

**STATEMENT OF THE  
NON COMMISSIONED OFFICERS ASSOCIATION  
OF THE UNITED STATES OF AMERICA (NCOA)  
BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
COMMITTEE ON VETERANS AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**PRESENTED BY:**

**KIMBERLEE D. VOCKEL  
Director of Legislative Affairs**

**JULY 25, 2002**

**H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT  
H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT**



**BIOGRAPHY FOR  
KIMBERLEE D. VOCKEL  
DIRECTOR OF LEGISLATIVE AFFAIRS**

As Director of Legislative Affairs for the Non Commissioned Officers Association, Mrs. Vockel is responsible for directing and managing the legislative activities of the congressionally chartered and accredited military and veterans' service organization. She is responsible for a wide range of compensation, benefits, and quality-of-life issues pertaining to the active, retired, National Guard, and reserve military communities and their families, as well as veterans, their dependents, and survivors. She is NCOA's representative for legislative issues in The Military Coalition (TMC). She currently serves on the following Coalition committees: Health Care, Veterans Affairs (Co-chair), Personnel/Compensation/Commissaries, and Membership/Nominations. She also represents NCOA on the Virginia Military/Absentee Voting Task Force and the TRICARE for Life (TFL) Working Level Panel.

A summa cum laude graduate from George Mason University, Mrs. Vockel joined the staff of the Non Commissioned Officers Association's National Capital Office in May 2001. She is the first woman, as well as the first military spouse, to hold this position at the NCOA. She received her Bachelor's Degree with highest honors and distinction in Government and International Politics and a minor in Philosophy. Mrs. Vockel is currently working on her Master's Degree in Legislative Affairs from The George Washington University.

Prior to joining the NCOA, Mrs. Vockel worked as a Legislative Correspondent/Press Intern in the United States Senate assisting in the research of various issues.

Mrs. Vockel is married to Air Force MSgt. James P. Vockel of Traverse City, Michigan. They currently reside in Woodbridge, VA.

## **DISCLOSURE OF FEDERAL GRANTS AND CONTRACTS**

The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

## EXECUTIVE SUMMARY

### RECOMMENDATIONS FOR CHANGES TO THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

#### **National Guard Duty**

NCOA recommends that this Subcommittee include H.R. 4017 in its final version of H.R. 5111, the Servicemembers' Civil Relief Act.

#### **Residence for Tax Purposes**

NCOA recommends that this Subcommittee remove the word "solely" from Sec. 511(a) to prevent the Courts from looking to other factors besides military orders to define a servicemember's residence and domicile, and that this Subcommittee give credence to, in the law, the Servicemember's voluntary filing of a "State of Legal Residence Certificate."

NCOA further recommends that this Subcommittee ensure that home ownership cannot be considered a factor that will count against servicemembers when determining residence and domicile.

The decision on where to maintain domicile and residence should remain under the control of the servicemember, not the states.

NCOA fully supports the revisions to the Soldiers' and Sailors' Civil Relief Act as proposed in H.R. 5111.

## INTRODUCTION

Mr. Chairman and distinguished members of this Subcommittee, on behalf of the Non Commissioned Officers Association (NCOA), which represents active duty, reserve component, retired, and veteran enlisted servicemembers and their families, I would like to express our sincere appreciation for the opportunity to present the Association's views on issues surrounding H.R. 5111, the Servicemembers' Civil Relief Act and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

### **H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT**

Congress' intentions with the Soldiers' and Sailors Civil Relief Act (SSCRA) are clearly stated in the statute:

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States...to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation... (50 U.S.C. Appx. §510)

The Reserve Components, composed of the Reserves and National Guard, are currently providing invaluable support for anti-terrorism and homeland security missions as an integral part of their respective branches of military service. National Guard members have dutifully answered the call to "expedite the national defense under the emergent conditions..." but they have not been granted the same protections intended to be provided under the SSCRA.

Because of the nature of the National Guard, members can be called to active duty under either Title 10 or Title 32. Under Title 10, activated Guardsmen receive some protections and benefits, but under Title 32 they have very few federal benefits and are not protected under the SSCRA. There is no doubt that members of the National Guard, just like their active duty counterparts, endure financial hardships as a result of their duty; therefore, they should be afforded the same coverage under the SSCRA as their active duty counterparts. In support and recognition of the Total Force Policy, members of the National Guard should be included in SSCRA protections when fighting next to their active duty comrades.

H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, provides equity for all members of the National Guard, who have been called to active service under Title 32 for more than 30 consecutive days in support of a federally funded contingency operation authorized by the President or Secretary of Defense.

### ***NCOA RECOMMENDS***

That this Subcommittee include H.R. 4017 in its final version of H.R. 5111, the Servicemembers' Civil Relief Act.

