



Immigration Legal Services, Education, and Advocacy

February 19, 2016

Senator Les Seiler
Chairman, Judiciary Committee
Nebraska Legislature
Lincoln, NE

RE: Opposition to LB 966

Dear Chairman Seiler and Honorable Members of the Committee:

My name is Charles Shane Ellison and I am the legal director for Justice for Our Neighbors-Nebraska, a faith-based non-profit organization that provides high-quality immigration legal services. I am also on the board of directors of the Refugee Empowerment Center (REC), and I am a former federal officer within the U.S. Department of Homeland Security where I screened refugees seeking protection within the U.S. I am testifying today to express my strong opposition to LB 966. This bill is immoral, unlawful, and makes for bad policy.

LB 966 is only a thinly-veiled attempt to end refugee resettlement in Nebraska in its current form by making it so prohibitively expensive as to ensure its demise. Under the terms of the bill, Nebraska resettlement agencies who assist refugees from the 34 nations listed in the bill would be forced to obtain liability insurance in the amount of \$25 million.¹ REC has learned that the cost of such a policy would be approximately \$25,000 a year if it could even be obtained. Any agency unable to certify its compliance with the law would be fined up to \$1,000 per day multiplied by the total number of refugees served by that agency over the previous five years.² Thus REC, which has resettled 1,263 refugees during the last five year, could eventually be fined as much as \$1.2 million every day it is noncompliant. Such fines and fees have no legitimate state interest. It is difficult to view this bill as anything other than a scheme designed to bankrupt refugee resettlement agencies in Nebraska who refuse to discriminate based upon national origin.

As such, the bill is unlawful. Not only has the Supreme Court explained that federal authorities have occupied the field of immigration law³—erecting a bar to virtually all state legislation that attempts to regulate immigration— but LB 966 is in direct conflict⁴ with several specific provisions

¹ LB 966 § 3, subsection (2); *see also infra* note 7.

² *Id.* (The term “refugee” used throughout the bill is in reference to refugees from the 34 “high-risk” countries.)

³ *Hines v. Davidowitz*, 312 U.S. 52, 66 (1941) (“[T]he regulation of aliens is so intimately blended and intertwined with responsibilities of the national government that where it acts, and the state also acts on the same subject ... the law of the state must yield to it.”); *Keller v. City of Fremont*, 719 F.3d 931, 939-40 (8th Cir. 2013) (explaining the Supreme Court has held that “[t]he federal government has broad, undoubted power over the subject of immigration and the status of aliens, ... [and a] virtually unfettered power to preempt state laws ... [which] may be inferred from the pervasiveness of a federal regulatory regime or from the dominance of the federal interest being regulated.” (citing *Arizona v. U.S.*, 132 S. Ct. 2492, 2498, 2500-01 (2012) (quotations omitted))).

⁴ The court in *Keller* also explained that “state laws are preempted when they conflict with federal law..., [which] occurs when compliance with both federal and state laws is impossible” or “when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” 719 F.3d 931, 939-40 (citing *Arizona*, 132 S. Ct. at 2501 (quotations omitted)).

of federal law.⁵ Most troubling, the bill explicitly singles out certain nationalities for unequal protection of law.⁶ Indeed, resettlement agencies would be compelled by the State of Nebraska to refuse refugees from the 34 nations listed given the exorbitant costs and fines the bill levies on agencies that accept them.⁷ However, this compelled action by the state would be a violation of federal law and regulations,⁸ as well as the U.S. Constitution.⁹ LB 966, at its core, is simply a reframed attempt to bar certain refugees from Nebraska, a move that has failed in other states¹⁰ because it is fundamentally unconstitutional.¹¹

Lastly, the bill is bad policy. It is premised on misinformation and unfounded fear. Refugees remain the most vetted of any class of immigrant allowed to enter the U.S. The screening methods

⁵ Federal law bars national origin discrimination within refugee resettlement programs. *See* 8 U.S.C. § 1522(a)(5) (“Assistance and services funded under this section *shall* be provided to refugees without regard to ... religion, [or] nationality...”) (emphasis added); 42 U.S.C. § 2000d (“[N]o person in the United States *shall* on the ground of ... national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”) (emphasis added). Congress has also expressed its intent to not create a private cause of action with regard to the enforcement of asylum laws. 8 U.S.C. § 1158(7) (“No private right of action- Nothing in this subsection [relating to asylum] shall be construed to create any substantive or procedural right ... that is legally enforceable by any party against ... any other person.”)

⁶ LB 966 § 2, subsection (1) (the bill mostly focuses on countries with large Muslim populations). *Muslim Population by Country*, Pew Research Center, available at <http://www.pewforum.org/2011/01/27/table-muslim-population-by-country/>.

⁷ The bill provides that resettlement agencies shall “certify[] that such agency has the financial capacity to meet the obligations of this section,” but only makes them financially liable for crimes committed by refugees resettled from those 34 nations. *See* LB 966 § 2, subsection (2); and § 3, subsection (2). As such, the bill would appear to allow any agency to “certify that [it] has the financial capacity to meet the obligations of the [bill]” by adopting a policy that shields the agency from liability by simply refusing to resettle any refugees from those nations. *See id.*

⁸ 45 C.F.R. § 400.5(g) (State refugee resettlement plans must explicitly “[p]rovide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion.”); 45 C.F.R. § 400.5(i) (The plan must “provide that the State will ... [c]omply with ... all other applicable Federal statutes and regulations...”). *See also supra* note 5 (detailing applicable federal statutes).

