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ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON THE JUDICIARY

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May 25, 2017

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Attorney General Sessions,

In 2013, a shocking *New York Times* exposé revealed that the Obama Administration bilked over a billion dollars from the taxpayer-funded Judgment Fund and handed it to special interests. Now, the Trump Administration may have an opportunity to claw back \$380 million for taxpayers, but it must act fast.

The vehicles for this giveaway were parallel, weak cases alleging bias by the Department of Agriculture. As told by the *Times*, in 2010, after a decade of fighting a discrimination class action, "Justice Department lawyers seemed to have victory within their grasp." A "succession of courts — and finally the Supreme Court" had rebuffed the plaintiffs. But then, "political appointees . . . engineered a stunning turnabout: they committed \$1.33 billion to compensate . . . thousands of Hispanic and female farmers who had never claimed bias in court." According to the *Times* investigation, the deal "was fashioned in White House meetings despite the vehement objections . . . of career lawyers . . . who had argued that there was no credible evidence of widespread discrimination."<sup>1</sup>

The government's statistical expert from UC Berkeley told the *Times* regarding the parallel *Keepseagle* case, "[i]f they had gone to trial, the government would have prevailed . . . . It was just a joke . . . . I was so disgusted. It was simply buying the support of the Native-Americans."

The plaintiffs' lawyers in *Keepseagle* were compensated based on the size of the purported settling class. The plaintiffs' lawyers self-servingly estimated that there were 19,000 claimants; the government predicted 5,300. Nevertheless, the government entered into a settlement based on the estimate of the plaintiffs' lawyers. As a result, plaintiffs' attorneys collected \$60.8 million in fees. Just a year before, the lead plaintiffs' attorney, Joseph Sellers, had served on President Obama's 2008 transition team.

<sup>1</sup> Sharon LaFraniere, *U.S. Opens Spigot After Farmers Claim Discrimination*, N.Y. TIMES (Apr. 25, 2013).

In the end, there were just 4,400 claimants – fewer than even the government had estimated – and \$380 million left over. This was taxpayer money, but instead of demanding it back, DOJ agreed to direct it to non-victim third-parties. This troubled the presiding judge:

\$380,000,000 of taxpayer funds is set to be distributed inefficiently to third-party groups that had no legal claim against the government. Although a \$380,000,000 donation by the federal government to charities . . . might well be in the public interest, the Court doubts that the judgment fund from which this money came was intended to serve such a purpose. The public would do well to ask why \$380,000,000 is being spent in such a manner.<sup>2</sup>

In a May 16, 2017 decision, the U.S. Court of Appeals for the D.C. Circuit rejected a private party's challenge to this payment. However, in a dissent, one of the judges provided a roadmap for the Trump Administration to recover the money:

[T]he Justice Department should consider a motion under Federal Rule of Civil Procedure 60(b)(4) to strike the *cy pres* provisions within the settlement agreement as void. . . . [The motion] is not subject to the finite time constraints restricting other Rule 60(b) motions. . . . This should not affect the settlement agreement's applicability between the class members and the United States . . . . The Justice Department can argue . . . that the Executive Branch lacked the constitutional and statutory authority to enter into these *cy pres* provisions. It cannot be required to continue to ask the judiciary to approve and police a *cy pres* distribution scheme that violates the Appropriations Clause and Article III limitations.<sup>3</sup>

The opinion closed with the observation that the “conduct of those in this case proves how little the Constitution will matter when good character ceases to be informed by adherence to one's oath of office, and is primarily defined by how generous you are willing to be with someone else's money.”

These settlements were an abuse of the discretion that Congress granted DOJ in creating the Judgment Fund. The Obama Justice Department disrespected millions of American taxpayers by blithely spending their hard-earned dollars on a Department-engineered windfall for special interests masquerading as a settlement. I ask that you consider whether the *Keepseagle* case presents an opportunity to reverse some of the damage wrought by your predecessors.

Sincerely,



Bob Goodlatte  
Chairman

<sup>2</sup> *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 101, 104 (D.D.C. 2015).

<sup>3</sup> *Keepseagle v. Perdue*, No. 16-5189, slip op. at 73-74 (D.C. Cir. May 16, 2017) (Brown, dissenting).