

# Roadblocks to Finding Home: Traditional Domicile Analysis' Fundamental Unworkability for Military Families

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*Domicile, or one's "true home," has ramifications about personal jurisdiction, federal court diversity jurisdiction, taxation, and family law. Typically, domicile is determined by physical presence in a location and intent to remain there indefinitely. But for military personnel and their families, general common law principles and statutory reforms create more barriers and complications to establishing and maintaining a domicile of choice than the civilian population typically faces. These barriers expose military families—especially those who relocate frequently—to increased litigation risks, such as tax enforcement suits, if they fail to take additional judicially-recognized steps to make their domiciles clear.*

*This Note demonstrates the ways in which the common law and statutory domicile framework has proven unworkable for military personnel and advocates for reconceptualizing it to better serve those affected and to comport with the doctrine's underlying purposes. Part I describes the modern common law approach to domicile analysis and explores how legislative reforms have modified the traditional analysis for military personnel and spouses. Part II details the practical problems military personnel face in establishing a domicile of choice, focusing on the ways in which certain legal and financial considerations disincentivize military families from establishing and maintaining domicile in a manner courts can clearly analyze through the existing framework. Part III evaluates possibilities for reforming the domicile framework. It concludes that an amendment to the existing statutory scheme should give military families the option to establish a new domicile of choice via formal declaration with each new duty station, which would drastically simplify domicile analysis and reduce litigation, while still preserving the core functions of domicile.*

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## INTRODUCTION

The reality of “home” for military personnel comes with practical and legal complications unfamiliar to most civilians. Moving pursuant to military orders restructures the financial obligations of servicemembers and their spouses to different states and creates a legal landscape many of these individuals find difficult to navigate.<sup>1</sup> Servicemembers whose long-term plans change over the course of their careers may struggle to make sense of instructions they receive from the military to maintain ties with the state where they plan to retire.<sup>2</sup> They may fail to recognize the central role that their states of legal residence, or “domiciles,” will play in organizing their lives—and the difficulty of establishing and maintaining domicile. Military families may face added confusion surrounding the location of each individual’s domicile, particularly when their children have different states of birth.<sup>3</sup>

Domicile serves the important function of identifying an individual’s place in the broader American legal system. Basic fairness concerns require that individuals have a clear picture of their legal obligations so that they can shape their behavior accordingly.<sup>4</sup> As such, an individual should be able to identify their domicile—their one “true home” and place that can always exercise

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1. See, e.g., wthecoyote, *State domicile/residency questions (with respect to moving and separating from the military while married to another servicemember)*, REDDIT (Mar. 16, 2019), [https://www.reddit.com/r/tax/comments/b1t5hs/state\\_domicileresidency\\_questions\\_with\\_respect\\_to/](https://www.reddit.com/r/tax/comments/b1t5hs/state_domicileresidency_questions_with_respect_to/) [<https://perma.cc/5HB8-6E3W>] (expressing uncertainty about where a recently retired servicemember and still-active duty spouse should file taxes and how their recent actions might affect their domiciles); meghabucks, *State tax question for military spouse—am I eligible to claim my husbands [sic] domicile as my own for tax purposes?*, REDDIT (Aug. 2, 2020), [https://www.reddit.com/r/MilitaryFinance/comments/i2i9od/state\\_tax\\_question\\_for\\_military\\_spouse\\_am\\_i/](https://www.reddit.com/r/MilitaryFinance/comments/i2i9od/state_tax_question_for_military_spouse_am_i/) [<https://perma.cc/9RB7-6WMS>] (recounting a military spouse’s difficulties in determining tax obligations after moving between states); J33f, *HALP! - [MSRRA, SCRA, & Military Spouse Taxes] - Am I doing this right??*, REDDIT (July 9, 2022), [https://www.reddit.com/r/tax/comments/vv6e49/halp\\_msrra\\_scra\\_military\\_spouse\\_taxes\\_am\\_i\\_doing/](https://www.reddit.com/r/tax/comments/vv6e49/halp_msrra_scra_military_spouse_taxes_am_i_doing/) [<https://perma.cc/R2CR-DDPC>] (“I’m just unsure of how all this works and Military One Source is less than helpful at times and often just makes things more confusing.”).

2. See, e.g., U.S. ARMY COMBINED ARMS CTR., *What You Should Know About Your State of Legal Residence*, [https://usacac.army.mil/sites/default/files/documents/sja/legal\\_residence.pdf](https://usacac.army.mil/sites/default/files/documents/sja/legal_residence.pdf) [<https://perma.cc/WT9Y-79NA>] (attempting to establish the importance of maintaining connections to one’s state of legal residence, or domicile, to avoid legal complications).

3. The author of this Note grew up in a military family and has personally encountered this difficulty.

4. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(1) cmt. c (AM. L. INST. 1971).

personal jurisdiction over them<sup>5</sup>—with relative ease in order to manage their legal interests. But in light of that overarching purpose, the application of traditional domicile analysis to military personnel and their families, who often move frequently under orders,<sup>6</sup> has gone badly astray and no longer provides a useful framework.

Legal scholars have long struggled to apply the domicile framework to mobile military families,<sup>7</sup> and individual servicemembers rarely have the tools to establish and maintain their domiciles without significant risk of tax litigation and other legal consequences. Yet the current approach requires exactly that—these individuals, equipped with minimal instructions from the military itself, must attempt to navigate the domicile framework in the face of barriers which create special challenges to engaging in the factors courts typically consider persuasive evidence of domicile.<sup>8</sup> Attempts to protect personnel from the consequences of an unintended change or retention of domicile have fallen short and, if anything, have created further confusion.<sup>9</sup> While these problems may not affect all military individuals, they deeply affect many—often in ways that exacerbate existing equity issues within military service, including the financial disparities between enlisted personnel and officers.<sup>10</sup>

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5. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(1) cmt. d (AM. L. INST. 1971). Note, too, the importance of an individual's domicile in determining the availability of federal court subject matter jurisdiction; this jurisdiction exists where adverse parties all maintain different domiciles. See 28 U.S.C. § 1332(c)(1). See also *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954) (defining domicile as a person's "true, fixed, and permanent home").

6. On average, military families move every two and a half years. See *Effects of Moving on Military Families*, MIL. FAM. ADVISORY NETWORK, <https://www.mfan.org/topic/moving-permanent-change-of-station/effects-of-moving-on-military-families/> [<https://perma.cc/N8FY-NZ6M>]. And approximately 400,000 military families move each year. Mariel Padilla, *When the Military Orders Families to Move, Spouses Are Left to "Figure it Out,"* 19TH NEWS (Nov. 2, 2022), <https://19thnews.org/2022/11/military-families-moving-pcs-season/> [<https://perma.cc/39M2-Y97Y>].

7. See *infra* Part II.A (sampling the large body of scholarship, spanning decades, offering practical guidance to attorneys attempting to navigate this field of law).

8. See *infra* Part II.B (discussing the barriers that stand in the way of military families' ability to purchase homes, live off base, and vote in a previous residence).

9. See *infra* Part II.C (discussing how statutory reforms misconstrue the domicile framework and mislead personnel about how to establish and maintain domicile).

10. See *infra* Part II.B.2.a (discussing the decision to live on base); see also Appendix A, *infra* (discussing how the structure of the military's basic allowance for housing will more often prevent enlisted personnel from living off base and, consequently, prevent them from establishing a new domicile).

Though the relevant portions of the statutes governing military domicile have not been meaningfully amended in recent years,<sup>11</sup> a few proposals have suggested altering the traditional analysis to better serve military families.<sup>12</sup> None, however, have placed sufficient emphasis on simplifying the framework rather than further complicating it, nor have they addressed the inequities that the current doctrine both creates and reinforces. Effective reform must prioritize these outcomes.

Accordingly, this Note argues that Congress should amend the existing statutory scheme to allow military families to opt into a new domicile formally with each new mandated change in station, rather than preserve the traditional common law requirements that they establish and maintain domicile through other means. Part I outlines the historical and legal background of domicile law. Part II details the practical challenges with the doctrine's application for military personnel. Finally, Part III explains this Note's recommendation to allow military personnel and their families to opt into a new domicile with each permanent change of station, which would remedy the problems the current framework creates and better support the core purposes of domicile doctrine.

## I. HISTORICAL AND LEGAL BACKGROUND OF DOMICILE DOCTRINE

The traditional common law concept of “domicile” attempts to identify an individual's true home in order to create predictability and consistency in legal administration.<sup>13</sup> To that end, an individual has only one domicile at a time.<sup>14</sup> Successfully establishing a new domicile requires both physical presence and an intent to remain indefinitely, which courts evaluate using a multi-factor balancing test.<sup>15</sup> To simplify the domicile framework

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11. See Dean W. Korsak, *The Hunt for Home: Every Military Family's Battle with State Domicile Law*, 69 A.F. L. REV. 251, 270 (2013); see also 50 U.S.C. § 4001, the most recent amendment to the statute governing military domicile, discussed *infra* Part I.B.

12. See *infra* Part III.B (discussing one proposal to use an inherent factors analysis to determine military personnel's domiciles, and another proposal to entirely replace the domicile framework with habitual residence).

13. See *Hertz Corp. v. Friend*, 559 U.S. 77, 94–95 (2010) (discussing the “nerve center” approach to corporate domicile, which recognizes these values along with the importance of “protecting the justified expectations” of interested parties).

14. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(2) (AM. L. INST. 1971).

15. See Wendy P. Daknis, *Home Sweet Home: A Practical Approach to Domicile*, 177 MIL. L. REV. 49, 53 (2003) (noting that formal declarations of intent do not sufficiently establish domicile, with the best evidence coming instead from an individual's actual

for military personnel who change residences frequently, Congress has enacted statutory reforms clarifying that an individual's domicile does not change for tax purposes solely as a result of changing residence under military orders,<sup>16</sup> nor solely as a result of changing residence to remain with a spouse under military orders.<sup>17</sup> Because servicemembers still retain the ability to change their domiciles while under orders should they choose to do so,<sup>18</sup> the basic common law framework predominantly applies. Part A of this section details the common law framework, while Part B explains the existing statutory adjustments to that framework.

#### A. MODERN COMMON LAW APPROACH TO DOMICILE

Domicile plays an important role for both corporations and individuals in determining questions of personal jurisdiction, federal court subject matter jurisdiction, and taxation. But while corporations in many respects are the more legally complex operations, the concept of domicile arguably creates greater complications in its application to individuals than to corporate entities. For the latter, determining domicile typically presents a simple endeavor. Corporations are only “at home” in their state of incorporation and where they maintain their principal place of business.<sup>19</sup> Although individual domicile analysis uses the same “at home” language, it attempts to capture—and in fact is completely premised upon—the added, intangible factor of human emotion. Individual domicile consists of two components: (1) actual physical presence in a place and (2) intent to remain there

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behaviors); *see also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Special Note on Evidence for Establishment of a Domicil of Choice (AM. L. INST. 1971).

16. *See* Servicemembers Civil Relief Act, 50 U.S.C. § 4001(a)(1).

17. *See* Military Spouses Residency Relief Act, 50 U.S.C. § 4001(a)(2).

18. *See* Evan M. Stone, *State Taxation and Tax Protection for Military Families*, 35 L.A. LAW. 10, 12–14 (2012).

19. *See* *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 582 U.S. 255, 262 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)); *see also* 28 U.S.C. § 1332(c)(1). Rare cases might present difficulties in determining the location of corporate domiciles. *See, e.g.,* *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 369 n.5 (1972) (referencing confusion over which state contained a corporation's principal place of business because a river avulsion cut off the portion of Iowa containing that corporation). But if state boundaries are sufficiently clear, identifying a corporation's domicile includes only the relatively simple task of determining its state of incorporation, documented by paperwork, and its principal place of business. Though the second component could become somewhat more complex, it is at least limited to objective measures of business activity.

indefinitely.<sup>20</sup> While courts can generally identify physical presence easily, the intent element, which attempts to measure the purely internal state of a person's mind,<sup>21</sup> presents greater difficulties. An individual's subjective intent, the most important factor in identifying domicile, presents the greatest complication for courts making such determinations.<sup>22</sup>

Courts holistically evaluate intent to remain indefinitely based on an individual's manifested intent either to maintain their current domicile or to establish a new one.<sup>23</sup> In this sense, unlike corporate domicile, individual domicile relies on traditional, internal feelings of home. Typically, courts engage in a balancing test of several factors when asking the ultimate question: whether an individual can adequately demonstrate the "present intention to make a home."<sup>24</sup> These factors often include, for example, purchasing or renting a home, registering to vote, obtaining a driver's license, joining social organizations, investing or donating money, and marrying within the state.<sup>25</sup> No factor alone is dispositive,<sup>26</sup> so the military formally encourages servicemembers to engage in as many of the above activities as possible to maintain sufficiently clear ties to their domiciles of choice.<sup>27</sup> For some, these instructions might provide sufficiently clear guidance.<sup>28</sup> But many individuals who have either served in the military or who grew up in a military family will immediately pinpoint the weakness in this

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20. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 15(2), 16, 18 (AM. L. INST. 1971).

21. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 15(2)(b) (AM. L. INST. 1971) (describing this factor as involving an "attitude of mind").

22. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 18 cmt. A (AM. L. INST. 1971) (noting that "[t]he most important factor in identifying the proper state [of domicile] is to be found in the . . . intention or attitude of mind"); RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Special Note on Evidence for Establishment of a Domicil of Choice (AM. L. INST. 1971).

23. See Daknis, *supra* note 15, at 53.

24. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 18 cmt. b (AM. L. INST. 1971).

25. See Daknis, *supra* note 15, at 78–79.

26. See Kit Applegate, Stifel v. Hopkins *Revisited: Domicile and the Effects of Compulsion*, 32 RUTGERS L.J. 583, 620 (2001) (citing CHARLES ALAN WRIGHT ET AL., 13B FEDERAL PRACTICE AND PROCEDURE § 3612 (2d ed. 1984)).

27. See SEYMOUR JOHNSON A.F. BASE OFFICE OF THE STAFF JUDGE ADVOC., CHANGING YOUR STATE OF LEGAL RESIDENCE (2014), <https://www.seymourjohnson.af.mil/Portals/105/Documents/Legal/Changing%20your%20State%20of%20Legal%20Residence.pdf?ver=2016-02-16-161522-827> [<https://perma.cc/9E44-5LMA>].

28. See, e.g., Wallace v. Wallace, 89 A.2d 769, 770 (Pa. 1952) (finding a servicemember to be domiciled in Florida after he made a residence there, "stated that he liked it there and began thinking of it as his permanent home," began the search for a house to purchase and for permanent employment, and engaged in additional actions solidifying his intent to remain indefinitely).

legal framework: not every person can so easily identify the place that feels like their one “true, fixed, principal, and permanent” home.<sup>29</sup>

Though an individual only has one domicile at a time,<sup>30</sup> that domicile can arise in three ways.<sup>31</sup> First, a person automatically acquires their initial “domicile of origin” based on their parents’ domicile at the individual’s time of birth.<sup>32</sup> Second, the individual can subsequently acquire a new domicile of choice as an adult through physical presence and intent to remain indefinitely.<sup>33</sup> Finally, in some cases, an individual’s domicile arises purely as a matter of law, as when minors automatically take on their parents’ new domicile of choice.<sup>34</sup> For military families who move

29. Daknis, *supra* note 15, at 51 (quoting BLACK’S LAW DICTIONARY 501 (7<sup>th</sup> ed. 1999)). See also Ohmbidextrous, Comment to *What is it like for you socially?? (Growing up and now)*, REDDIT (Jan. 26, 2023), [https://www.reddit.com/r/militarybrats/comments/10m02yo/what\\_is\\_it\\_like\\_for\\_you\\_socially\\_growing\\_up\\_and/](https://www.reddit.com/r/militarybrats/comments/10m02yo/what_is_it_like_for_you_socially_growing_up_and/) [https://perma.cc/PWD2-ECZD] (responding, “I never had the feeling of home and still don’t” to an inquiry about how individuals who grew up in military families, or “military brats,” answer the question of where they are from); misterspatial, peripherique, bear5675, Haiky3w, BockBock2000, & adkj2020, Comments to *How many schools have you all been to?*, REDDIT (Sept. 5, 2022), [https://www.reddit.com/r/militarybrats/comments/x69kkf/how\\_many\\_schools\\_have\\_you\\_all\\_been\\_to/](https://www.reddit.com/r/militarybrats/comments/x69kkf/how_many_schools_have_you_all_been_to/) [https://perma.cc/J9HL-D6DN] (all recounting attending at least ten schools before college as military brats); ErikW1thAK, *Has anyone felt that their memory has been impacted by being a military brat?*, REDDIT (Aug. 4, 2022), [https://www.reddit.com/r/militarybrats/comments/wg07hi/has\\_anyone\\_felt\\_that\\_their\\_memory\\_has\\_been/](https://www.reddit.com/r/militarybrats/comments/wg07hi/has_anyone_felt_that_their_memory_has_been/) [https://perma.cc/7BZ6-9N5J] (“When I’m asked about where I grew up I remember many random details about each place in random flashbacks.”); halffdan59, Comment to *Anyone else feel like they don’t have a real home?*, REDDIT (Sept. 11, 2019), [https://www.reddit.com/r/militarybrats/comments/d2z61y/anyone\\_else\\_feel\\_like\\_they\\_dont\\_have\\_a\\_real\\_home/](https://www.reddit.com/r/militarybrats/comments/d2z61y/anyone_else_feel_like_they_dont_have_a_real_home/) [https://perma.cc/3GBK-SDLD] (“I think of ‘home’ [as a military brat] differently than people who have grown up most of their lives in one house or one town, that is a fixed geographic location. I tend to think of ‘home’ as something I carry with me, part portable property and part wherever I am living becomes ‘home’ for now, until the next place.”).

30. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(2) (AM. L. INST. 1971).

31. See Daknis, *supra* note 15, at 52 (citing *Adams v. Smith (In re Estate of Jones)*, 182 U.S. N.W. 227, 228 (Iowa 1921)).

32. See Daknis, *supra* note 15, at 52 (citing *Prentiss v. Barton*, 19 F. Cas. 1276, 1277 (C.C.D. Va. 1918)). In cases where a parent’s domicile is unclear, that uncertainty will naturally extend to their children. The difficulties the existing domicile framework poses for servicemembers therefore implicate their children as well.

33. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 15 (AM. L. INST. 1971). Minors, meanwhile, remain subject to their parents’ domicile of choice. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 22 (AM. L. INST. 1971).

34. See Daknis, *supra* note 15, at 56 (citing *Adams v. Smith (In re Estate of Jones)*, 182 U.S. N.W. 227, 228–29 (Iowa 1921)). See also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 22(1) (AM. L. INST. 1971). At the common law, married women also usually take on the domiciles of their husbands if the two live together. Because married couples who live together will generally share a domicile of choice, it is somewhat unclear whether this rule still applies in modern times. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 21 cmt. a (AM. L. INST. 1971).



frequently, the latter types of domicile are especially relevant. With each move, military personnel and their spouses must actively engage in the process of either acquiring a new domicile of choice or maintaining a previous one, while their children will then by extension adopt or maintain that domicile as a matter of law.

The domicile framework's value rests on one key virtue: simplicity. Complex jurisdictional doctrines and statutes create vague rules<sup>35</sup> that increase litigation costs.<sup>36</sup> By contrast, requiring individuals to maintain a single, identifiable domicile engenders the more favorable outcome of “endowing every person with a ‘personal law’ . . . which determines . . . [their] most important legal interests.”<sup>37</sup> While courts have most often spoken on this issue in the context of general personal jurisdiction over corporations,<sup>38</sup> these principles extend to individual domicile analyses. Courts have expressed a general preference for simple jurisdictional rules, which increase the predictability of legal obligations<sup>39</sup> not just for corporations making financial decisions,<sup>40</sup> but also for individuals evaluating, for example, where they must pay taxes and what laws they might face if they file for divorce.<sup>41</sup> The domicile concept at least theoretically aims to ensure that courts can easily identify the domiciles of both individuals and corporations<sup>42</sup> to create predictability and ease judicial administrative burdens<sup>43</sup>—hence the longstanding rule that domicile indicates one singular place.<sup>44</sup> Traditional domicile analysis arguably fails to adhere to these values of simplicity and

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35. See *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (noting that “[c]omplex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims” and ultimately “diminish the likelihood that results and settlements will reflect a claim’s legal and actual merits”).

36. See *id.* at 94.

37. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(1) cmt. c (AM. L. INST. 1971).

38. See, e.g., *Hertz*, 559 U.S. at 79; *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).

39. See, e.g., *Hertz*, 559 U.S. at 94 (“Simple jurisdictional rules also create greater predictability.”).

40. See *id.* at 94.

41. See U.S. ARMY COMBINED ARMS CTR., *supra* note 2, at 2.

42. See *Daimler*, 571 U.S. at 137 (“[Domicile] affiliations have the virtue of being unique . . . as well as easily ascertainable.”).

43. See *Hertz*, 559 U.S. at 94–95 (quoting *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983) (“recognizing the ‘need for certainty and predictability of result[.]’”) (noting the relative simplicity of applying a “nerve center” approach)).

44. See *Daimler*, 571 U.S. at 137 (noting that domicile affiliations indicate a singular place).

predictability for individuals in general,<sup>45</sup> but its shortcomings as applied to military families are even starker. Accordingly, this Note addresses a particular application of the framework that desperately needs revision.

## B. LEGISLATIVE REFORM OF MILITARY DOMICILE

Statutory reforms have, to some extent, altered this basic common law framework. In 1940, Congress passed the Soldiers' and Sailors' Civil Relief Act (SSCRA) to provide broad protections to military servicemembers.<sup>46</sup> In 2003, Congress updated the Act, now called the Servicemembers Civil Relief Act (SCRA), to add additional protections and to clarify its language.<sup>47</sup> The current version of the SCRA provides in part that military servicemembers "shall neither lose nor acquire a . . . domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders."<sup>48</sup> In other words, the sole fact of a compelled relocation by the military will not change an individual's domicile for tax purposes.<sup>49</sup>

Importantly, however, the SCRA does not prevent changes in domicile that result from other factors courts typically consider even when those factors themselves ultimately flow from a compelled change in station. Rather, states do consider other factors as potentially indicative that a servicemember has, "even unknowingly," changed domicile.<sup>50</sup> These individuals must therefore do more than simply declare their preferred states to maintain their preferred domiciles;<sup>51</sup> they must establish and

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45. See Kerry Abrams & Kathryn Barber, *Domicile Dismantled*, 92 IND. L.J. 387, 392 (2017) (characterizing domicile in general as "an increasingly unwieldy and unhelpful legal concept").

46. U.S. DEP'T OF DEF., SERVICEMEMBERS CIVIL RELIEF ACT (SCRA), <https://militarypay.defense.gov/Benefits/Servicemembers-Civil-Relief-Act/> [<https://perma.cc/Z7D7-264N>].

47. *Id.*

48. 50 U.S.C. § 4001(a)(1).

49. See Korsak, *supra* note 11, at 288.

50. Stone, *supra* note 18, at 12 (citing *Carr v. Dep't of Revenue*, 2005 WL 3047252 (Or. T.C. Nov. 4, 2005)).

51. Stone, *supra* note 18, at 14 ("[T]he burden is on the service member to establish and maintain legitimate domicile through indicia of domicile or else be subject to challenge. It is not enough to simply declare a tax-favored jurisdiction, nor is it enough to make a half-hearted effort at maintaining the tax-favored domicile."). Formal declarations do carry some weight with courts evaluating domicile, but "their accuracy may be suspect because of

maintain domicile through the same evidentiary factors courts consider for civilians<sup>52</sup> and may even face a higher burden of proof because their presence results from military orders rather than from a totally voluntary choice.<sup>53</sup> Failure to take the same careful steps as other individuals risks tax-related repercussions and other possible consequences should a state decide to scrutinize the domicile of a servicemember to determine their financial and legal obligations to that state.<sup>54</sup>

In 2009, Congress enacted the Military Spouses and Residency Relief Act (MSRRA) as a counterpart to the SCRA to “guarantee the equity of spouses of military personnel with regard to matters of residency.”<sup>55</sup> The relevant portion of the MSRRA provides that military spouses<sup>56</sup> domiciles will also remain unaffected “for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember’s military orders.”<sup>57</sup> Under this statute, spouses face the same burden of proof in establishing and maintaining their domiciles as servicemembers do under the SCRA.<sup>58</sup> The high volume of litigation over MSRRA protections in some states, however, has led at least a few scholars to recommend that military spouses invoke those protections only with caution and legal assistance.<sup>59</sup>

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their self-serving nature.” RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Special Note on Evidence for Establishment of a Domicile of Choice (AM. L. INST. 1971).

