



Written by [Alex Newman](#) on May 14, 2009

Texas, Other States Introduce Firearm Freedom Act

The bill's sponsors say it is more about defending states' rights and sovereignty from an over-reaching federal government than about guns. "I think states have got to stand up or else most of their rights are going to be buffaloeed by the administration and by Congress," said Republican Texas state Rep. Leo Berman, one of the bill's chief sponsors. "It deals with firearms and ammunition, which raises eyebrows, but it's more of a 10th Amendment bill than a Second Amendment bill," added Andy Kuchera, his legislative director.



"Sovereignty is a big issue right now."

The proposed law would do two things according to Berman: "It tests our sovereignty in relationship to the federal government, and it would attract new small gun manufacturers to the state to manufacture certain types of weapons and ammunition that are only used in intrastate commerce." He also noted that his bill is aimed at helping "mom and pop" businesses that deal with firearms, ammunition or accessories.

The text of the proposed legislation is very similar to the [law passed in Montana](#), which takes effect October 1 of this year. The bill cites the U.S. Constitution's Ninth and 10th Amendments, which state that the enumeration of certain rights in the Constitution do not deny others retained by the people, and that those powers not delegated to the federal government are reserved by the states or the people. According to the bill: "The guaranty of those rights is a matter of contract between the state and people of Texas and the United States dating from the time Texas became a state." The bill also references the Second Amendment and the Texas Constitution which "clearly secures to Texas citizens the right to keep and bear arms."

If passed, the law is almost certain to end up tested in court. The U.S. Supreme Court ruled against California's medical marijuana in 2005 claiming that since it was indistinguishable from other marijuana, the feds have the power to enforce anti-drug laws in the state. This case, however, could be different. Firearms that would fall under the proposed bill must be stamped with the words "Made in Texas," making them easily distinguishable from other guns. Another case that has been cited as relevant to the bill is *Wickard v. Filburn*, where the U.S. Supreme Court ruled against a farmer who was fined for growing too much wheat. The argument was that wheat he grew and consumed himself would lead to decreased wheat sales in other states, so it falls under federal jurisdiction because of the interstate commerce clause.

Under the proposed bill, as soon as somebody notifies the Texas Attorney General that he intends to manufacture or sell guns without a federal permit, he is required to seek a ruling from a federal court making sure it is legal. However, Montana's law is likely to be tested before the Texas bill, which is still in the legislature. The legal battles will be waged by the Montana Shooting Sports Association, which drafted the original bill. The National Rifle Association has also expressed support for the state



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legislative measures, and gun supporters and champions of states' rights have applauded the efforts across America.

Other states are also considering similar bills of their own. Tennessee, South Carolina, and Alaska have all introduced similar legislation. The House in Alaska has already given the thumbs up. Utah may do so at the next legislative session. "It is part of the populist state-sovereignty movement, the sense there is so much power in Washington," says Stephen P. Halbrook, the Virginia lawyer who successfully argued against the D.C. gun ban before the Supreme Court. "It is a grass-roots thing."

Texas has always been a fiercely independent state. Controversy erupted recently when Republican Gov. Rick Perry used the word "secession." A bill in the state's legislature called on the federal government to "cease and desist" in imposing unconstitutional regulations on Texas citizens. Right now the bill is pending in the House Committee on Public Safety. And though the bill may not make it to a vote in this legislative session as it winds down, it has found wide support.

No matter what happens in court, these state legislatures are taking important steps to fulfill their responsibilities. States must protect the rights of their citizens — especially when the federal government refuses to do so. The interstate commerce clause has been taken to extremes by a federal government that refuses to acknowledge limits on its power despite the clearly worded contract known as the Constitution. When a party to a contract refuses to live up to its end of the deal, the other party must take steps to ensure that the contract is upheld.

AP Images Photo: Republican Texas state Rep. Leo Berman



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