

No. 26-3081

ORAL ARGUMENT REQUESTED

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff-Appellant,

v.

WALMART, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Kansas
Case No. 2:23-cv-2395
Hon. Toby Crouse, District Judge

OPENING BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION AS PLAINTIFF-APPELLANT

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STATEMENT OF PRIOR OR RELATED APPEALS

There are no prior or related appeals.

INTRODUCTION

The Equal Employment Opportunity Commission brought this enforcement action against Walmart under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, alleging it had failed to accommodate two deaf employees in Olathe, Kansas. After two years of hard-fought litigation, the EEOC and Walmart agreed to a proposed consent decree to resolve the case. Parties, especially governmental enforcement agencies like the EEOC, negotiate for consent decrees because such decrees remedy allegations of past statutory violations while also increasing both the deterrent effect and efficient enforcement of prospective relief. Consistent with that purpose, the decree here provided for monetary relief to the two employees and prospective equitable relief targeted at the discrimination alleged in the lawsuit.

The district court refused to enter the decree. Although it acknowledged Congress’s strong preference for voluntary settlement of employment discrimination lawsuits and found no dispute on whether the decree met all the relevant factors set out by the Supreme Court and this Court, the district court rejected the proposed decree because of misplaced concerns about how such decrees function. By leaving the EEOC and

Walmart to choose between foregoing their negotiated settlement or going to trial based on considerations other than those specified by the Supreme Court and this Court, the district court abused its discretion.

STATEMENT OF JURISDICTION

This appeal addresses the district court's denial of the parties' joint motion to enter a consent decree to settle their litigation. Jurisdiction therefore arises under 29 U.S.C. § 1292(a)(1), applying the factors set out in *Carson v. American Brands, Inc.*, 450 U.S. 79, 84-85 (1981).

Under *Carson*, this Court assesses interlocutory appellate jurisdiction over the denial of proposed consent decrees by looking to whether the district court's order "had the same practical effect as the denial of an injunction, ... might have irreparable consequences[,] and can only be 'effectively challenged' by immediate appeal." *United States v. Colorado*, 937 F.2d 505, 507 (10th Cir. 1991) (quoting *Carson*, 450 U.S. at 85).

The underlying order here satisfied all three factors. First, "[p]rospective relief was at the very core" of the decree, *Carson*, 450 U.S. at 84, which mandates that Walmart not discriminate against deaf employees and requires policy changes, notice-posting, and training to prevent future discrimination. See Appx. 96-108 (Proposed Consent

Decree).¹ Refusal to enter the proposed decree thus had the same practical effect as denial of an injunction. *See Colorado*, 937 F.2d at 508 (finding factor satisfied when agreement at issue “contained many conditions which [the defendant] must fulfill”); *SEC v. Citigroup Glob. Mkts., Inc.*, 752 F.3d 285, 293 (2d Cir. 2014) (factor met when rejected consent decree would have enjoined defendant from future violations of a statute and ordered defendant “to undertake steps aimed at preventing future occurrences of [the violation]”).

The district court’s order also meets the second and third factors, which this Court can consider together. *See Colorado*, 937 F.2d at 508-09. These factors are satisfied “if the appellants ‘might lose their opportunity to settle their case on the negotiated terms’ or if they are denied ‘their right to compromise their dispute on mutually agreeable terms.’” *Id.* at 508 (quoting *Carson*, 450 U.S. at 86); *see also Carson*, 450 U.S. at 88 n.14. Here, a consent decree was an essential term of the settlement negotiated after two years of litigation. *See Add.5* (2/27/26 Tr. at 4) (“[T]he EEOC is insisting on

¹ References to “Appx.____” are to the pages of the EEOC’s Appendix. References to “Add.____” are to the pages of the Addendum attached to this brief.

resolution by consent decree[.]”); Appx.125 (1/6/26 Tr. at 3) (noting a consent decree was part of the parties’ bargain); *id.* at 128 (Walmart’s counsel’s representation that the parties “crafted the consent decree very carefully”). In addition, the district court made clear that it would not agree to approve *any* consent decree, indicating that an immediate appeal was the only means of “effectively challeng[ing]” the court’s order, *Colorado*, 937 F.2d at 507.² Add.15 (2/27/26 Tr. at 14); *see Citigroup*, 752 F.3d at 293 (factors satisfied when “the district court expressed no willingness to revisit the settlement agreement”); *cf. United States v. City of Hialeah*, 140 F.3d 968, 974-75 (11th Cir. 1998) (stating that refusing to enter a consent decree under Title VII of the Civil Rights Act of 1964 always meets the *Carson* factors).

² The district court recognized that its denial of the proposed consent decree could lead to an appeal. Appx.133 (1/6/26 Tr. at 20) (“[I]f you want to appeal my decision ... I want to put you in the best position to go to Denver and do that.”); Add.14 (2/27/26 Tr. at 14) (“I noted in your pleading that there is a 1292 issue that may be out there. If you want to do that, that’s fine.”).

STATEMENT OF THE ISSUE

Did the district court abuse its discretion by refusing to enter the parties' proposed consent decree despite identifying no concerns with any of the factors governing consent decree approval?

STATEMENT OF THE CASE

A. Factual and Procedural Background

The EEOC filed this lawsuit under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, seeking compensatory relief for Raymond Moore and Marvin Montoya and injunctive relief to prevent future violations of the ADA. Appx.23-40 (Complaint). Both men are deaf, and both worked as overnight stockers at Walmart Store #4475 in Olathe, Kansas. *See id.* at 26; Appx.67 (Summary Judgment Order). The lawsuit alleged that Walmart refused to accommodate Moore and Montoya (by providing them American Sign Language ("ASL") interpreters and written communications) and constructively discharged them. Appx.31-36.

The EEOC and Walmart engaged in extensive discovery disputes and then filed competing summary judgment motions. Appx.7, 11-13, 65. Shortly before the scheduled start date for a seven-day trial, the parties agreed to a consent decree to resolve the case. Appx.63, 94-95.

The proposed decree directly addresses the alleged discrimination in the lawsuit. It includes, among other elements, a mandatory term preventing Walmart from discriminating against deaf workers based on disability and from failing to provide them reasonable accommodations under the ADA. Appx.97 at ¶ 5. It also requires Walmart to adopt and maintain policies for providing reasonable accommodations to deaf workers within the region that includes Store #4475. *Id.* at 98-99 at ¶ 10. Those policies include a means of directly requesting interpretive services or other communication accommodations. *Id.* They also mandate the provision of ASL interpreter services, as needed, to deaf individuals at specified events and limit the requirements Walmart may impose on individuals seeking accommodations for hearing disabilities. *Id.*

The proposed decree also calls for semi-annual training for all managerial, supervisory, and human resources employees at Store #4475 relating to the accommodation of hearing-related disabilities and the ADA's reasonable accommodation requirements generally. *Id.* at 100 at ¶ 13. In addition, it requires Walmart to post a notice in each facility within the region that includes Store #4475 informing deaf and hearing-

disabled employees that Walmart will provide interpreter services or written communication accommodations. *Id.* at 99 at ¶ 11, 99.

