

No. 19-1137

In The
Supreme Court of the United States

TENNESSEE, BY AND THROUGH THE
TENNESSEE GENERAL ASSEMBLY, et al.,
Petitioners,

v.

DEPARTMENT OF STATE, et al.,
Respondents.

On Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

BRIEF OF *AMICUS CURIAE* CENTER FOR
IMMIGRATION STUDIES IN SUPPORT OF
PETITIONERS

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U.S. SENATE COMM. ON FOREIGN RELATIONS, 11TH
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INTEREST OF *AMICUS CURIAE*¹

The Center for Immigration Studies (“CIS” or “The Center”) is an independent, nonprofit, nonpartisan research organization that has been recognized by the Internal Revenue Service as a tax-exempt educational organization. Since its founding in 1985, CIS has pursued a single mission—providing immigration policymakers, the academic community, news media, and concerned citizens with reliable information about the social, economic, environmental, security, and fiscal consequences of legal and illegal immigration into the United States. CIS has been awarded grants and contracts for immigration research from federal agencies, including the Department of Justice and the Census Bureau. On more than 130 occasions, CIS has been invited by Congress to provide expert testimony on immigration, including on the specific subject of refugees and asylum. *See, e.g., Eroding the Law and Diverting Taxpayer Resources, Hearing Before the Subcomm. on Immigration and the Nat’l Interest of the U.S. Senate Comm. on the Judiciary, 114th Cong. 5 (2015)*, (statement of Jessica M. Vaughan), available at <https://cis.org/Testimony/Eroding-Law-and-Diverting-Taxpayer-Resources-0>. CIS wishes to use this expertise to give the Court a fuller understanding

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amicus curiae* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties have consented to the filing of this brief in writing to counsel for *amicus curiae*.

of the legal and policy issues that are relevant to this case.

I. SUMMARY OF ARGUMENT

Our current refugee resettlement policy, created by the Refugee Act of 1980, Pub. L. No. 96-121, 94 Stat. 102 (1980) (codified in various sections of 8 U.S.C.) is run by the federal government but shifts many of its burdens onto the states and onto the appropriating authority of state legislatures. These burdens are specific and concrete and represent the particularized injury needed for standing. Good policy requires that those officials who actually bear the costs of policy decisions must be those who weigh the policy's costs and benefits. Though the U.S. Refugee Resettlement program was never originally designed nor passed under the premise that federal decision makers could shift costs onto state governments without giving them any control or even input, it evolved into exactly such a program.

II. ARGUMENT

A. The fiscal costs of the U.S. Refugee Resettlement program have been imposed by the federal government.

The current costs of our nation's refugee resettlement program are substantial, dependent upon the numbers of refugees resettled by the federal government. In March of this year, CIS produced a study estimating the current day costs per refugee of the program. Jason Richwine, Steven A. Camarota, & Karen Zeigler, *The Fiscal Impact of Refugee*

Resettlement: No Free Lunch for Taxpayers, CENTER FOR IMMIGRATION STUDIES, (2020), https://cis.org/sites/default/files/2020-03/richwine-refugees-3-20_0.pdf. To calculate the average fiscal impact of refugees, CIS used the model created by the National Academies of Sciences, Engineering, and Medicine. *Id.* at 1. This model estimates the lifetime fiscal impact of new immigrants, counting all taxes paid and services consumed at the federal, state, and local levels. *Id.* Educational attainment is the most important predictor in the model. *Id.* On average, highly educated immigrants will contribute more in taxes than they consume in services, while immigrants with low levels of education will contribute less than they consume. *Id.*

CIS applied the National Academies' fiscal model to data from the 2016 Annual Survey of Refugees. *Id.* at 2. According to this survey, one in three recent refugees between the ages of 25 and 64 arrived in the United States with no education beyond the sixth grade. *Id.* Some 53 percent lacked a high school diploma, compared to 7 percent of U.S. natives in the same age range. Similarly, only 18 percent of refugees had a four-year college degree, compared to 34 percent of natives. *Id.* Despite the disparity, just 7 percent of recent refugees between the ages of 25 and 64 were currently pursuing a degree of any kind. *Id.*

When CIS applied the education levels of refugees to the National Academies' fiscal model (with some adjustments for resettlement costs and the fact that refugees are immediately eligible for welfare benefits), it found that the average refugee will cost about \$36,000 in net present value (that is,

consolidating all of the lifetime costs into a single upfront payment) over his or her lifetime. Those entering as adults (ages 25 to 64) cost \$133,000 each. *Id.* Therefore, the fiscal costs borne by our country in the pursuit of humanitarian goals will be substantial, depending mostly on federal government decisions on how high to set the refugee numerical ceiling.

