

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 decree 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.

But today I am here to follow Alex Haley's advice to find the good and praise it. When it comes to teaching American history, some of the best news can be found right here on Capitol Hill.

On January 25, the College Board announced that the House page school ranked first in the Nation among institutions with fewer than 500 pupils for the percentage of the student body who achieve college-level mastery on the advanced placement exam in U.S. history. Twenty-one students, or about one-third of the school's student body, took the exam, and 18 received the required score of 3 or above to demonstrate mastery of the subject.

A number of Senate pages also take the AP U.S. history exam. Madam President, 12 students in the current class of 29 in the Senate page school will take 22 different AP exams this year. Eleven will take the U.S. history exam. But results for the Senate pages are not collectively known in the same way we know them in the House, and that is because the Senate Page School is only half the size of the House school. Senate pages register for the exam under their home high school name, rather than as a student at the page school. But based on what she hears from students, Principal Kathryn Weeden believes Senate pages score very well, but no complete tabulation of scores is available, as is with the House.

House pages attend classes in the attic of the Jefferson Building of the Library of Congress. They are perched atop one of the largest collections of historical documents about our country. But location alone cannot account for their great success. The House Page School puts a strong emphasis on social studies and American history.

Students take American history with Sebastian Hobson and Ron Weitzel, a House Page School teacher of 21 years who will retire this year. Surely, much of the credit belongs to Mr. Hobson and Mr. Weitzel. But students also find a focus on American history in their work with other teachers. On Saturdays, students participate in the Washington Seminar, a program that explores American Government and history here in the District of Columbia.

Math teacher Barbara Bowen, who is something of an expert on Presidents Jefferson and Washington, takes students to Monticello and Mount Vernon.

Computer and technology teacher Darryl Gonzalez takes students to Fort McHenry and the American History Museum.

Science teacher Walt Cuirle includes the history of U.S. energy policy when he teaches his class on energy. Mr. Cuirle also takes students to Philadelphia for the Benjamin Franklin portion of the school's Washington seminar.

Most students take English teacher Lona Klein's course on American literature, which has to include history as they read literature from the Puritans, the Enlightenment, and the slave

rebellions. She also leads a field trip to Annapolis to see the State house and the Naval Academy.

Principal Linda Miranda has made the teaching of American history a priority at the House Page School, and it shows. It is no wonder the school has received this recognition from the College Board, which administers the advanced placement exams across the country. Ms. Miranda credits the outstanding quality of the students who are selected as House pages and her faculty, whom she calls "Renaissance men and women."

There is no question this has been a team effort at the House Page School, but I know good leadership starts at the top. So I salute Linda Miranda, her faculty, and the students at the House Page School. I hope their success may be an example to schools across the country as to how we can restore the teaching of American history to its rightful place in our schools so our children grow up learning what it means to be an American.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

BIPARTISAN AGENDA FOR OREGON

Mr. WYDEN. Madam President, there has been a tumultuous start to this session of Congress with often acrimonious debate about judges, budget, and the tragic situation involving Terri Schiavo and her family. But I rise this morning with my friend and colleague, Senator GORDON SMITH, to speak not of division but of bipartisanship and of the hopes we share for our home State of Oregon and for our country.

This morning marks the fifth time Senator SMITH and I have unveiled what we call our bipartisan agenda for our home State. It has been our privilege and our pleasure at the beginning of each Congress to travel together around Oregon to listen to our fellow Oregonians and to find common ground on issues that matter to our citizens around their dining room tables and in their kitchens.

We suspect that what we hear in our joint townhall meetings is what other Members of the Senate hear as well. Oregonians, and all Americans, now struggle with health care—families and farmers and business owners and health care providers. Oregonians and all Americans are struggling to make ends meet in this economy, and this means workers and employers. Oregonians and all Americans want opportunities—educational opportunities, job opportunities, opportunities so their children have better lives.

Oregon has two U.S. Senators—a Democrat and a Republican—but we realize that for the most part, our citizens are not interested first in Republican solutions or Democratic solutions; they want solutions that work for Oregon and for our country. They want ideas, and they get frustrated

when they see political figures letting petty and partisan differences get in the way of their interests.

In the bipartisan agenda for Oregon in the 109th Congress, we are seeking to expand a number of our shared legislative goals to seek good for our fellow Americans. I was especially pleased to join Senator SMITH as a member of the Senate Finance Committee this year. The committee oversees vital areas of policy, including health care, technology tax, trade policy, and many of the items on our agenda fall under the jurisdiction of the Senate Finance Committee.

We are also, in this agenda, working to expand our reach not only for Oregonians but for all Americans by working to tackle one of the most important and difficult issues in American health care, and that is providing catastrophic health care coverage so that our citizens do not have to go to bed at night fearing they are going to get wiped out by medical costs. This is a matter about which Democrats and Republicans have been talking for years, and there have been good Democratic and Republican ideas about catastrophic coverage for years. The fact is that if you own a hardware store in Alaska, Oregon, Iowa, or Florida, and you have five or six people and one of them gets sick, everybody gets wiped out in terms of their medical bills.

Senator SMITH and I believe we can develop a plan that will bring this Congress together, give us the opportunity to pass catastrophic health care legislation to be enacted and the President can sign into law.

So ours is a bipartisan agenda for Oregon, but it is also an invitation on the part of the two of us to contribute ideas and good will on issues where we have struck common bipartisan ground.

Our intention for a few minutes this morning is to speak on a number of these items—in effect, one of us speaking for both of us. I am very pleased to yield to my good friend and colleague, Senator SMITH, and to thank him for all of the opportunities to work with him, particularly for his willingness to consistently meet me more than half way in our efforts to try to work for our State. I thank Senator SMITH.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. SMITH. Madam President, I thank my colleague.

It seems only yesterday but it was over 8 years ago that Senator WYDEN and I engaged in a very hotly contested race for the seat of Bob Packwood, formerly the seat of Wayne Morse. I believe he was called "the tiger of the Senate," a man for whom Senator WYDEN had worked earlier in his college years.

Ours was a campaign that Oregonians will not soon forget because it was so hard fought. It was a special election. RON WYDEN won that race, and I narrowly lost that race. Yet, through a matter of circumstances, it was possible for me to continue running for