DEMOCRACY 2025

To: Interested Parties
From: Democracy Forward Foundation
Re: Litigation Responses to Collusive Litigation Tactics Under the Trump-Vance Administration
Date: March 19, 2026

I. Introduction

Over the last year, the Trump-Vance administration has increasingly used collusive litigation tactics to bypass ordinary legal processes and instead implement its policy agenda through bad faith litigation. Democracy Forward Foundation's first resource on this topic, Weaponizing the Courts: Trump-Vance's Collusive Settlement Strategy, outlines one such strategy—collusive settlements—and provides examples of how the administration is using this particular tactic. This second resource focuses in more depth on ways to oppose the Trump-Vance administration's collusive efforts (both collusive settlements and other tactics).

II. The Trump-Vance Administration's Collusive Litigation Tactics

The Trump-Vance administration is using a variety of collusive strategies to advance its legal and policy goals. In some cases, the administration is entering into collusive settlements and consent decrees to bypass ordinary legislative and regulatory processes, and in others, the administration is colluding with friendly parties to vacate or terminate existing settlement agreements and consent decrees. The common thread through all of these tactics is an attempt to use litigation between parties who are not actually adverse to expand the executive branch's authority beyond its lawful bounds.

1. Sue and Immediately Settle (Collusive Settlements & Consent Decrees)

Using this strategy, the Trump-Vance administration sues a friendly party—such as an ideologically-aligned governor—to challenge an existing state-level statute, regulation, or program. The administration alleges a dispute with the defendant state, even though the defendant shares the same position. In this scenario, the two parties are not true adversaries in the litigation. The parties then move quickly towards a settlement to resolve the "dispute." The parties then file a proposed settlement with the court, and the court issues a consent decree,

which is a binding order that is enforceable by the court.[1] For examples of these types of collusive settlements (including but not limited to consent decrees), see the below cases:

- *United States v. Texas*, 7:25-cv-00055 (N.D. Tex.); 25-10898 (5th Cir.)
    - The Department of Justice (DOJ) filed a lawsuit challenging a Texas law that allowed undocumented students to receive in-state tuition rates; the state Attorney General chose not to defend the law. The same day that the complaint was filed, the court granted a jointly-filed consent motion for judgment against the Texas law and entered a judgment that permanently enjoined the state from enforcing the challenged provisions of the state statute. As described further below, the district court denied motions to intervene filed by two purported intervenors. The proposed intervenors have appealed the denial of their motions to intervene and to vacate the district court's consent judgment order. The case is ongoing.
- *United States v. Oklahoma*, 6:25-cv-00265 (E.D. Okla.); 25-7089 (10th Cir.)
    - Oklahoma's Attorney General acquiesced to DOJ's position that its state law permitting in-state tuition for undocumented students was unlawful. The parties jointly moved for a consent judgment on the same day the lawsuit was filed, which the court entered. In the consent judgment, the court declared the challenged provisions of the Oklahoma law invalid and permanently enjoined the enforcement of the relevant provisions. Oklahoma Students for Affordable Tuition filed a motion to intervene in the lawsuit in the district court and filed a notice of appeal to preserve its right to appeal at a later stage. The motion to intervene is pending resolution in the district court and a motion to dismiss the appeal is pending in the 10th Circuit on appeal.
- *United States v. Commonwealth of Virginia*, 3:25-cv-01067 (E.D. Va)
    - Virginia's outgoing Attorney General joined the DOJ in submitting a proposed joint consent order to declare provisions of the Virginia Dream Act, which guarantees eligible high school graduates in the Commonwealth, including undocumented individuals, in-state tuition at public higher education institutions, unlawful. The Dream Project (a Virginia-based non-profit), Virginia Students for Affordable Tuition, and two undocumented students moved to intervene in the lawsuit to defend the validity of the challenged provisions of the Virginia statute and to protect their access to education through in-state tuition rates. Virginia's newly-elected Attorney General withdrew the proposed joint

[1] Consent decrees are settlements that are entered by courts as orders. Consent degrees have a coercive effect—they are enforceable with the courts' contempt powers—in contrast to ordinary settlements, which are contracts between the two parties. Consent decrees "have attributes both of contracts and of judicial decrees . . . Because of this dual character, consent decrees are treated as contracts for some purposes but not for others." *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236 n.10 (1975). For example, by settling a case about the constitutionality of a statute, the federal government can decide to not enforce certain aspects of the statute, effectively overturning that part of the law without Congressional involvement. Similarly, the federal government may agree to interpret an agency rule in a certain way, enabling it to "make policy without any of the traditional trappings of administrative law." Simon Brewer, *The Attorney General's Settlement Authority and the Separation of Powers*, Yale L. Rev. 130, 174 (2020).

consent order before the court ruled on the pending motions to intervene. Having determined that Virginia is defending the constitutionality of the statute at issue in this case, the court dismissed as moot the motions to intervene. This case is ongoing.

