whether or not that specific—because they are cited, as you know, in the Code section where it has been challenged that it provides Federal jurisdiction. Are you familiar with how those were determined, because it

was determined in favor of Congressional action, which is there was no Federal jurisdiction?

Colonel SULLIVAN. Mr. Turner, you are far too confident in my ability to look at a book like that and say, yes, I am familiar with all of those cases. I will happy to provide you with a memorandum, Mr. Turner, telling you exactly what the jurisdictional rulings have been in regard to Federal Court on the Indian Child Welfare Act.

Mr. TURNER. I would love that. Excellent. Thank you so much. Thank you, Madam Chairman.

Ms. HERSETH SANDLIN. If you could provide me with a copy of that memorandum as well, Mr. Sullivan.

Colonel SULLIVAN. Certainly.

[Colonel Sullivan subsequently provided the information in a followup letter dated April 8, 2010, which appears on p. 101.]

Ms. HERSETH SANDLIN. I actually worked in Federal District Court in South Dakota and I have had the honor of representing nonsovereign tribes. While we had a heavy docket of cases coming from Indian Country, never did we have a child custody case under ICWA, what we refer to as the Indian Child Welfare Act.

I would be interested in light of the statutory interpretation of ICWA and the same types of provisions being included in Mr. Turner's bill to prohibit the Federal cause of action, to prohibit the access to Federal Courts to litigate these cases.

I want to make one other analogy here that is not as direct as the one that Mr. Turner has brought our attention to as it relates to ICWA. In representing both a military installation in South Dakota as well as Native American tribes, when we disbursed Federal funding for education for what we call children who are Federally connected children, that applies to children whose parents are in the Armed Services and children who are Native American.

And there is a unique relationship. I appreciated your recitation and your understanding of ICWA, but there is a unique relationship between the Federal Government and tribal governments and tribal members based on treaties and in my opinion, a unique relationship between the Federal Government and the men and women who serve in our Armed Forces. I think that is sort of the analogy that forms a very strong basis in support of Mr. Turner's, legislation, and I look forward to getting a copy of your memorandum as well.

Colonel SULLIVAN. Certainly, ma'am.

Ms. HERSETH SANDLIN. Mr. Boozman.

Mr. BOOZMAN. Again, I would like for you all just to comment. One of the concerns I have and nobody—the Committee is so supportive of all of these things. And I guess one of my concerns is as you are out and about and you are busy with employers with the—I think I have been to Iraq eight or nine times and Afghanistan three or four times and visiting with the guys there, and there are so many people there that are on their, I do not even know what tour of duty now, but our Guard has never been used in this manner. It is a real problem. It is a problem for them. It is also a problem for the employers.

And so as a result of that, at some point, and it can be very subtly or it can be overtly, it cannot be too overtly because they really cannot do it, but my concern is that we are going to have a back-

lash with employment of our Guardsmen. Okay? And we are probably experiencing that a little bit now.

The Family Leave Act where we put the added burden of another 2 weeks, and, again, we need to look at this, and I understand the intent and I think it is a good one, do you all have some concern that that might cause increased problems with hiring of Guardsmen and things of that nature? I guess what I am saying, is that a legitimate concern that we should have?

Mr. BROWN. Thank you for the question, Congressman Boozman.

I think it certainly is. Any time you are talking about taking employees from an employer for any duration of time in which, you know, they provide services for that employer, it is always a challenge, but there is the reality as well with servicemembers that, you know, they are losing their loved one for quite a period of time. And it is good for the morale and the welfare of the individual, Congressman.

I think you are also very correct in deployments, particularly with Guard and Reservists, having an impact on potential employees being hired or them being hired when they return. That is certainly an issue and one that is also very difficult to address.

For example, we have unemployment numbers every month from the Bureau of Labor Statistics (BLS). They tend to be a smaller sample than we would like them to be. They are very statistically up and down, but they also do not identify what branch of service and what type of service these individuals are participating in. That could be very helpful in identifying Guard and Reserve type issues, particularly with their employers. And I think that is something that, you know, BLS could do with one more question.

Thank you for the question.

Mr. EMBREE. And, sir, if I could weigh in from IAVA's standpoint. One thing with H.R. 3257 that we like to point out is the employer has the discretion to determine whether family leave is considered paid or unpaid leave time. And we think that will actually alleviate some of the worries about whether or not employers will be supportive of this.

And one other thing to point out is that the current language of the bill only prevents employers from making the family use their vacation time or take sick time or comp time. So this just closes that loophole. It actually helps the employer as well as helping those family members. So they do have time be it paid or not to spend time with their family member while they are on leave.

Mr. MADDEN. Thank you very much for the question.

The American Legion believes that although we support this, there could be some problems that occur for those under 50 employers and the way to address this is to ensure—I mean, either way, it is benefitting the veteran and that family member. So the American Legion supports the position.

Mr. BOOZMAN. Well, you did very well today, Mr. Embree, for your first time out and we appreciate you being part of the team and being over here.

So with that, I yield back.

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman.

I have two areas of followup from Mr. Perriello's line of questioning about his bill, H.R. 4079, and it relates to some of the testi-

mony that Mr. Schatz had provided. The question is directed to Mr. Madden, Mr. Brown, Mr. Embree.

Given what I think is clear in terms of some success in the public sector of helping veterans in this transition, as it relates to not having that requirement of the wage increase; I think everyone here on the Subcommittee recognizes your concerns and appreciation. How do we reconcile what we have seen happen for veterans who have employment in the public sector versus the proposal that Mr. Perriello has put forward as a way to address this issue while we work other avenues, so to speak, for veterans seeking job opportunities in the private sector?

Mr. EMBREE. Ma'am, thank you for the question.

What we are saying is that we do believe that there needs to be an overhaul of this program and we accept that. And we agree on the principle of this bill. We just believe that the rates for the OJT payment of the GI Bill should be adjusted if we are going to adjust the incentives for the employer.

Right now, the way the bill stands right now, we would be incentivizing the participating OJT programs to lower their wages to the 50 percent threshold as it stands right now. And that is one of our major fears.

If you look at it this way the GI Bill starts out with currently the stipend for the OJT Program paying about $1,026 a month. In 6 months, that drops to $752. Within another 6 months, it is down to $478. That is about $500 that that veteran will lose a month if we do not adjust the OJT stipend from the GI Bill as an offset of adjusting the actual requirements of the employer.

Mr. BROWN. Thank you for the question, Madam Chairwoman.

My understanding is actually that the Federal Government would cover that difference. I mean, there are so many unemployed veterans right now. With the OJT Program, our understanding is that they would be pegged at 50 percent. The Federal Government would continue to pay the other 50 percent of that veteran's salary. That being the case, we actually supported the legislation.

Mr. MADDEN. Thank you very much for the question, Madam Chairwoman.

The American Legion believes that the Montgomery GI Bill does not pay enough for it and believes that the Post-9/11 GI Bill should be the supplement and they should be brought under those educational benefits.

Ms. HERSETH SANDLIN. Mr. Schatz, do you want to comment any further in terms of the questions that Mr. Perriello was posing or in light of the VSOs' various positions on the bill and the comments that they just made?

Mr. SCHATZ. Yes, ma'am. And I thank you for that opportunity.

I bring the public sector story to us because perhaps it was not a well-known story. Maybe only the insiders knew about it. But I think it is enlightening today because it was a success.

And, again, without massaging any benefit rates, that is not to say that we as the National Association of State Approving Agencies would not be agreeable to some sort of discussions, but I simply bring up a point of fact that historically we have precedence that it does work the way it left the dock.

So I appreciate all comments and concerns and issues. But, again, we would be agreeable to discuss any other type of measures.

Ms. HERSETH SANDLIN. Well, I appreciate the recommendations and the input you have provided. We are going to continue to work with Mr. Perriello and with all of the Committee and with the Ranking Member to see what is the best way to address this both in the short and long term.

From a rural State, I have a little bit of concern about these very small businesses who would never be able to offer an increase in wages. Referring to Mr. Smith's bill as it relates to what we did on family and medical leave, by only applying to businesses who employ more than 50 people. We have Congressional districts where most of our businesses are small businesses and employ less than that. We want to make sure that we are covering everyone including families, by giving families protection, flexibility options just as we are trying to give our veterans as much flexibility and options as possible by utilizing education benefits.

Again, we are working all the different angles on this, but I appreciate the helpful input that you have all provided today.

Mr. Turner, Mr. Boozman, do you have any final questions for this panel?

Okay. Thank you all. And we look forward to continuing to work with you on these bills that we are considering today and, of course, many others that are pending here in the 111th Congress. We thank you for your service and your dedication on behalf of our Nation's veterans and our military families. Thank you.

I would now like to invite our third panel to the witness table. Joining us on this final panel is Colonel Shawn Shumake, Director, Office of Legal Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Program Integration and Legal Policy, U.S. Department of Defense (DoD), and Mr. Keith Wilson, Director of the Office of Education Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs.

Mr. Wilson is accompanied by Mr. Mark Bologna, Director of Loan Guaranty Service, Veterans Benefits Administration for the U.S. Department of Veterans Affairs, and F. John Brizzi, Jr., Deputy Assistant General Counsel for the U.S. Department of Veterans Affairs.

I want to welcome back all of you to the Subcommittee. Your full written statements will be entered into the record as well so we ask you to keep your testimony to 5 minutes because I know there are a number of questions from the Members who are still here at the hearing.

Colonel Shumake, we will start with you. Again, welcome to the Subcommittee and you are now recognized for 5 minutes.

STATEMENTS OF COLONEL SHAWN SHUMAKE, USA, DIRECTOR, OFFICE OF LEGAL POLICY, OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS), PROGRAM INTEGRATION AND LEGAL POLICY, U.S. DEPARTMENT OF DEFENSE; AND KEITH M. WILSON, DIRECTOR OF EDUCATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MARK BOLOGNA, DIRECTOR OF LOAN GUARANTY SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND F. JOHN BRIZZI JR., DEPUTY ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS

STATEMENT OF COLONEL SHAWN SHUMAKE, USA

Colonel SHUMAKE. Thank you, Madam Chairwoman, Ranking Member Boozman, Members of the Subcommittee.

The Department of Defense appreciates the opportunity to appear before you today and discuss H.R. 4469. The Department opposes this legislation.

Some believe that the Department's opposition to this bill arises simply because it is a States' rights issue and that is certainly not the case, although the States certainly are indeed in a better position to perform the delicate balancing of the interests that arise when a servicemember has to deploy and give up custody of a child.

Even so, we cannot lose sight of the fact that the balancing in this case is far different than anything the Servicemembers Civil Relief Act, the SCRA, is normally asked to do. This is not like balancing the servicemember's interest against that of a creditor to be sure that the servicemember is entitled to the 6 percent interest rate cap. This is a balancing of interests that also includes the complicated dynamic of a child.

Certainly a servicemember should not lose custody of a child solely because of a deployment, but how should the effects of that deployment be balanced into the equation? There is no one size fits all answer to that question and not everyone would even concede or agree that the best interest of the child should always be subordinate to the best interest of the servicemember.

In any event, the States through their legislatures and their judges are in the best position to do this balancing. As Mr. Sullivan pointed out, if this becomes law, we do believe that there will be Federal Court oversight and perhaps even jurisdiction for removal. And this would greatly delay and greatly increase the cost of already difficult and expensive litigation.

We would like to emphasize more importantly that this legislation provides extremely narrow substantive protections. Its thrust is to prevent change of custody motions from being filed while the servicemember is deployed in support of a contingency operation. That is very specific conditions. But we have yet to find one single case, not one single case involving a motion for a change of custody filed while the servicemember was deployed in support of a contingency operation in which the servicemember lost custody as a result of the deployment or as the result of the potential for deploy-

ment. This is largely due to the strong protections the SCRA already provides.

One might then ask that if this law is so narrow and really does not do anything, then what is the problem. It will not hurt anything. But that is not the case.

You have also heard, of course, about the dangers of Federal jurisdiction. But in addition, this law would be seen as the gold standard for child custody. States would conclude that Congress has spoken and no further action was necessary. There would be a huge disincentive for those States that do not already have military specific custody laws now to pass them.

Our State Liaison Program within the Under Secretary for Personnel and Readiness is working tirelessly with the States to encourage the 18 or 20 or so remaining States that do not have military specific child custody statutes to pass them. Right now between 10 and 15 additional States either have a bill in Committee or otherwise under consideration.

Just yesterday the Vermont legislature sent a military specific child custody bill to the Governor for signature to make it law. A key consideration here is that almost all, if not all of these bills include greater protections for the servicemembers than this narrowly-drawn provision would provide.

One huge example is the authority to allow a servicemember to delegate visitation rights, something that is not even considered in H.R. 4469. And indeed there are other benefits as well that these States are providing in a system that fits better within their overall context and their overall domestic relations laws.

Although we oppose H.R. 4469, it has done some great things. It has pushed the Department to redraft its family care plan instruction to ensure that the noncustodial biological parent is brought into the discussion about what happens during the deployment or is at least notified of the deployment before it happens.

This is where the greatest difficulty arises. All too often servicemembers think they can ignore the noncustodial parent and simply designate in their family care plan where the child will be left, perhaps with a third party or a new husband or wife. And failure to involve that noncustodial parent in the decision is what creates difficulties after the servicemember is deployed.

The Department's revision to its family care plan will do everything possible to avoid this and it follows the instruction in the Senate that the Senate provided in its guidance in Section 556 of S. 1390, which was the Senate's version of last year's National Defense Authorization Act.

This bill, H.R. 4469, has also caused the Department to recognize the great cost associated with litigating these cases. However, no law, whether it is Federal or State, can possibly prevent costly litigation when the parties wish to make that an issue.

So the Department has taken another step to team up with the ABA's military pro bono project and establish a liaison with that organization to ensure that we do everything we possibly can to provide this great service to our servicemembers.

The Department is grateful for the tremendous things that this Subcommittee has done, but we must reemphasize our opposition to H.R. 4469 and ask that you not favorably report it.

To the degree that there is a problem that H.R. 4469 addresses, the answer to that problem does not lie with Federal legislation.

The Department has worked real hard to provide answers to that question through its State Liaison or through its efforts with its family care plan and also through the ABA and our closer coordination with them.

At the very least, the Department asks that you delay any further action on this bill until it can complete the report required by last year's Authorization Act on this bill, which is due at the end of March.

Thank you for the opportunity to address this Committee. We look forward to the opportunity to continue to work with this Committee and I will do my best to answer any questions that you may have. Thank you.

[The prepared statement of Colonel Shumake appears on p. 86.]

Ms. HERSETH SANDLIN. Thank you, Colonel.

Mr. Wilson, welcome back to the Subcommittee again. You are now recognized for 5 minutes.

Mr. WILSON. Thank you, Madam.

Ms. HERSETH SANDLIN. Frequent flyer testimony miles.

STATEMENT OF KEITH M. WILSON

Mr. WILSON. Office space might be needed.

Good afternoon, Chairwoman Herseth Sandlin. Good afternoon, Ranking Member Boozman and other Members of the Subcommittee.

I am pleased to be here today to provide VA's views on pending legislation affecting our education and housing programs. Three of the bills on today's agenda affect programs or laws administered by the Departments of Labor or Defense. Accordingly, we defer to those Departments as appropriate.

H.R. 3484 would amend title 38 to extend until June 30th, 2014, VA's authority regarding certain work study activities under the educational assistance programs we administer. VA does not oppose legislation that would extend the current expiration date of the work study provisions. However, we would prefer that the legislation provide a permanent authorization of the work study activities rather than extending for short time periods.

H.R. 3813, the "Veterans Training Act," would amend title 38 to expand the universe of approved programs of education under the Post-9/11 GI Bill to include programs approved for purposes of chapter 30, title 38. Qualifying programs would include those pursued at an educational institution as defined under section 3452(c) of title 38. This measure would not include payment provisions for the newly-covered programs of education.

While VA supports the intent to expand the programs of education for which an eligible individual may use Post-9/11 GI Bill benefits, VA does not support H.R. 3813 for the reasons outlined in my written testimony.

H.R. 3948, the "Test Prep for Heroes Act," would amend title 38 to authorize payments to students under the Post-9/11 GI Bill for test preparation. VA does not oppose legislation that would provide for payment of test preparatory courses under the Post-9/11 GI Bill.

We would note, however, that H.R. 3948 does not specify an effective date and, therefore, VA suggests the addition of an effective date with provisions that would amend applicable tests taken on or after January 1st of 2011.

H.R. 4079 would temporarily suspend a requirement under title 38 that potential employers of veterans participating in programs of on-the-job training demonstrate a wage progression for such veterans employed when applying for approval for State Approving Agencies.

VA does not support enactment of this bill. Although the requirement in current law that the wages must reach a level of 85 percent of the wages for a job a veteran is being trained for, it may be too restrictive under current economic conditions. We suggest that Congress instead consider reducing the relevant percentage requirements rather than completely removing them. Modifying the requirement in this manner could allow the SAAs to approve more employers to participate in OJT programs and increase valuable training opportunities for veterans.

H.R. 4203 would amend title 38 to direct the Secretary to ensure that payment of education assistance to a veteran student under the Post-9/11 GI Bill be made directly to the veteran's bank account. VA does not support this measure. We believe it is unnecessary.

Currently individuals receiving educational benefits under the Post-9/11 GI Bill can request that VA make these payments directly to their bank account. VA has provided this payment option since the new payment program began in August of 2009.

H.R. 4359 would expand the Secretary's authority to guarantee home loans for energy-efficient dwellings and increase the maximum amount certain veterans may borrow toward making energy-efficient improvements. It would also require the Secretary, within 90 days of enactment of the bill, to prescribe interim policy guidance on energy-efficiency audits and the conditions under which such audits may be performed.

VA supports the goal of encouraging energy efficiency and is still assessing the impact of the bill on borrowers and program costs. We will provide the Department's views on the bill for the record.

[The Administration views for H.R. 4359 follow:]

DEPARTMENT OF VETERANS AFFAIRS VIEWS ON H.R. 4359, THE WARMER ACT

The WARMER Act would expand the Secretary's authority to guarantee housing loans for energy-efficient dwellings and increase the maximum amount certain Veterans may borrow toward making energy-efficient improvements. It also would require the Secretary, within 90 days of enactment of the bill, to prescribe interim policy guidance on energy-efficiency audits and the conditions under which such audits may be performed.

VA supports the goal of encouraging energy efficiency, but cannot support the bill, as drafted, because it would create an inconsistency with other statutory provisions. For instance, the bill would amend 38 U.S.C. § 3710(d) to describe the types of loans the Secretary may guarantee, but would not amend 3710(a), which also describes energy efficiency improvement loans. In addition, it is not clear how the new guaranty amounts would work with the guaranty structure currently set forth in 38 U.S.C. § 3710(d)(3). We look forward to working with Congress to address these and other concerns.

VA estimates that the enactment of H.R. 4359, as drafted, would result in a first-year savings of $8,000, a 5-year cost of $59,000, and a 10-year cost of $201,000.

Mr. WILSON. Madam Chair, this concludes my statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have.

[The prepared statement of Mr. Wilson appears on p. 87.]

Ms. HERSETH SANDLIN. Thank you, Mr. Wilson.

As we did with the prior panel, the Ranking Member and I will reserve our questions until after our colleagues who are still in attendance at the hearing have an opportunity to pose their questions.

I would like to recognize Mr. Turner.

Mr. TURNER. Thank you, Madam Chair. I greatly appreciate your hospitality in allowing me to be on the Committee and also your thoughts on the legislation H.R. 4469.

Colonel, you and I have had a number of conversations about this, one of which, of course, occurred in my office. And I have heard your description. I really want to get to your concern that you are not finding any of these cases because in my office, you made that statement also that, you know, it is a bill looking for a remedy that does not have a problem or something to the effect of that you are not seeing these cases as they apply.

So my first question is, when were you or someone who reports to you in concluding that looking at the records of the Family Law Court proceedings in Montgomery County, Ohio, where I live?

Colonel SHUMAKE. Sir, I have not looked at the Family Law Court proceedings in your district in Ohio.

Mr. TURNER. Hamilton County in Cincinnati?

Colonel SHUMAKE. No, sir, I have not.

Mr. TURNER. The Chair's community, did you look there?

Colonel SHUMAKE. No, sir.

Mr. TURNER. And the Ranking Member?

Colonel SHUMAKE. No.

Mr. TURNER. And the reason why I ask that is because the one thing that we know from our conversations is that this is an issue that is locked up in the Family Law Courts scattered across the country. There is no database for you to look at.

For you to say you have not found any, for you to say that it does not exist is really not something that anyone can say because you cannot exhaustively undertake this search that I just asked you if you had started.

In fact, it is my understanding that you would have a hard time even looking at any database with respect to family law proceedings with respect to members.

Do you have a database that tells you during members' service time how many of them even have any custody proceedings that occur? Do they have to report that to you?

Colonel SHUMAKE. Sir, we have to resort to anecdotal data. We have in the course of preparing our responses to the last year's report requirement, we have found 34 reported cases. I mean, that is what the report has asked us to look at, the reported cases. Thirty-four that deal with these issues indeed do not address or do not meet the criteria that you have established in that legislation.

Mr. TURNER. Well, what is important about what you just said, because I want to make this clear as your report is coming due, is that you are looking at anecdotal information. You do not know

how many hearings there have been. You do not even know the subject matter of what occurred in hearings other than these 34 that you found through anecdotal.

I am looking forward to your report because, as you said, you know, perhaps the bill is too narrow and we need to widen it. Certainly the review that you have of these cases, I know that the Members of the Armed Services Committee would be interested if the review shows that we need to broaden its scope to encompass what occurred in those 34 cases. But I look forward to it with respect to that.

Now, with respect to Federal Court, we are a Congress. We actually get to decide. And throughout, you know, this book that has the annotations of the Federal Court cases other than laws, there are a number of Federal Court precedents, which I am certain in your position you are very well aware of where we get to decide where Federal Court jurisdiction is.

So I am very confident of the provisions that we have in the bill. And if there is something you would like to recommend to strengthen that since your concern is Federal jurisdiction, I would be open to amending the language to ensure that we do not make a mistake in that area.

And the next thing, you said that a number of States have passed legislation. Does the legislation in Michigan, Tennessee, Florida, and Illinois with respect to servicemembers and custody agree? Are they the same, Michigan, Tennessee, Florida, and Illinois?

Colonel SHUMAKE. Sir, I cannot comment on the specific ones, but I do agree with your point that they do vary. And, in fact, that is not surprising.

In fact, in Secretary Gates' letter back in September, he recognized that they should vary and that is not surprising that they would because they have to look at the unique circumstances within that State. So I would expect they would.

I would expect that as they get more in it, as we work with our liaison, we would actually make it better and improve it. And we have done that. Our first goal is simply to make sure they have addressed the unique circumstances——

Mr. TURNER. Colonel.

Colonel SHUMAKE [continuing]. Of military members.

Mr. TURNER. Colonel, I appreciate that you said that which is why I asked you the question. I am familiar with Secretary Gates' letter, of course, which I am certain you had involvement in. That actually is a basis usually for a national standard, not for inaction by Congress. When the States vary, especially when you have a national military and you want consistency and people to have confidence as to what standard would apply to them, that is usually when you go to a national standard.

Now, family care plans, you were telling me what you thought people should have done. Some of these 34, perhaps you could tell us what they should have done to avoid the cases that you are reviewing.

Thank you, Madam Chair.

Colonel SHUMAKE. I am sorry. What often happens, and if you look at, for instance, *Diffen* v. *Talon* case that I know you are fa-

miliar with, one you brought up in your office when I was in there, when you look at what they should have done is they should have realized that you cannot use a family care plan to delegate your custody rights to a third party who is really a legal stranger to the case, to the child, like the parent of the deploying member or the new spouse of the deploying member. You cannot do that when there is a noncustodial, biological parent on the scene who has not been declared unfit.

And that is what we saw in the *Diffen* v. *Talon* case where they tried to do that without up front going out to that noncustodial, biological parent and saying, look, I am deploying. Let us do that up front. Let us not wait until the deployment happens and then that other parent says wait a second, you cannot just give your custody away to a third party.

So that is something that we are fixing in our family care plans right now. That is the huge, huge thing. And that is one of the things that we commend you for with this legislation. Because of your efforts, we have seen where the holes lie and it is not with the motions for changes of custody that occur during a contingency operation. It is in those cases where there is not even a determination of child custody in the first place.

So we use as a readiness tool the family care plan to go out and insist that our servicemembers resolve those things before they become a problem, before they are downrange, and we are asking them to keep an eye on the target and they are worried about their families back home.

So that is a great result of what we have been through with this legislation, but it perfectly illustrates our point that we do not need the legislation and that is has negative effects, unintended consequences that we do not have to deal with by the improvements that we are making in the family care plan instruction or regulation.

Ms. HERSETH SANDLIN. Thank you, Mr. Turner.

What would the unintended negative consequences be of this legislation, again? The potential to end up in Federal Court?

Colonel SHUMAKE. Well, yes, ma'am. That is why——

Ms. HERSETH SANDLIN. Even though we have addressed, I think effectively, Congress' ability to prevent that from happening?

Colonel SHUMAKE. True, but it has not been done in the legislation because, again, the legislation says that it does not create a Federal cause of action. It does not say anything about blocking the ways to get into Federal Court that already exist that Mr. Sullivan talked about, the removal of 28 U.S.C. § 1442(a). It is still there, the ability for the Federal Courts to go in and have oversight when the request goes up to say, hey, the State Courts are not implementing H.R. 4469 like they are supposed to. Federal Court, it is a Federal question.

And I have heard several experts, and I am not an expert in the Federal Courts, but as I have gone to our Office of General Counsel and I have reached out to others in the Department of Justice, they certainly believe that the Federal Court oversight is going to be there no matter what we say with respect to this.

But the particular language in the bill does not forestall these other alternatives to the Federal Courthouse. Perhaps it stops an

initial action based on a Federal question, but all the other mechanisms are still there. So that is the Federal Court unintended consequence.

The other unintended consequence is we are working really closely with the remaining States. We are between now 40 to 45. And those bills, I have seen them. They are more comprehensive. They provide greater rights and they fit nicely within the context of the domestic laws that already exist within those States. You know, you do not have to worry about the issues of preemption.

And I know there is a provision in this statute about preemption as well and it talks about where the greater protections will lie, and I think it means to say that the courts that consider those greater protections and try to figure out which one is greater, I think it means to say that you will apply the higher standard.

It does not actually say that. It just says the Federal or State Courts considering the action will apply either the Federal or State law. It does not say the Federal or State law that provides the greater protection. I think just a word got dropped out of that.

But even so, it is not always easy in this world and in different systems where they do not even use the same terms, it is not always easy to say what is providing greater protections as opposed to what is just providing different protections so that you get the arguments that we want to avoid. We do not want lawyers to get in there where it is already a very difficult and rancorous proceeding, we do not want to give them an opportunity for more arguments about the specific law and which one applies.

So, you know, it may sound nice on paper to say apply the greater protection, but sometimes it is just a different protection so you are not sure which one applies.

Ms. HERSETH SANDLIN. Well, my sense is that H.R. 4469 is seeking to provide a floor, a base protection and in no way inhibits. I think there is specific language that indicates, and I know you stated you are familiar with it, but there may be some confusion that States are in no way prohibited from granting greater protection. Instead it goes at the heart of the fact that the deployment should not in and of itself be used as a factor in determining what is in the best interest of the child.

You had answered, I think in response to Mr. Turner, my question about other changes being made to the family care plan. We may want to follow-up with you separately about that, but I did want to spend a little bit of time here with Mr. Wilson on a couple of the other bills before us today.

H.R. 3813 introduced by Mr. Sestak, what kind of specific payment rules are needed for this bill if this bill became law?

Mr. WILSON. There are a couple directions I believe that need to be addressed. One would be the relationship between training times under the type of programs that would be offered under H.R. 3813 and how they marry up with training times now as they apply to the housing allowance, et cetera. The bill is silent on that, so we believe we would need to make sure that we fully understand the relationship so that there is consistency in how that housing allowance would be paid.

The other issue perhaps is a little bit more complex in that the equivalent of what would be the tuition and fee payments would

be paid up front as the current tuition and fees are now under the Post-9/11 GI Bill.

Under the type of programs that are covered under H.R. 3813, you have situations such as an 18-month-long computer training program that could cost $20,000, $30,000, $40,000, $50,000. Potentially you could create an environment by which a veteran would prior to completion of that prolonged period of training have to withdraw and they could potentially be on the hook for significant amounts that would have to be recouped from them.

Ms. HERSETH SANDLIN. We are going to be working with Mr. Sestak. Obviously Mr. Perriello has some similar interests in again finding a way to work through some of the situations, providing flexibility for the veterans and using the benefit.

Certainly we are very interested in this Subcommittee, as you know, in administrative ease where we can find it in administering the benefit. So I appreciate your recommendations.

I may have just a couple of others, and I recognize the Ranking Member for questions he may have for the panel.

Mr. BOOZMAN. Very quickly. We do appreciate, Mr. Wilson, the technical assistance that we received in helping us with the WARMER Bill and trying to get things straight and your all's willingness to work with us to try and resolve some issues. So we do appreciate that very much.

The NDAA required DoD to provide—there has been mention of the study on the issue——

Colonel SHUMAKE. Yes, sir.

Mr. BOOZMAN [continuing]. That we are talking about. I think that is due the 31st. Will it be done then?

Colonel SHUMAKE. Sir, I hope so. That is my goal, but I cannot say that there have not been a few setbacks that I had not anticipated. But that is what we are shooting for.

Mr. BOOZMAN. Okay. Good. Well, again, that would be helpful also in seeing that as we go forward with that issue.

So with that, I yield back, Madam Chair.

Ms. HERSETH SANDLIN. Mr. Turner?

Mr. TURNER. No thank you.

Ms. HERSETH SANDLIN. Mr. Wilson, H.R. 4079, Mr. Perriello's bill, and we had explored this with the prior panel. From your perspective in the position that you have been in with the Education Service, why is the public sector not required to provide a periodic wage increase but the private sector is required to do so? What is your understanding of that?

Mr. WILSON. Yes. This was an issue I am familiar with that was one of the first that was put on my plate when I was fortunate enough to be appointed to this position about 4 years ago.

The situation we were looking at there was a little bit different, but the end result was very similar in that the public sector was in a situation where competitively speaking they were at a disadvantage. They were not able to offer the salaries at the training levels that would attract the talent that they were looking to bring into their organizations.

