

109TH CONGRESS
1ST SESSION

H. R. 1229

To amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2005

Mr. BLUNT (for himself, Mr. COOPER, Mrs. BLACKBURN, Mr. CHABOT, Mr. DAVIS of Tennessee, Mr. DELAY, Mr. FORD, Mr. FRANKS of Arizona, Mr. GORDON, Mr. JONES of North Carolina, Mr. MATHESON, Mr. TANNER, Mr. WAMP, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, 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 “Federal Consent De-
5 cree Fairness Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Consent decrees are made for remedying
2 violations of rights, and they should not be used to
3 advance any policy extraneous to the protection of
4 those rights.

5 (2) Consent decrees are also made for pro-
6 tecting the party who faces imminent injury and
7 should not be expanded to apply to parties not in-
8 volved in the litigation.

9 (3) In structuring consent decrees, courts
10 should take into account the interests of State and
11 local governments in managing their own affairs.

12 (4) Consent decrees should, whenever possible,
13 be structured to give due deference to the policy
14 judgments of State and local officials as to how to
15 obey the law.

16 (5) Courts should not impose consent decrees
17 that require technically complex and evolving policy
18 choices, especially in the absence of judicially discov-
19 erable and manageable standards.

20 (6) Consent decrees should not be unlimited,
21 but should contain an explicit and realistic strategy
22 for ending court supervision.

1 **SEC. 3. LIMITATION ON CONSENT DECREES.**

2 (a) IN GENERAL.—Chapter 111 of title 28, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 1660. Consent decrees**

6 “(a) DEFINITIONS.—In this section:

7 “(1) The term ‘consent decree’—

8 “(A) means any final order that imposes
9 injunctive relief against a State or local govern-
10 ment, or a State or local official sued in his or
11 her official capacity, is entered by a court of the
12 United States, and is based in whole or part
13 upon the consent or acquiescence of the parties;

14 “(B) does not include private settlements;
15 and

16 “(C) does not include any final order en-
17 tered by a court of the United States—

18 “(i) to implement a plan to end seg-
19regation of students or faculty on the basis
20 of race, color, or national origin in elemen-
21 tary schools, secondary schools, or institu-
22 tions of higher education; or

23 “(ii) to remedy discrimination on the
24 basis of race in an action brought under
25 title VI or VII of the Civil Rights Act of
26 1964.

1 “(2) The term ‘special master’ means any per-
2 son, regardless of title or description given by the
3 court, who is appointed by a court of the United
4 States under rule 53 of the Federal Rules of Civil
5 Procedure, rule 48 of the Federal Rules of Appellate
6 Procedure, or similar Federal law.

7 “(b) LIMITATION ON DURATION.—

8 “(1) IN GENERAL.—A State or local govern-
9 ment, or a State or local official sued in his or her
10 official capacity, or a successor to such official, may
11 file a motion under this section with the court that
12 entered a consent decree to modify or vacate the
13 consent decree upon the earlier of—

14 “(A) 4 years after a consent decree is
15 originally entered by a court of the United
16 States, regardless of whether the consent decree
17 has been modified or reentered during that pe-
18 riod; or

19 “(B) in the case of a civil action in
20 which—

21 “(i) a State is a party (including an
22 action in which a local government is also
23 a party), the expiration of the term of of-
24 fice of the highest elected State official

1 who authorized the consent of the State in
2 the consent decree; or

3 “(ii) a local government is a party and
4 the State encompassing the local govern-
5 ment is not a party, the expiration of the
6 term of office of the highest elected local
7 government official who authorized the
8 consent of the local government to the con-
9 sent decree.

10 “(2) BURDEN OF PROOF.—With respect to any
11 motion filed under paragraph (1), the burden of
12 proof shall be on the party who originally filed the
13 civil action to demonstrate that the continued en-
14 forcement of a consent decree is necessary to uphold
15 a Federal right.

16 “(3) RULING ON MOTION.—Not later than 90
17 days after the filing of a motion under this sub-
18 section, the court shall rule on the motion.

19 “(4) EFFECT PENDING RULING.—If the court
20 has not ruled on the motion to modify or vacate the
21 consent decree during the 90-day period described
22 under paragraph (3), the consent decree shall have
23 no force or effect for the period beginning on the
24 date following that 90-day period through the date
25 on which the court enters a ruling on the motion.

1 “(c) SPECIAL MASTERS.—

2 “(1) COMPENSATION.—The compensation to be
3 allowed to a special master overseeing any consent
4 decree under this section shall be based on an hourly
5 rate not greater than the hourly rate established
6 under section 3006A of title 18, for payment of
7 court-appointed counsel, plus costs reasonably in-
8 curred by the special master.

9 “(2) TERMINATION.—In no event shall the ap-
10 pointment of a special master extend beyond the ter-
11 mination of the relief granted in the consent de-
12 cree.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The table of sections for chapter 111 of title 28, United
15 States Code, is amended by adding at the end the fol-
16 lowing:

“1660. Consent decrees.”.

17 **SEC. 4. EFFECTIVE DATE.**

18 The amendments made by this Act shall take effect
19 on the date of enactment of this Act and apply to all con-
20 sent decrees regardless of—

21 (1) the date on which the final order of a con-
22 sent decree is entered; or

1 (2) whether any relief has been obtained under
2 a consent decree before the date of enactment of this
3 Act.

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