Home Court Advantage Revisited: Interstate Modification of Child Support Orders Under UIFSA and FFCCSOA

Steven K. Berenson*

TABLE OF CONTENTS

I. INTRODUCTION

The modification and enforcement of child support orders has proven to be a particularly stubborn problem where both parents and the children have relocated from the issuing jurisdiction. The Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Orders Act (FFCCSOA) were promulgated to address these, among other, issues.[1] Though the provisions of the two enactments are generally harmonious, a small number of conflicts remain. One important apparent conflict relates to the jurisdiction of a court to modify another state's child support order in the circumstances mentioned above. According to UIFSA, the party seeking modification cannot do so in their state of residence.[2] As the comments to UIFSA put it," [a] colloquial (but easily understood) description of this requirement is that the modification movant must "play an away game on the other party's home field."[3]

However, FFCCSOA does not explicitly contain such a prohibition. In 2001, the Tennessee Supreme Court interpreted the two provisions together and concluded that FFCCSOA does not preempt UIFSA's "home court advantage" prohibition regarding

* Associate Professor of Law, Thomas Jefferson School of Law. The author wishes to thank Daniel Hatcher, David Herring, and J.P. Ogilvy for helpful suggestions regarding earlier drafts. The author further wishes to thank Deanna Sampson for continuing support.

1. *See, e.g.*, Patricia W. Hatamyar, *Interstate Establishment, Enforcement, and Modification of Child Support Orders*, 25 OKLA. CITY U. L. REV. 511, 511-21 (2000); *see also* 28 U.S.C. § 1738B (2006); UNIF. INTERSTATE FAMILY SUPPORT ACT, 9 U.L.A. 159 (2005).

2. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1)(B), 9 U.L.A. 254 (2005).

3. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 256 (2005).

interstate child support modification.[4] Yet, in 2008, the Massachusetts Supreme Judicial Court reached the opposite conclusion in similar circumstances.[5]

This essay reviews these two judicial decisions to determine which court correctly determined the fate of UIFSA's no "home court advantage" provision. It begins by providing some background regarding the historical problem of modification and enforcement of child support orders in the interstate context, and recent legislative efforts to address those problems.[6] The essay then goes through a detailed description of the factual circumstances and the courts' reasoning in the two cases mentioned above.[7] Subsequently, the essay independently evaluates the various preemption arguments involved before concluding that the Tennessee court was correct in finding that UIFSA is not preempted by federal law.[8] The essay goes on to contend that, in the interests of ensuring collection of the maximum amount of needed support for children, UIFSA should be amended to allow custodial parents to seek modification of interstate child support orders in their state of residence, except in cases of great hardship to the non-custodial parent. On the other hand, UIFSA's no "home court advantage" policy should generally be continued with regard to non-custodial parents.[9]

II. INTERSTATE CHILD SUPPORT ENFORCEMENT—THE BAD OLD DAYS

The difficulty experienced by Custodial parents' in collecting child support payments has long been a vexing problem.[10] According to the most recent United States Census data available, nearly 23% of all custodial parents who have enforceable child support agreements receive no child support payments at all.[11] And less than half of all custodial parents receive the full amount of child support owed to them.[12] In total, approximately $13.2 billion worth of child support owed to custodial parents in 2005 was not paid.[13] For the most part, the percentage of child support owed that is actually received has not changed significantly since 1993.[14]

4. LeTellier v. LeTellier, 40 S.W.3d 490, 492 (Tenn. 2001).

5. Draper v. Burke, 881 N.E.2d 122, 127-29 (Mass. 2008).

6. *See infra* Part II.

7. *See infra* Part III.

8. *See infra* Part IV.

9. *See infra* Part V.

10. *See, e.g.*, Patricia Wick Hatamyar, *Critical Applications and Proposals for Improvement of the Uniform Interstate Family Support Act and The Full Faith and Credit for Child Support Orders Act,* 71 ST. JOHN'S L. REV. 1, 3 & nn.1-2 (1997).

11. Timothy S. Grall, *Custodial Mothers and Fathers and Their Child Support: 2005; Current Population Reports*, United States Census Bureau 7 (Aug. 2007). Five out of six custodial parents are women. *Id.* at 3. Nine out of ten custodial parents owed child support were women. *Id.*

12. *Id.* at 7. The precise figure is 46.9%. *Id.*

13. *Id.* at 8-9. This amounted to a little more than one-third (34.7%) of the total amount of

Traditionally, custodial parents were left virtually on their own to try to collect the child support payments owed to them.[15] While better off custodial parents were able to hire private attorneys to help them to enforce their child support rights, most custodial parents lacked the resources necessary to engage private attorneys for what, in many cases, might be lengthy and difficult battles to receive support. This was particularly true given the economic challenges that affected primarily women following the dissolution of their marriages,[16] and even more true among the women who were not receiving the child support owed to them.

In 1974, in an effort to recover welfare payments that were provided to impoverished single parents under the Aid to Families with Dependent Children (AFDC) program, Congress required states, as a condition of receiving AFDC funds, to set up programs designed to increase the collection of child support payments owed to the recipient of AFDC benefits.[17] The state entities created pursuant to this mandate are often referred to as "Title IV-D" agencies after the section of the Social Security Act that provided the requirement.[18] By the late 1980s, the federal government required state IV-D agencies to make their services available to all parents who were owed child support, regardless of their receipt of AFDC funds.[19] Among the tools available to IV-D agencies to collect child support are wage and

$38 billion owed to custodial parents. *Id.*

14. *Id.* at 7-9. Daniel Hatcher points out that about half of the total amount of child support owed in this country is actually due to state entities rather than to custodial parents. Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, 1030 (2007). In cases where the custodial parent receives benefits pursuant to the Temporary Assistance to Needy Families (TANF) program, after a small "pass through" to the custodial parent, child support payments go to the state to reimburse it for its TANF outlay. *Id.* In such circumstances, where current child support payments are not made, most of the arrearage that accumulates is owed to the state. *Id*. Hatcher persuasively argues that allocating child support payments to state reimbursement is misguided whenever needy children could benefit from access to the funds. *Id.* at 1032.