While the decisions that affect costs are those of the federal government, the costs are not borne by the federal government solely. State and some local legislatures bear the burden of dealing with many costs, such as housing assistance, education, English Language Learner and special education programs, and interpreter services. State Medicaid programs, in particular, (which, in Petitioner’s case, is known as TennCare) are the state legislature’s costs to address alone, along with many of the costs imposed at the local level. *See e.g., Don Barnett, Do States Have a Say in the Refugee Resettlement Program? Tennessee lawsuit highlights federal overreach*, CENTER FOR IMMIGRATION STUDIES, 2018, <https://cis.org/sites/default/files/2018-01/barnett-states-rights.pdf>, at 3.²

According to the July 29, 2017, draft of the Department of Health and Human Services report

² While the law calls for refugee “self-sufficiency,” the Office of Refugee Resettlement considers refugees self-sufficient if they earn enough income to support themselves without cash assistance — even if they receive other types of noncash public assistance, such as Supplemental Nutrition Assistance Program benefits or Medicaid. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-12-729, REFUGEE RESETTLEMENT: GREATER CONSULTATION WITH COMMUNITY STAKEHOLDERS COULD STRENGTHEN PROGRAM (July 25, 2012) at 27.

“The Fiscal Costs of the U.S. Refugee Admissions Program at the Federal, State, and Local Levels, from 2005-2014,” the entire population of refugees in the United States, some 2.9 million, used \$47.5 billion in Medicaid in the 10 years that the study covered. Refugees and families (including American-born children) used \$65.3 billion of Medicaid in the same period. Barnett at 9. About 37 percent of this total is covered by state governments according to the Kaiser Family Foundation. *Id.* Thus, for most of this century at least, this federal program has unilaterally imposed costs onto state and local governments.

B. Burdensome costs fall upon states and localities.

Over the years, leaders of states and local governments have voiced their concerns over the costs of the program. For instance, in 2016, the governor of Maine, Paul R. LePage wrote in a letter to President Obama: “Maine’s social services, schools, infrastructure and other resources are being burdened by this unchecked influx of refugees. ... We have also found that welfare fraud is especially prevalent within the refugee community.” *See id.* at 5.

While few systematic reviews of the strains of the current structure of the U.S. resettlement system on local resources have taken place, in 2010, the Senate Foreign Relations Committee submitted a report, providing compelling case studies demonstrating the costs borne by individual localities. The findings of the report included:

...These newcomers place demands, sometimes significant, on local schools,

police, hospitals and social services. Local governments are often burdened with the weight of addressing the unique assistance refugees require, yet they rarely have an official role in influencing how many refugees are resettled by local voluntary agencies and often are not even informed in advance that new residents will be arriving.... efforts to address the special needs of refugee students are ad hoc, a drain on local education funding, and implemented in the absence of data-driven best practices. Within the cities examined for this report, several schools labeled as failing or facing imminent risk of being taken over by state authorities have a high refugee student population. School administrators complained that refugee students—sometimes within weeks of arriving in the United States—are required to take standardized tests and their often poor performance is detrimental to the school’s overall score. School administrators also reported receiving little to no additional Federal or State resources to increase staffing levels and offer additional assistance addressing the psycho-social-cultural needs of refugee students.

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THE SENATE 2-3 (2010).

These local costs are greater the larger the number of refugees are resettled— a choice exercised by the executive branch of the federal government.