Along with this prospective relief, Walmart agreed to pay \$150,000 each to Montoya and Moore in compensatory damages. *Id.* at 97 at ¶ 6.

By its terms, the proposed decree remains in effect for three years from the date of entry. *Id.* at 102 at ¶ 23. It sets out a dispute resolution mechanism if there is a disagreement about Walmart's compliance with the decree during that time, and it provides for continuing district court jurisdiction to enforce compliance during the pendency of the decree. *Id.* at 102-03 at ¶¶ 23-26.

The parties moved the court to enter their proposed consent decree, Appx.94-95, but the district court instead scheduled a hearing for January 6, 2026. *See* Appx.123-24.

B. District Court's Decision

At the January 6 hearing, the district court expressed concern about approving the proposed consent decree. As Judge Crouse explained, he felt "general reticence for entering into a consent decree and retaining jurisdiction." Appx.125 (1/6/26 Tr. at 3). He explained that "reading some Law Review articles kind of about the perils of ... judicial

superintenden[ce] masquerading as consent decrees,” along with his “general view of the world” and his conception of his judicial role, led him to believe that consent decree enforcement was an improper use of judicial power, *id.* at 131-33, though he allowed that he was “probably the only person in the district that has maybe these concerns.” *Id.* at 135. Judge Crouse invited additional briefing on these issues because he did not “want [his] weird predilection ... to blow up [the] deal.” *Id.* at 144-46. He then set another hearing for February 27. *Id.* at 147.

The EEOC filed an unopposed brief addressing the court’s concerns. Appx.109-18. The brief explained that Congress and the Supreme Court expressed a preference for resolution through consent decrees, and it described a case in which refusal to enter a consent decree was found to constitute an abuse of the district court’s discretion. *Id.* at 109-14. It also set out the factors that courts use in deciding whether to enter a consent decree and described how the proposed decree satisfied each factor. *Id.* at 114-17. Meanwhile, the brief emphasized the district court’s limited role in enforcing this proposed consent decree, as the decree did not require reporting to the court, monitoring by the court, or any court involvement before the parties completed a mandatory conferral process. *Id.* at 117-18.

The district court read an order rejecting the proposed decree into the record at the February 27 hearing. Add.9-14 (2/27/26 Tr. at 8-13); *see also* Add.1 (minute order). The court began by noting the factors for approval of consent decrees set out in *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986) (“*Firefighters*”), and it acknowledged that the Supreme Court has recognized Congress’s preference for obtaining voluntary compliance under Title VII. Add.9 (2/27/26 Tr. at 8). The court then observed that the consent decree satisfied the *Firefighters* factors: it “springs from a dispute within the court’s subject matter jurisdiction,” and “the nature of the resolution is certainly anticipated by the allegations within the complaint and the pretrial order.” *Id.* at 10. Further, the court “t[ook] the parties at their word that [the decree] furthers the objectives of the law under the ADA and that the decree is fair, adequate, and reasonable,” as well as “the result of an arm’s-length bargaining.” *Id.* at 10-11. Finally, the court acknowledged that the decree constituted “an appropriate resolution” of the dispute for both parties. *Id.* at 11; *see also id.* at 6-7 (“My sense is of those four factors, all of them apply.”).

Despite those findings, the court declined to enter the decree. Judge Crouse explained that he was worried about “giving the imprimatur of

judicial approval of privately negotiated settlement agreements,” which he viewed as reflecting “the executive branch’s desire to co-opt the judicial branch’s judicial power.” *Id.* at 6, 10; *see also id.* at 13 (asserting that the parties’ request that he “bless their agreement and adopt it as [his] own” would “invade[] the power of an Article III court”). The court also expressed a reluctance to use judicial resources to retain jurisdiction in order to “polic[e] the parties’ compliance with [a] privately negotiated agreement,” which “runs the risk of utilizing and overconsuming judicial resources.” *Id.* at 5, 12.

The court also raised several related concerns. Judge Crouse questioned “whether the parties continue to be adverse,” which he thought might pose an Article III violation, particularly with respect to the lack of an ongoing dispute about prospective relief. *Id.* at 13-14. And, he observed, he had “seen nothing to indicate that the relatively simple issues in this case could not and have not been resolved for private agreement.” *Id.* at 13. He also worried about “the interweaving of prospective and retrospective relief.” *Id.* at 14.

Judge Crouse concluded, “I have the power to issue such [a] decree, but I choose in light of the foregoing to decline to exercise my discretion.”

Id. The court acknowledged that the parties might choose to appeal, noting “If you want to do that, that’s fine.” *Id.* at 15. He then scheduled a hearing to discuss next steps, noting that the parties “have the choice to either go to trial” or settle without a consent decree. *Id.*³

STANDARD OF REVIEW

This Court reviews a district court’s refusal to enter a consent decree for an abuse of discretion. *Colorado*, 937 F.2d at 510 (10th Cir. 1991); *see also Citigroup*, 752 F.3d at 291. Under that standard, it “examine[s] the district court’s legal determinations de novo, and its underlying factual findings for clear error.” *Att’y Gen. of Okla. v. Tyson Foods, Inc.*, 565 F.3d 769, 776 (10th Cir. 2009). “An abuse of discretion occurs ... when an irrelevant or improper factor is considered and given significant weight.” *EEOC v. Prod. Fabricators, Inc.*, 666 F.3d 1170, 1172 (8th Cir. 2012) (citation modified); *see also Snyder v. Beam Techs., Inc.*, 147 F.4th 1246, 1258 (10th Cir. 2025) (“Applying the wrong test to decide an issue is legal error.” (citation modified)).

³ After the EEOC filed its notice of appeal, the district court granted the parties’ joint motion to stay the case pending appeal. Appx.121-24.

SUMMARY OF ARGUMENT

The EEOC, like other federal law enforcement agencies, regularly resolves litigation through consent decrees. *See, e.g., United States v. North Carolina*, 180 F.3d 574, 583 (4th Cir. 1999); *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 892 (7th Cir. 1985); *Citigroup*, 752 F.3d at 294-95. Because consent decrees serve Congress's interest in encouraging the voluntary resolution of employment discrimination claims and other violations of federal law, courts of appeals cabin district court discretion to reject them. *See, e.g., Hiram Walker & Sons*, 768 F.2d at 889 ("The district court may not deny approval of a consent decree unless it is unfair, unreasonable, or inadequate."); *Citigroup*, 752 F.3d at 294 (same); *see also Durrett v. Hous. Auth. of City of Providence*, 896 F.2d 600, 604 (1st Cir. 1990) (observing, in a § 1983 and Fair Housing Act case, that "the district court's discretion is restrained by the clear policy in favor of encouraging settlements" (citation modified)).

