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Before

The Committee on Veterans' Affairs

United States Senate

April 29, 2009

on

S. 475 Military Spouses Residence Relief Act

Chairman Akaka, Ranking Member Burr, and Distinguished Members of the Committee,
My name is Chuck Mason, I am a legislative attorney for the American Law Division of the
Congressional Research Service. I would like to thank you for inviting me to testify today
regarding S. 475, the "Military Spouses Residency Relief Act."

Introduction

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) provided civil protections and rights to individuals based on their service in the U.S. armed forces. On December 19, 2003, Congress enacted P.L. 108-189, the Servicemembers Civil Relief Act (SCRA), in response to the increased utilization of Reserve and National Guard military units in the Bush Administration's "Global War on Terrorism," and as a modernization and restatement of the protections and rights previously available to servicemembers under the SSCRA. Much like with the SSCRA, the SCRA has been amended since its initial passage and proposed changes continue to be introduced in Congress.

Congress has long recognized the need for protective legislation for servicemembers whose service to the nation compromises their ability to meet obligations and protect their legal interests. During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918, which did not create a moratorium on legal actions against servicemembers, but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were involved in a controversy. During World War II, Congress essentially reenacted the expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940, and then amended it substantially in 1942 to take into account the new economic and legal landscape that had developed between the wars. During consideration of the amendments in the 87th Congress, Congressman Overton Brooks (D-LA) stated,

This bill springs from the desire of the people of the United States to make sure as far as possible that men in service are not placed at a civil disadvantage during their absence. It springs from the inability of men who are in service to properly manage their normal business affairs while away. It likewise arises from the differences in pay which a soldier received and what the same man normally earns in civil life.

Congress enacted amendments on several occasions during subsequent conflicts, including 2002 when the benefits of the SSCRA were extended to certain members of the National Guard. In 2003, Congress enacted the SCRA as a modernization and restatement of the SSCRA and its protections.

The SCRA is an exercise of Congress's power to raise and support armies (U.S. Const. Art. I, sec. 8, cl. 12) and to declare war (Art. I, sec. 8, cl. 11). The purpose of the Act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation." The SCRA protects servicemembers by temporarily suspending certain judicial and administrative proceedings and transactions that may adversely affect their legal rights during military service. Forgiving of all debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty is not required, nor is absolute immunity from civil lawsuits provided. Instead, it provides for the suspension of claims and protection from default judgments. In this way, it seeks to balance the interests of servicemembers and their creditors, spreading the burden of national military service to a broader portion of the citizenry. In *Engstrom v. National Bank of Eagle Lake*, the United States Court of Appeals for the Fifth Circuit acknowledged the balancing required when it stated "[a]lthough the act is to be liberally construed it is not to be used as a sword against persons with legitimate claims."

While the Congressional Research Service takes no position on pending legislation, you requested comment on S. 475, the "Military Spouses Residency Relief Act." If enacted, S. 475 would amend three sections of the Servicemembers Civil Relief Act: (1) Section 508, Land rights of servicemembers; (2) Section 511, Residence for tax purposes; and (3) Section 705, Guarantee of residency for military personnel. Arguably, the proposed amendments could reduce confusion related to residency and taxation issues, that often arise as a result of frequent duty station transfers, for military families.

Land rights of servicemembers – Sec. 508 (50 U.S.C. app. § 568).

Various land rights are protected by the Servicemembers Civil Relief Act, including rights in public lands, desert-lands, mining claims, and mineral permits and leases. Under these protections, servicemembers may maintain rights to access and use public lands and to enter desert-lands obtained before entering military service. The servicemember may also retain mining claims and mineral permits and leases even in the event of nonperformance of the requirements of the lease while on active duty. Generally, an individual must be at least 21 years old in order to exercise such land rights; however the Act creates an exception to the age requirement and allows all servicemembers, regardless of age, to exercise rights related to lands owned or controlled by the United States. Additionally, any residency requirements, related to the establishment of a residence within a limited time, for purposes of exercising the land rights,

are suspended for six months after release from military service. As enacted, the Act does not provide the same protections and rights to a servicemember's spouse or dependents.

Under S. 475, the spouse of a servicemember would be entitled to the suspension of residency requirements, with respect to exercising land rights, for a period of six months after the servicemember is released from military service.

Residence for tax purposes – Sec. 511 (50 U.S.C. app. § 571).

In order to prevent multiple state taxation on the property and income of military personnel serving within various tax jurisdictions by reason of military service, the Act provides that servicemembers neither lose nor acquire a state of domicile or residence for taxation purposes when they serve at a duty station outside their home state in compliance with military orders. A servicemember who conducts other nonservice-related business while in military service may, however, be taxed by the duty station jurisdiction for the resulting income. This section does not protect the income of a spouse or other military dependent from taxation in the duty station jurisdiction. However, a tax jurisdiction cannot include the military compensation earned by nonresident servicemembers to compute the tax liability imposed on the non-military income earned by the servicemember or spouse. Personal property of a servicemember will not be subject to taxation by a jurisdiction other than his or her domicile or residence while serving at a duty station outside of his or her home state. However, relief from personal property taxes does not depend on whether the property is taxed by the state of domicile. Property used for business is not exempt from taxation. An Indian servicemember whose legal residence or domicile is a Federal Indian reservation will only pay taxes under the laws of the Federal Indian reservation and not to the state where the reservation is located.

S. 475 would create a new subsection addressing the income of a military spouse. Under the proposed language, the spouse of a servicemember would neither lose nor acquire a state of domicile or residence for taxation purposes when he or she accompanies a spouse to a duty station outside the home state in compliance with military orders. Any income earned by the spouse, while in that jurisdiction pursuant to the military orders, would not be subject to the tax jurisdiction outside of their home state. Personal property of the spouse of a servicemember would also not be subject to taxation by a jurisdiction other than his or her domicile or residence while accompanying his/her spouse to a duty station outside of his or her home state.

Guarantee of residency for military personnel – Sec. 705 (50 U.S.C. app. § 595).

Military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any federal, state, or local office, solely because of their absence from the respective state in compliance with military or naval orders.

S. 475 would guarantee that the spouse of a servicemember would not change his or her state residence or domicile for the purpose of voting for any federal, state, or local office, solely because of an absence from the respective state while accompanying a spouse to a duty station in compliance with military orders.

Issues for Consideration

In reviewing the proposed legislation, several questions may arise:

1. The language addressing residence for tax purposes of spouses of servicemembers may create

a disparity in treatment between the servicemember and his or her spouse. As proposed, any income earned by a spouse while accompanying a servicemember would not be subject to taxation in the jurisdiction of military service. However, if a servicemember were to earn additional income, be it through a business endeavor or a part-time job, the servicemember's additional income would be subject to taxation in that jurisdiction.

2. The constitutionality of the proposed language also appears to raise a question of first impression. It is well settled that the SCRA is constitutional under Congress' authority to raise and support the armies and to declare war. The U.S. Supreme Court in *Dameron v. Brodhead*, a case addressing the ability of Congress to exempt servicemembers from taxation where stationed, stated that the purpose of the Act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation." It is unclear if the power to raise and support the armies or to declare war also encompasses the ability to exempt an individual, not actually in the armed forces, from taxation in the jurisdiction where his or her spouse is stationed. Any inquiry on the constitutionality of the question would likely hinge on whether exempting the spouse from taxation outside of his or her home state assists the servicemember to "devote their entire energy to the defense needs of the Nation?"