

112TH CONGRESS
1ST SESSION

S. 1842

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

NOVEMBER 10, 2011

Mr. WICKER 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 article of amendment to the Con-
9 stitution of the United States (hereinafter in this
10 section referred to as the “10th Amendment”), rati-

1 fied on December 15, 1791, states, “The powers not
2 delegated to the United States by the Constitution,
3 nor prohibited by it to the States, are reserved to
4 the States respectively, or to the people.”.

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

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

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

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

1 was adopted, that powers not granted to the United
2 States were reserved to the States or to the people.”.

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

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

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

18 (9) It is the responsibility of Congress to safe-
19 guard the 10th Amendment and to recognize that it
20 is as vital and valuable today as on the date of its
21 ratification.

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) TO SUBMIT A LEGAL BRIEF.—During any period
6 when a proposed Federal rule is required under chapter
7 5, title 5, United States Code, to be open for public com-
8 ment, any designated State official may file with the head
9 of the agency proposing the rule a legal brief challenging
10 the constitutionality of the proposed rule under the 10th
11 article of amendment to the Constitution.

12 (b) DUTY OF FEDERAL OFFICIAL TO POST LINK TO
13 THE BRIEF.—The head of the Federal agency proposing
14 the rule shall prominently post on the agency’s primary
15 Web page, in such a manner that it is immediately notice-
16 able to those who visit that Web site, a link to each brief
17 submitted under subsection (a).

18 (c) RESPONSE BY FEDERAL AGENCY.—Unless the
19 Federal agency determines not to carry into effect the pro-
20 posed rule, not later than 15 days after posting the link
21 under subsection (a), the head of that agency shall—

22 (1) certify in writing that, in the opinion of that
23 head, such rulemaking does not violate the 10th ar-
24 ticle of amendment to the Constitution and include
25 in that certification a full and complete written

1 statement of the legal reasoning supporting that
2 opinion; and

3 (2) prominently post the certification on the
4 front page of the agency's Web site next to the legal
5 briefs pertaining to that rule posted under sub-
6 section (b).

7 (d) NOTICE TO OTHER STATES' OFFICIALS.—Not
8 later than 15 days after a designated State official sub-
9 mits a brief under this section, the head of the agency
10 proposing the rule shall give notice to each designated
11 State official of each State that the brief was filed.

12 (e) VENUE AND JURISDICTION OF LEGAL ACTIONS
13 BY STATE OFFICIALS.—If a designated State official de-
14 cides to commence legal action against a proposed or final
15 Federal rule on the grounds that the rule violates the 10th
16 article of amendment to the Constitution, in addition to
17 any other venue or jurisdiction that may be provided by
18 law, the official may elect to file the action in the United
19 States district court for the district in which the official's
20 place of business is located, which shall be a proper venue
21 for the case and the court shall have jurisdiction to hear
22 and determine it.

23 (f) EXPEDITED APPEAL.—Upon the request of a des-
24 ignated State official who is a party in the case, the rel-
25 evant United States Court of Appeals shall grant expe-

1 dited review of a decision by a district court in any case
2 that could have been brought under subsection (e).

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

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

6 (A) the chief executive of the State;

7 (B) the lieutenant governor or equivalent
8 officer of the State;

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

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

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

○