52. See Stone, *supra* note 18, at 14.

53. See Applegate, *supra* note 26, at 613 (discussing the “special purpose” doctrine).

54. See Stone, *supra* note 18, at 14 (“[S]tates are within their authority to critically examine service members’ claims of SCRA-protected out-of-state domicile and overt acts within their state.”) (referencing Carr v. Dep’t of Revenue, 2005 WL 3047252 (Or. T.C. Nov. 4, 2005) (engaging in one such critical examination) and Palandech v. Dep’t of Revenue, 2011 WL 1045641 (Or. T.C. Mar. 23, 2011) (engaging in another)).

55. S. Rep. No. 111-46, at 1 (2009).

56. The statutory framework the MSRRA provides for military spouses is flawed, but even it exceeds the complete lack of comparable relief provided to any non-traditional partners who are not actually spouses. See BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “spouse” as a “husband or wife by lawful marriage”).

57. 50 U.S.C. § 4001(a)(2).

58. See Stone, *supra* note 18, at 14.

59. See, e.g., Korsak, *supra* note 11, at 280–83 (documenting at least eighteen cases in the span of a few years where Virginia, a particularly litigious state in this context, brought SCRA-related tax charges before its tax board); Janet H. Fenton, *Military Spouses Residency Relief Act (MSRRA): Use Caution and Read Carefully*, ARMY LAW., Jan. 2010, at 106.

Most recently, in January 2023, President Biden signed into law the Veterans Auto and Education Improvement Act.<sup>60</sup> This Act amended the SCRA to allow married servicemembers and their spouses to use either individual's domicile or the servicemember's current duty station for their tax purposes in a given year. This amendment left in place the SCRA's previous provision preventing these individuals' domiciles from automatically changing because of moving pursuant to military orders, and it declined to incorporate any language that might change the process by which servicemembers and their spouses establish their domiciles.<sup>61</sup> Instead, the amendment's scope is limited to choosing a tax jurisdiction—omitting any mention of personal jurisdiction for other purposes or federal subject matter jurisdiction.<sup>62</sup> Furthermore, the amendment only appears to offer this limited option to married servicemembers and their spouses.<sup>63</sup> In other words, it leaves most of the fundamental complexities of military domicile, and by extension, most of the potential for consequent litigation, untouched.

## II. THE CURRENT DOMICILE FRAMEWORK HAS PROVEN UNWORKABLE FOR MILITARY PERSONNEL

The existing amalgamation of common and statutory domicile law creates an unworkable system for military personnel and their families. Part A of this section demonstrates how, despite efforts by the military to educate its personnel about the pitfalls of domicile doctrine, the legal framework remains frustratingly difficult to navigate. Part B provides examples of how, because of their mobile lifestyles, military families face unusually high barriers to establishing and maintaining domicile through the evidentiary factors courts typically evaluate. Finally, Part C explains why attempted statutory reforms have provided woefully inadequate protections to servicemembers seeking to navigate this legal landscape.

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60. 50 U.S.C. § 4001.

61. See *New Year, New Laws: SCRA Changes*, N.C. STATE BAR – LEGAL ASSISTANCE FOR MIL. PERS. (Feb. 10, 2023), <https://www.nclamp.gov/for-lawyers/additional-resources/new-year-new-laws-skra-changes/> [<https://perma.cc/8U6R-5FSG>].

62. See *id.*

63. See *id.* By this language, non-marital partners seem to fall outside the scope of the amendment's protections.

A. DOMICILE EDUCATION BY THE MILITARY FAILS TO ADEQUATELY CLARIFY LEGAL OBLIGATIONS

In light of the tension between the traditional domicile framework and the mobile existence of many military families, the military itself attempts to provide some piecemeal assistance in explaining the concept of domicile—or “state of legal residence” (SLR)—to its personnel.<sup>64</sup> Informational pamphlets distributed to servicemembers typically distinguish between domicile and the more familiar “home of record” (i.e., the state where individuals enter the military).<sup>65</sup> These pamphlets explain that an individual’s domicile results from physical presence in a location and intent to remain there, and generally list a few examples of ways in which servicemembers can prove domicile, such as registering to vote, purchasing property, and preparing a will.<sup>66</sup> Finally, they usually at least briefly recognize that domicile plays a role in determining servicemembers’ rights and obligations with regards to taxation, voting, divorce, etc.<sup>67</sup>

Despite statutory efforts to give military personnel greater flexibility in choosing and maintaining their preferred domiciles, the information provided by military institutions fails to provide sufficient guidance to individuals attempting to navigate even this adjusted framework. Such guidance may, for example, suggest only that the physical presence requirement evaluates whether an individual has “established a home” without explaining what exactly that phrase means, except for noting that living in an on-base dormitory falls short.<sup>68</sup> Additionally, while the guidance tends to list examples of ways individuals can prove their domiciles, it generally stops short of explaining which factors are most important or how many will generally suffice to prove domicile<sup>69</sup>—though they may ominously note that changing one’s

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64. See, e.g., *What You Should Know About Your State of Legal Residence*, *supra* note 2.

65. See *id.*

66. See *State of Legal Residence Certificate*, MARINES CORPS FORCES RESERVE, [https://www.marforres.marines.mil/Portals/116/Docs/G-1/IPAC/Documents/SelRes/STATE\\_LEGAL\\_RESIDENCE\\_Sgt\\_Doe.pdf](https://www.marforres.marines.mil/Portals/116/Docs/G-1/IPAC/Documents/SelRes/STATE_LEGAL_RESIDENCE_Sgt_Doe.pdf) [<https://perma.cc/N7X5-A6XS>].

67. See, e.g., *What You Should Know About Your State of Legal Residence*, *supra* note 2; *Changing Your State of Legal Residence*, *supra* note 27. Note, however, that not every source details each possible consequence of a domicile determination. The Seymour Johnson pamphlet, for example, does not specifically list divorce, though it does mention property settlement generally.

68. See *Changing Your State of Legal Residence*, *supra* note 27.

69. See JB Langley-Eustis Law Center, *Domicile & State of Residency*, JOINT BASE LANGLEY-EUSTIS (Apr. 2017), <https://www.jble.af.mil/Portals/46/Documents/Units/Air->

SLR is “no easy matter”<sup>70</sup> and may come with “inconvenien[ces] or additional costs.”<sup>71</sup> And though these documents recognize that domicile implicates many areas of life for servicemembers, they frequently fail to explain how and why domicile will determine “whether or not [an individual] receives privileges from a state”<sup>72</sup> and instead leave servicemembers to attempt to interpret such vague, unhelpful language on their own.

Further, these documents make certain assumptions that may contradict many servicemembers’ lived realities. They often note, for instance, that an individual’s domicile refers to the place where they intend to retire.<sup>73</sup> Some servicemembers may have no idea of where they plan to retire, and those who have a long military career may not make that decision for many years after joining.<sup>74</sup> These pamphlets, however, may give as little information as merely noting that maintaining a clear domicile is critical for personnel and their spouses to avoid, broadly, “future problems.”<sup>75</sup> Moreover, they do so without providing information about what additional complications might arise in the event that individuals change their minds about their domiciles—a possibility inherent to the concept’s very nature.<sup>76</sup>

The reality that most formal correspondence from the military does not—or perhaps cannot—provide sufficient guidance to personnel unfamiliar with the legal nuances of domicile is supported by decades of legal scholarship attempting to offer practical guidance to personnel and their attorneys in this specific

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Force-Units/Legal/Domicile%20and%20State%20of%20Residency.pdf?ver=2017-04-25-154914-050 [https://perma.cc/2HT3-M58M]; *Changing Your State of Legal Residence*, *supra* note 27; *What You Should Know About Your State of Legal Residence*, *supra* note 2; *State of Legal Residence Certificate*, *supra* note 66.

70. *What You Should Know About Your State of Legal Residence*, *supra* note 2.

71. *Id.*

72. *Id.*

73. *See, e.g., id.*; *see also* JB Langley-Eustis Law Center, *supra* note 69 (“[Domicile] is the place to which the member intends to return at the conclusion of his or her military service.”).

74. *See, e.g.,* jmpf619, Duuuuude84, & Bikesandkittens, Comments to *How did you decide where to retire?*, REDDIT (Jan. 10, 2023), [https://www.reddit.com/r/MilitaryFIRE/comments/108oitl/how\\_did\\_you\\_decide\\_where\\_to\\_retire/](https://www.reddit.com/r/MilitaryFIRE/comments/108oitl/how_did_you_decide_where_to_retire/) [https://perma.cc/W7ZW-QL5Y] (discussing the process of deciding where to live after retiring from military service and indicating that the decision for these individuals did not take place until later in their careers).

75. *See What You Should Know About Your State of Legal Residence*, *supra* note 2.

76. *See Applegate*, *supra* note 26, at 598.

area, including since the SCRA's passage.<sup>77</sup> Scholars recognize that in the military context, the traditional domicile framework is peculiar,<sup>78</sup> deceptive,<sup>79</sup> difficult,<sup>80</sup> and most of all, confusing.<sup>81</sup> The fact-intensive nature of domicile means that attorneys often disagree about the location of an individual's domicile, which gives rise to additional challenges in predicting court behavior.<sup>82</sup> These difficulties face even seasoned attorneys tasked with assisting servicemembers whose domiciles determine the outcome of their tax responsibilities, divorce proceedings, wills and probate processes, and qualifications for in-state tuition<sup>83</sup>—painting an even bleaker picture for those servicemembers attempting to work out the details of their domicile independently based on a few vague pamphlets.

#### B. THE COMMON LAW FRAMEWORK CREATES FUNDAMENTAL INCOHERENCIES

The complications that arise in attempts by military families to establish a new domicile or to maintain an old one blur the line between the two components of the common law framework: physical presence and intent to remain indefinitely. Ultimately, the mobile lifestyle of many military families often implicates both prongs. This section begins by detailing how, although military

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77. See, e.g., John Owen, *Where Do You Live?*, JAG J., Nov. 1949, at 8; Jerry R. Siefert, *Residence and Domicile of Servicemen*, JAG J., Feb. 1957, at 5; John H. Lewis, Jr., *Domicile of Military Personnel*, 5 A.F. L. REV. 3 (1963); Thomas R. Sanftner, *The Serviceman's Legal Residence: Some Practical Suggestions*, 26 JAG J. 87 (1971); Henry W. Comstock, *Establishing or Changing Domicile When Clients Have Multiple State Contacts*, 12 EST. PLAN. 330 (1985); Larry Carpenter, *The Soldiers and Sailors Civil Relief Act: Legal Help for the Sudden Soldier*, 25 ARK. LAW. 42 (1991); Gilbert Veldhuyzen & Samuel F. Wright, *Domicile of Military Personnel for Voting and Taxation*, 1992 ARMY LAW. 15 (1992); Daknis, *supra* note 15; Jeffrey P. Sexton, *Staying Connected: Home of Record Not Always the Same as "Domicile" Under the Servicemembers Civil Relief Act's Taxation Protections*, 2006 ARMY LAW. 27 (2006); Janet H. Fenton, *Military Spouses Residency Relief Act (MSRRA): Use Caution and Read Carefully*, 2010 ARMY LAW. 106 (2010); Evan M. Stone, *State Taxation and Tax Protection for Military Families*, 35 L.A. LAW. 10 (2012); Dean W. Korsak, *The Hunt for Home: Every Military Family's Battle with State Domicile Law*, 69 A.F. L. REV. 251 (2013); Mark E. Sullivan, *Help!—It's My First Military Divorce Case*, 40 VT. BAR J. 28 (2014); Mark E. Sullivan & Kristopher J. Hilscher, *Avoiding Mines: What Counsel Should Know When Handling a Military Divorce Case*, 53 FAM. L.Q. 143 (2019).

