

# Refugees Relief Agencies Win Standoff Against Texas

08.04.16 | Linda J. Rosenthal, JD



There is "...ongoing tension between government regulation of the financial and political activities of U.S. organizations and their First Amendment rights of speech and association," according to the Jon Pratt, author of "[Battlefield History and Status: First Amendment Tensions between Nonprofits and Governments](#)," an excellent new article appearing in the *Nonprofit Quarterly* magazine, summer 2016 edition. "Struggles over the regulatory frame surrounding nonprofits represent the next chapter in the evolution of the structural definitions of the nonprofit sector."

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*Nonprofits rely upon government authority to provide their structural integrity—a reliable degree of certainty regarding corporate formation, ownership of property, tax treatment, and contract enforcement; but they struggle to maintain their autonomy and range of movement in the face of various government accountability reforms and political pressures.*

In an April 2016 editorial in *The Chronicle of Philanthropy*, Tim Delaney, President and CEO of the National Council of Nonprofits, wrote that "[a]cross the country, state lawmakers are introducing measures ... that trample on nonprofits' constitutional rights — seeking to invade our boardrooms, muzzle what we say, and control how we spend our funds and run our programs."

Recently, though, there was a victory for the International Rescue Committee (IRC) and the federal government in a lawsuit brought by the State of Texas trying to block resettlement of Syrian refugees in the Lone Star State. The favorable outcome also directly affects almost 20 other relief

agencies in that state.

## *Opposition to Syrian Refugee Resettlement*

After the terrorist attacks in Paris in November 2015, there was an immediate political pushback in many states against accepting refugees from strife-torn hotspots in the Middle East.

Under the federal Refugee Act of 1980, though, Congress granted the president and the State Department sole power over refugee policy. “Both the Constitution and federal law prohibit states from picking and choosing among refugees, ... [and] multiple Supreme Court decisions dating back to the late 1800s make it clear that states are constitutionally prohibited from discriminating on the basis of national origin or denying the opportunity to live or seek work to immigrants once the federal government has seen fit to admit them.”

“The lion’s share of refugee placement is shouldered by a network of nongovernmental organizations that partner with the State Department to help refugees find places to live and work and ease their transition into new communities.”

Federal law includes a role for state and local officials, but it is limited to “advice-giving and consultation.”

“Refugee resettlement in the United States is completely funded by the federal government, but the state is in charge of contracting with local nonprofit organizations and distributing federal dollars to those agencies. Texas also oversees health assistance to refugees through two federally funded programs.”

“In Texas, most refugee services are carried out by private organizations that receive funding in the form of contracts from the state,” in part so that Texas can “put relatively little of its own tax revenue into social services.” Under federal law, the states have no authority “to nullify the president’s decision to increase the number of type of refugees or where those refugees will eventually live....”

“No matter what these governors say as part of their political grandstanding, states cannot actually stop Syrian refugees from settling within their borders.”

## *Texas Efforts to Strongarm Nonprofits*

Just days after the Paris attacks, though, Texas Governor Greg Abbott ordered the Texas Health and Human Services Commission (HHSC) to “suspend its cooperation with federal officials” on refugee resettlement. Governor Abbott wrote a letter to President Obama informing him that Texas would not accept any Syrian refugees.

The director of the Texas HHSC then sent a “troubling” letter to “nonprofits and other private agencies with refugee resettlement programs” and which are under contract with Texas to administer federal funds for this purpose. The bottom line of this letter to the relief organizations was an instruction to immediately discontinue plans for any resettlement of Syrian refugees. In fact, members of one family were scheduled for imminent placement in Texas.

The International Rescue Committee (IRC) and other groups objected on numerous grounds including that this directive is a violation of federal law that “put nonprofit agencies in the position of either disobeying state-level requests or breaking federal law.” Some of the faith-based agencies also asserted that this move is a violation of their religious liberty rights; namely, that their faith

beliefs are a key foundation of their dedication to relief work.

## *Texas Files Suit Against the Feds and IRC*

“The federal Office of Refugee Resettlement ...warned Abbott and other governors that they do not have the power to reject Syrian refugees, telling them they would be breaking the law if they denied benefits or services to refugees based on their country of origin or religion. And the International Rescue Committee’s Dallas branch informed the state it would continue aiding Syrian refugees placed in Texas despite Abbott’s orders.”

In early December 2015, Texas filed a federal lawsuit in the U.S. District Court for the Northern District of Texas: *Texas Health and Human Services Commission v. U.S. et al.*, Case No: 3:15-cv-03851. The named defendants were the federal government and the International Rescue Committee.

Texas alleged that “the federal government and the resettlement group have not fulfilled their contractual obligations to consult with, and provide information, to state officials.” The state also claimed that federal government had not given Texas “enough information and about the refugees” and that it had “security concerns.”

In addition, Texas asserted that the IRC “violated a separate provision of the [Refugee Act] requiring the nonprofit work ‘in close cooperation and advance consultation’ with the state.”

## *Outcome of Lawsuit*

Long story short, federal judge David C. Godbey refused interim injunctive relief twice, and then in mid-June 2016, tossed out the lawsuit entirely against the federal government and against the International Rescue Committee. In addition to substantive reasons for the denial of relief, Judge Godbey [a Harvard-trained lawyer appointed by President George W. Bush] observed:

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*Somewhat ironically, Texas, perhaps the reddest of red states, asks a federal court to stick its judicial nose into this political morass, where it does not belong absent statutory authorization....Finding no such authorization, this court will leave resolution of these difficult issues to the political process.*

## *Conclusion*

This battle in Texas has been wrapped up, but the battle over refugee resettlement continues in other jurisdictions, placing relief agencies in the crosshairs of this political dispute.