So a lot of them were in the situation where when they brought the individual on board, they would be offering the full performance salary from the get-go in an attempt to bring those individ-

uals into the organization. That had the same effect in that there was not a wage progression.

We looked at our flexibility. The Secretary did have flexibility to address that by policy, so we did that.

Ms. HERSETH SANDLIN. Do you think if Mr. Perriello's bill provides flexibility in the private sector—do you think this could work as well? Understanding the concerns expressed by some of the VSOs today, what are your thoughts on how this could work in the private sector?

Mr. WILSON. I believe the potential is there.

Ms. HERSETH SANDLIN. Have you worked directly with any of the other State Approving Agencies and their experiences similar to what Mr. Schatz was describing in his testimony?

Mr. WILSON. That is correct. I believe his experiences are consistent with what we see in other States as well.

Ms. HERSETH SANDLIN. I sort of cut you off, but what were you going to elaborate on?

Mr. WILSON. No. I just wanted to point out that I believe there is potential. What we wanted to guard against was the situation where a veteran's overall wages or overall income wages and OJT combined would be declining at the point when they are getting more training, which seems to be inconsistent.

We do recognize the issues, though, where if that is the only job that the veteran is offered, the only one available to them, they will take that job regardless. And we want to be able to recognize that. So I do believe there is some flexibility and we look forward to working with the Subcommittee on that.

Ms. HERSETH SANDLIN. Thank you.

I do not have any further questions. Just a couple of final comments.

I know Mr. Boozman was inquiring, Colonel, about the timetable for the report. I think we are all interested in that report. Obviously we have got some folks on the Armed Services Committee who are interested as well.

I thank you for your testimony and to both of you on this panel, and others on previous panels for your statements.

I do think, Colonel, it is very unusual to have all Members of the Armed Services Committee write a letter in agreement for what they view as sort of a base, a core protection on something as important as the custody of a child.

I think that we are in a position here to address some of the concerns that you have to tighten up language if necessary.

We will obviously be working with our Senate counterparts given that the House has spoken quite clearly and repeatedly on the importance of this kind of protection, and appreciate the work that you and the DoD have undertaken in light of the House's actions even though it has not been signed into law.

But I do hope that we can continue to work to address the unintended consequences that you think may result and how we can again add language, tighten language, provide additional evidence and precedent that we have and the experiences that all of us have in our Congressional districts being very familiar, particularly with the experience of some of our National Guard and Reservists who in the experiences of this Subcommittee and the full Committee

have fallen through the cracks as it relates to protections that DoD should be providing in other areas and the awarding of benefits and informing them of benefits that they are entitled to.

Again, we look forward to working with you and appreciate your input, but this Subcommittee is very interested in continuing to move to confirm what the House and prior Congresses have done.

We think that the report that you are preparing will be very informative for us. I know you will be sharing that with the Armed Services Committee and we will be looking forward to seeing the results of your report as well.

Colonel SHUMAKE. Yes, ma'am. Thank you.

Ms. HERSETH SANDLIN. Thank you again to everyone that testified. Again, a variety of different bills we have here to either close loopholes, provide more flexibility, provide additional protections and opportunities for our Nation's veterans.

We are going to continue to look for ways to improve existing programs and add new ideas in light of the changed environment and additional challenges that the men and women in our Armed Forces face and the types of challenges that puts on folks, particularly in your position, Colonel, Mr. Wilson, for you, and your teams in a fast changing environment for a number of different reasons compounded by the change in our economy here in the United States to be able to give back what the country owes to folks that are in Iraq, Afghanistan, and elsewhere around the world going through strains and struggles that we will never, I think as Mr. Embree stated, that so many of us will never be able to fully understand, but make every good faith effort to address the needs when individual stories are brought to us from constituents in our districts.

As always, we are going to keep an open mind toward any other suggestions and ideas that you will be able to share. But, again, we appreciate those that you have presented to us in the written record and through your testimony and responses to our questions today.

With that, the hearing stands adjourned.

[Whereupon, at 4:05 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity

Today we have a full schedule that includes 11 bills before us that would address the unique needs of our veteran population. The bills before us today seek to: expand existing laws to provide certain family members with a leave of absence from work when a servicemember is called up for active duty service; modernize fees payable to Institutions of Higher Learning for certifying student veterans; expand education entitlements under Title 38; reauthorize existing law to prevent the foreclosure of a veteran's home; amend on-the-job training requirements to encourage businesses to hire military veterans in a tough economy; make available housing loans to construct or modify energy efficient homes; provide protections under the Servicemembers Civil Relief Act to servicemembers going through child custody arrangements; and create energy related job opportunities for military veterans.

Included in today's hearing is H.R. 3484, which I introduced to reauthorize existing law that affords certain student veterans with a work-study allowance while they are enrolled in school. Under the current work-study program, veterans that qualify for the VA work-study program are limited to working on VA related work such as processing VA paperwork, performing outreach services, and assisting staff at VA medical facilities or the offices of the National Cemetery Administration.

The current work-study program is scheduled to expire on June 30, 2010. My legislation would simply reauthorize this important program to June 30, 2014 allowing our student veterans to gain valuable skills in an approved work environment while completing their studies.

Providing our student veterans with work-study opportunities is an issue that I take seriously. Earlier this year the House successfully passed H.R. 1037, the Pilot College Work Study Programs for Veterans Act of 2009. This legislation includes language to direct the Secretary of the U.S. Department of Veterans Affairs to conduct a 5-year pilot project on expanding existing work-study activities for veterans. Rest assured that I will continue to push for enactment of this important legislation in the remainder of the 111th Congress.

Prepared Statement of Hon. John Boozman, Ranking Republican Member, Subcommittee on Economic Opportunity

Good afternoon Madam Chair.

Thanks for moving these bills forward. I would first request that the written testimony of the American Bar Association be included in the hearing record. I would note for the record that they oppose passage of H.R. 4469.

Madam Chair, I greatly appreciate your including H.R. 4259, The Warriors Adapting Residences with Mortgages for Energy Renovations Act or for short, the 'WARMER Act', which I introduced with Congressman Walz as an original cosponsor. I introduced the WARMER Act as a result of concerns expressed by a very knowledgeable developer who pointed out several shortcomings in the way VA appraised properties with regards to energy efficiency improvements.

Besides the PAYGO issues, we have a very good collection of bills to consider. I have some concern with a couple bills. First, H.R. 4079 which would waive the requirement that an employer increase the wages of veterans who are employed as apprentices under title 38's apprenticeship program. H.R. 4079 as written, would have some unintended consequences such as lowering the apprentice's total wages over the period of training because of the statutory reduction in the VA payment. But, against that concern we must balance whether some job, even one with a declining wage is better than no job these days. I appreciate the bill's intent and I want to work with you on the bill.

I also have some concerns about H.R. 4592. Again, I agree with the intent to put veterans in good-paying jobs and I would like to work with Mr. Teague to do that in the most effective manner in the long term.

Finally, I am also very interested to hear the testimonies on H.R. 4469. It sounds to me like there are some technical legal issues involved and I believe we will hear a very good discussion by our witnesses, including our colleague, Mr. Turner, the bill's sponsor. I would note that, in my opinion, the ultimate goal of child custody law is to protect the best interests of the child, not the rights of the servicemember.

I yield back.

Prepared Statement of Hon. Harry Teague

Madam Chairwoman and Ranking Member Boozman and fellow Subcommittee Members, thank you for allowing me to have the opportunity to speak on behalf of H.R. 4592. This bill addresses three different issues that are vitally important to my district and our country—energy, veterans and jobs.

The latest survey of veterans unemployment by the Department of Labor shows the number of unemployed Iraq and Afghanistan veterans is now almost the same as the number of servicemembers currently deployed in support of those two wars. When the unemployment rate hit 9.7 percent last fall, veterans of the Iraq and Afghanistan wars were unemployed at a rate of 11.3 percent.

To combat the problem of unemployment among those who served our Nation in uniform, I drafted legislation to get *energy jobs for veterans.* Under my bill, those who fought for us abroad would be able to continue their work for the security of our country when they return home—by getting a job producing our energy right here in America.

Energy independence is one of our Nation's foremost security imperatives, and there is no one more suitable for—or capable of—filling energy jobs in America than our veterans. The national security and economic security of our Nation has been secured in large part by our veterans, and it can only be maintained by freeing us from foreign energy sources and putting our citizens back to work.

The Energy Jobs for Veterans Act would direct the Secretary of Labor to award competitive grants to two States to establish programs to provide marketable energy job skills and employment experience and lasting employment in well paying energy jobs to veterans. The program would provide to an energy employer up to 50 percent, not to exceed $20,000, of the salary paid to a veteran for a year of apprenticeship and on-the-job training. Eligible energy employers are those involved in the energy efficient building, construction and retrofits industries; the renewable electric power industry; the biofuels industry; the energy efficiency assessment industry; the oil and gas industry; and the nuclear industry.

I hope that my colleagues in this Committee and the House would agree that this bill brings together three different issues in a way that creates a winning opportunity for our country.

I would like to thank the Chairwoman and Ranking Member again for allowing this bill to come forward. I would also like to thank the staff of the Economic Opportunity Subcommittee for their assistance, specifically Juan Lara, Javier Martinez and Orfa Torres.

I would also like to thank Congressmen Perriello for co-sponsoring this legislation with me.

Thank you once again Madam Chair. This concludes my statement, and I would be happy to answer any questions that my fellow Committee Members may have.

Prepared Statement of Hon. John J. Hall,
a Representative in Congress from the State of New York

Chairwoman Herseth Sandlin, Ranking Member Boozman, and Members of the Subcommittee on Economic Opportunity, thank you for holding this hearing and allowing me to speak about my bill, H.R. 4203. My bill would require the Department of Veterans Affairs to direct deposit student veterans' GI education checks.

Recently, too many student veterans have been left waiting for GI Bill educational benefits that they have applied for but have not yet received. The VA has authorized checks for those students but they are required to travel to one of the VA's regional benefit offices with a photo ID, a course schedule and an eligibility certificate

before they can receive their benefits. In many cases, this is a time-consuming, expensive and unnecessary burden.

Veterans in my district, in the Hudson Valley of New York, are currently required to travel to lower Manhattan to collect emergency education benefits. For an Orange County Community College student traveling from Middletown, the roundtrip cost to pick up their education benefits would be $35 and take more than 4 hours and 30 minutes. For a Marist College student traveling from Poughkeepsie, the roundtrip cost to pick up their education benefits would be more than $45 and take more than 4 hours and 15 minutes. The New York regional benefit office is open 8:30 am to 4:00 pm Monday through Friday. Getting to lower Manhattan during the hours the VA's office is open means students will have to skip work or class. Requiring veterans to travel from their homes to a Regional Office in order to receive their benefit creates an onerous and unnecessary burden.

These veterans have already applied for the education benefit, and are in the VBA's system. The fastest method to deliver these emergency checks would be via direct deposit to their bank accounts, the same way all other VBA benefits are distributed to eligible veterans. If necessary, the VBA could require that veterans fax in appropriate documentation, allowing the funds to be released.

The current process is an unnecessary hassle and we should do everything possible to help these veterans get the education they need to succeed after they have served our country so honorably.

In closing, I appreciate your consideration of this bill and ask for your support to ensure that student veterans are able to receive the benefits they have earned and deserve. I look forward to answering any questions you might have about my bill. Again, thank you for holding this hearing and allowing me to testify.

Prepared Statement of Hon. Adam H. Putnam,
a Representative in Congress from the State of Florida

Madam Chair,

I appreciate the opportunity to provide testimony before your Committee about the Test Prep for Heroes Act (H.R. 3948). This is bi-partisan legislation that I introduced along with my colleague from the Florida delegation, Congressman Ron Klein. Twenty seven of our colleagues have joined us in cosponsoring this bill.

In crafting this legislation, we understand the important role Congress has in meeting the needs of those that have so bravely served America in uniform across the globe. While we acknowledge that there may be greater needs on the horizon for our Nation's veterans, we believe that the Test Prep for Heroes Act will help to provide an important benefit to those men and women in uniform that return home with dreams of attending college, law school, medical school, or any other advanced education.

Under current law—through the Post-9/11 GI Bill—veterans are entitled to a reimbursement of up to $2,000 for the costs of licensing and certification tests. The law, however, provides no reimbursement for preparatory classes that are often needed to better prepare for the material covered on those tests.

Therefore, our bill would simply allow the $2,000 reimbursement to be used for one test and one preparatory course. We do not change the overall funds available to each veteran, but simply allow them to be reimbursed for a preparatory class to help cover subject matter they may not have been exposed to for years.

It is important to note that the Montgomery GI Bill does allow for a reimbursement of $2,000 for preparatory courses and tests. The Test Prep for Heroes Act would help to provide veterans returning home now with the same benefit available to those that served before them.

Madam Chair, a veteran that served in Iraq or Afghanistan has the ability to be reimbursed for the cost of an SAT if he or she is wanting to attend college. As you know, the costs of the tests themselves are minimal. It is, however, the costs of a prep class—a comprehensive approach to better understanding material that hasn't been covered for years—that is out of reach for many of our young veterans.

Congressman Klein and I introduced this legislation to provide our young veterans with the best possible tools to succeed. We are not asking for more money to be allocated to each veteran or even a substantial change in law. We are simply asking that we better equip these young men and women by providing them access to courses that will help them achieve better results in their dreams to receive a higher education.

Again, I greatly appreciate this opportunity and your focus on better serving our Nation's veterans. I look forward to working with you and the other Members of the Committee to ensure that the appropriate education benefits are delivered America's veterans in a common-sense and timely manner.

Thank you.

Prepared Statement of Hon. Joe Sestak,
a Representative in Congress from the State of Pennsylvania

Chairwoman Sandlin, Ranking Member Boozman, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss my bill, H.R. 3813, the Veterans Training Act.

Passage of the Post-9/11 GI Bill marked one of the highlights of my first term as a United States Congressman. While I strongly opposed the war in Iraq, I have always voted to provide our brave men and women who wear the Cloth of this Nation the tools they need to succeed, both on the battlefield and in returning to civilian life. As a former Admiral, who served in the United States Navy for 31 years, I have no higher priority than the welfare of our Veterans.

The Post-9/11 GI Bill is the most extensive educational assistance program authorized since the original GI Bill was signed into law in 1944, and it is a vital tool for our Nation's Veterans as they transition from military to civilian careers. The maximum benefit allows every eligible Veteran, servicemember, reservist, and National Guard member an opportunity to receive an in-state, undergraduate education at a public institution at no cost. Provisions of the program include payments for tuition and fees, housing, and a books and supplies stipend.

Particularly in these challenging economic times, this bill provides our Veterans the opportunity to realize the futures they put on hold in order to serve our Nation. Additionally, it is a just reward for their heroic service. Unlike in wars of the past, our servicemembers in the field in Iraq and Afghanistan go outside the wire every day. The trauma and stress inflicted upon our brave soldiers, through asymmetrical threats such as Improvised Explosive Devices (IEDs), have led to record levels of military suicides, Traumatic Brain Injuries (TBIs), and instances of Post-Traumatic Stress Disorder (PTSD). The situation has only been aggravated by lengthy deployments and insufficient dwell time.

These men and women were there for us; we need to be there for them. Passage of the Post-9/11 GI Bill was a monumental achievement; however, as with so many other programs, there is room for improvement. Currently, students attending postsecondary education institutions that do not grant associate or higher degrees, such as vocational-technical schools, career schools, and apprenticeship programs, are not eligible for benefits under the Post-9/11 GI Bill. This is unfair, because these kinds of programs have always been included in the traditional Montgomery GI Bill.

My bill, H.R. 3813, would fix this inequity and allow students to participate in the postsecondary educational program of their choice. Many of our returning Veterans may want to pursue a trade, such as truck driving, automobile or aviation maintenance, cosmetology, nursing, or construction. These Veterans may have families to support, military skills they wish to transition into a civilian career, or they may simply wish to forgo traditional college education in favor or a shorter, more entrepreneurial program. Whatever their motivation, there is no reason to deny these brave men and women the maximum flexibility in determining how to utilize their hard-won—and well-deserved—benefits. They should be permitted to pursue short-term certificate and diploma programs—and thus, their next career—at the institutions of their choice, which is exactly what my bill would authorize.

Finally, it is worth noting that since all institutions and programs under the GI Bills must be certified by the State Approving Agency (SSA), there is always a detailed review by a government agency to ensure that all State and Federal requirements are complied with. To that end, this session I have also introduced H.R. 4571, the "GI Bill Enhancement Act of 2010," to raise the cap on Department of Veteran Affairs funding for SSAs, which has remained stagnant since the passage of the Post-9/11 GI Bill. This measure would improve implementation of the Post-9/11 GI Bill, particularly if H.R. 3813 is signed into law and certification of non-degree granting institutions becomes mandatory.

H.R. 3813 is a common-sense measure that would expand one of our Nation's proudest legislative achievements by providing parity between the Post-9/11 GI Bill and its previous incarnations. It has been endorsed by the National Association of State Approving Agencies and the Pennsylvania Association of Private School Administrators.

The original post-World War II GI Bill did not just help our Veterans. It was one of this Nation's most effective investments in our citizens. It helped create a generation of innovators, pioneers and artists, as well as a workforce that remains unmatched in the world. I expect nothing less from the Post-9/11 GI Bill and consider it our duty, to our Veterans and our Nation, to make it the best it can be. I urge the Committee to report H.R. 3813 favorably at the earliest opportunity. Thank you, Madam Chairwoman.

Prepared Statement of Hon. Adam Smith,
a Representative in Congress from the State of Washington

Madame Chairwoman, Ranking Member Boozman, and distinguished Members of the Subcommittee, thank you for the opportunity to testify before you today in support of the Military Family Leave Act of 2009.

As someone who has the privilege of representing thousands of military personnel and their families, I have seen firsthand the dedication and degree of professionalism that our men and women in uniform put into their mission. Providing military personnel with the benefits, treatment, and respect they deserve in exchange for their service to our Nation has, and should continue to be, a priority for Congress. I also recognize the unique and challenging nature of military life and the impacts it has on our military's families.

As Members may be aware, section 585 of the Fiscal Year 2008 National Defense Authorization Act (P.L. 110–181) amended the Family and Medical Leave Act (FMLA) to permit the children, parents, or next of kin of military personnel to take up to 26 work-weeks of leave to care for a covered servicemember recovering from a serious injury or illness incurred while serving on active duty. In addition, the amendment permits an employee to take up to 12 work-weeks of FMLA leave for certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation. These new military family leave entitlements became effective on January 16, 2009.

While the amendment to FMLA has allowed numerous military families to take time away from work to be with their loved ones, current laws do not afford the same protection to individuals whose employment situation is not eligible for FMLA benefits. This includes employees who have worked for an employer for less than 12 months, have worked less than 1,250 hours over the previous 12 months, or work for an employer who employs less than 50 employees in a 75 mile radius. As a significant number of military spouses work for small businesses, work part-time to balance work and family needs, or have less than 1 year with a company due to recent moves or reassignments, many are not eligible for protected leave under current law.

To address this issue and to ensure that military families have the flexibility to take time off of work to address issues that arise over the course of the deployment of a loved one, I introduced the Military Family Leave Act of 2009. This legislation would ensure that the spouse, children, or parents of a member of the military are able to take up to 2 weeks of unpaid leave when the servicemember receives a notification or order to active duty in support of a contingency operation, or is deployed in connection with such an operation.

The Military Family Leave Act is modeled after a provision that was approved by the Washington State Legislature and took effect on June 12, 2008. The Oregon State Legislature also passed a similar law, which took effect on June 25, 2009. This effort was led Stacy by Bannerman, a former constituent of mine and the spouse of a member of the Oregon National Guard. I'd like to take this opportunity to briefly recognize Ms. Bannerman for her work on behalf of military families and ask consent that her written statement in support of the Military Family Leave Act of 2009 be included in the record.

With that, I again thank the Committee for the opportunity today in support of the Military Family Leave Act of 2009 and look forward to your question.

Prepared Statement of Hon. Michael R. Turner,
a Representative in Congress from the State of Ohio

Chairwoman Herseth-Sandlin and Chairman Boozman:

I would like to thank you for your leadership and consideration of this important bill, H.R. 4469.

H.R. 4469 will amend the Servicemembers Civil Relief Act to protect the custody arrangements of servicemembers during their deployment as well as prohibit the use of deployment as a factor in determining the best interests of a child in custody cases.

Madame Chair, the stories are too clear and too frequent: a servicemember, many times a single mom, is called to serve her country and is given a short time to wind down her personal business and deploy. She makes temporary custody arrangements for her children usually with her ex-spouse, sometimes in the form of a non-binding family care plan. Then, upon return from deployment, goes to pick up her child, and finds out that her ex-spouse won't relinquish custody without a court order.

Sometimes the story is even worse: A servicemember in fighting for custody in court has their custodial rights terminated by a judge simply because of "deployment" or even "possibility of deployment". Deployed parents, serving our country, in places like Afghanistan or Iraq, need protections from courts disrupting these established family arrangements. We cannot have one branch of government asking American men and women to serve, while another branch of government punishes them for their service.

In the absence of consistent guidance, some States have become aware of this issue and some have taken action. In 2005, the State of Michigan passed a law to provide protection provisions to military personnel similar to the language introduced in this bill. I commend those States who have taken action on this issue. However, almost half of all States have not passed protections for military parents, and for States that have, their protections vary, if they even exist at all. A national standard is required.

This is why I have introduced H.R. 4469 to amend the SCRA to provide custody protections for military parents. Madame Chair, our men and women serve in a Federal military that is regulated by the Federal Government. These men and women sometimes reside in one State, but are stationed in another State, have marriage licenses in one State, divorces in another. Disputing custody arrangements should not be an opportunity to shop for the best forum to take a child away from a military parent.

H.R. 4469 has passed the House on 4 separate occasions—3 times as part of the National Defense Authorization Act, and once as a stand-alone bill. As a stand-alone bill, this legislation was passed by voice vote on suspension with support from the Chairman of this Committee. Additionally, every single member of the House Armed Services Committee, both Democrat and Republican, has expressed their support for this legislation. Through the years, I have tried to resolve any concerns with this legislation and have inserted language that prohibits a Federal right of action for custody cases, and expressly allows States to create an even higher standard of protection for servicemembers.

Much is asked of our servicemembers and mobilizations can disrupt and strain relationships at home. This basic protection is needed to provide them peace of mind that the courts will not undertake judicial proceedings concerning their established custody rights while they are serving valiantly in contingency operations. Even one of these stories is one too many, and is justification to take action. A parent's service to their country should not be used as a weapon against them. This amendment protects them and it protects their children.

Again, I thank you Chairwoman Herseth Sandlin (SD) and Ranking Member Boozman (AR).

I yield back the balance of my time.

Air Force Association
Arlington, VA
July 28, 2009

The Honorable Michael R. Turner
1740 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Turner:

The Air Force Association, a 501(c)(3) non-profit organization representing approximately 125,000 current and former Airmen and their families, is writing to express our support for protecting the child custody rights of deployed servicemembers.

As you know, this is a difficult issue. We all recognize the competing interests of protecting military children while honoring the sacrifices of those who wear the uniform. Both are extremely important to our Nation and its families. For these reasons, we support the common-sense measures related to child custody protection in the House-passed version of the FY 2010 Defense Authorization Bill. Section 584 contains provisions that balance these needs by granting courts limited authority to temporarily change child custody orders while servicemembers are deployed. When they return, any changes are rescinded unless circumstances exist that are unrelated to ongoing military service within the family. Under these rules, courts will not be permitted to consider military service a factor while deliberating any permanent child custody arrangements. Because the legislation does not create a Federal right of action, nor does it inhibit the authority of States to enact stricter guidelines if they so choose, we believe States' rights are adequately protected. Though additional challenges may persist, this set of provisions strikes a balance between the safety and well-being of children and the need to respect military service.

The Air Force Association strongly supports this important step in protecting our servicemembers. It is of the highest importance to please contact Shane Barker in our Office of Government Relations at (703) 247–5800 ext. 4842 if we can further assist in achieving this important goal.

Sincerely,

Michael M. Dunn
President and CEO

[Identical letters were sent to Hon. Ike Skelton, Hon. Howard P. McKeon, House Armed Services Committee, and Hon. Carl Levin, Hon. John McCain, Senate Armed Services Committee.]

Association of the United States Army
Arlington, VA.
26 August 2009

The Honorable Ike Skelton
Chair
Committee on Armed Services
2206 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the more than 105,000 members of the Association of the United States Army, I write to thank you and the Armed Services Committee for your efforts to protect the interests of servicemembers in the FY 2010 National Defense Authorization Bill.

We are grateful to both chambers for their support of increased end strengths, a 3.4 percent military pay raise, TRICARE coverage for "gray area" Guard and Reserve retirees, and additional initiatives to improve conditions and benefits for wounded warriors and their families and caregivers.

In conference we request that you consider the following:

End Strength

AUSA very strongly supports the Senate provision that would authorize a 30,000 end strength increase beginning in FY 2010, rather than waiting until FY 2011. We believe these additional troops are needed as soon as possible to ease operations

tempo stresses on members and families and better meet the needs of commanders in the field.

Concurrent Receipt

AUSA very strongly supports the House provision phasing out the disability offset to military retired pay for all members whose service-caused illnesses and injuries forced their medical retirement from active service. This plan was a key feature of the President's defense budget submission, and AUSA urges its retention in the final Defense Authorization Act.

Survivor Benefit Plan (SBP)

AUSA very strongly supports the Senate provision that would end deduction of Dependency and Indemnity Compensation (DIC) from SBP annuities when the member's death is service-caused. Congressional leaders have repeatedly cited fixing this "widow's tax" as a top priority, and AUSA believes aggressive action is essential to substantively address that commitment.

TRICARE Fees

AUSA very strongly urges retention of Section 706 of the Senate bill as a "Sense of Congress" provision in the final bill. This section acknowledges that military health care is a primary offset for the unique demands and sacrifices inherent in a military career, that career servicemembers have earned coverage levels commensurate with that sacrifice, that much of defense health cost growth reflect readiness requirements that are a "cost of doing business" for the Defense Department, and that the Department can and should pursue a range of other options to reduce health costs and rather than seeking to impose large fee increases on military beneficiaries. This statement of congressional intent provides a vital foundation for discussion on this important benefit issue.

Reserve Retirement Age Credit for Post-9/11 Active Service

AUSA very strongly supports the Senate provision that would provide retroactive credit for active service since September 11, 2001 for the purpose of reducing the Reserve retirement age. Current law authorizes a 3-month reduction in the standard retirement age for each cumulative 90 days served on active duty, but credits only active service rendered since January 28, 2008.

Military Parent Custody Rights

AUSA very strongly supports the House provision that would help protect the custody rights of military parents while deployed.

Flexible Spending Accounts (FSA)

AUSA very strongly urges retention of Senate section 658 as a "Sense of Congress" provision in the final bill. We are perplexed at the continued resistance of the Department to providing currently serving uniformed services beneficiaries the same FSA option afforded all other Federal and corporate employees. No one has greater need for dependent care than servicemembers subject to frequent and extended deployments. Thousands of Service families experience significant out-of-pocket expenses for dental care, eyeglasses and contact lenses, medication copayments, over-the-counter medications and more. AUSA urges the Committees to pursue every possible effort to end the current discrimination against servicemembers on FSA eligibility.

Thank you for the opportunity to provide AUSA's views on these important issues.

Sincerely,

GORDON R. SULLIVAN
General, USA Retired

GRS/rmw

Reserve Officers Association of the United States
Washington, DC.
August 10, 2009

The Honorable Howard P. McKeon
United States House
Committee on Armed Services
Washington, D.C. 20515

Dear Ranking Member McKeon:

I am writing on behalf of the Reserve Officers Association of the United States, chartered by Congress with a membership of 65,000, to express our support for protecting the child custody rights of deployed servicemembers in the House's version of the National Defense Authorization Act (NDAA), H.R. 2647, Section 584.

This is, as you understand, a critical and complex issue due to the contending interests to protect military children just as we honor servicemembers who sacrifice a great deal, and both are vitally important to our Nation. In favor of these reasons we support the much needed actions associated with the child custody protection section in the House Fiscal Year 2010 NDAA. This section provides partial authority to courts to protect children in cases that necessitate temporary custody but also secures servicemembers' rights while they are deployed on contingency operations. The legislation does not establish Federal right of action or hinder States' authority. The provision affords the desired balance between children's welfare and recognizing military service.

The Nation that is able to bail out numerous businesses should do the right thing for those who are putting their lives and their families' well-being at risk to defend their fellow Americans. Our citizen-warriors are not asking for a handout, only to protect their families who endure arduous and dangerous service to the country.

The Reserve Officers Association strongly supports the House's child custody protection provision and requests that you find the means to adopt it in the final version of the FY 2010 NDAA.

Sincerely,

Paul T. Kayye
Rear Admiral, MC, USNR (Ret.)
National President

Congress of the United States
Washington, DC.
June 16, 2009

Dr. Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301–1000

Dear Secretary Gates:

We appreciate your interest stated during the May 13, 2009 House Armed Services Committee hearing to protect child custody rights for our men and women in uniform.

As you know, legislative language addressing this issue has already passed the House of Representatives three times. First, as Section 577 of the House passed FY 2008 National Defense Authorization Act (H.R. 1585). Additionally, portions of this legislation were also included in Section 584 of the final House passed version of the FY 2008 NDAA (H.R. 4986). Finally, last year this language passed the House as a stand-alone bill (H.R. 6048) and was attached to the FY 2009 NDAA. Nearly 60 members from both sides of the aisle signed on to H.R. 6048 as co-sponsors.

Today, the House Armed Services Committee passed their FY 2010 NDAA. This bill contains similar language that would protect custody rights for military parents. As we move forward with the current legislative session and consideration of the FY 2010 NDAA, we look forward to your continued interest in addressing this im-

portant issue to ensure that our men and women in uniform have their parental rights protected.

