NO. _____

IN THE

Supreme Court of the United States

TENNESSEE GENERAL ASSEMBLY, ET AL.,
Petitioners,

v.

U.S. DEPARTMENT OF STATE, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether both chambers of a state legislature, acting together, have institutional standing to sue the federal government when the federal government commandeers state funds for a federal program.

2. Whether the federal government can constitutionally coerce a state to pay for a federal program from which the state has withdrawn by threatening to cut all the state's Medicaid funding.

PARTIES TO THE PROCEEDING

Petitioners are the Tennessee General Assembly; the State of Tennessee by and through the Tennessee General Assembly; Senator John Stevens, individually and in his official capacity as Member of the Tennessee Senate for the 24th Senatorial District; and Representative Terri Lynn Weaver, individually and in her official capacity as Member of the Tennessee House of Representatives for the 40th House District.

Respondents are United States Department of State; Michael J. Pompeo, in his official capacity as United States Secretary of State; Bureau of Population, Refugees, and Migration; Carol Thompson O'Connell, in her official capacity as Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration; United States Department of Health and Human Services; Alex M. Azar II, in his official capacity as Secretary of Health and Human Services; Office of Refugee Resettlement; and E. Scott Lloyd, in his official capacity as Director of the Office of Refugee Resettlement.

LIST OF ALL PROCEEDINGS

1. U.S. Court of Appeals for the Sixth Circuit, No. 18-5478, *State of Tennessee et al.* v. *United States Department of State, et al.*, judgment entered July 24, 2019.

2. U.S. District Court for the Western District of Tennessee, No. 1:17-cv-01040, *State of Tennessee et al.* v. *United States Department of State, et al.*, final judgment entered March 19, 2018.

TABLE OF CONTENTS

PETITION APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

Statutes

TABLE OF AUTHORITIES—Continued

Page(s)

Regulations

Other Authorities

OPINIONS BELOW

The District Court opinion granting Respondents' motion to dismiss is reported at *State of Tennessee* v. *U.S. Department of State*, No. 1:17-cv-01040, 329 F. Supp. 3d 597 (W.D. Tenn. March 19, 2018), and is reprinted at App. 39a. The court of appeals opinion affirming that ruling is reported at *State of Tennessee* v. *U.S. Department of State*, 931 F.3d 499 (6th Cir. 2019), and is reprinted at App. 1a. The Sixth Circuit's order denying rehearing en banc is not reported but is reprinted at 92a.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 2019. App. 1a. The court of appeals denied Petitioners' timely request for rehearing en banc on October 16, 2019. App. 92a. Justice Sotomayor extended the time to file a petition for a writ of certiorari to March 16, 2020. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Spending Clause, Article 1, § 8, clause 1 of the U.S. Constitution, states in relevant part: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . . ."

INTRODUCTION

In *National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519 (2012) (*NFIB*), this Court reaffirmed that the Constitution prohibits the federal government from threatening to take away a state's Medicaid funding if the state chooses not to participate in a federal program. *Id.* at 585. That is the exact situation presented here. The only difference is that in *NFIB*, the plaintiff states never agreed to participate in the federal program. Here, Tennessee initially agreed to participate in a federal refugee resettlement program because the federal government promised to reimburse 100% of the program's cost; when the federal government broke its promise, Tennessee withdrew. Yet the federal government continues to operate the program in Tennessee and to shift costs to Tennessee, making the exact same Medicaid-funding threat if Tennessee stops writing checks. The Court should hold that there is no substantive difference between a state that withdraws from an expensive federal program and one that never participated at all. Either way, the federal government cannot "conscript" states "into the national bureaucratic army." *Ibid.* (citation omitted).

The Sixth Circuit sidestepped this important legal issue by holding that the Tennessee General Assembly lacked standing. App. 2a. That was error. The General Assembly is an institutional plaintiff asserting an institutional injury: the federal government has co-opted the General Assembly's appropriation power and impaired its obligation to enact a balanced state budget. That is because the federal government can siphon state funds—at any time and in any amount—to help pay for a federal program from which Tennessee has withdrawn.

