DEMOCRACY FORWARD

TO: Interested Parties
FROM: Democracy Forward
DATE: October 15, 2025
RE: Weaponizing the Courts: Trump-Vance's Collusive Settlement Strategy

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The Trump-Vance administration has escalated its use of "collusive settlements," or "sue and settle" cases. Rather than resolving genuine legal disputes, the administration manufactures lawsuits to bypass normal processes and impose extreme policy changes.

This playbook can be hard to spot in real time, but its mechanics are straightforward.

Here's how it typically works:

The federal government identifies a priority issue and a hand-picked "opponent," often a conservative-leaning state or industry ally, to challenge a law or policy in a court likely to be sympathetic to their cause. The case is then swiftly resolved through a prearranged settlement that locks in their shared agenda and is rubber-stamped by the court, often within hours or days of filing, all without meaningful scrutiny or opposition.

Simply put, the parties were never true adversaries; they conspired to secure a predetermined outcome from the courts.

For example, states across the country, including red ones, have enacted laws granting in-state tuition to certain undocumented students, recognizing that an educated, well-trained workforce strengthens communities and the economy. Yet under President Trump's anti-immigrant agenda, some of those same states are now turning to collusive settlements. Below we expose attempts in Texas and Oklahoma to roll back these policies—measures too popular to repeal legislatively and too firmly grounded in law to defeat through genuine, adversarial litigation.

From Critics to Champions

Administrations of both parties have employed this tactic to some degree. But the Trump-Vance administration has expanded its use across issue areas and turbocharged it through judge shopping, demonstrating how prepared the administration was from day one to weaponize legal tools in service of its ideological agenda.

Ironically, conservative groups now benefiting from this tactic once railed against the Obama administration for allegedly encouraging liberal groups and Democratic state attorneys general to sue agencies like the Environmental Protection Agency (EPA). At the time, and again during the Biden administration, conservatives argued that "sue and settle" skirts congressional oversight and runs afoul of the Administrative Procedure Act—the statute designed to ensure transparency, accountability, and public participation in agency rulemaking. Even the Heritage Foundation derided the practice as "regulation through sham litigation" and later called for a pause and review of all "sue and settle" EPA related cases in its Project 2025 plan, outlining this as part of its day-one agenda.

Now, in this Trump administration, the strategy's reach has expanded well beyond environmental policy and routine agency rulemaking. It is being deployed aggressively in a wide-range of cases involving in-state tuition benefits, political endorsements, access to federal funding, vaccines, consumer rights, and other core pillars of democracy, allowing the administration and its allies to reshape the law in their favor while sidestepping normal checks and balances.

The Cost of Collusive Settlements

The Supreme Court has repeatedly held that lawsuits like these violate Article III of the Constitution, which requires an actual "case or controversy" before a court can assert jurisdiction—let alone approve a settlement. These manufactured lawsuits are designed not to resolve real disputes but to orchestrate predetermined outcomes that bypass fair and open litigation, undermine the rule of law, and inflict serious harm on both communities and democratic institutions. Circumventing democratic processes like legislation and rulemaking silence the voices of those impacted and erode public trust in the judiciary

Challenging the Harm

Right now, the most effective way to disrupt this practice is intervention by counsel representing those directly harmed, an approach Democracy Forward Foundation and other public-interest legal partners have taken and will continue to pursue. In addition, the pro-democracy community can leverage tools such as Freedom of Information Act (FOIA) requests, similar state transparency laws, and public pressure campaigns to expose and challenge collusive settlements spotlighting cases where there is forum shopping, judge shopping, or near-instant settlements approved by the courts. Ultimately, however, lasting reform may require legislative and judicial action to end this abuse of process for good.