Sincerely,

Michael R. Turner
Member of Congress

Rob Bishop
Member of Congress

Mike Rogers (AL)
Member of Congress

Joe Wilson
Member of Congress

J. Randy Forbes
Member of Congress

Roscoe G. Bartlett
Member of Congress

Doug Lamborn
Member of Congress

Mary Fallin
Member of Congress

Trent Franks
Member of Congress

David Loebsack
Member of Congress

Mike Coffman
Member of Congress

Joe Courtney
Member of Congress

W. Todd Akin
Member of Congress

Jim Cooper
Member of Congress

Brad Ellsworth
Member of Congress

Martin Heinrich
Member of Congress

Robert A. Brady
Member of Congress

Madeleine Z. Bordallo
Member of Congress

Larry Kissell
Member of Congress

James R. Langevin
Member of Congress

Solomon P. Ortiz
Member of Congress

Bobby Bright
Member of Congress

Marc Thornberry
Member of Congress

Robert E. Andrews
Member of Congress

Susan A. Davis
Member of Congress

Chellie Pingree
Member of Congress

Niki Tsongas
Member of Congress

Gabrielle Giffords
Member of Congress

John Kline
Member of Congress

Frank LoBiondo
Member of Congress

Jeff Miller
Member of Congress

Walter B. Jones
Member of Congress

Howard P. "Buck" McKeon
Member of Congress

Robert J. Wittman
Member of Congress

Duncan Hunter
Member of Congress

John Fleming
Member of Congress

Neil Abercrombie
Member of Congress

Ellen O. Tauscher
Member of Congress

K. Michael Conaway
Member of Congress

Patrick J. Murphy
Member of Congress

Jim Marshall
Member of Congress

Gene Taylor
Member of Congress

Frank Kratovil
Member of Congress

Eric Massa
Member of Congress

Loretta Sanchez
Member of Congress

Silvestre Reyes
Member of Congress

Glenn C. Nye
Member of Congress

Tom Rooney
Member of Congress

Dan Boren
Member of Congress

Carol Shea-Porter
Member of Congress

Henry C. "Hank" Johnson, Jr.
Member of Congress

Todd Russell Platts
Member of Congress

Scott Murphy
Member of Congress

John M. Spratt, Jr.
Member of Congress

Joe Sestak
Member of Congress

Vic Snyder
Member of Congress

Rick Larsen
Member of Congress

Cathy McMorris Rodgers
Member of Congress

Adam Smith
Member of Congress

Bill Shuster
Member of Congress

Mike McIntyre
Member of Congress

The Military Coalition
Alexandria, VA.
August 26, 2009

The Honorable Ike Skelton
Chairman
Committee on Armed Services
United States House of Representatives
Washington, DC 20515

The Honorable Howard P. McKeon
Ranking Member
Committee on Armed Services
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Mr. Ranking Member:

The Military Coalition (TMC), a consortium of uniformed services and veterans associations representing more than 5.5 million current and former servicemembers and their families and survivors, is grateful to you and the Armed Services Committee for your efforts to protect the interests of servicemembers in the FY 2010 National Defense Authorization Bill.

We are grateful to both chambers for their support of increased end strengths, a 3.4 percent military pay raise, TRICARE coverage for "gray area" Guard and Reserve retirees, and additional initiatives to improve conditions and benefits for wounded warriors and their families and caregivers.

The attached matrix highlights Coalition recommendations concerning selected differences between the House- and Senate-passed bills. Several priorities merit special mention:

End Strength

The Coalition very strongly supports the Senate provision that would authorize a 30,000 Army end strength increase beginning in FY 2010, rather than waiting until FY 2011. We believe these additional troops are needed as soon as possible to ease operations tempo stresses on members and families and better meet the needs of commanders in the field. We appreciate the Committees' action in reversing force cuts for the active Navy and Air Force, but remain concerned that the Nation's dramatically increased reliance on the Reserve components merits increases in those components as well.

Concurrent Receipt

The Coalition very strongly supports the House provision phasing out the disability offset to military retired pay for all members whose service-caused illnesses and injuries forced their medical retirement from active service. This plan was a key feature of the President's defense budget submission, and the Coalition urges its retention in the final Defense Authorization Act.

Survivor Benefit Plan (SBP)

The Coalition very strongly supports the Senate provision that would end deduction of Dependency and Indemnity Compensation (DIC) from SBP annuities when the member's death is service-caused. We recognize that there were some very modest adjustments in the tobacco legislation earlier this year, but those would bring no relief at all until FY 2014. Congressional leaders have repeatedly cited fixing this "widow's tax" as a top priority, and the Coalition believes aggressive action is essential to substantively address that commitment.

Reserve Retirement Age Credit for Post-9/11 Active Service

The Coalition very strongly supports the Senate provision that would provide retroactive credit for active service since September 11, 2001 for the purpose of reducing the Reserve retirement age. Current law authorizes a 3-month reduction in the standard retirement age for each cumulative 90 days served on active duty, but credits only active service rendered since January 28, 2008. Hundreds of thousands of Guard and Reserve members served one or more combat tours between 2001 and 2008, and this and other qualifying service during the current conflict merits equal

retirement-age credit. The Coalition believes this is the least America can do to recognize the truly extraordinary demands imposed on Guard and Reserve forces and families.

Mental Health Assessments

The Coalition very strongly supports the Senate provision requiring person-to-person mental health assessments for servicemembers deployed in support of a contingency operation. We believe this is the single most important initiative in helping to detect and address PTSD, suicidal tendencies and other potential service-caused behavioral problems. The Coalition believes limiting the initiative to a demonstration program would be insufficient to meet this pressing need.

TRICARE Fees

The Coalition appreciates the work of the Committees, in concert with the President, to protect the earned benefit of TRICARE from the imposition of higher fees, copays, or deductibles and we very strongly urge retention of Section 706 of the Senate bill as a "Sense of Congress" provision in the final bill. This section acknowledges that military health care is a primary offset for the unique demands and sacrifices inherent in a military career, that career servicemembers have earned coverage levels commensurate with that sacrifice, that much of defense health cost growth reflect readiness requirements that are a "cost of doing business" for the Defense Department, and that the Department can and should pursue a range of other options to reduce health costs and rather than seeking to impose large fee increases on military beneficiaries. This statement of congressional intent provides a vital foundation for discussion on this important benefit issue.

Absentee Voting Rights

The Coalition very strongly supports the Senate provisions to protect military absentee voting rights. Hundreds of thousands of military and family members' votes have not been counted in recent elections because of absentee ballot problems. It is long past time for enactment of the specific initiatives outlined in the Senate provisions.

Flexible Spending Accounts (FSA)

The Coalition very strongly urges retention of Senate section 658 as a "Sense of Congress" provision in the final bill. We are perplexed at the continued resistance of the Department to provide currently serving uniformed services beneficiaries the same FSA option afforded all other Federal and corporate employees. No one has greater need for dependent care than servicemembers subject to frequent and extended deployments. Thousands of Service families experience significant out-of-pocket expenses for dental care, eyeglasses and contact lenses, medication copayments, over-the-counter medications and more. The Coalition urges the Committees to pursue every possible effort to end the current discrimination against servicemembers on FSA eligibility.

Comparison of Military and Private Sector Pay and Benefits

The Coalition is concerned that comparison of military and private sector total compensation packages, as proposed in Senate section 602, has little validity absent a similarly detailed comparison of military and private sector working conditions. Retirement, health, and other institutional benefits are essential offsets to the extraordinary demands and sacrifices of a service career. Inclusion of the value of such benefits in a pay comparability equation is not a proper application, absent quantification of liability for repeated family separations, extended overtime without extra pay, frequent moves that disrupt spousal careers and children's education, risk of death or incapacitation, and the forfeiture of many personal freedoms most Americans take for granted (e.g., inability to resign at will and risking a felony conviction for refusing an order). It would count the cost of Combat-Related Special Compensation while ignoring the cost to the member of incurring the disability. Compensation value is cash and benefits received divided by the service and sacrifice required to earn it. If total compensation is 10 percent higher but requires 50 percent more sacrifice, the numerator comparison alone is highly misleading.

Thank you for the opportunity to provide the Coalition's views on these important issues.

Sincerely,

The Military Coalition

(Signatures enclosed)

Attachment: TMC Recommendations on House/Senate Differences [The attachment is being retained in the Committee files.]

CC: Armed Services Committee Members

Michael M. Dunn,
Air Force Association

Richard M. Dean, Air
Force Sergeants Association

Patricia M. Murphy
Air Force Women Officers Associated

Patrick Nixon
American Logistics Association

James B. King
AMVETS

Rodney Wolfe
Army Aviation Assn. of America

George Anderson
Association of Military Surgeons of the United States

William Loper
Association of the U.S. Army

Mark Hardy
Association of the United States Navy

Gerard Farrell
Commissioned Officers Assn. of the U.S. Public Health Service, Inc.

Edward Swift
Chief Warrant and Warrant Officers Association, U.S. Coast Guard

Michael Cline
Enlisted Association of the National Guard of the U.S.

Joe Barnes
Fleet Reserve Assn.

Ruth Miller
Gold Star Wives of America, Inc.

Paul Rieckhoff
Iraq and Afghanistan Veterans of America

Robert Zweiman
Jewish War Veterans of the USA

Michael Blum
Marine Corps League

Vernon Leubecker
Marine Corps Reserve Association

Norb Ryan, Jr.
Military Officers Association of America

Jeff Roy
Military Order of the Purple Heart

William M. Matz, Jr.,
National Association for Uniformed Services

Mary Scott
National Military Family Assn.

Gilbert H. Bolton
National Order of Battlefield Commissions

Stephen Sandy
Naval Enlisted Reserve Assn.

Gene Overstreet
Non Commissioned Officers Association of the United States of America

Lani Burnett
Reserve Enlisted Assn. of the U.S.

COL D.L. Patillo
Reserve Officers Association

Mason Ahearn
Society of Medical Consultants to the Armed Forces

Gary R. Pollitt
The Military Chaplains Association of the USA

Deirdre Holleman
The Retired Enlisted Assn.

Tom Scaramastro, USCG
Chief Petty Officers Association

Don Hess
U.S. Army Warrant Officers Association

Robert Wallace
Veterans of Foreign Wars of the U.S.

Whittier Law Review
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NOTE AND COMMENT: CHILD CUSTODY PROTECTIONS IN THE SERVICEMEMBERS CIVIL RELIEF ACT: CONGRESS ACTS TO PROTECT PARENTS SERVING IN THE ARMED FORCES

NAME: Christopher Missick*

BIO: * Christopher Missick is a Sergeant in the U.S. Army Reserve and was deployed from 2004–2005 with the 319th Signal Battalion in support of Operation Iraqi Freedom. He is a graduating student of Whittier Law School. "I want to thank my family for their unending support in all my pursuits, personal and professional.

I would like to extend my gratitude to the Whittier Law Review editors and members that prepared this article for publication, including: April Szabo, Editor-in-Chief; Anna Barvir, Executive Editor; Tricia Engelhardt, Executive Editor; Krystina Tran and Peter Watson, Article Editors; and Melissa DuChene, Robert Beckerman, Sarah Hedberg, Graham Bentley, Sascha Topa and Afshin Mozaffari, cite checkers extraordinaire."

SUMMARY:

... For instance, popular tax and credit protections remained in the SCRA, but it provided for greater legal and financial support for the families of soldiers, and "expanded the definition of 'court' to include 'an administrative agency of the United States or of any State.'" Although these changes were important, child custody protection, one of the most significant changes necessary, was overlooked. ... "In reviewing the cases it becomes clear that paternity, divorce and post-divorce cases comprised the highest percentage of litigation which arose under the SSCRA." Due to deployments to Afghanistan and Iraq, the rate of divorce has continued to rise among servicemembers, leaving them vulnerable to losing custody of their children while deployed. ... On June 8, 2005, Amber, counsel for Levi, and a trial judge signed an order amending the custody arrangement, subsequently awarding custody of the child to Starleen, and permitting reasonable visitation to Amber. ... Congressional Amendment A spate of news articles, television interviews, and angry editorials, inspired in part by the story of Eva Crouch, led Representative Mike Turner to act to introduce an amendment to the SCRA that would protect the rights of military parents during deployments. ... Typical of America's "laboratories of democracy," State governments have been enacting child custody protections for servicemembers for most of the decade; the result has been an effective patchwork of laws in States such as Michigan, Kentucky, and Arizona. ... If courts liberally construe the protections provided to servicemembers by the act, Congressman Turner's amendments will likely ensure that only temporary custody arrangements are made while servicemembers are deployed.

TEXT:

[*857]

I. Introduction

In May 2007, an Associated Press article documenting the large numbers of post-9/11 military servicemembers who lost custody of their children, due in part to mobilizations and deployments, set off a flurry of discussions, debates, and legislative action.[1] The measures taken by State governments meant slow but steady progress in protecting parental rights of servicemembers, but also highlighted the inadequate protections provided in Federal legislation known as the Servicemembers Civil Relief Act (SCRA).[2]

In 2003, President Bush signed Public Law 108–189,[3] ushering in a new era of civil protections for America's armed forces under the SCRA.[4] The SCRA was an extensive modernization of the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA),[5] a law left largely untouched since World War II.[6] The SCRA provided many new civil relief measures for deployed military personnel, while retaining some of the most popular elements of the SSCRA.[7] For instance, popular tax and credit protections remained in the SCRA, but it provided for greater legal and financial support for the families of soldiers, and "expanded the definition of 'court' to include 'an administrative agency of the [*858] United States or of any State.'"[8] Although these changes were important, child custody protection, one of the most significant changes necessary, was overlooked.

A distressing loophole in the SCRA regarding parental protections was exposed as servicemembers lost custody of their children during prolonged military deploy-

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[1] See MSNBC, Deployed Troops Fight for Lost Custody of Kids, Children taken from single parents in uniform when they are mobilized, http://www.msnbc.msn.com/id/18506417/ (last accessed Apr. 21, 2008).

[2] *50 U.S.C. app. §§ 501–96* (Westlaw current through P.L.110–199).

[3] Pub. L. No. 108–189, § 1, *117 Stat. 2835 (2003);* John T. Meixell, Notes from the Field: Servicemembers Civil Relief Act Replaces Soldiers' and Sailors' Civil Relief Act, *2003 Army Law. 38 (Dec. 2003).*

[4] Meixell, supra n. 3.

[5] Pub. L. No. 861, *54 Stat. 1178 (1940);* Meixell, supra n. 3.

[6] Meixell, supra n. 3.

[7] See id.

[8] Id. at 38–41.

ments.[9] With an increasing reliance on military reservists and National Guard soldiers for service in theaters of operation like Iraq and Afghanistan,[10] the front lines of these custody battles have increased in civilian communities, far from large active duty military installations. The reliance on citizen soldiers has made the problem more readily identifiable because deployed soldiers are no longer clustered to specific regional or geographic locations.[11] In addition, with deployments of these personnel often lasting more than 1 year,[12] the impact has been that the civilian family law system is trying to apply an unfamiliar Federal statute to a problem that is very sensitive. An inherent conflict exists between placing the highest priority on the needs of the child and protecting those called to national service.

On May 5, 2007, an unprecedented Associated Press article brought the problem of servicemembers losing custody of their children during deployments to the forefront of our national political debate.[13] The article outlined specific cases where parents lost custody of their children.[14] It incorporated from the story of Lieutenant Eva Crouch, who stated, "my child was my life . . . I go serve my country, and I come back and have to go through hell and high water [to regain custody]."[15] It invoked the heart-wrenching image of a weathered Captain Brad Carlson, sitting in uniform in a military Humvee holding a picture frame of his three smiling children, whom he can no longer see, and commenting that he felt "really betrayed. [*859]"[16] It involved the story of Corporal Levi Bradley, who, while deployed near Fallujah, learned of the custody battle raging at home and became so distressed that he rolled the Humvee he was driving.[17] For a public dissatisfied with the war in Iraq,[18] but proud of its servicemembers' dedication and sacrifice, the article was poised to spread quickly and make a deep impact.

Consequently, on October 1, 2007, the Senate approved the 2008 Defense Appropriations bill,[19] which had passed the House of Representatives on May 17, 2007.[20] The bill included an amendment introduced by Representative Mike Turner of Ohio,[21] granting limited civil protections to mobilized and deployed servicemembers facing hearings on the subject of child custody.[22] The President ultimately vetoed the 2008 Defense Appropriations Bill on December 28, 2007.[23] However, Congress revived the SCRA provisions in House Resolution 4986[24] and, on January 28, 2008, the President signed the revised National Defense Authorization Act for Fiscal Year 2008.[25]

This comment explores the roots of the SCRA and some of the cases that led to the public outcry over parental loss of custody during deployments. It then explores the changes made to the SCRA through [*860] the passage of House Resolution 4986, comparing them to State protections already in place. While the SCRA seems the most logical legislative vehicle through which to provide comprehensive national protections to servicemembers who are parents, it is not the only consideration when trying to protect servicemember parental rights. Therefore, this comment will address additional concerns that Congress should bear in mind when granting pa-

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[9] See Deployed Troops Custody Battle, supra n.1.

[10] John Masson, Volunteers Care for Families; Networks Provide Comfort and Help, Detroit Free Press (Michigan) 7 [P 13] (Nov. 27, 2006).

[11] See Matthew D. LaPlante, Military Scraps Call-Up Limits, Salt Lake Trib. (Jan. 12, 2007).

[12] Id. at [P 19].

[13] See Deployed Troops Custody Battle, supra n. 1.

[14] See id.

[15] Id. at [P 17].

[16] Id. at [P P 15, 42, 45].

[17] Id. at [P P 13, 26–27].

[18] See Frank Newport, Jeffrey M. Jones & Joseph Carroll, Gallup Poll Review: Key Points About Public Opinion on Iraq; Most Say War Was a Mistake; Slight Uptick This Month Saying Troop Surge is Working, Gallup Poll News Serv. (Aug. 14, 2007).

[19] National Defense Authorization Act for Fiscal Year 2008, H.R. 1585, 110th Cong. § 1 (Mar. 20, 2007) (as introduced).

[20] GovTrack, Legislation, 2007–2008 (110th Congress), H.R. 1585: National Defense Authorization Act for Fiscal Year 2008, http://www.govtrack.us/congress/bill.xpd?tab=main&bill=h110-1585 (last accessed Apr. 10, 2008).

[21] U.S. House of Representatives Committee on Rules, Summary of Amendments Submitted to the Rules Committee for H.R. 1585—National Defense Authorization Act for Fiscal Year 2008 Military Construction Authorization Act for Fiscal Year 2008, http://www.rules.house.gov/amendment details.aspx?NewsID=2660 (last accessed Apr. 10, 2008).

[22] Id.

[23] 154 Cong. Rec. H5 (daily ed. Jan. 15, 2008).

[24] H.R. 4986, 110th Cong. (2008) (enacted) (reprinted in *122 Stat. 3).*

[25] Pub. L. No. 110–181, § 584, *122 Stat. 3 (2008);* GovTrack, Legislation, 2007–2008 (110th Congress), H.R. 4986: National Defense Authorization Act for Fiscal Year 2008, http://www.govtrack.us/congress/bill.xpd?bill=h110–4986 (last accessed Apr. 10, 2008).

rental rights to servicemembers, who should never be forced to fight a battle on two fronts or sacrifice parental rights to fulfill a military obligation.

II. Historical Perspective

Debate over civil protections for servicemembers has typically occurred prior to, or in the midst of, military engagements, as illustrated by the dates when civil protections have been enacted.[26] For instance, amendments to the SSCRA occurred during World War II, the Korean War, and the Vietnam War;[27] however, the first legal protections for servicemembers began nearly 150 years ago.[28]

A. Civil War

The United States has implemented some form of civil protection for soldiers and sailors since the Civil War.[29] On June 11, 1864, Congress approved one of the earliest pieces of legislation aimed at providing such protections.[30] The law served to protect soldiers from both civil and criminal litigation when their duties called them away to participate in military action.[31] The act also stated:

> that whenever, during the existence of the present rebellion, any action, civil or criminal, shall accrue against any person who by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial [*861] proceedings, cannot be served with process for the commencement of such action or arrest of such person. . . .

The time during which such person shall be beyond the reach of judicial process shall not be deemed or taken as any part of the time limited by law for the commencement of such action.[32]

With this, Congress set a precedent, and several States followed with their own legislative acts to protect soldiers and sailors engaged in the war; for instance, many of the Confederate States enacted their own servicemember civil relief protections.[33] This led one "South Carolina circuit judge . . . [to interpret the act as saying] "the State says to the creditor, (in a time of general distress,) you may not add to the calamity which overwhelms the land by harassing with lawsuits and sheriff's sales those who happen to be in your debt.'"[34] The 1864 act, however, is unique because it prevented both civil and criminal litigation throughout the duration of the Civil War.[35]

B. The 20th Century

As the 20th century introduced the notion of mass global conflict and international warfare with the "Great World War," the necessity for revised civil protections for servicemembers again became apparent.[36] In many ways, World War I laid the groundwork for provisions that provided "comprehensive" support for military personnel under the Soldiers' and Sailors' Civil Relief Act of 1918 (SSCRA of 1918).[37] The Act extended protection "to persons in military service . . . in order to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the Nation[.][38] It underlined [*862] provisions "for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war.[39] The act expressly provided protections for general relief from judgments,[40] "rent, installment contracts, [and] mortgages,[41] in-

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[26] See Colin A. Kisor, Who's Defending the Defenders?: Rebuilding the Financial Protections of the Soldiers' and Sailors' Civil Relief Act, *48 Naval L. Rev. 161, 163 (2001).*
[27] Id.
[28] *Id. at 161–62.*
[29] See id.
[30] Id.
[31] Id.
[32] *Id. at 162* (internal citation omitted).
[33] Gregory M. Huckabee, Operations Desert Shield and Desert Storm: Resurrection of the Soldiers' and Sailors' Civil Relief Act, *132 Mil. L. Rev. 141, 143 (1991).*
[34] Id. (internal citation omitted).
[35] Id.
[36] Id.
[37] *50 U.S.C. app. § 164* (1918) (enacted under the Soldiers' and Sailors' Civil Relief Act, ch. 20, § 100, *40 Stat. 440 (1918));* Huckabee, supra n. 33, at 143.
[38] *50 U.S.C. § 164* at art. I.
[39] Id.
[40] Id. at art. II.
[41] Id. at art. III.

surance policies,[42] and taxes "falling due during the period of military service."[43] The SSCRA of 1918 expired 6 months after World War I ended.[44]

By 1940, Europe was once again in a state of war and the United States would soon be embroiled in an intercontinental global war. On October 17, 1940, a few years before the United States was attacked at Pearl Harbor, the provisions of the SSCRA of 1918 were resurrected[45] and revised in the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA of 1940).[46] Though this Act relied heavily upon the SSCRA of 1918, it included additional benefits with respect to public lands, changed the method of administering the provisions of guaranteed insurance premium protection, and raised from $50 to $80 the monthly rental of family dwellings in the non-eviction provision (an increase of $30 after 22 years).[47]

During the next 50 years, the SSCRA was altered, amended, and updated in a piecemeal fashion.[48]

C. Development of the SCRA from the SSCRA

Operation Desert Storm created a new generation of veterans and forced a wholesale re-examination of the SSCRA.[49] It was the first war since World War II to require the use of large numbers of Reserve forces and National Guard members, as 50,000 citizen-soldiers were summoned to join their active duty counterparts.[50] For decades, the [*863] SSCRA was important to military personnel involved in family law disputes.[51] "In reviewing the cases it becomes clear that paternity, divorce and post-divorce cases comprised the highest percentage of litigation which [arose] under the [SSCRA.][52] Due to deployments to Afghanistan and Iraq, the rate of divorce has continued to rise among servicemembers,[53] leaving them vulnerable to losing custody of their children while deployed.

III. Analysis of the Author

A. Case Law Regarding Custody Disputes Under the Pre-Amendment SCRA

Servicemembers have faced a variety of custody disputes since the passage of the SCRA.[54] The nature of military deployments, where one parent is suddenly forced to leave for an extended period of time and custody arrangements are necessarily altered, has forced courts to examine these issues.[55] The impact of the 2008 amendments to the SCRA can be seen in the following cases.

1. *Crouch* v. *Crouch,* Custody Disputes Confronted in a CONUS (Continental U.S.) Mobilization

Crouch v. *Crouch*[56] garnered national attention for its straightforward facts and sympathetic character: a National Guard soldier and mother lost custody of her child after being called to active duty because of a system that offered no protection for the custody rights of deployed servicemembers.[57]

Charles Jackson Crouch (hereafter Charles) and his wife, Kentucky National Guard soldier Virginia Eva Crouch (hereafter Eva), [*864] had their first child together in July 1994.[58] By December 1996, the couple divorced and agreed to share joint custody of their daughter.[59] The child lived primarily with Eva until February 2003, when she received orders to report to her National Guard unit within 72

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[42] Id. at art. IV.
[43] Id. at art. V.
[44] Huckabee, supra n. 33, at 144.
[45] Id.; Meixell, supra n. 3, at 38 (internal citation omitted).
[46] Huckabee, supra n. 33, at 144; Meixell, supra n. 3, at 38.
[47] Huckabee, supra n. 33, at 145.
[48] Id. at 155–57.
[49] Id. at 157–58.
[50] See id. at 145–58.
[51] See Roger M. Baron, The Staying Power of the Soldiers' and Sailors' Civil Relief Act, *32 Santa Clara L. Rev. 137 (1992).*
[52] *Id. at 138.*
[53] Gregg Zoroya, Soldiers' Divorce Rates Up Sharply, USA Today 1A [P 1] (June 8, 2005).
[54] See Deployed Troops Custody Battle, supra n. 1.
[55] Id. at [P 10].
[56] *Crouch* v. *Crouch, 201 S.W.3d 463 (Ky. 2006).*
[57] Jessica Wehrman, Troops' Custody Rights May Be Protected; Turner's Bill Would Guard Against Deployments Counting Against Parents Fighting for Children, Dayton Daily News (Ohio) A4 (May 24, 2007).
[58] *Crouch, 201 S.W.3d at 464.*
[59] Id.

hours.[60] Eva and Charles agreed that Charles would care for their daughter at his residence during the duration of Eva's expected 1-year deployment overseas.[61]

Instead of being deployed overseas, Eva was stationed at Fort Knox, Kentucky for a 1-year mobilization that ended in February 2004.[62] She was then given an opportunity to attend Officer Training School for 4 months.[63] After speaking with Charles, Eva agreed to leave their daughter in Charles's care so the child could finish the school year before returning to live with Eva for the summer.[64]

When Eva returned from active duty in July of 2004, she was ready to pick up her daughter and return to her normal life.[65] When she called Charles to inform him that she was picking up their child the next day, however, he replied, "Not without a court order."[66] As a result, she went to court to enforce the December 17, 1996 permanent custody order.[67] On August, 30, 2004, much to Eva's surprise, "the trial court entered an order finding that it was in the minor child's best interests to remain with [her father].[68] The ruling stated:

The Court finds from the evidence that at the time the agreed order was executed it was the intent of both parties that the child would be returned to the physical custody of [Eva] at the conclusion of [Eva's] military alert. If the agreed order had been a contract for the sale of goods, the parties' intent would control as a [*865] matter of law. However, in the present arrangement the Court must consider the best interests of the child.[69]

Eva, stunned by the ruling, said, "'we're not asking for any special consideration . . . all we're asking is that our service not be held against us.'"[70] Eva's appeal reached the Kentucky Supreme Court.[71] The Court examined the language of the original 1996 agreement and contrasted it with the 2003 agreement, intended to last for the duration of Eva's active military obligation.[72] The 2003 agreement stated that the temporary custody situation was to be in place "until further Orders of the Court."[73] The Court determined that while this phrase "is generally construed to denote permanency, when the phrase is read in the context of this order, it could also be reasonably interpreted to indicate that the trial court will transfer custody back to [Eva] upon completion of her active military duty."[74]

Eva's frustration with her custody ordeal reverberated throughout the country, leading many States to implement protections. Kentucky was one of those States.[75] By the time Eva's case had reached the Kentucky Supreme Court, the Kentucky legislature had enacted *Kentucky Revised Statute section 403.340.*[76] The law, entitled "Modification of custody decree; Modification based on active duty deployment to revert back on parent or custodian's return,"[77] speaks directly to the issues Eva faced. Even though the law did not pass in time to have an impact on Eva's case, the Court recognized that its "interpretation of the February 10, 2003, order is consistent with the newly enacted [*Kentucky Revised Statute section] 403.340 (5).*"[78]

The case produced discord among the members of the Kentucky Supreme Court.[79] Justice Scott's dissent focused on two important issues. First, he argued, in Kentucky,

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the burden of supplying the affidavits required by [*Kentucky Revised Statute section] 403.340(2)* was on the Appellee [Eva], as she was the one moving to change the physical custody. Undoubtedly, the purpose of both statutes is to place the burden

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[60] Id.
[61] Id.
[62] Id.
[63] Id.
[64] Id.
[65] Id.
[66] Ewan MacAskill, International: Pressure on Bush to Help Military Families Fighting on Two Fronts: Work and Family Strains Add to Stress of War Zone: Veterans Demand More Legislative Protection, The Guardian (London) 17 [P 4] (May 8, 2007) (internal quotations omitted).
[67] *Crouch, 201 S.W.3d at 464.*
[68] Id.
[69] Id. (internal citation omitted).
[70] Wehrman, supra n. 57, at [P 6].
[71] *Crouch, 201 S.W.3d at 464.*
[72] Id.
[73] *Id. at 466.*
[74] Id.
[75] See *Ky. Rev. Stat. Ann. § 403.340* (Westlaw current through 2007 Legis.).
[76] Id.; *Crouch, 201 S.W.3d 463.*
[77] *Ky. Rev. Stat. Ann. § 403.340.*
[78] *Crouch, 201 S.W.3d at 466.*
[79] See *id. at 467* (Scott, J., dissenting).

of proof on the parent seeking to modify custody so as to encourage stability in the custodial relationship.[80]

Second, he examined the well-being of the child, who admittedly expressed a desire to stay enrolled in a school where she liked her teachers and had new friends.[81] Eva Crouch, now Eva Slusher, successful regained custody of her daughter, having devoted nearly 2 years and 25,000 dollars in legal fees to the custody battle.[82]

2. In re Marriage of Bradley—Stay Proceedings in Custody Disputes

Not long after Amber and Levi Bradley were married, Levi joined the military and was shipped out for Boot Camp in June 2003; shortly thereafter, Amber gave birth to their son Tyler on September 8, 2003.[83] The couple lived with Levi's mother, Starleen, from their wedding day until April 27, 2005.[84] The circumstances surrounding the custody dispute began when Levi filed a divorce action on May 19, 2005.[85] In the action, "Levi prayed for sole custody of Tyler, with residential placement with his mother," in part, because Amber had embarked on a series of lifestyle choices that he claimed led to Tyler being improperly cared for.[86] In the aftermath of the divorce action, the couple decided to try to make the relationship work, so Amber moved to North Carolina to spend time with Levi, giving custody of Tyler to Starleen.[87]

On June 8, 2005, Amber, counsel for Levi, and a trial judge signed an order amending the custody arrangement, subsequently awarding custody of the child to Starleen, and permitting reasonable [*867] visitation to Amber.[88] By the end of September, however, Amber attempted to change the order, arguing "she did not have counsel at the time she signed the order and did not fully understand what she was agreeing to."[89] This petition gave rise to the assertion of the SCRA by Levi, who requested a stay since he had been deployed to Iraq and was not scheduled to return until March 31, 2006.[90] The district court rejected this request, and found:

> that temporary orders in this matter are not stayed by the Servicemen's Civil Relief Act. I believe this Court has a continuing obligation to consider what's in the best interest of the child. I do believe that judgments against a petitioner husband are precluded thereby but not what is in the best interest of this child and I believe the Court has the authority and will take up the Motion to Modify Temporary Orders.[91]

After reviewing the history of this case in the introduction to its opinion, the Kansas Supreme Court applied the relevant sections of the SCRA to examine the District Court's finding that the SCRA did not apply to temporary custody orders.[92] The court looked specifically to section 522(b) of the SCRA, finding that the section gives the court the authority to grant a stay to any servicemember in a civil proceeding for "'not less than [ninety] days, if the conditions in paragraph (2) are met.'"[93] The conditions in paragraph (2)(A) require some communication describing how the military duties "'materially affect the servicemember's ability to appear,'" and providing an alternative date for appearance.[94] Section (2)(B) requires "'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.'"[95]

[*868] The court pointed out that one of the problems with Levi's application for a stay was the lack of documentation in accordance with section 522(b)(2).[96] Even though he provided a document he referred to as "'orders issued on July 11, 2005,'"

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[80] Id. (emphasis omitted).
[81] *Id. at 468.*
[82] CNN, Protecting Deployed Troops From Custody Battles, [P 12–13] http://www.cnn.com/2008/LIVING/wayoflife/01/31/troops.custody.a p/(last accessed Apr. 21, 2008).
[83] *In re Marriage of Bradley, 137 P.3d 1030, 1031 (Kan. 2006).*
[84] Id.
[85] Id.
[86] Id.
[87] *Id. at 1031–32.*
[88] *Id. at 1032.*
[89] Id.
[90] Id.
[91] Id. (internal quotations omitted).
[92] *Id. at 1032–33.*
[93] *Id. at 1033* (quoting *50 U.S.C. app. §522*(b) (Westlaw current through P.L. 110–195)).
[94] Id. (quoting *50 U.S.C. app. §522*(b)(2)(A) (Westlaw current through P.L. 110–195)).
[95] Id. (quoting *50 U.S.C. app. §522*(b)(2)(B) (Westlaw current through P.L. 110–195)).
[96] Id.

the document did not specifically contain Levi's name.[97] Instead, the document referenced a duty roster which included Levi's name as one of the soldiers being deployed to Iraq, but was not attached, so the court did not rely on it.[98]

After examining case law regarding the SCRA, the court opined:

> it also appears from the language of [section] 522(b)(1) that a court's discretion to grant a stay on its own motion depends on satisfaction of the statutory conditions—"the court may on its own motion ... stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met."[99]

The court relied on the reasoning in the opinion of *King* v. *Irvin*[100] for additional support in requiring documentation.[101] Despite the obvious fact that both cases sought to apply the SCRA, the facts of *King* v. *Irvin* were much different from those confronting the Bradleys.