In refusing to enter the proposed consent decree, the district court abused its discretion twice over. First, it refused to enter the decree despite finding it undisputed that the decree met all of the factors the Supreme Court and this Court have identified as determinative. Second, the court

based its refusal on factors that are irrelevant to the analysis set out by the Supreme Court and this Court and that do not justify its decision not to enter the decree.

ARGUMENT

I. The district court abused its discretion in refusing to enter the consent decree.

Federal courts look to specific factors in reviewing proposed consent decrees. *See, e.g., Colorado*, 937 F.2d at 509; *Prod. Fabricators, Inc.*, 666 F.3d at 1172. Though the district court here acknowledged the presence of the relevant factors, it nevertheless erroneously refused to approve the decree.

A. A district court may only reject a proposed consent decree if it does not satisfy the well-established factors governing their approval.

More than forty years ago, the Supreme Court recognized that “[i]n enacting Title VII, Congress expressed a strong preference for encouraging voluntary settlement of employment discrimination claims.”⁴ *Carson*, 450 U.S. at 88 n.14. That same preference applies to claims under the ADA,

⁴ Congress expressly recognized the use of consent decrees in employment discrimination cases when it amended Title VII in 1991. 42 U.S.C. § 2000e-2(n) (limiting the ability of certain parties to challenge consent decrees); Civil Rights Act of 1991, Pub. L. No. 102-166 § 108, 105 Stat. 1071, 1076 (Nov. 21, 1991) (adding § 2000e-2(n) to Title VII).

which shares Title VII's enforcement mechanisms and goal of eradicating employment discrimination. *See* 42 U.S.C. § 12117(a) (ADA) (adopting Title VII's "powers, remedies and procedures"); 42 U.S.C. § 2000e-5(f)(1) (Title VII enforcement procedures); *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 285 (2002) (applying Title VII principles to ADA case).

An order unjustifiably refusing to enter a consent decree "would . . . undermine" that policy. *See Carson*, 450 U.S. at 88 & n.14; *Citigroup*, 752 F.3d at 293 (in SEC enforcement action, stating that "our Court recognizes a strong federal policy favoring the approval and enforcement of consent decrees" (citation modified)). That preference is "even more forcefully applicable in Title VII cases because of Congress' express preference for settlement in such cases." *Hiram Walker & Sons*, 768 F.2d at 889; *see also EEOC v. Safeway Stores, Inc.*, 611 F.2d 795, 801 (10th Cir. 1979). To respect this congressional preference, courts may only engage in a narrow review of consent decrees, and they "should be chary of" disapproving them. *Hiram Walker & Sons*, 768 F.2d at 888-90; *cf. SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) (explaining that although district courts have discretion whether to enter settlement proposals, "[t]his discretion is not unbridled").

To facilitate this circumscribed review, the Supreme Court and this Court have identified several specific factors for courts to focus on when assessing proposed decrees. Consent decrees (1) “must spring from and serve to resolve a dispute within the court’s subject-matter jurisdiction,” (2) “must come within the general scope of the case made by the pleadings,” and (3) “must further the objectives of the law upon which the complaint was based.”⁵ *Firefighters*, 478 U.S. at 525 (citation modified) (citing, among others, *Safeway Stores*, 611 F.2d at 799). In addition, “the district court must ensure that the agreement is not illegal, a product of collusion, or against the public interest.” *Colorado*, 937 F.2d at 509; *see also North Carolina*, 180 F.3d at 581. The district court thus “has the duty to decide whether the decree is fair, adequate, and reasonable before it is approved.”⁶ *Colorado*, 937 F.2d at 509; *see also Prod. Fabricators*, 666 F.3d at 1172 (applying the same factors).

⁵ When appropriate, courts also consider whether the “consent decree . . . imposes obligations on a party that did not consent to the decree.” *Firefighters*, 478 U.S. at 529; *see also Durrett*, 896 F.2d at 604. The decree here does not affect third parties, and the district court did not base its decision on any such concern.

⁶ The Second Circuit has held that adequacy should not be part of the test for consent decrees involving public enforcement agencies. *Citigroup*,

Though sometimes articulated separately, these factors largely overlap in practice. *See United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 85 (1st Cir. 1990) (stating in the context of a CERCLA consent decree that “[r]easonableness, fairness, and fidelity to the statute . . . are all mutable figures taking on different forms and shapes in different factual settings.”). Under *Firefighters*, the district court must consider whether the decree “further[s] the objectives of the law upon which the complaint was based.” 478 U.S. at 525. Meanwhile, under this Court’s articulation of the factors, a district court must determine whether the decree is “against the public interest.” *Colorado*, 937 F.2d at 509; *see also, e.g., Citigroup*, 752 F.3d at 294-95 (considering “basic legality” and “whether the consent decree is tainted by improper collusion” as elements of “fairness and reasonableness”). Both articulations also point toward the “fairness” of the decree. *Patterson v. Newspaper & Mail Deliverers’ Union of N.Y. & Vicinity*, 514 F.2d 767, 771 (2d Cir. 1975) (review for fairness includes whether “the settlement agreement was . . . in the public interest”). Similarly, this Court looks to

752 F.3d at 294. As there is no dispute here about the decree’s adequacy, this Court need not reach that issue.

whether the proposed decree is “a product of collusion,” *Colorado*, 937 F.2d at 509, which is also a part of a review for “fairness and reasonableness,” *Citigroup*, 752 F.3d at 294-95.

District courts must hew to these core factors, as courts around the country have repeatedly held. “Unless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.” *Randolph*, 736 F.2d at 529; *see also Vanguard of Cleveland v. City of Cleveland*, 753 F.2d 479, 484 (6th Cir. 1985) (“When presented with a proposed consent decree, the district court must ascertain only that the settlement is fair, adequate and reasonable.”), *aff’d*, *Firefighters*, 478 U.S. at 515; *Hiram Walker & Sons*, 768 F.2d at 889 (same); *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir. 1987) (“When a public agency requests that a judicial stamp of approval be placed on a negotiated consent decree, the court has the duty to approve the decree unless it is unfair, inadequate or unreasonable.” (citation modified)). Thus, “[a]bsent a substantial basis in the record for concluding that the proposed consent decree does not meet these requirements, the district court is required to enter the order.” *Citigroup*, 752 F.3d at 294.

B. The district court did not base its decision on these required factors.

The district court here exceeded the limits on its discretion by rejecting the proposed consent decree despite acknowledging that all the factors set out above had been met. Instead, it refused to enter the decree based on its own atypical view of the nature and function of consent decrees generally.