Uncovering Collusive Settlements Under the Trump-Vance Administration

Collusive settlements can be difficult to spot as they unfold. What's clear is that the Trump-Vance administration and its allies are leveraging collusive settlements, recent examples of the impact of the strategy include:

Revoking Access to In-State Tuition Benefits for Dreamers

United States v. Texas and *United States v. Oklahoma*

In *United States v. Texas*, the Department of Justice (DOJ) sued the state over its decades-old Dream Act—which grants in-state tuition to undocumented students—just days after opponents failed to repeal the law in the Texas Legislature.[1] DOJ argued that the law violated 8 U.S.C. §

1623(a),[2] which prohibits undocumented immigrants from receiving education benefits on the basis of residence within a state, unless those benefits are available to U.S. citizens and nationals without regard to residence. The case was filed in the Northern District of Texas' Wichita Falls Division, one of the few remaining "single-judge" divisions in the country, where all cases are assigned to Judge Reed O'Connor. A mere six hours after the case was filed, the parties settled, and Judge O'Connor permanently enjoined Texas from enforcing the law.[3]

The Texas Civil Rights Project, Democracy Forward Foundation, American Civil Liberties Union (ACLU) of Texas, National Immigration Law Center, and the Dallas-based firm of Lynn Pinker Hurst & Schwegmann filed a motion in June to intervene to defend the constitutionality of the Texas Dream Act on behalf of La Unión del Pueblo Entero (LUPE), the Austin Community College District's Board of Trustees (ACC), and college graduate student Oscar Silva.

Despite the evidence of collusion in this case, on August 15, Judge O'Connnor denied interested parties the opportunity to intervene. In opposing the intervention, Texas argued that it would be prejudiced if the proposed intervenors "were permitted to swoop in at the eleventh hour," despite the rapid pace at which this collusive settlement unfolded.[4] Judge O'Connor ultimately ruled that intervention should be denied because it would be "legally futile" because the Texas provision at issue is expressly preempted by federal law.[5] That ruling is now on appeal.

In a case strikingly similar to *Texas*, DOJ recently sued[7] Oklahoma over a law[8] that allows undocumented Oklahoma residents to receive in-state tuition. DOJ repeated its argument from *Texas* that Oklahoma's law is preempted by 8 U.S.C. § 1623(a).[9] DOJ also asserted that Oklahoma's law is preempted by 8 U.S.C. § 1621(d),[10] which prohibits undocumented immigrants from receiving any state or local public benefit unless the law conferring the benefit was passed after August 22, 1996. Just like *Texas*, this case is moving quickly. The same day the complaint was filed, the parties filed a Joint Motion for Entry of Consent Judgment[11] that would prohibit Oklahoma from enforcing the law. Two days later, on August 7, 2025, the magistrate judge, to whom the case was referred with both parties' consent, recommended to the district court the Motion be granted.[12] The court granted the Motion on August 29, 2025.[13]

If these settlements stand, thousands of students who were relying on in-state tuition to access educational opportunities and contribute to their communities will suddenly be scrambling to pay. Many will almost certainly leave school instead, harming them, their families, and the entire economy.

Revoking the Disadvantaged Business Enterprise Program
Mid-America Milling Company v. U.S. Department of Transportation[14]

Through this collusive settlement, the Trump-Vance Administration is trying to end programs that support women- and minority-owned businesses, stripping communities of wealth-building opportunities and flipping the Constitution on its head in the process.

In this case, a construction company and a trucking company, represented by the far right Wisconsin Institute for Law & Liberty, argued that the Department of Transportation's long-standing Disadvantaged Business Enterprise (DBE) program is unconstitutional and discriminatory.[15] When the suit was first filed in 2023, the federal government adamantly defended the program, just as it had for over 40 years in other litigation during bipartisan administrations–and those cases found no constitutional issue with the program. Just hours after President Trump took office in January 2025, however, he issued two executive orders that suggested the administration might change its position on the program's constitutionality.[16] A group of DBEs and their trade organizations, represented by Democracy Forward Foundation and the Minority Business Enterprise Legal Defense and Education Fund, moved to intervene to defend the validity of the program.