15. *See, e.g.*, D. KELLEY WEISBERG & SUSAN FRELICH APPLETON, MODERN FAMILY LAW: CASES AND MATERIALS 698 (3d ed. 2006).

16. *See, e.g.*, LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA 323-24 (1985).

17. *See, e.g.*, WEISBERG & APPLETON, *supra* note 15, at 699-700; Marsha Garrison, *Child Support and Children's Poverty—A Review of Small Change: The Economics of Child Support—By Andrea H. Beller & John W. Graham; Yale University Press, 1993*, 28 FAM. L.Q. 475, 476 (1994); Hatcher, *supra* note 14, at 1041-42; Laura W. Morgan, *The Federalization of Child Support A Shift in the Ruling Paradigm: Child Support as Outside the Contours of "Family Law*," 16 J. AM. ACAD. MATRIM. LAW. 195, 203 (1999) [hereinafter Morgan, *Federalization*].

18. *See* Morgan, *Federalization*, *supra* note 17, at 203.

19. *See* WEISBERG & APPLETON, *supra* note 15, at 700; Morgan, *Federalization*, *supra* note 17, at 203-04.

bank garnishments, tax refund intercepts, and passport, drivers, and professional license suspensions.[20]

Prior to the extension of IV-D program services to non-welfare recipients, one of the ways child support obligors were able to evade their support obligations was by moving out of the state that issued the initial child support order.[21] State courts lack mechanisms to enforce their orders outside of their territorial bounds.[22] And for reasons stated above, many child support obligees lack the private resources necessary to pursue their obligors across state lines and into a foreign state's courts.[23] Moreover, because child support orders are always modifiable based on a showing of materially changed circumstances, many states took the position that such orders were not entitled to full faith and credit under the United States Constitution.[24] Thus, child support obligors were often able to obtain new orders in their new states, or modify existing orders, reducing the amount of child support to be paid.[25]

In order to increase the uniformity, enforceability, and stability of child support orders in the interstate context, a series of model statutes were drafted. These provisions, including the Uniform Desertion and Non-Support Act (UDNA), the Uniform Support of Dependants Law (USDL), the Uniform Reciprocal Enforcement of Support Act (URESA), and the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), were each adopted by a number of states and, to varying degrees, accomplished some of the goals of their drafters.[26] For example, "URESA provided the first mechanism by which support orders could be established and enforced across state lines."[27] However, none of these provisions fully accomplished its drafters' goals of completely rationalizing and harmonizing the interstate child support establishment and enforcement regime. For example, due to the lack of a long-arm jurisdiction provision, all proceedings under URESA required the involvement of at least two states.[28] Moreover, URESA provided no mechanism for

20. *See* WEISBERG & APPLETON, *supra* note 15, at 700; Morgan, *Federalization*, *supra* note 17, at 203.

21. *See* Hatamyar, *supra* note 10, at 3 n.1 (quoting U.S. COMMISSION ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM 4 (1992)).

22. *See* Tina M. Fielding, Note, *The Uniform Interstate Family Support Act: The New URESA*, 20 U. DAYTON L. REV. 425, 426 (1994).

23. *See* Fielding, *supra* note 22, at 426; Hatamyar, *supra* note 10, at 3 n.1 (citing WEITZMAN, *supra* note 16, at 286-87).

24. *See* Fielding, *supra* note 22, at 426 n.17 (citing Sistare v. Sistare, 218 U.S. 1, 17, 22 (1910)*; see also* WEISBERG & APPLETON, *supra* note 15, at 712-13; Hatamyar, *supra* note 10, at 4-5 n.l0.

25. *Cf.* Laura W. Morgan, *Interstate Enforcement of Support: A Short Primer on Federal and Uniform Law (Part 2 of 2)*, 9 DIVORCE LITIG. 65, 65-66 (1997) [hereinafter Morgan, *Interstate Enforcement Part 2*].

26. *See* Fielding, *supra* note 22, at 427.

27. Morgan, *Interstate Enforcement Part 2*, *supra* note 25, at 66.

28. *Id*. at 66.

child support obligors (as opposed to obligees) to obtain relief through the statute.[29] And most significantly, URESA continued to allow for multiple and potentially conflicting child support orders to be in effect at the same time in a single case.[30] A detailed description of the strengths and weaknesses of each of the various model acts mentioned above lies beyond the scope of this article.[31] However, there is little doubt that virtually all commentators agreed that, as of the beginning of the 1990s, more work needed to be done to simplify and harmonize the legal regime governing the interstate modification and enforcement of child support.[32]

Consistent with this consensus, in 1994 the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the Uniform Interstate Family Support Act, or UIFSA.[33] A major goal of UIFSA was to cut down on the incidence of multiple support orders in a single case.[34] UIFSA also attempted to cut down on the number of cases in which multiple states' courts are involved, in favor of more single state proceedings.[35] Additionally, UIFSA constrains the ability of courts in subsequent states to apply local law (as opposed to the law of the issuing jurisdiction) in modifying existing support orders.[36] Perhaps its most important feature in accomplishing these goals is the concept of continuing exclusive jurisdiction: as long as either the child, or either of its parents continues to reside in the state that issued the initial child support order, that state retains continuing exclusive jurisdiction to modify that order, and no other state has jurisdiction to do so.[37] It is only if all of the interested parties (i.e., both parents and the relevant child) have left the issuing jurisdiction that a second state may exercise jurisdiction to modify the support order.[38]

A number of states quickly adopted UIFSA. By June 1, 1996, 33 States and the District of Columbia had adopted UIFSA.[39] However, Congress was not satisfied

29. *Id*.

30. *See* WEISBERG & APPLETON, *supra* note 15, at 713; Morgan, *Interstate Enforcement Part 2*, *supra* note 25, at 66-67.

31. *See* Fielding, *supra* note 22, at 427-46.

32. *See* Morgan, *Interstate Enforcement Part 2, supra* note 25, at 67.

33. *See* Fielding, *supra* note 22, at 425 nn. 6, 7.

34. *See* WEISBERG & APPLETON, *supra* note 15, at 713; Fielding, *supra* note 22, at 447; Hatamyar, *supra* note 10, at 4-5.

