

SENATE JOINT RESOLUTION 467

By Ramsey

A RESOLUTION regarding the commencement of legal action seeking relief, including declaratory and injunctive relief, from the federal government's mandated appropriation of state revenue and noncompliance with the Refugee Act of 1980 with respect to refugee resettlement in Tennessee.

WHEREAS, the State of Tennessee withdrew from the federal Refugee Resettlement Program in 2007; and

WHEREAS, the federal government reinstated the program by designating a replacement agency and establishing the Tennessee Office of Refugees in 2008; and

WHEREAS, the Tennessee Office of Refugees was selected as the Wilson-Fish provider for the State of Tennessee in 2010; and

WHEREAS, the federal government is actively placing refugees in the State of Tennessee; and

WHEREAS, the State of Tennessee is required to provide certain benefits and services to otherwise eligible refugees, including Medicaid services, or risk losing all Medicaid funding pursuant to 8 U.S.C. § 1612 and 42 U.S.C. § 1396(c); and

WHEREAS, under the Tenth Amendment to the United States Constitution as construed by the United States Supreme Court in *National Federation of Independent Businesses v. Sebelius*, 132 S. Ct. 2566 (2012), the federal government cannot lawfully coerce the State to provide funding with no real option but to acquiesce; and

WHEREAS, such coercion is also prohibited by Article II, Section 24, of the Tennessee Constitution, which prohibits the expenditure of public money except pursuant to appropriations made by law; and

WHEREAS, by conditioning all Medicaid funding on the requirement that the State provide Medicaid services to refugees absent other input or control by the State of Tennessee, the State is being coerced in violation of both the United States Constitution and the Tennessee Constitution; and

WHEREAS, each member of the General Assembly has taken an oath to uphold the Constitution of Tennessee and the Constitution of the United States; and

WHEREAS, if it is constitutionally permissible for the federal government to compel a state legislative body to perform its most important function, the appropriation of state tax dollars, as well as expend its limited resources, personnel, and services on a program from which it has withdrawn, the Tenth Amendment to the United States Constitution is merely words on paper, and the powers of the federal government are unfettered and boundless, allowing it to require the same of any state, for any program, at any time; and

WHEREAS, while Tennesseans are proud to be the sixteenth member of these United States, the right of Tennessee to appropriate tax dollars in a manner determined by representatives elected by its citizens is fundamental and cannot be usurped, lest the legislative bodies in all of these United States be considered mere departments of the federal government and rendered impotent and unnecessary; and

WHEREAS, if the federal government intends to overreach its authority to the point that it assumes the traditional constitutional role of a state legislative body, it is only fitting and proper that the very existence, as well as the depth and breadth, of this federal power be clarified and declared in a court of law; and

WHEREAS, the Refugee Act of 1980 establishes a framework for collaboration and cooperation between the federal government and the States in resettling refugees. 8 U.S.C. § 1522. The Refugee Act of 1980 requires that the federal government "shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities." 8 U.S.C. §

1522(a)(2)(A). The federal government's obligation to consult with the States is thus clear and unequivocal. The federal government "shall consult" with a State regarding the placement of refugees within its borders before those refugees are placed there; and

WHEREAS, the Refugee Act of 1980 requires the federal government to consult with the State regarding the placement of refugees before those refugees are placed within its borders, and that consultation has not occurred; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED NINTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that the Tennessee General Assembly directs the Attorney General and Reporter of the State of Tennessee to initiate or intervene in one or more civil actions on behalf of the State of Tennessee or, in the alternative, seek appropriate relief in a federal court of competent jurisdiction regarding the failure of the federal government to comply with the Refugee Act of 1980, as amended, and any actions taken by the federal government, including the President of the United States, the head of any department or agency, or any other employee of the executive branch of the federal government, in violation of federal law or as prohibited by the Tenth Amendment to the United States Constitution, or any other statutory or constitutional provisions of the United States or the state of Tennessee, with respect to the operation or implementation in this state of any provision of the federal government's Refugee Resettlement Program, including any revision or amendment by regulation or otherwise pertaining to the program.

BE IT FURTHER RESOLVED, that the civil action shall also seek to prohibit the appropriation of state funds without the specific authorization of the Tennessee General Assembly in connection with the refugee resettlement act.

BE IT FURTHER RESOLVED, that the Attorney General and Reporter, in conjunction with the Speaker of the Senate and the Speaker of the House of Representatives, may employ the services of outside counsel to assist in and consult on any such civil action filed on behalf of the state or the General Assembly.

BE IT FURTHER RESOLVED, that the Attorney General and Reporter shall file written notice with the chief clerk of the Senate and chief clerk of the House of Representatives if the

Attorney General and Reporter chooses not to initiate or intervene in a civil action pursuant to this resolution.

BE IT FURTHER RESOLVED, that upon receipt of notice from the Attorney General and Reporter declining the initiation of or intervention into a civil action described in this resolution, the Speaker of the Senate and the Speaker of the House of Representatives are authorized to employ outside counsel to commence a civil action effectuating the purposes of this resolution.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Attorney General and Reporter of Tennessee.