

Search

ABOUT MEMBERS EVENTS & MEETINGS M  
NEWS

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

**Resolution on the Federal Consent Decree Fairness Act**

**PURPOSE:** Urging Congress to enact the Federal Consent Decree Fairness Act to ensure that federal consent decrees are narrowly drafted, limited in duration, and respectful of state and local interests and policy judgments.

**WHEREAS,** in a growing number of cases involving state and local governments across the nation, consent decrees have become a means by which federal judges make policy decisions that are best left in the hands of state and local officials; and

**WHEREAS,** consent decrees can remain in place for decades and lock-in policies that were agreed to by state and local officials who are no longer in office; and

**WHEREAS,** newly-elected state and local officials often inherit overbroad or outdated consent decrees that limit their ability govern and respond to the priorities and concerns of their constituents; and

**WHEREAS,** existing procedures discourage current state and local officials from trying to modify or terminate a consent decree, even where such a decree no longer represents the best approach for local communities; and

**WHEREAS,** in one recent example, reforms to Tennessee's Medicaid program - proposed by the governor and approved by the state legislature in 2004 - were blocked in federal court because they ran afoul of consent decrees dating back to 1979, and only some of the reforms were permitted to go forward, resulting in increased costs for taxpayers and the loss of coverage for many Medicaid enrollees; and

**WHEREAS,** in another example, consent decrees have forced the Los Angeles County Metropolitan Transit Authority to spend 47 percent of its budget on buses, leaving just over half the budget to pay for the county's remaining transportation needs; and

**WHEREAS,** in a further example, special education in New York City has been governed by a consent decree since 1979, thwarting efforts by successive mayors and schools chancellors to implement new reforms and updated policies for implementation of the Individuals with Disabilities Education Act (IDEA); and

**WHEREAS,** in *Frew v. Hawkins*, 540 U.S. 431 (2004), the U.S. Supreme Court - while upholding the consent decree in question - expressed its concern that consent decrees may "improperly deprive future officials of their designated legislative and executive powers," which may lead to "federal court oversight of state programs for long periods of time even absent an ongoing violation of federal law."; and

**WHEREAS,** the Federal Consent Decree Fairness Act, now pending in Congress, is bipartisan legislation that addresses weaknesses in the current system while preserving consent decrees as a mechanism for settling legal disputes; and

**WHEREAS,** the Federal Consent Decree Fairness Act provides a three-pronged approach to address these weaknesses by: (1) allowing a state or local government to file a motion in federal court to modify or vacate a consent decree after four years or after the state or local official who provided consent leaves office, whichever comes sooner; and (2) after a motion to modify or vacate a consent decree has been filed, shifting the burden of proof to the plaintiffs to demonstrate why management of a program should continue to rest with the court rather than be returned to hands of elected officials; and (3) setting out a series of findings, based on the U.S. Supreme Court's decision in *Frew*, to provide guidance to federal courts to ensure that for future consent decrees are narrowly drafted, limited in duration, and respectful of state and local interests and policy judgments; and

**WHEREAS,** this legislation goes to the very heart of democracy, in that citizens are entitled to elect state legislators and other leaders to make policy decisions and do the business of governing, and federal judges are neither public policy experts nor accountable to the electorate for the choices they make.

**THEREFORE, BE IT RESOLVED,** that the American Legislative Exchange Council supports the principle that federal consent decrees should be narrowly drafted, limited in duration, and respectful of state and local interests and policy judgements; and

**ALEC EXPOSED**

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations- includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**BE IT FURTHER RESOLVED**, that Congress should enact the Federal Consent Decree Fairness Act.

*Adopted by ALEC's Civil Justice Task Force at the Annual Meeting July 20, 2006.  
Approved by the ALEC Board of Directors August, 2006.*

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECexposed.org](http://www.ALECexposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.