78. See Lewis, *supra* note 77, at 3.

79. See Sanftner, *supra* note 77, at 92.

80. See Daknis, *supra* note 15, at 50.

81. See Stone, *supra* note 18, at 14.

82. See Siefert, *supra* note 77, at 5.

83. See *What You Should Know About Your State of Legal Residence*, *supra* note 2.

families are physically present in each new place of residence, that presence results from compulsion rather than from a fully autonomous choice. This dynamic creates a presumption against intent to remain indefinitely that undermines any attempt to establish a new domicile.<sup>84</sup> It goes on to demonstrate that military families face additional, specific barriers to engaging in some of the evidentiary factors courts consider in evaluating an individual's domicile—such as home ownership, off-base housing, and voting behavior—that civilians typically do not encounter. While the experiences of military families vary greatly, at least some will encounter significant barriers to establishing and maintaining their domiciles of choice, at great and perhaps unwitting risk of tax-related repercussions and other legal consequences.<sup>85</sup>

### 1. *Physical Presence Requirement*

Though the intent-to-remain requirement raises the most extensive practical difficulties for military families operating within the traditional domicile framework, conceptual problems arise initially with respect to the physical presence requirement. The domicile framework and compulsory military relocation face a fundamental mismatch because personnel and their families “will make their home wherever they are told to reside and for as long as they are told to remain in a particular location.”<sup>86</sup> In other words, unlike most civilians, these individuals lack autonomy over their actual physical presence in a state. The act of establishing a domicile, which “by its very nature pre-supposes an element of voluntariness and liberty,”<sup>87</sup> is therefore hard to reconcile with the compulsory nature of military relocation.

Courts have indeed attached significance to the compulsion military servicemembers face in determining their domiciles,<sup>88</sup> noting that they lack true free choice in their physical residence.<sup>89</sup> Some federal courts have held that physical presence resulting

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84. See Applegate, *supra* note 26, at 613 (quoting J.H. Beale, *Proof of Domicil*, 74 U. PA. L. REV. 552, 562 (1926)).

85. See Stone, *supra* note 18, at 12 (“The subjectivity of intent often requires courts to look at objective factors and draw conclusions that may conflict with what a service member believes to be his or her domicile.”).

86. Korsak, *supra* note 11, at 294–95.

87. Applegate, *supra* note 26, at 598 (discussing the intent requirement, but the idea lends itself nicely to each component of domicile).

88. See *id.* at 593–94 (discussing *Stifel v. Hopkins*, 477 F.2d 1116 (6th Cir. 1973)).

89. See *Harris v. Harris*, 215 N.W. 661, 662 (1927).



from legal or physical compulsion cannot establish a new domicile for an individual,<sup>90</sup> while others instead have treated compulsion as creating a rebuttable presumption against establishing a new domicile.<sup>91</sup> Courts have further distinguished between total legal or physical compulsion, such as incarceration, and economic or “special purpose” compulsion, which technically leaves room for individual choice.<sup>92</sup> Military servicemembers operate under the latter type of compulsion.<sup>93</sup> While they remain subject to military orders involving relocation, these individuals do retain the option to leave military service should they so choose. By contrast, incarcerated individuals cannot simply decide to leave prison.

Despite operating under this less severe form of compulsion, military personnel face heightened barriers to establishing new domiciles because of the so-called “special purpose doctrine.” Although residence typically provides prima facie evidence of domicile to meet the first requirement of physical presence, when residence only fills a temporary purpose, it becomes “deprive[d] . . . of all evidential value”<sup>94</sup> under the special purpose doctrine. Recent decisions have continued to recognize the special purpose doctrine, which by definition affects any military family wishing to establish a new domicile while under orders.<sup>95</sup> On average, military families move every two to three years and therefore may have to overcome the presumption against domicile quite

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90. See Applegate, *supra* note 26, at 588 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 17 cmt. a (AM. L. INST. 1969)). Applegate also highlights cases such as *United States v. Stabler*, 169 F.2d 995, 998 (3d Cir. 1948) (finding that domicile involves “some picking out of a place to live in by the individual concerned”) to support this proposition.

91. See Applegate, *supra* note 26, at 590 (citing *Stifel*, 477 F.2d at 1126 (holding that, because “the loss of the right to invoke the diversity jurisdiction of federal courts is not a collateral punishment of incarceration,” individuals who are involuntarily present in a location will have the opportunity to rebut a presumption against domicile)).

92. See Applegate, *supra* note 26, at 599–600 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 17 cmt. a (AM. L. INST. 1969)) (noting that “[t]he law distinguishes between different kinds and degrees of compulsion” because “[f]ew persons . . . enjoy complete freedom in the selection of their home”).

93. See Applegate, *supra* note 26, at 600 (arguing that servicemembers who reside off base have the necessary freedom of choice to change residences and identifying *Stifel*, 477 F.2d 1116, as having drawn parallels between the restrictions facing servicemembers and prisoners).

94. J.H. Beale, *Proof of Domicil*, 74 U. PA. L. REV. 552, 562–63 (1926). See also Applegate, *supra* note 26, at 613.

95. See, e.g., *Whitener v. Burnett*, Civ. No. 10-865 BRB/RHS, 2010 WL 11618919, at \*3 (D.N.M. Dec. 13, 2010); *McHenry v. Astrue*, No. 12-2512 SAC, 2012 WL 6561540, at \*2 (D. Kan. Dec. 14, 2012).

frequently, depending on how often they decide they would prefer to eventually make a permanent home at their new duty station.<sup>96</sup>

The special purpose doctrine in some ways blurs the line between domicile's two traditional requirements. While courts have typically described the doctrine as primarily pertaining to the intent-to-remain requirement,<sup>97</sup> its application fundamentally undermines the physical presence prong as well by stripping its evidentiary value. Military families must therefore rely on their ability to establish domicile almost entirely by engaging in those factors courts consider persuasive evidence of intent to remain indefinitely.<sup>98</sup> Here too, however, practical realities impose additional barriers.

## 2. *Intent-to-Remain Requirement*

The intent-to-remain requirement presents the greatest complications for military personnel and their families who attempt to establish a new domicile or to maintain an old one after moving away. Courts consider many factors when evaluating an individual's subjective, internal intent to remain in a place indefinitely and, while no one factor is dispositive, military families often face certain barriers to establishing some of those factors that civilians, who move less frequently, do not.<sup>99</sup> The problems surrounding base housing, home ownership, and voting behavior best illustrate these complications.

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96. *Celebrating Military Children*, U.S. DEPT OF DEF., <https://www.defense.gov/Spotlights/Month-of-the-Military-Child/> [<https://perma.cc/3TZ4-9D8G>].

97. *See, e.g.*, *Stifel v. Hopkins*, 477 F.2d 1116, 1127 (6th Cir. 1973) (Edward, J., concurring) (suggesting that “a declaration of intent to remain in the state concerned is greatly weakened . . . by the obvious lack of choice.”).

98. *See infra* Part II.B.2.

99. Certain classes of civilians may in fact face similar complications in their own domicile analyses, particularly those whose careers make their lifestyles relatively mobile, and young individuals who are unable to establish some of the traditional domicile-proving factors, such as home ownership, because of financial barriers or uncertainty about where they want to live in the long term. A broader reformulation of domicile analysis may benefit these groups of civilians as well as military personnel, but these cases are also distinguishable from those of servicemembers who ultimately act under a particular type of compulsion that civilians do not typically face.

a. *Base Housing*

Although courts may not traditionally consider where an individual lives within a state when evaluating domicile,<sup>100</sup> whether military servicemembers live on or off base is perhaps the most important factor in determining whether they can successfully establish a domicile of choice in their place of residence. At least some courts have held that personnel are *per se* unable to establish a new domicile when they reside on base,<sup>101</sup> even if their families live on base with them.<sup>102</sup> While this rule still leaves room for military personnel to establish new domiciles in states where they live pursuant to military orders, doing so requires that they acquire additional housing off base to establish their intent to remain indefinitely.<sup>103</sup> At least one court has held that even living for one year off base in a rented house was not a substantive piece of evidence in favor of establishing domicile,<sup>104</sup> suggesting that to establish a new domicile while under orders, personnel would need to maintain an off-base residence for a longer period of time, depending on the other factors at issue. But because of significant incentives for military personnel to live with their families on base when this option is available, this rule functionally precludes many military families from establishing a new domicile of choice at all.

Whether a servicemember lives on or off base is not necessarily a useful indicator of their intent to remain in a state indefinitely. When possible, the United States government provides military families with base housing where they are not required to pay rent, utilities, or other housing costs.<sup>105</sup> Servicemembers and families

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100. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(1) cmt. f (AM. L. INST. 1971).

101. See Applegate, *supra* note 26, at 593 (citing *Stifel*, 477 F.2d at 1122).

102. See *Stifel*, 477 F.2d at 1122.

103. See *id.* at 1116. *Stifel's* statement of this rule cited a long line of precedents for it: e.g., *Deese v. Hundley*, 232 F. Supp. 848, 850 (W.D.S.C. 1964) (explaining that moving to a base does not involve “independent intention,” while moving off that base can demonstrate intention to become a domiciliary of a state); *Harris v. Harris*, 205 Iowa 108, 215 N.W. 661 (1927). More recent decisions have continued to reaffirm the rule. See, e.g., *Walker* by *Walker v. Pearl S. Buck Found., Inc.*, Civ. No. 94-1503, 1996 WL 706714 (E.D. Pa. Dec. 3, 2016); *Garcia v. Sanchez*, Civ. No. 02-1646 (ADC), 2008 WL 7765261 (D.P.R. Sept. 30, 2008); see also Applegate, *supra* note 26, at 602 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 17 cmt. d (AM. L. INST. 1969)).

104. See *Garcia*, 2008 WL 7765261, at \*6.

105. KRISTIE L. BISSELL ET AL., *MILITARY FAMILIES AND THEIR HOUSING CHOICES* 2-2 (2010).

who decline base housing instead receive a monthly Basic Allowance for Housing, or BAH, that attempts to provide “equitable housing compensation” based on local rental markets, but not necessarily to cover all housing costs.<sup>106</sup> The military calculates servicemembers’ BAH based on their rank, whether they have dependents, and the location of the duty station where they work.<sup>107</sup> For those who accept it, the BAH does not compensate for the lack of infrastructure available to those who live on base, such as commissary and hospital facilities; indeed, the military has expressly disclaimed BAH as a hardship allowance.<sup>108</sup>

Because BAH rates do not necessarily closely correspond to fair market rates in any given area,<sup>109</sup> many military families, especially those with tight finances,<sup>110</sup> may lack a meaningful choice between on- and off-base housing when offered the former. Importantly, unlike on-base housing provisions, BAH does not increase with family size—it only considers whether the servicemember has any dependents or none.<sup>111</sup> Families with more children will therefore less frequently be able to use their BAH to acquire comparable housing to what they would receive on base, where they would be unable to acquire a domicile. Further, BAH rates are lower for enlisted personnel than for officers, meaning that living off base—and therefore having the chance to establish a new domicile of choice—often presents a less realistic option for enlisted families.<sup>112</sup> To acquire a new domicile of choice,

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106. *Basic Allowance for Housing*, DEF. TRAVEL MGMT. OFF., <https://www.travel.dod.mil/Allowances/Basic-Allowance-for-Housing/> [https://perma.cc/WME3-9SEC].

107. *Frequently Asked Questions: BAH Basics*, DEF. TRAVEL MGMT. OFF. (Mar. 25, 2022), <https://www.travel.dod.mil/Support/ALL-FAQs/Article/2906543/bah-basics/> [https://perma.cc/J3U5-N5UZ].

108. *See id.*

109. A sample of BAH rates at military bases across the United States, set against fair market rates in the same areas, indicates that BAH rates at least sometimes fall short of fair market rent rates. *See infra* Appendix A for a more detailed analysis; *see also* BLUE STAR FAMS., *MILITARY FAMILY LIFESTYLE SURVEY 2022 COMPREHENSIVE REPORT 65–66* (2022) (documenting that many military families have reported their BAH being insufficient to cover off-base rental housing, which forces them to pay hundreds of dollars in monthly out-of-pocket expenses).

110. Factors such as childcare costs, food insecurity, and high spousal unemployment rates contribute to many military families’ financial difficulties. *See id.* at 11.

111. *Frequently Asked Questions: BAH Basics*, *supra* note 107.

112. Commissioned officers hold four-year college degrees and complete officer training, while enlisted personnel must have a high school degree and complete basic training. *See Understanding the Roles of Military Officers and Enlisted Servicemembers*, MIL. ONE SOURCE (Sept. 17, 2021), <https://www.militaryonesource.mil/military-basics/new-to-the->

servicemembers and families who forgo the BAH must acquire additional off-base housing, a burden that, if affordable at all, would likely cancel out the financial benefits of living on base.

