

113TH CONGRESS  
2D SESSION

# H. R. 4047

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

FEBRUARY 11, 2014

Mr. CULBERSON 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,*

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  
10       “10th Amendment”), ratified on December 15,

1 1791, provides, “The powers not delegated to the  
2 United States by the Constitution, nor prohibited by  
3 it to the States, are reserved to the States respec-  
4 tively, 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 of  
10 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, and each sovereign State  
15 in the Union of States, have, and have always had,  
16 rights that the Federal Government may not usurp.

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

21 **SEC. 3. SPECIAL STANDING FOR CERTAIN STATE OFFI-**  
22 **CIALS TO CHALLENGE FEDERAL RULE-**  
23 **MAKING AS A VIOLATION OF THE 10TH**  
24 **AMENDMENT.**

25 (a) DEFINITIONS.—In this section—

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

4           (2) 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;

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

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

16       (b) SUBMISSION OF LEGAL BRIEF.—During any pe-  
17 riod during which a proposed rule is open for public com-  
18 ment under chapter 5 of title 5, United States Code, any  
19 designated State official may submit to the head of the  
20 agency proposing the rule a legal brief challenging the con-  
21 stitutionality of the proposed rule under the 10th Amend-  
22 ment.

23       (c) DUTY OF FEDERAL OFFICIAL TO POST LINK TO  
24 THE BRIEF.—The head of the agency proposing a rule  
25 described in subsection (b) shall prominently post on the

1 front page of the Web site of the agency, in such a manner  
2 that it is immediately noticeable to individuals who visit  
3 that Web site, a link to each brief submitted under sub-  
4 section (b).

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

10 (1) certify in writing that, in the opinion of the  
11 head of the agency, the rule does not violate the  
12 10th Amendment;

13 (2) include in the certification the full legal rea-  
14 soning supporting that opinion; and

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

19 (e) NOTICE TO OFFICIALS OF OTHER STATES.—Not  
20 later than 15 days after the date on which a designated  
21 State official submits a brief under subsection (b), the  
22 head of the agency proposing the rule shall give notice to  
23 each designated State official of each State that the brief  
24 was submitted.

25 (f) ACTIONS BY STATE OFFICIALS.—

1           (1) COMMENCEMENT OF ACTION.—At any time  
2 after the head of an agency posts a certification  
3 under subsection (d) that a rule does not violate the  
4 10th Amendment, a designated State official may  
5 commence a civil action against the agency on the  
6 grounds that the rule of the agency violates the 10th  
7 Amendment.

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

17           (3) EXPEDITED APPEAL.—Upon the filing of a  
18 notice of appeal by a designated State official who  
19 is a party to an action described in paragraph (1)  
20 brought in a district court of the United States, the  
21 appropriate court of appeals of the United States  
22 shall grant expedited review of a decision by the dis-  
23 trict court in the action.

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