

112TH CONGRESS  
1ST SESSION

# H. R. 455

To protect 10th Amendment rights by providing special standing for State government officials to challenge proposed regulations, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2011

Mr. COLE (for himself, Mr. ROONEY, Mr. BISHOP of Utah, Mr. BOREN, Mr. GARRETT, Mr. WILSON of South Carolina, Mr. LUCAS, Mr. MILLER of Florida, Mr. SCOTT of South Carolina, Mr. SULLIVAN, Mr. GRIFFIN of Arkansas, Mr. BILBRAY, Mr. KLINE, Mrs. BLACKBURN, Mr. HANNA, Mr. TERRY, Mr. DANIEL E. LUNGREN of California, Mr. KING of Iowa, Mr. LANKFORD, Mr. BARTON of Texas, Mr. SCHOCK, Mr. MCHENRY, Mr. HALL, Mr. PEARCE, Mr. CARTER, Mr. ISSA, Mr. CHABOT, Mr. CONAWAY, Mr. NEUGEBAUER, Mr. WALBERG, Mr. FLORES, Mr. POE of Texas, Mr. YOUNG of Indiana, Mr. STUTZMAN, Mr. MARCHANT, Mrs. LUMMIS, Mr. FRANKS of Arizona, Mr. ROE of Tennessee, Mr. WESTMORELAND, Mr. SOUTHERLAND, Mr. NUGENT, Ms. GRANGER, Mr. POSEY, Mr. BILIRAKIS, Mr. POMPEO, Mr. HUELSKAMP, Mr. FARENTHOLD, Mr. SCHWEIKERT, Mr. AKIN, Mr. WALSH of Illinois, Mr. CRAWFORD, Mr. FLEMING, Mr. CHAFFETZ, Mr. GIBBS, Mr. CAMPBELL, Mr. KINGSTON, Mr. MANZULLO, Mr. PAUL, Mr. CANSECO, and Mr. BENISHEK) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To protect 10th Amendment rights by providing special standing for State government officials to challenge proposed regulations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “10th Amendment Reg-  
3 ulatory Reform Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds:

6 (1) The 10th article of amendment to the Con-  
7 stitution of the United States (hereinafter in this  
8 section referred to as the “10th Amendment”) , rati-  
9 fied on December 15, 1791, states, “The powers not  
10 delegated to the United States by the Constitution,  
11 nor prohibited by it to the States, are reserved to  
12 the States respectively, or to the people.”.

13 (2) The 10th Amendment expressly limits the  
14 powers of the Federal Government to those dele-  
15 gated by the Constitution and reaffirms and protects  
16 the freedom of the States to exercise those that are  
17 not.

18 (3) The 10th Amendment reflects the opposi-  
19 tion of the Founding Fathers to a Federal Govern-  
20 ment with expansive powers; their intention for the  
21 powers of the States to act as a check on those of  
22 the Federal Government; and their concern that the  
23 Federal Government would attempt to usurp powers  
24 intended to remain with the States.

25 (4) James Madison, in The Federalist No. 45,  
26 wrote, “The powers delegated by the proposed Con-

1       stitution to the Federal Government are few and de-  
2       fined. Those which are to remain in the State gov-  
3       ernments are numerous and indefinite.”.

4               (5) The Supreme Court, in *United States v.*  
5       *Sprague*, 282 U.S. 716 (1931), noted, “The Tenth  
6       Amendment was intended to confirm the under-  
7       standing of the people at the time the Constitution  
8       was adopted, that powers not granted to the United  
9       States were reserved to the States or to the people.”.

10              (6) The Supreme Court, in *Fry v. United*  
11       *States*, 421 U.S. 542 (1975), also noted, “The  
12       Amendment expressly declares the constitutional pol-  
13       icy that Congress may not exercise power in a fash-  
14       ion that impairs the States’ integrity or their ability  
15       to function effectively in a federal system.”.