King, a naval reservist, had previously gotten into an accident, sued Irvin, and the case had been placed "on the trial calendar for the week of February 23, 2004."[102] King subsequently sought an SCRA stay of proceedings on the trial because he had received "military orders to report to duty on February 23."[103] The court continued the case until April 19, despite the fact that King had not attached his orders to his petition as he claimed.[104] At the April 19 hearing, counsel for King requested another continuance without providing any [*869] supporting documents.[105] The trial court denied the request and dismissed the case.[106]

Courts are faced with a difficult proposition in interpreting a Federal statute that may be invoked only rarely before them. One of the troubling aspects of a lack of custody protection in the SCRA, however, is the fact that appearance in a personal injury case is treated similarly to a case addressing the custody rights of servicemember parents. In the closing paragraphs of its opinion, the Kansas Supreme Court addressed the fact that "where there is a failure to satisfy the conditions of the Act, then the granting of a stay is within the discretion of the trial court."[107]

3. *Lenser* v. *McGowan*—The SCRA, "A Shield Not a Sword"

Following World War II, there was increasing concern that servicemembers would misuse the civil protections afforded to them. In *Slove* v. *Strohm,*[108] the court stated, "this Act may not be used as a sword against persons with legitimate claims against servicemen. Some balancing between the rights of the respective parties must be arrived at."[109] Some of these fears stem from the common-sense implications of extending too many benefits to servicemembers. For example, if credit protections were too generous, servicemembers may be denied credit opportunities because the financial risk to the creditor would be too great. More importantly, the well-being of children may be placed at risk if protections afforded servicemembers trumped current child-protection laws. Further, courts are loath to allow the SCRA to be used offensively as a tool for harassment or simply to frustrate another party. In *Lenser* v. *McGowan,*[110] the court found that a servicemember had improperly attempted to take advantage of circumstances by using the Act to gain custody of his children.[111]

The circumstances of this case involved the breakdown of the marriage between Michael and Angel Lenser.[112] They had a child [*870] together, Carson Ray Lenser.[113] Michael and Angel legally separated in November 2003, but Michael returned to Angel's residence to visit Carson during Christmas.[114] Michael was or-

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[97] Id.
[98] Id.
[99] *Id. at 1034* (internal citation omitted).
[100] *King* v. *Irvin*, 614 S.E.2d 190 (Ga. App. 2005).
[101] *Bradley, 137 P.3d at 1034.*
[102] *King, 614 S.E.2d at 191.*
[103] Id.
[104] Id.
[105] Id.
[106] Id.
[107] *In re Marriage of Bradley, 137 P.3d 1030, 1034 (Kan. 2006).*
[108] *Slove* v. *Strohm, 236 N.E.2d 326 (Ill. App. 1st Dist. 1968).*
[109] *Id. at 328.*
[110] *Lenser* v. *McGowan, 191 S.W.3d 506 (Ark. 2004).*
[111] See id.
[112] *Id. at 507.*
[113] Id.
[114] *Id. at 509–10.*

dered to return to Fort Hood, Texas on January 2, 2004 to prepare for deployment to Iraq.[115] After that, Carson lived with Michael's mother, Dorothy Hockey.[116]

Meanwhile, a custody order was granted, awarding Angel custody of Carson.[117] In response, Michael asserted that: (1) he was entitled to stay custody proceedings pursuant to the SCRA, and (2) the court lacked jurisdiction to remove Carson from Dorothy's custody because the civil action should have been put on hold for 90 days.[118] The court explained that "nothing in the grant of a stay deprives a court of jurisdiction. To the contrary, a stay means that the court retains jurisdiction, but holds action on the case in abeyance." [119]

The court then found that the domestic relations proceeding could be stayed, but that a temporary order giving custody to Angel was proper.[120] The court noted that the SCRA "does not put Carson in suspended animation. His life goes on, and the circuit court properly entertained the issue of who should receive temporary custody." [121] The court found that Michael was attempting to gain an advantage by arguing that all legal proceedings should halt the moment a stay is entered under the SCRA.[122] Essentially, Michael argued that since he had placed Carson with his mother, the stay should maintain that arrangement for the duration of the order.[123] The court concluded that had Carson perchance been with Angel when the stay was entered, it is doubtful Michael would be arguing as he does presently. To accept Michael's argument would create an environment in which a servicemember could always gain custody by simply making sure the child is staying with the [*871] servicemember when the stay is requested. That would provide servicemembers an advantage rather than protect against adverse effects.[124]

Lenser illustrates how a servicemember may use the SCRA to gain an unfair advantage rather than to gain protection. The case also emphasizes the importance of maintaining the courts' ability to grant temporary custody orders, as well as the need to ensure that parents' fundamental rights to custody of their children are not abridged. Fortunately, Congress took many of these lessons and applied them to the 2008 Defense Appropriations Bill.[125]

B. Differences Between the Congressional Amendment and Relative State Protections

1. Congressional Amendment

A spate of news articles, television interviews, and angry editorials, inspired in part by the story of Eva Crouch, led Representative Mike Turner to act to introduce an amendment to the SCRA that would protect the rights of military parents during deployments.[126] The proposed amendment was intended to set a minimum standard of protection for military parents.[127] Entitled "Child Custody Protection," [128] it sought to fix major problems with the SCRA.

The language in Congressman Turner's bill strongly resembled legislation passed in Michigan several years prior.[129] Even though the language, as introduced, was not adopted in the final bill signed by President Bush, it provides important insight into the legislative intent behind the amendment. Section 208(a) of Congressman Turner's proposal, entitled "Restriction on Change of Custody," [130] stated:

[*872]

If a motion for change of custody of a child of a servicemember is filed while the servicemember is deployed in support of a contingency operation, no court may enter an order modifying or amending any previous judgment or order, or issue a new order, that changes the custody arrangement for that child that existed as of the

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[115] *Id. at 510.*
[116] *Id. at 507.*
[117] Id.
[118] *Id. at 508.*
[119] *Id. at 509.*
[120] *Id. at 511.*
[121] Id.
[122] Id.
[123] *Id. at 509.*
[124] *Id. at 511.*
[125] Wehrman, supra n. 57, at [P 11].
[126] See Wehrman, supra n. 57.
[127] H.R. Rpt. 110–151 at Summary of Amend. 9 (May 15, 2007).
[128] Id. at Text of Amend. 9.
[129] Audra Miller, Congresswoman Candice Miller, News Center, Rep. Miller Urges House to Protect Rights of Military Parents and their Children, http://candicemiller.house.gov/Read.aspx?ID=337 (last accessed Mar. 4, 2008).
[130] H.R. Rpt. 110–151 at Text of Amend. 9.

date of the deployment of the servicemember, except that a court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child.[131]

Therefore, subsection (a) sought to ease servicemembers' concerns that permanent custody arrangements would be amended while they were deployed. The most important clause of subsection (a) permitted only the entry of temporary custody orders.[132] This ensured that the precarious nature of deployments, which sometimes required moving a child from one residence to another, did not leave the parent without options.

Subsection (b), entitled "Completion of Deployment," stated:

In any proceeding covered under subsection (a), a court shall require that, upon the return of the servicemember from deployment in support of a contingency operation, the custody order that was in effect immediately preceding the date of the deployment of the servicemember is reinstated.[133]

This section appears to curtail unpopular holdings like the one in Crouch by requiring the reinstatement of pre-deployment custody arrangements.

For the servicemember, perhaps the most important element of the amendment was found in subsection (c), "Exclusion of Military Service From Determination of Child's Best Interest." [134] This section stated:

If a motion for the change of custody of the child of a servicemember who was deployed in support of a contingency operation is filed after the end of the deployment, no court may [*873] consider the absence of the servicemember by reason of that deployment in determining the best interest of the child.[135]

A consistent problem that has plagued parents returning from extended deployments in which custody arrangements were temporarily altered was the argument by the opposing non-servicemember spouse that the child had become accustomed to the new living arrangements and the child's primary residence should not be transferred again. This element was evident in the Crouch case,[136] but it seems to be a feature of most custody battles waged during the deployment of a servicemember spouse. This subsection therefore attempts to alleviate a lingering problem for servicemembers who return from active duty service in deployments.

Unfortunately, this subsection fails to address charges of mental incompetence levied by non-servicemember spouses against servicemembers who have returned from deployments, particularly when those deployments were to combat zones. Former spouses can argue that, after such a traumatic experience, the servicemember is not mentally capable of caring for a child, and should not therefore be given custody.

Congressman Turner's amendments to the SCRA were included in the 2008 Defense Appropriations Bill, which ultimately passed the Senate on January 22, 2008,[137] to be signed by President Bush in early 2008.[138] However, some of the longer passages Congressman Turner submitted were only adopted in abbreviated form.[139]

In introducing his amendment, Congressman Turner stated he wanted to provide "certainty to servicemembers deployed in a contingency operation that their child custody arrangements will be protected.[140] He continued,

In some cases, courts are overturning established custody arrangements while the custodial parent is serving our country in a contingency operation, such as Iraq or Afghanistan.

[*874]

States have become aware of this issue and are looking at what action they can take to support our men and women in uniform. The State of Michigan passed a law in 2005 to provide these protections to military personnel. The amendment offered today is modeled after the established Michigan law.

Much is asked of our servicemembers, and mobilizations can disrupt and strain relationships at home. This additional protection is needed to provide them peace of mind that the courts will not take away their children because they answered

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[131] Id.
[132] Id.
[133] Id.
[134] Id.
[135] Id.
[136] *Crouch* v. *Crouch, 201 S.W.3d 463, 464 (Ky. 2006).*
[137] GovTrack, supra n. 20.
[138] Pauline Arrillaga, Law Helps Even the Field in Troops' Custody Battles, The Virginian-Pilot (Norfolk, V.A.) A7 [P 3] (Jan. 31, 2008).
[139] See Pub. L. No. 110–181, § 584, *122 Stat 3 (2008).*
[140] 153 Cong. Rec. H5132–01 (daily ed. May 16, 2007).

the country's call to serve. This amendment protects them and it protects their children.[141]

By the time President Bush finally signed the 2008 Defense Appropriations Bill, the amendments to the SCRA included re-worked language taken from the existing SCRA framework. Congressman Turner's original amendments were left behind and a section entitled, "Protection of Child Custody Arrangements for Parents Who Are Members of the Armed Forces Deployed in Support of a Contingency Operation," added the following:

> (a) Protection of Servicemembers Against Default Judgments.—Section 201(a) of the Servicemembers Civil Relief Act *(50 U.S.C. App. 521*(a)) is amended by inserting ", including any child custody proceeding," after "proceeding".
>
> (b) Stay of Proceedings When Servicemember Has Notice.—Section 202(a) of the Servicemembers Civil Relief Act *(50 U.S.C. App. 522*(a)) is amended by inserting ", including any child custody proceeding," after "civil action or proceeding".[142]

Even without the additional language proposed by Congressman Turner in May 2007, these amendments to the SCRA indicate just how important the addition of several words can be to a deployed servicemember. As it applies to default judgments, the SCRA now reads: "(a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance."[143]

[*875] Likewise, the SCRA, in a section entitled, "Stay of proceedings when servicemember has notice," now reads:

> (a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section——
>
> (1) is in military service or is within 90 days after termination of or release from military service; and
>
> (2) has received notice of the action or proceeding.[144]

Because of the additions, servicemembers now enjoy a baseline of protection that ensures they will not lose custody of their children while deployed. Nevertheless, Congress should heed the model of many States by strengthening these provisions, as the next section will show.

2. State Laws

A new era of civil protections for American servicemembers was ushered into the public form through the SCRA.[145] Then, nearly 4 years after the SCRA was enacted, Congress finally introduced a bill detailing civil relief from changes to permanent child custody arrangements during deployments.[146] Typical of America's "laboratories of democracy,"[147] State governments have been enacting child custody protections for servicemembers for most of the decade; the result has been an effective patchwork of laws in States such as Michigan, Kentucky, and Arizona.[148] The following pages will examine these precursors to the new Federal protections and the [*876] different approaches some States have taken. These approaches, if enacted by the Federal Government, would likely provide greater child custody protection to servicemembers.

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[141] Id.

[142] Pub. L. No. 110–181 at § 584.

[143] *50 U.S.C. app. § 521*(a) (Westlaw current through P.L. 110–198).

[144] *50 U.S.C. app. § 522*(a) (Westlaw current through P.L. 110–198).

[145] See DefenseLink, Soldiers' and Sailors' Civil Relief Act of 1940, A Brief History, http://www.defenselink.mil/specials/Relief Act Revision/history.html (last accessed Apr. 17, 2008).

[146] H.R. 1585, 110th Cong. § 584 (May 17, 2007).

[147] John O. McGinnis, Reviving Tocqueville's America: The Rehnquist Court's Jurisprudence of Social Discovery, *90 Cal. L. Rev. 485, 510 (2002).*

[148] See *Ark. Code Ann. § 9–13–110* (Westlaw current through 2007 Reg. Sess., including changes made by Ark. Code Rev. Commn. through Jan. 31, 2008); *Ky. Rev. Stat. Ann. § 403.340* (Westlaw current through 2007 Legis.); *Mich. Comp. Laws Ann. § 722.27* (Westlaw current through P.A.2008, No. 87 of the 2008 Reg. Sess., 94th Legis.).

a. Michigan State's Approach

In 2005, Michigan introduced a bill to amend existing laws on child custody as they pertained to military personnel.[149] Using the framework of the State's existing child custody laws, section 7(c) of the Child Custody Act of 1970 was amended to read:

> If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty, except the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in a best interest of the child determination.[150]

b. Kentucky State's Approach

Kentucky takes a markedly different approach to child custody arrangements of military personnel. The law, entitled "Modification of custody decree; modification based on active duty deployment to revert back on parent or custodian's return," is found in section 403.340 of Title XXXV, Kentucky's regulations on "domestic relations."[151] In this one section, State lawmakers confronted many of the issues that caused Eva Crouch to endure a lengthy and costly custody battle. In subsection (5)(a), the bill states:

> any court-ordered modification of a child custody decree, based in whole or in part on: 1. The active duty of a parent or a de facto [*877] custodian as a regular member of the United States Armed Forces deployed outside the United States; or 2. Any Federal active duty of a parent or a de facto custodian as a member of a State National Guard or a Reserve component; shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the Federal active duty, as appropriate.[152]

This provision ensures that a temporary custody arrangement developed before a deployment is precluded from being converted into a permanent arrangement simply because the deployment is unexpectedly extended.

c. Arkansas State's Approach

Arkansas enacted its servicemember parent provisions on March 16, 2007 to protect "parents who are members of the armed forces."[153] In an unprecedented move, Arkansas decided to pass an emergency clause because:

> members of the armed forces are spending inordinate time and energy dealing with issues of child custody and visitation as a sole consequence of being mobilized. . . . Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective [upon approval by the Governor of Arkansas].[154]

This rather extraordinary language ensured that the bill addressed aspects of servicemember custody issues not articulated in the statutes discussed above; these included flexibility with visitation and safeguards for parents who face permanent changes to their custody arrangements after mobilization.[155]

The Arkansas legislature articulated several reasons for enacting these protections: "recent national emergencies have demonstrated that noncustodial parents will sometimes attempt to use a custodial parent's military mobilization, in and of itself, as a 'material change in [*878] circumstances' to attempt to justify a change

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[149] Mich. H. 5100, 93d Leg., 1st Sess. (2005).
[150] *Mich. Comp. Laws Ann. § 722.27(7)(c).*
[151] *Ky. Rev. Stat. Ann. § 403.340.*
[152] Id. at § 403.340(5)(a).
[153] 2007 Ark. Acts 301.
[154] Id. at § 2.
[155] See id.; see also *Ky. Rev. Stat. Ann. § 403.340; Mich. Comp. Laws Ann. § 722.27* (Westlaw current through P.A.2008, No. 87 of the 2008 Reg. Sess., 94th Legis.).

in custody." [156] The legislature also noted that the stress military personnel experience in mobilization is already immense without the additional pressures of child custody proceedings or the prospect of losing custody of a child.[157] Simply stated, the purpose of this bill seems to have been to avoid unwanted modification of custody orders for servicemember parents solely because of their military service, a motivation very similar to the many actions of Congress and other State legislatures taken since this issue gained recognition. However, Arkansas provided more protection for servicemember parents by providing increased flexibility to amend orders for visitation and custody of mobilized servicemembers.[158] The bill explicitly states that courts' consideration in custody issues must be consistent with "maximizing the mobilized parent's time and contact with his or her child that is consistent with the best interest of the child." [159] The legislature then instructed courts to consider a myriad of potential issues, including but not limited to, the length of the mobilized parent's call to active duty ... the duty station ... [the potential for] contact with the child through a leave, a pass, or other authorized absence ... the contact that the mobilized parent has had with the child before the call to active military duty ... [and the] nature of the military mission.[160]

Though not exhaustive, the list strikes a balance between the increasing opportunities a servicemember may have throughout a mobilization to secure visitation rights and reducing the possibility that a servicemember who was a neglectful parent will use the power of the statute to harass the other parent.

Interestingly, the bill draws a distinction between those who voluntarily enter permanent active military duty and those who join the Reserves or National Guard.[161] It places a premium on the notion of the "citizen-servicemember," suddenly called from civilian life to participate in a national cause. The parent who consciously enters permanent active duty may be under fewer time constraints than the [*879] reservist called to report within a limited number of hours or days and may have a greater opportunity to arrange his or her affairs. On this subject, the bill provides that it:

> shall not limit the power of a court of competent jurisdiction to permanently modify an order of child custody or visitation in the event that a parent volunteers for permanent military duty as a career choice regardless of whether the parent volunteered for permanent military duty while a member of the armed forces.[162]

C. Recommended Legislative Amendments to the SCRA in Child Custody Disputes

The amendments to the House bill have not yet taken effect, so we have yet to see child custody cases brought under the new Federal approach. If courts liberally construe the protections provided to servicemembers by the act, Congressman Turner's amendments will likely ensure that only temporary custody arrangements are made while servicemembers are deployed. The changes will also ensure that when servicemembers return from deployment, their military service will not play a negative role in determining custody arrangements.

Although the newly revised SCRA provides a significantly higher level of protection than existed previously, it still does not provide the same level of protections as the state-drafted legislation discussed here.[163] Among these, Kentucky's statute is remarkable in that it ensures that temporary custody arrangements made prior to deployment and solely because of deployment, do not serve as justification for continuing that custody arrangement upon the servicemembers' return and reintegration into civilian life.[164] Despite the changes that states have adopted, and

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[156] 2007 Ark. Acts 301 (internal quotations omitted).
[157] Id.
[158] Id.
[159] Id. at § 1(c).
[160] Id. at § 1(c)(2).
[161] Id. at § 1(d).
[162] Id. at § 1(d).
[163] See U.S.C. app. § 521–22 (Westlaw current through P.L. 110–199); *Ark. Code Ann. § 9–13–110* (Westlaw current through 2007 Legis.); *Ky. Rev. Stat. Ann. § 403.340* (Westlaw current through 2007 Reg. Sess., including changes made by Ark. Rev. Commn. through Jan. 31, 2008); *Mich. Comp. Laws Ann. § 722.27* (Westlaw current through P.A.2008, No. 87 of the 2008 Reg. Sess., 94th Legis.).
[164] *Ky. Rev. Stat. Ann. § 403.340(3).*

which Congress should adopt, servicemembers are still left particularly vulnerable in some areas of child custody.[165]

[*880] The following paragraphs propose (1) that Congress should adopt additional measures to mitigate the impact deployments have on custody arrangements, and (2) that the government address international marriages and custody disputes to protect servicemembers from losing their children while they serve our Nation.

1. Creating a Rebuttable Presumption of Mental Fitness

If, upon returning from deployment, the non-servicemember spouse seeks to reinstate the pre-deployment permanent or temporary child custody arrangement, the SCRA should provide that there is a rebuttable presumption that the servicemember is physically and mentally fit to engage with his or her child or children. This seems reasonable, considering that after returning from active duty deployments, all members of the military must undergo a Post-Deployment Health Reassessment (PDHRA)[166] [*881] and that mental health assessments are given at regular intervals once the servicemember has returned home.[167] The family court would continue to exercise discretion to order additional screening to investigate the reasons for the non-servicemember spouse's complaint. Creating a rebuttable presumption of physical and mental fitness would protect a servicemember from spurious attacks by a former spouse seeking to use the servicemember's deployment experiences against him/her.

2. Incorporate Explicit Protections from Kentucky Statutory Language

Future revisions of the SCRA should also consider adopting the language of the Kentucky statute. Specifically, the Act should include a provision that:

> any court-ordered modification of a child custody decree, based in whole or in part on: 1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or 2. Any Federal active duty of a parent or a de facto custodian as a member of a State National Guard or a Reserve component; shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the Federal active duty, as appropriate.[168]

The amendment to the SCRA in the 2008 Defense Appropriations Bill helps assure servicemembers that custody of their children will not be arbitrarily altered

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[165] Indeed, one area of child custody not impacted by the SCRA—and not addressed in this comment due to its complexity—is that of international child abduction under the Hague convention.

A unique feature of military life, especially American military life, is the frequency with which a servicemember is stationed abroad; currently, "forces of the United States military are located in nearly 130 countries around the world performing a variety of duties from combat operations, to peacekeeping, to training with foreign militaries." GlobalSecurity.org, Military, Operations, Where Are The Legions? Global Deployments of U.S. Forces, http://www.globalsecurity.org/military/ops/global-deployments.htm (last accessed Mar. 6, 2008). Additionally, "as of January 2005, there [were] some 250,000 soldiers, sailors, airmen, Marines, and Coast Guardsmen deployed in support of combat, peacekeeping, and deterrence operations." Id. In countries where United States forces are not engaged in combat operations, restrictions on intimate relationships with local residents are relaxed; thus, servicemembers often marry foreign nationals.

The Hague Convention only applies when there is an unauthorized "removal or retention of a child [which] breaches a custody order," and only if the petition is "filed within 1 year of the abduction." Laura McCue, Left Behind: The Failure of the United States to Fight for the Return of Victims of International Child Abduction, *28 Suffolk Transnatl. L. Rev. 85, 85, 90 (2004).* However, overseas combat deployments for most active or activated Army personnel range anywhere from 12 to 18 months. See Robert Burns, Army Extends Iraq Tours to 15 Months, Charleston Gaz. 2A (Apr. 12, 2007). In addition to the time that servicemembers spend in Iraq, Reservists and National Guard members also spend up to 6 months preparing for deployment at an active duty installation in the United States. Sydney J. Freedberg Jr., National Journal, The Guard's Turn to Surge, http://nationaljournal.com/about/njweekly/stories/2007/1214nj1. htm (last accessed Apr. 17, 2008). With so much time between receiving orders to report for active duty and returning home, a non-servicemember spouse can easily take a child and establish residency in a foreign country. As a result, the Hague Convention's 1-year statute of limitations may have passed by the time the servicemember returns to the United States, discovers the child's location, and files a petition seeking return of the child.

[166] Deployment Health Clinical Center, Deployment Support, Post-Deployment, Post Deployment Health Reassessment (PDHRA) Program (DD Form 2900), http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2900.pdf (last accessed Apr. 17, 2008).

[167] Army Behavioral Health, Post Deployment, Frequently Asked Questions About the PDHRA, http://www.behavioralhealth.army.mil/post-deploy/pdhrafaqs.html (last accessed Apr. 17, 2008).

[168] *Ky. Rev. Stat. Ann. § 403.340(5)(a).*

during their deployment or upon their return.[169] Integrating the Kentucky language into the SCRA would provide for reasonable assurances that custody changes are only temporary and would provide greater flexibility in pre-deployment custody arrangements.

[*882]

IV. Conclusion

For several generations, Congress has consistently declared that civil protections for our nations' servicemembers are an important objective. As our society has evolved, those protections have evolved as well. The transformation of America's fighting forces will continue over the next 20 years, as will the personal and financial problems servicemembers face on an individual level. The law should recognize these changes and adapt to ensure that lives placed in jeopardy by military service should be focused on succeeding in battles, one front at a time.

Our State and Federal legislatures must be quick to respond to the issues plaguing our servicemembers. Fortunately, the SCRA has succeeded in ensuring that servicemembers are not forced to wage a battle on two fronts. Complacency in ensuring our servicemembers have adequate civil protections is the greatest enemy our servicemembers face from within the United States, while they defend our interests abroad.

Prepared Statement of Robert W. Madden, Assistant Director, National Economic Commission, American Legion

Madame Chairwoman, Ranking Member Boozman, and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's views on the several measures under the jurisdiction of this Subcommittee. The American Legion commends the Subcommittee for holding a hearing to discuss these very important and timely issues.

H.R. 3257, Military Family Leave Act of 2009, would entitle an employed family member of a member of the Armed Forces to 2 workweeks of leave per year for each family member who:

- receives notification of a call or order to active duty in support of a contingency operation, or
- who is deployed in connection with a contingency operation.

This measure would allow such leave to:

- be taken intermittently or on a reduced leave schedule; and
- consist of paid or unpaid leave, as the employer considers appropriate.

Additionally, the bill would allow an employer to require certification of entitlement to such leave within a leave request.

Finally, the measure would provide employment and benefits protection for employees upon their return from such leave and would prohibit an employer from interfering with or otherwise denying the exercise of such leave rights.

The American Legion supports this pilot program. As a national veterans' service organization of wartime veterans, Legionnaires understand the hardships and sacrifices made by servicemembers and their families, especially lengthy separations. The American Legion recognizes military service as the ultimate form of community service in that each servicemember is committed to national goals and objectives more significant than individual desires.

Military deployments frequently require servicemembers to miss life cycle events, such as births, deaths, marriages, anniversaries that most Americans celebrate routinely in a family-centered environment. Such military deployments are extremely taxing on the children of servicemembers, especially single parents who have to make special child care arrangements.

The American Legion would encourage that there should be some deference given to the measures that must be taken in an effort to mitigate the temporary loss of the physical contributions to the household of the deployed servicemember. The American Legion urges Congress to support H.R. 3257 and amend title 38, United States Code (U.S.C.), to grant family members of the uniformed services temporary annual leave during the deployment of such members. If passed, we believe this law

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[169] Arrillaga, supra n. 138, at [P 3,6,11,12].

will improve the morale of our troops and improve the military quality of life, for which The American Legion has so vehemently supported over the years.

H.R. 3484 would extend to June 30, 2014, the period during which the following work-study activities qualify for an additional veterans' educational assistance allowance:

- outreach services furnished by employees of a State approving agency;
- provision of hospital and domiciliary care in a State home; and
- activity relating to the administration of a national cemetery or State veterans' cemetery.

At this time, The American Legion does not have an official position regarding H.R. 3484.

H.R. 3579 would amend the Montgomery GI Bill Educational Assistance Program for veterans to increase the reporting fee payable to educational institutions that enroll veterans receiving assistance.

The American Legion supports this legislation. Due to the lack of staffing and budget cuts that are being made at institutions, an increase in reporting fees is warranted. The school's certifying official assists veterans with applying for classes and monitors their enrollment weekly along with ensuring this information is reported to VA. The increased funding could assist with more staffing and provide better equipment (i.e. computers) which would provide a self-serve area for veterans or allow more funds to provide for Veterans' Centers.

