

112TH CONGRESS
1ST SESSION

H. R. 3041

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

SEPTEMBER 23, 2011

Mr. COOPER (for himself, Mr. DAVIS of Kentucky, Mr. PAUL, and Mr. SMITH of Texas) 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 the United States Supreme
3 Court, in its unanimous decision in *Frew v. Hawkins*, 540
4 U.S. 431 (2004), found the following:

5 (1) Consent decrees may “lead to federal court
6 oversight of state programs for long periods of time
7 even absent an ongoing violation of federal law,”.
8 540 U.S. 431, 441.

9 (2) “If not limited to reasonable and necessary
10 implementations of federal law, remedies outlined in
11 consent decrees involving state officeholders may im-
12 properly deprive future officials of their designated
13 legislative and executive powers.”. 540 U.S. 431,
14 441.

15 (3) “The federal court must exercise its equi-
16 table powers to ensure that when the objects of the
17 decree have been attained, responsibility for dis-
18 charging the State’s obligations is returned promptly
19 to the State and its officials.”. 540 U.S. 431, 442.

20 (4) “As public servants, the officials of the
21 State must be presumed to have a high degree of
22 competence in deciding how best to discharge their
23 governmental responsibilities.”. 540 U.S. 431, 442.

24 (5) “A State, in the ordinary course, depends
25 upon successor officials, both appointed and elected,
26 to bring new insights and solutions to problems of

1 allocating revenues and resources. The basic obliga-
2 tions of federal law may remain the same, but the
3 precise manner of their discharge may not.”. 540
4 U.S. 431, 442.

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

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

9 **“§ 1660. Consent decrees**

10 “(a) DEFINITION.—In this section, the term ‘consent
11 decree’—

12 “(1) means any order imposing injunctive or
13 other prospective relief against a State or local gov-
14 ernment, or a State or local official against whom
15 suit is brought, that is entered by a court of the
16 United States and is based in whole or part upon
17 the consent or acquiescence of the parties; and

18 “(2) does not include—

19 “(A) any private settlement agreement;

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

23 “(C) any order entered by a court of the
24 United States to implement a plan to end seg-
25regation of students or faculty on the basis of

1 race, color, or national origin in elementary
2 schools, secondary schools, or institutions of
3 higher education; and

4 “(D) any order entered in any action in
5 which one State is an adverse party to another
6 State.

7 “(b) LIMITATION ON DURATION.—

8 “(1) IN GENERAL.—A State or local govern-
9 ment, or a State or local official who is a party to
10 a consent decree (or the successor to that individual)
11 may file a motion under this section with the court
12 that entered the consent decree to modify or termi-
13 nate the consent decree upon the earliest of—

14 “(A) 4 years after the 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;

19 “(B) in the case of a civil action in which
20 a State or an elected State official is a party,
21 the date of expiration of the term of office of
22 the highest elected State official who is a party
23 to the consent decree;

24 “(C) in the case of a civil action in which
25 a local government or elected local government

1 official is a party, the date of expiration of the
2 term of office of the highest elected local gov-
3 ernment official who is a party to the consent
4 decree;

5 “(D) in the case of a civil action in which
6 the consent to the consent decree was author-
7 ized by an appointed State or local official, the
8 date of expiration of the term of office of the
9 elected official who appointed that State or
10 local official, or the highest elected official in
11 that State or local government; or

12 “(E) the date otherwise provided by law.

13 “(2) BURDEN OF PROOF.—

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

22 “(i) was actionable by such party; and

23 “(ii) was addressed in the consent de-
24 cree.

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 subparagraph (A), the court shall
8 ensure that any remaining provisions of the
9 consent decree represent the least restrictive
10 means by which to prevent such a violation.

11 “(3) RULING ON MOTION.—

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

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

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

20 “(I) file motions; and

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

23 “(ii) sets the date or dates of any
24 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 after the date on which the motion is filed.

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 to
18 a consent decree from seeking appropriate relief under
19 State law.”.

20 (b) CONFORMING AMENDMENT.—The table of sec-
21 tions for chapter 111 of title 28, United States Code, is
22 amended by adding at the end the following:

“1660. Consent decrees.”.

23 **SEC. 4. GENERAL PRINCIPLES.**

24 (a) NO EFFECT ON OTHER LAWS RELATING TO
25 MODIFYING OR VACATING CONSENT DECREES.—Nothing

1 in the amendments made by section 3 shall be construed
2 to preempt or modify any other provision of law providing
3 for the modification or vacating of a consent decree.

4 (b) FURTHER PROCEEDINGS NOT REQUIRED.—
5 Nothing in the amendments made by section 3 shall be
6 construed to affect or require further judicial proceedings
7 relating to prior adjudications of liability or class certifi-
8 cations.

9 **SEC. 5. DEFINITION.**

10 In this Act, the term “consent decree” has the mean-
11 ing given that term in section 1660(a) of title 28, United
12 States Code, as added by section 3 of this Act.

13 **SEC. 6. EFFECTIVE DATE.**

14 This Act and the amendments made by this Act shall
15 take effect on the date of the enactment of this Act and
16 apply to any consent decree regardless of—

17 (1) the date on which the order of the consent
18 decree is entered; or

19 (2) whether any relief has been obtained under
20 the consent decree before such date of enactment.

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