As multiple courts have held, where a consent decree satisfies the factors discussed above, it is reversible error to refuse to enter a decree based on unrelated considerations. For example, the Eighth Circuit held that the district court abused its discretion by requiring additional evidence that continuing jurisdiction was necessary, rather than confining its inquiry to whether the consent decree was “fair, reasonable, and adequate.” *Prod. Fabricators*, 666 F.3d at 1173-74. Similarly, the Fourth Circuit reversed a district court that refused to enter a decree when all the parties agreed that the factors favored approval. *North Carolina*, 180 F.3d at 581-82 (holding that denial of a consent decree based on “a party’s change of heart” and “changed circumstances” constituted abuse of discretion); *see also Citigroup*, 752 F.3d at 297 (abuse of discretion to reject decree based on belief that

enforcement agency “failed to bring the proper charges” or because decree did not “provide collateral estoppel assistance to private litigants”).

The district court here committed exactly that error. It did not find any of the required factors absent. The proposed decree “plainly does” resolve a dispute within the court’s subject matter jurisdiction, it acknowledged, and the decree is within the scope of the pleadings. Add.10 (2/27/26 Tr. at 9). The court also “t[ook] the parties at their word that [the proposed decree] furthers the objectives of ... the ADA and that the decree is fair, adequate, and reasonable.” *Id.* And it held that the decree was “the result of an arm’s length bargaining.” *Id.* at 10-11. Having found no reason to doubt the presence of those core factors, the court should have entered the decree. *See Randolph*, 736 F.2d at 529; *Hiram Walker & Sons*, 768 F.2d at 889.

Instead, the court rejected the decree because of its admittedly idiosyncratic beliefs about consent decrees. At the January 6, 2026, hearing, Judge Crouse described his “general reticence for entering into a consent decree and retaining jurisdiction.”⁷ Appx.125; *id.* at 131, 133 (noting his

⁷ Judge Crouse acknowledged that his dislike of consent decrees was “kind of [his] quirk,” and stated that he was “probably the only person in the

“general view of the world” that overseeing compliance with consent decrees was “not something that ... the judicial power should be spent on”). He reiterated that reticence as he denied the decree, characterizing the parties’ motion as “seek[ing] that I bless their agreement and adopt it as my own, which I think invades the power of an Article III court.” Add.12 (2/27/26 Tr. at 11); *id.* at 13 (asking “whether or not utilization of consent judgments in that situation complies with Article III”). The court questioned common elements of consent decrees, such as the continuing adversity of the parties, the propriety of continuing jurisdiction, and the inclusion of both prospective and retrospective relief. *Id.* at 13-14. Relying on these concerns, rather than the factors discussed above, was reversible error.⁸ See *Prod. Fabricators*, 666 F.3d at 1174; *Citigroup*, 752 F.3d at 297.

district that has maybe these concerns. Maybe my colleagues do, I don’t know, but you just got stuck with me.” Appx.165 (1/6/26 Tr. at 13).

⁸ The district court’s antipathy toward consent decrees poses an additional problem for a federal enforcement agency like the EEOC, which litigates regularly in federal court. The happenstance of judicial assignment could eliminate the potential availability of a consent decree to resolve litigation the EEOC brings in the public interest. Indeed, the EEOC currently has another case pending before the same district court judge. See *EEOC v. Kan. Dep’t of Health & Env’t*, No. 2:25-cv-2327 (D. Kan., filed June 17, 2025).

II. Even on their own terms, the district court’s unconventional concerns do not justify a decision to reject the proposed decree.

The district court’s disregard for the factors governing the review of consent decrees, by itself, was an abuse of discretion warranting reversal. *See supra* pp.13-20. Even if this Court engages with the substance of the district court’s general concerns about consent decrees, however, those objections – which are based on a misapprehension of the nature of such decrees and the governing law – do not justify the district court’s refusal.

Most significantly, the district court was mistaken in its belief that the proposed decree “invade[d] the power of an Article III court.” Add.11-12 (2/27/26 Tr. at 10-11). At the earlier hearing, it expressed that concern in separation-of-powers language, worrying that “you’re with the government, Article II, and Congress has expressly authorized [the decree] under Article I. But ... the concept seeks to coopt an Article III power.” Appx.129 (1/6/26 Tr. at 7). That description of consent decree approval, however, misconceives of the role of the district court in reviewing proposed decrees.

Separation of powers ensures that “[e]ach branch exercises the powers appropriate to its own department,” *Patchak v. Zinke*, 583 U.S. 244,

250 (2018) (citation modified), and approving a consent decree is fully consistent with that principle. While a federal agency may submit a proposed decree to the court, “[t]he entry of a consent judgment is a judicial act.” *SEC v. Dennett*, 429 F.2d 1303, 1304 (10th Cir. 1970); *see also Randolph*, 736 F.2d at 528 (“The Supreme Court has long endorsed the propriety of the use and entry of consent judgments.”). Nor does the submission of a consent decree deprive a court of any judicial power, as courts are “not obliged to approve every proposed consent decree.” *Colorado*, 937 F.2d at 509. For example, they may reject decrees that are “not in furtherance of statutory objectives.” *See Prod. Fabricators*, 666 F.3d at 1172; *Firefighters*, 478 U.S. at 525. In identifying factors for district courts to use in reviewing proposed decrees, the Supreme Court, this Court, and other courts have never suggested that approving such decrees improperly invades Article III. *See, e.g., Firefighters*, 478 U.S. at 525; *Colorado*, 937 F.2d at 509; *Citigroup*, 752 F.3d at 294-97.

The district court appears to have incorrectly based its judicial powers concern on an overbroad reading of one sentence in *System Federation No. 91 v. Wright*, 364 U.S. 642, 651 (1961). *See Add.12 (2/27/26 Tr.*

at 11) (referring to *Wright*). But in context, *Wright* confirms that consent decrees do not, by their nature, invade judicial power.

Wright involved a consent decree, originally approved by the district court, forbidding discrimination based on union status in violation of the Railway Labor Act. 364 U.S. at 643-44. Congress later amended that Act to allow conduct forbidden in the consent decree under some circumstances, and the union sought to modify the consent decree to reflect the amended Act. *Id.* at 644-45. The district court refused to modify the decree, *id.* at 645, but the Supreme Court explained that modification was appropriate in light of the changed statutory objectives, *id.* at 647-51. In that context, the Court stated that parties could not purchase a continuing injunction that undercut the statute's revised aims. *Id.* at 651 (explaining that "parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction" through a consent decree). Importantly, that statement arose from the specific posture of that case and did not apply to consent decrees generally: the Supreme Court later described *Wright* as a "conflict[]" between a judicial decree and the underlying statute," in which the Court held that furtherance of statutory objectives was paramount.

Firefighters, 478 U.S. at 525-27; see also *Wright*, 364 U.S. at 651 ("The court

must be free to continue to further the objectives of [a statute] when its provisions are amended.”).

