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September 30, 2009

The Honorable Dr. Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Gates:

Thank you for your September 25, 2009 letter which we received from the staff of the House Armed Services Committee. As you recall, on May 13th, 2009, you stated that you were unaware that the Department of Defense had opposed changes in federal law that would protect our men and women in uniform during their child custody disputes, and you said: "I will commit to you that we will work with you on it."

Nearly five months have passed since your testimony. Unfortunately, your office has repeatedly refused my requests to meet with you personally and has made no serious effort to work with my office on any compromise language that will ensure protections for our men and women in uniform. My meetings with your staff have only resulted in their reiteration of DoD's opposition. What is particularly troubling is that DoD has misplaced priorities with regard to federal protections for service members. It has no objection to the FY10 NDAA House language allowing service members to cancel their cell phone contracts without penalty after orders of deployment, yet it opposes protecting the child custody rights of these same service members. Surely custody rights are at least equally important.

DoD has based its opposition to the House-passed custody language on fears that an amended SCRA would undermine states' rights. However, this would not be the first federal statute that would impact child custody. For example, 25 USC §1911 grants exclusive jurisdiction in Indian tribe child custody cases with specific tribes, as to any state. Additionally, the language that I offered to the FY10 NDAA explicitly states that the language does not create a federal right of action, and it allows for states to impose heightened protections beyond the baseline protections which are established in federal law. As you indicate in your letter, approximately 28 states currently afford some level of custody protections for service members, but "the states' approaches to this issue vary widely." This statement points out precisely why it is necessary to enact a baseline of federal protections to ensure that our federal military service members are protected in child custody disputes.

Waiting for states to enact their own laws is not a strategy that we should employ to protect service members in a *federal* military. It is my hope that you will reconsider your opposition, and work with my office to resolve this issue. I look forward to hearing from you, and talking with you directly when you next testify before the House Armed Services Committee.

Sincerely,

Michael R. Turner
Member of Congress