

110TH CONGRESS
1ST SESSION

H. R. 4041

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

NOVEMBER 1, 2007

Mr. BLUNT (for himself, Mr. COOPER, Mr. ADERHOLT, Mr. AKIN, Mrs. BLACKBURN, Mr. DAVID DAVIS of Tennessee, Mr. LINCOLN DAVIS of Tennessee, Mr. DUNCAN, Mr. EVERETT, Mr. GORDON of Tennessee, Mr. PAUL, Mr. POE, Mr. SMITH of Texas, Mr. TANNER, and Mr. WAMP) 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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that:

3 (1) Consent decrees are for remedying violations of requirements of Federal law, and they
4 should not be used to advance any policy extraneous
5 to that purpose.6 (2) Consent decrees are also for protecting the
7 party or class facing injury and should not be ex-
8 panded to apply to parties not involved in the litiga-
9 tion.10 (3) In structuring consent decrees, courts
11 should take into account the interests of State and
12 local governments in managing their own affairs.13 (4) Consent decrees should be structured and
14 administered to give due deference to the policy
15 judgments of State and local officials, and their suc-
16 cessors, as to how to obey the law.17 (5) Whenever possible, courts should not impose
18 consent decrees that require technically complex and
19 evolving policy choices, especially in the absence of
20 judicially discoverable and manageable standards.21 (6) Consent decrees should not be unlimited,
22 but should contain an explicit and realistic strategy
23 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, the term ‘con-
7 sent decree’—

8 “(1) means any order imposing injunctive or
9 other prospective relief against a State or local gov-
10 ernment, or a State or local official sued, entered by
11 a court of the United States that is based in whole
12 or part upon the consent or acquiescence of the par-
13 ties; and

14 “(2) does not include—

15 “(A) private settlements agreements;

16 “(B) any order arising from an action filed
17 against a government official that is unrelated
18 to his or her official duties;

19 “(C) any order entered by a court of the
20 United States to implement a plan to end seg-
21 regation of students or faculty on the basis of
22 race, color, or national origin in elementary
23 schools, secondary schools, or institutions of
24 higher education; and

25 “(D) any order entered in any action—

1 “(i) filed by the United States or any
2 agency of the United States, except for re-
3 porting requirements provided under sec-
4 tion 4 of the Federal Consent Decree Fair-
5 ness Act; or

6 “(ii) in which 1 State is an adverse
7 party to another State.

8 “(b) LIMITATION ON DURATION.—

9 “(1) IN GENERAL.—A State or local govern-
10 ment, or a State or local official who was a party
11 to the consent decree (or the successor to that indi-
12 vidual) may file a motion under this section with the
13 court that entered a consent decree to modify or ter-
14 minate the consent decree upon the earlier of—

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

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

22 “(i) a State or an elected State offi-
23 cial is a party, the expiration of the term
24 of office of the highest elected State offi-
25 cial who was a party to the consent decree;

1 “(ii) a local government or elected
2 local government official is a party, the ex-
3 piration of the term of office of the highest
4 elected local government official who was a
5 party to the consent decree; or
6 “(iii) the consent to the decree was
7 authorized by an appointed State or local
8 official, upon the expiration of the term of
9 office of the elected official who appointed
10 that State or local official, or the highest
11 elected official in that State or local gov-
12 ernment; or
13 “(C) the date otherwise provided by law.

14 “(2) BURDEN OF PROOF.—

15 “(A) IN GENERAL.—With respect to any
16 motion filed under paragraph (1), the burden of
17 proof shall be on the party who originally filed
18 the civil action to demonstrate that the denial
19 of the motion to modify or terminate a consent
20 decree or any part of a consent decree is nec-
21 essary to prevent the violation of a requirement
22 of Federal law that—

23 “(i) was actionable by such party; and
24 “(ii) was addressed in the original
25 consent decree.

1 “(B) FAILURE TO MEET BURDEN OF
2 PROOF.—If a party fails to meet the burden of
3 proof described in subparagraph (A), the court
4 shall terminate the consent decree.

