IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HANNAH MAGEE PORTÉE,

Plaintiff,

v.

MIKE MORATH, in his official capacity as COMMISSIONER OF EDUCATION, TEXAS EDUCATION AGENCY, and STATE BOARD FOR EDUCATOR CERTIFICATION,

Defendants.

CIVIL ACTION NO. 1:23-cv-00551-RP

STATEMENT OF INTEREST OF THE UNITED STATES

The United States of America respectfully submits this Statement of Interest under 28 U.S.C. § 517[1] to address important issues of first impression regarding the scope of a recent amendment to the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. § 4025a. This provision, which took effect on January 5, 2023, provides for the portability of the professional licenses of servicemembers and their spouses. The United States respectfully requests that the Court consider this Statement of Interest in evaluating Plaintiff's Motion for Preliminary Injunction [Doc. 5] (the "Motion").

The Statement of Interest sets forth three arguments in support of Plaintiff's motion. First, it asserts that Plaintiff is likely to succeed on the merits of her claim that her school counseling licenses are covered under Section 4025a. Second, it discusses why vigorous

[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

enforcement of Section 4025a serves the public's exceptionally strong interest in national defense and military readiness. Finally, it explains why Plaintiff has standing to bring this action.

I. INTEREST OF THE UNITED STATES

The Attorney General has authority to enforce the SCRA, *see* 50 U.S.C. § 4041(a), and has a strong interest in ensuring the proper interpretation of the statute. Congress enacted the SCRA to "provide for, strengthen, and expedite the national defense" by enabling servicemembers "to devote their entire energy to the defense needs of the Nation." 50 U.S.C. § 3902(1). The SCRA was enacted pursuant to Congress's war powers, and the statute is housed in Title 50 of the United States Code, which relates to the military and national defense.

Many of the rights and protections granted by the SCRA advance national security by promoting the financial readiness[2] of servicemembers and their families. The Secretary of Defense has noted that "[o]ur people and our [military] readiness remain inextricably linked, and we remain the preeminent fighting force in the world because we strive to continuously improve how we care for people."[3]

Without vigorous enforcement of the SCRA, including Section 4025a, our Nation's ability to meet its critical defense needs will suffer. As no court has yet interpreted the SCRA's license portability provisions, this case presents important issues of first impression.[4]

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[2] The Department of Defense defines "financial readiness" as "the state in which successful management of personal financial responsibility supports a servicemember's ability to perform their wartime responsibilities." Department of Defense (DoD) Instruction 1342.22: Military Family Readiness at 53.

[3] Secretary of Defense Memorandum, "Strengthening Economic Security in the Force," (November 17, 2021) at 1. https://media.defense.gov/2021/Nov/17/2002894808/-1/-1/1/STRENGTHENING-ECONOMIC-SECURITY-IN-THE-FORCE.PDF

[4] To the extent Defendants wish to respond to the arguments raised in this Statement of Interest, and request leave from the Court to file a sur-reply to do so, Plaintiff's counsel has represented to the United States that he will not oppose that request.

II. BACKGROUND

According to her Complaint [Doc. 1] and Affidavit in support of the Motion [Doc. 5-1], Plaintiff Hannah Magee Portée ("Plaintiff") is a military spouse and licensed school counselor. Doc. 1 at ¶2; Doc. 5-1 at ¶2. Plaintiff was licensed as a school counselor in the state of Ohio on July 21, 2021, and was licensed as school counselor in the state of Missouri on July 7, 2022. Doc.1 at ¶23. Both licenses are in good standing. *Id.* at ¶37. In 2022, Plaintiff was employed as a long-term substitute counselor at a middle school in Ohio and a guidance counselor at an elementary school in Missouri. *Id.* at ¶27.