Wright thus represents another formulation of one of the *Firefighters* factors, not a reason to think consent decrees generally invade the judicial power. Compare *Firefighters*, 478 U.S. at 525 (consent decree “must further the objectives of the law upon which the complaint was based” (citation omitted)), with *Wright*, 364 U.S. at 651 (“The parties have no power to require of the court continuing enforcement of rights the statute no longer gives.”); *Prod. Fabricators*, 666 F.3d at 1172 (noting the concern that parties cannot purchase injunctions as it set out the relevant factors). Because the proposed decree here satisfied the *Firefighters* factors, the district court erred in relying on *Wright* to find that the decree improperly intruded on its judicial power.

The district court also erred in believing that the parties were no longer adverse simply because they had reached an agreement on the specifics of the proposed decree. Describing this issue as “[m]ore important” than its judicial power concern, the court worried that “[w]hen litigants decide to terminate their case on mutually agreeable terms, they’re no longer adversaries.” Add.12-13 (2/27/26 Tr. at 11-12). But consent

decrees are, by their nature, “settlements to which adversarial parties have consented.” *Ho v. Martin Marietta Corp.*, 845 F.2d 545, 547 (5th Cir. 1988); *see also Sinclair Oil Corp. v. Scherer*, 7 F.3d 191, 193 (10th Cir. 1993) (“A consent decree is a negotiated agreement that is entered as a judgment of the court.”). And “it is the parties’ agreement that serves as the source of the court’s authority to enter any judgment at all.” *Firefighters*, 478 U.S. at 522. Thus, a district court “err[s] in holding that no controversy existed because the parties arrived in court with the proposed judgment in hand.” *Randolph*, 736 F.2d at 528.

The district court similarly erred in basing its decision on the decree’s contemplation of three years of continuing jurisdiction. Add.12 (2/27/26 Tr. at 11) (describing continuing jurisdiction as “run[ning] the risk of utilizing and overconsuming judicial resources”). “Continuing jurisdiction is the norm (and often the motivation) for consent decrees.” *Prod. Fabricators*, 666 F.3d at 1173; *see also Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983) (“A consent decree is essentially a settlement agreement subject to continued judicial policing.”); *id.* (“The injunctive quality of consent decrees compels the court to ... retain jurisdiction over the decree during the term of its existence.”). Indeed, continuing jurisdiction is so

integral to the functioning of consent decrees that a court retains jurisdiction over a consent decree “even without a provision in the decree which provides for continuing jurisdiction.” *Picon v. Morris*, 933 F.2d 660, 662 (8th Cir. 1991).

As these cases indicate, continuing jurisdiction is not a trivial benefit. It has an important “deterrent effect,” *Prod. Fabricators*, 666 F.3d at 1174, and the Supreme Court observed that settlements without continuing jurisdiction can be at a “decisive handicap.” *Firefighters*, 478 U.S. at 524 n.13 (citation modified); *see also id.* (listing other benefits of continuing jurisdiction for a consent decree, including efficiency, consistency, and flexibility in enforcement).

Along the same lines, the district court incorrectly based its decision on its assessment that “the relatively simple issues in this case” could have been resolved through “private agreement.” Add.13 (2/27/26 Tr. at 12). As the Supreme Court explained, “[t]he choice of an enforcement scheme—whether to rely on contractual remedies or to have an agreement entered as a consent decree—is ... made voluntarily by the parties,” and they may have “a number of reasons” for seeking to resolve their differences through a consent decree rather than by private contract. *Firefighters*, 478 U.S. at 523

n.13; see also *Randolph*, 736 F.2d at 528 (explaining why parties might find a consent decree preferable to a private settlement agreement). A district court thus errs when it refuses to enter a proposed consent decree simply because, in its estimation, “contract remedies were available” instead. *Randolph*, 736 F.2d at 528. That is particularly true where an enforcement agency is a party to the decree. *Id.* at 529 (“[T]he courts should pay deference to the judgment of the government agency which has negotiated and submitted the proposed judgment.”); *Conservation L. Found. of New England, Inc. v. Franklin*, 989 F.2d 54, 58 (1st Cir. 1993) (“Where an administrative agency has committed itself to a consent decree, the district court must exercise some deference to the agency’s determination that settlement is appropriate....”).

Here, the EEOC is the agency tasked with enforcing the ADA, and it submitted the proposed consent decree to serve the public interest in eradicating disability discrimination. See *Waffle House*, 534 U.S. at 291 (“The statute clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake.”); *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 324 (1980) (reasoning that Title VII empowers the EEOC to seek injunctive relief and

“remedial action to eradicate the effect of past discrimination”). In doing so, the EEOC emphasized its strong preference for a consent decree with continuing jurisdiction. *See* Appx.125, 130 (1/6/26 Tr. at 3, 8); Add.5 (2/27/26 Tr. at 4). The district court’s substitution of its own judgment regarding the sufficiency of a “private agreement,” Add.13, in place of the EEOC’s considered determination constituted reversible error.

The district court also misunderstood the significance of the fact that the proposed decree contained both retrospective and prospective relief. Add.13-14 (2/27/2026 Tr. at 12-13). The EEOC regularly seeks – and courts regularly enter – consent decrees containing retrospective monetary relief as well as prospective relief.⁹ *See, e.g., EEOC v. Pan Am. World Airways, Inc.*, 897 F.2d 1499, 1503 (9th Cir. 1990) (consent decree included backpay and policy changes); *North Carolina*, 180 F.3d at 578 (in Title VII case, consent decree included “numerous forms of prospective relief” and “monetary

⁹ Decrees containing monetary relief and prospective relief are common within this Circuit. *See, e.g., EEOC v. S. Valley Care Ctr., LLC*, No. 1:25-cv-00569 (D.N.M. Feb. 27, 2026) (Doc. 27); *EEOC v. Chipotle Servs., LLC*, No. 2:23-cv-02439 (D. Kan. Mar. 28, 2025) (Doc. 187); *EEOC v. HHS Env’t Servs., LLC*, No. 2:24-cv-00721 (D. Utah Mar. 13, 2025) (Doc. 25); *EEOC v. Teamsters Loc. Union No. 455*, No. 1:22-cv-02520 (D. Colo. July 3, 2023) (Doc. 65).

relief in the form of back pay”). These common forms of relief do not meaningfully differentiate the proposed decree here from other decrees that courts regularly approve.

Moreover, both forms of relief are appropriate here. Federal law provides for both injunctive relief and damages to compensate victims of disability discrimination for non-pecuniary harms. 42 U.S.C. § 12117(a) (incorporating numerous Title VII provisions into the ADA, including the provision for injunctive relief in 42 U.S.C. § 2000e-5(g)(1)); 42 U.S.C. § 1981a(a)(2). And the prospective relief ensures that Walmart provides reasonable accommodations to employees and applicants in similar situations. *See* 42 U.S.C. § 12111(9)(B) (defining reasonable accommodation to include “the provision of qualified readers or interpreters, and other similar accommodations”); *id.* § 12112(b)(5)(A) (prohibiting “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee,” absent undue hardship). Including multiple forms of relief contemplated under the relevant statutes did not justify the district court’s refusal to enter the proposed decree.

