will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes.

The Senator from Tennessee is recognized.

ORDER OF PROCEDURE

Mr. ALEXANDER. Mr. President, I see my friend from Oregon here. I ask unanimous consent to speak a little bit longer than 10 minutes if that would not inconvenience him, or would he like to go?

Mr. WYDEN. That is fine with me. I am waiting for Senator SMITH. Madam President, if I could, I ask unanimous consent that after Senator ALEXANDER completes his remarks, Senator SMITH, my colleague from Oregon, and I may speak for up to 30 minutes. We may not consume all of that time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, I ask unanimous consent to speak for up to 20 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE NEW IRAQI LEADERSHIP

Mr. ALEXANDER. Madam President, I have three or four comments I want to make this morning. Most importantly, I want to say a word about the new leadership in Iraq.

In a delegation led by the Democratic leader, Senator REID of Nevada, seven of us were in Iraq, in Baghdad, about 10 days ago. We met with two of the three new leaders who have been chosen. Mr. al-Hasani, the new speaker, a Sunni, spent some time with us. We spent an hour with Dr. al-Jaafari who, just an hour ago, was named the new Prime Minister of Iraq, and who will be the most important leader we will be dealing with.

I believe our delegation was one of the first from the Senate to spend that much time with the new leader of Iraq. I want to report that I was most impressed with what we saw there. We met a man in his late fifties, who had been in exile from Iraq for a number of years because of the brutality of Saddam Hussein. He is a physician. It seems as though physicians are ascending in all sorts of different places, including in the U.S. Senate and in Iraq. He is a well-educated man and conducted our discussion in English. He showed in his presence a great deal of calm. He is not a quiet man, but he is a calm man who seems to know exactly what he believes and what he thinks.

I was taken with the fact that he began his discussion with us with about a 5-minute monolog about the brutality of Saddam Hussein. He said he was ''worse than Hitler, worse than Stalin.'' Those were his words. He said Hussein had murdered a million people in 35 years. In his words, al-Jaafari said ''he had buried 300,000 people alive.'' He said that quietly, but he obviously feels that very deeply.

Second, I was most impressed with his understanding of U.S. history. We talked about the difficulty of creating a democracy and how we are expecting them to create a constitution by August. In our situation, years ago, it took us 12 years from the time of the Declaration of Independence to the time of our Constitution. Our Founders locked the news media out for 6 months while they did that. Today, we are expecting the Iraqis to come together—people of different backgrounds—and have a constitution by August, while we watch and criticize on 24/7 television everything they do.

He has a good understanding of U.S. history and, I thought, a great appreciation for democracy and freedom. He showed not only no resentment about the American presence in Iraq, he showed great gratitude for the American presence in Iraq. He wants us to stay there for a while, so that there is enough security for their constitutional government to form. He seemed very comfortable with that.

Finally, he is a brave man—brave during exile, brave today. There may be only a few thousand people in Iraq—a country the size of California with 25 million people—who are causing all the trouble, but they are making it a dangerous place to be. Even the Green Zone and the areas around it are not entirely safe.

So we have a sophisticated, English-speaking, well-educated, U.S.-history-knowing, brave man, who is the new leader of Iraq, a man who is grateful for the American presence and who is determined to help create a democracy. I congratulate the Iraqi people on the substantial achievement.

Also, Mr. al-Hasani, the new speaker, a Sunni—the new Prime Minister is a Shiite—was very impressive to us in the Senate delegation. He, as well as the Prime Minister, wore western clothing in these meetings. I say this as a fact, not as a judgment.

Mr. al-Hasani was educated in the U.S. at two major universities. He lived in Los Angeles during his exile. He created a business in Los Angeles. He went back to Iraq to help create a new democracy. He is also a sophisticated person with a strong knowledge of freedom and democracy, a strong appreciation of the United States, and he is also a brave man to be undertaking this. I congratulate the Iraqis for that.

CONSENT DECREES

Mr. ALEXANDER. Madam President, I will ask unanimous consent to have printed in the RECORD an article I wrote, which appeared in the Legal Times for the week of April 4, entitled ''Free the People's Choice.'' This involves a piece of legislation that Senators PRYOR and NELSON on the other side of the aisle and Senators CORNYN and KYL on this side of the aisle and I have introduced, which would make it possible for newly elected Governors and mayors and legislatures to do what they were elected to do and be free from outdated consent decrees their predecessors may have agreed to, and which exist with the approval of the Federal courts.

We have hundreds of outdated Federal court-approved consent decrees across America, which are running our education systems, foster care systems, Medicaid systems, and they make it impossible for democracy to flourish in the U.S., at a time when people are fighting and dying to give other people democracy in another part of the world. We have strong Democratic and Republican support in the Senate for this. In the House, I finished a meeting with the Republican whip, Roy Blunt, who with Congressman COOPER from Nashville, and all of the Democratic Congressmen from Tennessee, have introduced the same bill in the House.

