

Alexander-Pryor: Federal Consent Decree Fairness Act of 2005
Slowing Down “Democracy by Court Decree”

The Problem

- Federal consent decrees – judicial orders based on the consent of parties engaged in a civil action – have become a means by which the judiciary branch makes decisions that should be left in the hands of state legislatures and local officials.
- Consent decrees typically ignore the policy judgments of state and local officials in favor of judicially managed programs.
- Consent decrees can remain in place for decades and “lock in” policies that were agreed to by officials who are no longer in office by discouraging state and local governments from trying to modify or vacate consent decrees.

The Solution: The Federal Consent Decree Reform Act of 2005

- Applies to any consent decree to which a state or local government, or a state or local official sued in their official capacity, is a party.
- Sets out a series of findings based on a Supreme Court decision that suggests that ***consent decrees should be narrow in scope and return control to state and local governments as soon as possible.***
- Sets “term limits” on consent decrees by allowing a state or local government to file a motion to vacate or modify a consent decree ***4 years after the decree is entered OR after the end of the term of the state or local official who authorized the consent*** of the state or local government in the consent decree.
- ***Shifts the burden of proof to the plaintiff*** in the initial civil action to demonstrate the decree is still necessary to uphold the federal right it was meant to protect.
- ***Originally cosponsored by Senators Pryor, Kyl, Cornyn, and Nelson (NE). Now 22 Senate cosponsors. Companion bill in the House introduced by Congressman Roy Blunt and Congressman Jim Cooper.***

Why now?

- Consent decrees are a *national* problem:
 - In Tennessee, hundreds of thousands of Tennesseans could have their health insurance limited or cut altogether because a series of consent decrees prevented the state from making adjustments that could preserve the program.
 - In Los Angeles, consent decrees have forced the Metropolitan Transit Authority to spend 47 percent of its budget on city buses – leaving just over half the budget to pay for all the rest of the transportation needs of the city of Los Angeles.
 - In New York, a consent decree mandating bilingual education has been in force for *thirty years*. The result is that public schools – which are meant to be vibrant, changing institutions – have no choice but to force students into bilingual programs, even over the objections of the parents of the children the decree is meant to benefit.
- The Supreme Court, in its recent decision in *Frew v. Hawkins*, indicated in dicta that it was concerned that consent decrees may “improperly deprive future officials of their designated legislative and executive powers.” Such circumstances may lead to “federal court oversight of state programs for long periods of time even absent an ongoing violation of federal law.” *Frew v. Hawkins*, 124 S. Ct. 899 (2004).