35. *See* Fielding, *supra* note 22, at 458-61; Hatamyar, *supra* note 10, at 4-5; Morgan, *Interstate Enforcement Part 2*, *supra* note 25, at 72.

36. *See* Fielding, *supra* note 22, at 461-63.

37. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. 192 (2005); Fielding, *supra* note 22, at 459; Hatamyar, *supra* note 10, at 4-5.

38. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. 192 (2005); Fielding, *supra* note 22, at 460.

39. John J. Sampson, *Uniform Interstate Family Support Act (1996), Statutory Text, Prefatory Note, and Commissioners' Comments, with More Unofficial Annotations*, 32 FAM. L.Q. 390, 399 (1998) [hereinafter Sampson, *UIFSA 1996*].

with the pace of reform and sought further to enhance interstate conformity so as to ease interstate collection of child support.[40] So in late 1994, Congress enacted the Full Faith and Credit for Child Support Orders Act (FFCCSOA).[41] The FFCCSOA required states to give full faith and credit to each other's child support orders, even in relation to ongoing support, as opposed to past due support that had been reduced to a judgment.[42] The FFCCSOA also adopted UIFSA's "one-order-at-a-time" approach to reduce the potential for multiple and conflicting child support orders.[43] Despite their common objectives, some differences in language resulted in potential conflicts between UIFSA and FFCCSOA.[44] Thus, FFCCSOA was amended in 1996 "to achieve greater consistency with UIFSA."[45] Moreover, as part of President Clinton's "welfare reform" legislation, states were required to adopt UIFSA in order to continue to receive federal funding for child support enforcement programs.[46] Despite these efforts, UIFSA was further amended in 2001 to continue the process of harmonizing federal and different state laws on the subject.[47]

At least one potential conflict remains between the current versions of UIFSA and FFCCSOA. Under UIFSA, if the original issuing state has lost continuing exclusive jurisdiction to modify the order because both parents and the child have moved from the state,[48] then a party seeking to modify the order must do so in a court that is not located in the moving party's state of residence, and that has personal jurisdiction over the non-moving party. The precise relevant language is as follows:

> [A] tribunal of this State may modify a child-support order issued in another State . . . if . . .
>
> (1) the following requirements are met:

40. Laura W. Morgan, *Interstate Enforcement of Support: A Short Primer (Part 1 of 2)*, 9 DIVORCE LITIG. 41, 42-43 (1997) [hereinafter Morgan, *Interstate Enforcement Part 1*].

41. Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (codified at 28 U.S.C. § 1738B (1994)). *See* Margaret Campbell Haynes, *Federal Full Faith and Credit for Child Support Orders Act*, 14 DEL. LAW. 26 (1996); Morgan, *Interstate Enforcement Part 1*, *supra* note 40, at 42.

42. *See* Hatamyar, *supra* note 10, at 7.

43. *Id.* at 5-7.

44. *Id.* at 7-8.

45. *Id.* at 4.

46. *See* Sampson, *UIFSA 1996*, *supra* note 39, at 401. By 1998, all states had adopted UIFSA. John J. Sampson, *Uniform Interstate Family Support Act (2001), With Prefatory Note and Comments (with Still More Unofficial Annotations),* 36 FAM. L.Q. 329, 338 (2002) [hereinafter Sampson, *UIFSA 2001*].

47. *See id.* at 339.

48. *See* Sampson, *UIFSA 2001*, *supra* note 46, at 434-35.

> (A) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing State;
>
> (B) a petitioner who is a nonresident of this State seeks modification; and
>
> (C) the respondent is subject to the personal jurisdiction of the tribunal of this State . . . .[49]

By contrast, FFCCSOA does not impose the same non-residency requirement on the moving party. Its relevant language provides:

> If there is no individual contestant or child residing in the issuing state, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.[50]

Thus, FFCCSOA permits a parent to seek modification in their "home court," provided the court has personal jurisdiction over the non-moving party.[51] By contrast, UIFSA requires the parent seeking modification to travel for an "away game" in order to obtain a modification.[52]

Of course, to the extent the two statutory provisions conflict, under supremacy principles, the federal statute governs.[53] However, FFCCSOA does not contain an express provision preempting state law. Thus, the question becomes whether the two statutes directly conflict, or, even in the absence of a direct conflict, whether application of the state provision would frustrate Congress' purpose in enacting the federal legislation. Two state supreme courts have now reached opposite answers to this question in the context of interstate child support modification cases.

III. THE CASES

In *Letellier v. Letellier*, the mother originally obtained an order for custody of the couple's child and for child support from the Superior Court of the District of Columbia in 1989.[54] Nine years later the mother filed petitions in Juvenile Court in Tennessee to register the D.C. order and to modify the child support award.[55] At the

49. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a), 9 U.L.A. 254 (2005). The statute also provides for modification jurisdiction by consent of all of the parties. *See* § 611(a)(2).

50. 28 U.S.C. § 1738B(i) (2006).

51. *See* Sampson, *UIFSA 2001*, *supra* note 46, at 433-34.

52. *See id.* at 434.

53. U.S. CONST. art. 6, cl. 2.

54. 40 S.W.3d 490, 492 (2001).

55. *Id.*

time, the father resided in Virginia, and the mother and child in Tennessee.[56] The Juvenile Court granted the father's motion to dismiss the petition to modify on grounds of lack of subject matter jurisdiction.[57] The Tennessee Court of Appeals reversed the trial court on grounds that FFCCSOA preempts UIFSA and provided the lower court with subject matter jurisdiction to modify the support order.[58] On further appeal, the Tennessee Supreme Court reversed the Court of Appeals decision and reinstated the Juvenile Court's order dismissing the petition.[59]

First, the Tennessee Supreme Court noted that D.C. lost continuing exclusive jurisdiction to modify its support order under UIFSA due to the fact that both parents and the child had moved from the District.[60] Next, the court found that Tennessee lacked subject matter jurisdiction to modify the support order under UIFSA § 611(a)(1)(B)'s "no home court advantage" provision, because the mother was a resident of Tennessee at the time she filed the modification petition in her home state.[61] The court then went on to address the question of whether UIFSA is preempted by FFCCSOA.[62] The court began with the familiar presumption that Congress did not intend to preempt state law[63] and went on to note that no express language in FFCCSOA purports to preempt UIFSA.[64]

Of course, even in the absence of express statutory language, federal law may preempt state law impliedly to the extent it is Congress' intent to do so.[65] However, the *Letellier* court also rejected any notion that Congress intended FFCCSOA to preempt UIFSA and referenced language in the statute's legislative history indicating

56. *Id.*

57. *Id.*

58. *Id.* at 492-93.

