Written by **Warren Mass** on December 3, 2015

Texas Suing Federal Government to Block Syrian Refugee Settlement

The Texas Health and Human Services Commission filed a suit in the U.S. District Court in Dallas on December 2 asking for an immediate restraining order and a hearing by December 9 to petition for an injunction that would prevent resettlement of Syrian refugees within Texas.

The suit, filed by state Attorney General Ken Paxton, names U.S. Secretary of State John Kerry, the U.S. State Department, the International Rescue Committee, and others as defendants, charging that they are violating federal law by moving forward with the planned resettlement of two Syrian families. The suit accuses the defendants of violating their "statutory duty" to consult with the state in advance of placing refugees in Texas.

Reuters quoted Paxton's statement: "The point of this lawsuit is not about specific refugees, it is about protecting Texans by ensuring that the federal government fulfills its obligation to properly vet the refugees and cooperate and consult with the state."

A report in the *Texas Tribune* noted that the lawsuit alleges that federal officials violated the Refugee Act of 1980, which requires that the federal government "shall consult regularly" with the state regarding the placement of refugees. Texas also asserts that the International Rescue Committee violated a separate provision of the act requiring that the nonprofit work "in close cooperation and advance consultation" with the state.

The International Rescue Committee (IRC) is an NGO whose mission is to offer emergency aid and long-term assistance to refugees and those displaced by war, persecution, or natural disaster. It has its origins in the International Relief Association (IRA), founded in 1931 in Germany by two left-wing factions, the Communist Party Opposition (KPO) and the Socialist Workers Party (SAP).

The IRC released the following statement about its refugee resettlement programs in Texas:

> Refugees are victims of terror, not terrorists, and the families we help have always been welcomed by the people of Texas. The IRC acts within the spirit and letter of the law, and we are hopeful that this matter is resolved soon.

Three days after the November 13 Paris terrorist attacks, Texas Governor Greg Abbott and five other governors joined Rick Snyder of Michigan and Robert Bentley of Alabama, both of whom had issued statements on November 15 declaring that their states would not be open to the Syrian refugees the

Obama administration plans on "resettling" in the United States.

Abbott, the governor of the nation's second largest state in both area and population, sent an open letter to President Obama that stated, in part:

> As governor of Texas, I write to inform you that the State of Texas will not accept any refugees from Syria in the wake of the deadly terrorist attack in Paris.
>
> Further, I — and millions of Americans — implore you to halt your plans to accept more Syrian refugees in the United States. A Syrian "refugee" appears to have been part of the Paris terror attack. American humanitarian compassion could be exploited to expose Americans to similar deadly danger. The reasons for such concerns are plentiful.
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> The FBI director testified to Congress that the federal government does not have the background information that is necessary to effectively conduct proper security checks on Syrian nationals, Director Comey explained: "We can query our database until the cows come home, but there will be nothing show up because we have no record of them."

Governor Abbott stated that, effective November 16, he is directing the Texas Health and Human Services Commission's Refugee Resettlement Program to not participate in the resettlement of any Syrian refugees in the State of Texas.

More governors joined Abbott, Snyder, Bentley, and the others, and by November 17, they numbered 30. The states so proclaiming include: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Ohio, Oklahoma, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, South Carolina, Tennessee, Texas, Wisconsin, and Wyoming.

Some defenders of the federal government's power to resettle refugees among the states despite the states' opposition have denied that the states have the right to refuse. Among these is Terri Burke, executive director of the American Civil Liberties Union (ACLU) of Texas. "The bottom line is, refugee admission is a federal matter, reflecting our values as a nation," said Burke. "Texas and other states don't have veto power in this area."

Most strict constitutionalists would disagree with Burke's opinion and maintain that the states have "veto power" (technically called the power of nullification) not only in this area, but in any area where the federal government attempts to usurp authority vis-à-vis the states that is not specifically granted to it by the Constitution.

In an article on the subject posted by *The New American* on November 30, constitutional attorney and contributor Joe Wolverton explored the arguments concerning whether state governors have the right to refuse entry into their states of refugees fleeing Syria.

The first point that Wolverton addressed was the assertion made by those claiming that federal authority supercedes the rights of the states on the matter — citing the "supremacy clause" of Article VI of the Constitution. He reminds readers that the Supremacy Clause does not declare that all laws passed by the federal government are the supreme law of the land, but only "laws of the United States made in pursuance" of the Constitution.

In other words: *in pursuance thereof*, not in violation thereof.

To prove this point, Wolverton quotes Alexander Hamilton's language found in *The Federalist*, No. 33:

> If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

Wolverton notes that the Constitution has little to say about immigration (although Article I, Section 8 empowers Congress to "establish an uniform Rule of Naturalization.") However, naturalization is not the same as immigration, since (he writes): "Immigration is the act of coming to a country of which one is not a native. Naturalization, however, is defined as the conference upon an alien of the rights and privileges of a citizen."

In a rare statement on which branch of government has the power to regulate immigration, noted Wolverton, President Ulysses S. Grant wrote in a memo to the House of Representatives: "Responsibility over immigration can only belong with the States since this is where the Constitution kept the power."

As Wolverton concludes his article:

> With respect to the difficult and potentially dangerous position in which [Arizona] Governor Ducey and the other 30 or so state executives find themselves, one wonders where in the Constitution states are required to ask the federal government's permission to exercise a power they specifically retain under the Bill of Rights, namely the power to grant or refuse permission for entry into their sovereign territory to an immigrant, no matter what label that immigrant is given by the federal government.

The 10th Amendment to the U.S. Constitution reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Since the power to regulate immigration is not granted to the federal government by the Constitution, then it must, as Grant wrote, belong to the states.

The right of states to nullify unconstitutional usurpations of power by the federal government is well documented in the writings of the Founding Fathers. As just one example, Thomas Jefferson wrote in 1798 in his Resolutions Relative to the Alien and Sedition Acts:

> ... Where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non foederis*,) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them.

The states have firm grounding upon which to assert their authority to determine which aliens may or may not be admitted into them, but their current methodology may not be the strongest weapon they have. Lawsuits filed in federal courts are apt to be decided against them by federal judges. However, by exercising the concept of nullification, the federal government could not so easily dismiss their resistance, without triggering a constitutional crisis.

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