This piece of legislation would put term limits on Federal court consent decrees and cause them to be more narrowly drawn and do as the Supreme Court said they should do—get these issues back into the hands of the elected officials as soon as possible.

This legislation has strong support, and I hope it will be moving through the Judiciary Committee in proper fashion. It is the No. 1 priority of the National Governors Association and National Association of Counties, and many others. We cannot expect States to control the growth of Medicaid spending if we do not allow them to make their own decisions. We need to get flexibility from our laws, and we need to get the courts to step aside and let elected officials make policy decisions.

I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the LegalTimes, Apr. 4, 2005]

FREE THE PEOPLE'S CHOICE

(By Lamar Alexander)

Imagine yourself the governor of a state grappling with a broken public health care system. Your goal is to cover the greatest number of people—particularly children—with the best medicine available. But costs are spiraling out of control, so you and your staff craft a reform package that balances the health care needs of low-income citizens with the fiscal realities of the state budget. The task is tough, but this is why you ran for public office.

The story should end there, or, at least, you've reached the point when you would present your plan to your fellow elected officials in the state legislature, and they take a vote—representative democracy at work. Only that's not what's happening in states around the country, whether the issue is health care or transportation or education.

Instead, the hands of governors, mayors, even school boards have been tied by costly and restrictive consent decrees handed down by federal courts, sometimes decades before. These judicial orders result from agreements brokered between public officials and plaintiffs engaged in civil court actions. Once

these decrees are set, they are very difficult to change, making reform and common-sense adjustments over time virtually impossible.

The result is what New York Law School professors Ross Sandler and David Schoenbrod call ''democracy by decree''—public institutions being taken out of public control and placed in the hands of an unelected federal judiciary.

There are times when this is absolutely necessary, when state and local governments defy federal law and congressional intent. Desegregation is the best example. In the civil rights era, the judiciary had no choice but to exercise control over public institutions in order to guarantee African-Americans their constitutional rights.

While ensuring that states follow the rule of law, consent decrees can also preserve the separation of powers and uphold the ideals of federalism. Unfortunately, in many cases, they have done just the opposite.

ROADBLOCKS TO REFORM

The hypothetical I offer above mirrors what is currently happening in my home state of Tennessee. Three specific consent decrees blocked the implementation of Democratic Gov. Phil Bredesen's initial Medicaid reform package, which would have preserved coverage for all 1.3 million enrollees of TennCare, the state's Medicaid program. His plan was passed overwhelmingly by the state's General Assembly and endorsed by major stakeholders in the program, from patients to providers.

But mandates set forth in these consent decrees—which far exceed federal requirements—limited the governor's policy choices and continue to drive up program costs. As a result, Bredesen was recently forced to devise a new reform strategy, which would cut 323,000 adults from the program and reduce the benefits of the remaining 396,000 adults. Citing the consent decrees, the courts are now blocking this proposal as well.

The consent decrees cover a range of health care issues. One signed by U.S. District Judge John Nixon in 1979, known as the Grier consent decree, prevents the state from placing reasonable limits or controls on prescription drugs, including the use of cheaper generics in lieu of expensive brand-name pharmaceuticals. As a result, Tennessee now spends more on TennCare's pharmacy benefit than it does on higher education.

The John B. consent decree, signed by Judge Nixon in 1998 and revised in 2001 and 2004, imposes a host of special requirements for children. From one line of federal code, the court entered a consent decree that established a requirement that Tennessee offer medical screenings to 80 percent of the state's children—a laudable public policy goal but one that should be set by the elected officials whose job it is to manage the program.

Finally, the Rosen consent decree, signed by U.S. District Judge William Haynes in 1998, prevents TennCare from limiting enrollment when a person is part of an optional Medicaid population or when a person's eligibility for the program cannot be determined. To make matters worse, on Jan. 29, 2005, Judge Haynes took his authority under that consent degree a step further: He declared that he must approve any changes to the TennCare system that would reduce enrollment. With the budget clock ticking, Tennessee's state legislators are now waiting for a U.S. district judge to give them permission to do their job.

And Tennessee isn't alone. There are consent decrees in all 50 states on issues ranging from prisons to child care. In Los Angeles, a consent decree entered in 1996 by U.S. District Judge Terry Hatter Jr. has forced the Metropolitan Transit Authority to spend 47 percent of its budget on city buses, leaving just over half of the budget to pay for the rest of the transportation needs of the nation's second-largest city.

