

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1099

H.P. 773

House of Representatives, March 21, 2017

Resolve, To Require the State To Bring Suit against the Federal Government for Failure To Comply with the Federal Refugee Act of 1980

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative LOCKMAN of Amherst.
Cosponsored by Senator DAVIS of Piscataquis and
Representatives: BRADSTREET of Vassalboro, HANLEY of Pittston, HARRINGTON of Sanford, HERRICK of Paris, JOHANSEN of Monticello, SHERMAN of Hodgdon, Senators: CYRWAY of Kennebec, MASON of Androscoggin.

1 **Whereas**, the Federal Government is actively placing refugees in the State; and

2 **Whereas**, the State is required to provide certain benefits and services to eligible
3 refugees, including Medicaid services pursuant to 8 United States Code, Section 1612 or
4 risk losing Medicaid funding; and

5 **Whereas**, under the United States Constitution, Amendment X as construed by the
6 United States Supreme Court in National Federation of Independent Business et al. v.
7 Sebelius, 132 S. Ct. 2566 (2012), the Federal Government cannot lawfully coerce the
8 State to provide funding with no real option but to acquiesce; and

9 **Whereas**, by conditioning all Medicaid funding on the requirement that the State
10 provide Medicaid services to refugees absent other input or control by the State, the State
11 is being coerced in violation of both the United States Constitution and the Constitution
12 of Maine; and

13 **Whereas**, each member of the Legislature has taken an oath to uphold the
14 Constitution of Maine and the United States Constitution; and

15 **Whereas**, if it is constitutionally permissible for the Federal Government to compel
16 a state legislative body to perform its most important function, the appropriation of state
17 tax dollars, as well as expend its limited resources, personnel and services, the United
18 States Constitution, Amendment X has no meaning and the powers of the Federal
19 Government are unfettered and boundless; and

20 **Whereas**, the right of Mainers to appropriate tax dollars in a manner determined by
21 representatives elected by Maine citizens is fundamental and cannot be usurped; and

22 **Whereas**, if the Federal Government intends to overreach its authority to the point
23 that it assumes the traditional role of a state legislative body, it is only fitting and proper
24 that the very existence as well as the depth and breadth of this federal power be clarified
25 and declared in a court of law; and

26 **Whereas**, the federal Refugee Act of 1980 establishes a framework for collaboration
27 and cooperation between the Federal Government and the states in resettling refugees.
28 The federal Refugee Act of 1980 requires that the Federal Government "shall consult
29 regularly (not less often than quarterly) with State and local governments and private
30 nonprofit voluntary agencies concerning the sponsorship process and the intended
31 distribution of refugees among the States and localities before their placement in those
32 States and localities." 8 United States Code, Section 1522(a)(2)(A); and

33 **Whereas**, the Refugee Act of 1980 requires the Federal Government to consult with
34 the State regarding the placement of refugees before those refugees are placed within its
35 borders, and that consultation has not occurred; now, therefore, be it

36 **Sec. 1. The Attorney General to initiate or intervene in one or more civil**
37 **actions on behalf of the State or seek appropriate relief in a federal court of**
38 **competent jurisdiction. Resolved:** That the Attorney General shall initiate or

1 intervene in one or more civil actions on behalf of the State or seek appropriate relief in a
2 federal court of competent jurisdiction regarding the failure of the Federal Government to
3 comply with the federal Refugee Act of 1980, as amended, and any actions taken by the
4 Federal Government, including the President of the United States, the head of any
5 department or agency or any other employee of the executive branch of the Federal
6 Government, in violation of federal law or as prohibited by the United States
7 Constitution, Amendment X, or any statutory or constitutional provisions of the United
8 States or the State, with respect to the operation or implementation in this State of any
9 provision of the Federal Government's refugee resettlement program, including any
10 revision or amendment by regulation or otherwise pertaining to the program. The civil
11 action under this section must seek to prohibit the appropriation of state funds without the
12 specific authorization of the Legislature in connection with the federal Refugee Act of
13 1980. The Attorney General, in conjunction with the President of the Senate and the
14 Speaker of the House of Representatives, may employ the services of outside counsel to
15 assist in and consult on the civil action under this section; and be it further

16 **Sec. 2. Notice from Attorney General. Resolved:** That the Attorney General
17 shall file written notice with the Secretary of the Senate and the Clerk of the House of
18 Representatives if the Attorney General chooses not to initiate or intervene in a civil
19 action under section 1. Upon receipt of notice from the Attorney General declining the
20 initiation of or intervention in a civil action in section 1, the President of the Senate and
21 the Speaker of the House of Representatives are authorized to employ outside counsel to
22 commence a civil action in section 1.

23 **SUMMARY**

24 This resolve directs the Attorney General to initiate or intervene in a civil action
25 against the Federal Government in opposition to the federal Refugee Act of 1980 and the
26 imposition of financial mandates on the State. If the Attorney General sends notice to the
27 Senate and the House of Representatives declining to initiate or intervene in a civil action
28 required by this resolve, this resolve authorizes the President of the Senate and the
29 Speaker of the House of Representatives to employ outside counsel to commence the
30 civil action.