On July 29, 2022, Plaintiff married Captain David Portée, an active-duty Air Force Officer. *Id.* at ¶26. Prior to the wedding, Captain Portée had received military orders for a permanent change of station from Scott Air Force Base in Illinois to Laughlin Air Force Base in Texas. *Id.* at Exhibit C. Captain Portée's orders required him to report to Laughlin Air Force Base by January 9, 2023. *Id.* Plaintiff relocated to Texas to accompany Captain Portée. *Id.* at ¶¶ 8, 26.

On October 4, 2022, Plaintiff applied through the Texas Education Agency's Educator Certification Online System for a school counselor certificate that would allow her to work as a school counselor in the state of Texas. *Id.* at ¶29. Plaintiff's application was denied on the grounds that she failed to provide information verifying that she had two years of full-time wage-earning experience in the role of school counselor. *Id.* at ¶30.

In February 2023, Plaintiff learned of recent amendments to the SCRA that mandated the portability of licenses for servicemembers and their spouses. *Id.* at ¶32. Plaintiff reached out to Defendants to inform them of the requirements of the new law. *Id.* On February 27, 2023, the Texas Education Agency's Director of Educator Credentialing responded, stating that Plaintiff

would need to provide "documentation verifying two (2) academic years of full-time, wage-earning experience in the role of school counselor or provide documentation of a classroom teaching certificate." *Id.* at ¶33. He further stated that "during the call you mentioned an Air Force article stating something to the effect of automatically transferring certifications, however, this would not apply to Texas." *Id.*

Thereafter, both Plaintiff and her military legal assistance attorney communicated with the Director of Educator Credentialing, attempting to explain the license portability requirements of the SCRA. *Id.* at ¶¶ 34-35. On March 2, 2023, the Director of Educator Credentialing emailed Plaintiff's military legal assistance attorney and stated that because Section 4025a(c) requires that the license have been "actively used during the two years immediately preceding the relocation" due to military orders, Plaintiff would need to provide proof of "two creditable years of service in an Early Childhood-Grade 12 public or accredited private school in the specific student services area sought." Doc. 5-1 at 5 (emphasis in original).

On May 17, 2023, Plaintiff filed a complaint alleging that Defendants had violated Section 4025a of the SCRA. Doc. 1. On June 16, 2023, Plaintiff filed a Motion for Preliminary Injunction seeking to enjoin the Defendants from:

> 1. Enforcing regulations, preempted by the Servicemembers Civil Relief Act, that disregard the federally mandated portability and validity of Plaintiff's out-of-state school counselor licenses.
>
> 2. Arbitrarily interfering with Plaintiff's vested property interest in her portable and valid out-of-state school counselor licenses as afforded to her by the Servicemembers Civil Relief Act, by declaring that since she cannot demonstrate two years of full-time, wage-earning experience in the role of a licensed school counselor, the State of Texas will not recognize her out of state licensure.
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> 3. Enforcing regulations that prohibit Texas schools from employing Plaintiff in the State of Texas as a licensed school counselor.

Doc. 5 at 1-2. On July 7, 2023, Defendants filed an opposition to the Motion. Doc. 13.

III. THE SCRA'S PROFESSIONAL LICENSE PORTABILITY PROVISION

Section 4025a reduces the burdens associated with interstate military moves and allows military spouses to obtain meaningful employment more easily. *See* 50 U.S.C. § 4025a(a). It gives servicemembers and their spouses the right, for the first time, to port their professional licenses:

> [i]n any case in which a servicemember or the spouse of a servicemember has a covered license and such servicemember or spouse relocates his or her residency because of military orders for military service to a location that is not in the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders . . . .

Id.

The term "covered license" means a professional license or certificate:

> (1) that is in good standing with the licensing authority that issued such professional license or certificate;
>
> (2) that the servicemember or spouse of a servicemember has actively used during the two years immediately preceding the relocation described in subsection (a); and
>
> (3) that is not a license to practice law.

Id. § 4025a(c).