2. Settle Ongoing Litigation to Advance Policy Goals

Another one of the administration's recent tactics has been to change positions so as to settle ongoing litigation—that at one time was genuinely adversarial but is not any longer—as a means to advance its favored policy positions. While some instances of settling ongoing cases are a standard practice in any administration, the Trump-Vance administration has been brazen in its use of settlements to evade separation of powers limitations and to circumvent other legal requirements. For examples, see the following cases:

- *Mid-America Milling v. U.S. Dep't of Transportation*, 3:23-cv-00072 (E.D. Ky)
    - The Department of Transportation under the Trump-Vance administration stopped defending the Disadvantaged Business Enterprise program, prompting a coalition of minority- and women-owned companies, and organizations that represent them, to move to intervene. The court has allowed the coalition to participate in the case to defend the program. This litigation is ongoing.
- *Mississippi Bankers Assoc. v. Consumer Financial Protection Bureau*, 3:24-cv-00792 (S.D. Miss.)
    - Two financial counseling and economic justice organizations moved to intervene to defend the Consumer Financial Protection Bureau's (CFPB's) "Overdraft Lending: Very Large Financial Institutions" Rule, anticipating that the Trump-Vance administration would not defend the Rule. The court permitted the organizations to intervene as defendants, but this case was later dismissed as moot after Congress overturned the rule.
- *Chamber of Commerce v. CFPB*, 4:24-cv-00213 (N.D. Tex.)
    - The Trump-Vance administration switched positions, and ceased defending a CFPB rule promulgated to curb credit card late fees. A consent judgment was entered holding the rule exceeded the CFPB's statutory authority; all other claims were dismissed.
- *National Religious Broadcasters v. Werfel*, 6:24-cv-00311 (E.D. Tex.)
    - The Trump-Vance administration switched positions and stopped defending the proposition that the Johnson Amendment to the Internal Revenue Code, which bars nonprofits from supporting or opposing candidates for elected office, applies to two specific churches. The parties proposed a consent judgment that would stipulate to jurisdiction, agree that the Internal Revenue Service would not enforce the Johnson Amendment with respect to the two plaintiff churches, and dismiss the remaining claims. Multiple third-parties filed amicus briefs and one filed a motion to intervene, which was denied. The litigation is ongoing.

3. Vacate Prior Settlement Agreements or Terminate Existing Consent Decrees

The Trump-Vance administration has also sought to terminate existing consent decrees that were intended to provide relief to the public (or, similarly, to withdraw proposed consent decrees before the court has entered a judgment). For examples, see the following cases:

- *Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc.*, No. 1:20-cv-04176 (N.D. Ill.)
    - The CFPB under the Trump-Vance administration sought to vacate a November 2024 settlement with a mortgage lender related to its practice of discouraging potential mortgage applicants on the basis of race. The court denied the motion to vacate, and the settlement remains in effect.
- *United States v. Essa Bank & Tr.*, No. 2:23-cv-02065 (E.D. Pa.)
    - The DOJ sought to vacate a consent decree that enjoined a mortgage lender from engaging in redlining practices. The court denied the motion to vacate, and the settlement remains in effect.
- *United States of America v. City of Minneapolis*, 0:25-cv-00048 (D. Minn.)
    - The Civil Rights Division of the DOJ and the City of Minneapolis jointly filed a proposed consent decree that addressed police misconduct in the Minnesota Police Department on January 6, 2025. In May 2025, the Trump-Vance DOJ reversed course, withdrew support for the consent decree, and filed a motion to dismiss the case with prejudice, which the court granted.

Many of these cases are in the realm of civil rights enforcement. A new tool, Red Line for Civil Rights (https://redlinecivilrights.org/), tracks cases involving DOJ's Civil Rights Division where the Trump-Vance administration has changed course.

III. Getting Involved in Collusive Litigation

There are two primary ways for those wanting to challenge collusive strategies to get involved in litigation: (1) move to intervene in an active lawsuit either as a plaintiff-intervenor or defendant-intervenor; or (2) file a brief as amicus curiae, likely with leave of the court.

1. Intervention

Pursuant to Rule 24 of the Federal Rules of Civil Procedure (FRCP), interested parties can intervene in ongoing litigation by motion, either as of right or permissively. The standards and relevant tests are described below.

Once an intervenor has been added to the case, they have the same procedural rights as a party. *See* 7C Wright & Miller's Federal Practice & Procedure § 1920 (3d ed. 2025). Therefore, while they cannot necessarily block a settlement among the other parties, they do have the right to raise objections to the court and to appeal to any court ruling, including a court ruling entering a consent judgment. Depending on the circumstances, intervening parties can join litigation as plaintiff-intervenors (such as in circumstances where the administration is attempting to settle in a way that reduces their statutory enforcement authority) or as defendant-intervenors (such as in circumstances where the administration is not defending an existing regulation or statute).

a. Intervention as of Right

Under Rule 24(a)(2), courts are required to permit intervention as of right where an interested party "claims an interest relating to the subject of the litigation, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect that interest," and existing parties do not adequately represent that interest. This standard mirrors that of joinder of a required party in FRCP 19(a)(1)(B)(i).[2] Courts typically focus on the "interest" and "adequacy" elements. If the court determines these elements are satisfied, then the court has no discretion—it must grant the motion to intervene.