59. *Id.* at 499.

60. *Id.* at 493 (citing Tenn. Code Ann. § 36-5-2205(a)(1) (2005)). Though the references in *LeTellier* are to Tennessee's version of UIFSA, references throughout the discussion herein will be directly to the Uniform Act. *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 205, 9 U.L.A. 192 (2005).

61. *LeTellier*, 40 S.W.3d at 493-94.

62. Prior to addressing the preemption issue, the *LeTellier* court rejected an argument by the mother that § 611(a)(1)(B) did not apply in this case because the court had obtained personal jurisdiction over the father through UIFSA's long-arm jurisdiction provisions (§ 201). *LeTellier*, 40 S.W.3d at 495-96. While the court conceded that § 611 would not apply if the Court were to exercise long-arm jurisdiction to issue an initial child support order against the father, or to modify a Tennessee child support order, the fact that the initial order was issued by a foreign jurisdiction rendered § 611 applicable regardless of the manner in which personal jurisdiction was obtained over the father. *Id.*

63. *LeTellier*, 40 S.W.3d at 497-499 (citations omitted). *But cf.* Mary J. Davis, *Unmasking the Presumption in Favor or Preemption*, 53 S.C. L. REV. 967 (2002) (noting that the court presumes preemption).

64. *LeTellier*, 40 S.W.3d at 499.

65. Davis, *supra* note 63, at 970.

the intent that FFCCSOA be consistent with UIFSA.[66] The court also pointed out that FFCCSOA was amended after its initial enactment for the purpose of eliminating inconsistencies with UIFSA.[67] Finally, and most significantly from the court's perspective, the fact that Congress required all 50 states to adopt UIFSA in order to continue to receive certain federal funds, belied any intent by Congress to preempt that very statute.[68]

Another manner in which federal law may preempt state law is if there is an actual conflict between federal and state statutory language.[69] However, after analyzing the relevant language of UIFSA and FFCCSOA together, the *Letellier* court concluded that there is in fact no conflict between the statutes.[70] Starting with FFCCSOA, the court concluded that the relevant language is ambiguous on its face, warranting reference to relevant legislative history to resolve the ambiguity.[71] More specifically, the court determined that is unclear whether the term "jurisdiction" in 28 U.S.C. § 1738B(i) refers solely to personal jurisdiction "or to both personal and subject matter jurisdiction."[72] In light of the legislative history mentioned above, which indicates the intent to harmonize the two statutes, the court concluded that the term jurisdiction in FFCCSOA should be interpreted to refer "to both personal and subject matter jurisdiction."[73] Essentially, the court read FFCCSOA as incorporating, though its use of the term jurisdiction, the subject matter jurisdiction requirements of UIFSA § 611(a)(1)(B), or the no home court advantage prohibition.[74] Thus, because the mother's petition in *Letellier* failed to comply with UIFSA's subject matter jurisdiction or no home court advantage requirement, it also failed to comply with FFCCSOA, and there was no conflict between the statutes.[75]

For a number of years, commentators viewed *Letellier* as representing the final word regarding a possible conflict between UIFSA and FFCCSOA over whether a party seeking modification of an out of state child support order can do so in their state of residence, and a number of other courts followed the decision.[76] However,

66. *LeTellier*, 40 S.W.3d at 497 & n.5 (quoting H.R. REP. NO. 102-982, at 5 (1992) ("[FFCCSOA, as proposed] is consistent with … the terms of UIFSA.")).

67. *Id.* at 498 & n.8 (quoting H.R. CONF. REP. NO. 104-725, at 351 (1996) ("revisions to FFCCSOA proposed 'to ensure that full faith and credit laws can be applied consistently with UIFSA'").

68. *LeTellier*, 40 S.W.3d at 497-98.

69. *Id.* at 497 (citation omitted); *see also* Free v. Bland, 369 U.S. 663, 666-68 (1962); Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 227-28 (2000); Davis, *supra* note 63, at 970.

70. *Id.* at 496.

71. *Id.* at 498.

72. *Id.*; *see also* 28 U.S.C. § 1738B(i) (2006).

73. *LeTellier,* 40 S.W.3d at 498.

74. *Id.* at 498-99; *see also* Sampson, *UIFSA 2001*, *supra* note 46, at 434.

75. *LeTellier,* 40 S.W.3d at 499; *see also* Sampson, *UIFSA 2001*, *supra* note 46, at 434.

76. *See, e.g.*, 37 AM. JUR. *Trials* § 1.5 (Supp. 2009).

that situation changed in 2008 when the Massachusetts Supreme Judicial Court issued its decision in *Draper v. Burke*.[77] In *Draper*, the original child support order was issued by an Oregon court pursuant to the couple's dissolution of marriage proceedings.[78] Subsequently, the mother and child moved to Massachusetts, and the father to Idaho.[79] The mother then petitioned for modification of the child support order in Massachusetts, essentially seeking contribution by the father to the children's college expenses.[80] The father moved to dismiss for lack of subject matter jurisdiction, based on UIFSA § 611(a)(1)(B)'s requirement that the party seeking to modify a child support order outside the issuing state be a non-resident of the state in which modification is sought.[81] The father did not contest the court's personal jurisdiction over him, given the fact that he was born and raised in Massachusetts, married there, and resided there with the mother and child for approximately 10 years.[82] The trial court denied the motion to dismiss, and increased the father's child support.[83]