The covered license shall be considered valid in another state if the servicemember or spouse:

> (1) provides a copy of such military orders to the licensing authority in the jurisdiction in which the new residency is located;
>
> (2) remains in good standing with-
>
> (A) the licensing authority that issued the covered license; and

> > (B) every other licensing authority that has issued to the servicemember or the spouse of a servicemember a license valid at a similar scope of practice and in the discipline applied in the jurisdiction of such licensing authority;
>
> (3) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

Id. § 4025a(a).[5]

Military spouses are commonly employed in occupations that require professional licenses. A recent survey of military spouses found that the top three self-reported occupations for those in the labor force were teacher, child care worker, and registered nurse—all of which require a license or certification.[6] Active-duty military spouses have a 21% unemployment rate, which is more than five times higher than that of the general population.[7] This high rate of unemployment has been driven in part by frequent military moves and licensure requirements faced by spouses who move to a different state.[8] Section 4025a reduces the administrative hurdles spouses face when they move across state lines.

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[5] Section 4025a also states that when a professional license is subject to an interstate licensure compact, the terms of that compact will govern. *See* 50 U.S.C. § 4025a (b). However, Texas is not part of any interstate licensing compact that would allow Plaintiff to use her Ohio or Missouri school counseling license to practice in Texas. Doc. 1 at ¶ 38.

[6] Tong, Patricia K. et al., "Enhancing Family Stability During a Permanent Change of Station: A Review of Disruptions and Policies," RAND Corporation, 2018 ("RAND Report") at 12-13. https://www.rand.org/pubs/research_reports/RR2304.html

[7] *See* Defense Personnel Analytics Center, Office of People Analytics, 2021 Active Duty Spouse Survey, https://www.militaryonesource.mil/data-research-and-statistics/survey-findings/2021-spouses-survey/. According to the Bureau of Labor Statistics, the national unemployment rate in May 2023 was 3.7%. *See* "The Employment Situation – May 2023 [News Release]," U.S. Department of Labor, June 2, 2023, https://www.bls.gov/news.release/pdf/empsit.pdf.

[8] Press Release, "DoD Releases Military Spouse Licensure Report," U.S. Department of Defense, Feb. 22, 2020 https://www.defense.gov/News/Releases/Release/Article/2091431/dod-releases-military-spouse-licensure-report/.

Section 4025a also enhances the military's ability to retain highly trained and experienced servicemembers by promoting employment opportunities for their spouses. Military spouse employment is an important factor in force retention, as a spouse's satisfaction with career opportunities is a major factor in determining whether a servicemember decides to stay in the military. [9] As family satisfaction is critical to the retention of married servicemembers, the U.S. military has a strong interest in ensuring that military spouses who want to work can find meaningful employment in their chosen field.

IV. ARGUMENT

A plaintiff seeking a preliminary injunction must show that she "is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). In this case, Plaintiff is likely to succeed on the merits of her claim against Defendants and the public interest strongly favors the issuance of an injunction.[10] Plaintiff has also set forth factual allegations that establish she has standing to bring this action.

A. <u>Plaintiff is Likely to Succeed on the Merits</u>

Plaintiff is likely to succeed on the merits as the facts as alleged in the Complaint and set forth in Plaintiff's Affidavit establish a substantial likelihood that Defendants' conduct violated Section 4025a of the SCRA. First, the SCRA's license portability provisions apply to Plaintiff as

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[9] RAND Report at 18 (citing a survey indicating that 43% of military spouses said that the availability of career opportunities for both spouses was a very important factor affecting whether their spouse stayed in the military).

[10] This Statement of Interest focuses only on the Plaintiff's claims that she is likely to succeed on the merits and that the public interest favors the issuance of an injunction. The United States does not take a position at this time on the merits of any claims not addressed in this Statement of Interest.

she actively used her professional licenses at some point during the two years preceding her relocation to Texas. Second, Defendants' interpretation of Section 4025a(c)(2), which requires that a license has been "actively used during the two years immediately preceding the relocation" due to military orders, as requiring two full years of continuous full-time employment is inconsistent with the plain meaning and the purpose and intent of the provision.