As the federal government put it in its briefing below, "[t]hat Tennessee opted to end its participation as a grant recipient in [the Office of Refugee Resettlement]'s Refugee Resettlement Program *has no implications whatsoever* for its longstanding obligation to provide Medicaid benefits to eligible refugees." 10/12/18 Appellees' Br. 22 (emphasis added). In other words, the Tennessee General Assembly has lost all control over appropriations to cover the cost of the federal program from which it has withdrawn. And the federal government will continue to operate the program and to demand payment for refugee Medicaid costs by threatening to cut all of Tennessee's Medicaid funding if Tennessee doesn't pay.

As a result, the Tennessee General Assembly's loss of its appropriation power and ability to enact a balanced budget is not an "abstract 'loss of political power,'" as the Sixth Circuit concluded. App. 27a (quoting *Raines* v. *Byrd*, 521 U.S. 811, 821 (1997)). Rather, the loss is a concrete and particularized injury, one that is unique to the General Assembly. Accordingly, the General Assembly has standing, just like the state legislature in *Arizona State Legislature* v. *Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015).

The issues presented in this case cut to the core of the Constitution's protection of states against overreach by the federal government. If a state legislature cannot vindicate its rights in court when the federal government picks the state's pocket and threatens the state if it dares stop providing funds, then federalism is a dead letter. Certiorari is warranted.

STATEMENT

A. The Refugee Act

Congress amended the Immigration and Nationality Act in 1980 by enacting the Refugee Act. Pub. L. No. 96-121, 94 Stat. 102 (1980) (codified in various sections of 8 U.S.C.). The Act created a new Office of Refugee Resettlement within the Department of Health and Human Services. 8 U.S.C. 1521(a). The Office administers the resettlement program, 8 U.S.C. 1521(b), consulting with state and local governments and non-governmental nonprofit agencies about "the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities." 8 U.S.C. 1522(a)(2)(A). It is undisputed that states cannot stop the federal government from placing refugees within their borders. See *Exodus Refugee Immigration, Inc.* v. *Pence*, 838 F.3d 902, 904 (7th Cir. 2016). And it is undisputed that Tennessee does not object to the federal government continuing to place refugees in Tennessee. The only dispute is who must pay for those refugees' medical care.

The resettlement program helps refugees achieve economic self-sufficiency by offering federal grants to encourage employment training, education in speaking English, and developing other skills. 8 U.S.C. 1522(a)(1)(A); *Exodus Refugee Immigration*, 838 F.3d at 903; 45 C.F.R. 400.11. It is up to each state whether to administer this program. If a state desires to participate, it submits a proposal to the Office for approval, describing how the state intends to "coordinate cash and medical assistance and other services to promote refugee resettlement and economic self-sufficiency." App. 4a; 8 U.S.C. 1522(a)(6)(A)–(C); 45 C.F.R. 400.4.

When a state elects not to participate or, as here, withdraws from the program, then the state will not receive or otherwise administer any federal grant funding. 45 C.F.R. 400.301. Critically, however, the Office can "authorize a replacement designee or designees to administer the provision of assistance and services, as appropriate, to refugees in that State." 45 C.F.R. 400.301(c); see also *Exodus Refugee Immigration*, 838 F.3d at 905; 60 Fed. Reg. 33584, 33588 (June 28, 1995). The Office funds 13 of these programs in 12 non-participating states. App. 4a.

The officials responsible for the resettlement program's creation recognized the substantial financial impact that resettlement can have on state budgets. Senator Ted Kennedy, the Act's leading sponsor, emphasized that the Act's purpose was "to assure full and adequate *federal* support for refugee resettlement programs by authorizing permanent funding for state, local[,] and volunteer agency projects." Compl. ¶ 22 (quoting Edward M. Kennedy, *Refugee Act of 1980*, 15 Int'l Migration Rev., No. 1/2, Spring-Summer 1981 141, 142 (emphasis added)). What's more, Congress recognized that, "[b]ecause the admission of refugees is a federal decision and lies outside normal immigration procedures, the federal government has a clear responsibility to assist communities in resettling refugees and helping them to become supporting." *Id.* ¶ 23 (citing Kennedy at 151). So Congress crafted the Act intending that "[s]tate and local agencies . . . not be taxed for programs they did not initiate and *for which they were not responsible*" and instead that the federal government alone should be "responsible" for funding its own program. *Id.* ¶ 24 (citing Kennedy at 151).