16              (7) The Executive Departments and Agencies  
17       of the Federal Government often promulgate regula-  
18       tions contrary to the spirit and letter of the 10th  
19       Amendment.

20              (8) The 10th Amendment assures that the peo-  
21       ple of the United States of America and each sov-  
22       ereign State in the Union of States, now have, and  
23       have always had, rights the Federal Government  
24       may not usurp.

1           (9) It is the responsibility of Congress to safe-  
2           guard the 10th Amendment and to recognize that it  
3           is as vital and valuable today as on the date of its  
4           ratification.

5 **SEC. 3. SPECIAL STANDING FOR CERTAIN STATE OFFI-**  
6                   **CIALS TO CHALLENGE FEDERAL RULE-**  
7                   **MAKING AS A VIOLATION OF THE 10TH**  
8                   **AMENDMENT.**

9           (a) **TO SUBMIT A LEGAL BRIEF.**—During any period  
10          when a proposed Federal rule is required under chapter  
11          5, title 5, United States Code, to be open for public com-  
12          ment, any designated State official may file with the head  
13          of the agency proposing the rule a legal brief challenging  
14          the constitutionality of the proposed rule under the 10th  
15          article of amendment to the Constitution.

16          (b) **DUTY OF FEDERAL OFFICIAL TO POST LINK TO**  
17          **THE BRIEF.**—The head of the Federal agency proposing  
18          the rule shall, not later than 10 days after a brief is sub-  
19          mitted under subsection (a), prominently post on the agen-  
20          cy’s primary Web page, in such a manner that it is imme-  
21          diately noticeable to those who visit that Web site, a link  
22          to that brief.

23          (c) **RESPONSE BY FEDERAL AGENCY.**—Unless the  
24          Federal agency determines not to carry into effect the pro-

1 posed rule, not later than 15 days after posting the link  
2 under subsection (a), the head of that agency shall—

3           (1) certify in writing that, in the opinion of that  
4 head, such rulemaking does not violate the 10th ar-  
5 ticle of amendment to the Constitution and include  
6 in that certification a full and complete written  
7 statement of the legal reasoning supporting that  
8 opinion; and

9           (2) prominently post the certification on the  
10 front page of the agency’s Web site next to the legal  
11 briefs pertaining to that rule posted under sub-  
12 section (b).

13       (d) NOTICE TO OTHER STATES’ OFFICIALS.—Not  
14 later than 15 days after a designated State official sub-  
15 mits a brief under this section, the head of the agency  
16 proposing the rule shall give notice to each designated  
17 State official of each State that the brief was filed.

18       (e) VENUE AND JURISDICTION OF LEGAL ACTIONS  
19 BY STATE OFFICIALS.—If a designated State official de-  
20 cides to commence legal action against a proposed or final  
21 Federal rule on the grounds that the rule violates the 10th  
22 article of amendment to the Constitution, in addition to  
23 any other venue or jurisdiction that may be provided by  
24 law, the official may elect to file the action in the United  
25 States district court for the district in which the official’s

1 place of business is located, which shall be a proper venue  
2 for the case and the court shall have jurisdiction to hear  
3 and determine it.

4 (f) EXPEDITED APPEAL.—Upon the request of a des-  
5 ignated State official who is a party in the case, the rel-  
6 evant United States Court of Appeals shall grant expe-  
7 dited review of a decision by a district court in any case  
8 that could have been brought under subsection (e).

9 (g) DEFINITIONS.—As used in this section—

10 (1) the term “designated State official” means,  
11 with respect to a State—

12 (A) the chief executive of the State;

13 (B) the lieutenant governor or equivalent  
14 officer of the State;

15 (C) the chief legal officer of the State; or

16 (D) a legislative leader of the State; and

17 (2) the term “legislative leader” means a speak-  
18 er, majority leader, or minority leader, of the State  
19 legislature or any House thereof.

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