

SUBJECT: Affirming the right to manufacture an incandescent light bulb in Texas

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 6 ayes — Keffer, Crownover, Carter, Craddick, J. Davis, Sheffield

0 nays

3 absent — C. Howard, Lozano, Strama

WITNESSES: For — None

Against — David Power, Public Citizen; (*Registered, but did not testify*:
Joshua Houston, Texas Impact)

BACKGROUND: In 2007, the U.S. Congress enacted and President Bush signed the Energy Independence and Security Act, a portion of which sets an energy efficiency standard for general service incandescent lamps and for incandescent reflector lamps and fluorescent lamps.

DIGEST: HB 2510 would affirm that an incandescent light bulb that was manufactured in Texas and remained in the state would not be subject to federal law or regulation under the authority of the U.S. Congress to regulate interstate commerce. An incandescent light bulb manufactured in the state would have to have “Made in Texas” clearly stamped on it.

The bill would require the attorney general to defend a citizen of Texas whom the federal government — under the claimed authority of the commerce clause of the U.S. Constitution — attempted to prosecute for a violation of federal law for manufacturing or selling a light bulb in the state. The attorney general would have to seek a declaratory judgment from a federal district court that the bill was consistent with the U.S. Constitution upon receiving notice from a citizen who intended to manufacture a bulb covered under the bill.

The bill would take effect January 1, 2012, and would apply to a light bulb manufactured on or after that date.

SUPPORTERS
SAY:

HB 2510 would affirm the sovereignty of Texas to regulate commercial activities exclusively within its borders. The bill would protect local industries that manufactured incandescent light bulbs solely for distribution and sale within the state.

Constitutional considerations. HB 2510 would be upheld under a narrow interpretation of the scope of the commerce clause. The 10th Amendment to the U.S. Constitution provides that powers not delegated to the U.S., nor prohibited by it to the states, are reserved to the states respectively, or to the people. The Ninth Amendment to the U.S. Constitution further states that certain rights granted to the U.S. shall not be construed to deny or disparage others retained by the people. The cumulative effect of these key amendments is to provide constitutional affirmation that powers accorded to the federal government should be narrowly construed.

While the U.S. Constitution recognizes a federal right to regulate matters of interstate commerce, commonly called the commerce clause, it grants the federal government no authority to regulate intrastate commerce. The U.S. Supreme Court has recently acknowledged certain limits of the scope of the commerce clause. In *United States v. Alfonso Lopez, Jr.*, 514 U.S. 549 (1995), the court overturned a long-standing precedent of upholding a wide range of federal actions under the commerce clause. This landmark case signified a willingness to establish limits to the commerce clause that could be transferred and extended to consideration of HB 2510. As the bill would apply only to commerce within the state of Texas, it certainly has a chance of passing constitutional muster through the court system. Whatever the outcome, protecting the rights of Texas manufacturers is well worth the constitutional fight.

Incandescent bulbs. The federal Energy Independence and Security Act required greater efficiency for light bulbs starting in 2012. It would, in effect, outlaw incandescent bulbs as they would not be able to meet the more stringent standards.

This prohibition is misguided for many reasons. First, it stifles domestic industries that produce incandescent light bulbs in favor of compact florescent light bulbs (CFLs), which almost exclusively are made in China. Second, it promotes an environmentally and economically questionable product. CFLs, which would replace incandescent bulbs, are many times more expensive for consumers, do not offer the same quality or range of light as incandescent bulbs, seldom last as long as predicted in

advertisements, and contain mercury and therefore must be disposed of properly in special recycling programs. The advantages of these bulbs sag under the weight of their deficiencies — at any rate, they possess no virtues that justify forcing them upon Texans.

HB 2510 would carve Texas manufacturers out of this benighted federal prohibition. The bill would not prohibit CFLs. Rather, it would leave technological advances in lighting to market forces steered by the customer and not the federal government. The bill would protect local industries and businesses in the wake of a severe recession, and it would reaffirm the right of the state to take measures to protect industries and economies within its borders from federal encroachment.

OPPONENTS
SAY:

HB 2510 would add clearly unconstitutional provisions to state law and would attempt to undermine vast improvements in energy use pertaining to sources of light.

Constitutional considerations. The bill would violate the supremacy clause in the U.S. Constitution, which establishes federal law as the “supreme law of the land.” It is very unlikely that the bill would survive a constitutional challenge. Current jurisprudence regarding consideration of the commerce clause remains permissive. A court that upheld established precedents would apply a “rational basis” review to the question — that is, it would ask if Congress had a rational basis for believing that incandescent light bulbs fell under the commerce clause, such that a failure to regulate in one state could undermine another state’s regulation of the item.

HB 2510 would not survive a challenge under this reasoning. Light bulbs clearly are commodities that cannot be prevented from traversing a border of another state. Since the state cannot credibly limit their distribution, sale, and movement to Texas alone, they clearly fall under interstate commerce and therefore are subject to federal regulation. Pursuing a case through the federal courts to wage a losing battle would consume significant resources in time and funds, which would ultimately be paid by the taxpayers of Texas.

Incandescent bulbs. Incandescent bulbs are outdated and have been soundly replaced by a host of good alternative options in CFLs. Updated technologies have greatly improved CFLs in recent years. As their market share has grown, the new bulbs have become more varied to suit the needs

of a diverse customer base. CLFs save money in the long run, since they last many times longer than incandescent bulbs, use significantly less energy, do not pose the fire hazards as do incandescent bulbs, and are available with an increasingly wide range of choice in luminosity and color spectra. In addition, major retailers have adopted recycling programs for CLFs, and some recent designs do not contain mercury.

There are few businesses still manufacturing incandescent bulbs. Most manufacturers have turned to developing and producing improved lighting, such as LED lights. Texas is the base for many leading businesses designing and producing LED lights, which have a promising future.