Other benefits of living on base further incentivize personnel to accept that option when available. In many ways, bases function as gated communities. The opportunity to live on base comes with access to high-performing schools,<sup>113</sup> as well as commissaries, hospitals, and other resources.<sup>114</sup>

Financial and practical incentives aside, personnel sometimes lack the option to live off base at all. The military formally requires certain individuals to live on base, particularly those in mission essential jobs and those new to service.<sup>115</sup> These affected individuals therefore cannot establish domicile at a new duty station without acquiring additional off-base housing.<sup>116</sup> Given these considerations, an equitable domicile framework for military personnel must include reconsideration of the rule precluding servicemembers from establishing domicile while living on base so that the benefits provided by base housing do not fundamentally undermine individuals' opportunities to establish a domicile of choice.

### b. *Home Ownership*

In determining a person's intent to remain in a location, courts consider another housing-related factor: "whether a dwelling was purchased or rented."<sup>117</sup> While renting a home can serve as evidence of intent to remain,<sup>118</sup> some states give more weight to

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military/military-officer-and-enlisted-service-members-roles/ [https://perma.cc/9H37-KN32].

113. See *DoD Schools Ranked Best in the United States on Nation's Report Card*, U.S. DEP'T OF DEF. (Oct. 24, 2022), <https://www.defense.gov/News/Releases/Release/Article/3197274/dod-schools-ranked-best-in-the-united-states-on-nations-report-card/> [https://perma.cc/RX32-DT8M]; Karen Jowers, *Students' Scores in DoD Schools Among Highest in the Nation, Report Says*, MIL. TIMES (Jan. 25, 2022), <https://www.militarytimes.com/the-home-front/2022/01/25/students-scores-in-dod-schools-among-highest-in-the-nation-report-says/> [https://perma.cc/4DN4-PPJW].

114. See *Frequently Asked Questions: BAH Basics*, *supra* note 107.

115. See *Handbook for Military Life: Benefits 2012*, MIL. TIMES (2012), <https://ec.militarytimes.com/benefits-handbook/housing/base-housing/> [https://perma.cc/ED27-QQ9G].

116. See *Stifel v. Hopkins*, 477 F.2d 1116, 1122 (6th Cir. 1973).

117. *Korsak*, *supra* note 11, at 265; *District of Columbia v. Murphy*, 314 U.S. 441, 457 (1941)).

118. See *Korsak*, *supra* note 11, at 265 (citing *Murphy*, 314 U.S. at 457).

home ownership.<sup>119</sup> In the military context, courts have repeatedly found that purchasing off-base housing alone does not establish a new domicile.<sup>120</sup> However, courts do consider home ownership as one piece of evidence in determining a servicemember's intent to remain at their current duty station.<sup>121</sup>

Purchasing a home is often far less financially feasible than renting one<sup>122</sup>—a problem that is compounded for those military families who move frequently.<sup>123</sup> Individuals and families who frequently relocate must make decisions about where they want to remain more often, and purchasing a home with every new desired domicile may not be financially realistic or responsible.<sup>124</sup> Practical realities of owning a home can pose additional barriers for these military families, especially those who move away from the state where they have attempted to establish a domicile by purchasing a home.<sup>125</sup> The more frequently a military family

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119. See Daknis, *supra* note 15, at 54 n.33 (describing the Texas Tax Board's residence status regulations, which set forth a formula by which servicemembers can establish a domicile in Texas by engaging in at least four of eight specified conditions; those conditions include purchasing a residence, but not renting one).

120. See, e.g., *Mudd v. Yarbrough*, 786 F. Supp. 2d 1236, 1250–51 (E.D. Ky. 2011) (explaining that this factor, without more, is insufficient to prove “unmistakable intent” to remain indefinitely); *Purdom v. Gettleman*, Civ. Action No. 08-CV-7-JMH, 2008 WL 695258 at \*4 (E.D. Ky. Mar. 12, 2008); *In re Marriage of Thornton*, 135 Cal. App. 3d 500, 509–10 (Ct. App. 1982).

121. See, e.g., *Mudd*, 786 F. Supp. 2d at 1249 (quoting *Gambelli v. United States*, 904 F. Supp. 494, 497 (E.D. Va. 1995) (citing *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592 (D.C.S.C. 1981))).

122. Home ownership requires a long-term financial commitment. See Alivia McAtee, *Renting vs. Buying a Home: How to Decide in Four Steps*, TIME MAG. (Apr. 28, 2022), <https://time.com/nextadvisor/mortgages/renting-vs-buying-a-home/> [<https://perma.cc/VZ3S-HY7Y>]. Mortgage rates are on the rise, see Erika Giovanetti, *Mortgage Rates Spike to Highest Level in 20 Years*, U.S. NEWS & WORLD REP. (Oct. 17, 2022), <https://money.usnews.com/loans/mortgages/articles/mortgage-market-news-oct-13-2022> [<https://perma.cc/3TP7-VVE3>], and home ownership comes with assorted maintenance costs that landlords typically handle for renters. See Rebecca Blacker, *Should You Rent or Buy a Home?*, U.S. NEWS & WORLD REP. (Oct. 27, 2022), <https://realestate.usnews.com/realestate/articles/should-you-rent-or-buy-a-home> [<https://perma.cc/T5C2-44PM>]; McAtee, *supra* note 122.

123. A military family who attempts to establish a new domicile by purchasing a home in a new state where they are stationed for only a year or two before moving to another state and deciding to change their domicile again would risk a net loss in reselling the home and might face a capital gains tax as well. See McAtee, *supra* note 122.

124. The cost of a home itself poses financial barriers even without accounting for other transaction costs involved in buying and selling a home, such as realtor fees.

125. Those who wish to maintain their domicile after moving and make up some of the costs of purchase by renting out their home must engage in their landlord responsibilities from afar. See McAtee, *supra* note 122. Meanwhile, the difficulties multiply for families who ultimately decide to choose a different domicile and then have to sell a home in a state where they no longer live, which may be necessary given that courts view selling a home as

moves and has to make domicile-related decisions, the more these barriers will interfere with their ability to make a truly autonomous choice about where they can convince courts they intend to remain. While not all military families move every year or two, those who do will regularly experience these challenges.

c. *Voting Behavior*

Voting activity is another factor that courts consider when evaluating individuals' intent to remain.<sup>126</sup> The SCRA permits servicemembers to continue voting in their properly-established domiciles of choice, even if they currently reside elsewhere, and the MSRRA extends that ability to spouses.<sup>127</sup> While these statutory provisions should theoretically provide an additional layer of protection for military families attempting to maintain a domicile located in a previous residence by enabling personnel to more easily engage in one of the evidentiary factors, it actually—like much of the SCRA—functions paradoxically. Personnel and spouses may continue to vote in states they consider “home”—in other words, in their domicile.<sup>128</sup> But lack of voting activity itself is a strike against successfully establishing or maintaining domicile,<sup>129</sup> and some states even use voter registration to establish a presumption of domicile.<sup>130</sup> Thus, servicemembers are often incentivized to see voting in their “home” state not just as a privilege but also as a means of maintaining their legal ties. However, particular flaws in the domicile system reduce the ability

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a factor demonstrating intent to change one's domicile. See Mack Borgen, *The Determination of Domicile*, 65 MIL. L. REV. 133, 147 (1974).

126. See Korsak, *supra* note 11, at 265 (citing *District of Columbia v. Murphy*, 314 U.S. 441, 456 (1941)).

127. See Korsak, *supra* note 11, at 277 (citing S. Rep. No. 111-46, at 20 (2009)); 50 U.S.C. § 595. See also *Servicemembers Civil Relief Act Basics: Taxation and Voting*, MIL. OFFICERS ASS'N OF AM., <https://www.moaa.org/Caregiver/Legal/Servicemembers-Civil-Relief-Act/Taxation-and-Voting/> [<https://perma.cc/79NW-XX24>] (“You are entitled to retain your right to vote in your state of legal residence . . . . The SCRA extends these rules to spouses of servicemembers.”).

128. See Korsak, *supra* note 11, at 277.

129. See *id.* at 265.

130. See JB Langley-Eustis Law Center, *supra* note 69, at 1–2; see also *Servicemembers Civil Relief Act Basics: Taxation and Voting*, *supra* note 127 (“You do have the right to change your voter registration to the state where you are currently stationed. But be careful if you make this choice: The state where you are newly registered to vote might consider voter registration as evidence that you now consider it to be your state of legal residence, entitling it to tax your income.”).

of servicemembers to maintain a voting record in a domicile they have left.

Importantly, competing incentives might discourage personnel from voting in a state where they do not reside—thereby undercutting their ability to establish and maintain domicile in that state. Preliminarily, the requirements for voting eligibility in a state differ from the requirements for establishing domicile. To vote in a given state, an individual typically must be a resident, sometimes for a certain time period before registration or before an election.<sup>131</sup> Unlike in the domicile framework, however, some individuals have more than one option *via-à-vis* deciding where they would like to vote (though they may only vote in one state).<sup>132</sup> College students, for example, can generally choose to register to vote either at their permanent home address or at their school address.<sup>133</sup> Some states differentiate from the domicile framework even further by explicitly stating that “the intent of where students plan to return after attending college . . . is not to be factored into the decision to approve their registration.”<sup>134</sup> Under the SCRA’s flexible regime, military personnel technically have a similar choice. But unlike college students, these personnel might be maintaining a domicile in a state where they are rarely if ever physically present, which raises the threat of additional barriers.

Already, some states have signaled an interest in restricting voting by military personnel, and they may seize the opportunity

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131. Delaware, for example, requires voters to be permanent residents, while several states require residency in the state or a county, city, or precinct thirty days before the next election. See *Voter Registration Rules*, VOTE.ORG, <https://www.vote.org/voter-registration-rules/> [https://perma.cc/L8MN-CGA6].

132. In making this choice, individuals may be more likely to strategically choose to vote in the state where they believe their vote will have the greatest impact, rather than in the state they consider home, making an individual’s voting history a flawed means of determining domicile at the outset. See, e.g., Barbalot, LBad96, & qialah, Comments to *If Your College Student Wants to Vote, S/he Should Check the Rules Beforehand*, COLL. CONFIDENTIAL (July 2016), <https://talk.collegeconfidential.com/t/if-your-college-student-wants-to-vote-s-he-should-check-the-rules-beforehand/1832275?page=4> [https://perma.cc/BY7N-YPH6] (“My D goes to school in a swing state . . . Looks like she could change where she’s registered . . . and make her vote count more.”) (“I never registered in NJ . . . as my vote would make literally no difference . . . My vote would actually mean something in NC.”) (“My D had no problems registering to vote in Ohio in 2012 at Oberlin. It was worth it to her given that Ohio is a swing state and ours is a pretty safe blue state.”).

133. See *Out of State College Student Voting Guide*, ALL IN, <https://allinchallenge.org/wp-content/uploads/ALL-IN-Out-of-State-College-Student-Voting-Guide.pdf> [https://perma.cc/WT24-Y5LG].

134. *College Students*, OFF. OF THE INDIANA SEC’Y OF STATE, <https://www.in.gov/sos/elections/voter-information/ways-to-vote/college-students/> [https://perma.cc/7CQL-U7VT].



of the current political moment to do so.<sup>135</sup> Until the Supreme Court struck it down in 1965, a provision in the Texas Constitution prohibited military personnel from acquiring a voting residence in the state while serving.<sup>136</sup> This history might indicate at least some political predisposition against military enfranchisement; and while that in turn does not necessarily imply a broader state interest in restricting domicile, voting barriers necessarily double as domicile barriers. Additionally, the increasingly conservative Supreme Court<sup>137</sup> could make room for states to enact a host of absentee ballot restrictions,<sup>138</sup> especially given that the Court's decisions have recently trended toward increasingly extreme deference to the states.<sup>139</sup>

Further, even when absentee ballots are readily accessible, recent unprecedented levels of voter fraud allegations by conservative public officials might deter personnel from voting in a state where they do not reside because they might perceive, or actually experience, significant legal risks from voting in a domicile they are trying to maintain but where they are no longer physically present.<sup>140</sup> Such rhetoric alone might be sufficient to

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135. See Veldhuyzen & Wright, *supra* note 77, at 16–17 (discussing equal protection issues related to voting restrictions on military personnel).