A second, less common way to intervene as of right is to show that a party has been given an "unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). Under this subsection, intervenors need not prove any interest or lack of representation in the ongoing litigation. Instead, if the court determines that a federal statute applies, it must grant the motion to intervene.

b. Permissive Intervention

Courts may allow permissive intervention under certain circumstances even if a party does not meet the standard for intervention as of right. *See* 7C Fed. Prac. & Proc. Civ. § 1913 (3d ed.). To move for permissive intervention, a party must file a timely motion and show the party has a claim or defense that shares a common question of law or fact with the ongoing litigation. Fed. R. Civ. P. 24(b)(1)(B). The court has the discretion to deny permissive intervention if it would unduly delay or prejudice the original parties. Fed. R. Civ. P. 24(b)(3). As the requirements for permissive intervention are significantly less burdensome than for intervention as of right, litigators can request permissive intervention as an alternative if the requirements of intervention as of right are in dispute.

Example Briefs:

- Motion to Intervene filed by a group of individual disadvantaged business enterprises, and associations and organizations that represent such enterprises (motion denied), *Mid-America Milling v. DOT*, 3:23-cv-00072 (E.D. Ky.)
- Motion to Intervene filed by MyPath and Mississippi Center for Justice, financial counseling and economic justice organizations (motion for permissive intervention granted), *Mississippi Bankers Ass'n. v. CFPB*, 2025 WL 694462, at *2 (S.D. Miss. 2025)
- Motion to Intervene and Reply in Support of (ISO) Motion filed by Oklahoma Students for Affordable Tuition (awaiting ruling), *United States v. Oklahoma*, 6:25-cv-00265 (E.D. Okla.)
- Motion to Intervene, Reply ISO Motion (motion denied) and Appellate Brief, filed by Students for Affordable Tuition, *United States v. Texas*, 7:25-cv-00055 (N.D. Tex.)
- Motion to Intervene or Leave to File Amicus Brief filed by Americans United For Separation of Church and State (motion to intervene denied), *National Religious Broadcasters v. Werfel*, 6:24-cv-00311 (E.D. Tex.)

[2] *See* FRCP 24(a)(2), advisory committee's note to 1966 amendment: "The amendment provides that an applicant is entitled to intervene in an action when his position is comparable to that of a person under Rule 19(a)(2)(i), as amended, unless his interest is already adequately represented in the action by existing parties."

- Motions to Intervene filed by two student intervenors and the Dream Project, a nonprofit that supports noncitizen students in Virginia (denied as moot, following Virginia's withdrawal of support for the consent judgment), *United States v. Commonwealth of Virginia*, 3:25-cv-01067-REP (E.D. Va)

2. Filing a Brief as an Amicus Curiae

When filing a motion to intervene is impractical or denied by a court, parties can consider filing an amicus curiae brief to otherwise get involved in active litigation. Amicus briefs permit non-parties to make arguments against court-approval of collusive proposed consent orders. Filers of amicus briefs may use the opportunity to highlight the lack of adversity between parties, to provide facts or expertise otherwise absent, and to alert the court to the administration's efforts to circumvent the legal requirements of the Administrative Procedure Act, constitution, other statutes, as well as any jurisdictional defects.

Particularly in instances in which the federal government fails to oppose motions to vacate existing settlement agreements or consent decrees in collusion with the opposing party, amicus briefs can be especially useful to a court. Amici can fill the gap where the government fails to mount a vigorous defense, and explain the issues that the government did not raise when it failed to oppose the motion, or the interests that the court might not be aware of. *United States v. Essa Bank & Tr.*, 2025 WL 2087776, at *5 (E.D. Pa. July 23, 2025) (denying an unopposed motion to terminate a consent order, as "[a] court may deny an unopposed [] motion and may do so based on amici's arguments."). While amicus briefs usually require consent of the parties or approval of the court, the standards are far lower and approval to file an amicus brief is typically granted.

Example Briefs:

- Motion for Leave to file Amicus Brief (granted) and Amicus Brief filed by the Housing Equality Center of Pennsylvania, POWER Interfaith, and National Fair Housing Alliance in *United States v. Essa Bank & Tr.*, No. 2:23-cv-02065 (E.D. Pa.)
- Motion for Leave to file Amicus Brief (granted) and Amicus Brief filed by the National Fair Housing Alliance and 13 additional organizations in *Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc.*, No. 1:20-cv-04176 (N.D. Ill.)
- Motion to Intervene or Leave to File Amicus Brief (granting leave to file amicus brief instead of granting motion to intervene), Amicus Brief filed by Americans United For Separation of Church and State, and Amicus Brief filed by the Campaign Legal Center in *National Religious Broadcasters v. Werfel*, 6:24-cv-00311 (E.D. Tex.)

IV. Conclusion

The Trump-Vance administration's use of collusion as a litigation tactic represents a threat to democratic accountability and the separation of powers. But these efforts are vulnerable to challenge when litigators move quickly, intervene strategically, and highlight the constraints that limit the executive's ability to make policy through manufactured litigation.