CONCLUSION

For all these reasons, the judgment of the district court should be vacated and the case remanded for the court to enter the proposed decree.

Respectfully submitted,

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July 16, 2026

STATEMENT REGARDING ORAL ARGUMENT

Consent decrees serve a critical role in the EEOC's efforts to enforce the federal laws against employment discrimination. The district court's opinion, meanwhile, is an outlier that misconceives the well-settled law governing the approval of carefully negotiated decrees like the one here. Though the EEOC believes a straightforward application of the relevant factors can resolve this appeal, we stand ready to present argument to assist the Court in its deliberations.

ADDENDUM

TABLE OF CONTENTS

R.161 Civil Minute Sheet (Feb. 27, 2026)..... Add.1
February 27, 2026 Transcript Add.2

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

EEOC,	)	
	)	
	)	Case Number: 23-2395
	)	
WALMART, INC.,	)	
	)	
	)	Date of Hearing: 2/27/26
	)	

CIVIL MINUTE SHEET – MOTION HEARING - KCK

JUDGE:	Hon. Toby Crouse, United States District Judge	
COURT REPORTER:	Dani Murray	
COURTROOM DEPUTY:	Traci Anderson	
TIME IN COURT:	20 mins.	

APPEARANCES:

PLAINTIFF’S COUNSEL:	Joshua Pierson / Andrea Baran
DEFENDANT’S COUNSEL:	Carrie McAtee

PROCEEDINGS:

The parties discuss the Joint Motion for Entry of Consent Decree, Doc. 152.

The Court denies the joint motion for entry of consent decree, Doc. 152, as reflected on the record.

The Court sets a status conference for April 1, 2026 at 1:00 p.m. in Topeka, Kansas, Courtroom 401.

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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Case No. 23-cv-2395-TC

Plaintiff,

v.

Kansas City, Kansas

Date: February 27, 2026
10:00 a.m.

WALMART INC.,

Defendant.

.....

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE TOBY CROUSE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

For the
Plaintiff:

Mr. Joshua M. Pierson
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For the
Defendant:

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Proceedings recorded by machine shorthand,
transcript produced by computer-aided transcription.

P R O C E E D I N G S

(Court called to order at 10:03 a.m.)

THE COURT: Good morning, everybody. We're here in Case Number 23-2395, EEOC versus Walmart, Inc.

Counsel, please state your appearances for the record.

MR. PIERSON: Josh Pierson and Andrea Baran for the EEOC.

THE COURT: Good morning to you both.

MR. PIERSON: Good morning, Your Honor.

MS. MCATEE: Carrie McAtee for the Defendant Walmart.

THE COURT: Good morning to you both.

Counsel, we were here -- I forget when we were last together, but we were talking about the proposed entry or proposed joint motion for entry of consent decree. That's Document Number 152. My best recollection is that we had set kind of a briefing schedule at that time, and maybe previously I expressed some reluctance to the entry of the joint motion for -- entry of that consent decree, and you all took me up on my offer to submit a memo in support, so to speak, to address that, which is Document 156.

So I have had an opportunity not only to review 152, as well as the attachment, I guess it's 152-1, but also Document 158. So we are here today, for lack of a better word, for kind of oral argument and discussion as to how best to proceed. So that's what I think we're doing.

1 And, Mr. Pierson, I would probably defer to you just
2 to see how you want to argue it. I've got some questions for
3 you, but tell me what you want to do.

4 MR. PIERSON: Thank you, Your Honor. Yeah, I'm happy
5 to, of course, answer any questions. If it's helpful for me to
6 sort of walk through the brief and some high points, I'm happy
7 to do that as well as a preliminary matter, if that's what Your
8 Honor would like.

9 THE COURT: So I guess I think I understand what you
10 all are seeking, and I kind of think what my thoughts are. But
11 I'm happy to let you -- if you've got a presentation prepared,
12 to go forward with that.

13 MR. PIERSON: I don't have anything prepared, so I
14 think maybe Your Honor's questions would be the best place to
15 go unless you want something else.

16 THE COURT: Okay. In looking at this, one, is I will
17 commend you for finding that it looks like I actually entered a
18 consent judgment. That was news to me. So kudos for that. I
19 don't actually recall it, but it looks like it happened.

20 I guess my general concern kind of persists as to what
21 we previously discussed, and so I'm trying to figure out -- I
22 don't know. It looks like part of the concern that you would
23 have is I'm effectively denying your settlement, and I guess
24 I'd maybe take issue with that. I don't think I'm doing
25 anything other than refusing to put a stamp of judicial

1 approval on it.

2 It looks like your proposed settlement agreement with
3 Walmart will continue with or without my approval. It appears
4 that it's temporary and limited. It appears that it
5 anticipates both prospective and retrospective relief. And I'm
6 just struggling to figure out what good I'm doing except for,
7 in the EEOC's view, serving as a hammer to the privately
8 negotiated agreement.

9 So I guess those are kind of my overarching concerns,
10 which we previously talked about, but...

11 MR. PIERSON: Yeah. So thank you, Your Honor. I
12 mean, so I would agree to a certain extent that the EEOC is
13 insisting on resolution by consent decree because we are
14 interested in the court's -- in our ability to seek the court's
15 intervention more quickly than would be possible with a private
16 decree.

17 So that is one of the reasons we've asked you to enter
18 it and one of the reasons we've decided to settle the case on
19 these terms. So I don't know if that really addresses your
20 concern other than to say that is -- that is the reason for our
21 insistence here.

22 THE COURT: Maybe a different way to posit it would
23 be, the EEOC would still be able to effectuate everything that
24 you privately negotiated without me, fair?

25 MR. PIERSON: I'm not sure that's correct, Your Honor.

1 I mean, because part of what we have negotiated is our ability
2 to remedy any issue --

3 THE COURT: Right, but that implicates me. Your
4 relationship vis-a-vis Walmart remains the same with the
5 exception of you don't have a judge policing the parties'
6 compliance with the privately negotiated agreement.

7 MR. PIERSON: I suppose I would say it's true that
8 there could be an agreement in principle that is the same as
9 the consent decree but not a consent decree, and without the
10 court's continuing jurisdiction for enforcement, that is true.

11 THE COURT: Okay.

12 MR. PIERSON: I don't mean to avoid your question, if
13 that was.

14 THE COURT: Yeah, no, no, no. I mean, again, that's
15 kind of part of the problem is that I don't see anything here
16 that is different than the mine-run cases of privately
17 negotiated agreements except for the executive branch's desire
18 to co-opt the judicial branch's judicial power. And that
19 strikes me as a request that can be made, but I think the cases
20 you cited indicated that courts still have discretion.

21 I do want to make sure that we are all on the same
22 page. I'm looking at page 2 of your brief, the *Firefighters*
23 case.