H.R. 3813, Veterans Training Act, would deem a program of education as an approved program for purposes of the Post-9/11 Veterans' Educational Assistance Program if the program is offered by an institution offering:

- postsecondary instruction that leads to an associate or higher degree and the institution is an approved institution of higher learning; or
- instruction that does not lead to an associate or higher degree and the institution is an approved educational institution.

The American Legion has sought to amend Chapter 33, title 38, U.S.C., to include apprenticeship programs, flight training, correspondence schools, vocational schools and on-the-job training programs being completed at any educational institute. The American Legion has recommended that Chapter 33 needed to be modified to include non-college degree programs. Veterans choosing to use their educational benefits at other than Institutions of Higher Learning (IHL) that are currently covered by Chapter 30 should be allowed to attend their choice of education and receive the same benefits that Chapter 33 recipients are entitled.

Currently, veterans who are using their Chapter 30 benefits are denied the housing and books stipend. These programs were not included in the original language for the Post-9/11 GI Bill. H.R. 3813 seeks to ensure that all veterans who choose to use their education benefits are treated fairly, no matter what course of education they are undergoing. The American Legion strongly supports H.R. 3813 and believes this bill will grant all eligible veterans the right to choose their own education path.

H.R. 3948, Test Prep for Heroes Act, would amend Chapter 31 of title 38, U.S.C., to provide for entitlement under the Post-9/11 Educational Assistance Program to pay for test preparatory courses. The American Legion supports the increase in pay for eligible veterans. This legislation will provide veterans with increased allowances more closely aligned to financial benefits under the Post-9/11 GI Bill. The American Legion believes this legislation will greatly assist and encourage eligible veterans to remain in vocational rehabilitation programs, search for employment, and assist with living expenses. Additionally, this bill will provide reimbursements for child care to veterans who are participating in a vocational rehabilitation program and/or the sole caretaker of a child (or children).

H.R. 3976, Helping Heroes Keep Their Homes Act of 2009, would amend the Housing and Economic Recovery Act of 2008 to extend through December 31, 2015, specified protections for servicemembers relating to mortgages and mortgage foreclosures.

The American Legion supports efforts to enhance benefits received by servicemembers to retain their home during any housing crisis. Servicemembers serve multiple deployments to combat zones and should be afforded relief in order to stay in their current homes where they and their families reside. In order to maintain quality of life while deployed, it is imperative for servicemembers and their families to be afforded all opportunities to continue their way of life and in their current residence. Servicemembers and their families have sacrificed enough and should not be forced to undergo the additional stress of possible foreclosure to their home.

H.R. 4079 would amend title 38, U.S.C., to temporarily remove the requirement for employers to increase wages for veterans enrolled in on-the-job training pro-

grams. The American Legion believes that the quality of life for all veterans of this great nation plays an important role in this diverse economy. The American Legion believes veterans, who are undergoing on-the-job training, should not be limited to a certain pay scale and should not be denied increases in pay. Many of these veterans are already struggling with their financial security because of their on-the-job program, but to deny them an increase should not simply happen. There are circumstances when veterans are involved in an on-the-job training program and need to provide for their family and need their wages to be increased. In addition, The American Legion believes on-the-job training programs should fall under Chapter 33 as a vocational education benefits. This would enable those veterans, who are undergoing on-the-job training programs, the housing allowance and books stipend desperately needed. This benefit would create additional support for those veterans and their families and also give them the same benefits as those individuals who are undergoing a traditional school path.

H.R. 4203 would seek to amend title 38, U.S.C., to direct the Secretary of Veterans Affairs to provide veterans certain educational assistance payments through direct deposit. The American Legion does not have an official position on H.R. 4203.

H.R. 4359, Warriors Adapting Residences with Mortgages for Energy Renovations Act, amends title 38, U.S.C., to authorize the Secretary of Veterans Affairs to guarantee housing loans for the construction of energy sufficient dwellings. At this time, The American Legion has no official position on H.R. 4359.

H.R. 4469 would amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation. At this time, The American Legion has no official position on H.R. 4469.

The American Legion appreciates the opportunity to present this statement for the record. Again, thank you Madame Chairwoman, Ranking Member Boozman, and Members of the Subcommittee for allowing The American Legion to present its views on these very important issues.

Prepared Statement of Justin Brown, Legislative Associate, National Legislative Service, Veterans of Foreign Wars of the United States

MADAM CHAIRWOMAN AND MEMBERS OF THIS SUBCOMMITTEE:

On behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, I would like to thank this Committee for the opportunity to testify. The issues under consideration today are of great importance to our members and the entire veteran population. We have provided our views on the 10 bills of interest and are thankful that this Committee values the opinion of the Veterans of Foreign Wars of the United States.

H.R. 3257, ***to amend title 38, United States Code, to grant family of members of the uniformed services temporary annual leave during the deployment of such members.***

The VFW supports this important legislation that provides 2 weeks of leave for every family member (spouse, sibling, or parent) of a servicemember who receives orders to active duty in support of a contingency operation, or who is deployed in connection with a contingency operation. The leave would be paid or unpaid depending on what the employer of the eligible employee deems appropriate and could be taken intermittently or on a reduced leave schedule. For example, a husband would be able to take 2 weeks of unpaid leave prior to his wife's deployment without the fear of suffering penalties due to this absence.

The eligible employee would be legally guaranteed the same benefits, positions, and seniority when they return from leave as enjoyed prior to the leave and their employer has the right to require certification to support the requested leave.

This bill affords to servicemembers and their family's precious quality time, which is imperative to their well-being and morale prior to deployment.

H.R. 3484, ***to amend title 38, United States Code, to extend the authority for certain qualifying work-study activities for purposes of the educational assistance programs of the Department of Veterans Affairs.***

The VFW supports this legislation that would extend the authority for work-study programs under the authority of the Department of Veterans Affairs from June 10, 2010 to June 30, 2014. The VFW is a strong advocate for the service that the work-study program provides our Nation's veterans. The work-study program allows veterans to work in a position within the Federal Government, educational institutions, or with certain non-profit organizations, while giving the veteran extra needed in-

come. Work-study positions offer veterans the opportunity to study, while also providing a service to the organization at which they are working.

H.R. 3813, *to amend title 38, United States Code, to provide for the approval of certain programs of education for purposes of the Post-9/11 Educational Assistance Program.*

The VFW is concerned that this legislation does not address the compensation implications of expanding the Post-9/11 GI Bill. Currently, the law states only institutions of higher learning that lead to an associate degree or higher may be utilized under Chapter 33. This means that veterans attending vocational schools, apprenticeship schools, on-job training and distance learning programs are excluded from utilizing Chapter 33.

Many of our separating servicemembers have no desire to attend a traditional educational institution because they are interested in learning skill sets that are not offered at these institutions. This legislation would seemingly allow our veterans to attend educational institutions that do not lead to a degree (such as vocational schools, correspondence schools, business schools, science schools, technology schools among others) within the jurisdiction of the Post-9/11 GI Bill. However, this legislation fails to provide adequate mechanisms for providing payment to the veterans that choose these educational programs.

The VFW believes that Congress should standardize, simplify, and restructure all education programs with, an eye toward equitable benefits for equitable service, in accordance with Chapter 33. Remaining Chapter 30 programs (lump sum payments, vocational training, distance learning) should be moved into Chapter 33. Title 10 Section 1606, the guard and reserve Select Reserve GI Bill needs to reflect the Chapter 33 scale. Chapter 35, survivors and dependents educational benefits should also be comparable to Chapter 33. Ultimately, phasing out Chapter 30 and simplifying benefits based on Chapter 33.

H.R. 3948, *to amend title 38, United States Code, to provide for entitlement under the Post-9/11 Educational Assistance Program to payment for test preparatory courses, and for other purposes.*

The VFW supports this legislation that will allow veterans to receive the appropriate test preparation prior to taking tests that play a major role in the college and graduate school admissions process, like the SAT, GRE, or LSAT. Test preparatory courses are often expensive and therefore cost prohibitive to veterans attending college or interested in attending college. Also, higher performance on standardized tests helps veterans gain access to scholarships, financial aid, and more competitive institutions of learning.

H.R. 3976, *to extend certain expiring provisions providing enhanced protections for servicemembers relating to mortgages and mortgage foreclosure.*

The VFW supports this vital legislation that would extend servicemembers protections on mortgage interest rate caps and potential foreclosures. In particular, the extension would apply to a 9 month period after a servicemember has been released from duty where his/her property cannot be sold, foreclosed, or seized. The legislation also extends a 1 year cap of the 6 percent interest cap on a servicemember's mortgage following their separation. These provisions are set to expire by January 1, 2011. H.R. 3976 would extend the foreclosure provision until December 21, 2015 and the interest rate cap provision to January 1, 2016.

This important legislation will help servicemembers, at high-risk for unemployment, transition to the civilian sector without fear of losing their home, while also protecting them against excessive interest rates on their mortgage payments. As we wage two wars and the economy remains grim, it is essential to provide veterans with the provisions specified in the *Housing and Economic Recovery Act of 2008.*

H.R. 4079, *to amend title 38, United States Code, to temporarily remove the requirement for employers to increase wages for veterans enrolled in on-the-job training programs.*

The VFW supports this legislation that temporarily eliminates the requirements for employers to regularly increase the wages of veterans participating in on-the-job training programs authorized under Chapter 30.

Currently, employers can hire a veteran under the on-job training program and the VA pays for half of the salary of the veteran as a training period that lasts from 6 months to 2 years. The employer pays the veteran trainee 50 percent at the start of the program and gradually increases their payment to 85 percent of the trainee's salary. VA pays the 50 percent–15 percent difference in this salary. This legislation proposes to freeze employer's contributions to trainees at 50 percent.

In the dismal job market and overall economic climate, employers are hesitant to hire any new employees. The prospect of hiring trainees at a constant rate of 50 percent of their salary for the entirety of their training period will give veterans a unique advantage in finding a suitable employment option with on-the-job training.

This legislation would require this employment subsidy to remain in effect until October 1, 2015 at which time the current law would be reinstated. The Secretary of Veterans Affairs will submit a report on the effects of the requirement removal to the House and Senate Committees on Veteran's Affairs no later than June 1, 2015 to monitor the results of the amendment.

H.R. 4203, ***to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to provide veterans certain educational assistance payments through direct deposit.***

The VFW currently has no formal position on this legislation.

H.R. 4359, ***to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to guarantee housing loans for the construction energy efficient dwellings, and for other purposes.***

The VFW supports this legislation that would expand the VA's guarantee for housing loans to include the construction of energy efficient dwellings. Currently, VA home loan guarantees are only extended for the purpose of making your home more energy efficient if: a veteran owns the home in which he resides and would like to make modifications, or if a veteran wishes to buy and modify an already existing home. This legislation would allow veterans to build the home of their choice and do so in an energy efficient way.

Also, this proposal would change the maximum loan guarantee for energy efficient modifications from $3,000 or $6,000 dollars respectively, to "five percent of the total established value of the property, dwelling, and improvements, unless the Secretary specifically provides for a higher amount."

Helping veterans make a small investment to become more energy efficient will save energy and save money for the veteran in the long run. This win-win strategy provides a proactive solution to make inroads on a pressing global issue, while helping veterans achieve their dreams of home ownership.

H.R. 4469, ***to amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.***

The VFW supports this legislation that would amend the Servicemembers Civil Relief Act by adding a new section entitled "Child Custody Protection." In particular, this legislation will restrict permanent custody decisions while a servicemember is deployed in support of a contingency operation. A court would still be able to enter a temporary custody order, during times of deployment, if the court finds that it would be in the best interest of the child.

Of great importance, this legislation would also exclude military service in determining the child's best interest. This would make the courts unable to consider the absence of the servicemember by reason of deployment, or possibility of deployment, in determining the best interest of the child for the sake of permanent custody decisions.

The VFW strongly believes that a servicemember's duty should not reflect negatively on themselves for the sake of judicial proceedings that deal with something as serious as a permanent custody decision of a child. Clearly, deployments cause great hardships on families and servicemembers. However, in most instances, the decision to deploy is not the servicemember's; it is our governments. Therefore, we should not allow our government to then punish servicemembers in judicial custody disputes.

Madam Chairwoman, this concludes my testimony and I will be pleased to respond to any questions you or the Members of this Subcommittee may have. Thank you.

Prepared Statement of Timothy S. Embree, Legislative Associate, Iraq and Afghanistan Veterans of America

Madam Chairwoman, Ranking Member, and Members of the Subcommittee, on behalf of Iraq and Afghanistan Veterans of America (IAVA), thank you for allowing us to testify before your Committee. Many of the 10 pieces of legislation being considered today will profoundly affect veterans of Iraq and Afghanistan and their families. We appreciate this opportunity to offer our feedback.

Executive Summary:

Three of the bills being considered today touch on key priorities for IAVA: education, rights for female servicemembers and seamless transition. Two years ago, Congress passed the new GI Bill, helping to build the next greatest generation. We believe: H.R. 3813, the Veterans Training Act, will further this commitment by streamlining and simplifying the new Post-9/11 GI Bill to include vocational training; H.R. 4469 will better support the 30,000 single mothers who have deployed since 9/11 by granting them child custody protections; and H.R. 3976, the Helping Heroes Keep Their Homes Act, will ensure military families are able to stay in their homes during a deployment.

Bill #	Bill Title	Author	IAVA Position
H.R. 3257	Military Family Leave Act of 2009	Smith, Adam	Support
H.R. 3484	Reauthorizing VA work-study program	Herseth Sandlin	Support
H.R. 3579	Increasing the School Reporting Fee	Filner	Support
H.R. 3813	Veterans Training Act	Sestak	Support
H.R. 3948	Test Prep for Heroes Act	Putnam	Support
H.R. 3976	Helping Heroes Keep Their Homes Act	Perriello	Support
H.R. 4079	Temporarily remove the requirement to increase wages for OTJ vets	Perriello	Oppose
H.R. 4203	Requiring GI bill payments to be offered through direct deposit	Hall	No Position
H.R. 4359	WARMER Act Warriors Adapting Residences with Mortgages for Energy Renovations Act	Boozman	Support
H.R. 4469	Provide protection of child custody arrangements for deploying parents	Turner	Support

Full Testimony:

H.R. 3257, Military Family Leave Act of 2009

The Military Family Leave Act would grant a family member of a deployed servicemember at least 2 weeks of military family leave for every year that the servicemember is deployed. This family member would not be required to use accrued vacation time to utilize these 2 weeks of military family leave; however, the employer has the discretion to determine whether military family leave is considered paid or unpaid leave time. Failure to grant military family leave or penalizing a family member for taking this leave will result in the same punishment as a violation of USERRA protections.

IAVA fully supports this legislation. This bill will give family members of servicemembers on leave the opportunity to spend time with the servicemember instead of working during that limited time. It will also provide a cushion for family members to handle all of the unexpected tasks, errands and responsibilities that surface during a deployment.

Lastly, IAVA recommends that H.R. 3257 be amended to prohibit employers from requiring family to exhaust other forms of leave not explicitly outlined in the bill, such as sick leave and so-called “comp time.”

H.R. 3257 is an expansion of the Family and Medical Leave Act that passed in the 2008 NDAA and was forcefully endorsed by IAVA.

H.R. 3484, To amend title 38, United States Code, to extend the authority for certain qualifying work-study activities for purposes of the educational assistance programs of the Department of Veterans Affairs.

H.R. 3484 will reauthorize the VA work-study allowance program for another 4 years. This vital program helps campuses hire student veterans to assist processing GI Bill paperwork, work at a local VA facility, or perform veteran outreach in their community. Student veterans earn minimum wage and can work up to an average of 25 hours/week. Veterans can also receive up to 40 percent of their payment as an advance payment.

In 2009 the VA spent $23 million on work-study programs and the VA's budget request for 2011 lowers that figure to $18 million.[1] The program was created in 1972, paying veterans $250 in advance pay in exchange for the student veteran agreeing to work 100 hours.

IAVA supports H.R. 3484 because it provides meaningful employment opportunities for student veterans while improving services for other veterans. We have met many student veterans who assist their school certifying official with processing GI Bill paperwork through this program and we believe that the mentoring they provide to other veterans is invaluable.

H.R. 3579, To amend title 38, United States Code, to provide for an increase in the amount of the reporting fees payable to educational institutions that enroll veterans receiving educational assistance from the Department of Veterans Affairs, and for other purposes.

H.R. 3579 would increase the payments made to colleges for processing a veteran's GI Bill paperwork, called reporting fees, to $50/student veteran. This is a much needed increase from the current and embarrassingly low rate of $7/veteran. School certifying officials are required to verify a student veteran's enrollment before that veteran can begin receiving their education benefits. This online certification form can take upwards of an hour to complete and must be updated if the student veteran changes their enrollment status.

Given their unique role as the gatekeeper for student veterans GI Bill benefits, school certifying officials are often mistaken for VA employees and are often a veteran's first and only contact with the VA. They answer questions about benefits, explain the application process and sometimes refer veterans to other VA services. Unfortunately, poor training and/or a lack of a full-time certifying official on a campus will lead to unnecessary friction between veterans and the school. For example, any mistakes in the certification process will mean the veteran will likely have to wait months for their education benefits or they may be billed for overpaid benefits. Because of the current extremely low reporting fees there is no financial incentive for schools to make veterans' certification a top priority for their best people. Many colleges delegate this responsibility to entry-level staff, where there is often have high turnover. And often the university employees have too many other responsibilities to make certifying veterans' enrollment their top priority. Furthermore, schools are reluctant to send certifying officials to vital VA trainings held regionally each summer.

IAVA strongly supports H.R. 3579 because we believe that student veterans should receive first class service when they access their education benefits, from the VA and from their school. We also believe that the current policy of paying certifying officials less than the Federal minimum wage to process student veterans' paperwork, worth tens of thousands of dollars to each veteran, is unfair and needs to be fixed immediately.

H.R. 3813, Veterans Training Act

The Veterans Training Act would expand the Post-9/11 GI Bill to cover vocational training at vocational schools. Currently, the Post-9/11 GI Bill will only cover vocational training at a degree granting college, but not at an exclusively vocational training program. IAVA believes it is unfair and confusing that a veteran can be reimbursed under the Post-9/11 GI Bill for studying to be an EMT at their local community college, but cannot take the same course at an EMT school.

Vocational training has always been an important part of the GI Bill, 70 percent of the 8 million veterans who used the WWII GI Bill did not seek college degrees but instead participated in vocational and apprenticeship training programs. While that number has decreased over the years, the fact remains that a traditional college education isn't for everyone. IAVA believes that veterans should have a choice

[1] VA Annual Budget Submission (FY 2011); Volume III: Benefits and Burial Programs and Department Administration; page 82; http://www4.va.gov/budget/docs/summary/Fy2011__Volume__3–Benefits__and__Burial__and__Dept__Admin.pdf.

on how to use their GI Bill benefits. The over 16,000 veterans enrolled in vocational programs [2] should not be excluded from the robust new Post-9/11 GI bill.

IAVA strongly endorses H.R. 3813, the Veterans Training Act. On a technical note, section 2(b)(1) of H.R. 3813 is unnecessarily duplicative because it includes programs that would already be covered under section 2(b)(2).

H.R. 3948, Test Prep for Heroes Act

The Test Prep for Heroes Act would allow veterans taking a preparatory course for a licensing or certification test to be reimbursed under the new GI Bill helping veterans have higher success rates on their exams. Currently, veterans can use their Post-9/11 GI Bill benefits to cover the cost of a single licensing or certification test, up to $2,000, but are forced to pay out of pocket for preparatory courses. For example, the GI Bill will cover a bar examination test but will not cover the bar prep course that nearly every law student takes to prepare for such a rigorous examination. H.R. 3948 will help veterans be more successful in their licensing and certification exams by making prep courses financially available.

IAVA believes this act should be expanded to allow veterans to be reimbursed for taking multiple licensing or certification tests up to the $2,000 cap. Under the old GI Bill, veterans could use their education benefits to cover multiple licensing and certifications tests while the new GI Bill will only reimburse for a single test. We believe that veterans, whose career path requires multiple certification tests, should not be penalized. For example, the new GI Bill will reimburse a future mechanic for only one of the following certifications:

Automobile: Automatic Transmission/Transaxle	$23
Automobile: Brakes	$23
Automobile: Engine Repair	$23

A mechanic would only receive $23 for her or his certifications under the new GI Bill while an aspiring attorney in Nevada could receive $1225 for their bar exam. Expanding H.R. 3948 to include multiple licensing and certification tests will level the playing field and provide a more equitable benefit for veterans.

H.R. 3976, Helping Heroes Keep Their Homes Act of 2009

The Helping Heroes Keep Their Homes Act of 2009 will extend vital foreclosure protections for deploying servicemembers that are set to sunset at the end of this year. Returning servicemembers now receive 9 months of protection from mortgage foreclosures after they separate from active-duty. Originally, servicemembers had only 90 days before they risked foreclosure on their homes. At the height of the housing crisis, foreclosure rates in military towns were increasing at four times the national average. IAVA was strongly supportive of these protections when they were passed back in August of 2008 as part of the Housing and Economic Recovery Act. We strongly support their extension as part of H.R. 3976. Technical note: the Thomas version of H.R. 3976 has a typo, it should be called the "Recovery Act" not the "Recover Act."

H.R. 4079, To amend title 38, United States Code, to temporarily remove the requirement for employers to increase wages for veterans enrolled in on-the-job training programs.

H.R. 4079 would temporarily lower the mandatory wages being paid by an employer to veterans enrolled in on-the-job training (OJT) programs. Veterans enrolled in OJT programs currently receive a monthly stipend under the GI Bill worth $1026/month for the first 6 months, $752 for the second 6 months and $478 for the rest of their training. This stipend is meant to support a veteran while they are completing their vocational training. For example, many cadets attending police and fire academies utilize this benefit.

Since 1967, when this program began, employers wishing to participate in the GI Bill as an eligible OJT program were required to pay a participating veteran 50 percent of the wages they would receive if they were fully trained. That percentage would increase to 85 percent throughout the veteran's training period. The clear purpose of this requirement is to offset the diminishing GI Bill OJT stipend while gradually increasing the employer's obligation, meaning the veteran would receive a steady stream of income through their training. H.R. 4079 would temporarily remove the employer's obligation to increases wages above the 50 percent threshold for the next 5 years consequently, as the OJT stipend decreased the veterans wages would decrease.

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[2] Based on VA GI Bill data for 2008.

As it is currently written, IAVA opposes H.R. 4079 because we cannot support lowering wages for our Nation's veterans, especially in this time of fiscal crisis. By removing the requirement that employers increase wages during the veteran's training we would be incentivizing participating OJT programs to lower their wages to the 50 percent threshold. If wages remain stagnant throughout a veterans training program, they will receive progressively less money every 6 months due to the drop in GI Bill rates. This is unacceptable.

If the end purpose is to encourage more employers to offer OTJ programs and/or increase the number of veterans utilizing this program, we believe the H.R. 4079 could be modified to achieve those ends. By coupling the temporary removal of requirements for wage increase with the stipulation that OJT rates do not drop after 6 months, participating veterans will not experience lowered wages and more employers would participate. Without such a stipulation or a similar modification IAVA must oppose H.R. 4079.

H.R. 4203, To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to provide veterans certain educational assistance payments through direct deposit.

H.R. 4203 would require the Department of Veterans Affairs to ensure that all veterans be eligible to receive Post-9/11 GI Bill payments via direct deposit. VA Education Services, which administers GI Bill benefits, has already implemented a direct deposit program for GI Bill beneficiaries. A student can sign up for direct deposit when they apply for their GI Bill benefits. This bill is basically redundant so IAVA takes no position on H.R. 4203. However, if this Committee sees fit to consider this legislation IAVA recommends a technical correction by changing the word "veteran" to "student" because the Post-9/11 GI Bill pays education benefits to veterans, spouses and dependents.

H.R. 4359, WARMER Act: Warriors Adapting Residences with Mortgages for Energy Renovations Act

The WARMER Act would help veterans finance money-saving energy efficient improvements to their homes using VA home loans. A veteran wishing to install a solar heating system would be able to use a VA home loan to cover the installation costs up to 5 percent of the established property value of the home. The VA currently has a program that authorizes them to make similar loans. However the WARMER Act improves upon that pilot program by capping the loan based on the established value of the property. Currently they are capped at an arbitrary fixed rate that requires the VA Secretary to develop new standards for evaluating energy efficiency improvements.

IAVA supports the WARMER Act because it modernizes and expands a useful benefit for veterans seeking to reduce their carbon footprint and their monthly bills.

H.R. 4469, To amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.

H.R. 4469 would provide critical protections for deploying parents. More than 30,000 single mothers have deployed to Iraq and Afghanistan as of March 2009,[3] H.R. 4469 would prohibit a permanent change of custody order while the servicemember is deployed as well as ensure that the servicemember's deployment status is not counted against the servicemember in future custody hearings. This will grant deploying parents the peace of mind knowing that their military service will not come between them and their children.

IAVA wholeheartedly endorses H.R. 4469 because we believe forcing a deployed parent to worry about child custody hearings while they are deployed in a war zone is cruel and damaging to our fighting force. The whole purpose of the Servicemember's Civil Relief Act (SCRA) is to ensure a deployed servicemember's attention is on the task at hand and not on their responsibilities back home. We believe that H.R. 4469 is a vital improvement to the SCRA.

IAVA has heard some concerns expressed about the unintended consequences of such a law and we are confident those concerns are unwarranted. H.R. 4469 adequately protects the best interest of the children in question by allowing temporary custody orders while the servicemember is deployed and an exemption from reinstating a custody order if it is not in the best interest of the child.

[3] "Women Warriors: Supporting She 'Who Has Borne the Battle'"; Erin Mulhall; page 4; http://media.iava.org/IAVA__WomensReport__2009.pdf

Prepared Statement of James Bombard, Legislative Director, National Association of State Approving Agencies, and Chief, New York Bureau of Veterans Education

Introduction

Madam Chairwoman and Members of the Subcommittee, I am pleased to appear before you today on behalf of the National Association of State Approving Agencies (NASAA) to provide input, support, and to discuss the provisions of the following bills: H.R. 3813, H.R. 4079, H.R. 3948, H.R. 3579, H.R. 3484, and H.R. 4203. The other bills listed in the invitation letter (H.R. 3257, H.R. 3976, H.R. 4359, and H.R. 4469) are not within the purview of education benefits so I will not be commenting on them. We are supportive of them in principle.

State Approving Agencies have been an integral part of the administration of the various GI Bills since shortly after the inception of the original GI Bill in June of 1944. It has been our distinct pleasure and honor to have the opportunity to contribute to the success of these programs. In short, State Approving Agencies are "the face of the GI Bill at the State level."

H.R. 3813

This bill would expand the Post-9/11 GI Bill to include approved programs offered at noncollege degree educational institutions. The Post-9/11 GI Bill does not provide increased benefits for all eligible veterans/individuals because it limits the type of educational institutions they can choose to use their earned benefits. Students attending nondegree granting postsecondary educational institutions (public vocational-technical, some career schools, certain nursing schools, and other approved educational institutions) are not eligible for increased benefits under the Post-9/11 GI Bill.

On return to civilian life, many servicemembers are interested in hitting the ground running. Short-term certificate and diploma programs can be a critical part of a successful transition. But if they are not offered at a degree granting institution, then programs such as truck driving, some police and firefighting academies, aviation maintenance, cosmetologist, barber, HVAC, construction trades, allied medical programs such as medical assisting, EMT, etc., are not available for pursuit under the new GI Bill. Nondegree institutions have been included in other GI Bills so why should Chapter 33 be different? After a veteran has bravely served their country, they should be allowed to pursue their next career at the institution of their choice. Since all institutions/programs must be approved by the State Approving Agency, there is a detailed review by a government agency to ensure all State and Federal requirements are met. State Approving Agency staff have had many examples of individuals who do not understand why they cannot use their earned benefits. In fact, on February 3, 2010, during a routine supervisory visit to a cosmetology school in Pennsylvania, William Stephens (NASAA President) had to explain this "short fall" in benefits to both a Pennsylvania National Guard member (with over 36 months of active duty) and the father of a National Guard member who had transferred his benefits to his daughter so she could obtain her cosmetology education and license. Both thought they could use their earned Chapter 33 benefits at this institution and now have a potential large shortfall in their benefits. They were both understandably frustrated. They had earned the benefits and should be able to use them (or give them to their dependents) at the approved institution of their choice.

H.R. 4079

This bill would remove the requirement for employers to increase wages for veterans enrolled in on-the-job training programs. It is necessary due to the difficult economic times. This would be a temporary waiver (5 years) of the mandatory wage increase for private sector employers to participate in the VA on-the-job training program. It will allow veterans to utilize their GI Bill as they pursue job training and careers consistent with the promise of the GI Bill.

Difficult economic times that contribute to wage freezes or wage reductions in the private sector impacts veterans seeking OJT benefits from the approval perspective as wage increases are required in the private sector only. The quality of a training program is not predicated on wage increases.

A national survey completed by the National Association of State Approving Agencies (NASAA) found that 22 of 30 States that are active in the on-the-job training program have identified lost approval opportunities due to the wage increase requirement.

As an example, in Missouri, it is estimated more than 20 employers have not qualified for approval due to the wage increase requirement since mid FY 2009.

Some of these companies are nationally known while others represent the small business sector. The impact of the GI Bill through the on-the-job training program is enormous.

The product created by passage of H.R. 4079 is a level playing field for veterans opting for on-the-job training. The wage increase requirement for public sector employers was removed several years ago (based on the same rationale) as State, county, and municipal budgets flat lined.

Employers, both private and public, are not allowed to pay less in wages to eligible veterans/reservists/dependents than other similarly qualified trainees. This is a regulatory requirement and is monitored by State Approving Agencies. The passage of this bill will allow eligible veterans/individuals to use their earned benefits during these difficult economic times at programs that are approved and monitored by State Approving Agencies.

H.R. 3948

This bill would include the payment of Chapter 33 benefits for test preparatory courses for a test that is required or used for admission to an educational institution. Currently Chapter 33 eligible individuals can use their benefits for one licensure or certification test reimbursement. This bill will expand the opportunities and permit eligible individuals to use their earned benefits in obtaining admission to educational institutions. We support this bill and recommend that additional consideration be given to expanding the number of test preparatory courses and the number of tests for licensure or certification for which veterans can use their earned benefits.