On appeal, the Supreme Judicial Court acknowledged that the mother failed to satisfy UFISA's subject matter jurisdiction requirements to modify the support order due to her residence in Massachusetts.[84] However, the Massachusetts court rejected the *Letellier* court's construction of the term jurisdiction in 28 U.S.C. § 1738B(i) to include both subject matter and personal jurisdiction.[85] The Supreme Judicial Court criticized the *Letellier* court's interpretation on grounds that it removed the word "jurisdiction" from its broader statutory context.[86] Indeed, the word jurisdiction appears in 28 U.S.C. § 1738B(i) as part of the phrase "jurisdiction over the nonmovant[,]" which the Massachusetts court took to be an expression of personal jurisdiction only.[87] The court went on to conclude that, because Congress referred expressly only to personal jurisdiction in the statute, Congress intended only to impose a personal jurisdiction requirement on courts' ability to modify an out of state child support order.[88] Thus, Massachusetts's, and presumably Tennessee's imposition of a subject matter jurisdiction requirement though UIFSA, conflicts with Congress's

77. 881 N.E.2d 122 (2008).
78. *Id.* at 123-24.
79. *Id.* at 124.
80. *Id.*
81. *Id.*
82. *Id.* at 123-24 & n.2.
83. *Id.* at 124-25.
84. *Id.* at 126.
85. *Id.* at 128.
86. *Id.*
87. *Id.*
88. *Id.*

imposition of only a personal jurisdiction requirement through FFCCSOA and is therefore preempted, according to the Supreme Judicial Court.[89]

In support of its reasoning, the court pointed out that while Congress did have the purpose of increasing uniformity and reducing jurisdictional competition and conflict among state courts with respect to child support orders in enacting FFCCSOA, Congress had an additional purpose as well.[90] That was to benefit children by removing obstacles to custodial parents' ability to collect child support.[91] The court believed that forcing the mother to go to Idaho to compel the husband to contribute to the child's college expenses would not serve that purpose at all.[92] Thus, the court affirmed the trial court's order.[93]

IV. THE PREEMPTION ANALYSIS—WHICH COURT WAS RIGHT?

The conflict between the Tennessee and the Massachusetts decisions raises questions as to which court was correct in its analysis of the relevant law, and in its interpretation of preemption doctrine in particular. To start, it seems that the Massachusetts court plainly offers the better construction of the relevant statutory language. The phrase "jurisdiction over a nonmovant" in FFCCSOA implies only a requirement of personal jurisdiction.[94] The Tennessee court's removal of the word jurisdiction from this phrase represents a type of "word chopping"[95] that defeats rather than supports an objective analysis of the statute's plain language.

However, the conclusion that FFCCSOA expressly refers only to personal jurisdiction alone and not to subject matter jurisdiction, merely frames, rather than determines, the inquiry. As pointed out above, preemption need not be express.[96] And the Tennessee court acted properly in presuming that Congress did not intend to preempt state law.[97] Indeed, this presumption is particularly strong "in a field which the States have traditionally occupied,"[98] such as family law.[99] Given the number of recent federal enactments cited above regarding child support,[100] one might

89. *Id.* at 128-29.

90. *Id.* at 129.

91. *Id.*

92. *Id.* at 126-27, 129.

93. *Id.* at 129.

94. *Id.* at 128 (internal quotation marks omitted).

95. *See, e.g.*, Smith v. State Parole Bd., 456 N.E.2d 784, 786-87 (Mass. App. Ct. 1983).

96. *See* Davis, *supra* note 63, at 970; *see also* Nelson, *supra* note 69, at 227.

97. *See* LeTellier v. LeTellier, 40 S.W.3d 490, 497 (Tenn. 2001); *accord* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

98. Wyeth v. Levine, 129 S.Ct. 1187, 1194-95 (2009) (citations omitted).

99. *See, e.g.*, Ankenbrandt v. Richards, 504 U.S. 689 (1992) (upholding a "domestic relations exception" to federal diversity jurisdiction for certain family law cases).

100. *See supra* Part II.

reasonably question whether child support in particular remains an area occupied by state law.[101] Yet it is certainly the case that federal law has not come close to occupying the entire field of child support,[102] so the presumption against a finding of preemption remains warranted.

The *Letellier* court also correctly recognized other grounds on which implied preemption might be found. These include: 1) "a clear [Congressional] intent to preempt state law[;]" 2) "where compliance with both federal and state law is in effect physically impossible[;]"or 3) "where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress."[103] Each of these grounds will be discussed in turn.

As the U.S. Supreme Court has stated, "the purpose of Congress is the ultimate touchstone in every preemption case."[104] And the Tennessee court correctly concluded that the history of Congress's consideration of UIFSA belies any intent to preempt it. First, Congress's United States Commission on Interstate Child Support expressed support for UIFSA.[105] Second, contemporaneous legislative documents state that FFCCSOA was intended to be consistent with UIFSA.[106] Third, Congress enacted legislation requiring all states to adopt UIFSA in order to qualify for certain federal funds.[107] Finally, Congress later adopted amendments to FFCCSOA for the express purpose of eliminating inconsistencies with UIFSA.[108] It is untenable to read into this history the Congressional intent to preempt UIFSA.

Also, if one agrees with the Massachusetts court's construction of 28 U.S.C. § 1738B(i) as referring only to personal jurisdiction,[109] then in order to find implied preemption one must also attribute to Congress's silence with regard to subject matter jurisdiction the intent to preclude states from imposing any subject matter jurisdiction requirement at all with regard to child support modification. Yet, subject matter

101. *See* Morgan, *Federalization*, *supra* note 17, at 195-96.

102. *See* English v. General Elec. Co., 496 U.S. 72, 79 (1990); *Rice*, 331 U.S. at 230; Nelson, *supra* note 69, at 227 (describing these as "field" preemption cases).

103. LeTellier v. LeTellier, 40 S.W.3d, 490, 497 (Tenn. 2001) (quoting Watson v. Cleveland Chair Co., 789 S.W.2d 538, 542 (Tenn. 1989)). Professor Nelson refers to the second and third categories as "conflict" preemption cases. Nelson, *supra* note 69, at 227-28. The second category he refers to as "physical impossibility" conflict preemption cases, and cites Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963), as the seminal case. Nelson, *supra* note 69, at 228 & n.14. The third category he refers to as "obstacle" conflict preemption cases and cites Hines v. Davidowitz, 312 U.S. 52, 67 (1941) as the seminal case. Nelson, *supra* note 69, at 228 n.14. The *Watson* opinion, on which the *LeTellier* court relied, also cites to these cases. *See* Watson v. Cleveland Chair Co., 789 S.W.2d 538, 542 (Tenn. 1989).

104. Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996) (internal quotation marks omitted).

105. H.R. REP. NO. 102-982, at 4-5 (1992); H.R. REP. NO. 103-206, at 4 (1993).

106. H.R. REP. NO. 102-982, at 4-5 (1992); H.R. REP. NO. 103-206, at 4 (1993).

107. 42 U.S.C. § 666(f) (2006).

108. *LeTellier*, 40 S.W.3d at 498 n.8.

109. *See* Draper v. Burke, 881 N.E.2d 122, 128 (Mass. 2008).

jurisdiction is a foundational requirement for virtually all exercises of judicial authority.[110] It simply goes too far to conclude that Congress, acting *sub silencio*, intended to preclude states from imposing any subject matter jurisdiction requirement at all in order for state courts to modify another state's child support order.

It is also not "physically impossible"[111] to comply with both FFCCSOA and UIFSA. Assuming that the issuing jurisdiction has lost continuing exclusive jurisdiction pursuant to 28 U.S.C. 1738B(e)(2)(A) and UIFSA § 611(a)(1)(A), if you agree with the construction of 1738B(i) advanced by the Massachusetts court, then the only requirement FFCCSOA places on the modifying court in terms of jurisdiction is personal jurisdiction over the nonmovant. This requirement is easily satisfied in the nonmovant's state of residence. Or, if the nonmovant does not reside within the modifying court's jurisdiction, personal jurisdiction is satisfied by application of one of UIFSA's eight bases for long-arm jurisdiction[112] and compliance with the requirements of the Due Process Clause of the 14th Amendment to the United States Constitution.[113] The only additional requirement imposed by UIFSA is that the moving party may not be a resident of the modifying court's state.[114] Thus, while a single state (that of the moving party's residence) is eliminated from having jurisdiction to modify, any other state that has personal jurisdiction over the nonmovant will be an appropriate forum in which to modify. So compliance with both provisions is not impossible. Indeed, the only scenario that might be considered to present impossibility would be where the *only* state with personal jurisdiction over the nonmovant is also the moving party's state of residence. However, in that situation, UIFSA § 613(a)[115] would provide jurisdiction in the two parties' state of residence, so impossibility is again avoided.

The Massachusetts court hung its hat on the ground of obstacle preemption in ruling that FFCCSOA preempts UIFSA.[116] More particularly, the court noted that at least *one* of the objectives of Congress in enacting FFCCSOA was to enhance the welfare of children by increasing the ability of custodial parents to collect child support.[117] And, the court was surely right that at least in the circumstances of *Draper*, this objective would not have been served by forcing the custodial parent, the mother, to travel from Massachusetts to Idaho to seek contribution from the father to

110. *See, e.g.*, 21 C.J.S. *Courts* § 20 (2006).

111. *See* Fla. Lime & Avocado Growers v. Paul, 373 U.S. 132,143 (1962).

112. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201, 9 U.L.A. 185 (2005).

113. *See* Kulko v. Super. Ct. of Cal., 436 U.S. 84, 91 (1978).

114. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611(a)(1)(B), 9 U.L.A. 254 (2005).

115. UNIF. INTERSTATE FAMILY SUPPORT ACT § 613(a), 9 U.L.A. 261 (2005), provides that "[i]f all of the parties who are individuals reside in this State and the child does not reside in the issuing State, a tribunal of this State has jurisdiction … to modify the issuing State's child-support order…."

116. *See* Draper v. Burke, 881 N.E.2d 122, 129 (Mass. 2008).

117. *Id.*

the children's college expenses.[118] However, while preemption of UIFSA's "home court" prohibition may have strengthened the mother's ability to collect support in the circumstances of *Draper*, it would not do so in all cases. Indeed, under the Massachusetts court's decision, a custodial parent might have to travel to defend against a non-custodial parent's motion to *decrease* child support, filed in the non-custodial parent's home state.[119] In such circumstances, UIFSA's home-court prohibition likely would actually better serve Congress's objective to protect the welfare of children of separated parents than application of FFCCSOA alone. Particularly in the current economic climate, where motions to modify child support orders downwards are proliferating in light job cuts, layoffs, and wage and hour reductions,[120] UIFSA's home-court prohibition cannot be seen as necessarily being at odds with the goal of protecting the recipients of child support.

The obstacle preemption argument against UIFSA becomes even weaker when one focuses on the particular provision of FFCCSOA at issue in *Letellier* and *Draper*, as opposed to FFCCSOA as a whole. The fact that the only limitation FFCCSOA places on modification jurisdiction after the issuing jurisdiction has lost continuing exclusive jurisdiction is personal jurisdiction over the nonmovant, demonstrates a Congressional intent to provide a certain minimal level of fairness to nonmovants in modification proceedings. The requirement of personal jurisdiction demands that the nonmovant have at least "minimum contacts" with the modifying jurisdiction "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[121] And the purpose of UIFSA's home-court limitation is also to provide protection to nonmovants. As the comments to § 611 provide:

> This restriction attempts to achieve a rough justice between the parties in the majority of cases by preventing a litigant from choosing to seek modification in a local tribunal to the marked disadvantage of the other party.[122]

Thus, UIFSA provides an additional protection for nonmovants on top of that provided by FFCCSOA, namely the requirement that nonmovants not be compelled to defend against modification petitions in the moving party's state of residence. Where a state statute provides additional protection for individuals on top of similar

118. *Id.* at 126.

119. Although in the circumstances of *Draper*, the court suggested that an Idaho court would not have been able to satisfy FFCCSOA's personal jurisdiction requirement with regard to the mother. *Id.*

120. *See, e.g.*, KATE DAVIDSON, *Another Casualty of the Recession: Child Support*, NATIONAL PUBLIC RADIO REPORT (Apr. 5, 2009), *available at* http://www.npr.org/templates/story/story.php?storyId=102761479.