During debate leading up to the Act's passage, Senator Kennedy outlined for his colleagues the three categories of assistance—cash, medical, and social services—explaining that "[t]hese three types of Federal assistance are provided through a 100-percent reimbursement to the States for all refugees who do not qualify for the regular AFDC-Medicaid programs. For those who do qualify for the regular programs, the funds cover the State's portion of payment for these services." Compl. ¶ 25 (quoting 125 Cong. Rec. 23234 (Sept. 6, 1979)). And what was promised initially came to pass: (1) Congress authorized 36 months of full reimbursement to a state for the cost of each refugee resettled and participating in certain benefit programs, *id.* ¶ 26; (2) states received a 100% reimbursement of their costs under the Aid to Families with Dependent Children and Medicaid programs for each participating refugee, *ibid.*; and (3) the federal government provided separate financial assistance for refugees not eligible for benefits under these programs, *ibid.*

Over time, however, the federal government began shirking its commitment; reimbursements to the states were reduced and then eliminated entirely by 1991, leaving states holding the bag. Compl. ¶ 27. The Office was even forced to amend the resettlement program's regulations to reflect the "steady decline in Federal refugee funding for the State share of . . . Medicaid . . . due to insufficient appropriated funds." 60 Fed. Reg. 33584, 33588 (June 28, 1995). As discussed below, the federal government made up for the federal financing shortfall by shifting those costs to the states and threatening to withhold Medicaid funds if the states declined to pay.

B. Medicaid

The Medicaid program is a "cooperative federal-state public assistance program that makes federal funds available to states electing to furnish medical services to certain impoverished individuals." *Mowbray* v. *Koslowski*, 914 F.2d 593, 595 (4th Cir. 1990). A state's Medicaid participation is voluntary, though to receive federal funds, the state must obtain federal approval for a state Medicaid plan with certain federal criteria. *NFIB*, 567 U.S. at 541–42; see also 42 U.S.C. 1396a(10); 42 C.F.R. 430.10. Tennessee has chosen to participate in Medicaid since 1968. App. 5a.

A state submits for approval its plan or any amendments to the Centers for Medicare & Medicaid Services, colloquially known as CMS. 42 C.F.R. 430.12. Once CMS approves the plan, the federal government reimburses the state based on a percentage of the state's costs incurred. *West Virginia* v. *U.S. Dep't of Health & Human Servs.*, 289 F.3d 281, 284 (4th Cir. 2002); see also 42 U.S.C. 1396d(b). If a state's plan is out of compliance, Health & Human Services may withhold or limit the reimbursement payment. 42 U.S.C. 1396c. Such withholding is subject to a system of administrative and judicial review. App. 5a–6a (describing the system). But it is undisputed that Tennessee's annual reimbursement has ranged between four and seven billion dollars, roughly "17 to 21% of the state's total budget for all purposes." App. 6a.

Through passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996), Congress required non-citizens in the United States to be in the country for five years and meet certain eligibility requirements before receiving Medicaid and other

federal assistance. App. 7a. But "Congress identified some classes of qualified aliens, including refugees, who may participate in identified federal programs, including Medicaid, immediately upon admission to the United States, until seven years *after* the refugee was admitted to the United States." App. 8a (citing 8 U.S.C. 1612(a)(2)(A)(i)).

It is that Medicaid-eligibility requirement that frames the issues presented. Because Tennessee participates in Medicaid, it "must determine a refugee applicant's eligibility for Medicaid as medically needy[,]" and assist "all refugees eligible under its State plans." 45 C.F.R. 400.94(b)–(c). If the refugee is covered, then the refugee's status as a noncitizen is not a bar to the refugee receiving Medicaid. See 8 U.S.C. 1612(a)(2)(A)(i); 45 C.F.R. 400.94(c). Because the federal government reimburses only a portion of Tennessee's statewide Medicaid spending, every refugee settled in Tennessee will cost money that comes out of the state budget. This is exactly the opposite of the 100% reimbursement that Congress promised states when enacting the refugee resettlement program.

C. Tennessee withdraws from the federal resettlement program but continues incurring the cost

Tennessee used to voluntarily participate in the refugee resettlement program. Compl. ¶ 32. But due to the mounting costs the federal government was not covering, Tennessee elected to withdraw from the program in 2007, as was its right. 45 C.F.R. 400.301. By letter dated October 29, 2007, Tennessee notified the Office of Refugee Resettlement of its intent to withdraw effective June 30, 2008. Compl. ¶ 32.

