



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Dear Senator or Representative:

On behalf of our more than 100 member organizations and the millions of individual citizens they represent, the undersigned members of the Consortium for Citizens with Disabilities (CCD) urge you to oppose the *Federal Consent Decree Fairness Act (S. 489/ HR 1229)*.

CCD is a coalition that works to advance national public policy that ensures civil rights and protections for the 56 million Americans with disabilities and promotes self-determination, independence, empowerment, integration and inclusion of all children and adults with disabilities in all aspects of society.

Consent decrees are an efficient means for willing parties to enter into a carefully negotiated agreement without litigation. Consent decrees reflect the litigating parties' reasoned judgment that a consensual resolution is preferable to full-blown litigation. The Federal Consent Decree Fairness Act misrepresents the consensual nature of consent decrees and the well-established legal precedent on the practicality and efficiency of this settlement tool. Congress should not enact legislation simply to correct what some perceive as a few onerous consent decrees.

If enacted, the Federal Consent Decree Fairness Act would impose grossly unfair burdens on individuals protected by a wide array of federal laws. Such individuals include people with disabilities who often rely on consent decrees to ensure that civil rights, health care, education and other laws that protect them are upheld. The legislation would eliminate any incentive for civil rights plaintiffs to negotiate settlements, since only litigated judgments would be assured of being in place for the requisite amount of time necessary to accomplish the needed reform. This outcome would unnecessarily burden the courts and add to the costs that all parties would bear. This bill does not provide much benefit for defendants, either. In civil rights cases, a state or local government defendant would also likely end up paying the successful plaintiffs' attorneys' fees and costs. In addition, it would result in the dissolution of many carefully negotiated consent decrees currently in effect and require the courts to manage litigation in these matters.

The proposed legislation would allow a state or local government to file a motion to vacate or modify a consent decree four years after the decree is entered or after the election of a new top state or local official. In order for a consent decree to continue, the original plaintiff(s) would be required to prove that their federal rights continue to be

violated, AND a judge would have to rule in their favor, all within 90 days of the state or local government's motion. Thus, in addition to the increase in litigated cases, requiring the federal judiciary to act in 90 days would put undue pressure on an already overburdened federal judicial system and punish plaintiffs unjustly if a federal court were unable to issue a decision within the allotted time.

Most importantly, the limited time frame to have consent decrees in place is simply unrealistic for many cases, particularly civil rights cases, involving systemic reform. The issues do not lend themselves to formulaic resolutions that can be accomplished in a short period of time. There may be decades-long practices causing harm that require remedies to be implemented methodically and systematically. In many cases, the ability to fulfill the terms of a consent decree within the artificial time period imposed by the bill would either be impossible to achieve, or, require drastic steps that would not be desirable to the defendants or the plaintiffs.

For example, an existing consent decree that settled a challenge under the Americans with Disabilities Act (ADA) to the public transportation system in New Orleans, Louisiana, *Tubre v. RTA, USDC ED La 93-4124* is still active after many years, with a court monitor reporting regularly to the court. An initial agreement on a Consent Decree was reached in 1995, and was amended in 1996. In 2000, an action plan submitted by the transportation agency in response to the Monitor's findings was made an order of the court. In 2004, the provisions of the Consent Decree relating to paratransit services were satisfied, and those sections of the decree were dissolved. But there remain other provisions where there is not full compliance which the court and parties continue to monitor. Clearly, there is little chance that this case could have been satisfactorily resolved with a four year consent decree. It has taken the parties a very long time to make the changes necessary to achieve compliance, and the processes of monitoring and consent decree enforcement have been essential in obtaining those improvements.

The proposed legislation would affect most litigation brought by the U.S. Department of Justice (DOJ) against state and local governments, as well as litigation brought by private parties. Extremely important to people with disabilities, it would allow state governments to avoid implementation of consent decrees that govern efforts by the DOJ, to ensure state compliance with the Civil Rights of Institutionalized Persons Act (CRIPA), a law that, when enforced, has saved the lives of countless people with disabilities and others relegated to institutional settings where they may have been subjected to severe abuse, mistreatment and even death. Such consent decrees frequently take a decade or more to implement. To move more quickly would often put lives right back at risk, the very condition the settlements seek to remedy.

Additionally, enforcement of the Voting Rights Act and the Help America Vote Act could become very burdensome under this legislation. The bill could also affect numerous other disability discrimination cases involving employment, housing, transportation, health care, and education for years to come. Indeed, the bill would negatively affect a wide spectrum of cases brought to secure federal rights for people with disabilities in federal court against state and local governments.

Finally, existing federal law already permits the modification and dissolution of consent

decrees. The courts currently apply a generous and flexible standard for allowing state and local governments to modify or terminate existing consent decrees. A party need only show that a significant unanticipated change in circumstances warrants revision of the decree, such as when there is a change in underlying law, when the goals of the consent decree have been achieved or when a consent decree proves to be detrimental to the public interest. In a 2003 unanimous decision by the U.S. Supreme Court in *Frew v. Hawkins*, the Court emphasized the existence of this remedy and noted, “If the State establishes reason to modify the decree, the court should make the necessary changes; where it has not done so, however, the decree should be enforced according to its terms.”

Again, we urge you to oppose this bill and any similar amendments.

Signed:

American Association of People with Disabilities

American Association on Mental Retardation

American Counseling Association

American Dance Therapy Association

American Foundation for the Blind

Association of University Centers on Disabilities

Bazelon Center for Mental Health Law

Epilepsy Foundation

Helen Keller National Center

National Down Syndrome Congress

National Down Syndrome Society

National Mental Health Association

National Association of Social Workers

National Association of Protection and Advocacy Systems

National Coalition on Deaf-Blindness

NISH

Paralyzed Veterans of America

TASH

The Arc of the United States

Title II Community AIDS National Network

United Cerebral Palsy