The court granted the DBEs groups' motion to intervene in May 2025. Just one week later, the government and plaintiffs filed a sweeping Proposed Consent Order[17] that would essentially gut the DBE program and hamper efforts to help level the playing field for contractors hoping to secure federal surface transportation contracts. The proposal echoed language used by plaintiffs' counsel Wisconsin Institute for Law & Liberty, which--just days before inauguration--had publicly called on the incoming Administration to settle the case and "root out DEI from the federal bureaucracy."[18] The DBEs opposed the Proposed Consent Order, arguing that it is merely an effort to circumvent the judicial process to permanently kneecap the program. The litigation remains pending.

If the DBE program is shuttered, countless minority-owned businesses will miss out on opportunities to compete for federal funding. These businesses have been historically overlooked, and this program provides them with a meaningful opportunity to compete.

Eroding the Separation of Church and State

National Religious Broadcasters v. Long[19]

The administration is also using this tactic to erode the separation of church and state, making it easier for tax-exempt religious organizations to engage in partisan politics.

In this case, the Internal Revenue Service (IRS) proposed a collusive settlement that will allow churches and other religious entities to endorse political candidates.[20] The settlement allows the IRS to interpret the 1954 Johnson Amendment, which prohibits 501(c)(3) organizations from engaging in political campaigns in favor of or in opposition to any political candidates, as unconstitutionally restricting these entities' speech, threatening the separation of church and state. Notably, however, non-religious nonprofit organizations would still be bound by the Johnson Amendment. Moreover, the Johnson Amendment has long been understood to protect religious liberty by limiting the corrupting influences of politics on religion.[21] In the proposed settlement, the parties request "declaratory relief that the Johnson Amendment unconstitutionally prohibits § 501(c)(3) organizations from engaging in political speech and injunctive relief to prohibit enforcement of the Johnson Amendment insofar as it operates to prohibit political speech."[22] Americans United for Separation of Church and State[23] and Campaign Legal Center[24] have filed amicus briefs opposing the proposed settlement, which the court has not yet ruled on.

If this settlement is allowed to stand, houses of worship will be granted the ability to endorse political candidates, while other 501(c)(3) organizations will continue to be prohibited from doing so. This creates an unfair opportunity for religious entities to make political endorsements and further degrades the separation of church and state in America.

Attacking Public Health Safeguards

Flores II v. Kennedy, Jr.[25]

Health and Human Services Secretary Robert F. Kennedy Jr. has launched a full-scale assault on public health, from undermining vaccine confidence and shuttering key divisions to ousting subject-matter experts over policy and political disputes.

Children's Health Defense (CHD), founded by Kennedy himself, recently filed a lawsuit against HHS and Kennedy for "failing to establish a task force dedicated to making childhood vaccines safer, as mandated by federal law."[26] The connection between Kennedy and CHD raises obvious concerns: the group even admitted, "it may appear as though we are being unfriendly to Mr. Kennedy. On the contrary, we're helping him to have an excuse to do his job." On August 14, HHS announced it would reinstate the Task Force on Safer Childhood Vaccines, and the case was dismissed the very next day.

While the settlement merely reinstated a mandated task force, the fact that Robert F. Kennedy Jr.'s HHS is collaborating with right-wing entities to push his antivaccine agenda is troubling, and fits with his broader attacks on our public health systems.

Rolling Back Consumer Protections

CFPB and Navy Federal Consent Order[27]

In a twist on the typical, affirmative collusive settlement, the Trump-Vance Consumer Financial Protection Bureau (CFPB) recently terminated a number of consent orders that helped consumers. One of these consent orders was entered into in 2024 with Navy Federal Credit Union and provided direct relief to consumers for the unlawful collection of $80 million in overdraft fees, as well as a $15 million penalty.[28] The termination waives "any alleged noncompliance."[29] This collusive action will directly harm consumers who, under the consent decree, were set to receive more than $80 million in redress as compensation for Navy Federal's unlawful actions. Those consumers had no opportunity to be heard in this process and, because the settlement was entered as an administrative consent order, the CFPB was able to terminate this order unilaterally – with no public hearing or judicial approval.[30]

The termination of this order means that members of the public who were entitled to relief under the original consent order will lose out on over $80 million in compensation–money they never should have lost in the first place.