In response, the Office designated Catholic Charities of Tennessee and the Office's own subsidiary, the Tennessee Office for Refugees, to continue the refugee resettlement program in Tennessee. App. 8a. By the General Assembly's calculation, from the 2007 withdrawal until 2016, the federal government resettled some 13,000 refugees in Tennessee, *ibid*, and those who are eligible can enroll in Tennessee's Medicaid program, TennCare, *ibid.* In 2015 alone, this cost the General Assembly over $31 million. App. 9a.

The General Assembly passed Senate Joint Resolution 467 in 2016, directing the Tennessee Attorney General to "initiate or intervene" in a civil action to stop the federal government from effectively siphoning tens of millions of dollars annually from the state budget. App. 9a. If the Attorney General declined, the Resolution authorized "the Speaker of the Senate and the Speaker of the House of Representatives" to retain outside counsel and file suit. *Ibid.* Tennessee's Governor did not sign the Resolution because he trusted the Attorney General's judgment. *Ibid.*

The Tennessee Attorney General declined to move forward but "delegate[d his] constitutional . . . and statutory . . . authority to commence litigation on behalf of the State of Tennessee to staff counsel for the General Assembly for the limited purpose of pursuing litigation to address the issues raised in [the Resolution] in the manner provided for by" the Resolution. App. 10a. So the General Assembly, acting for itself and on behalf of the state, plus one individual Senator and one individual Representative, filed suit against the federal defendants. *Ibid.*

The lawsuit alleges that 42 U.S.C. 1396c is coercive, because if Tennessee fails to enroll all eligible refugees in TennCare, the federal government could eliminate 20% of the state budget. App. 11a. Plaintiffs sought a declaratory judgment that the federal government violated the Spending Clause and the Tenth Amendment, and they requested an injunction "prohibiting the federal government from settling refugees in Tennessee until the United States paid for all resettlement costs." App. 11a.

D. Proceedings below

The district court granted the federal defendants' motion to dismiss for lack of standing, lack of ripeness, failure to administratively exhaust, and failure to state a claim. Tennessee appealed. The Sixth Circuit began by reciting the familiar three-part test articulated in *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992): a plaintiff must have an injury-in-fact that is concrete and particularized and actual or imminent, the injury must be fairly traceable to the defendant's challenged action, and it is likely the injury will be redressed by a favorable court decision. App. 13a.

In the context of a legislative body's standing, the court explained that the General Assembly may sue "if it has suffered an institutional injury." App. 14a–15a (citing *Ariz. State Legislature* v. *Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2664 (2015)). Such an injury affects "the power of the legislature as a whole rather than harm to an individual legislator." App. 15a (quoting *Kerr* v. *Hickenlooper*, 824 F.3d 1207, 1214 (10th Cir. 2016)). In *Arizona State Legislature*, for example, the voter-initiated change to Arizona's constitution would have nullified any Arizona legislative vote "purporting to adopt a redistricting plan." App. 20a (citation omitted).

The court of appeals acknowledged that Senate Joint Resolution 467 "lends support to the General Assembly's claim that it brings suit as an institutional body." App. 21a. But the court relied on *Alaska Legislative Council* v. *Babbitt*, 181 F.3d 1333 (D.C. Cir. 1999), a case in which the D.C. Circuit held that members of the Alaska Legislature lacked standing to sue the Secretary of the Interior for its management of federal public lands in Alaska. App. 24a. In the D.C. Circuit's view, the claim in *Babbitt* merely alleged interference with the state's authority to manage its fish and wildlife, which was an injury that "the *state* purportedly suffered," not a claim that the Legislature had been injured. App. 25a. The court of appeals below analogized *Babbitt* to the General Assembly's claim that the U.S. State Department "is commandeering state funds to support the Refugee Resettlement Program . . . through a statute that permits eligible refugees to enroll in Medicaid." *Ibid.* The court of appeals did not see a distinction between the General Assembly's loss of its state appropriation power and the Alaska Legislature's loss of control to regulate federal (not state) lands.