## H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT

H.R. 5111, the Servicemembers' Civil Relief Act, is a restatement, clarification, and revision of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). While NCOA supports the proposed revisions SSCRA, the Association has several recommendations for further revisions to the law concerning residence for tax purposes

### *RESIDENCE FOR TAX PURPOSES*

Sec. 511 of H.R. 5111 makes some very significant changes to the "residence" provision of the SSCRA, which will clarify several issues that have arisen as a result of states' past applications of this provision, most namely Sec. 511 (d) which prohibits a tax jurisdiction from computing military compensation of a nonresident servicemember in its calculation of taxes owed by the spouse of the servicemember. NCOA strongly supports maintaining this provision to prevent spouses from being overtaxed because of the servicemembers' nonresident status in a state. While NCOA supports the other revisions of the "Residence for Tax Purposes" section, the Association would like to address several issues that have arisen in recent years that require further revisions to this section

Several court decisions have brought to light the need for Congress to define what constitutes "residence" and "domicile." In 2000, the Minnesota Federal District Court decided the case of *United States v Minnesota* (97 F. Supp. 2d 973, D. Minn. 2000), which addressed the issue of tax protections for servicemembers as nonresidents in a state. In trying to determine if the income of twelve Public Health Service (PHS) Officers who were stationed in Minnesota but claimed domicile elsewhere, the Court decided that the fact that the SSCRA specifies that residency cannot be presumed solely based on military orders did not preclude them from considering other factors to determine if a servicemember is indeed a resident of the state.

The District Court decided that four factors can be used to determine a servicemember's residence and domicile for tax purposes: (1) location of his home regardless of whether it was owned or rented, (2) the state that issued his driver's license, (3) the state that registered his automobile, and (4) whether or not the servicemember engages in civic clubs. It is common for a servicemember to seek off-base housing when moved to a new duty station. It is also common for servicemembers, as responsible, caring citizens, to engage in civic activities to better their communities. This test, if allowed to be applied to servicemembers, would deter servicemembers from contributing to and improving their temporary communities because civic involvement would count against them. It would also directly damage those servicemembers living off-base during their tour of duty outside of their state of residence. It is commonplace, and recommended, for servicemembers to buy, instead of rent, a home when they transfer to a new location on military orders. Because of the frequent moves servicemembers are required to make, the purchase of a home is typically a better investment than renting. However, the following two court cases have further endangered a servicemember's right to voluntarily choose his/her state of residence.

The first case, *Wolff v Baldwin* (9 N.J. Tax 11, N.J. Tax Ct. 1986), further exemplifies the need for Congress to clarify its intent concerning residence and domicile in the SSCRA. In *Wolff*, the New Jersey Tax Court held that "by executing and filing a homestead rebate

form, plaintiff and his wife assert that they are citizens and residents of this state. ‘Citizen’ and ‘resident’ has been defined as domicile under [New Jersey law]”. The Plaintiff, Mr. Wolff used his parents’ Pennsylvania address as “home of record,” maintained a Pennsylvania driver’s license, voted by absentee ballot in Pennsylvania, and paid local Philadelphia school taxes. Regardless of Mr. Wolff’s clear desire to be a resident of Pennsylvania, the Tax Court found his filing of a homestead rebate form sufficient to involuntarily change his residence to New Jersey.

The second case again shows how a servicemember’s residency can be damaged by buying a home when on military orders in a state other than the one he/she desires to keep as his/her residence and domicile. The Maryland Tax Court held in *Envall v Comptroller of the Treasury* (No. 1128, 1982 WL 1763, MD T.C. 1982) that the domicile of Mr. Envall, who maintained a driver’s license and vehicle registration in Nevada but voted and purchased a home in Maryland, was in Maryland instead of Nevada.

Both of these cases show that clarification of “residence” and “domicile” is needed in the SSCRA for servicemembers to not be punished for making the best of their available finances while on active duty.

The Department of Defense already has a mechanism to identify a servicemember’s intended “residence” and “domicile,” the State of Legal Residence Certificate. The Department should also have criterion in place to validate a servicemember’s declaration. A servicemember’s filing of this document is a voluntary and active effort to declare his/her intentions of returning to a particular state upon separation from military service. There are other actions that a servicemember may take, out of convenience or necessity of his/her situation, that could be misconstrued by a state as expressing an intent to declare that state as his/her domicile (i.e., obtaining a driver’s license in that state as opposed to renewing by mail his/her license in their “declared” state, which may not have a photograph attached). Congress should make it clear in the SSCRA that a servicemember’s filing of a “State of Legal Residence Certificate” in conjunction with at least one other action to establish a connection with that state should be honored by all other states, regardless of other actions he/she may take. The decision on where to maintain domicile and residence should remain under the control of the servicemember, not the states.

### ***NCOA RECOMMENDS***

That this Subcommittee remove the word “solely” from Sec. 511(a) to prevent the Courts from looking to other factors besides military orders to define a servicemember’s residence and domicile, and that this Subcommittee give credence to, in the law, the Servicemember’s voluntary filing of a “State of Legal Residence Certificate.”

NCOA further recommends that this Subcommittee ensure that home ownership cannot be considered a factor that will count against servicemembers when determining residence and domicile.

**CONCLUSION**

Mr. Chairman, distinguished members of the Subcommittee, thank you for this opportunity to present NCOA's views on H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, and H.R. 5111, the Servicemembers' Civil Relief Act. This effort to modify the 1940 law is timely and appropriate, and NCOA looks forward to further assisting this Subcommittee, as well as the full Committee, in making this law properly address the needs of the men and women serving in the Armed Services and their families.