



THE BUCKEYE INSTITUTE

The Buckeye Institute Testifies Before Congressional Committee

June 6, 2023

Columbus, OH – On Tuesday, The Buckeye Institute testified ([download a PDF](#)) before the U.S. House of Representatives Subcommittee on the Constitution and Limited Government, a subcommittee of the U.S. House Judiciary Committee.

In his testimony, Andrew M. Grossman, a senior legal fellow at The Buckeye Institute, highlighted the “use and abuse of ‘sue and settle’ tactics in litigation against the government,” which Grossman noted, “seeks to compel [federal] agency action, set agency priorities, and (in some instances) influence the content of regulations or other agency actions.”

Noting that the federal regulators are sometimes “only too happy to face collusive lawsuits by friendly ‘foes,’” Grossman told the Subcommittee that the U.S. Environmental Protection Agency entered into “more than sixty such settlements” in the first term of the Obama Administration alone, forcing the EPA to publish more than one hundred new regulations “at a cost to the economy of tens of billions of dollars.” Upon entering office, Grossman noted that the Trump Administration ended the abuse of sue and settle, declaring, “The days of regulation through litigation are over.” Unfortunately, the Biden Administration quickly revived the practice.

Grossman went on to outline “common-sense reforms” that Congress can adopt to “provide for transparency and accountability in settlements and consent decrees,” recommendations which were “reflected in the Sunshine for Regulatory Decrees and Settlements Act.” Grossman also urged Congress to consider a more comprehensive approach that “limits the ability of third parties to compel Executive Branch action” and would ensure that “the public interest” wasn’t subordinated to “special interests.”

Congress isn’t the only government institution that can act. Grossman recommended the Department of Justice readopt the Meese Policy. Named after Edwin Meese III, U.S. attorney general under President Ronald Reagan, the policy addressed the “fundamental problem of sue and settle” and “block[ed] agencies from relinquishing their discretionary authority to outside groups.” Grossman noted, “An administration that embraces the Meese Policy will benefit from greater flexibility, improved transparency, and, ultimately, better policy results.”

In closing, Grossman reminded the Subcommittee that “collusive settlements that govern the federal government’s future actions raise serious constitutional and policy questions” and “evade democratic accountability.”

In addition to serving as a senior legal fellow at Buckeye, Grossman is an adjunct scholar at the Cato Institute and a partner in the Washington, D.C., office of Baker & Hostetler LLP.