The court of appeals also rejected the General Assembly's argument that the refugee resettlement program interferes with the Assembly's duty to enact a balanced budget. App. 26a–27a, n.11. The court considered this violation to be too hypothetical to represent a threatened injury that is "real, immediate, and direct." *Ibid.* (citation omitted).[1]

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[1] The court of appeals also rejected the standing of the individual legislator plaintiff, App. 28a–29a, and of the General Assembly to sue on behalf of the State of Tennessee, App. 29a–38a. Petitioners do not challenge these rulings.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit's opinion conflicts with decisions of this and other courts by substantially narrowing the contexts in which a state may sue the federal government for a violation of state rights. In particular, when the federal government forces a state legislature to appropriate funds to support a federal program in which the state declines to participate, there is an institutional injury that satisfies Article III standing requirements. And once standing is satisfied, the merits of this case are on all fours with *NFIB*: the federal government is forcing Tennessee to pay for the Medicaid expenses of refugee-resettlement-program participants under threat of withholding *all* of Tennessee's Medicaid funding. Accordingly, the Court should grant the petition, reverse the Sixth Circuit, and remand for entry of an injunction that prevents the federal government from using a threatened withholding of Medicaid funds to force Tennessee to pay for the costs of the federal refugee resettlement program in Tennessee.

The federalism interests at stake here are too important for this Court to ignore. This case demonstrates that, notwithstanding this Court's decision in *NFIB*, the federal government continues to use the threat of withholding Medicaid funding as a hammer to commandeer funding from states that otherwise wish not to participate in a federal program. And this case presents the ideal vehicle for the Court to resolve both the standing and commandeering issues. Review is warranted.

I. The Court should grant the petition and hold that states have standing to challenge unconstitutional federal actions that impose funding obligations on states.

It is undisputed that when the federal government places refugees who are eligible for Medicaid coverage in the State of Tennessee, Tennessee shoulders a portion of the financial burden for that coverage. This result is not a product of "unfettered choices made by independent actors," *ASARCO Inc.* v. *Kardish*, 490 U.S. 605, 615 (1989) (opinion of Kennedy, J.), but is a necessary and intended consequence of (1) the federal government's insistence on continuing to place refugees in Tennessee after the State has withdrawn from the resettlement program, and (2) the federal government's Medicaid eligibility requirements for refugees. App. 8a–9a. As a direct result of these federal decisions, Tennessee paid more than $30 million in 2015 alone to subsidize a federal government program in which the State is not a voluntary participant. *Ibid.*

The significant *amount* of dollars the federal government is taking from the State's treasury is not the issue; after all, this Court has held that a plaintiff has suffered an injury-in-fact even where the amount of financial harm was only a few dollars. *E.g.*, *Council of Ins. Agents & Brokers* v. *Molasky-Arman*, 522 F.3d 925, 932 (9th Cir. 2008). The issue is that the General Assembly has alleged a "concrete and particularized" injury that is "fairly traceable" to the federal government's action and which will be redressed by a favorable decision here. *Summers* v. *Earth Island Inst.*, 129 S. Ct. 1142, 1149 (2009).

In this respect, the General Assembly's position is no different than that of the Arizona Legislature in the independent redistricting case. There, the Arizona Legislature challenged an amendment to the state constitution that removed redistricting authority from the Legislature and vested that authority in an independent body. *Arizona State Legislature*, 135 S. Ct. at 2660–61. In holding that the Arizona Legislature had standing, this Court emphasized that, since the Legislature had a sufficient number of votes to defeat or enact a provision impacted by the constitutional amendment, the Legislature suffered sufficient harm to its legislative authority to assert Article III standing. *Ibid.* at 2665. This was true even though the Legislature ultimately lost its claim on the merits. See *id.* at 2663 (quoting *Davis* v. *United States*, 564 U.S. 229, 249 n.10 (2011)).

Here, the General Assembly had sufficient votes to enact a budget that did not include Medicaid funding for the federal refugee resettlement program. Yet by authorizing the continued resettlement of refugees eligible for TennCare, the federal government *forced* Tennessee to make such an appropriation. Lower courts recognize that such an invalidation of state legislative authority creates standing. *E.g.*, *United States House of Representatives* v. *Burwell*, 130 F. Supp. 3d 53, 72–73 (D.D.C. 2015) ("because the House occupies a unique role in the appropriations process prescribed by the Constitution," the House of Representatives, as an institution, has standing to sue when it alleges that the federal government has usurped its authority to appropriate funds); *Baird* v. *Norton*, 266 F.3d 408, 412 (6th Cir. 2001) ("For legislators to have standing as legislators, then, they must possess votes sufficient to have defeated or approved the measure at issue.").