136. See Carrington v. Rash, 380 U.S. 89, 90–91 (1965); see also Applegate, *supra* note 26, at 606–07.

137. See, e.g., Moore v. Harper, 143 S. Ct. 1089 (2022) (Mem.) (considering whether to grant state legislatures immunity from state constitutional provisions that might bar certain election laws). Though the majority in *Moore* ultimately declined to validate the independent state legislature theory, 143 S. Ct. at 2081, entertaining this once-fringe theory at all arguably indicates a dramatic rightward shift in the Court's election law jurisprudence. See Ethan Herenstein & Thomas Wolf, *The 'Independent State Legislature Theory,' Explained*, BRENNAN CTR. FOR JUST. (June 6, 2022), <https://www.brennancenter.org/our-work/research-reports/independent-state-legislature-theory-explained> [<https://perma.cc/BMM5-X98N>].

138. See Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2330 (2021) (upholding an Arizona law that restricts which individuals may collect mail-in ballots and potentially opening the door for states to further curtail absentee voting).

139. See, e.g., Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (overturning nearly fifty years of precedent to enable states to ban abortion procedures); Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2491 (2022) (increasing state jurisdiction on tribal reservations).

140. Following the 2016 general election, then-President-Elect Trump voiced concerns about “serious” fraud in California, New Hampshire, and Virginia, and some national Republican officials offered rhetorical support for those claims. See John Myers, *Donald Trump Alleges Widespread Voter Fraud in California. There's No Evidence to Back it Up*, L.A. TIMES (Nov. 27, 2016), <https://www.latimes.com/politics/la-pol-ca-trump-tweet-california-voter-fraud-20161127-story.html> [<https://perma.cc/48RV-UUFQ>]. Despite evidence of voter fraud in the 2016 election, see Philip Bump, *There Have Been Just Four Documented Cases of Voter Fraud in the 2016 Election*, WASH. POST (Dec. 1, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/12/01/0-000002-percent-of->

deter military personnel from attempting to use voting practices to maintain a domicile of choice by fueling fear of prosecution, especially given the particular rhetoric surrounding supposedly fraudulent use of absentee ballots.<sup>141</sup> Even if not, the fallout from some of this rhetoric provides further practical deterrence.<sup>142</sup> Although very few cases of voter fraud are actually taking place in the United States and therefore legal consequences are rare, the disproportionate amount of media attention and coverage that voter fraud receives by conservative activist groups might suggest to military personnel and spouses that it would be wiser to default to voting in their state of physical residence rather than risk accidentally violating voting regulations—even though doing so

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all-the-ballots-cast-in-the-2016-election-were-fraudulent/ [https://perma.cc/WC7W-PQBG], Republican politicians continued to perpetuate “the Big Lie” of election theft throughout the 2018 midterm elections, the 2020 general election, and the 2022 midterm elections. See Miles Parks, *FACT CHECK: Trump Repeats Voter Fraud Claim About California*, NPR (Apr. 5, 2018), <https://www.npr.org/2018/04/05/599868312/fact-check-trump-repeats-voter-fraud-claim-about-california> [https://perma.cc/5RRS-4B8H]; Melissa Block, *Can The Forces Unleashed By Trump’s Big Election Lie Be Undone?*, NPR (Jan. 16, 2021), <https://www.npr.org/2021/01/16/957291939/can-the-forces-unleashed-by-trumps-big-election-lie-be-undone> [https://perma.cc/Q5A7-SVAP]; CNN Staff, *Five Baseless 2022 Election Conspiracy Theories, Fact-Checked*, CNN POL. (Nov. 9, 2022), <https://www.cnn.com/2022/11/08/politics/fact-check-election-voter-fraud-conspiracies/index.html> [https://perma.cc/KD59-BPLA]. Despite evidence that claims of voter fraud did not fuel as much chaos in 2022 as in the previous cycle, 179 Republican 2020 election deniers won their 2022 races. See Shannon Bond et al., *Election Officials Feared the Worst. Here’s Why Baseless Claims Haven’t Fueled Chaos*, NPR (Nov. 14, 2022), <https://www.npr.org/2022/11/14/1136537352/2022-election-how-voting-went-misinformation> [https://perma.cc/WHE3-72W5]; Adrian Blanco et al., *Tracking Which 2020 Election Deniers are Winning, Losing in the Midterms*, WASH. POST (Nov. 7, 2022), <https://www.washingtonpost.com/politics/interactive/2022/election-deniers-midterms/> [https://perma.cc/W38S-ZWBH].

141. See *A Sampling of Recent Election Fraud Cases from Across the United States*, HERITAGE FOUND., <https://www.heritage.org/voterfraud> [https://perma.cc/WQC7-XY97]; Arit John, *Two Democracies are Forming in the U.S. — ZIP Code Determines Which One You’re In*, L.A. TIMES (Oct. 20, 2022), <https://www.latimes.com/politics/story/2022-10-19/mail-ballot-election-laws-backlash-voting-rights-midterms> [https://perma.cc/D7Z8-K338].

142. At the broadest level, claims of voter fraud have led many Republican state legislatures to restrict absentee voting, which would of course dramatically decrease individuals’ abilities to cast their votes in states where they no longer reside. See Nolan D. McCaskill, *After Trump’s Loss and False Fraud Claims, GOP Eyes Voter Restrictions Across Nation*, POLITICO (Mar. 15, 2021), <https://www.politico.com/news/2021/03/15/voting-restrictions-states-475732> [https://perma.cc/KU8X-HT5D]. On a more individual level, conservative interest groups publish “Election Fraud Databases” that advertise, among other information, criminal convictions for voter fraud. See, e.g., *A Sampling of Recent Election Fraud Cases from Across the United States*, HERITAGE FOUND., <https://www.heritage.org/voterfraud> [https://perma.cc/WQC7-XY97]. Despite evidence that very little voter fraud takes place in a given election, the Heritage Foundation boldly claims to offer documentation of over 1,200 convictions without specifying a timeline for them, even though their data stretch back to at least 1982. See *Election Fraud Cases*, HERITAGE FOUND., <https://www.heritage.org/voterfraud/search> [https://perma.cc/H5YS-YE49].

might make it more difficult to maintain a previous domicile. Additional reform is necessary to ensure that personnel and spouses can comfortably vote, without actual or perceived legal risks, in the place they want to call home.

### C. STATUTORY COMPLICATIONS

Congress has attempted, albeit unsuccessfully, to restructure the domicile doctrine as applied to the military context. The SCRA and MSRRA purport to protect military servicemembers and spouses from domicile-related tax litigation by preventing their domiciles from changing for tax purposes solely because of compliance with military orders. However, the statutes fail to adequately serve this purpose or to resolve the fundamental incompatibilities between military life and traditional domicile analysis.

To start, the very premise of these statutes defies the realities of domicile. They assert that servicemembers and spouses will neither lose nor acquire domicile “for purposes of taxation”<sup>143</sup> specifically. The central rule of domicile, however, establishes that each person has exactly one domicile at all times,<sup>144</sup> not that an individual can have multiple domiciles serving different functions. Suggesting that domicile could remain fixed only for taxation purposes, which is at least a plausible reading of the plain text,<sup>145</sup>

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143. See 50 U.S.C. § 4001(a)(1-2).

144. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(2) (AM. L. INST. 1971).

145. Another plausible interpretation of the SCRA’s language is that the statute is attempting not to suggest that individuals can have multiple domiciles but instead to prevent servicemembers from being caught in state rules that impose tax obligations after a specified number of days of residency. See, e.g., *Frequently Asked Questions About Filing Requirements, Residency, and Telecommuting for New York State Personal Income Tax*, N.Y. STATE DEPT OF TAX’N & FIN., <https://www.tax.ny.gov/pit/file/nonresident-faqs.htm> [<https://perma.cc/9UKV-43QF>] (“You may be subject to tax as a resident even if your domicile is not New York . . . You are a New York state resident if . . . you spend 184 days or more in New York State during the taxable year.”). Through this framework, “domiciled for purposes of taxation” might simply point to the SCRA’s efforts to ensure that servicemembers will owe income taxes in only one state at a time, while the word “residence” plays an important interpretive role. If this is the intent behind this language, however, inclusion of the word “domicile” at all seems puzzling, and it remains challenging to read this portion of the statute without having to confront “domicile for purposes of taxation” as a standalone phrase based on the sentence structure. According to the series qualifier canon, “[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.” *Canons of Construction (adapted from Scalia & Garner)*, UNIV. OF HOUS. L. CTR., <https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS%20OF%20CONSTRUCTION.pdf> [<https://perma.cc/F8QE-RW4Q>]. The Supreme

creates a popular misconception<sup>146</sup> about what the statutes actually do. Facially, a reasonable reading of the text could suggest that personnel and spouses who move under military orders will not risk a change in domicile at all. Courts have held instead that these individuals must continue to establish and maintain their domiciles using the traditional evidentiary factors.<sup>147</sup>

Additionally, even within the specific issue of tax litigation, the SCRA and MSRRA may lack reliable protections for servicemembers because, their inherent shortcomings aside, current judicial trends heavily favor deference to state sovereignty. The Supreme Court has previously demanded that lower courts liberally construe statutes such as the SCRA and MSRRA to err on the side of protecting servicemembers.<sup>148</sup> But in more recent decisions, the current Court has identified state sovereignty as a high priority, sometimes by construing other federal jurisdictional statutes narrowly to allow states to intrude on areas of federal law in ways that decades of precedent had previously prohibited.<sup>149</sup> States have an obvious interest in taxing their residents, even those who maintain their domiciles elsewhere. Some states have also previously attempted to undermine the SCRA to tax non-domiciled servicemembers by arguing that the statute only provides protection from multiple taxation and by challenging the

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Court's decision in *Lockhart* included a discussion of the series qualifier canon and declined to apply it because, in that case it would render the predicate nouns "hopelessly redundant." *Lockhart v. United States*, 577 U.S. 347, 356 (2016). Residence and domicile are distinct legal concepts, and no such redundancy would exist as a result of reading "for purposes of taxation" to apply to both "residence" and "domicile." Additionally, "for purposes of taxation" would still apply to the word "domicile" even under the alternative rule of the last antecedent. *Id.* at 352. In any case, the unclear phrasing of the text at least makes the multiple domiciles reading a plausible one, which ultimately reflects the statute's unfortunate formulation and lack of responsiveness to the realities of the domicile framework or servicemembers' lived realities.

146. See JB Langley-Eustis Law Center, *supra* note 69, at 1.

147. See Stone, *supra* note 18, at 12–14; see also *infra* Part I.B.

148. See Korsak, *supra* note 11, at 269 (quoting *Boone v. Lightner*, 319 U.S. 561, 575 (1943)). But see STEPHEN N. SUBRIN ET AL., CIVIL PROCEDURE: DOCTRINE, PRACTICE, AND CONTEXT 857 (5th ed. 2016) ("Generally speaking, jurisdictional statutes are construed narrowly.").

149. See, e.g., *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2491 (2022) (narrowly construing the General Crimes Act, a federal jurisdictional statute, to allow states to intrude on areas of federal Indian law in a defiance of substantial precedent). "After the Cherokee's exile to what became Oklahoma, the federal government promised the Tribe that it would remain forever free from interference by state authorities. . . . Where our predecessors refused to participate in one State's unlawful power grab at the expense of the Cherokee, today's Court accedes to another's." *Id.* at 2505 (Gorsuch, J., dissenting).

statute's constitutionality;<sup>150</sup> when brought in state court, these cases often result in interpretations of the SCRA that are favorable to the states.<sup>151</sup> These interests and current trends indicate a possibility that courts may start to chip away at the already minimal protections in the SCRA and MSRRA in the name of state sovereignty.

These legal circumstances demonstrate severe deficiencies in the foundations of these statutes. The recently enacted Veterans Auto and Education Improvement Act,<sup>152</sup> rather than improving this framework, adds complications. Most obviously, providing greater choice of tax jurisdiction to married couples alone<sup>153</sup> only gives any measure of relief to a particular subset of servicemembers. The amendment also leaves in place the fictional distinction between domicile for tax purposes and domicile in general.<sup>154</sup> For couples whose highest priority is certainty about where they should file taxes, the amendment offers some improvement, but it provides nothing to resolve other uncertainties about domicile for personal or federal subject matter jurisdiction purposes. Importantly, the SCRA and MSRRA still lack any provision clarifying how military families can establish and maintain domicile, meaning that the statutory framework retains the basic incoherencies that existed before the latest amendment.