1. The SCRA's License Portability Provisions Apply to Plaintiff

The facts as alleged in the Complaint and set forth in Plaintiff's Affidavit establish that Plaintiff is entitled to have her Ohio and Missouri school counseling licenses recognized by Defendants. Section 4025a of the SCRA requires that a servicemember's or spouse's out-of-state professional license be recognized as valid if the servicemember or spouse: (1) holds a "covered license"; (2) has relocated to the jurisdiction due to military orders; (3) has provided a copy of the military orders to the licensing authority in the jurisdiction where they have relocated; (4) remains in good standing with the licensing authority that issued the license and every other licensing authority that has issued them a license valid at a similar scope of practice and in the discipline applied for; and (5) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements. *See* 50 U.S.C. § 4025a(a). A "covered license" is defined as a professional license or certificate: (1) that is in good standing with the issuing licensing authority; (2) that the servicemember or spouse of a servicemember has actively used during the two years immediately preceding the relocation due to military orders; and (3) that is not a license to practice law. *See* 50 U.S.C. § 4025a(c).

In this case, all the requirements of Section 4025a appear to have been met. Plaintiff is the spouse of an active duty servicemember. Doc. 1 at ¶8; Doc. 5-1 at ¶4(c). In or around January

2023, she relocated to Texas due to her spouse's military orders. Doc. 1 at ¶28; Doc. 5-1 at ¶4(e). Plaintiff submitted a copy of her spouse's military orders to Defendants, is in good standing with the Ohio and Missouri licensing authorities that issued her licenses, and has agreed to submit to the authority of the Texas licensing authority for purposes of standards of practice, discipline, and fulfillment of continuing education requirements. Doc. 1 at ¶ 37; Doc. 5-1 at ¶4(h).

Plaintiff's licenses are also "covered licenses" within the meaning of the statute. As noted above, Plaintiff is in good standing with both the Ohio and Missouri licensing authorities and her school counseling licenses are not licenses to practice law. Doc. 1 at ¶23; Doc. 5-1 at ¶4(a)-(b). Additionally, Plaintiff actively used her licenses "during the two years immediately preceding" her relocation to Texas. In 2022, Plaintiff was employed as a guidance counselor both at an elementary school in Missouri and as a long-term substitute counselor at a middle school in Ohio. Doc. 5-1 at ¶4(d).

2. Defendants' Interpretation of Section 4025a(c)(2) is Inconsistent with the Plain Meaning and the Purpose and Intent of the Statute

In their Memorandum in Opposition to the Motion, Defendants contend that Plaintiff has not met the requirements for a covered license, arguing that in order to have actively used a license "during the two years immediately preceding" a relocation, a servicemember or spouse must have used the license full-time continuously throughout the two-year period preceding the relocation. *See* Doc. 13 at 2, 5. Defendants' interpretation cannot be reconciled with either the plain meaning or the intent of the SCRA.

In interpreting a statute, a court is required to look at the plain language of the statute and to give the words used their plain and common meaning. *Perrin v. U.S.*, 444 U.S. 37, 42 (1979). Where a word is susceptible to more than one meaning, courts can discern the meaning of the statute by examining the context in which the word is used. *Deal v. United States*, 508 U.S. 129,

131-32 (1993). It is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Id.* at 132.

The word "during" can either mean "throughout the duration of" or, alternatively, "at a point in the course of." MERRIAM-WEBSTER ONLINE DICTIONARY, http://www.merriam-webster.com/dictionary/during. The context in which the word "during" is used in Section 4025a strongly suggests that Congress intended it to mean "at a point in the course of." Section 4025a(c)(2) requires that the covered license have been "actively used during the two years immediately preceding the relocation." If Congress had wanted to impose a requirement of continuous employment, it could have easily done so by requiring the license to have been "continuously used" during the two years immediately preceding the relocation. Instead, it required only that the license have been "actively used." The word "active" is defined as "characterized by action rather than by contemplation or speculation." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/active. By requiring that the license have been "actively used," Congress undoubtedly intended to grant portability to spouses and servicemembers who had actually used their license *at some point* in the past two years and not throughout the entire time period.

