Opening Statement – Chairman Gary Palmer

Subcommittee on Intergovernmental Affairs
Subcommittee on Interior, Energy, and Environment
Examining "Sue and Settle" Agreements: Part II
Tuesday, July 25, 2017

Good morning. This hearing is the second part of a set of hearings to examine the impact of certain federal settlements referred to as "sue and settle."

The "sue and settle" phenomenon refers to a process where an outside group will sue a federal agency, state, or local government for an alleged violation of federal law or constitutional right.

The parties will often choose to settle by entering into a consent decree agreement rather than face a long and costly trial.

These legally-binding consent decree agreements are then approved by a judge and enforceable by contempt, and can only be modified by court order.

Consent decrees can last for decades and end up costing more than if the parties had gone to trial.

Because parties can use consent decrees to set provisions that extend beyond the scope of the original violation of law, they have become an effective tool to circumvent policymaking by elected representatives in order to push a political agenda across governmental institutions.

These actions place an enormous burden on states, local governments, industry stakeholders, and taxpayers, who may be shut out of the negotiations but are left to foot the bill.

Under the threat of enforcement by contempt charge, state budgets are being reorganized. Local governments across the country are spending multiple decades and billions of dollars to comply with impossible mandates through never-ending federal oversight. Penalties for the inevitable violation of decrees redirect funds from these communities to Washington.

Worse, some feel afraid to speak to Congress about what they are experiencing. Multiple state and local leaders cited fear of political retaliation from federal court monitors if they were to appear to testify before the Committee on this issue.

This is unacceptable and a threat to the principles of Federalism. Unfortunately, I have witnessed this firsthand in my home state of Alabama. I watched as a consent decree between Jefferson County and the Environmental Protection Agency ballooned from $1.5 billion dollars in estimated cost to over $3 billion to address the storm issue in Jefferson County.[1]

Sewer rates quadrupled over four years in order to pay for the project[2], and Jefferson County became the nation's largest municipal bankruptcy case in history, until Detroit filed in 2013.[3]

Because of incomplete data and a lack of proper categorization, we are unable to fully evaluate the total amount taxpayers spend as a result of collusive settlement agreements. For example, in my previous experience leading an Alabama think tank, I was unable to obtain a

[1] http://www.businessinsider.com/the-incredible-story-of-the-jefferson-county-bankruptcy-one-of-the-greatest-financial-ripoffs-of-all-time-2011-10

[2] http://www.businessinsider.com/the-incredible-story-of-the-jefferson-county-bankruptcy-one-of-the-greatest-financial-ripoffs-of-all-time-2011-10

[3] https://www.forbes.com/sites/danalexander/2013/12/05/biggest-bankruptcy-before-detroit-alabama-county-stages-comeback/#3bce8c4cc427

complete list of all federal consent decrees that apply to the State from the Department of Justice because of inadequate recordkeeping.
This lack of transparency limits our constitutional duty to conduct oversight of the management of taxpayer resources.
It is time for the federal government to move away from emphasizing its role as prosecutor or political monitor and return to serving as the American people's partner in setting priorities that best represent their interest.

Recently, Congressman Doug Collins introduced the *Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2017,* to increase transparency and public engagement by ensuring opportunity for public notice and comment on consent decrees and other settlement agreements.

I thank Congressman Collins for his leadership on this issue. I look forward to exploring additional solutions with our panel today.