24 MR. PIERSON: Yes, Your Honor.

25 THE COURT: My sense is of those four factors, all of

1 them apply. In other words, I have the judicial power, and I
2 don't think either party disputes that. The question is
3 whether I should or should not exercise the judicial discretion
4 to enforce that judgment, fair?

5 MR. PIERSON: I think that's fair with one potential
6 caveat in that I believe the *Firefighters* case as well as *U.S.*
7 *versus Colorado* and the *Carson* case as well do stand for more
8 than just the court has discretion and therefore can deny. I
9 think they stand for the proposition that the district courts
10 are to review consent decrees with certain factors in mind and
11 decide whether those factors are satisfied.

12 So I agree that the court can deny the motion for
13 entry of consent decree, of course. I think maybe where I
14 disagree with Your Honor is if the court is going to do so, it
15 needs to do so based on the factors articulated in those cases.

16 THE COURT: In other words, you think that by agreeing
17 that the four factors in the *Firefighters* case compels me to
18 enter a consent judgment and I lack discretion to enter into
19 such an agreement?

20 MR. PIERSON: I think the consent decree and the
21 parties' proposal here does satisfy the factors of
22 *Firefighters*, yes.

23 THE COURT: Different answer to the question I asked.

24 Does the existence of those four factors compel me
25 to -- in other words, remove my discretion -- as to whether or

1 not I have to enter it?

2 MR. PIERSON: I do think it means you need to enter
3 the consent decree, yes. I guess I'm uncomfortable telling you
4 you don't have discretion. But, yes, I do think it means that
5 it would be err to not enter the consent decree here, yes, I do
6 agree.

7 THE COURT: And my recollection is the circuit reviews
8 the entry or declination of an entry for consent decrees for
9 abuse of discretion. Is that consistent with your
10 understanding?

11 MR. PIERSON: Without -- I don't want to bind my
12 appellate colleagues if we end up there. But, yes, I believe
13 that is the case.

14 THE COURT: So I guess like -- that kind of implies
15 that what you just told me is wrong; in other words, that I
16 have discretion to enter a judgment if I find those four
17 factors, but I also by definition have discretion not to.

18 MR. PIERSON: Well, I guess I think maybe where I'm
19 having trouble, Your Honor, is I don't think the court has
20 discretion to deny the entry of the decree because of concerns
21 about the executive branch co-opting the power of the
22 judiciary.

23 I think the court has discretion to evaluate the
24 factors in *Firefighters* and *U.S. versus Colorado*, and if it
25 finds some of those factors not satisfied, to send the

1 agreement back to us or to tell us what is wrong with the
2 proposal.

3 But so maybe I'm tripping over my own politeness here
4 in not wanting to tell you you don't have discretion, but I
5 don't think it is true to say that you can deny the entry of
6 the decree for any reason.

7 THE COURT: Okay. Anything else that you want to
8 discuss relative to this?

9 MR. PIERSON: I don't think so, Your Honor, unless you
10 have further questions. But, no, I think we covered it in the
11 last hearing and the briefing.

12 THE COURT: Ms. McAtee, anything from you?

13 MS. MCATEE: No, Your Honor.

14 THE COURT: Okay. I'm going to deny the joint motion
15 for entry of consent decree. I note that the parties have
16 jointly moved for that entry. It is in Document 152. They
17 argue this consent decree is proper because the proposed
18 agreement satisfies the relevant factors laid out by the
19 Supreme Court in the *Firefighters* case, which is at 478 U.S.
20 501 (1986).

21 I note that the Supreme Court has recognized that
22 Congress receives voluntary compliance as the preferred means
23 of achieving the objectives of Title VII. To that end, a
24 consent decree is one avenue, but not the only avenue, by which
25 parties can resolve the disputes voluntarily.

1 As indicated and discussed with the parties, private
2 litigants, whether governmental agency or otherwise, can always
3 voluntarily resolve their disputes, but a consent decree has
4 the added nature of giving the imprimatur of judicial approval
5 of privately negotiated settlement agreements.

6 And as best I can tell, the only attribute that the
7 parties are seeking here is a simpler avenue in the event there
8 is a breach of the parties' privately negotiated settlement.
9 So it has both the attributes of a contract and judicial
10 decree, which does implicate in my estimation the discretion
11 that an Article III judge has when faced with these things.

12 When analyzing whether to approve a consent decree,
13 district courts must consider the decree -- whether the decree
14 springs from a dispute within the court's subject matter
15 jurisdiction -- I believe this plainly does; whether it comes
16 within the scope of the case. I think the nature of the
17 resolution is certainly anticipated by the allegations within
18 the complaint and the pretrial order.

19 I take the parties at their word that it furthers the
20 objectives of the law under the ADA and that the decree is
21 fair, adequate, and reasonable. I'm not sure that I'm entirely
22 cognizant of what went into the negotiations, but I will take
23 the parties at their word that the division of responsibilities
24 with Walmart to both pay retrospective relief to the two
25 plaintiffs as well as to agree and promise the EEOC that they

1 will engage in conduct going forward is the result of an
2 arm's-length bargaining.

3 So I guess ultimately my choice is to either approve
4 or deny the decree. I can't negotiate it, and I don't want to
5 be a part of the negotiations. I was not a part of the
6 negotiations, and I don't want to be a part of the resolution.

7 I think what the parties have negotiated is an
8 appropriate resolution for each of them, but it can't stand on
9 its own without judicial intervention or involvement or
10 continuing policing, which the parties have anticipated I would
11 do.

12 I note that the entry of a consent decree is a
13 discretionary act that calls upon the power of an Article III
14 judge to enter and approve of that, but district courts are not
15 obliged to approve every consent decree that they are presented
16 to. In my understanding district courts have discretion.

17 And one of the things that the Tenth Circuit -- or I'm
18 sorry, the Supreme Court has recognized and the Tenth Circuit
19 has replicated is that federal courts are not to be considered
20 recorders of contracts. It's an organ of a governmental agency
21 that is constituted to make judicial decisions, and when it has
22 rendered judicial or consent judgments, it is effectively being
23 asked to advocate for the parties' privately adjudicated
24 resolution.

25 I will get to it in a later point, but the language

1 the parties proposed and the nature of that certainly seeks
2 that I bless their agreement and adopt it as my own, which I
3 think invades the power of an Article III court to consider and
4 apply that.

5 As recognized by the Supreme Court in the 1961
6 decision, *Employees' Department versus Wright*, parties of a
7 lawsuit cannot by giving each other consideration purchase from
8 the court of equity a continuing injunction through a consent
9 decree.

10 There are certainly prudential concerns that I have
11 identified here. One of them is that consent decrees involve
12 federal courts getting involved in policing the parties'
13 private agreement, and to be fair, this strikes me as this is
14 the sole reason why the parties have asked me to get involved.
15 I think the parties have made clear in the consent decree at
16 152-1 certainly contemplates that the parties have adequately
17 and appropriately negotiated an arm's-length bargain at which
18 they can police, just like any other litigant, but the only
19 things the parties are seeking I do is retain jurisdiction for
20 three years in the event that parties have a dispute. This
21 runs the risk of utilizing and overconsuming judicial resources
22 in a way that is effectively monitoring and enforcing a
23 privately negotiated agreement.