Moreover, most courts that have considered the statutory meaning of "during," when used to describe a certain period preceding an event, have construed it to mean at "at some point during" that period. *See, e.g., Darling v. United States*, 2016 U.S. Dist. LEXIS 117014, *13 (W.D. Tenn. Aug. 31, 2016) (holding that a state statute that required medical experts to have practiced in Tennessee or a contiguous state "during the preceding year" required only that they have practiced at some point during the preceding year and not throughout the entire preceding

year) (*citing Steele v. Ft. Sanders Anesthesia Group, P.C.*, 897 S.W.2d 270, 280 (Tenn. App. 1994)); *State v. Caprio*, 477 A.2d 67, 72 (R.I. 1984) (holding that an arson statute that required that the premises be occupied "during the six months preceding the offense" did not require a continuous occupancy throughout the entire six-month period; occupancy at "any point during the six-month period suffices"); *see also, St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co.*, 324 Ore. 184, 201 (1996) ("The common meaning of 'during' is 'at some point in the course of'").

Throughout the SCRA, Congress frequently uses the word "during" to mean "at one point in the course of." For example, the provision protecting against nonjudicial mortgage foreclosures states that, "A sale, foreclosure, or seizure of property . . . shall not be valid if made **during**, or within one year after, the period of the servicemember's military service . . ." 50 U.S.C. § 3953(c) (emphasis added). Because a sale, foreclosure, or seizure occurs at a particular time, Congress clearly intended this provision to apply to mortgage foreclosures occurring at any point during the course of the servicemember's military service or the year thereafter. In several other sections of the SCRA, Congress also used "during" in a context clearly meaning at some point during a course of time. *See also* 50 U.S.C. § 3955(a)(4)(A) (servicemember may terminate a residential or motor vehicle lease if the servicemember "incurs a catastrophic injury or illness during a period of military service"); 50 U.S.C. § 3958(a)(1) ("A person holding a lien on the property or effects of a servicemember may not, during any period of military service . . . foreclose or enforce any lien on such property or effects without a court order"); 50 U.S.C. § 3931(g)(1) ("If a default judgment is entered in an action . . . against a servicemember during the servicemember's period of military service . . ., the court . . . shall, upon application by or on behalf of the servicemember, reopen the judgment . . . "); 50 U.S.C. § 3918(a) ("the waiver is

effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service); 50 U.S.C. § 3953(b) ("In an action filed during, or within one year after, a servicemember's period of military service . . . the court may . . . (1) stay the proceedings for a period of time as justice and equity require, or (2) adjust the obligation to preserve the interests of all parties); 50 U.S.C. § 3916(b)(1) (servicemembers shall receive information about their SCRA rights "[d]uring the initial orientation training").

This interpretation is also consistent with the statutory purpose of Section 4025a and the SCRA as a whole. Courts have held that the SCRA should "be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Brewster v. Sun Trust Mortg., Inc.*, 742 F.3d 876, 878 (9th Cir. 2014), *citing Boone v. Lightner*, 319 U.S. 561, 575 (1943) (interpreting the Soldiers' and Sailors' Civil Relief Act (SSCRA), a predecessor statute to the SCRA); *see also Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (giving a broad construction to the SSCRA in light of its "beneficent purpose" and noting that "the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call.").

