



AMERICAN BAR ASSOCIATION

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STATEMENT OF AMERICAN BAR ASSOCIATION PRESIDENT

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before the

SUBCOMMITTEE ON BENEFITS

of the

COMMITTEE ON VETERANS' AFFAIRS

of the

U.S. HOUSE OF REPRESENTATIVES

on the subject of the

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

July 25, 2002

Mr. Chairman and Members of the Subcommittee,

As President of the American Bar Association, I commend you for holding hearings on an issue of great importance to our men and women in uniform and their families--the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). We support provisions in the Servicemembers' Civil Relief Act (H.R. 5111) and the Soldiers' and Sailors' Civil Relief Equity Act (H.R. 4017) that would provide much-needed clarification and modernization of the SSCRA.

The ABA, which has over 400,000 members, has a history of partnering with the armed forces that dates back to the 1940s. For example, we successfully advocated for voluntary legal services for those in the military. We successfully lobbied for increased recognition and uniform procedural methods for the execution and recognition of military wills. And in response to the terrorist attacks of September 11th that claimed the lives of thousands of innocent Americans, we mobilized to provide legal assistance to reservists who have been called to active duty around the nation. Unfortunately, our homeland security is still at issue in this time of conflict. As a result, we must provide protections for our servicemembers who risk their lives everyday, in order to protect our nation.

There are approximately 1.4 million servicemembers and 80,000 reservists currently serving on active duty, many of whom have families. It is imperative to our homeland security that these brave men and women devote their full and undivided attention to their military duties. The Congressional intent behind the SSCRA in 1918 and today is to give our servicemembers peace of mind by granting special protections to their rights and property interests while they serve our country. Since 1918, the SSCRA has assisted servicemembers and reservists on active duty, and their families, by

temporarily suspending or postponing civil proceedings (such as bankruptcy, foreclosure, civil lawsuits and divorce) that might prejudice their civil rights. The SSCRA ensures that a servicemember will not be at a disadvantage in defending a civil action due to his or her military service.

It is important to note that although this hearing is being held by the House Veterans' Affairs Committee's Subcommittee on Benefits, Congress enacted the SSCRA to provide protections for servicemembers, rather than benefits. While the SSCRA suspends civil action until the servicemember's ability to answer or comply is no longer materially impaired by military service, it does not extinguish any liabilities or obligations that the servicemember may have.

National Guard

The SSCRA currently applies to any person in military service. Military service is defined as someone who is on active federal duty under Title 10 of the United States Code with any branch of service as well as any member of the reserves on active duty. In response to September 11th, many of those in the National Guard are performing important full-time functions such as airport and installation security pursuant to Section 502(f) of Title 32 of the United States Code. Currently, the SSCRA does not provide protections to such Guardsmen; however, the ABA supports the expansion of such protections because these men and women are performing important functions that warrant such recognition and protection.

Our position is consistent with Section 2 of H.R. 4017 that would extend SSCRA protections to Guardsmen called to active service for a period of more than 30

consecutive days pursuant to Section 502(f) of Title 32 of the United States Code. The ABA also recommends amending H.R. 5111, in order to achieve this same objective.

Rent Ceiling and Eviction

The SSCRA provides that if a servicemember is renting property for \$1200 or less per month and those premises are used chiefly for dwelling purposes by the spouse, children, or other dependents of a person in military service, the landlord must obtain a court order to evict them. However, the court can allow the eviction if the court finds that the ability of the tenant to pay the agreed upon rent is not materially affected by reason of military service. In addition, the court may delay eviction proceedings for up to three months.

The \$1,200 rent level has remained constant since 1991. Over the past several years, the cost of housing has increased significantly around the country. It is not uncommon for servicemembers to incur difficulty in securing affordable housing. In addition, a servicemember's termination of civilian employment salary and/or delay in receipt of military pay can negatively impact his or her financial situation as well as that of his or her dependents. As a result, the SSCRA needs to address the reality of increased housing costs for servicemembers and their families, because the current level of \$1,200 is inadequate.

The ABA recommends that the rent level in the SSCRA be raised to a realistic amount that takes into account the rising housing costs around the country. Section 301 of H.R. 5111 would provide that a landlord may not evict a servicemember or his or her dependents, absent a court order, during a period of military service for the servicemember from premises that: (1) are occupied or intended to be occupied primarily

as a residence, and (2) for which the monthly rent does not exceed \$1,700. Although, we support increasing the current rent level to \$1,700, we also recognize that the issue is bound to resurface due to rising housing costs. In the meantime, servicemembers and their families are inconvenienced and disadvantaged as they wait for SSCRA's rent level to be amended. In order to resolve this issue, the ABA recommends amending Section 301 of H.R. 5111 to include an escalator provision or index that would reflect cost of living increases.

Stay of Proceedings

Pursuant to the SSCRA, a servicemember may request a stay of civil proceedings if his or her military service materially affects his or her ability to prosecute or defend an action. A stay is not automatic under such circumstances and a request for a stay is required. Unfortunately a request (usually a letter) for a stay by either the servicemember or his attorney may constitute an appearance. If the request constitutes an appearance, the servicemember may be prevented from reopening a default judgment at a later time, if the stay is denied and the member does not appear.

A problem arises when a servicemember receives notice of a pending action but is unable to make an appearance. It is not uncommon for servicemembers to contact the court to request a stay of proceedings pursuant to the SSCRA. Some courts have proceeded to judgment in the absence of the servicemember and have either: (1) concluded that the servicemember's military service did not materially affect his or her ability to participate even though he or she was absent; or (2) considered the absent servicemember's request for a stay to constitute an appearance that deprived him or her of the right to later challenge the judgment as a de facto default judgment. Both results

are contrary to the clear intent of the statute. As a result, when a stay request is sought, servicemembers are advised to ask their commanding officer to make such a request, including a copy of the servicemembers' orders.

The ABA believes that a petition for a stay of proceedings pursuant to the SSCRA should not be construed to be an "appearance" before a court for any purpose. We recommend that the SSCRA be amended to state that an application or petition for a stay of proceedings pursuant to the SSCRA should not constitute an appearance for any purpose.

Administrative Proceedings

Section 102 of H.R. 5111 would expand application of the SSCRA to include administrative agencies. This would be an important protection for servicemembers that is supported by the ABA, because it would suspend or postpone administrative proceedings, when a servicemember or reservist is serving on active duty.

Conclusion

In this time of conflict, Congress needs to take the initiative and enact emergency wartime provisions similar to what occurred in 1991. The revision of the SSCRA is an urgent issue that should be addressed as soon as possible. Congress has an important opportunity to rise to the occasion by modernizing and clarifying SSCRA, which has become outdated through the passage of 84 years and advancements in case law. Major John Wigmore, author of Wigmore on Evidence and original drafter of the 1918 SSCRA, observed before this Committee's predecessor, "You drop everything you have, drop all your relations and all your business affairs, and all the property you have, and we will

take you, and maybe your life.” Legislative action now will show our servicemembers and their families that this nation values their sacrifice and is behind them 100%.

On behalf of the ABA, I thank you for the opportunity to testify before you today. I look forward to answering any questions that you may have.