

**From:** Michael S. Coffee

**To:** Battle Robinson

**Sent:** Wednesday, February 26, 2014 1:18 PM

**Subject:** Extent of UCCJEA Amendments for Purposes of the Child Protection Convention

Battle,

Thank you again for the opportunity to express my thoughts regarding the extent of the amendments to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) that are appropriate for the implementation of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Child Protection Convention). I offer these thoughts in the context of our continued consideration of U.S. implementation of the Child Protection Convention.

As you are likely aware, we are still in the process of considering the appropriate federal model to implement the Child Protection Convention. In particular, we can look to conditional spending or cooperative federalism.

We are looking to conditional spending, which is also the model to be used for the implementation of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Child Support Convention). There, the provision of federal funding would be linked to U.S. state enactment of the 2008 amendments to the Uniform Interstate Family Support Act (UIFSA). Where a U.S. state does not enact the entirety of the 2008 amendments, there may be a question as to whether it will receive funding. I note, for example, that the 2008 amendments change "State" to "state" in provisions unrelated to the implementation of the Child Support Convention. Should a U.S. state decide not to make those changes unrelated to the Child Support Convention, there will likely be review and consideration of that state enactment at the federal level. If the decision is that funding will continue despite limited enactment of the 2008 UIFSA amendments, the inclusion of these extraneous provisions will have added a level of complexity to the process. If, however, the decision is otherwise, the inclusion will have done much worse.

We are also considering cooperative federalism. Under that approach, U.S. state law would implement the Child Protection Convention at the state level if a state adopts the amended UCCJEA. If a state does not adopt the amended UCCJEA, federal law would govern in that state. If a state purports to adopt implementing legislation that is materially inconsistent with the federal act or the amended UCCJEA, the state statute would be, to the extent of the inconsistency, preempted by the federal act. In this situation, should a U.S. state adopt some, but not all, of the amendments to the UCCJEA, a judge would need to determine whether the U.S. state law is materially consistent with the uniform act. At a minimum, this would allow for additional litigation and could add additional burden on judges. Where the Child Protection Convention is intended, in part, to simplify processes associated with child support orders, this additional confusion and delay would run counter to one of the purposes of the Convention.

For these reasons, in light of the many complexities associated with the Child Protection Convention, the implementation of the Convention will be greatly assisted were the amendments to the UCCJEA to be limited to those necessary for implementation of that Convention.

Please let me know if you, or others, would like to discuss this very important issue.

Thanks.

*Mike*

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