Given the liberal construction that must be given to SCRA provisions, the Defendants' interpretation of Section 4025a(c)(2) is unreasonably narrow and would restrict license portability to military spouses who are able to maintain continuous employment in their field of

licensure.[11] Such a requirement would be extremely difficult for most military spouses to fulfill, especially given the unpredictable timing and frequency of military-ordered moves, which occur about once every two years.[12] Defendants' interpretation of Section 4025a(c)(2) would deny license portability to any spouse who has taken time off from their career for family or medical reasons and exclude spouses who choose to pursue part-time employment in their field. It would also deny license portability to military spouses who, like Plaintiff, are in the beginning stages of their professional careers. In short, Defendants' interpretation would make license portability impossible for many military spouses.[13] Given the purpose and objectives of Section 4025a, it is reasonable to conclude that Section 4025a(c)(2) requires that the servicemember or spouse of a

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[11] Since the SCRA was enacted in 2003, Congress has enacted numerous amendments expanding the rights and protections granted to military spouses. *See, e.g.,* Pub. L. No. 117-333 §17a, 136 Stat. 6121, 6163 (2023) (codified as amended at 50 U.S.C. § 3956) (expanding the right to terminate certain consumer contracts to dependents); Pub. L. No. 116-92 § 545, 133 Stat. 1198, 1377 (2019) (codified as amended at 50 U.S.C. § 4025) (giving spouses the right to terminate a residential lease in the event of the catastrophic illness or injury of the servicemember); Pub. L. No. 111-97, 123 Stat. 3007 (2009) (codified as amended at 50 U.S.C. §§ 4001, 4025) (guaranteeing residency of military spouses for purposes of voting and tax purposes); Pub. L. No. 108-454 §704, 118 Stat. 3598, 3624 (2004) (codified as amended at 50 U.S.C. § 3955) (providing that a servicemember's termination of a lease terminates any obligation a dependent has under the lease).

[12] A 2001 GAO report found that the average time between permanent change of station (PCS) moves was about two years. *See* U.S. General Accounting Office, Briefing Report to the Chairman and Ranking Minority Member, Subcommittee on Defense, Committee on Appropriations, U.S. Senate, "Military Personnel: Longer Time Between Moves Related to Higher Satisfaction and Retention," GAO -01-841, Aug. 2001, https://www.gao.gov/assets/gao-01-841.pdf.

[13] Due to the unique demands of military life, military spouses often require more flexibility in employment than their civilian counterparts. *See, e.g.* Caitlin Dunham, *It Takes a Family: How Military Spousal Laws and Policies Impact National Security*, 11 Journal of National Security Law & Policy 291, 297 (2020), available at https://jnslp.com/wp-content/uploads/2021/06/How-Military-Spousal-Laws-and-Policies-Impact-National-Security_2.pdf (noting that "laws and policies to create [employment] opportunities for military spouses will not be successful unless they account for the unpredictability that military spouses regularly have to experience.").

servicemember have actively used their license ***at some point*** during the two years immediately preceding their relocation due to military orders.[14]

B. The Public Interest Will Be Served by Enforcing the SCRA's License Portability Provision

Enforcement of Section 4025a serves the public interest by reducing barriers to licensure and increasing employment opportunities for eligible servicemembers and military spouses. When military spouses are able to find meaningful employment, it has a positive impact on the financial readiness of military families and makes it easier for the military to retain skilled and experienced servicemembers.[15] It is well established that the public has an exceptionally strong interest in national defense and in ensuring military readiness. *See Winter v. NRDC*, 555 U.S. 7, 24 (2008); *Defense Distributed v. United States Dep't of State*, 838 F.3d 451, 458 (5th Cir. 2016); *see also Huntco Pawn Holdings v. United States DOD*, 240 F. Supp. 206, 238 (D.D.C. 2016) (holding that the "weighty public interest" in military readiness and protecting military families from financial hardship outweighed any harm to plaintiff).