Furthermore, misinformation about the amendment's effects began to spread shortly after its enactment, with military-affiliated news outlets claiming that "under the new law . . . the service member and the spouse could easily choose to retain their residency in an income tax-free or low income tax state."<sup>155</sup> Not

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150. See, e.g., Korsak, *supra* note 11, at 270–71 (describing *Dameron v. Broadhead*, 345 U.S. 322, 324–26 (1953)).

151. See Korsak, *supra* note 11, at 294 (“[D]ecisions from Virginia, Minnesota, and Oregon validate the concern that state courts may tend to interpret the federal questions raised by the SCRA favorable to states. To further the point, there is a history of federal courts repeatedly deciding the issue of preemption at odds with state decisions, and then other state court decisions give only cursory treatment to SCRA implications when deciding against a servicemember.”).

152. See Part I.B, *supra*, for details on the substance of this amendment to the SCRA.

153. See 50 U.S.C. § 4001.

154. See Michael S. Archer, *New Year, New Laws: SCRA Changes*, N.C. STATE BAR – LEGAL ASSISTANCE FOR MIL. PERS. (Feb. 10, 2023), <https://www.nclamp.gov/for-lawyers/additional-resources/new-year-new-laws-scr-a-changes/> [<https://perma.cc/UN8Q-TE8E>].

155. Katie Horrell, *Military Members and Spouses Could Avoid State Income Taxes Thanks to New Law*, MILITARY.COM (Jan. 18, 2023), <https://www.military.com/daily-news/2023/01/18/military-members-and-spouses-could-avoid-state-income-taxes-thanks-new-law.html/amp> [<https://perma.cc/99HQ-FN3H>].

only does this claim fail to recognize that the SCRA and MSRRA already allowed servicemembers and spouses to claim their prior residences for tax purposes so long as they maintained their domiciles in those locations,<sup>156</sup> it also misleadingly asserts that these individuals can do so easily, when in fact they must take care to actively maintain their connections with their prior residences to exercise this option.<sup>157</sup> The amendment affects only these individuals' abilities to claim their current duty stations for tax purposes, while excluding any increased protections for their ability to maintain their domiciles at a previous duty station instead.

Because of these shortcomings, the SCRA and MSRRA are practically meaningless.<sup>158</sup> The risk of military orders having a direct effect on domicile acquisition has never been the problem—rather, the decreased ability to engage in the traditional evidentiary factors is what most acutely creates specific barriers for these individuals.<sup>159</sup> The connection to the orders themselves is an indirect one. At best, the SCRA and MSRRA simply fail to serve their intended purposes and leave the common law framework relatively untouched—recognizing the fundamental problem of the domicile framework but addressing only a tiny piece of it. At worst, they might provide personnel with a false sense of security, should they take the plain text to mean that they need not worry about the traditional evidentiary factors at all.

### III. SERVICEMEMBER DOMICILE SHOULD OPERATE UNDER AN OPT-IN FRAMEWORK

The problems with the current common law and statutory framework call for drastic reform. This section begins by recommending that Congress amend the SCRA to allow military families to opt into new domiciles via formal declaration with each new change in duty station, overriding the current requirement to prove domicile through other means. It then explains why other proposed reforms do not adequately simplify the domicile concept

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156. See 50 U.S.C. § 4001(a)(1)-(2).

157. See Stone, *supra* note 18, at 12–14.

158. See also Korsak, *supra* note 11, at 277 (“While the MSRRA provides useful protection for military spouses, it does not do for spouses what the SCRA does not do for servicemembers. The MSRRA leaves spouses exposed to the same vulnerability as servicemembers: a host state challenge to domicile in an effort to tax income.”).

159. See *supra* Part II.B.2.

nor eliminate the disproportionately negative impacts that the existing framework has on military personnel.

A. AN OPT-IN DOMICILE WOULD ADEQUATELY PROTECT  
SERVICEMEMBERS AND THEIR FAMILIES

To protect equity for and between servicemembers and to better serve the fundamental purposes of domicile, a new framework should give military personnel and their families the option to formally declare a new domicile each time they move under orders, rather than requiring them to establish or maintain their domiciles using the currently accepted evidentiary factors. Conceptualizing domicile in this way would greatly simplify jurisdictional questions for personnel while retaining domicile's core purposes and functions.

Such a change would correct many of the existing scheme's problems. First and foremost, this new framework would ensure that a military individual's domicile remains easily identifiable, in keeping with the doctrine's purpose of preserving predictability and administrability.<sup>160</sup> Relatedly, it would also make domicile simple and straightforward to establish and maintain, which would ease the evidentiary burden on personnel and families—including children, who could be included in the amendment.<sup>161</sup> This reform would preserve the first core element of domicile, physical presence,<sup>162</sup> by only providing the opportunity to opt into a new domicile with each actual physical relocation, ensuring that each individual remains legally tied to a state to which they have a specific, identifiable connection.<sup>163</sup> Further, by eliminating the risk that military personnel will find themselves unwittingly domiciled in a different state than they intended,<sup>164</sup> this simplified framework would reduce the volume of consequent tax litigation. Finally, Congress could enact such a reform as an amendment to the SCRA<sup>165</sup> and delegate the details of implementation to an agency such as the Department of Veterans Affairs or the

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160. See *Hertz Corp. v. Friend*, 559 U.S. 77, 95 (2010).

161. See Appendix B, *infra*, for proposed statutory language extending protections to family members other than spouses.

162. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 15(2) (AM. L. INST. 1971).

163. See *id.* at § 11 cmt. a.

164. See Stone, *supra* note 18, at 12.

165. Congress has, in fact, amended the SCRA with some frequency, most recently with the Veterans Auto and Education Improvement Act of 2022, which President Biden signed into law in January 2023. See Archer, *supra* note 154.

Department of Defense.<sup>166</sup> The remainder of this subsection proposes and explains sample statutory language that Congress could incorporate into the SCRA.<sup>167</sup>

An effective amendment to the SCRA should begin with language presenting the opt-in option. This first component should preempt possible confusion by making clear that the option would apply not only for tax purposes, but for domicile in general:

A servicemember shall, upon undertaking a permanent change of station in compliance with military orders, have the option to formally claim that jurisdiction as the servicemember's new singular domicile for all purposes, including, but not limited to, federal subject matter jurisdiction under 28 U.S.C. § 1332 and all matters of personal jurisdiction.

This revision would address two existing problems within the SCRA. First, it would extend the recent amendment's option to choose one's current duty station as their tax jurisdiction to all servicemembers, rather than just to married ones.<sup>168</sup> Second, it would remedy the current statutory scheme's incorrect suggestion that domicile can be split into multiple locations to serve different purposes<sup>169</sup> by clarifying that this option would apply not just to taxation but to all functions of domicile, including federal subject matter jurisdiction.<sup>170</sup> This approach would entirely alleviate the problems associated with the intent-to-remain component of domicile, including, most pressingly, the requirement of maintaining a residence off base.<sup>171</sup>

Even more importantly, an effective amendment must clarify not only the servicemembers' ability to adopt a new duty station as their domicile, but also their alternative ability to retain a previous domicile instead:

Should a servicemember decline to claim domicile at a new duty station, that servicemember shall neither lose nor acquire a

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166. See Appendix B, *infra*, for proposed statutory language putting forward such a delegation.

167. See Appendix B, *infra*, for the proposed statutory language in full. This amendment would not affect the existing framework governing domicile when servicemembers and families move outside of the United States, which falls beyond the scope of this Note.

168. See *supra* Part II.C; 50 U.S.C. § 4001.

169. See *supra* Part II.C; see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11(2) (AM. L. INST. 1971).

170. Domicile serves the important function of determining when an individual may sue or be sued in federal court pursuant to diversity jurisdiction, but the SCRA's current focus on taxation fails to provide protections that make the availability of this forum predictable for servicemembers. See 28 U.S.C. § 1332.

171. See *supra* Part II.B.2.a.



domicile for any purpose by reason of being absent or present in any jurisdiction of the United States in compliance with military orders, or by reason of any activity that may accompany a permanent change of station, and shall instead retain their previous domicile unless and until that servicemember formally claims another.

This revision would address the flip side of the current SCRA's insufficiencies by guarding against the risk that military personnel and families will unintentionally adopt a new domicile following a permanent change of station. This protection would in turn alleviate any concerns these individuals may have about, for instance, continuing to vote in their previous residences, by simplifying and clarifying the doctrine.<sup>172</sup> Together, these two provisions would enable the SCRA to provide adequate protection from the twin risks of the current framework: failing to successfully establish a new domicile and failing to successfully maintain an old one.

Any risk that this reform's beneficiaries will use it to game the system<sup>173</sup>—for instance, by declaring domicile based on which states have favorable tax laws rather than based on true internal intentions—does not outweigh the reform's more positive consequences. First, the current depth of the existing problem outweighs the potential risks of abuse because, at worst, servicemembers who use the opt-in option disingenuously will merely enjoy identical benefits to those of the other residents of their state of choice. Second, the ability to game the system at all depends to a great extent on luck, because the military itself ultimately decides where to station its personnel, who cannot unilaterally decide to declare domicile in a “good” state without living there.<sup>174</sup> And finally, Congress can guard against this risk by imposing limits, such as requiring the option to expire upon retirement from military service and by allowing courts to make equitable exceptions upon evidence of abuse.<sup>175</sup>

Additionally, while this reform arguably gives military personnel and their families special treatment with the opportunity to simply declare a domicile while others must continue to engage in the traditional evidentiary factors to acquire

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172. See *supra* Part II.B.2.c.

173. Concerns about gamesmanship could explain the lack of similar proposals to date.

174. See Korsak, *supra* note 11, at 294–95.

175. See Appendix B, *infra*, for proposed statutory language addressing such safeguards.

and maintain their domicile of choice, that treatment merely corrects an existing disadvantage. A legitimate argument exists—and scholars have made it<sup>176</sup>—that the traditional domicile framework cannot function in an increasingly mobile society at all, and broader reform might provide better protections for many other groups of people. Military families are, after all, not the only ones who have to live relatively mobile lifestyles.<sup>177</sup> In the meantime, however, substantial evidence points to existing disadvantages that military personnel face within the current domicile framework—a framework that also exacerbates equity issues within the military itself.<sup>178</sup> The mismatch between the current domicile requirements and the compulsory, sometimes frequent changes in duty station for military personnel calls for a specific exception in this context. A potential—but ultimately slight—overextension of benefits is an imperfect but preferable alternative to the current unworkable system.

#### B. ALTERNATIVE SOLUTIONS FAIL TO MAKE DOMICILE DOCTRINE WORKABLE

Proposals taking a comparatively moderate approach would not sufficiently tackle the domicile doctrine's unworkability for military personnel. A 2013 proposal by Captain Dean W. Korsak recommends identifying which traditional domicile factors are "inherent to living in a state pursuant to military orders" and, in making domicile determinations, interpreting the SCRA and MSRRA to preclude consideration of those factors for military personnel and spouses.<sup>179</sup> Korsak would recognize, for example, having student status, employment location, a driver's license, and a mailing address in a state as activities inherent to living there.<sup>180</sup> Meanwhile, other factors such as voter registration, real property ownership, union membership, and social club membership that do not involve inherent activity would therefore not be precluded.<sup>181</sup>

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176. See, e.g., Abrams & Barber, *supra* note 45.

177. Consider, for example, seasonal workers who may also not remain consistently in one place, and college students whose campus locations are outside the state where they claim a permanent address. Reformulating the domicile framework for military families might also serve as a valuable test case for these other groups, or even for an increasingly mobile society writ large.

178. See *supra* Part II.B.2.a.

179. Korsak, *supra* note 11, at 295.

180. See *id.* at 296–303.

181. See *id.*

A final set of factors, such as location of business relationships and classification of employment as temporary or permanent, may be inherent to living in a state pursuant to military orders, depending on the facts of each case.<sup>182</sup>

Korsak's proposal correctly recognizes the conflict between the realities of military life and the way traditional domicile analysis operates, even under the modifying statutes.<sup>183</sup> However, the inherent factors framework would further complicate, rather than simplify, the analysis for servicemembers by adding yet another layer of inquiry about whether dozens of factors should "count" toward domicile. Moreover, the proposal fails to account for the broad spectrum of military families' experiences, instead offering one list of factors that should never be included in their domicile analysis, another list of factors that should always be included, and a final few factors that would require case-by-case determinations.<sup>184</sup> Such a setup leaves two unsatisfactory options: accept this rigid framework or engage in an additional line of inquiry about whether, for a given individual, each particular factor is "inherent" to living in a state pursuant to military orders.<sup>185</sup> To effectively and efficiently address the core problems with domicile analysis in the military context, reform should leave room for flexibility and unpredictable circumstances, and should aim to simplify the basic framework rather than muddy it. The inherent factors analysis, while innovative, does neither.