⁹ *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (“The fourteenth amendment to the constitution is not confined to the protection of citizens. It says... ‘[no state shall] deny to *any person* within its jurisdiction the *equal protection of the laws.*’ These provisions are universal in their application, to *all persons* ... without regard to any differences of ... nationality”); *Graham*, 403 U.S. 365, 372-505 (2005); *Johnson v. California*, 543 U.S. 499, 505 (2005).

Additionally, the bill also unconstitutionally interferes with foreign policy. *See U.S. v. Pink*, 315 U.S. 203, 233 (1942) (“No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively.”).

¹⁰ After Georgia’s Attorney General issued his opinion that the Governor’s order to deny services to Syrian refugees would be unlawful, the Governor rescinded that order. *See Governor Deal Rescinds Order on Syrian Refugees*, December 30, 2015, available at <http://www.gpb.org/news/2015/12/30/update-gov-deal-rescinds-order-on-syrian-refugees>. Last week, a federal judge denied Texas’ request to permanently enjoin the resettlement of Syrian refugees. *See Court Order Allows Syrian Resettlement to Go On*, February 9, 2016, available at <http://www.texaslawyer.com/id=1202749270878/Court-Order-Allows-Syrian-Resettlement-to-Go-On-in-Texas?slreturn=20160118104422>. And Indiana’s governor is being sued over his order seeking to bar Syrian refugees from the state. *See U.S. Joins Refugee Case Against Pence*, February 12, 2016, available at <http://www.theindianalawyer.com/us-joins-syrian-refugee-case-against-pence/PARAMS/article/39489>.

¹¹ *See Graham v. Richardson*, 403 U.S. 365, 378 (1971) (“[A]liens lawfully within this country have a right to enter and abide in any State in the Union on an equality of legal privileges with all citizens under nondiscriminatory laws.”); *Truax v. Raich*, 239 U.S. 33, 29 (1915) (a non-citizen admitted to the United States under federal law has “the privilege ... of entering and abiding in any State in the Union.”).



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used by the Department of Homeland Security, the Department of State, the Central Intelligence Agency, the Federal Bureau of Investigations, the Department of Defense, and the National Center for Counter-terrorism are robust, rigorous, and sophisticated.¹² Punishing non-profit refugee resettlement agencies for political reasons is not responsible governance.¹³

This bill does not represent Nebraska's values of compassion and hospitality. Therefore, we strongly oppose LB 966.

Sincerely,

Charles Shane Ellison
Legal Director
JUSTICE FOR OUR NEIGHBORS-NEBRASKA

¹² See *Oversight of the Administration's FY 2016 Refugee Resettlement Program: Fiscal and Security Implications*, October 1, 2015, available at <https://www.dhs.gov/news/2015/10/01/written-testimony-uscis-senate-judiciary-subcommittee-immigration-and-national>. UNHCR estimates that the average length of major protracted refugee situations has increased to 17 years. See *Protracted Refugee Situations*, available at <http://www.state.gov/j/prm/policyissues/issues/protracted/>. Of the less than one percent of global refugees who will be deemed strong candidates for resettlement to any nation, just a fraction will be considered for resettlement to the U.S. Those individuals then undergo an 18-24 month screening process involving health checks, repeated biometric checks, and multiple layers of background checks. In addition to screenings by U.S. intelligence agencies, prospective refugees are also individually interviewed by specially trained DHS officers. Certain applicants, such as citizens of Iraq and Syria, undergo additional country-specific checks. See <https://www.uscis.gov/refugeescreening>.

¹³ Those who would seek to bar Syrian refugees have cherry-picked data to fabricate a case that resettling refugees is a security threat. For example, some continue to claim that one of the Paris bombers was a Syrian refugee, even after authorities concluded that the Syrian passport found on the individual was a fake. Compare *Syrian Passport by Stadium Stolen or Fake A.F.P. Reports*, November 17, 2015, available at <http://www.nytimes.com/live/paris-attacks-live-updates/syrian-passport-reportedly-was-stolen-or-fake/>, with *Keeping Nebraska Safe*, November 23, 2015, available at <https://governor.nebraska.gov/press/keeping-nebraska-safe>. Additionally, both the CIA and FBI Directors have been misquoted by opponents of refugee resettlement to suggest they oppose Syrian resettlement. While it is true that FBI Director Comey stated that we “can only query against that which we have collected,” he did so in the context of a hearing where he agreed with DHS Secretary Johnson and National Counterterrorism Center Director Rasmussen that we *can and will* adequately screen Syrian refugees. See <http://www.c-span.org/video/?328763-1/jeh-johnson-james-comey-nicholas-rasmussen-testimony-national-security-threats>. (Director Rasmussen stated that “we have a lot of lessons learned in this area ... we have now worked successfully to make sure that every bit of available intelligence information that the U.S. government holds will be looked at with respect to ... screen[ing] ... a potential refugee I certainly feel good about that process and the degree to which we have tightened that up over time.” DHS Secretary Johnson added that “[e]ach [refugee] will receive a careful security vetting ... It is a good process and a thorough process.” Then, FBI Director Comey stated “I do not have anything to add. My view is captured in what both the Secretary and Director have said.”) Moreover, the quote by Director Comey that refugee opponents have latched on to (i.e., we can only query against that which we have collected) is a truism. If opponents of the refugee resettlement program want to suspend it until our security systems can find records that don't exist, they are demanding the impossible and are implicitly calling for permanent suspension of refugee resettlement in the U.S.