The Sixth Circuit's decision below conflicts most directly with the Fifth Circuit's decision in *Texas* v. *United States*, 809 F.3d 134, 155–61 (5th Cir. 2015), though that case involved state, rather than legislative, standing. There, Texas and other states sought to enjoin the United States and Department of Homeland Security officials from implementing DAPA, the Deferred Action for Parents of Americans and Lawful Permanent Residents program, and from expanding DACA, the Deferred Action for Childhood Arrivals program. The Fifth Circuit held that Texas established standing because it subsidized driver's licenses and would "lose a minimum of $130.89 on each one it issued to a DAPA beneficiary." *Id.* at 155. "Even a modest estimate would put the loss at 'several million dollars.'" *Ibid.* (citation omitted).

As here, the federal government did not dispute that Texas would incur these costs, though it did suggest that the "costs would be offset by other benefits to the state." *Ibid.* But the Fifth Circuit rejected an offset approach. "Once injury is shown, no attempt is made to ask whether the injury is outweighed by benefits the plaintiff has enjoyed from the relationship with the defendant. Standing is recognized to complain that some particular aspect of the relationship is unlawful and has caused injury." *Id.* at 155–56 (citing 13A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE 3531.4, at 147 (3d ed. 2015)). Accordingly, Texas's monetary loss was concrete, fairly traceable to the federal government, and redressable by a favorable ruling, and Texas (and the other plaintiff states) had standing.

The General Assembly's loss of legislative authority is even more acute than Texas's monetary loss in the DAPA case. Whereas Texas had the choice to subsidize the cost of driver's licenses, 809 F.3d at 156–57, Tennessee has no choice but to extend and pay for Medicaid benefits to eligible resettled refugees. Accordingly, the General Assembly must also have standing.

The court of appeals rejected these arguments based on a D.C. Circuit decision that purportedly went the other way, *Alaska Legislative Council* v. *Babbitt*, 181 F.3d 1333 (D.C. Cir. 1999). But *Babbitt* was not a forced-appropriation case, much less one that invalidated a state legislature's authority. The allegation by members of the Alaska Legislature in *Babbitt* was that the Secretary of the Interior's federal management of federal public lands that happened to be in Alaska infringed on Alaska's Tenth Amendment authority. *Id.* at 1335. But Alaska's interest in regulating wildlife on federal public lands—i.e., lands which are not under the state's complete sovereign control—is not remotely comparable to the Tennessee General Assembly's interest in appropriating state funds. And the alleged injury in *Babbitt*—that federal law interfered with state authority to manage fish and wildlife, *id.* at 1338—was truly an injury to the state *qua* state, since the Alaska executive branch, and in particular its department of natural resources, also had authority to manage game. The same is not true in Tennessee, where the Tennessee Constitution delegates appropriation authority to the General Assembly alone. TENN. CONST. art. 2, §§ 3 (vesting the General Assembly alone with the power to enact laws) & 24 (requiring all appropriations to be made by enacted laws).

What's more, the General Assembly has lost not only its appropriation power but its ability to satisfy its state constitutional duty to craft a balanced budget. TENN. CONST. art. 2, § 24. As the Assembly explained at oral argument in the court of appeals below, the federal government could place a large number of refugees in Tennessee toward the very end of a budget cycle, and the large, unexpected increase in state Medicaid spending for those refugees would upset what had otherwise been a careful legislative balance of state revenues and expenses, sometimes by millions of dollars. App. 26a–27a, n.11.

The court of appeals disregarded the loss of this authority as presenting a "hypothetical set of circumstances" that did not present a "real, immediate, and direct" injury. App. 27a, n.11 (quoting *Davis* v. *FEC*, 554 U.S. 724, 734 (2008)). But there is nothing hypothetical about it. The federal government is regularly placing refugees in Tennessee, throughout the year, and at an annual cost of tens of millions of dollars. And even if the alleged harm was more remote, this Court and others routinely recognize Article III standing where the alleged harm is real. *E.g.*, *Massachusetts* v. *Environmental Protection Agency*, 549 U.S. 497, 526 (2007) (states established standing where risk of harm was "remote" but "nevertheless real"); *Hawaii* v. *Trump*, 859 F.3d 741, 767–68 (9th Cir. 2017), *vacated on other grounds*, 138 S. Ct. 377 (2017) (harm not too speculative where the plaintiff had yet to request a waiver that would have granted him the requested relief); *Natural Resources Defense Council* v. *Environmental Protection Agency*, 464 F.3d 1, 7 (D.C. Cir. 2006) (lifetime risk of 1 in 200,000 of developing non-fatal skin cancer as a result of agency action is a cognizable injury-in-fact).