Other proposals for domicile reform that sweep more broadly and aim to change the framework in its entirety still fall short of protecting military personnel and their families. In their 2017 proposal, Kerry Abrams and Kathryn Barber recognize that the "legal fiction of domicile has become increasingly unmoored from the reality of people's lives" because of not just increased mobility, but also gender equality and the "delayed attainment of social adulthood."<sup>186</sup> Their recommended solution involves replacing domicile with habitual residence, at least for determining questions of court jurisdiction.<sup>187</sup> While their proposal does not explicitly advocate for making this change in other areas of law, such as taxation, its description of the "incoherence of domicile as

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182. *See id.*

183. *See id.* at 294–95.

184. *See id.* at 296–303.

185. *See* Korsak, *supra* note 11, at 296.

186. Abrams & Barber, *supra* note 45, at 289–90.

187. *See id.* at 391.

a concept”<sup>188</sup> might suggest that other legal questions currently based on an individual’s domicile would similarly benefit from shifting to analysis based on residency.

If anything, this reform would overcorrect the situation, at least in the military context. Abrams and Barber certainly offer accurate critiques of the current domicile framework, and their argument that jurisdictional tests should ideally “be applied simply with paper documentation, rather than testimony about mental states”<sup>189</sup> closely aligns with the fundamental purposes of domicile from which the current framework has gone so far astray.<sup>190</sup> For many—perhaps even most—individuals who have at least some modicum of control over where they live and consequently what state laws they subject themselves to, this reform may hold some merit. But for military families who already face domicile-related complications because of their limited autonomy,<sup>191</sup> it would only amplify existing problems. Matching domicile automatically to residency would make it impossible for these individuals to overcome the presumption against domicile that results from the special purpose doctrine.<sup>192</sup> The same holds true for other groups who retain even less control over their physical location than military personnel, such as incarcerated individuals.<sup>193</sup> This solution would ultimately retain or even multiply the equity problems the current domicile framework imposes upon military personnel and would, at minimum, require room for further exemptions to resolve them.

## CONCLUSION

The application of the existing domicile framework to military families has needlessly complicated what should instead be a straightforward legal concept. The current approach to domicile has become deeply problematic—but not unfixable. Adopting the opt-in proposal would resolve many of the tensions that the traditional balancing test creates and would enable domicile to serve its proper, intended functions. This option would eliminate

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188. *Id.*

189. *Id.* at 432.

190. *See supra* Part I.

191. *See supra* Part II.A.

192. *See* Applegate, *supra* note 26, at 613 (quoting J.H. Beale, *Proof of Domicil*, 74 U. PA. L. REV. 552, 562 (1926)).

193. *See generally* Applegate, *supra* note 26.

pressure on, for example, young servicemembers to formulate retirement plans at an unrealistic age and would increase their flexibility to decide when a new duty station might provide an ideal future home. It would allow personnel living on base to establish a domicile of choice at their new duty stations without per se barriers to proving intent to remain indefinitely. And finally, it would reduce confusion for families by providing a simple route to establishing a collective domicile. A comprehensive opt-in framework would both simplify the legal landscape and, in doing so, provide peace of mind for military personnel who have long been tangled in the needlessly confusing web of current domicile doctrine.

## APPENDIX A

The following charts provide BAH rates for servicemembers stationed at a sample of five Air Force bases, five Army bases, five Marine bases, five Naval bases, and five joint bases. The calculations are based on zip codes<sup>194</sup> that correspond to the location of the base itself, which determines BAH compensation regardless of where in the nearby area a servicemember decides to live.<sup>195</sup> Alongside each base and zip code are two sets of numbers: (1) the fair market rate of a one-bedroom residence<sup>196</sup> and the BAH rates<sup>197</sup> for O-3 and E-6 personnel without dependents, and (2) the fair market rate of a three-bedroom residence and the BAH rates for O-3 and E-6 personnel with dependents. Estimated timelines suggest that officer and enlisted personnel would generally reach these ranks by approximately age thirty.<sup>198</sup> All numbers are based on available estimates from 2018 to avoid any skew in data resulting from the COVID-19 pandemic. A direct comparison between the fair market rate for three-bedroom residences and BAH rates for personnel with dependents assumes that the

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194. When available, rates are based on data for an individual zip code; where not, they are based on the broader metropolitan area as sorted by the database (indicated by asterisks).

195. See *Frequently Asked Questions: BAH Basics*, *supra* note 107.

196. See *FY2018 Fair Market Rents Documentation System*, OFFICE OF POL'Y DEV. AND RSCH., [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2018\\_code/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2018_code/select_Geography.odn) [<https://perma.cc/FFH4-6P6T>].

197. See *Basic Allowance for Housing Rate Lookup*, DEF. TRAVEL MGMT. OFFICE, <https://www.travel.dod.mil/Allowances/Basic-Allowance-for-Housing/BAH-Rate-Lookup/> [<https://perma.cc/XVV4-TJYF>].

198. Information based on testimonials from military personnel.

individual servicemembers have two children because comparable on-base housing would likely provide such a family with a three-bedroom residence. In reality, of course, personnel have a varying number of children and therefore a different fair market rate comparison would be more accurate in different situations.

FIGURE 1: AIR FORCE BASES

Base/Location	Zip Code	FMR (1b)	O-3 (ND)	E-6 (ND)	FMR (3b)	O-3 (D)	E-6 (D)
MacDill (FL)	33621	\$1260	\$2073	\$1662	\$2060	\$2169	\$2142
Wright-Patterson (OH)*	45433	\$583	\$1242	\$1053	\$1024	\$1554	\$1335
Scott (IL)*	62225	\$692	\$1038	\$1311	\$1187	\$1470	\$1386
Keesler (MS)*	39534	\$667	\$1200	\$1002	\$1062	\$1374	\$1254
Edwards (CA)*	93524	\$695	\$1650	\$1539	\$1303	\$2082	\$1710

FIGURE 2: ARMY BASES

Base/Location	Zip Code	FMR (1b)	O-3 (ND)	E-6 (ND)	FMR (3b)	O-3 (D)	E-6 (D)
Fort Bragg (NC)*	28310	\$678	\$1299	\$1032	\$1138	\$1479	\$1368
Fort Hood (TX)*	76544	\$580	\$1125	\$1083	\$1098	\$1449	\$1107
Fort Benning (GA)*	31905	\$685	\$1455	\$1158	\$1142	\$1578	\$1551
Fort Wainwright (AK)*	99703	\$1029	\$1830	\$1410	\$1990	\$2382	\$1881
Fort Carson (CO)	80913	\$1130	\$1659	\$1482	\$2120	\$1806	\$1662

FIGURE 3: MARINE CORPS BASES

Base/Location	Zip Code	FMR (1b)	O-3 (ND)	E-6 (ND)	FMR (3b)	O-3 (D)	E-6 (D)
29 Palms (CA)	92278	\$926	\$1074	\$828	\$1618	\$1380	\$1056
Camp Pendleton (CA)	92058	\$1480	\$2739	\$2166	\$2770	\$3018	\$2886
Quantico (VA)	22134	\$1630	\$1827	\$1656	\$2450	\$2139	\$1869
Camp Lejeune (NC)*	28542	\$666	\$1110	\$972	\$1182	\$1374	\$1143
Miramar (CA)	92145	\$1210	\$2841	\$2367	\$2260	\$3150	\$3015

FIGURE 4: NAVAL BASES

Base/Location	Zip Code	FMR (1b)	O-3 (ND)	E-6 (ND)	FMR (3b)	O-3 (D)	E-6 (D)
Norfolk (VA)*	23511	\$912	\$1605	\$1512	\$1533	\$1932	\$1659
Jacksonville (FL)	32212	\$990	\$1593	\$1323	\$1600	\$1692	\$1665
Kitsap (WA)*	98312	\$882	\$1863	\$1593	\$1615	\$1962	\$1896
Corpus Christi (TX)*	78418	\$789	\$1818	\$1494	\$1328	\$2046	\$1992
Coronado (CA)	92118	\$1920	\$2841	\$2367	\$3580	\$3150	\$3015

FIGURE 5: JOINT BASES

Base/Location	Zip Code	FMR (1b)	O-3 (ND)	E-6 (ND)	FMR (3b)	O-3 (D)	E-6 (D)
San Antonio-Lackland (TX)	78236	\$1200	\$1797	\$1482	\$1980	\$1827	\$1800
Pearl Harbor-Hickam (HI)	96853	\$1530	\$2916	\$2343	\$2950	\$3366	\$3015
Lewis-McChord (WA)*	98433	\$881	\$1902	\$1650	\$1666	\$2112	\$1953
Andrews (MD)	20762	\$2010	\$2583	\$2214	\$3020	\$2862	\$2706
Langley-Eustis (VA)*	23665	\$912	\$1560	\$1236	\$1577	\$1713	\$1635

At six<sup>199</sup> of these duty stations, the BAH for both O-3 and E-6 personnel with dependents falls short of the fair market rent for a three-bedroom residence. At two more,<sup>200</sup> the BAH falls short for the E-6 personnel alone. At another five,<sup>201</sup> the BAH for at least the E-6 personnel exceeds the fair market value of a three-bedroom by less than \$100—and by less than \$200 for an additional four.<sup>202</sup> Given that the fair market rent statistics may not reflect the added cost of utilities, the BAH at these additional nine duty stations arguably falls short as well.

While these numbers may not tell the whole story, certain trends are worth noting. First, the often severe discrepancy between BAH rates for officer and enlisted personnel raises a serious equity issue. Enlisted personnel will be shut out from the opportunity to establish a new domicile far more frequently than officers if, in general, it is most financially feasible to accept base housing when the BAH is lower than the expected cost of off-base housing. Second, personnel with dependents will be the nearly exclusive bearers of this burden, given that the BAH for those

199. Fort Carson, 29 Palms, Quantico, Coronado, San Antonio-Lackland, and Andrews.

200. Fort Wainwright and Camp Lejeune.

201. MacDill, Fort Hood, Jacksonville, Pearl-Harbor Hickam, and Langley-Eustis.

202. Scott, Keesler, Camp Pendleton, and Norfolk.



without dependents is almost always quite generous by comparison. And the more children personnel have, the stronger that impact will be, because the BAH will ignore them.<sup>203</sup>

## APPENDIX B

### PROPOSED LANGUAGE TO REPLACE 50 U.S.C. § 4001(A):

(1) A servicemember shall, upon undertaking a permanent change of station in compliance with military orders, have the option to formally claim that jurisdiction as the servicemember's new singular domicile for all purposes, including, but not limited to, federal subject matter jurisdiction under 28 U.S.C. § 1332 and all matters of personal jurisdiction.

(A) Should a servicemember decline to claim domicile at a new duty station, that servicemember shall neither lose nor acquire a domicile for any purpose by reason of being absent or present in any jurisdiction of the United States in compliance with military orders, or by reason of any activity that may accompany a permanent change of station, and shall instead retain their previous domicile unless and until that servicemember formally claims another.

(B) This option shall expire upon the retirement of a servicemember from military service, at which time the individual's domicile shall be determined by traditional common law factors indicating physical presence and intent to remain indefinitely.

(C) Any judicial body may, upon determining abuse of this option or of the option provided in 50 U.S.C. § 4001(a)(2), implement such equitable exceptions as that body determines is necessary to preserve the interests of justice.

(D) The Department of Veterans Affairs shall design and implement procedures, including a centralized system to which servicemembers will submit official forms indicating their decision to claim a new domicile, to give effect to 50 U.S.C. § 4001(a)(1)(A), and shall make such procedures as simple and accessible to servicemembers as is reasonably practicable.

(2) The provisions of 50 U.S.C. § 4001(a)(1) shall apply to the spouses, children, and other family members of servicemembers to

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203. See *Frequently Asked Questions: BAH Basics*, *supra* note 107.

the extent that those individuals accompany the servicemember in their permanent changes of station, until the option expires upon the servicemember's retirement from military service.