

113TH CONGRESS
1ST SESSION

S. 1632

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2013

Mr. WICKER (for himself, Mr. COCHRAN, Mr. GRASSLEY, Mr. ISAKSON, Mr. SESSIONS, Mr. ROBERTS, Mr. THUNE, Mr. INHOFE, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring the 10th
5 Amendment Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds:

8 (1) The 10th Amendment to the Constitution of
9 the United States (referred to in this Act as the

1 “10th Amendment”), ratified on December 15,
2 1791, provides, “The powers not delegated to the
3 United States by the Constitution, nor prohibited by
4 it to the States, are reserved to the States respec-
5 tively, or to the people.”.

6 (2) The 10th Amendment expressly limits the
7 powers of the Federal Government to those dele-
8 gated by the Constitution and reaffirms and protects
9 the freedom of the States to exercise those that are
10 not.

11 (3) The 10th Amendment reflects the opposi-
12 tion of the Founding Fathers to a Federal Govern-
13 ment with expansive powers, their intention for the
14 powers of the States to act as a check on those of
15 the Federal Government, and their concern that the
16 Federal Government would attempt to usurp powers
17 intended to remain with the States.

18 (4) James Madison, in *The Federalist* No. 45,
19 wrote, “The powers delegated by the proposed Con-
20 stitution to the federal government are few and de-
21 fined. Those which are to remain in the State gov-
22 ernments are numerous and indefinite.”.

23 (5) The Supreme Court, in *United States v.*
24 *Sprague*, 282 U.S. 716 (1931), noted, “The Tenth
25 Amendment was intended to confirm the under-

1 standing of the people at the time the Constitution
2 was adopted, that powers not granted to the United
3 States were reserved to the States or to the people.”.

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

10 (7) The Executive departments and agencies of
11 the Federal Government often promulgate regula-
12 tions contrary to the spirit and letter of the 10th
13 Amendment.

14 (8) The 10th Amendment assures that the peo-
15 ple of the United States, and each sovereign State
16 in the Union of States, have, and have always had,
17 rights that the Federal Government may not usurp.

18 (9) Congress has the responsibility to safeguard
19 the 10th Amendment and to recognize that it is as
20 vital and valuable today as on the date of its ratifi-
21 cation.

1 **SEC. 3. SPECIAL STANDING FOR CERTAIN STATE OFFI-**
 2 **CIALS TO CHALLENGE FEDERAL RULE-**
 3 **MAKING AS A VIOLATION OF THE 10TH**
 4 **AMENDMENT.**

5 (a) DEFINITIONS.—In this section—

6 (1) the term “agency” has the meaning given
 7 that term in section 551 of title 5, United States
 8 Code;

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

11 (A) the chief executive of the State;

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

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

15 (D) a legislative leader of the State;

16 (3) the term “legislative leader” means a speak-
 17 er, majority leader, or minority leader, of a State
 18 legislature or any House thereof; and

19 (4) the term “rule” has the meaning given that
 20 term in section 551 of title 5, United States Code.

21 (b) SUBMISSION OF LEGAL BRIEF.—During any pe-
 22 riod during which a proposed rule is open for public com-
 23 ment under chapter 5 of title 5, United States Code, any
 24 designated State official may submit to the head of the
 25 agency proposing the rule a legal brief challenging the con-

stitutionality of the proposed rule under the 10th Amendment.

(c) DUTY OF FEDERAL OFFICIAL TO POST LINK TO THE BRIEF.—The head of the agency proposing a rule described in subsection (b) shall prominently post on the front page of Web site of the agency, in such a manner that it is immediately noticeable to individuals who visit that Web site, a link to each brief submitted under subsection (b).

(d) RESPONSE BY FEDERAL AGENCY.—Unless an agency determines not to finalize a proposed rule described in subsection (b), not later than 15 days after posting the link under subsection (c), the head of the agency shall—

(1) certify in writing that, in the opinion of the head of the agency, the rule does not violate the 10th Amendment;

(2) include in the certification the full legal reasoning supporting that opinion; and

(3) prominently post the certification on the front page of the Web site of the agency next to the links to the legal briefs pertaining to the rule posted under subsection (c).

(e) NOTICE TO OFFICIALS OF OTHER STATES.—Not later than 15 days after the date on which a designated

1 State official submits a brief under subsection (b), the
2 head of the agency proposing the rule shall give notice to
3 each designated State official of each State that the brief
4 was submitted.

5 (f) ACTIONS BY STATE OFFICIALS.—

6 (1) COMMENCEMENT OF ACTION.—At any time
7 after the head of an agency posts a certification
8 under subsection (d) that a rule does not violate the
9 10th Amendment, a designated State official may
10 commence a civil action against the agency on the
11 grounds that the rule of the agency violates the 10th
12 Amendment.

13 (2) VENUE AND JURISDICTION.—If a des-
14 ignated State official decides to commence an action
15 under paragraph (1), in addition to any other venue
16 or jurisdiction that may be provided by law, the offi-
17 cial may bring the action in the district court of the
18 United States for the district in which the place of
19 business of the official is located, which shall be a
20 proper venue for the action and the court shall have
21 jurisdiction of the action.

22 (3) EXPEDITED APPEAL.—Upon the filing of a
23 notice of appeal by a designated State official who
24 is a party to an action described in paragraph (1)
25 brought in a district court of the United States, the

1 appropriate court of appeals of the United States
2 shall grant expedited review of a decision by the dis-
3 trict court in the action.

○