In sum, this Court and lower federal courts have made clear that a legislative body has standing to initiate suit to protect its legislative authority. Here, the federal government's actions have usurped the General Assembly's appropriations power and duty to balance the state budget. This Court should grant the petition and hold that the General Assembly can vindicate its institutional rights in a federal-court action.

II. The federal government cannot use its spending power to coerce a state to pay for a federal program from which the state has withdrawn.

"Impermissible interference with state sovereignty is not within the enumerated powers of the National Government." *Bond* v. *United States*, 131 S. Ct. 2355, 2366 (2011). So "[n]o matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate," *New York* v. *United States*, 505 U.S. 144, 178 (1992), or in this case, to appropriate. What is constitutionally permissible under the Spending Clause turns on "whether the State voluntarily and knowingly accepts the terms of the contract." *NFIB*, 567 U.S. at 577 (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981)).

In *NFIB*, this Court addressed the federal government's "invitation" to states that expand their Medicaid programs. But "[i]nstead of simply refusing to grant the new funds to States that will not accept the new conditions, Congress . . . also threatened to withhold those States' *existing* Medicaid funds." 567 U.S. at 579–80 (emphasis added).

This Court held the scheme unconstitutional. When federal "conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes." *NFIB*, 567 U.S. at 580. And when talking about Medicaid funding, "the financial 'inducement'" "is a gun to the head." *Id.* at 581. In *NFIB*, "Section 1396c of the Medicaid Act provide[s] that if a State's Medicaid plan does not comply with the Act's requirements, the Secretary of Health and Human Services may declare that 'further payments will not be made to the State.'" *Ibid.* (quoting 42 U.S.C. 1396c). Because "Medicaid spending accounts for over 20 percent of the average State's total budget," the withholding threat constituted "economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion." *Id.* at 581–82

So too here, and for the exact same reason. If the General Assembly does not allow TennCare enrollment or pay the associated Medicaid costs for eligible refugees that the federal government has resettled in Tennessee, it too will have a state Medicaid plan that does not comply with the Medicaid Act's requirements. And like the plaintiff states in *NFIB*, Tennessee, too, will risk losing 17-21% of its state budget in the form of federal Medicaid reimbursement. App. 6a.

The only point on which the federal government could distinguish this case from *NFIB* is that Tennessee previously agreed to participate in the resettlement program, whereas the plaintiff states in *NFIB* did not. But that is a distinction without a difference. As explained at length above, Tennessee agreed to participate in the resettlement program

based on the federal promise that the federal government would reimburse states 100% of the program costs. And while the federal government initially kept its promise, it started appropriating increasingly fewer dollars to reimburse participating states until there were no federal reimbursement funds available at all. That is why Tennessee elected to withdraw.

As this Court has explained, "[t]hough Congress' power to legislate under the spending power is broad, it does not include surprising participating States with post-acceptance or 'retroactive' conditions." *NFIB*, 567 U.S. at 584 (quoting *Pennhurst*, 451 U.S. at 25). Yet the federal government's defunding of the resettlement program's reimbursement promise is exactly such a surprise. Just as in *NFIB*, "the Secretary cannot apply 1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out" in a changed federal program. *Id.* at 585. That leaves the federal government with two choices: reimburse Tennessee for the tens of millions of dollars in Medicaid costs it is incurring for resettled refugees or allow Tennessee to opt out entirely and pay for those expenses itself. What the federal government cannot do is refuse to pay the reimbursement monies while also refusing Tennessee's attempts to exit the program and end its financial obligations under Medicaid to refugees the federal government settles in Tennessee. The federal government "may not simply 'conscript state[s] into the national bureaucratic army," *id.* (quoting *FERC* v. *Mississippi*, 456 U.S. 742, 775 (1982) (O'Connor, J., concurring in judgment in part and dissenting in part)), whether by forcing a state to regulate, or here, by forcing a state to pay.