121. Kulko v. Superior Court, 436 U.S. 84, 92 (1978) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

122. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt, 9 U.L.A. 256 (2005).

protections provided for in a federal statute, there is no obstacle to furtherance of Congress's purpose.[123]

Perhaps even more importantly, UIFSA does not stand as an obstacle to Congress's over arching purposes in enacting FFCCSOA. As the *Draper* court recognized, Congress made its purposes explicit in enacting FFCCSOA.[124] The "purposes" provision of the statute, as originally adopted, states those purposes as:

> (1) to facilitate the enforcement of child support orders among the States;
> (2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and
> (3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.[125]

By removing the moving party's home state as another possible forum for relitigation of the original child support order, UIFSA serves these stated purposes. The narrower field of possible modification forums decreases the likelihood of continuing interstate controversy and jurisdictional competition. Thus, the obstacle preemption argument fails on this ground as well.

For all of these reasons, the conclusion of the *Letellier* court that FFCCSOA does not preempt UIFSA's modification jurisdiction provision seems more consistent with applicable preemption doctrine and principles than the *Draper* court's conclusion to the contrary.[126] Nonetheless, given this conclusion that UIFSA is not in fact preempted, one should consider whether UIFSA has in fact struck the right balance among the competing considerations in regard to its "no home court advantage" provision.

---

123. *See, e.g.*, Cal. Fed. Savings & Loan v. Guerra, 479 U.S. 272, 285 (1987) (finding that Title VII's prohibition on employment discrimination based on pregnancy did not preempt California statute which required employers to reinstate employees following pregnancy leave). *But cf.* Davis, *supra* note 63, at 999-1000 (describing *Guerra* in terms of express non-preemption language contained in Title VII). *Cf. also* Greier v. Am. Honda Motor Co., 529 U.S. 861, 867-68 (2000) (holding that state tort law requiring auto manufacturers to install airbags was preempted by federal regulation allowing a variety of restraint systems in motor vehicles).

124. *Draper*, 881 N.E.2d at 127.

125. Pub. L. No. 103-383, § 2(c), 108 Stat. 4063, 4064 (1994).

126. After this essay was substantially completed, the Supreme Court of Indiana ruled that FFCCSOA does not preempt UIFSA regarding the question of whether the issuing state has lost continuing exclusive jurisdiction to modify its support order. *See* Basileh v. Alghusain, 912 N.E.2d 814, 820-21 (Ind. 2009). The case is not directly on point because it did not address the question in issue here as to which state does have modification jurisdiction after the original issuing state has lost its continuing exclusive jurisdiction. Nonetheless, the Indiana court relied on the reasoning of *LeTellier* in reaching its decision. *Id.* at 820 (citing LeTellier v. LeTellier, 40 S.W.3d 490, 498 (Tenn. 2001)). Thus, the Indiana decision lends some support for the conclusion here that the *LeTellier* court reached the correct decision with regard to the preemption issue here.

V. THE POLICY QUESTION: HOW SHOULD UIFSA RESOLVE THE MODIFICATION JURISDICTION ISSUE?

As quoted above, UIFSA identifies the basis for its prohibition on child support modification jurisdiction in the moving party's home state in terms of fairness—a "rough justice" is achieved by requiring the person seeking modification "to play an away game on the other party's home field."[127] While this reasoning might be sound where both parties are equally situated in terms of their ability to travel to prosecute a modification claim, that is rarely the case where only one of the parties is the primary residential parent of the children involved. Indeed the *Draper* court laid UIFSA's fairness reasoning to waste by pointing out that there would be nothing "fair" in that case in requiring the custodial parent to travel clear across the country, to a jurisdiction (Idaho) with which she had no contacts at all, in order to compel the father to live up to his promise to contribute to the children's college expenses.[128] Nor is it fair to require a custodial parent to travel to seek an increase in child support if either the custodial parent's income has declined significantly, or the non-custodial parent's income has increased significantly.

Moreover, both UIFSA, and FFCCSOA to a lesser extent, at times seem to confuse the *means* of uniformity, with the *end* of ensuring that children receive adequate support to protect them from impoverishment. While it is true that in most instances, uniform and consistent state laws will lead to increased collection of child support, applying identical rules to differently situated parties will not necessarily achieve that result. Both the statistics discussed in Part II of this essay and the history of the build up to the enactment of both UIFSA and FFCCSOA demonstrate an overriding concern with the adequacy of the support collected on behalf of children of separated parents.[129] Applying UIFSA's home state prohibition on child support modification petitions uniformly to custodial and non-custodial parents interferes with achieving that ultimate goal.

Thus, what is proposed here is to amend UIFSA to allow custodial parents to file for child support modifications in their state of residence, provided that the other requirements of UIFSA § 611(a) and 28 U.S.C. § 1738B(i) are satisfied. On the other hand, non-custodial parents would remain obligated to file for child support modifications in a state other than their state of residence that meets the other statutory requirements. Thus, the parent generally in the best position to bear the

127. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 256 (2005).

128. *Draper*, 881 N.E.2d at 126. The parties stipulated that they had always contemplated that each would contribute to the college expenses. However, the original child support order did not address the issue, so modification was required rather than merely enforcement, which would have been allowed in Massachusetts. *Id*. at 124-27.