Endnotes

1. Since passing the law, Republican state lawmakers have filed at least 15 bills to undo the state law, per What to know about Texas ending in-state tuition for undocumented students.
2. Complaint, *Texas*, 7:25-cv-00055 (N.D. Tex.), at ECF No. 1.
3. Order and Final Judgment, *Texas*, 7:25-cv-00055 (N.D. Tex.), at ECF No. 8.
4. Response/Objection, *Id.* at ECF No. 50. Judge O'Connor did not address the timeliness argument in his order.
5. Order on Motion to Intervene, *Id.* at ECF No. 88.
6. Order on Motion to Stay. *Id.* at ECF No. 96.
7. Complaint, *Id.* at ECF No. 2.
8. Okla. Stat., tit. 70, § 3242*;* Oklahoma State Regents for Higher Education Policy § 3.18.6.
9. 8 U.S.C. § 1623.
10. 8 U.S.C. § 1621(d).
11. Joint Motion for Entry of Consent Judgment, *Oklahoma*, 6:25-cv-00265, at ECF No. 9.
12. Report and Recommendation, *Oklahoma*, 6:25-cv-00265 at ECF No.11.
13. *Id.* at ECF No. 23.
14. *Mid-America Milling Company v. U.S. Department of Transportation*, 3:23-cv-00072, (E.D. Ky.).
15. Complaint, *Id.* at ECF No. 1.
16. Exec. Order No. 14,151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8339 (Jan. 29, 2025). Exec. Order No. 14,173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 31, 2025).
17. Proposed Consent Order, *Id.* at ECF No. 82.
18. Wis. Inst. for L. & Liberty ("WILL"), Roadmap to Equality—Terminate, Settle, Investigate: Dismantling the "Equity Agenda," at 2-3 (Feb. 7, 2025), https://perma.cc/8QBN-6YUY ("WILL Feb. 7"), updated March 2025, https://perma.cc/Z5A2-2XZN ("WILL March 2025").
19. Joint Motion for Entry of Consent Judgment, *National Religious Broadcasters v. Werfel*, 6:24-cv-00311, (E.D. Tex. Jul 07, 2025) ECF No. 35.
20. Plaintiffs filed their complaint in 2024, during the Biden-Harris administration. The Biden-Harris administration was litigating the action in an adversary manner, while the Trump-Vance administration has taken a collusive approach in pursuing the proposed settlement.
21. Brief of *Amicus Curae* Americans United for Separation of Church and State in Opposition to Joint Motion for Entry of Consent Judgment, *Id.* at ECF No. 48.
22. *Id.* at ECF No. 35.
23. *Id.* at 9.
24. Brief Amici Curiae Campaign Legal Center, Public Citizen, and Common Cause Opposing the Parties' Joining Motion for Entry of Consent Judgment, *Id.*
25. Complaint for Declaratory Relief for Violations of the National Childhood Vaccine Injury Act of 1986, *Flores II v. Kennedy, Jr.* 2-25-cv-00916 (D. Nev.), at EFC No. 1.
26. Anti-vaccine group that Robert F. Kennedy Jr. Founded files lawsuit against him over vaccine safety task force.
27. Order Terminating Navy Federal Consent Order, *In the Matter of: Navy Federal Credit Union*, File No. 2024-CFPB-0014.
28. Navy Federal Credit Union Consent Order, *Id.*
29. Order Terminating Navy Federal Consent Order, *Id.*
30. This is just one example of an agency engaging in a collusive settlement by terminating a consent order. This practice persists across agencies throughout the Trump-Vance administration.