III. This case is an ideal vehicle to decide the issues presented.

The question whether a state legislature has standing to sue when the federal government infringes the legislature's appropriation authority and budget-balancing obligation is of substantial jurisprudential significance, will undoubtedly recur, and is cleanly presented here. At a minimum, the Court should grant the petition on that question and reverse.

The question whether the federal government can coerce a state to pay for a federal program from which it has withdrawn by threatening to withhold Medicaid revenues is equally important and likewise warrants granting certiorari. But the merits of that issue are so clearly resolved by this Court's decision in *NFIB* that it would also be appropriate to rule on that issue summarily. Here, however, the federal government will undoubtedly raise vehicle objections.

At the trial level, the district court held that the General Assembly's merits claims were not ripe. App. 65a–70a. But that was error. The General Assembly is mandated to provide Medicaid to otherwise eligible refugees who are resettled in Tennessee. 45 C.F.R. 400.94(b)–(c). And if Tennessee does not allow those refugees to enroll in TennCare, the federal government has the power to "make no further" Medicaid payments to Tennessee. 42 U.S.C. 1396c. The exact same scenario was presented in *NFIB*, yet this Court did not say the plaintiff states' claim in that case was not ripe. That is because the ripeness doctrine does not require plaintiffs to put "a gun to [their] head" by violating federal law prior to bringing their suit. *NFIB*, 567 U.S. at 581. The existence of the threat is enough. *Id.* at 581–82.

The district court also held that this suit is precluded by 42 U.S.C. 1316. App. 71a–73a. Not so. Section 1316 governs only the process for a "[d]etermination of conformity [of a State Medicaid plan] with requirements for approval." But the General Assembly does not seek to have a plan approved because such an attempt would be futile. To the contrary, the General Assembly admits that if it stops paying for its share of refugee Medicaid costs, its state Medicaid program will be out of compliance with federal requirements. There is no disagreement about this.

Finally, the federal government is likely to say that this Court should at most remand the merits issue so the Sixth Circuit can address it in the first instance. But that is not necessary. The district court already ruled on the merits against the General Assembly, App. 73a–91a, so there is already a reasoned decision to review. But rather than follow *NFIB*, the district court erroneously held that somehow the federal government can coerce the General Assembly into paying for a federal resettlement program because the authority to control immigration is vested solely in the federal government by the Naturalization Clause in Article I of the Constitution. App. 78a (citing *Takahashi* v. *Fish & Game Comm'n*, 334 U.S. 410, 416 (1947)). That misses the point. The General Assembly does not object to the federal resettlement program. It does not even object to the federal government resettling refugees in Tennessee. The General Assembly *does* object to the federal government reaching its hand into Tennessee's pocket to pay for the costs of such a program, particularly when the enabling legislation was enacted with the promise to reimburse states for all expenses incurred in this program.

So while it is generally true that the federal government has the power to regulate the conditions under which non-citizens remain in the United States, App. 79a (citing *Korab* v. *Fink*, 797 F.3d 572, 580 (9th Cir. 2014)), the federal government lacks the power to commandeer state funds for any purpose. This is not a situation where the General Assembly is choosing to offer benefits to citizens but declining to extend them to non-citizens. Contra App. 79a–81a (discussing *Graham* v. *Richardson*, 403 U.S. 365 (1971)). Rather, it is the federal government forcing the General Assembly to appropriate tens of millions of dollars per year so that the federal government can extend benefits to non-citizens.

Finally, the district court purported to distinguish this case from *NFIB* because *NFIB* involved "an entirely new program" whereas this case involves Tennessee's withdrawal from a program in which it initially agreed to participate. App. 86a. But as discussed at length above, Tennessee was induced to participate in the resettlement program by a since-broken promise that the federal government would reimburse the state for 100% of its costs. And *NFIB*'s reasoning applies equally to the federal government's use of a Medicaid-funding-withholding threat to force a state to continue paying for costs of a federal program from which it has withdrawn.

Accordingly, the Court should grant the petition, holding that the General Assembly has standing, and, either summarily or after merits briefing and argument, hold that the federal government's forced funding of the refugee resettlement program is unconstitutional.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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