129. *See supra* Part II.

increased costs and burdens to travel to file for modification, the non-custodial parent, will be required to do so.[130]

There is ample precedent in child support law for imposing asymmetrical obligations on custodial and non-custodial parents. For example, under a Florida statute non-custodial parents can raise the issue of subsequent children as a defense to the custodial parent's petition to increase child support, but not affirmatively in support their own motion to reduce child support.[131] Similar provisions have been upheld in other jurisdictions as well.[132]

Note that even if UIFSA were to allow a custodial parent to petition for modification in their state of residence, UIFSA and FFCCSOA's requirements of personal jurisdiction over the nonmovant would provide protection against unfairness to the non-custodial parent. Thus, unless the nonmovant has sufficient contacts with the custodial parent's state of residence to satisfy the Kulko/International Shoe test,[133] such as in *Draper* where the non-custodial parent had lived in Massachusetts for most of his life,[134] the amendment to UIFSA's subject matter jurisdiction requirement would not allow for modification jurisdiction in the custodial parent's home state. The comments to UIFSA suggest that the requirement of personal jurisdiction alone is not enough to ensure fairness to out of state, non-custodial parents, [135] because, under *Burnham v. Superior Court*, personal service in the forum state has been ruled to provide for personal jurisdiction, regardless of whether the defendant has "minimum contacts" with the forum state. [136] Thus, a non-custodial parent who would not otherwise be subject to personal jurisdiction in the custodial parent's state of residence would risk becoming subject to such personal jurisdiction by entering the forum state to visit the child and then being personally served with process.[137] However, in order to reduce the disincentive to visit the child caused by the *Burnham* rule, UIFSA could simply carve out an exception where the nonmovant is physically present in the forum state solely for the purpose of conducting child visitation.[138]

130. For purposes of the proposed statutory amendment, any parent with whom the child spends at least 50% of their time would be considered the custodial parent. Thus, in cases of a 50/50 time share, both parents would be able to invoke "home court advantage."

131. FLA. STAT. ANN. § 61.30(12)(c) (West 2005). The provision's constitutionality was upheld in Pohlmann v. Pohlmann, 703 So. 2d 1121, 1124 (Fl. Dist. Ct. App. 1997).

132. *See, e.g.*, Gallaher v. Elam, 104 S.W. 3d 455, 462 (Tenn. 2003); Feltman v. Feltman, 434 N.W.2d 590, 592-93 (S.D. 1989); Child Support Enforcement Agency v. Doe, 91 P.3d 1092, 1102 (Haw. Ct. App. 2004).

133. *See* Kulko v. Super. Ct. of Cal., 436 U.S. 84, 92 (1978) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

134. *See* Draper v. Burke, 881 N.E. 2d 122, 123-24 (Mass. 2008).

135. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 256 (2005).

136. 495 U.S. 604, 619 (1990).

137. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 256 (2005).

138. Of course, repeated visits over time would likely satisfy the Kulko/International Shoe minimum contacts standard. But such frequent trips to the forum state would remove any unfairness

Because such an exception would provide greater protection to out of state residents than is presently required by federal law, it would be consistent with FFCCSOA and not preempted under a similar analysis to that presented above.

The proposed statutory amendment is based on the premise that for the most part, non-custodial parents are better able to bear the costs of traveling to defend modification petitions than custodial parents. This is true because non-custodial parents bear fewer costs of child rearing than custodial parents, and because non-custodial parents do not have to make arrangements for childcare while traveling to litigate in a foreign state. However, it is also certainly true that in some cases, whether due to disability, financial hardship, or obligations to prior or subsequent families, the non-custodial parent may be less able to travel to litigate than the custodial parent. Recognizing such circumstances, the modified statute that I propose would contain an exception allowing courts to exercise modification jurisdiction in the non-custodial parent's home state, or decline modification jurisdiction in the custodial parent's home state in cases of extreme hardship to the non-custodial parent. A draft of modified statutory language is provided as Appendix A.

Finally, it is further worth noting that cooperation between different states' IV-D agencies, along with the possibility of telephonic hearings, may obviate the need for a parent to travel physically to prosecute or defend a modification petition in a foreign state in many cases. Nonetheless, because a party naturally has a right to be present at proceedings affecting their child support rights and obligations, the proposed statutory changes remain warranted.

VI. CONCLUSION

A review of the relevant legislative history makes clear that Congress had no intent to preempt UIFSA § 611(a)(1)(B) when it enacted FFCCSOA.[139] The better construction of the latter makes clear that UIFSA simply provides the subject matter jurisdiction requirement that goes along with FFCCSOA's personal jurisdiction requirement.[140] However, applying UIFSA's no home court advantage rule equally to custodial and non-custodial parents can result in injustice because custodial and non-custodial parents are not generally similarly situated in terms of their ability to bear the burdens and expense of litigating in a foreign jurisdiction. Moreover, UIFSA's singular focus on consistency and uniformity sometimes obscures the fact that these attributes are means to increase the availability of support to needy children, rather

in causing the nonmovant to litigate there. Note that under *Kulko*, the mere sending of child support payments to the forum state would not create minimum contacts sufficient to create personal jurisdiction. *See, e.g.,* McCubbin v. Seay, 749 So. 2d 1127, 1129 (Miss. Ct. App. 1999) (finding that husband sending child support payments to the state, along with his marriage in the state, were insufficient to create personal jurisdiction over him). So there would be no disincentive for an obligor to make required payments for fear of creating personal jurisdiction.

139. *See supra* Part IV.

140. *See supra* Part IV.

than ends in themselves. Thus, UIFSA should be amended to allow custodial parents to file for modification of child support orders in their state of residence if all interested persons have moved from the issuing jurisdiction, provided this jurisdiction also has personal jurisdiction over the non-custodial parent and except in cases of extreme hardship to the non-custodial parent, while maintaining its no home court advantage prohibition for non-custodial parents.

APPENDIX A – MODIFIED UIFSA PROVISIONS

Section 102. Definitions. In this [Act]:

"Custodian" means a person with whom a child who is the subject of a relevant child-support order resides at least half of the time.

Section 611. Modification of Child-Support Order of Another State.

(a) . . . a tribunal of this State may modify a child-support order issued in another State . . . if . . .

(1) the following requirements are met:

(A) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing State; and

(B) the [respondent] is subject to the personal jurisdiction of the tribunal of this State.

(2) a person who is not a custodian may not seek modification of a child-support order in their State of residence, except upon a showing that litigating in another forum would cause extreme hardship to the non-custodian, and that such hardship outweighs any hardship to the custodian of litigating in the non-custodian's State of residence.

(3) a tribunal of a custodian's State of residence may decline to exercise jurisdiction to modify a child support-order issued in another State upon a showing that the exercise of such jurisdiction would cause extreme hardship to a non-custodian and that such hardship outweighs any hardship that would be caused to the custodian by the decline of jurisdiction.