24 More important, there is a question as to whether the
25 parties continue to be adverse. It is not lost upon me that

1 the parties have jointly asked me to engage in a judicial
2 endeavor, not to resolve a dispute but rather to endorse a
3 negotiated agreement. I typically am called upon to resolve
4 disputes that are cases in controversy as not to bless a
5 negotiated agreement.

6 When litigants decide to terminate their case on
7 mutually agreeable terms, they're no longer adversaries, and I
8 kind of question whether or not utilization of consent
9 judgments in that situation complies with Article III. And
10 even if it does, I think there are prudential concerns to be
11 hesitant to engage in that, especially when the downside is the
12 parties still have their agreement; they just don't have a
13 third party involved in it, which is the court.

14 So as I mentioned, the parties' motion for consent
15 decree is denied. There is little reason, and I've seen
16 nothing, to indicate that the relatively simple issues in this
17 case could not and have not been resolved for private
18 agreement. This is on account of the fact that it's a
19 relatively simple dispute with a relatively small resolution.

20 As I think the parties noted in Document 158 at 9,
21 this is not an unusually complex or large scale resolution.
22 Those points underscore the fact that judicial oversight of the
23 parties' settlement is not necessary to effectuate the parties'
24 agreement.

25 I am also concerned about a couple of different

1 things. One of them is the interweaving of prospective and
2 retrospective relief. In the ordinary case where the court's
3 equitable powers are implicated, where there would be
4 prospective relief, that is typically what injunctions are.
5 This seeks to not only utilize alleged prospective relief,
6 which I think that's questionable, but also retrospective
7 relief where it's awarding of money damages and management and
8 description of how the execution of those money damages will be
9 disbursed.

10 And I say that there's a question as to the
11 prospective relief because while the parties have conferred
12 upon me the power to retain jurisdiction over this case for
13 three years, the only thing that it appears that I would be
14 doing is serving as a place that they could quickly place a
15 phone call to complain about noncompliance. So it doesn't
16 appear that there is any ongoing disputed relief that would be
17 at issue.

18 Again, I think it's clear that I have the power to
19 issue such decree, but I choose in light of the foregoing to
20 decline to exercise my discretion. So that's kind of my
21 thoughts relative to this.

22 Anything else we can do from the parties' point of
23 view?

24 MR. PIERSON: I guess perhaps we should discuss.
25 Nothing at the moment then, Your Honor.

1 THE COURT: All right. And probably what you want to
2 discuss is how best to go forward. I noted -- or I think I
3 noted in your pleading that there is a 1292 issue that may be
4 out there. If you want to do that, that's fine.

5 But you probably also, for lack of a better word --
6 and I've still got this on my docket, and you've still got it
7 -- my understanding is you've settled. I think you've
8 intimated at the last hearing that you would have to continue
9 to go forward. I guess I question that because I think the
10 parties have resolved everything, and it seems that the only
11 issue is whether or not I'm going to enter a consent judgment.

12 I guess if it would be helpful, unless something
13 dramatically changes, I can't envision myself reaching a
14 different conclusion for the reasons I previously indicated.
15 So I don't know if that helps you in resolving things, but it
16 strikes me that you guys have the choice to either go to trial
17 or consummate the privately negotiated agreement you did.

18 MR. PIERSON: Yeah, I think that's probably right,
19 Your Honor. I was going to say -- what I was going to say
20 before -- maybe I thought I should talk with my opposing
21 counsel here --

22 THE COURT: I'll give you that space if you want to --
23 so you don't put anything on the record you don't want to.
24 Again, you can say whatever, but I don't want to force you to
25 say something that your appellate colleagues may later not

1 love.

2 Would it be okay if I gave you 30, 45 --

3 MR. PIERSON: That would be just fine.

4 THE COURT: And I'll set you for a status conference.

5 MR. PIERSON: Perfect.

6 THE COURT: And then you guys can tell me what you
7 want to do, or you may file notice of appeal, and that will
8 take it off my docket and I'll know what you've done.

9 Do you want to do that -- I'm just thinking here. Do
10 you want to do it in Kansas City if we anticipate we'll
11 actually meet? Or I can just put you on my normal status
12 conference docket in Topeka. I do it every Wednesday, and
13 typically what I'll do is I'll throw cases on that docket so
14 that I don't lose it. Even though you guys anticipate that you
15 won't actually do it, it's just so I don't lose your case
16 because I don't -- the reason I know that I have something
17 pending with you guys is because you have a motion, and now
18 that it's been resolved, I don't know that -- what you guys are
19 doing, and I want to make sure that I'm processing you as best
20 I can.

21 You tell me what you want to do, and I'll do it.

22 MR. PIERSON: I think the status docket would be fine,
23 and that will give us time to get our heads together and figure
24 out if we have some other option or something.

25 THE COURT: Okay. And just because I put you on

1 Topeka -- again, you're more than welcome to come see us in
2 Topeka, but just because I put you on there doesn't mean you
3 couldn't file a motion to reschedule whenever you want to do it
4 here. It will just be easier for us to make sure you're on our
5 docket. If I give you -- Tracey, what do we have April 1st?

6 DEPUTY CLERK: 1:00 that day.

7 THE COURT: Can we go April 1st at 1:00 in Topeka?
8 I'll put you at the back of the criminal docket, and if you
9 guys want to (a) show up, great, or (b) file a motion to --
10 frankly, if you would just e-mail Ms. Anderson and say, hey,
11 we'd like to have an in-person hearing in KCK, and she'll give
12 you the dates that we can do it. We can handle it that way.

13 MR. PIERSON: That sounds just fine. I think I'm
14 either in trial that week or preparing for trial that week, so
15 that day may not literally work, but with the understanding
16 that we can simply ask for a different time, that should be
17 fine.

18 THE COURT: Yeah. And I can give you a different date
19 if you wanted.

20 MR. PIERSON: I think that's fine. We'll be able to
21 manage, yeah.

22 THE COURT: Okay. Awesome. Thank you guys very much.
23 Anything else before we go off the record?

24 MR. PIERSON: No. Thank you, Your Honor.

25 MS. MCATEE: Thank you, Your Honor.

1 THE COURT: Thank you, guys.

2 (Proceedings adjourned at 10:27 a.m.)

3 C E R T I F I C A T E

4 I certify that the foregoing is a true and correct
5 transcript from the stenographically reported proceedings in
6 the above-entitled matter.

7 SIGNED 2nd of March, 2026

8
9 /s/Danielle R. Murray
10 DANIELLE R. MURRAY, RMR, CRR
11 United States Court Reporter
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This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,032 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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July 16, 2026

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I certify that on this 16th day of July, 2026 I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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