



Written by [Joe Wolverton, II, J.D.](#) on March 17, 2017

## Tennessee Stands on 10th Amendment to Challenge Federal Refugee Policy

Tennessee has filed a complaint against the federal government, challenging the latter's refugee resettlement program.

The state's General Assembly filed the lawsuit on March 13, claiming that the federal government is forcing states to spend money they don't have to comply with mandates sent down from Washington, D.C., managing the settlement of international refugees.



Defendants in the lawsuit include the U.S. Departments of State and Health and Human Services, and their respective secretaries.

Neither Republican Governor Bill Haslam nor the Attorney General Herbert Slatery supports the legislature's lawsuit.

The complaint avers, "The state funds commandeered to support the federal government's refugee resettlement program deprive plaintiffs of scarce financial resources that are critical for protecting the welfare, health, and safety of all Tennesseans." Specifically, legislators mention money earmarked for teaching English as a second language to refugees.

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According to an ABC News report, The Thomas More Law Center, a private firm, stepped in to file suit for the General Assembly after the state's attorney general rejected the request to do so. The same report indicates that the Thomas More Law Center is representing the Republican-majority General Assembly pro bono. The firm is assisted by attorney B. Tyler Brooks with the law firm of Millberg Gordon Stewart PLLC located in Raleigh, North Carolina, who is also working without fee.

The Thomas More Law Center's website declares that the firm's mission is to "Preserve America's Judeo-Christian heritage; Defend the religious freedom of Christians; Restore time-honored moral and family values; Protect the sanctity of human life; Promote a strong national defense and a free and sovereign United States of America."

In a press release announcing the group's participation in the legal challenge to the federal refugee program, Richard Thompson, president and chief counsel of the Thomas More Law Center, said, "Supreme Court Chief Justice Roberts has observed, 'The States are separate and independent sovereigns. Sometimes they have to act like it.' We intend to follow that advice in our lawsuit on behalf of the State of Tennessee and its citizens. We are asking the Court to stop the bleeding out of millions of Tennessee taxpayer dollars each year to fund a federal program from which the State officially withdrew in 2007."

"Although there are compelling policy reasons to dismantle the existing refugee resettlement program in favor of resettling refugees in Middle East safe-zones as President Trump has suggested, this lawsuit focuses solely on the unconstitutional way the federal program is currently operating in the State of



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Tennessee,” Thompson added.

The principle of constitutional construction upon which the lawsuit is based is known as the anti-commandeering doctrine.

Put simply, anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern “international and interstate matters.”

While this expression of federalism (“dual sovereignty,” as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992); most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997).

Writing for the majority in the *Printz* opinion, the late Justice Antonin Scalia explained:

As Madison expressed it: “The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.” *The Federalist* No. 39, at 245. [n.11]

This separation of the two spheres is one of the Constitution’s structural protections of liberty. “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

The Founding Fathers understood this. For example, speaking at the convention considering ratification of the new Constitution in New York, part-time Constitutional Convention attendee Alexander Hamilton, a witness at the creation of the Constitution, declared:

I maintain that the word supreme imports no more than this — that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government ... but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding.

Speaking of the Supreme Court’s consideration of the anti-commandeering doctrine, Georgetown Law professor Randy Barnett is quoted in a Tenth Amendment Center (TAC) article as saying, “This line of cases is now considered well settled.”

Filed in the U.S. District Court for the Western District of Tennessee, the lawsuit, the More press release reveals, is “to preserve the balanced constitutional relationship between the federal government and the States.”

Additionally, the General Assembly is asking the court to declare that the federal refugee settlement scheme “has violated the Tenth Amendment and an order permanently enjoining the federal government from forcing the State of Tennessee to pay money out of its treasury to finance the federal refugee resettlement program.”

During the 2016 legislative session, the state House and Senate passed a joint resolution that permitted the state to pursue legal action against several federal departments charged with carrying out the



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terms of the refugee placement policy. The measure mentioned specifically the state's refusal to have its funds commandeered by Washington, D.C.

"The Constitution does not allow the Federal Government to force me as the elected representative of the 24th Senate District to implement federal programs while they sit in Washington insulated from the consequences," explained State Senator John Stevens, one of two lawmakers who are named as individual plaintiffs in the complaint.

Critics of the suit point to the so-called Supremacy Clause in Article VI of the U.S. Constitution, arguing that the provision puts federal law above state laws, prohibiting states from enacting laws contrary to the will of the Power on the Potomac.

The fact is the Supremacy Clause does not declare that all laws passed by the federal government are the supreme law of the land, period. A closer reading reveals that it declares the "laws of the United States made in pursuance" of the Constitution are the supreme law of the land.

*In pursuance thereof*, not in violation thereof. In other words, the Constitution and the laws of the United States are only "supreme" when those acts aim to legislate within the boundaries on federal power set by the states when they created the federal government with the ratification of the Constitution in 1789.

Thomas More's press release adds a little bit of history of the Volunteer State's sovereign will being sidestepped by the federal government:

Tennessee officially withdrew from participation in the refugee resettlement program in 2007. However, instead of honoring Tennessee's decision to withdraw from the program, the federal government merely bypassed the State and appointed Catholic Charities of Tennessee, a private, non-governmental organization to administer the program.

Similar suits filed by Texas and Alabama have been dismissed by other federal courts.

Regardless of the record, Tennessee's General Assembly seeks no more or less than the recognition by the court of its constitutionally retained authority to act in any area of the law not explicitly set aside by the states for the general government. This applies as much to the settlement of refugees as to the nearly innumerable roster of federal programs that are currently being financed by the states who are then required not only to pay for the programs, but to administer them, as well.

Tennessee's General Assembly would put an end to this unconstitutional practice.



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