H.R. 3579

This bill would increase the reporting fees paid to institutions for their role in administering the GI Bill. The current fee structure ($7.00 for regular enrollments and $11.00 for advance pay enrollments) has been in force for over 30 years. It is time for an increase. Certifying Officials at the various institutions are a "key" player to the success of the GI Bills. They are the "front line" and have the most contact/interaction with veterans/reservists/dependents. As a side note, some Certifying Officials are able to use these funds for travel to training sessions sponsored by State Approving Agencies and/or Department of Veterans Affairs. It is time to increase their reporting fee.

H.R. 3484

This bill would extend the authority for veterans to use the work study program while assisting with the preparation and processing of papers and other documents at educational institutions or facilities of the VA and working in support of certain other veteran related activities at the Federal and State level, such as outreach activities conducted by the VA and State Approving Agencies. Many veterans find it necessary to supplement their benefits by working. The work study program has been very successful and not only provides eligible veterans a method to increase their income while in school but also provided a substantial amount of workers for Department of Veterans Affairs, State Approving Agencies, and educational institutions. An extension of these other activities is a "win-win" situation.

H.R. 4203

This bill would ensure veterans have the opportunity to use direct deposit of their benefits. This approach to the payment of benefits not only provides a secure and fast method for the veteran/individual to receive his/her benefits, it also is more efficient for the Department of Veterans Affairs, thus, saving staff time.

Closing

We encourage the leadership and members of this Committee to take a firm and aggressive stand in promoting the enactment of the bills discussed above. We would also like to respectfully request your support for another bill, H.R. 4571, which was just introduced by Representative Sestak from Pennsylvania. This bill would increase State Approving Agency funding. As we have discussed before, funding for SAAs has remained at $19 million for the past 5 years and with the increased workload associated with the Post-9/11 GI Bill and increased operating costs, many State Approving Agencies are in crisis. Some are finding it necessary to decrease staff for this current fiscal year. Now is not the time to decrease the service for those who have served (or are currently serving) our country. We have provided written documentation on the rationale to increase SAA funding. We are available to provide additional detail on our request and look forward to working with the Subcommittee on H.R. 4571 or similar legislation which the Committee may consider.

Thank you Madam Chairwoman and Members of the Subcommittee for the opportunity to address you today. We would be pleased to respond to any questions that you have.

Prepared Statement of Colonel Mark E. Sullivan, USA (Ret.), Law Offices of Mark E. Sullivan, P.A., Raleigh, NC

Introduction

Thank you for the opportunity to testify today. I appreciate being able to discuss H.R. 4469 with you. I am a retired Army JAG colonel and the author of *The Military Divorce Handbook* (American Bar Association 2006). I have practiced law in Raleigh, North Carolina for over 30 years, and much of my work involves military divorce issues. I have been a leader in the American Bar Association on military custody and visitation matters for over 10 years, and in the North Carolina State Bar for 30 years. I've helped State legislatures and bar associations with military custody and visitation bills in the States of Alaska, Washington, New Mexico, Iowa, Kansas, Ohio, Indiana, Mississippi, Alabama, Virginia, Vermont, Georgia, New Jersey and Rhode Island. In the past 30 years, I have chaired the American Bar Association's Standing Committee on Legal Assistance for Military Personnel, the Military Committee of the ABA Family Law Section, and the military committee of the North Carolina State Bar. I served on the ABA Special Committee on Protecting the Rights of Servicemembers, and I am now a liaison to the National Conference of Commissioners on Uniform State Laws on military custody and visitation legislation.

Today our deployed troops in Iraq, Afghanistan are fighting insurgents and suicide bombers on the battlefield and, increasingly, custody and visitation battles at home. For many of them, obeying the call to duty (meaning mobilization for National Guard and Reserve personnel and deployment overseas for those on active duty) can mean visitation and custody problems on the home front. I have been fighting this battle for servicemembers for most of the last decade, helping to create language and legislation for State legislatures to grant custody and visitation protections for our servicemembers.

All of this work was in the halls of State government. It is not the province of Federal law to provide detailed and specific instructions on how to handle child custody cases, whether these involve custodial parents who are members of the armed forces, the State Department, the Central Intelligence Agency or the Federal civil service. Congress should not interject itself into writing rules for custody and visitation; this is the responsibility of State courts.

Some say, "We have a national military—for that we need a national standard" for custody. Not true. This simplified statement betrays a fundamental misunderstanding of the nature of our republic—50 States with their own laws, a Federal Government for those powers set out in the Constitution. If the "national military—national standard" argument contained any truth, then we'd have a national set of laws for servicemembers on drivers' licenses, voting requirements, the age of majority, and a host of other issues. The truth of the matter is that Congress has always deferred to the governments of the 50 States to enact and apply appropriately crafted legislation in the area of domestic relations, even when it affects military personnel. There are 50-plus different laws on child support for military personnel. Pension division upon divorce is a 50-state affair as well; the rules differ from place to place. The rules also differ among the States as to what the courts may do with Survivor Benefit Plan coverage upon divorce. States have always been solely responsible for the subject of custody and visitation in cases involving military parents.

That would come to an end with the passage of H.R. 4469. This radical revision of the Servicemembers Civil Relief Act (SCRA), which would apply only to the small number of single military parents who have custody of a child, would:

- preclude courts from permanently changing custody while a military parent is deployed;
- require resumption of custody upon the servicemember's return from deployment, unless the reinstatement of custody is not in the best interest of the child; and
- bar courts from considering a military parent's deployment or possibility of deployment as a basis for determining the best interest of the child in custody modification cases.

All of these are admirable proposals, and ones which need to be added to the laws in those states "about a third of the fifty" that do not have such protections. Most of the States already have legislation to protect military custody rights. Our own North Carolina statute, Section 50–13.7A of our General Statutes, provides these and more protections for military members. It's there because of our efforts in the State legislature, and because that's where it belongs—in a State statute, not in the Federal code. Rep. Mike Turner's heart may be in the right place; his custody bill is not. Passage of H.R. 4469 would create serious and expensive trouble for troops, for children, for ex-spouses—all in the name of a principle to which we all subscribe, namely, protecting the rights of servicemembers and their children during deployment, mobilization and other military absences.

Congress should *not* be directing our courts, whether State or Federal, on how to look after the best interest of a child, and yet this is exactly what the proposed legislation does. Our own Supreme Court stated:

> *The issuance of [custody] decrees . . . not infrequently involves retention of jurisdiction by the court and deployment of social workers to monitor compliance. As a matter of judicial economy, State courts are more eminently suited to work of this type than are Federal courts, which lack the close association with State and local government organizations dedicated to handling issues that arise out of conflicts over divorce, alimony, and child custody decrees. Moreover, as a matter of judicial expertise, it makes far more sense to retain the rule that Federal courts lack power to issue these types of decrees because of the special proficiency developed by State tribunals of the past century and a half. . . .*
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> *Ankenbrandt* v. *Richards,* 504 U.S. 689, 703–704 (1992)

Positive Results—A Majority of the States

Were the States failing to act in this area to protect the rights of servicemembers and their children, it would rightfully raise the ire of those in Congress, as well as the citizens who elect State and Congressional representatives. That is not the case, however. The States can—and *are*—acting creatively to protect the custody rights of our mothers and fathers in uniform. Today about two-thirds of the States—32 in all—have passed legislation, and about 10 have bills pending, to provide significant protections for the rights of military personnel, all of them more extensive than the terms of H.R. 4469. In just the first 6 months of 2008, for example, military custody bills became law in Iowa, Virginia, Mississippi, North Dakota and Kansas. States which are currently working on military custody and visitation legislation include Alaska, Iowa, Ohio, Indiana, Alabama, Vermont, Georgia, New Jersey, Hawaii and Rhode Island.

Dire consequences would follow were Congress to intrude on the significant protections and creativity demonstrated by the States, thus stifling the unique initiatives that they have enacted for the protection of parents in uniform. And the protections offered by State legislation are significantly better for military personnel than the terms of H.R. 4469. Many State statutes provide for the use of electronic means of testimony for servicemembers. Where is that in H.R. 4469? They allow expedited dockets for those who wish to put their affairs in order before deployment. They take into account mobilization for Guard/Reserve personnel, as well as temporary duty (TDY) when these situations mean an unaccompanied tour of duty. They deal with all forms of active duty, including humanitarian missions and remote tours of duty, not just contingency operations. They mandate the availability of the child or children for visitation during periods of leave for servicemembers. Where are those protections in H.R. 4469? That's why we need to leave the heavy lifting in this area to the States, rather than try to usurp their initiatives and trample on their laws.

And—most significantly—these State statutes and bills deal with the issue of visitation for servicemembers who *do not have custody.* This is an issue on which H.R. 4469 is silent, the visitation rights of military parents. It's completely left out of the bill, as if the drafters were not even aware that—of those servicemembers who have minor children—most are *not* custodial parents. The demands of military life generally require release of custody into the hands of the non-military parent. By an overwhelming majority, the usual arrangement for single parents in the armed forces is visitation rights, *not custody.* According to Defense Department regulations, first-term single enlisted parents cannot have legal custody of a minor child. The States are well aware of these facts. In addition to statutes allowing compensatory visitation for time lost due to military duties, many States are passing bills which let the judge delegate the visitation rights of a parent in uniform to a close family

member if this is in the best interest of the child. There are no rights for military parents with visitation rights in H.R. 4469.

Whether for custodial parents or visiting parents, the laws of about two-thirds of the States already provide strong protections and creative approaches to the rights of servicemembers. And the continued efforts of the States should not be stifled by the application of rigid Federal rules nationwide for cases which are always unique on their own facts. The passage of an overarching gridwork of Federal law in a field which has always been reserved for the States will completely destroy the initiative of those States which are considering initial legislation or thinking about improving their current laws to protect military members and their children. "Why bother?" they'll say. "Why make the effort, when Congress has already told us what the outcome must be, each and every time? We know what Congress wants, it's already in the Federal code. Why should we do *anything more* for military parents?" The States are universally opposed to such legislation; a simple inquiry to the State bars and bar associations will provide the proof. No one who is in charge of State custody laws wants a Federal statute which dictates custody outcomes.

The heavy-handed Federal intrusion set out in H.R. 4469 is a major mistake. Why should *any State* participate in developing new bills and creative concepts (such as delegated visitation rights, visitation rights during mid-term leave, protections against waiver of visitation rights, and advance notice of military absence), as is occurring right now, when "Uncle Sam" can take over and just dictate the outcome? Congress should not place a roadblock in the path of States' abilities to craft strong and creative protections.

This bill would not only wipe out any incentive at the State level to create or improve State laws for the protection of servicemembers. It would also pre-empt, under the Supremacy Clause of the Constitution, the laws of the several states when they come into conflict with the strictures of H.R. 4469. Any law which provides a different level of protection (other than a higher one) would be of no effect. No State remedy would prevail when faced with the clear dictates of Federal law.

When it comes to prompting passage of certain laws on the State level, the United States Congress knows well how to encourage action by State legislatures. If that is what's desired, there is a straightforward solution. In past years, the passage of the Uniform Interstate Family Support Act by all of the states, and the universal enactment of substantial child support reforms (including mandatory child support guidelines and expedited process for pending child support cases) were brought to fruition by the "encouragement" of Congress in the form of proposed withholding of IV–D funds from the States.

Twisting the Purpose of the Servicemembers Civil Relief Act

The American Bar Association, which opposes this bill, has long been a strong supporter of the SCRA as a vital shield that helps ensure servicemembers rights are not unduly prejudiced by virtue of their service. The purpose of the SCRA regarding courts and litigation is to provide *procedural protections* (protection against default judgments, appointment of counsel, stay applications) for military personnel, not to grant them substantive rights regarding family law issues. This bill goes against 70 years of history behind the SCRA and its predecessors. The Act was passed to create a shield against default judgments, against judges who refused to allow continuances when military duties were involved, against unscrupulous creditors. It was not enacted to dictate the outcome in cases involving divorce and domestic relations. It should not be used for that now. Moreover, the bill would seriously weaken the broad protections of the SCRA, because only child custody matters will be deemed to have been intended to be addressed by Congress in regard to family law disputes. We should not run the risk of unintentionally undermining current SCRA protections.

Why the Opposition?

On four occasions since 2007 a bill has been introduced which would add custody terms for military parents into the U.S. Code. And on four occasions Congress said NO. Why? Let's take a look at who is in favor of custody protections for military personnel but opposes this bill. Who has stood up to this bill and said it was a bad idea?

Senator John McCain—a staunch supporter of the rights of servicemembers—has led the way in refusing to sign on to the idea of changing the Servicemembers Civil Relief Act in so radical a way. In a letter of July 28, 2009 to Rep. Mike Turner, Senator McCain noted that:

> Child custody laws and litigation, as you know, have traditionally been the province of the States. I suggest that we need to proceed with care in considering Federal legislation that would preempt the States in their approaches to the child custody issues you have identified. I have been informed, for example, that 29 States have enacted laws providing guidance and direction to their own State courts about what standards to apply in cases involving military parents. I'm not convinced at this point that there needs to be a nationwide standard in view of the historical Federal deference to the State legislatures and the obvious concern that the States have shown about this issue.
>
> I also have some concerns about the opposition that has been raised to your proposal from Associations with expertise in this area. The Senate Veterans' Committee, the committee with jurisdiction over the Servicemembers' Civil Relief Act, has opposed the legislation you have advanced. In addition, the American Bar Association, led by its Standing Committee on Legal Assistance for Military Personnel, issued a resolution in February 2009 that opposed modifying the SCRA in the way you have suggested.

The Department of Defense, also a strong advocate of protecting the rights of military personnel, has likewise stood up to H.R. 4469 in its previous versions. Secretary Robert Gates, in a letter to Rep. Turner dated September 25, 2009, emphasized the positive actions which could be taken, and the lack of need for an amendment to the SCRA:

> Our General Counsel has reviewed the various state law protections for Servicemembers. We find that, at present, some level of protection for Servicemembers facing child custody issues exists in approximately 28 States, but the States' approaches to the issue vary widely. Many of these variances no doubt reflect different societal dimensions of the problem in different communities across the country. Thus, we have concluded that it would be unwise to push for Federal legislation in an area that is typically a matter of State law concern.
>
> However, we have identified a number of steps that the Department of Defense should take in this area:
>
> First, I plan to personally contact the governors of each of the States that have yet to pass legislation addressing the special considerations of child custody cases in the military to urge them to pass such legislation. I will also ask the Chief of the National Guard Bureau to follow-up with the Adjutant General of each of those states on the issue.
>
> Second, we will include concerns over child custody matters on the list of the Department's 10 Key Quality of Life Issues that will be presented to governors, State legislators and other State officials. On September 22, a representative from the Department's Office of Legal Policy and an expert in military child custody cases met with each of the Department's 10 Regional State Liaisons and discussed military child custody issues. These liaisons will now aggressively reach out to State officials whose legislatures have not addressed military custody concerns to provide them with appropriate and effective draft language. Further, the liaisons developed a general strategy for focusing on those States with the largest military populations.
>
> Third, I will ask the military service Judge Advocates General and Staff Judge Advocate to the Commandant to ensure they are doing all they can to work with the American Bar Association (ABA) to publicize, emphasize and support the ABA's national pro bono project. This project can provide our Servicemembers free legal representation from some of the country's most accomplished child custody practitioners. The pro bono project is run in concert with judge advocates from each of the Services, who work closely with the ABA to ensure our Servicemembers receive the best possible representation.
>
> Fourth, the Department is engaged with the military services to update and standardize Family Care Plans (FCPs) across the services. FCPs are developed to ensure that families are taken care of during times of drills, annual training, mobilization and deployment. FCPs include provision for long-term and short-term care, care and support for children, and financial arrangements including power(s) of attorney. The Department has recognized that improvements to its FCP guidance can address many of the custody

> issues that otherwise too often result in litigation after deployment. By clarifying those who require a FCP and emphasizing the importance of custody negotiations with the non-custodial parent early in the process—before deployment—the issues that most often give rise to litigation can largely be avoided. The Department is convinced that these efforts can resolve far more issues in favor of our Servicemembers than can new Federal legislation.

Why would the proponents of this bill ignore Secretary Gates? It is the job of Dr. Gates to ensure that our military personnel have the resources and protections necessary to defend the Nation. Surely he should be granted some deference by Congress, since he is the single person in the Nation whose responsibility it is to maintain the morale, fitness, and retention goals of our armed forces. And yet the Defense Department opposes this bill.

Also opposed is the American Bar Association. In Resolution 106, passed in February 2009, the ABA went on record as rejecting the ill-conceived ideas previous set out in H.R. 5658 in the 110th Congress, because this would——

- allow Federal courts to exercise jurisdiction in child custody cases, including matters which involve military parents
- dictate case outcomes in State child-custody cases
- run roughshod over the powers of State courts in custody cases involving servicemember parents, and
- pre-empt the growing body of State laws which comprehensively address servicemembers' needs in the child custody area.

The ABA supports study of the problem of military custody and improvement of Family Care Plan regulations, as well as funding for enhanced legal assistance as an entitlement for military personnel. The association supports the study of military custody issues mandated by Section 572 of the 2010 National Defense Authorization Act (report as to "all known reported cases since September 2003 involving child custody disputes in which the service of a member of the Armed Forces, whether a member of a regular component of the Armed Forces or a member of a reserve component of the Armed Forces, was an issue in the custody dispute"). And the ABA is on record as firmly opposing the denial of child custody to servicemembers based solely on their absence.

And finally, the bill is opposed by the National Military Family Association. For over 40 years, the NMFA has been the only national military organization that has represented officers, enlisted personnel and their family members from all branches of the armed forces. Its sole focus is the military family, and its goal is to create and support policies that will improve the lives of families in the military services. Why has amending the SCRA in this way generated opposition from even the NMFA, if its purpose is *purely beneficial*? The NMFA, in a letter dated July 21, 2009 to Senators Benjamin Nelson and Lindsey Graham of the Senate Armed Services Committee, stated that:

> We would also like to urge your support of the American Bar Association's (ABA) Resolution 106 concerning child custody and servicemember-parents. Based on our experience, we agree with the ABA that Federal intervention in what has traditionally been a State matter would be burdensome to the States would also go a long way in alleviating confusion and misconceptions about the Servicemembers Civil Relief Act.

Reasons for Opposition

The House should turn down H.R. 4469, a bill which would insert substantive custody provisions into the Servicemembers Civil Relief Act, including specific requirements for modification and enforcement of custody orders when a military custodian is deployed. There are a few foolish reasons to oppose such legislation. I have encountered these while fighting for State legislation to protect our military personnel and their children.

One such reason is the argument that servicemembers do not need unique protections in custody matters, and that there is no reason for choosing a special group for protection in custody cases. Those who argue in this way have no real understanding of the importance of military service—and the need to protect those who go in harm's way—when they have children who are subject to custody or visitation orders back home. They need and deserve our efforts to assist them—our best efforts. That's why I'm here to testify.

But just because there are foolish reasons to oppose this bill doesn't mean that we should overlook the *good reasons* why it *shouldn't pass.* And there are many.

Welcome to the Federal Courthouse!

The worst of dire consequences is litigation of military custody in Federal court. Imagine what would happen if litigants in military custody cases had *another door* open to them, namely, Federal courts. All of a sudden, *making a Federal case out of it* becomes a real option, not a mere throw-away phrase.

Do we want Federal judges trying custody cases? Or Federal marshals sent to retrieve children from school to testify in court? What kind of budget would a servicemember (or a former spouse) need for Federal custody litigation? Who will represent these servicemembers? They are not entitled to the provision of legal representation in court for such cases by the military, so this will require them to hire additional lawyers for complex litigation in multiple courts and perhaps in multiple States. The increased workload for our Federal trial-level judges and marshals is hard to imagine. The increased cost for military single parents is obvious. If you think that these cases are expensive now, wait till you start talking to constituents who've been told by their domestic attorneys, "Now we're in Federal court!" Has anyone apprised the House Judiciary Committee of this tremendous expansion of Federal court powers?

It is well-settled that, where there is a specific remedy enumerated and prescribed by Federal statute, the litigant has the right to have that issue determined in the Federal courts. *Puerto Rico* v. *Russell & Co.,* 288 U.S. 476, 53 S.Ct. 477, 77 L.Ed. 903 (1933): "Federal jurisdiction may be invoked to vindicate a right or privilege claimed under Federal statute." *Id.* at 483. The Federal rights set out in H.R. 4469 will lead directly to Federal court involvement in military custody cases.

No Federal Right of Action . . .

Of course, some say that the bill is buttoned up and bulletproof on Federal litigation, since it contains a clause, Sec. 208(d), which asserts that "Nothing in this section shall create a Federal right of action." Unfortunately, little thought went into the implications of opening up new Federal rights while trying to close the door on Federal remedies. The statement about not creating a Federal right of action means little, since there are several other ways that creative counsel can get a case involving *Federal rights* into the *Federal courts.* No one has examined these and, since this bill hasn't been reviewed by the House Judiciary Committee, nobody has really thought through the issue of Federal court jurisdiction and the enhanced litigation that this bill would create throughout the Nation in military custody cases.

Still Available—Removal and Other Remedies

For example, if counsel wants to avoid unpleasant results in State court, the procedure of removal to Federal court is the logical next step. While H.R. 4469 doesn't *create* a Federal right of action, it says nothing about the existing remedy of removal under 28 U.S.C. 1441. That's because nobody thought about removal. Such a transfer will add months and months onto the custody litigation, while a Federal judge decides whether to take the case or remand it back to State court. That's months and months of time ticking against the servicemember who thought that H.R. 4469 was there to *help* him or her; now it's the sole reason why counsel fees are spiraling out of control at the rate of $5–10,000 a month. How does that protect Sergeant Jane Doe's custody rights when she returns from deployment? How will she afford litigation in two courts instead of just one? Why would we want to open the door of Federal rights when it's clear that a Federal remedy must be given to those who are protected by this law? It's simple: there's nothing in H.R. 4469 which bars removal to Federal court.

While we're talking about removal, why not look into a specific basis for removal jurisdiction? It's found in Title 28 of the U.S. Code, Section 1442a. The statute provides:

> A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

Does this apply where a servicemember is sued for a change of custody? Let's set out the elements and analyze it:

- Sergeant Jane Doe has been sued in "a court of a State" regarding custody.
- She is "a member of the armed forces of the United States."
- There is a case against her and it is a "civil prosecution."
- And she would be relying on the rights prescribed for her; those rights, if H.R. 4469 were passed, would be in the Servicemembers Civil Relief Act.
- These rights are "under a law of the United States respecting the armed forces thereof," since the Servicemembers Civil Relief Act is, of course, such a law.
- And thus the State court case may be removed into Federal district court, where the Federal judge would have full power to hear and determine the cause.

So we're in Federal court, trying a custody case! How's that for a *dire consequence* of H.R. 4469?

When a servicemember's case may be decided contrary to H.R. 4469, there is another remedy—a declaratory judgment suit in Federal court. Such an action is brought under 28 U.S.C. 2201–2202. It involves these elements: 1) a contested case, 2) within the jurisdiction of the Federal district court, 3) involving a declaration of the rights and other legal relations of any interest party, and 4) whether or not further relief is sought. This is another pathway to Federal court which H.R. 4469 would not limit. Perhaps the proponents of this bill didn't think of that.

Yet another portal of entry into the Federal courthouse is a civil rights action. When a client believes that his or her civil rights have been violated by the other party in regard to the terms set out in H.R. 4469, a good lawyer would recommend suing in Federal court for a civil rights violation. Such an action would be brought under 42 U.S.C. 1983. Once again, the bill would open the door to such a filing, based on the Federal "rights" granted in H.R. 4469. But no one thought about that either.

Right Rules, Wrong Place

These problems and omissions in H.R. 4469 show clearly the error in trying to insert into the U.S. Code a set of rules for State custody cases when these issues should properly be left for State decisions; State lawmakers have far more knowledge about these matters than members of Congress, who have never before enacted substantive custody rules and placed them into Federal law. This bill is a significant departure from the long-standing case authority and congressional history against involvement of Federal courts and Congress in domestic relations matters. It represents a huge expansion of the limited grant of authority to Article III courts under the Constitution, which restricts Federal judicial power to specified subjects such as interstate commerce, national defense and international matters. This is a respectful acknowledgment of State laws and courts, which have preeminent powers and expertise in the remaining areas of litigation.

Why have the proponents pushed so hard on passage of this ill-advised usurpation of State laws and protections for military personnel, when they have consistently refused to work with the American Bar Association in fashioning any Federal alternatives to this legislation? Why are we not spending the time to do something which might actually help military families, such as implementing the American Bar Association's standing resolution to provide an entitlement to legal assistance for servicemembers and their families? A Federal commitment to provide funding for attorneys at military bases would go a long way in giving real help to members of the armed forces who need it. It would put on the front burner the important need for legal assistance at each post, camp or station around the world. It would provide a first line of defense for the man or woman in uniform who needs the assistance of a lawyer with domestic problems and other matters. Why not push for this remedy for all our men and women in the armed forces, rather than solving a non-problem for a small fraction of single parents?

Further Flaws

There are numerous other errors or limitations in H.R. 4469 which have been poorly thought through.

- Contingency operations are covered. What about humanitarian missions? Why should the troops involved in these be treated differently than those who are on contingency missions?
- What about temporary duty, or TDY? Why the different treatment of these troops? Why are they not covered?

- And what about remote or any other unaccompanied tours of duty? These troops should receive the same protections. Why did the proponents of this bill ignore them?
- Why is there no coverage for mobilization of Reservists in support of a deployment ("backfill"), taking these parents far from the children's homes, but yet not sending them on a deployment?

Where's the Beef?

Some say that there are courts where judges are taking away custody from servicemembers based on their deployment. Let's talk about that claim. Where are the cases which would be "correctly decided" if H.R. 4469 had been enacted 4 years ago? Or even last year? What decisions would have gone the other way? Too often supporters of this bill have given in to faddish pessimism and media-driven doubt, relying on unsupported claims rather than doing their homework. It's time to hit the "pause button" for a few moments. What's really happening "on the ground" and why do we need such a bill? Where's the problem?

There's a saying, "When your favorite tool is a hammer, all your problems begin to look like nails." That aptly describes the theory of H.R. 4469—create a solution, then search for a problem that needs such a remedy. I'm familiar with all of the news-account cases on military custody. I've viewed most of the tragic stories about parents who face legal battles regarding custody which have ended up in the electronic or print media. I have been quoted in several of these stories, in fact. It's vital to take a long, hard look at the cases and individuals that proponents of this bill have claimed would have been helped if this bill were passed. Would H.R. 4469 have been the salvation of the military member in many of these cases?

The fact is that none of them would have benefited from this bill. Not Lieutenant Eva Slusher in *Crouch* v. *Crouch* in the Kentucky Supreme Court. She was not deployed, she was mobilized and stayed in Kentucky for 11 months; then she allowed another 7 months to elapse before she asked for the return of her child. At the time she was mobilized, the father had custody; court order stated that the child should "be allowed to reside with the Petitioner [appellee] until further Orders of the Court."

Nor would this bill change the outcome for Tanya Diffin of *Diffin* v. *Towne* fame in New York. The same is true for Lieutenant Colonel Vanessa Benson, whose case in Florida was largely resolved last December with a return order for the child was signed by the judge there. The same applies to New Hampshire National Guard member Lisa Hayes, Army Reserve First Lieutenant Tira Bolder, Army Specialist Alexis Hutchinson at Ft. Stewart, Marine Corporal Levi Bradley, Specialist Lisa Pagan of Ft. Benning, and not Specialist Leydi Mendoza of the New Jersey National Guard. If H.R. 4469 had been enacted 4 years ago, not one of these cases would have had a different result. In reality, the problems which occasionally make the headlines are caused by poor lawyering, misuse of the SCRA and the rules of custody (to attempt to retain custody with a step-parent or grandparent, instead of the child's other parent), or lack of training for the servicemember's lawyer in the area of military custody and the SCRA.

Solutions Without Problems

The bill is a solution in search of a problem, and one that would cause dire consequences for troops, for their children and for ex-spouses in regard to child custody. The proposed legislation would not have the desired effect on servicemember custody disputes but would create unfortunate, costly and easily foreseeable new consequences in these cases.

The States have already taken this matter in hand by the rapid-fire enactment of strong and creative legislation to protect military personnel who have custody. They continue to do so. The bill would disrupt the carefully crafted State custody laws which are in place and which already provide a fair and even-handed system of handling child custody cases. We want to encourage the States to continue the rapid pace of passing legislation that provides fully for the protection of servicemembers with custody, rather than ride roughshod over their efforts by passage of preemptive Federal legislation in an area which is inappropriate for Federal legislation.

In addition, the Military Committee of the ABA's Family Law Section is working closely with legislatures and bar associations in those States which are still considering such legislation. Last year we posted a guide on how to write a military custody statute on the Committee's Web site, which is an open web resource available to anyone, regardless of membership in the ABA.

And finally the National Conference of Commissioners on Uniform State Laws (NCCUSL) has just designated a project for the drafting of a model act for military custody and visitation protections. The issues expected to be covered include all three terms in H.R. 4469, as well as numerous other protections for the troops and their children, as outlined above in this testimony. The first meeting of the committee is in April.

Significant steps have been taken by the States, with about two-thirds responding to the call already. The American Bar Association and NCCUSL are also leading the way in creating legislation to protect military personnel. The bill contains major flaws and would lead to a major intrusion into Federal court for troops and ex-spouses, difficulties which would cost them dearly in time and money. This Subcommittee should reject H.R. 4469.

Statement of Colonel Shawn Shumake, USA, Director, Office of Legal Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Program Integration and Legal Policy, U.S. Department of Defense

Chairwoman Herseth Sandlin and Members of the Subcommittee, thank you for extending the invitation to the Department of Defense to address H.R. 3976 and H.R. 4469.

H.R. 3976

This bill would amend Section 2203(c)(2) of the Housing and Economic Recovery Act of 2008 (HERA) (Public Law 110–289) by extending the sunset provision of the foreclosure protections of section 303 of the Servicemembers Civil Relief Act (SCRA), Public Law 108–189 (2003) (50 U.S.C. App. §§ 501–596) from January 1, 2011, to January 1, 2016. Currently, a servicemember's obligation on real or personal property secured by a pre-service mortgage or mortgage type obligation may not be foreclosed on for 9 months after leaving active duty, absent a valid court order. Also certain delay provisions for court actions involving such mortgages are also in effect for the same 9-month period. Under the proposed change, these 9-month periods would not revert to the previous 90-day periods until January 1, 2016.

The Department supports H.R. 3976.