C. States cannot leave the program if the federal government refuses to let them.

When the Obama Administration raised the 2017 refugee quota to 110,000, Maine, Texas, New Jersey, and Kansas asked to withdraw from the resettlement program, joining Alabama, Alaska, Kentucky, Louisiana, and Petitioner, the State of Tennessee. *See, e.g.*, Barnett at 5. Yet none of these states saw a reduction in refugee numbers as a result of their withdrawal from the program. *Id.* When Petitioner opted out in 2008, it actually found that its resettlement numbers increased by more than 75 percent immediately after it withdrew from the program, and stayed higher even while the national quota was declining. *Id.* at 7. It only lost more control and information over the its state appropriations and budgetary process, as its federally chosen refugee contractor, Catholic Charities of Tennessee, was unwilling to share data about how many refugees it placed in welfare or share information about the status of refugee health, information that previously would have been tracked through its state refugee and health coordinators. *Id.*

D. This Cost Shifting was not part of the original arrangement passed by Congress through the Refugee Act of 1980.

The Refugee Act originally intended to insulate states from refugee costs. Senator Edward Kennedy, sponsor of the Refugee Act, noted in his paper recounting the conference committee process:

Because the admission of refugees is a federal decision and lies outside normal immigration procedures, the federal government has a clear responsibility to assist communities in resettling refugees and helping them to become self-supporting. The basic issues here were the length of time of federal responsibility and the method of its administration. State and local agencies were insistent that federal assistance must continue long enough to assure that local citizens will not be taxed for programs they did not initiate and for which they were not responsible.

Edward M. Kennedy, *Refugee Act of 1980*, 15 INT'L MIGRATION REV., No. 1/2, Spring-Summer 1981, 141, 142. Further, he wrote that the program would "assure full and adequate federal support for refugee resettlement programs by authorizing permanent funding for state, local and volunteer agency projects." *Id.* To support these goals, the Act authorized three years of federal medical support and cash support for those refugees who do *not* qualify for cash welfare or Medicaid as well as federal reimbursement to the states for three years of the state's portion of

Medicaid, TANF, SSI, etc. paid on behalf of each refugee resettled in the state. *See* Barnett at 2.

But Federal support to states for refugee costs was soon reduced after the Act's passage and, by 1991, reimbursement for Medicaid and cash welfare was eliminated. *Id.* at 2-3. Given that now the Act's original bargain of preventing state governments and particularly state appropriating authorities from feeling the strain of decisions their officials had no part in making, incentive to withdraw from the program clearly had increased substantially by the early 1990's. Rather than lobbying to restore federal funding to lessen the fiscal strain, the Clinton Administration responded by promulgating regulations making it impossible for state budgets to avoid costs by withdrawing by allowing resettlement contractors to continue operations in states that had withdrawn. *See id* at 5; 45 C.F.R. 400.301 (2010). This regulation guaranteed that a state could never get out of the program or that a state legislature could never escape the fiscal impact on state revenues.

E. The Federal Government forcing the States to bear costs of its Programs is the very time when States have standing if this force is unconstitutional.

The impact on the Petitioner is not simply an "abstract loss of political power" as the Sixth Circuit concluded. *Tennessee General Assembly v. United States Department of State*, 931 F.3d 499 (6th Cir. 2019). The effect on Tennessee, rather, is concrete and particularized. Contrary to the claims of the Respondents, the refugee resettlement program definitively forces state legislatures like the Petitioner

to expend funds, and participation is not voluntary. Petitioner, like other states, tried to withdraw from the program, but its costs have continued, as a direct result of federal government decisions. The settlement of refugees and the costs borne by the state after it withdrew from the program are not hypothetical. According to the Department of State's Bureau of Population, Refugees, and Migration, in the past five fiscal years, (fiscal year 2014-2019), 7,077 refugees were resettled in Tennessee.³ The Tennessee General Assembly has no choice but to spend funds on these refugees, including allowing them to enroll in TennCare. The resettlement of refugees, will continue in the future as well. The number of refugees is not what is important for standing purposes, but the certain financial costs.

III. CONCLUSION

The current structure of the refugee resettlement program, therefore, is neither consistent with the program passed by Congress originally nor good policy. Allowing the federal government to unilaterally impose unfunded mandates on state legislatures results in warped federal policy. Decision makers who can pass the costs along to others are more likely to fail to make good decisions. The Refugee Act was not designed to be such a program.

Data for Tennessee in fiscal years 2014-2019 accessed from Refugee Processing Center, Admissions and Arrivals, at <https://www.wrapsnet.org/admissions-and-arrivals/>

Respectfully Submitted,

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