5 “(C) SATISFACTION OF BURDEN OF
6 PROOF.—If a party meets the burden of proof
7 described in described in subparagraph (A), the
8 court shall ensure that any remaining provi-
9 sions of the consent decree represent the least
10 restrictive means by which to prevent such a
11 violation.

12 “(3) RULING ON MOTION.—

13 “(A) IN GENERAL.—The court shall rule
14 expeditiously on a motion filed under this sub-
15 section.

16 “(B) SCHEDULING ORDER.—Not later
17 than 30 days after the filing of a motion under
18 this subsection, the court shall enter a sched-
19 uling order that—

20 “(i) limits the time of the parties to—

21 “(I) file motions; and

22 “(II) complete any required dis-
23 covery; and

24 “(ii) sets the date or dates of any
25 hearings determined necessary.

1 “(C) STAY OF INJUNCTIVE OR PROSPEC-
2 TIVE RELIEF.—In addition to any other orders
3 authorized by law, the court may stay the in-
4 junctive or prospective relief set forth in the
5 consent decree in an action under this sub-
6 section if a party opposing the motion to modify
7 or terminate the consent decree seeks any con-
8 tinuance or delay that prevents the court from
9 entering a final ruling on the motion within 180
10 days of the filing of the motion.

11 “(c) OTHER FEDERAL COURT REMEDIES.—The pro-
12 visions of this section shall not be interpreted to prohibit
13 a Federal court from entering a new order for injunctive
14 or prospective relief to the extent that it is otherwise au-
15 thorized by Federal law.

16 “(d) AVAILABLE STATE COURT REMEDIES.—The
17 provisions of this section shall not prohibit the parties
18 from seeking appropriate relief under State law.”.

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

“1660. Consent decrees.”.

23 **SEC. 4. DEPARTMENT OF JUSTICE REPORT.**

24 (a) IN GENERAL.—Not later than October 1 of each
25 year, the Attorney General shall submit a report to Con-

1 gress on all consent decrees in which the United States
2 is a party where the consent decrees were entered 4 or
3 more years prior to the date of the report.

4 (b) CONTENT OF REPORTS.—The report required
5 under subsection (a) shall include—

6 (1) copies of any consent decrees described in
7 subsection (a); and

8 (2) a written statement by the Attorney Gen-
9 eral or other agency head explaining—

10 (A) why each consent decree listed in the
11 report requires continued court supervision; and

12 (B) any efforts the United States had
13 made to limit the scope or duration of the con-
14 sent decree.

15 (c) PREPARATION OF REPORT.—

16 (1) IN GENERAL.—Federal agencies other than
17 the Department of Justice shall provide the informa-
18 tion required in this section to the Attorney General
19 not later than September 1 of each year.

20 (2) INPUT.—In preparing the report required
21 under subsection (a), the Attorney General or other
22 agency head shall solicit, and include in the report,
23 statements relating to each consent decree from
24 State and local officials who—

1 (A) support continued court supervision;

2 and

3 (B) oppose continued court supervision.

4 (d) ELECTRONIC SUBMISSION.—Copies of consent
5 decrees required by subsection (b)(1)(B) may be sub-
6 mitted in electronic format.

7 SEC. 5. GENERAL PRINCIPLES.

8 (a) NO EFFECT ON OTHER LAWS RELATING TO
9 MODIFYING OR VACATING CONSENT DECREES.—Nothing
10 in the amendments made by section 3 shall be construed
11 to preempt or modify any other provision of law providing
12 for the modification or vacating of a consent decree.

13 (b) FURTHER PROCEEDINGS NOT REQUIRED.—
14 Nothing in the amendments made by section 3 shall be
15 construed to affect or require further judicial proceedings
16 relating to prior adjudications of liability or class certifi-
17 cations.

18 SEC. 6. EFFECTIVE DATE.

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

22 (1) the date on which the order of a consent de-
23 cree is entered; or

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