

DRAFT LETTER

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U.S. Department of State
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Dear Ms. Carlson,

The National Conference of Commissioners on Uniform State Laws (NCCUSL) has followed with interest the deliberations of the Hague Conference on Private International Law, which is working toward a Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. As you are aware, NCCUSL has long been involved in the recovery of family support in the United States and is pleased to see steps being taken to address support issues in an international context.

We also appreciate the courtesies you have extended to NCCUSL to be informed about the process. Two of our Commissioners, Harry Tindall of Texas and Battle Robinson of Delaware, participated in the recent "Experts Meeting" to discuss the draft Convention. Commissioner Robinson will attend the upcoming session at The Hague. A member of the U.S. Delegation to the Conference, Professor John J. Sampson, was the Reporter for the Uniform Interstate Family Support Act promulgated by NCCUSL. They have reported to NCCUSL on the substantial progress that has been made by the Hague Conference and were particularly pleased that the recent "Experts Meeting" exhibited considerable consensus within the United States on policies reflected in the current draft.

In its review of the draft, NCCUSL has noted three areas of concern and believes the draft could be strengthened by further attention to these areas. NCCUSL is therefore hopeful that, at the forthcoming session at The Hague, the United States delegation will press for further consideration of these three issues.

The first is the matter of multiple orders and the desirability of providing a mechanism for determining the controlling order. We note with approval the provisions in the draft Convention that are designed to reduce the number of orders. We are well aware of the constraints on the Conference in dealing with this issue in the context of an international convention. But, NCCUSL's long experience with establishment, enforcement, and modification of child support in the United States has taught that the existence of multiple orders will remain a vexing problem for agencies, courts and litigants until some method of resolving the issue is developed. We understand that the Conference has discussed this issue but has not been able to resolve it. NCCUSL encourages additional efforts with the hope that the matter could be addressed before the Convention becomes effective.

Second, NCCUSL urges that the draft Convention be strengthened with respect to the role of private attorneys in the recovery of child support. We understand that the draft Convention contemplates such involvement, but we think the draft would be clearer and the final

document would garner important support from the Bar in the United States if the role of private attorneys is spelled out explicitly, rather than being left implicit. A separate Article with respect to direct requests, as well as additional definitions of terms used in the draft Convention, will be helpful in guiding attorneys.

A final area of concern is the concept in the draft Convention that “authentic instruments” be recognized and enforced in the same manner as court orders. Apparently, an “authentic instrument” is a private agreement, usually between a support obligor and obligee, which receives some form of endorsement by a public official but has not been accepted by a court. NCCUSL questions whether enforcement of these agreements, as contemplated by the current draft, would be accepted in this country. In the United States such essentially contractual agreements are subject to a different set of procedures and enforcement remedies than are obligations established by court order. And, as the United States’ recent proposal regarding the draft Convention points out, there would also be concern about the absence of Court review of the fairness of the agreements. NCCUSL recognizes that the provisions touching on “authentic instruments” remain bracketed in the draft and that the United States will be asking for further clarification and discussion on the issue and possible limitations on how such agreements are recognized and enforced. NCCUSL urges careful review by the United States delegation of the impact of the current proposal with respect to “authentic instruments”.

Thank you for the opportunity to comment. NCCUSL appreciates all you have done to expand opportunities for children to receive adequate and timely support and looks forward to being able to enthusiastically support and endorse the final product of the Conference.

Sincerely yours,

Howard J. Swibel
President