

109TH CONGRESS
1ST SESSION

S. 489

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 SENATE OF THE UNITED STATES

MARCH 1, 2005

Mr. ALEXANDER (for himself, Mr. KYL, and Mr. CORNYN) introduced the following bill; which was read twice and 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 that:

1 (1) Consent decrees are for remedying viola-
2 tions of rights, and they should not be used to ad-
3 vance any policy extraneous to the protection of
4 those rights.

5 (2) Consent decrees are also for protecting the
6 party who faces injury and should not be expanded
7 to apply to parties not involved in the litigation.

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

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

14 (5) Whenever possible, courts should not impose
15 consent decrees that require technically complex and
16 evolving policy choices, especially in the absence of
17 judicially discoverable and manageable standards.

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

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

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

1 **“§ 1660. Consent decrees**

2 “(a) DEFINITIONS.—In this section:

3 “(1) The term ‘consent decree’—

4 “(A) means any final order imposing in-
 5 junctive relief against a State or local govern-
 6 ment or a State or local official sued in their
 7 official capacity entered by a court of the
 8 United States that is based in whole or part
 9 upon the consent or acquiescence of the parties;

10 “(B) does not include private settlements;
 11 and

12 “(C) does not include any final order en-
 13 tered by a court of the United States to imple-
 14 ment a plan to end segregation of students or
 15 faculty on the basis of race, color, or national
 16 origin in elementary schools, secondary schools,
 17 or institutions of higher education.

18 “(2) The term ‘special master’ means any per-
 19 son, regardless of title or description given by the
 20 court, who is appointed by a court of the United
 21 States under rule 53 of the Federal Rules of Civil
 22 Procedure, rule 48 of the Federal Rules of Appellate
 23 Procedure, or similar Federal law.

24 “(b) LIMITATION ON DURATION.—

25 “(1) IN GENERAL.—A State or local govern-
 26 ment or a State or local official, or their successor,

1 sued in their official capacity may file a motion
2 under this section with the court that entered a con-
3 sent decree to modify or vacate the consent decree
4 upon the earlier of—

5 “(A) 4 years after a consent decree is
6 originally entered by a court of the United
7 States, regardless if the consent decree has
8 been modified or reentered during that period;
9 or

10 “(B) in the case of a civil action in
11 which—

12 “(i) a State is a party (including an
13 action in which a local government is also
14 a party), the expiration of the term of of-
15 fice of the highest elected State official
16 who authorized the consent of the State in
17 the consent decree; or

18 “(ii) a local government is a party and
19 the State encompassing the local govern-
20 ment is not a party, the expiration of the
21 term of office of the highest elected local
22 government official who authorized the
23 consent of the local government to the con-
24 sent decree.

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

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

10 “(4) EFFECT PENDING RULING.—If the court
11 has not ruled on the motion to modify or vacate the
12 consent decree during the 90-day period described
13 under paragraph (3), the consent decree shall have
14 no force or effect for the period beginning on the
15 date following that 90-day period through the date
16 on which the court enters a ruling on the motion.

17 “(c) SPECIAL MASTERS.—

18 “(1) COMPENSATION.—The compensation to be
19 allowed to a special master overseeing any consent
20 decree under this section shall be based on an hourly
21 rate not greater than the hourly rate established
22 under section 3006A of title 18, for payment of
23 court-appointed counsel, plus costs reasonably in-
24 curred by the special master.

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

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

 “§ 1660. Consent decrees.”.

9 **SEC. 4. EFFECTIVE DATE.**

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

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

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

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