



Lamar Alexander

United States Senator • Tennessee

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ALEXANDER, PRYOR INTRODUCE LEGISLATION TO SLOW DOWN “DEMOCRACY BY COURT DECREE”

WASHINGTON - U.S. Sens. Lamar Alexander (R-Tenn.) and Mark Pryor (D-Ark.) today introduced legislation to slow down “democracy by court decree” - the tendency of some federal courts to make decisions that elected state and local officials ought to be making.

During a news conference on Capitol Hill, Alexander said that the legislation “would make it easier for federal courts to do what the Supreme Court has recently said they should do in showing restraint while considering federal court consent decrees.”

The bill would make it easier for state and local governments to amend federal court consent decrees to which they are a party. Alexander said the legislation “would level the playing field for defendant state and local governments” by requiring plaintiffs to justify the continued existence of consent decrees after four years have passed or six months after voters have elected a new administration.

The senator said such consent decrees in federal courts – judicial orders based on the consent of parties engaged in a civil action – “can be effective judicial tools when drawn narrowly and with respect for state and local policy choices. But, in too many cases, consent decrees have instead sometimes become a means to “lock in” policies for decades after the state or local official that agreed to the decree has left. Instead of being free to make the policy choices they were elected to make, newly elected officials often find themselves restricted by the motions of plaintiffs attorneys and policy choices of a federal court.”

Alexander cited several examples of how existing consent decrees have limited the actions of newly elected officials:

- In Tennessee, a U.S. District Court Judge recently ruled – citing several existing consent decrees – that the governor could not scale back benefits for 300,000 optional beneficiaries of the state Medicaid program (known as TennCare) in

order to save health care programs for low-income children and to more fully fund educational programs;

- In New York, a 30-year-old consent decree has forced Hispanic children into bilingual education programs – over the objections of their own parents who want their children to learn English more rapidly in other education programs;
- 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.

Alexander said that the legislation only affects federal court consent decrees to which state and local governments are a party and does not affect consent decrees involving school desegregation.

The senator acknowledged the “excellent work” of New York Law Professors Ross Sandler and David Schoenbrod and their book, “Democracy by Decree,” and said that it was a great help in preparing the legislation.

Alexander and Pryor were joined for the announcement by U.S. Rep. Jim Cooper (D-Tenn.), who is the bill’s sponsor in the House. Other Senate co-sponsors include John Cornyn (R-Tex.), Jon Kyl (R-Ariz.) and Ben Nelson (D-Neb.).

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