H.R. 4469

This bill would add new sections to the Servicemembers Civil Relief Act (SCRA), Public Law 108–189 (2003) (50 U.S.C. App. §§ 501–596) and establish one-size-fits-all Federal child custody legislation. The Department opposed similar legislation in the FY 2008 and FY 2009 House National Defense Authorization bills and formally appealed identical legislation in the FY 2010 House National Defense Authorization bill. Although we appreciate the goals of this legislation, and the efforts of its proponents to support our servicemembers, our concerns and opposition remain.

Federal efforts to legislate matters of child custody would disrupt State domestic schemes; discourage passage of broader, more helpful State laws; and increase, cost, delay, and uncertainty due to increased Federal oversight of the State courts. The Department recognizes the complexities of such cases and the difficulties in balancing the interests of the servicemember against the best interest of the child, as impacted by the parent's absence due to military service. The Department believes that the states are in the best position to balance these interests within the context of their own domestic relations laws.

The Department applauds the efforts by the more than 30 States that have already passed legislation addressing the special circumstances facing military parents who have dropped their own affairs to take up the burdens of the Nation. Working through its State Liaison program, the Department can report remarkable progress just since last September: about 15 of the remaining States are currently actively considering specific military specific child custody legislation and there is general interest in similar legislation in several more States.

Apart from the disruption to the State laws already in effect and those currently under consideration, the risk of requests for Federal court oversight of the State implementation of Federal child custody law creates an unacceptable risk of stress and disruption for our servicemembers who would face increased cost, delay, and uncertainty in litigating these matters both in State and Federal court. Such stress, cost, and disruption would exacerbate already difficult circumstances.

In addition, H.R. 4469's focus solely on "judgment cases" (*i.e.,* where custody has already been granted by a court) brought during a contingency operation is arbi-

trarily narrow and would be better handled by the Department's ongoing efforts to redraft its Family Care Plan (FCP) Instruction. The Department has recognized that improvements to its FCP Instruction can address many of the issues that otherwise might result in custody litigation arising after deployment. By expanding the categories of servicemembers who require an FCP and emphasizing the importance of custody negotiations with the non-custodial parent early in the process before deployment, the risk of litigation can be greatly lessened. The Department is convinced that these efforts, in conjunction with the significant protections already available under the SCRA and provided by the States, will resolve far more issues in favor of parents who are Servicemembers than will additional Federal legislation—and will do so without the risks discussed above.

Prepared Statement of Keith M. Wilson, Director of Education Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs

Good afternoon Madam Chairwoman, Ranking Member Boozman, and other Members of the Subcommittee. I am pleased to be here today to provide the Department of Veterans Affairs (VA) views on pending legislation affecting our education and housing programs. Three of the bills on today's agenda affect programs or laws administered by the Departments of Labor or Defense. Accordingly, we respectfully defer to the Department of Labor regarding H.R. 3257, the "Military Family Leave Act of 2009," and to the Department of Defense regarding H.R. 3976, the "Helping Heroes Keep Their Homes Act of 2009," and H.R. 4469, a bill "to amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation."

EDUCATION PROPOSALS

H.R. 3484

Madam Chairwoman, your bill, H.R. 3484, would amend section 3485(a)(4) of title 38, United States Code, to extend until June 30, 2014, VA's authority regarding certain work-study activities under the educational assistance programs we administer.

Public Law 107–103, the "Veterans Education and Benefits Expansion Act of 2001," established a 5-year pilot program under section 3485(a)(4) of title 38 that expanded work-study activities by increasing the number of places where a student could work and receive VA work-study benefits. Subsequent public laws extended the period of the pilot program, and the provisions are currently scheduled to terminate on June 10, 2010.

VA does not oppose legislation that would extend the current expiration date of the work-study provisions, subject to Congress identifying offsets for the additional benefits costs. However, we would prefer that the legislation provide a permanent authorization of the work-study activities rather than extending repeatedly for short time periods.

We estimate that the enactment of H.R. 3484 would result in benefits costs of $331,000 in fiscal year 2010, and $6.7 million over 5 years. If made permanent, the authorization would result in benefits costs of $16.6 million over 10 years.

H.R. 3813

H.R. 3813, the "Veterans Training Act," would amend section 3313(b) of title 38, United States Code, to expand the universe of approved programs of education under the Post-9/11 GI Bill to include programs approved for purposes of chapter 30 of title 38 (Montgomery GI Bill (MGIB)). Thus, in addition to programs of education leading to undergraduate or post-graduate degrees offered at institutions of higher learning (colleges and universities, or similar institutions, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree), eligible individuals would be able to pursue non-college degree programs at other institutions. Qualifying programs would include those pursued at an educational institution as defined under section 3452(c) of title 38. This measure does not include payment provisions for the newly-covered programs of education.

While VA supports the intent to expand the programs of education for which an eligible individual may use Post-9/11 GI Bill benefits, VA does not support H.R. 3813. Without specific payment rules, the expansion proposed in this legislation adds significant payment complexity to the program. For example, the statute limits

the amount payable under the Post-9/11 GI Bill to an amount equal to the maximum in-state charges for an undergraduate program of education charged by a public institution. To accommodate all the various fee charges for undergraduate programs and the differences state-by-state, VA established a maximum credit-hour charge for tuition and maximum fee charges per term. This ensured that VA made payments in accordance with the intent of the initial legislation (that an individual eligible for the maximum benefit would not have to pay tuition and fees in an undergraduate program at a public institution).

Most non-degree programs are offered on a clock-hour measurement basis and students are generally charged tuition for the entire program versus term-by-term. A Veteran enrolled in a specialized computer training program lasting 6 months could be charged $10,000 for the program. It is unclear how VA should determine the maximum amount payable for such a program compared to an undergraduate program offered by an institution of higher learning (IHL). If VA were to limit payment to an amount equivalent to full-time attendance for a 6-month enrollment in an undergraduate program at a public institution with the highest charges in the State in which the Veteran is enrolled, the Veteran could be responsible for a significant portion of his or her charges as compared to a Veteran enrolled in an IHL. Most IHLs charge tuition based on enrollment for the term, quarter, or semester versus the entire undergraduate program.

In addition, under existing statute, VA must pay the tuition and fee charge for the entire program for a program offered by an institution that offers programs of education on other than a term, quarter, or semester basis. Thus, VA could pay significant tuition and fees up front for an 18-month specialized computer-programming course. If the student dropped out after completing only 3 months of the program, VA would then be responsible for collecting a large overpayment, as the statute provides the Secretary cannot provide benefits for a course from which an individual withdraws unless there are mitigating circumstances. Even with acceptance of mitigating circumstances, VA would be responsible for recovering an amount equal to the prorated tuition for the 15 months the individual was not pursuing his or her program. If the school had a policy that limited refunds to 60 percent of the tuition charges if the individual withdraws after 30 days from the start of the course, the Veteran would be responsible for repayment of the overpayment with some of his or her own funds. Depending on the tuition charges and the institution's refund policy, this could be a significant burden for the Veteran who does not complete a program.

VA is working aggressively on a new payment system to support the existing Post-9/11 GI Bill provisions. Adding new payment provisions before full deployment of the payment system would severely hamper deployment efforts. In addition, it would impact service delivery by adding additional rules while VA is manually processing claims augmented by limited automated tools. VA recommends postponing significant changes to the Post-9/11 GI Bill until after successful deployment of the payment system in December 2010 so that enhancements to the program do not have a negative impact on service delivery to those clients utilizing benefits this summer and fall.

Unfortunately, we are not able to estimate of the cost of enactment of this proposal at this time, but we will provide such an estimate for the record.

H.R. 3948

H.R. 3948, the "Test Prep for Heroes Act," would amend section 3315 of title 38, United States Code, to authorize payments to students under the Post-9/11 GI Bill for test preparatory courses—defined to mean a "preparatory course for a test that is required or used for admission to institution of higher education," or a "preparatory course for a test that is required or used for admission to a graduate school." If enacted, this measure would allow an individual eligible for Post-9/11 GI Bill educational assistance to receive payment for one licensing and certification test and one test preparatory course. The total amount payable could not exceed the lesser of $2,000, or the cost of the licensing and certification test and test preparatory course combined.

Currently, under 38 U.S.C. § 3315, individuals eligible for education benefits under the Post-9/11 GI Bill only can receive payment for one licensing or certification test as described in section 3452(b). The licensing and certification test may not exceed the lesser of $2,000 or the fee charged for the test.

VA does not oppose legislation that would provide for payment of test preparatory courses under the Post-9/11 GI Bill. We note, however, that H.R. 3948 does not specify an effective date, and, therefore, VA suggests the addition of an effective date provision make the amendments applicable to tests taken on or after January 1, 2011 (which would be after deployment of the Post-9/11 GI Bill payment system).

VA estimates the costs associated with H.R 3948 would be insignificant.

H.R. 4079

H.R. 4079 would temporarily suspend, during the period beginning on October 1, 2010, and ending on September 30, 2015, a requirement in 38 U.S.C. § 3677(b)(1)(A)(ii) that potential employers of Veterans participating in programs of on-the-job training (OJT) demonstrate a wage progression for such Veteran employees when applying for approval by State Approving Agencies (SAAs).

Currently, 38 U.S.C. § 3677(b)(1)(A)(ii) requires that, as part of the application for SAA approval, an employer seeking to hire a Veteran as part of an OJT program must provide a certification that the Veteran's wages will be increased in regular periodic increments until, no later than the last full month of the training period, such wages will be at least 85 percent of the wages paid for the job for which the individual is being trained. Some SAAs have indicated they are unable to approve some training programs because employers cannot commit to offering periodic wage increases due to current economic conditions.

VA does not support enactment of this bill. Although the requirement in current law that the wages must reach a level of 85 percent of the wages for the job a Veteran is being trained for may be too restrictive under current economic conditions, we suggest that Congress instead consider reducing the relevant percentage requirement rather than completely removing it. Modifying the requirement in this manner could allow SAAs to approve more employers to participate in OJT programs and increase valuable employment opportunities for Veterans. We believe it is worthwhile to keep in place a mechanism for an incremental wage increase, or "glidepath," so Veterans will see the commitment to progress, promise, and opportunity.

In addition, H.R. 4079 would require VA to report to the House and Senate Committees on Veterans' Affairs on the effects of the temporary suspension of the wage-increase requirement. This report would be due no later than June 1, 2015. VA does not currently have the reporting capability to track such data. As such, VA would have to develop reporting mechanisms with SAAs before implementing this legislation.

Unfortunately, we are not able to estimate of the cost of enactment of this proposal at this time, but we will provide such an estimate for the record.

H.R. 4203

H.R. 4203 would amend section 3313 of title 38, United States Code, to direct the Secretary to ensure that payments of educational assistance to a Veteran/student under the Post-9/11 GI Bill may be made directly to the Veteran's bank account. Currently, under 38 U.S.C. § 3323 there are no provisions that establish the requirements or the methods of payment to individuals who are eligible for the Post-9/11 GI Bill.

VA does not support this measure because we believe it is unnecessary. Currently, individuals receiving education benefits under the Post-9/11 GI Bill can request that VA make these payments directly to their bank account. VA has provided this payment option since the new program began in August 2009. Therefore, if this measure were enacted, there would be no impact on VA business processes and procedures.

There is no cost to VA associated with H.R. 4203.

HOUSING PROPOSAL

H.R. 4359

H.R. 4359, the "Warriors Adapting Residences with Mortgages for Energy Renovations Act" (or "WARMER Act"), would expand the Secretary's authority to guarantee housing loans for energy-efficient dwellings and increase the maximum amount certain Veterans may borrow toward making energy-efficient improvements. It also would require the Secretary, within 90 days of enactment of the bill, to prescribe interim policy guidance on energy-efficiency audits and the conditions under which such audits may be performed. VA supports the goal of encouraging energy efficiency and is still assessing the impacts of the bill on borrowers and program costs. We will provide the Department's views on this bill for the record.

Madam Chairwoman, this concludes my statement. I would be happy to respond to questions you or the other Members of the Subcommittee may have regarding our views as presented.

Statement of Patricia E. Apy, American Bar Association

Chairwoman Herseth Sandlin, Ranking Member Boozman and Members of the Subcommittee:

I am privileged to submit for the hearing record concerning H.R. 4469 this statement on behalf of the American Bar Association (ABA). For more than 70 years, the ABA has been a defender of the legal needs of military families and an advocate for the principle that the answer to the call of duty should not unduly place our servicemembers' rights at a disadvantage. We support the position that deployment should not in and of itself serve as either the basis or justification for a military servicemember permanently losing custody of his or her child. We must, however, respectfully oppose this legislation. We do so for primarily the four reasons given below.

Preliminarily, I would like to tell you something about myself. For the purposes of this statement, I have been designated by ABA President Carolyn Lamm to share with you these views on behalf of the Association. I am a matrimonial attorney in private practice with nearly 25 years of experience and particular expertise in the operation of State, Federal and international child custody law. I also hold a masters degree in Social Work with a clinical concentration in family and children's issues. My practice is devoted to complex international and interstate child custody cases, so by necessity my clients have included a significant number of servicemember parents and their families, whose circumstances frequently and unavoidably engender child custody disputes. I have served as an instructor on these and related issues at the Judge Advocate General Schools of the Army and Air Force and the Naval Justice School for nearly a decade. I am the current Chair of the ABA Family Law Section Military Law Committee, and had been appointed by the ABA President to serve on our Standing Committee on Legal Assistance for Military Personnel, where I served from 2002 to 2008 as both a member and a liaison. In September of 2003, the ABA, recognizing the impact that the war and the unprecedented deployment and mobilizations of servicemembers would have on military families, sponsored a 2-year study entitled "Working Group on Protecting the Rights of Servicemembers," co-chaired by BrigGen David C. Hague USMC (ret.) and RADM John Jenkins JAGC, USN (ret.). I served as one of two family law practitioners on that Working Group. I am happy to respond to any questions about my experiences, expertise or testimony. Of course, my responses should be construed as my own views unless confirmed as the official position of the ABA.

First, H.R. 4469, and related legislation in recent years, attempts to prescribe automatic substantive relief by utilizing the SCRA. The Servicemembers Civil Relief Act (SCRA) provides an important legal process shield that allows our servicemembers to focus on mission and helps bring them and their fellow troops home safely. We support the Act and its purpose. However, we distinguish the subject matter of child custody disputes from other matters that are accorded automatic substantive relief under the SCRA, such as service and lease contracts. Child custody matters must also contemplate the countervailing concern of the best interests of the child. While we appreciate that this latest version of the legislation has incorporated explicit reference to "the interests of the child," this does not cure our concern.

Determining the best interests of minor children is a fact-driven determination, made on a case-by-case basis, often requiring the assistance of mental health professionals to guide and advise the parties and the court. The court is bound, in addition to balancing the interests of the adult litigants, to independently protect the minor children who are the subject of the dispute. For these and related reasons, child custody litigation is unlike other matters covered under the SCRA. States, meanwhile, are acting in this area, providing superior relief than this legislation can offer. We believe that the SCRA's existing protections that provide objective procedural safeguards applicable to all cases (i.e., an automatic 90-day stay of legal proceedings), the opportunity to seek affirmative relief, and the additional substantive protections in place in more than 30 States and currently under review in most of the remainder, render this well-motivated but not well-considered legislation unnecessary at best, and harmful at worst.

While there are variations among the States, the Uniform Law Commission has undertaken an expedited review of these issues to produce a comprehensive legislative package that all States may consider introducing or use to complement their existing laws in a manner consistent with their respective judicial systems and servicemembers' needs. The State statutes in place and under review include a range of provisions well beyond the current legislation, including provisions for the delegation of visitation rights, arrangements for the temporary placement of children with grandparents, and the appointments of guardians ad litem for minor chil-

dren whose parents are deployed, to name only a few. One may argue that this Federal bill only seeks to assure that there is a means to offer a minimum standard of care for all States through the SCRA. However, we believe that while this Federal legislation would still require a number of changes to provide such a standard for targeted cases, even then its enactment would function to discourage the rapid and innovative progress States have been experiencing in recent years.

Second, by amending the SCRA to accomplish its aims, H.R. 4469 will unintentionally but surely introduce Federal litigation to a matter reserved to the States and in which the Federal Government has no expertise. In our view, this proposed law will result in considerable complexity, cost and delay without a foreseeable benefit for military parents at a time of their personal crisis. Merely deeming Federal question jurisdiction excluded in the legislation cannot avoid these problems. Questions concerning the definition of terms of a Federal statute or the application of its provisions in a given case are matters within the jurisdiction of, and reviewable by, Federal courts. Additionally, Federal statutes such as 28 U.S.C. §§ 1331, 1441, or 1442a may also make these matters removable to Federal court regardless of the language in H.R. 4469. The necessarily preemptive nature of Federal law over all domestic family law, coupled with language that compels a specific remedy, insures that either parent would be able to seek the vindication of Federal rights in the courts of the United States if they believed that Federal law had been misapplied.

Third, H.R. 4469 only applies to certain child custody cases and claims, leaving the status of others in question. The nature and extent of child custody disputes are as diverse as families themselves. Preliminarily, it is arguable that the cases being advanced as evidence for the need for this legislation would not have benefited from its provisions. The bill also does not seem to prevent someone from suing to change existing parenting orders due simply to a custodial parent's deployment. Ill-motivated and opportunistic litigants may always generate grounds to reopen and permanently change custody of a child, but the relief offered by this legislation focuses on only certain kinds of custody-related cases, includes only certain kinds of claims, and provides remedies only for servicemembers under certain conditions. For example, this legislation would preclude relief for the National Guard mother who is deployed in Iraq and does not serve as the primary residential parent. Efforts by her ex-husband to restrict her custody rights, and prevent her physical and telephonic access to the children during her brief R&R leave would not be covered.[i] What if a servicemember was not deployed in support of a contingency operation as the proposed amendment requires, but was absent on an unaccompanied tour to Korea, or flying off an aircraft carrier in the Indian Ocean on routine deployment? What about dual military couples?

The unintended consequence of focusing on only one fact pattern among the universe of potential family law issues will encourage State court judges who are only now becoming facile with the SCRA to be reluctant in applying its protections to *all* cases, as required by its plain language. These are just a few reasons why these fact-driven cases do not lend themselves to inflexible results, no matter how well intentioned. These matters are best reserved to the States where a trier of fact can consider all variables, consult with experts, require the production of all reliable information and testimony, and produce a result that insures the protection of the servicemembers and their families, as well as the needs of their minor children who are also bearing the harsh consequences of their parent's heroic absence for the service of his or her country. Accordingly, we urge you to oppose H.R. 4469, and instead to support the ongoing efforts in each of your States.

Fourth, H.R. 4469 proposes to wade into an area of domestic substantive law without the benefit of an informational record or expert views supporting its need or efficacy. This hearing represents the first public discussion of this legislation since its initial introduction in 2007, despite the ongoing concerns and opposition expressed. These and related matters have been subject to study by the ABA, in concert with military legal assistance, going back to January 2002 in anticipation of what we all expected to be increasingly complex deployment-related family law issues. We have maintained vigilance over rising concerns and launched initiatives such as the ABA Pro Bono Project, which provides military legal assistance lawyers and their clients expert civilian counsel on complicated matters without cost. Despite our work in this area, we recognize that there is no public record to ensure that the solutions proposed by this legislation are responsive to the issues and needs actually presented in these cases. Accordingly, we have supported interim efforts such as Section 571 of P.L. 111–84, a congressionally-requested study of mili-

[i] *Forson* v. *Weldon* FM–10–284–09 Superior Court of New Jersey, (Hon. Ann R. Bartlett, preliminary decision decided January 21, 2010.)

tary child custody cases since 2003 that will include an analysis of State responses to these cases, and propose recommendations for further action. We understand that the results of that study are expected within the next couple of months. Action without the benefit of that study and its recommendations, and in the face of legal experts' opposition, seems less than the collective best owed to our troops.

We are not alone in expressing troubled views over the legislation. We are joined in our concerns by the Department of Defense, the National Military Families Association, the Uniform Law Commissioners, lawmakers and others. To-date, this legislation has largely moved during nonpublic mark-up sessions of defense authorization legislation, as well as through its nonpublic conference committee deliberations, without a hearing or debate in committees of original jurisdiction until now. While we do recognize that a version of this legislation had been approved under suspension of the rules in the 110th Congress, the language before you today is not the same. In fact, the language of this legislation has changed repeatedly over multiple congresses since its original introduction, each version purporting to be the solution. Despite this evolution in the language, our concerns have not been fully addressed, and to the extent that the desire is to amend the SCRA in this particular way, opening the door to Federal litigation in child custody cases, our concerns will not be allayed.

Absent the benefit of the informed analysis of the Department of Defense study, Congress would be taking action in an area against expert advice as to foreseeable negative consequences to military parents and their children. We urge you to tread lightly in this delicate and complex area of law, and instead urge you to support alternative proposals we and others believe will provide superior protections to our troops. We stand ready to assist all who are interested in these matters. Like the sponsor of H.R. 4469, we have not been satisfied with the status quo, but we believe caring for our troops and promoting the stability of military families will require further work in this arena, work that is already underway.

Recommendation #1: Allow the States to finish addressing a matter reserved to the States. It may sound ineffectual to some with past experience with some matters, but with more than 30 States already taking some action, a dozen more considering proposals, and an expedited review by the Uniform Law Commission to help States understand how to tailor key protections to their jurisdiction, this is real, ongoing progress.

Recommendation #2: Improve the Family Care Plan instructions to, among other things, require advance coordination between both parents to make agreements clear and accordingly more legally enforceable. This is already underway. When the Navy improved its Family Care Plan process, an immediate reduction of these types of disputes resulted, preventing litigation and promoting a greater expectation and understanding of outcomes by all involved.

Recommendation #3: Collect data on the relevant case law and its projected impact on the courts and military families. The Department of Defense study and recommendations are expected soon, and others are also focusing efforts in this area during a time that the Congress and the Administration are focusing attention and due resources for military families. We have confidence that the Department study will produce thoughtful recommendations based on actual cases and informed by the technical operation of family law around the country. If the report recommends action by Congress, we are ready to assist in that effort.

In closing, for the reasons stated above, we urge you to oppose H.R. 4469 and related proposals that fail to contemplate the concerns we raise. We urge you instead to support ongoing efforts in the States and the Department of Defense to strengthen the rights of servicemembers in a comprehensive and targeted way, preventing unnecessary litigation in the first place.

Statement of Stacy Bannerman, Medford, OR
(Army National Guard Blue Star Wife)

Author of *When the War Came Home: The Inside Story of Reservists and the Families They Leave Behind* (2006).

Founder/Director of Sanctuary Weekends™ for Women Veterans

Campaign Creator and Director of:

- Oregon State Military Family Leave Act (H.B. 2744; effective June 2009)
- Proposal to establish a Oregon State Military Family Advisory Council
- Federal Military Family Leave Act of 2009 (H.R. 3257; S. 1441)
- Federal Military Family Mental Health Care Improvement Act of 2010 (seeking sponsors)

Recipient of the Patriotic Employer Award, National Guard Commission for the Employer Support of the Guard & Reserve, April 2009.

Thank you to Congressman Adam Smith for sponsoring H.R. **3257**, and to the House Veterans Affairs Subcommittee on Economic Opportunity for considering this important bill to support the families of the troops who are serving or will serve in the war on terror, and other combat deployments. In a few short months, another 30,000 troops will be deploying for Afghanistan—again. The majority of those troops are married with children; most of the spouses left behind work outside the home. Many of us have to choose between work and family when our loved one deploys. It's an impossible choice, and one that military families should never be asked to make when America is at war.

Changes to the Family and Medical Leave Act (FMLA) allow military families to take time off for a number of reasons connected with a deployment, but the law protects only a very few military family members. Most of us, who work for smaller companies, or work part-time, or are seasonal or contract labor, or, because of a recent PCS, have less than 1 year on the job, aren't eligible under current law. H.R. 3257 would offer protection so that we are able to spend much-needed time with our loved ones immediately prior to, during, and/or after deployment, without fear of losing our jobs, or being forced to choose between work and family.

My husband is a Sergeant First Class with the Army National Guard, and his Brigade spent several months training at Ft. McCoy, Wisconsin, more than 1,000 miles away from home and family, prior to shipping out for a second tour in Iraq. I had recently moved to southern Oregon to accept a new position in order to implement programs to help military families and veterans. I had been on the job at this small non-profit agency for a few months, and didn't have any sick leave or vacation time available. It would be more than 1 year before I saw my husband again.

If we support the troops, and by extension, military families, then passing the Military Family Leave Act of 2009 H.R. **3257**, to provide 14 days of unpaid leave per deployment for immediate military family members, should be at the top of this Nation's to-do list. Because when the soldier goes to war, so does the family. And when the veteran comes home, family support is the single most critical factor in successful reintegration. The demands of the war on terror and the demographics of the 21st Century military are very different from the past, and adapting to those realities must, by definition, include expanding support for military families.

For the first years of the Vietnam War, married men were exempt from the draft, and for the duration of the war, married men with children were given deferments so that they wouldn't be deployed as it would constitute too much of a hardship on the families. During Vietnam, the majority of troops were single soldiers serving one tour, and comparatively few citizen soldiers served in combat. Today, the bulk of the boots on the ground in Iraq and Afghanistan are married. They have served, or are serving, multiple tours; and most of them have children. Around 40 percent are citizen soldiers.

The men and women in uniform are serving longer and more frequent tours than ever asked of the military in this Nation's history. And so are their families.

Here's a comment from a military wife about why we need a **Military Family Leave Act** now:

> *I have heard too many times now of women who have had no cooperation from their employers for time off before their husbands have deployed, or no time off when their husbands come home for R&R or are home for good. Women have had to make the choice sometimes of quitting their jobs in order to have that time with their husbands and in today's economy that may not be the best choice for some families.*

And another:

> *I think it is a great idea. I have had friends treated poorly over asking for time off when their hubbies were coming home from 15 month deployments . . . and friends who subsequently quit their jobs in order to get that time that is well-deserved and much needed. I just can't believe any normal person wouldn't understand the importance of this time!!!*

One more:

> *I just want to say yes, it is about time we need a Federal military leave act. My husband left in October last year on his second tour to Iraq. I went to see him for 4 days at Fort Dicks, N.J., and I almost lost my job because of it. I had to fight for it after calling upper management and the mayor's office they finally backed off. There is still a lot of tension at work and he will*

be home in June for his 2 weeks and I am already fighting the time off as we speak. They always ensure that they support the troops and my husband but they are sorry I can't have the time off. I hope it passes so I won't have to worry about spending time with him and our children in the future. I just wanted to say thank you and I agree with you a 100 percent.—Mandy Trujillo, Portland, Oregon

Two weeks: that's what we're talking about. For the businesses that would be affected, it's a tiny sacrifice to help shoulder the burden of war borne exclusively by our troops and their families for nearly 9 years. But for the military family members that would be affected, 14 days would be a great gift. And, for some of us, the reality is that our soldier will come home in a box. In the very worst case scenario, we would spend the rest of our lives wishing for those last 2 weeks of time with our beloved. Two weeks. Surely America's military families deserve that.

Statement of Hon. Bob Filner, Chairman, Committee on Veterans' Affairs, and a Representative in Congress from the State of California

Good afternoon Chairwoman Herseth Sandlin, Ranking Member Boozman and Members of the Subcommittee. Thank you for the opportunity to speak on H.R. 3579, legislation to increase veteran reporting fees to institutions of higher learning.

While we have made improvements to the GI Bill to address the current educational needs of our veterans, we have failed to address the growing demands placed upon certifying officials responsible in assisting student veterans enrolled in a college or university program.

As some of my colleagues may know, VA employees were initially assigned to Institutions of Higher Learning to administer only one veteran education program for veterans. These VA employees were later removed in 1976 and the responsibility of certifying student veterans was placed on Institutions of Higher Learning by paying the school $7 for each student certified. In 1976, $7 may have been a reasonable amount but it no longer reflects the actual costs for the expanded services. After 34 years the time has come to update the amount to reflect today's costs.

My legislation seeks to address this very important issue by increasing the reporting fees payable to institutions of higher learning from the outdated $7 per student to $50 per student. This amount better reflects today's increasing demands placed on school officials.

I share their concerns of student veterans and education officials alike and I am confident that H.R. 3579 is a key piece of the puzzle that will provide Institutions of Higher Learning the resources to train certifying officials on the various benefit options available to student veterans and hire appropriate staff to prevent future delays in benefits. Our Nation's veterans certainly deserve the best services their school may provide.

I want to thank my colleagues Chairwoman Herseth Sandlin and Ranking Member Boozman for their continued work in the Subcommittee. I look forward to working with all of my colleagues to provide our Nation's veterans with education benefits in a timely manner. Madam Chair, I would be happy to address any questions that the Subcommittee may have regarding my testimony.

Statement of Hon. Ron Klein,
a Representative in Congress from the State of Florida

I would like to thank Chairwoman Herseth Sandlin and Ranking Member Boozman for allowing me to testify before this distinguished committee on behalf of our legislation, the *Test Prep for Heroes Act.* This legislation, introduced by Congressman Putnam and me, would make a technical correction to the *Post-9/11 GI Bill,* at no new cost to taxpayers, to ensure that our servicemen and women have the opportunity to take test prep courses for licensing and certification tests.

The passage of the *Post-9/11 GI Bill* marked a major step forward in finally fulfilling our obligation to those men and women who have served our country honorably since the events of September 11, 2001. The original GI Bill brought prosperity to an entire generation by putting our veterans through college upon returning home from service, and it was time to do the same for our servicemembers returning home from Iraq and Afghanistan. I was proud to be a cosponsor and strong supporter of the *Post-9/11 GI Bill,* however I am also committed to improving these benefits and fixing any omissions in the law that may prevent students from taking full advantage of them.

Under current law, GI Bill beneficiaries are eligible for up to $2,000 in reimbursements for the cost of taking a licensing and certification test. However, as many of you well know, the cost of the test often pales in comparison to the cost of test prep courses that many students take today to better prepare for these tests. For example, the cost of taking the SAT can be as little as $45, while the cost of an SAT test preparation course with a licensed instructor can run you over $1,000—enough to deter any cash strapped student from enrolling. If we allow GI Bill beneficiaries to use their $2,000 reimbursement for both the cost of one test prep course and the cost of one certification or licensing test, we could better position our returning veterans to compete with their peers on these high stakes tests.

The *Test Prep for Heroes Act* would do just that: allow veterans to use this $2,000 reimbursement for both the cost of one test and one preparatory course. It's a common sense solution to help ensure that our veterans can afford to better prepare for the material on these tests and earn a degree from a top rate college. By continuing to analyze and improve these benefits, I'm confident we can provide our servicemen and women with the resources they need to succeed and make our veterans an integral part of our Nation's economic recovery.

