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Biden Interior Department Revokes Trump-era Transparency Order

Interior Secretary Deb Haaland on Friday revoked a 2018 order requiring her department to post details of its legal settlements online so the public can see if officials are colluding with special-interest groups to advance the latter's agenda via the courts.

In her [order](#), Haaland claimed the Trump-era policy mandated “unnecessary and inefficient practices” that “fail[ed] to enhance transparency and impose[d] burdensome requirements that are inconsistent with the department's legal obligations.”



AP Images
Deb Haaland

According to the [2018 order](#), those practices included “establish[ing] a publicly accessible ‘Litigation’ webpage that is prominently linked to the Office of the Solicitor's homepage” and includes “a searchable list of final judicial and administrative consent decrees and settlement agreements ... that continue to govern departmental actions.” The list was also to show “any attorney fees or costs paid” in settling each case.

The Litigation page was further required to display proposed consent decrees and settlements “with certain long-term policy implications or large budgetary commitments” and give the public an opportunity to comment before such agreements were approved.

The purpose of the order was to put an end to so-called sue and settle actions, which the [U.S. Chamber of Commerce](#) described thus:

“Sue and Settle” refers to when a federal agency agrees to a settlement agreement, in a lawsuit from special interest groups, to create priorities and rules outside of the normal rulemaking process.

The agency intentionally relinquishes statutory discretion by committing to timelines and priorities that often realign agency duties. These settlement agreements are negotiated behind closed doors with no participation from the public or affected parties.

On top of that, the agency often agrees to pay a plaintiff's legal costs, enabling the interest group to file yet another suit to get more of its agenda enacted behind the scenes.

The [Daily Caller](#) reports:

“The American people need to know what kinds of agreements are being made and what kinds of monies are being spent on the public's behalf,” William Perry Pendley, the former director of the Bureau of Land Management between 2019 and 2021, told The Daily Caller



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News Foundation. There are former environmental group staffers that now work in the Biden administration and there needs to be transparency of possible “deals” happening behind closed doors, said Pendley.

“You have the ethical problem with [government officials] on the inside now making deals with their former colleagues and not telling anybody about it,” said Pendley. “There is money going to groups that are turning around and using that money to fund litigation to again sue their former colleagues who are now in office.”

The Trump-administration order claimed that over a five-year period in the Obama administration, the Interior Department entered into “over 460 settlement agreements and consent decrees” and disbursed “more than \$4.4 billion in monetary awards.”

Interior wasn’t alone in engaging in such shenanigans. Then-Environmental Protection Agency (EPA) administrator Scott Pruitt issued a [memo](#) in 2017 saying the sue-and-settle tactic “undermines the fundamental principles of government.”

“Sue and settle has been adopted to resolve lawsuits through consent decrees in a way that bound the agency to judicially enforceable actions and timelines that curtailed careful agency consideration,” he wrote. “This violates due process, the rule of law, and cooperative federalism.”

He directed the EPA to “avoid inappropriately limiting the discretion that Congress authorized the agency, abide by the procedural safeguards enumerated in the law, and resist the temptation to reduce the amount of time necessary for careful agency action.”

Not surprisingly, the Biden administration [revoked](#) Pruitt’s policy, too.

Given the differing approaches to the matter by the two administrations, it seems clear that interest groups aligned with the Democratic Party are benefiting most from sue-and-settle. However, as Michael Chamberlain, director of government watchdog Protect the Public’s Trust, told the Daily Caller, “There is this potential for abuses whether it’s a Republican or Democratic administration.”

“If the department is able to just act with its allied groups and just roll over and give them what they want, they’re making an end [run] around the normal channels,” he added. “They can’t get [policies] through Congress, they can’t get [them] through the regulatory approach, but they can get [them] through the courts, so this way, the potential for abuse is tremendous.”



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