



## Justice Department Ends Diversion of Federal Settlements to Left-Wing Groups

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On Monday, U.S. Attorney General Jeff Sessions [prohibited](#) Justice Department lawyers from diverting legal settlement funds to special interest groups outside the government that were neither victims of any wrongdoing, nor parties to such lawsuits. As the Cato Institute's Walter Olson [notes](#), "This is terrific news and a major step forward in [respecting] the constitutional separation of powers."

Sessions' [June 5 memo](#) ends a practice frequently used by Obama administration officials to circumvent the constitutionally-mandated appropriations process and dole out money to their political allies. Beneficiaries have [also included](#) "advocacy groups," "legal aid programs, law schools, and an assortment of other causes that [legislatures](#) and their appropriations committees have shown no interest in funding."

As Attorney General Sessions [noted](#), "unfortunately, in recent years the Department of Justice has sometimes required or encouraged defendants to make these payments to third parties as a condition of settlement. With this directive, we are ending this practice and ensuring that settlement funds are only used to compensate victims, redress harm, and punish and deter unlawful conduct."

By enabling government officials to reward and financially strengthen their political allies, diversions of settlement funds created a political imbalance that undermined democracy. [State attorneys general](#) have also diverted government settlement funds to political allies. "With control over big money flows," Olson [noted in 2015](#), "smart AGs can populate a political landscape with grateful allies." The Obama administration similarly "came under [justified criticism](#) for using the mortgage settlement to [funnel tens of millions of dollars](#)" to predominantly "left-leaning community-organizing groups."

As we [noted in 2011](#), the Obama administration sued many banks for discrimination (including banks accused of "racially disparate impact" for using commonplace, colorblind lending policies), and then diverted settlement funds to left-wing groups allied with it:

Fearing bad publicity from being accused of “racism”, banks have paid out millions in settlements after being sued by the Justice Department, even though they would probably prevail before most judges if they aggressively fought such charges (although doing so would probably cost them millions in legal fees). A Michigan judge called one proposed settlement “[extortion](#).” These settlements provide cash for “[politically favored 'community groups'](#)” allied with the Obama Administration, and the [*Wall Street Journal*]’s Mary Kissel predicts that “many” of the loans mandated by these settlements “[will eventually go bad](#).”

The banks accused of “racism” by the Obama administration include banks that were previously praised by non-political government agencies for their success in minority outreach and lending to minorities in regions in which they did business. For example, the Obama administration is suing Cardinal Financial Corp., even though “[the FDIC in the past gave kudos to Cardinal for its lending practices](#). [The Department of] Justice [later accused] Cardinal of failing to open branches and achieve racial loan quotas in counties that its federal regulator never before contended should be the focus of its lending,” arguing that it was not enough for the bank to make loans to minority applicants who applied for loans, and that it had an affirmative duty to open new branches in heavily-black areas it had never done business in before.

The Obama administration also paid left-leaning [trial lawyers countless millions of dollars to settle baseless](#) “disparate impact” lawsuits brought against government agencies by minority plaintiffs, even after federal judges expressed skepticism about those very lawsuits, suggesting that they were meritless.

Left-wing groups have also profited from class-action settlements. Under a practice known as *cy pres*, state judiciaries have [given](#) large amounts of money from class-action settlements to left-wing groups. *Cy pres* awards are supposed to go to groups with some relationship to the interests of members of the class, but all too often, the relationship is minimal or absent. As I [noted in the Washington Post in 2007](#), California state judges have used “class-action settlements for ideological purposes. Settlements intended to benefit consumers get paid instead to groups that lobby for affirmative action, hate-crimes laws, undocumented immigrants and public funding for abortion, even though many consumers have no interest in such political causes.”

State judges have also effectively diverted money to themselves and their friends. As CEI’s Ted Frank [noted](#) in 2015 testimony to Congress, “In a mass-tort inventory settlement of fen-phen cases in Kentucky, tens of millions of dollars intended for plaintiffs was diverted to a newly created charity, where the judge who approved the settlement and three of the plaintiffs’ attorneys sat as board members, each receiving tens of thousands of dollars for their service. The settlement also provided a million dollars to the alma mater of one of the trial lawyers, which then hired the attorney for a \$100,000/year no-show job.”

Federal courts have also diverted money from class-action settlements to improper beneficiaries or completely-unrelated purposes. “In one notorious case,” in Puerto Rico [cited](#) by Ted Frank, “a judge directed *cy pres* to an animal-rights group in a class action over a hotel fire.” In 2007, the *Washington Post* published a [story about](#) how New York federal judge Harold Baer gave money from a class-action lawsuit by models alleging they were ripped off by agencies to

programs for women with eating disorders. As the *Post* noted, federal judges have repeatedly used such settlements for purposes unrelated to the underlying lawsuit, giving the money to “[religious organizations](#),” “law schools,” and other organizations that “[hire lobbyists](#)” to influence judges.