I would like to thank you all for your consideration of our legislation and for the opportunity to testify before you today. I look forward to working with the Members of the Committee to improve upon the GI Bill and provide our veterans with the benefits they deserve. Thank you.

Prepared Statement of Faith DesLauriers, Legislative Director, National Association of Veterans' Program Administrators

Chairwoman Herseth Sandlin, Ranking Member Boozman and Members of the Subcommittee. NAVPA appreciates the opportunity to comment on proposed legislation as well as to highlight issues of interest and concern to it members and the population we serve.

While **H.R. 3579**, To amend title 38, United States Code, to provide for an increase in the amount of reporting fees payable to education institutions that enroll veterans receiving education assistance from the Department of Veterans Affairs, and for other proposes, was removed from the legislative hearing, we would like to go on record as supporting this bill.

School reporting fees have not changed since the inception over 30 years ago; however, several programs have been added on to the school Veterans' Program Administrators' responsibility at the institution and some, such as Vocational Rehabilitation, Chapter 31, have never been included. Now, a new and even more complex education program has been added, Chapter 33, P.L. 110–252. While the reporting, reconciliation and overall cost of administering all programs has increased and the burden on the educational institution is not business as usual; the added work effort has not been calculated. Also, the use of these fees should be designated to support the Office of Veterans' Affairs/Services and for professional development of the school VA Certification Officials and other Veterans' Program Administrators. We further propose that at minimum, recipients of this reporting fee must match these funds to support veterans' services.

NAVPA supports H.R. 950, To amend Chapter 33 of title 38, United States Code, to increase education assistance for certain veterans pursuing a program of education offered through distance learning. The intention of the Post-9/11 GI bill is to pay the basic housing allowance for veterans while pursuing a program of study at an institution of higher learning and many veterans are not able to travel to an IHL for various reasons choosing to continue their education via distance learning. Many students take classes online or at branch campuses of a school while serving on active duty. Once released, they find gainful employment and continue their education to be competitive in the civilian workforce. Also, in many cases active duty members are released due to a disability. In these cases, the students' only choice may be to complete their program of study through distance learning.

All modalities are approved by the State Approving Agencies for Veteran Training and recognized by accrediting bodies. This group of veterans should not be penalized for being responsible, disciplined adult learners, for putting their family first or whatever reason for choosing this credible 21st century mode of study. Thousands of veterans and active duty students are enrolled in courses defined by law and approved as distance learning—a mode of study that is approved for veterans training for all other GI Bill programs, and that has become a trend in both private and public education today—distance learning, blended, hybrid, etc. We should not inhibit

the ability of our veterans to participate in their educational plans by restricting the method by which they receive their course of study.

NAVPA Supports H.R. 3484 to extend the authority for certain qualifying work-study activities for purposes of the educational assistance programs of the Department of Veterans Affairs; **H.R. 3813** to provide for the approval of certain program of education for purposes of the Post-9/11 Educational Assistance Program which would include programs of education offered by an institution offering instruction that does not lead to an associate or higher degree; **H.R. 3948** to provide for entitlement under the Post-9/11 Education assistance program to payment for test preparatory courses and for other purposes and **H.R. 4079** to temporarily remove the requirement for employers to increase wages for veterans enrolled on On-the-job training programs.

P.L. 110–252 limits training opportunities, excluding On the Job Training, Apprenticeships and other training opportunities. Such limitations will prove to be a disservice to our veterans when they find that numerous career goals cannot be realized; and to our Nation when we realize that the return on investment is not as great as it was with previous education programs. Many veterans are not interested in attending college, but have the skills necessary to master a trade. Our country certainly needs tradesmen and women like electricians, plumbers, carpenters and truck drivers to bring goods and services to the communities across this Nation. We recommend that benefits be made available for certain skill attainment, trades and continuing education consistent with the concept of life-long learning and to provide the same flexibility currently in the Montgomery GI Bill chapters.

We advocate administrative like changes to Veterans' Education Programs that would:

Expand the student work study program—This program needs to be expanded to allow students to work in academic or administrative departments at the institution in which they are pursuing a degree. This will enable students to work in a number of jobs within the college or university and gain valuable civilian work experience.

Not tie the certification of tuition and fees to the living stipend—The living stipend/housing allowance under the Post-9/11 GI Bill should not be tied to the certification of tuition and fees. The Post-9/11 GI Bill requires that schools certify one term/semester at a time in order that actual tuition and fees be reported, rather than estimated. Understanding this requirement, it will be necessary for the VA to develop another certification of "Anticipated Enrollment" in order that the living stipend/housing allowance will be paid without interruptions. Allow schools and training institutions to certify students "intent" to enroll for the full academic year to establish eligibility for the living stipend. Allow the VA to pay and continue paying the living stipend until a report (VA Form 22–1999b) is submitted by the education/training institution which would stop or otherwise adjust this monthly payment. Further, we recommend that tuition and fees are reported/certified after the end of the schools' published drop/add period. This would result in a substantial reduction in the number of reports made by school officials and the number of adjustments made by the VA.

Payment of tuition and fees must be made to the school in a timely manner. The VA defines timely as 30 days from the occurrence. Education institutions will work with the men and women who serve our country and appreciate the VBA's position, but there should not be an expectation that they will carry account balances indefinitely or that they will continue to defer payments without verification of entitlement (Certificate of Eligibility).

The majority of educational institutions are deferring tuition and fees (in the amount due from the VA) for students who are, or appear to be eligible for the Post-9/11 GI Bill. However, these students came to college campuses with the understanding, a promise if you will that they would receive a monthly living allowance to supplement or in some cases cover living expenses. The current system of certification (one term at a time) will delay monthly payments further if there is not a means to separate the certification of "Anticipated Enrollment Status" from the certification of tuition and fees.

Allow for an electronic means of accessing education benefit information from Department of Veterans Affairs—NAVPA recommends that the Department of Veterans Affairs develop an Education Web Portal for easy and accurate access to VA Records pertaining to Veterans' Education Benefits. Veteran students do not have an electronic means of accessing meaningful and useful information from the Department of Veterans Affairs on their education benefits, usage and remaining entitlement from their VA records. Educational institutions are overwhelmed with the volume of calls, misinformation from the VA Call Center and limited ability to assist students in determining the status of their claims or even eligi-

bility. Above all, eligible individuals/students should have access to their VA records. All information relative to their VA education benefits, eligibility, applications, enrollment certifications and payments should be made available to them through this portal. Information should include at minimum information sent to the veteran via the U.S. mails at the beginning and throughout each academic year as contained in the 'Award letter and now the Certificate of Eligibility under the Post-9/11 GI Bill.

Designated school officials would have secure access to the portal for veteran students so they may provide counseling and assistance when necessary. VA–ONCE and WAVE have partially covered these issues; however, all information is still not available. Veterans should be able to view all pending issues to include receipt of documentation and current status, reasons for any delays in processing should also be addressed on this WEB portal.

We believe the implementation of a secure web portal will enhance service to veterans, bring efficiencies to the DVA with a corresponding reduction in telephone service personnel. The efficiencies in personnel utilizations realized would benefit processing time. This concept is needed now more than ever with the extreme delays in processing claims and the complexities of the Post-9/11 GI Bill.

In closing NAVPA request that the rules, policies and procedures governing the administration of the Post-9/11 GI Bill be made consistent, nationwide. Due to the complexities of this program schools are currently working with limited to non-existent information. Often what little they have was received through informal channels outside their State and RPO areas of responsibility. It is critical that VA create policies consistent with the published final rules, document them thoroughly, and distribute them consistently at all levels from VA Central Office through RPOs and ELRs down to the institutions that must implement them. Only then can every veteran be assured of receiving the same benefit consideration no matter what school, State, or RPO is responsible for the processing of their claim.

Again, thank you for the opportunity to support meaningful legislation and to make recommendations for improvements in the administration of the GI Bills. I would be pleased to answer any questions you may have.

Respectfully submitted for the record.

Statement of National Military Family Association

The National Military Family Association is the leading non-profit organization committed to improving the lives of military families. Our 40 years of accomplishments have made us a trusted resource for families and the Nation's leaders. We have been at the vanguard of promoting an appropriate quality of life for active duty, National Guard, Reserve, retired servicemembers, their families and survivors from the seven uniformed services: Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service and the National Oceanic and Atmospheric Administration.

Association Representatives in military communities worldwide provide a direct link between military families and the Association staff in the Nation's capital. These volunteer Representatives are our "eyes and ears," bringing shared local concerns to national attention.

The Association does not have or receive Federal grants or contracts.

Our Web site is: www.MilitaryFamily.org.

Chairman Herseth Sandlin and Distinguished Members of this Subcommittee, the National Military Family Association would like to thank you for the opportunity to present testimony on H.R. 4469, to amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.

Our Association often advocates that "one size does not fit all" regarding programs and benefits for our servicemembers and their families. Child custody is no different. Over the past 2 years, our Association has been contacted by numerous servicemembers regarding child custody issues during all phases of deployment and service careers. No two cases were the same. We appreciate the passion the proponents of the legislation have for our servicemembers and their families, but a single piece of legislation will not solve the problem.

Traditionally, child custody has been left to the States. Our Association is concerned that Federal intervention could stifle State efforts, which in many cases has provided broader protections for our servicemembers. More than 30 States have passed legislation protecting the rights of our servicemembers in child custody cases. At least 10 other States—Alabama, Alaska, Georgia, Hawaii, Indiana, Iowa,

New Jersey, Ohio, Rhode Island, and Vermont—are actively working legislation. The Department of Defense State Liaison program is working with these States to move legislation forward and to have legislation introduced in the remaining States.

Deployment is just one event that takes a servicemembers away from their family. What happens to a servicemember who has a permanent change of station (PCS) or goes on a temporary duty assignment (TDY) to attend a school? Where are their protections against a change in custody? There are many other events in a servicemember's career that can prompt custody changes. We need to better understand the fact patterns involved and work to find broader and more comprehensive solutions that address them.

In the Fiscal Year 2010 National Defense Authorization Act, Congress directed a report by the Secretary of Defense on child custody cases in which deployment of a servicemember was an issue and on measures taken to assist servicemembers in avoiding child custody disputes. The Department of Defense (DoD) is moving forward on the report, and we hope to see the results by the end of summer 2010. This report will help everyone better understand the scope of the problem and tailor specific solutions to solve them.

Servicemembers must also be proactive and address custody and deployment early in custody negotiations. Realizing the impact that this preplanning could have on decreased litigation, DoD has undertaken efforts to strengthen Family Care Plan instructions. Broadening the instances of who should have them and dictating what should be included, will prevent many of the custody issues that arise when servicemembers return.

Internally, we have struggled with how these issues can be resolved. At one time, we supported this legislation. Now, our experience tells us that Federal legislation is not the solution. We urge Congress to proceed cautiously and to consider the possible unintended consequences that this legislation could have, not only on our servicemembers, but on their children.

We thank you for your support of our servicemembers and their families and we urge you to remember their service as you work to resolve the many issues facing our country. Military families are our Nation's families. They serve with pride, honor, and quiet dedication.

Statement of Pennsylvania Association of Private School Administrators

The Pennsylvania Association of Private School Administrators (PAPSA) considers the Post-9/11 Bill to be unfair. Not all veterans can choose the type of education they want and need. Students attending *non-degree* postsecondary education institutions including public vo-techs, some career schools, and apprenticeship programs are not eligible for enhanced GI Bill benefits.

Fortunately, your colleague Joe Sestak has introduced legislation to correct this injustice. H.R. 3813, the Veterans Training Act, would allow Post-9/11 GI Bill benefits to be used at non-degree granting schools.

Many of the members of PAPSA and their students are being affected by the unfairness inherent in the Post-9/11 GI Bill. On return to civilian life, many returning servicemembers are interested in quickly hitting the ground running. Short-term certificate and diploma programs can be a critical part of a successful transition. But if they are not offered at a degree granting school, then programs in truck driving, aviation maintenance and gunsmithing, skills many vets may naturally want to enhance, are not eligible under the Post-9/11 GI Bill.

Other ineligible programs might include HVAC, construction trades, tool and die training and allied medical programs such as medical assisting, EMT and para-medical. Even some business training programs could be excluded. Limiting veterans' choices in this manner is just not right.

A growing number of veterans groups have recently stepped forward to challenge the exclusion of non-degree granting institutions from the Post-9/11 GI Bill. Non-degree institutions and apprenticeship programs have always been included in the traditional Montgomery GI Bill so why should the Post-9/11 GI Bill be different? After a veteran has bravely served their country, they should be allowed to pursue their next career at the school of their choice.

PAPSA also supports Chairman Filner's bill, H.R. 950 to allow the use of veterans' educational assistance program funds for the pursuit of an approved program of education offered through distance learning. This bill would help to promote greater access and educational choice for veterans and their families.

PAPSA represents the more than 320 private career colleges and schools in the Commonwealth and is the only association representing all for-profit colleges and

schools in Pennsylvania. With over 150 school members, PAPSA is a unified voice of quality career school education. We strongly support H.R. 3813 and H.R. 950.

Student Veterans of America
Washington, DC.
February 17, 2010

The Honorable Stephanie Herseth-Sandlin
Chairwoman, Economic Opportunity Subcommittee
House Committee on Veterans Affairs

The Honorable John Boozman
Ranking Member, Economic Opportunity Subcommittee
House Committee on Veterans Affairs

Madam Chairwoman and Mr. Ranking Member,

Thank you for providing Student Veterans of America the opportunity to weigh in on these important pieces of legislation that you are reviewing today. We appreciate your passion and commitment to veterans issues, and truly support the efforts of you and your staffs as you work to better enable our Nation's heroes to succeed when they come home.

Specifically, we would like to submit our comments on the following Bills before you: H.R. 3579, H.R. 3813, H.R. 3484, H.R. 3948, and H.R. 4203. Each of these directly affect the lives of student veterans around the country, and we implore you to enable the changes that the Members and we have developed.

H.R. 3579

The Student Veterans of America strongly supports Chairman Filner's Bill H.R. 3579 to amend title 38, United States Code, to provide for an increase in the amount of the reporting fees payable to educational institutions that enroll veterans receiving educational assistance from the Department of Veterans Affairs. The current fees, range from $7.00, and $11.00 and these reporting fees are the only source of funding that schools receive to support veterans, and are currently next to nothing. We strongly support the new fee of $50.00 each that is proposed in this bill.

The existing fees of $7.00 and $11.00 are effectively the same as were paid during the Vietnam War and are inadequate in providing the necessary support to student veterans. Raising these fees to $50.00 reflects an increased demand for expanded services for student veterans and would allow schools to have much more power and flexibility to help these student veterans. This increase in reporting fees would enable schools to expand training outreach events and increase or improve other student veteran related programs.

Furthermore, we believe that this increase would provide veteran certifying officials with the resources needed to receive training so that they can be fully informed of the benefit options available to student veterans. An expansion of veteran related programs and an increase in resources for certifying officials would have a positive impact on the lives and opportunities of student veterans, and we are confident that H.R. 3579 would help provide some of the funding necessary for these worthy programs.

H.R. 3813—Veterans Training Act

Congressman Sestak's Bill offers an obvious change to bring the Post-9/11 GI Bill more in line with the previous Montgomery GI Bill and is an essential way of ensuring the longevity of this program. This is a logical solution to many of the problems facing the Bill today, and we support it wholeheartedly.

H.R. 3484

We emphatically support the 4-year extension of the VA Work Study Program as proposed by Chairwoman Herseth-Sandlin and Ranking Member Boozman. This program enables thousands of student veterans to earn an income at their schools while working to help their fellow student veterans and their VA Certifying Officials. In many cases, the VA Work Study students are critical to the daily operations of their school's veteran services office, and this extension is essential to ensure that these offices are able to continue providing the high level of customer service that is expected by our veterans at their schools.

H.R. 3948—Test Prep for Heroes Act

Student Veterans of America absolutely supports Congressman Putnam's efforts to amend Title 38 of the U.S. Code to authorize the use of entitlement assistance

under the Post-9/11 GI Bill for payment for a test preparatory course in connection with licensing or certification in a vocation or profession. The lack of authorization for the use of funds for test preparation in Post-9/11 GI Bill does a disservice to the tens of thousands of student veterans who need to take a test to gain licensing or certification in a vocation or profession, but lack necessary funds to take a preparatory course that could help improve their test scores.

Many student veterans are required to take a test in order to receive licensing or certification in a vocation or profession. These tests are mandatory for jobs, and in order for student veterans to have the highest likelihood of success, they must be adequately prepared for these tests. Preparation courses are essential to ensure that student veterans have the highest chances to excel in these tests; however, such courses are often costly, which renders them impractical for many student veterans. By authorizing entitlement assistance for test preparation courses, H.R. 3948 would give student veterans the resources they need to be successful and continue to make a positive impact on American society.

In addition to the changes that H.R. 3948 provides, we would like to bring your attention to the fact that many of our student veterans need to take more than one test in connection with licensing or certification. However, the current text of Chapter 33 allows for only one such exam, up to a cost of $2000. Very few exams are even close to this expensive, and it is a shame that a veteran must waste such a generous benefit because of this language. In order to accommodate for this we strongly encourage the Bill to allow multiple tests to be taken under the same provision, instead of just one, as we have written below:

Change Section 3315 of Title 38 Chapter 33 to read:

(a) IN GENERAL.—An individual entitled to educational assistance under this chapter shall also be entitled to payment for licensing or certification test(s) described in section 3452(b).

(b) LIMITATION ON AMOUNT.—The amount payable under sub-section (a) for licensing or certification tests may not exceed a sum of $2,000. **Multiple examinations may be taken within this provision up to the amount of $2000.**

H.R. 4203

Chairman Hall's Bill to mandate that payments made under the Post-9/11 GI Bill be delivered via direct deposit is an essential part of bringing the VA into the 21st Century in regards to payment practices and working with veterans. Almost all military personnel are used to receiving their paychecks through direct deposit, and when they arrive at college, their GI Bill Benefits should be no different.

Additionally, we hope that the Subcommittee will consider taking this provision a few steps further, requiring that tuition payments paid to the educational institution also be required to be paid through direct deposit. This is essential for ease of processing for the receiving schools, who should not be forced to look for tuition funding in two locations for the same veteran from the same Federal agency. This is particularly important for veterans who are studying abroad, or who are receiving Yellow Ribbon Program funding in very large amounts. We cannot afford to have these checks get lost in the mail any longer, as SVA has already witnessed among our membership this past semester.

Finally, the VA should be required to properly label these funds when they are deposited. Currently it is unclear for both the student veteran and the educational institution what the funds are for when they are deposited. The VA provides no label on the money as to whether or not it is for housing or book stipends, a kicker, or a refund when it is deposited into a veterans account. Additionally, when the VA deposits money with an educational institution, they do not specify what semester the money is for, requiring even more work for our already over-worked certifying officials.

With these changes, it will be significantly easier for both the student veterans and the schools to work with the VA in handling the funds that have been allocated for this fantastic benefit. We hope the Subcommittee will work to ensure the implementation of these provisions for both the Post-9/11 GI Bill and all other Chapters.

This concludes our written testimony. Again, we would like to thank you for considering our opinion on these matters, and look forward to continuing to work with you and your staffs to help our Nation's student veterans.

Very Respectfully,

Brian Hawthorne
Legislative Director

MATERIAL SUBMITTED FOR THE RECORD

Law Offices of Mark E. Sullivan, P.A.
Raleigh, NC.
April 8, 2010

Honorable Stephanie Herseth Sandlin, Chair
Subcommittee on Economic Opportunity
House Veterans Affairs Committee
U.S. House of Representatives
335 Cannon House Office Building
Washington, DC 20515

Dear Rep. Herseth Sandlin:

During the February 25, 2010, testimony I gave before your Subcommittee, Rep. Michael Turner asked what guidance the child custody provisions of the Indian Child Welfare Act could give as to Federal court jurisdiction, stating:

"These statutes with respect to the Indian Tribe as you are familiar with had a similar challenge and also had the congressional statement that it does not provide Federal jurisdiction over those cases. And as you I am sure you can affirm for us, it was upheld as not providing Federal action which this bill that I proposed would not either."

You indicated that you too are interested in whether Federal courts are barred from hearing claims which are grounded in the ICWA, in light of your experience in this area prior to election to Congress. I have completed the memorandum which I promised to provide to you and Mr. Turner, and it is enclosed. Thank you for the opportunity to present to you and your Subcommittee members a clear illustration of how the Federal courts will be available to private custody litigants in military custody cases if Rep. Turner's bill, H.R. 4469, were to become law.

With best professional regards, I remain

Sincerely yours,

Mark E. Sullivan

Enclosure (1-as stated)
Cf: Hon. Michael Turner (w/encl)

Memorandum—House Veterans Affairs Committee, Subcommittee on Economic Opportunity

From: Mark E. Sullivan
To: The Honorable Stephanie Herseth Sandlin, Subcommittee Chair
Date: April 6, 2010
Subject: Indian Child Welfare Act and Federal Court Jurisdiction

Issue: Does a Federal district court have jurisdiction in a case involving the child custody provisions of Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et. seq.* ("ICWA")?

Answer: Yes. Federal district courts have jurisdiction in ICWA cases under 28 U.S.C. § 1331 ("Federal question jurisdiction"). There are other sources of jurisdiction under the ICWA as well, but the case law is more specific with respect to "Federal question jurisdiction."

Introduction

The Indian Child Welfare Act provides, among other things, that an Indian tribe shall have exclusive jurisdiction over certain child custody proceedings involving an Indian child residing on or domiciled with a reservation, such as foster care placements, termination of parental rights, pre-adoptive placements and adoption placements. The Act imposes a higher burden of proof for State action when intervention occurs in the life of a Native American child ("beyond a reasonable doubt" instead of "clear and convincing"). Deference is given to extended family placements pursuant to Native American courts, and proceedings involving children in tribal courts under tribal law.

The ICWA is a "Federal custody law" in only the sense that it governs *State action* in regards to Native American children. Any comparison to the proposals in H.R. 4469 would be a false analogy, since the ICWA deals not with custody disputes between private parties, but rather the limitations of State action regarding certain types of custody placements by the State. It is not applicable to child custody proceedings in divorce cases between individual litigants.

Discussion

Regardless of the dissimilarities, however, the question is whether a Federal district court can entertain a claim under the ICWA. The key Federal cases which have addressed this issue, with their decisions, are as follows:

(1) Congress intended to create a Federal private right of action in tribes and individuals to seek a determination of their ICWA rights and obligations in Federal district court under the ICWA's full faith and credit clause and Federal question jurisdiction. *Native Village of Venetie* v. *Alaska,* 944 F.2d 548 (9th Cir. 1991); and

(2) In the narrow range of child custody proceedings under the ICWA, such Federal court review can even include the re-examination of a State court's rulings on termination of custody on the merits. *Doe* v. *Mann,* 415 F.3d 1038 (9th Cir. 2005), *cert. denied,* 126 S. Ct. 1909, 164 L. Ed. 2d 663 (U.S. 2006).

Federal Question Jurisdiction under 28 U.S.C. § 1331

In *Doe* v. *Mann,* the Federal district court affirmed a decision of the California trial court terminating the parental rights of a Native American mother (whose child was covered by the ICWA) and approving the adoption of her child to a non-Indian family. The mother sued in Federal district court. She argued that the tribal court had exclusive jurisdiction. The Federal district court had ruled that a) the tribal court did not have exclusive jurisdiction in this particular case, and b) the Federal court could exercise subject matter jurisdiction over the case because the Indian Child Welfare Act, specifically 25 U.S.C. § 1914, "provides a cause of action in Federal court to invalidate certain State court child custody proceedings." *Doe* v. *Mann,* 285 F. Supp. 2d 1229, 1233–34 (N.D. Cal. 2003).

On appeal, the 9th Circuit Court of Appeals affirmed. It concluded that the Federal district court properly exercised jurisdiction under the Federal question statute, 28 U.S.C. § 1331, and that the Federal courts were entitled to review the State court judgment. The Court of Appeals also held that the "*Rooker-Feldman* doctrine," which would otherwise prevent Federal interference in State substantive law areas, did not bar the district court from exercising jurisdiction because Congress, in enacting 25 U.S.C. § 1914, provided Federal courts authority to invalidate State court actions in the area of child custody proceedings involving Native American children. *Doe* v. *Mann,* 415 F.3d 1038, 1040 (9th Cir. 2005).

Then—in reviewing the district court's decision on the merits—the appellate court concluded that the definition of child custody proceedings under the ICWA did not grant the tribe exclusive jurisdiction over the child dependency proceeding because the statutory structure of the ICWA demonstrated that Congress intended for States to be vested with jurisdiction over child dependency proceedings by existing Federal law. In its opinion, the Court of Appeals pointed to the ruling in a 1991 case:

> More than a decade ago, we resolved that the ICWA creates an implied cause of action and thus serves as a basis for Federal question jurisdiction under 28 U.S.C. § 1331. In *Native Village of Venetie* v. *Alaska,* 944 F.2d 548 (9th Cir. 1991) ("Venetie I"), we concluded that Congress intended to create a Federal private right of action in tribes and individuals to seek a determination of their ICWA rights and obligations in Federal district court under ICWA's full faith and credit clause in § 1911(d):
>
> > We see no reason that Congress would not have intended to give Indian tribes access to Federal courts to determine their rights and obligations under the Indian Child Welfare Act. The Act includes an express congressional finding that State courts and agencies have often acted contrary to the interests of Indian tribes.

Doe v. *Mann,* 415 F.3d 1038, 1045 (9th Cir. 2005), *citing Native Village of Venetie* v. *Alaska,* 944 F.2d 548, 553–554 (9th Cir. 1991).

The subsequent question was whether a Federal court is a "court of competent jurisdiction" to invalidate a State court judgment. The Court of Appeals articulated the issue accordingly:

> Applying *Califano,* we conclude that § 1914's reference to "any court of competent jurisdiction" alone does not create subject-matter jurisdiction in the Federal district court sufficient to review and vacate State custody decrees. Consequently, we must determine whether the Federal district court had jurisdiction from an independent source, 28 U.S.C. § 1331, making it a "court of competent jurisdiction" that is authorized by § 1914 to invalidate certain State court child custody proceedings.

Doe v. *Mann,* 415 F.3d 1038, 1045 (9th Cir. 2005). The Court of Appeals then concluded that a Federal court is, in fact, a "court of competent jurisdiction to invali-

date a State court judgment involving the Indian child." *Doe* v. *Mann,* 415 F.3d 1038, 1046 (9th Cir. 2005). The case was appealed but the Supreme Court denied certiorari. Thus the 9th Circuit Court of Appeals has held that Federal courts do have jurisdiction under the ICWA to review State court decisions. There are no conflicting cases in other circuits.

Impact of Full Faith and Credit

The Full Faith and Credit Clause of the Constitution does not, by itself, invoke Federal jurisdiction. Nevertheless, the incorporation of a full faith and credit clause into the ICWA—at **25 U.S.C. § 1911(d)**—seems to have persuaded the court in *Doe* v. *Mann.* This is not an isolated instance, moreover. Five years before the decision in *Venetie I* and 19 years before *Doe* v. *Mann,* the Court of Appeals affirmed a trial court's ruling that a tribal decision to remove a minor child from his home and placing him under tribal custody was the result of a judicial determination and must be given full faith and credit by states under **25 U.S.C. § 1911(d)**. *Native Village of Stevens v Smith,* 770 F.2d 1486, 1488 (9th Cir. 1985), *cert denied,* 475 U.S. 1121, 90 L. Ed. 2d 185, 106 S. Ct. 1640 (U.S. 1986). In essence, the Court moved from a position in 1986 that recognized the force of § 1911(d) to a position in 1991 that the ICWA implies a private right of action, and then to an even stronger position in 2005 that the private right of action is a Federal one which can be heard on substantive matters in Federal district court.

Other Federal Bases for Jurisdiction

In addition to "Federal question jurisdiction," as discussed above, there are numerous other cases arising out of the ICWA that have been brought to Federal court under other jurisdictional bases. There are at least 36 ICWA-related cases that made their way into Federal courts based, at least in part, on Due Process/Civil Rights actions pursuant to 42 U.S.C. § 1983. *See, e.g., Morrow* v. *Winslow,* 94 F.3d 1386 (10th Cir. 1996); *Roman-Nose* v. *New Mexico Department of Human Resources,* 967 F.2d 435 (10th Cir. 1992); and *Noatak* v. *Hoffman,* 896 F.2d 1157 (9th Cir. 1990). Similarly, the Declaratory Judgment Act, 28 U.S.C. § 2201, was invoked in at least five reported cases involving the ICWA. *See, e.g., MacArthur* v. *San Juan County,* 497 F.3d 1057 (10th Cir. 2007); *Bernhardt* v. *County of Los Angeles,* 339 F.3d 920 (9th Cir. 2003); and *Navajo Nation* v. *Dist. Court for Utah County,* 624 F. Supp. 130 (D. Ut. 1985). As well, the removal statute, 28 U.S.C. § 1441, has been invoked in at least five reported cases as a basis for access to Federal court or as an item of consideration by the Federal courts. *See, e.g., Paddy* v. *Mulkey,* 656 F. Supp. 2d 1241 (D. Nev. 2009); and *Nevada* v. *Hicks,* 533 U.S. 353, 150 L. Ed. 2d 398 (2001).

Conclusion

The Indian Child Welfare Act is clearly a poor parallel to the Federal custody terms in H.R. 4469. One involves *State action* and *adoption/placement* of Native American children, the other grants "Federal custody rights" in private party custody litigation.

However, despite these dissimilarities, both involve Federal district court intervention where children are involved. The doors of the Federal courthouse are open in ICWA litigation, just as they would be if H.R. 4469 passes.

Federal district courts are empowered to hear cases in which Federal rights and duties are enunciated in the underlying Federal legislation. Congress cannot create rights for a class of litigants—whether Native Americans or servicemembers—in the U.S. Code and then block the door to the Federal courthouse. Even if the bill says that it does not create a Federal right of action, there are numerous other avenues of access for Federal district court—existing Federal jurisdiction statutes—which will allow litigants to ask for a hearing in front of a Federal judge on matters involving deployment and custody if H.R. 4469 were passed. These existing remedies include "Federal question jurisdiction" under 28 U.S.C. § 1331, removal to Federal district court under 28 U.S.C. § 1441, declaratory relief under 29 U.S.C. §§ 2201–2202 (Declaratory Judgment Act) or actions for injunctive relief under the "civil rights action" statute, 42 U.S.C. § 1983.

○