In New York, a 1974 consent decree entered by U.S. District Judge Marvin Frankel has been mandating bilingual education for more than 30 years. The result is that public schools, which should be vibrant, learning, changing institutions, have no choice but to force students into outdated bilingual programs, even over the objections of their parents.

A BETTER SOLUTION

The solution to the problem of democracy by decree is a balanced system that protects the rights of individuals to hold state and local governments accountable in court, while preserving our democratic process through narrowly drawn agreements that respect elected officials' public policy choices. These goals are not incompatible. Last month, I introduced the Federal Consent Decree Fairness Act, bipartisan legislation that does both by establishing new principles and procedures for establishing, managing, and, ultimately, terminating court supervision.

The bill takes a three-pronged approach: First, it lays out a series of findings to guide the federal courts in approving future consent decrees. These findings give congressional endorsement to the Supreme Court's call for limiting decrees, as it did in Frew v. Hawkins in 2004. The findings also advocate the entry of consent decrees that take into account the interests of state and local governments and give due deference to their policy choices. And they make it clear that consent decrees should contain explicit and realistic strategies for ending court supervision.

Second, the bill places ''term limits'' on decrees, giving states and localities the opportunity to revisit them after the earlier of four years or the expiration of the term of the highest elected official who consents to the agreement. These time frames give consent decrees an opportunity to succeed, while not tying the hands of newly elected officials. They also prevent outgoing officials from agreeing to consent decrees as a way to lock in their successors to policies those successors would not normally support.

Finally, this legislation shifts the burden of proof from state and local governments to the plaintiffs in the case for purposes of the motion to vacate or modify the decree. Currently, a consent decree can be vacated or modified only following a showing by the defendant state or local government that circumstances have so significantly changed as to render the decree unworkable. The practical effect is that they must prove a negative—that the decree is no longer necessary. Yet if the purpose of the original agreement was to protect the plaintiff, it's logical that the plaintiff should demonstrate whether continued protection is justified.

RESPECTING DEMOCRACY

The goal of the Federal Consent Decree Fairness Act is to ensure that when a federal right is no longer threatened, a consent decree meant to protect that right can be expeditiously ended. When the purpose of the decree has been met, or circumstances have significantly changed, or later officials propose new and improved solutions to a problem, there needs to be a better way to remove the strictures of a consent decree.

The Federal Consent Decree Fairness Act would not impact the court's jurisdiction. It wouldn't eliminate consent decrees or even nullify existing ones. And it exempts desegregation cases. The bill merely creates a new judicial procedure that allows state and local governments to request a review of the consent decree under a shifted burden of proof.

The intent here is not to diminish the role of the federal courts. Consent decrees are important tools of federalism because they ensure that no government is above the law. From a practical perspective, they save enormous court costs and prevent damaging legal battles.

Rather, the goal is to level the playing field for state and local governments. There is no democracy when federal courts run police departments, school districts, foster care programs, and state insurance programs. Judges are not public policy experts, and they are not accountable to the electorate for the choices they make.

While the Supreme Court upheld the consent decree in Frew, its opinion captured the problem: ''If not limited to reasonable and necessary implementations of federal law, remedies outlined in consent decrees involving state officeholders may improperly deprive future officials of their designated and executive powers. They may also lead to federal court oversight of state programs for long periods of time even absent an ongoing violation of federal law.''

The Frew Court rightly focused on the encroachment of federal power over state and local governments. Our nation's founders envisioned a dynamic but separate relationship between the federal government and the states, and among the three branches of government. The 10th Amendment is clear in its delineation of responsibility: ''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

And while The Federalist No. 48 sets forth the idea that some connection between the two levels of government is necessary, its writer, James Madison, issues a clear warning: ''It is equally evident that neither of them ought to possess directly or indirectly, an overruling influence over the others in the administration of their respective powers.''

Consent decrees have, unfortunately, evolved into a mechanism for the federal judiciary to exercise ''an overruling influence'' on many state and local governments. Reform is desperately needed to fix this broken system. Democracy by decree is no democracy at all.

PRAISING THE HOUSE PAGE SCHOOL

Mr. ALEXANDER. Madam President, I would like to now praise the pages. I could say good words about the Senate pages and I will. I wanted to especially praise the House page school—and I hope the Senate pages will excuse me for doing that.

Madam President, my good friend, Alex Haley, the author of ''Roots,'' used to say, ''Find the good and praise it.'' Those words are engraved on his tombstone. When he wrote the story of Kunta Kinte, he minced no words in describing the terrible injustices his ancestors overcame, but he also acknowledged their courage and perseverance.

Since I joined this body, I have made improving the teaching of American history one of my top priorities. I have noted some deeply disturbing statistics about students' knowledge of our past. For example, of all the subjects tested by the National Assessment for Education Progress, also known as our Nation's report card, American history is our children's worst subject.