Enforcement of Section 4025a also serves the public interest by increasing the pool of qualified and available applicants in critical career fields, including education. Recent news

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[14] Defendants argue – incorrectly - that the SCRA does not conflict with state law because Section 4025a imposes the same standard as 19 Texas Administrative Code Section 230.113(b), which requires an applicant to demonstrate two years of full-time, wage-earning experience. *See* Doc. 13 at 7-9. To the extent Defendants may argue that Plaintiff's licenses should not be recognized because she has not met the requirements set forth in 19 Tex. Admin. Code § 230.113(b), that argument would also fail since any such requirements are preempted by Section 4025a. The Supremacy Clause of the U.S. Constitution provides that federal law is the "supreme Law of the Land." U.S. CONST. art. VI, cl. 2. "The doctrine of federal preemption that arises out of the Supremacy Clause requires that "any state law, however clearly within a State's acknowledged power, must yield if it interferes with or is contrary to federal law." *Gade v. National Solid Wastes Management Ass'n,* 505 U.S. 88, 91(1992) (holding that federal laws and regulations preempted state licensing laws).

[15] *See supra* Part III.

reports have observed that there is a nationwide shortage of school counselors and psychologists, even as the demand for school-based mental health services has risen.[16] The public has an important interest in ensuring that students have adequate access to mental health services. *See Jaffee v. Redmond*, 518 U.S. 1, 11 (1996) ("The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance"). Allowing military spouses to fill these critical positions will help ensure that our country's needs are adequately met.

C. Plaintiff Has Standing to Bring This Action

Contrary to Defendants' assertions, Plaintiff has standing to bring this action. The facts as alleged by Plaintiff and set forth in her affidavit clearly show how she was harmed by a violation of Section 4025a of the SCRA. Plaintiff has alleged and sworn that Defendants' failure to recognize Plaintiff's licenses as valid is preventing her from pursuing significant employment opportunities in her chosen profession at an early stage of her career. *See* Doc. 1 at ¶40; Doc. 5-1 at ¶4(l).

Plaintiff's loss of employment opportunities constitutes a particularized injury-in-fact. Courts have recognized that the loss of opportunity to pursue one's chosen profession or to find comparable employment can cause severe and lasting harm. *Burgess v. FDIC*, 871 F.3d 297, 304 (5th Cir. 2017); *see also Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) (holding that a decision that impeded a plaintiff's "ability to procure comparable employment" constituted an irreparable injury); *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir.

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[16] *See, e.g.,* Arianna Prothero & Maya Riser-Kositsky, "School Counselors and Psychologists Remain Scarce Even as Needs Rise," Education Week, Mar. 1, 2022, https://www.edweek.org/leadership/school-counselors-and-psychologists-remain-scarce-even-as-needs-rise/2022/03; Patrick Wall et al., "School Psychologist, Counselor Hiring Lags Nationwide Even As Student Mental Health Needs Soar," Chalkbeat, Nov. 18, 2022, https://www.chalkbeat.org/2022/11/18/23465030/youth-mental-health-crisis-school-staff-psychologist-counselor-social-worker-shortage.

2014) ("Setbacks early in their careers are likely to haunt Plaintiffs for the rest of their lives . . . Plaintiffs' entire careers may be constrained by professional opportunities they are denied today."). Moreover, Plaintiff's injury is fairly traceable to the Defendants' challenged conduct – their continuing failure to recognize her licenses as valid pursuant to Section 4025a.

Eliminating any doubt as to Plaintiff's standing, Congress expressly provided a private right of action to "any person aggrieved by a violation" of the SCRA. 50 U.S.C. § 4042. Aggrieved persons may "obtain any appropriate equitable or declaratory relief with respect to the violation" and "recover all other appropriate relief, including monetary damages," and the court may award aggrieved persons reasonable attorney fees and costs. *Id.*; *see Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 341 (2016) (noting that Congress' "judgment" in providing a cause of action is "instructive and important" in evaluating whether a plaintiff has shown an injury-in-fact).

V. CONCLUSION

For the foregoing reasons, the United States respectfully submits this Statement of Interest in support of Plaintiff's Motion for a Preliminary Injunction.

Dated: July 13, 2023

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