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S. 3050

November 16, 2016

UNINTENDED CONSEQUENCES OF THE STOP SETTLEMENT SLUSH FUND BILL TO STATE ENVIRONMENTAL AND NATURAL RESOURCES AGENCIES

IN THE SENATE OF THE UNITED STATES

JUNE 10, 2016

Mr. LEE, Mr. CRUZ, and Mr. CORNYN introduced the following bill; which was read twice and referred to the

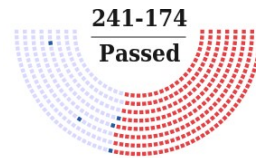
BY WHYTNI WILLIS

On September 7, 2016, the House of Representatives voted 241-174 to pass the Stop Settlement Slush Funds Act of 2016 (H.R. 5063).[i] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn1) This bill prevents the government from entering into settlements providing for payments to anyone except the government itself unless the payments represent restitution for harm caused directly by the payer.[ii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn2) In other words, this bill will bar the Department of Justice (DOJ) from requiring settling defendants to donate money to third parties.[iii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn3)

Congressman Bob Goodlatte (R-Va.) introduced the bill in April claiming that he wants to stop the DOJ's pattern of systematically subverting Congress' budget authority by using settlements from financial institutions to funnel money to left-wing activist groups.[iv] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn4) Congressman Goodlatte states that this bill will ensure that settlement money either goes directly to victims or to the Treasury for elected representatives to decide how to best allocate the money.[v] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn5)

The day before the House passed the bill, President Obama made it clear that he strongly opposes the bill through a statement of administration policy, which stated that the bill is "unnecessary and would harm the public interest." [vi] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn6) The statement of administration policy also stated that if the bill makes it to President Obama, his senior advisors will recommend that he veto the bill.[vii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn7)

The Senate version of the bill has been referred to the judiciary committee.[viii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn8) Members of state environmental regulatory agencies, law enforcement, and prosecutors wrote a letter to congressional and judiciary committee leaders to express their concerns with the bill.[ix] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn9) The writers of the letter are concerned that the bill would prevent state environmental agencies from receiving funding for and participating in supplemental environmental projects and natural resource damages projects.[x] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn10) Over the years, the supplemental environmental projects have helped to benefit local communities by offering environmental violators the opportunity to mitigate their harmful actions by improving, enhancing, and protecting the local environment.[xi] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn11)



Similarly, damages have been recoverable where natural resources have been injured.[xii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn12) Where possible, the natural resource damage funds are used to repair the damaged resource, and when complete restoration is not possible, the funds are used to protect and restore other natural resources in the area, which aids the communities where those natural resources are located.[xiii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn13) However, this bill could inhibit the use of funds to effect these outcomes.[xiv] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn14)

The reasons behind the bill appear to be legitimate and the bill itself seems to be valuable. However, it would be beneficial to both environmental and natural resource agencies if the legislation ensured that these types of state agencies are exempt from the prohibitions. These state agencies have long relied on these funds, therefore an exemption would prevent the consequence of cutting off the funds.[xv] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn15) In conclusion, the legislature should look for a more mindful way to draft the prohibition to get directly at the concerns of Congress without indirectly preventing beneficial environmental and natural resource outcomes.[xvi] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_edn16)

[i] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f1) JV DeLong, *Settlements and Slush Funds*, Forbes (Sept. 11, 2016, 3:30 PM), <http://www.forbes.com/sites/jvdelong/2016/09/11/settlements-and-slush-funds/#3d7b797117ec> (<http://www.forbes.com/sites/jvdelong/2016/09/11/settlements-and-slush-funds/#3d7b797117ec>).

[ii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f2) *Id.*

[iii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f3) Beth Breeding, *Goodlatte Introduces Bill to Halt DOH Slush Fund Money to Activist Groups*, Congressman Bob Goodlatte (April 27, 2016), <http://goodlatte.house.gov/news/documentsingle.aspx?DocumentID=571> (<http://goodlatte.house.gov/news/documentsingle.aspx?DocumentID=571>).

[iv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f4) *Id.*

[v]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f5) *Id.*

[vi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f6) Anna Giaritelli, *Obama would Veto GOP's Anti-Slush Fund Bill*, Washington Examiner (Sept. 6, 2016, 8:34 PM), <http://www.washingtonexaminer.com/omb-obama-would-veto-gops-anti-slush-fund-bill/article/2601123> (<http://www.washingtonexaminer.com/omb-obama-would-veto-gops-anti-slush-fund-bill/article/2601123>).

[vii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f7) *Id.*

[viii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f8) Stephen Lee, *States Lobby Against Slush Fund Bill in Senate*, BNA (Sept. 14, 2016), <http://www.bna.com/state-groups-lobby-n57982077004/> (<http://www.bna.com/state-groups-lobby-n57982077004/>).

[ix]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f9) Alexandra Dunn, Doreen Harr, Geary Allen, James Triner, & Lynn Cassidy, *RE: Stop Settlement Slush Funds Act Concerns*, (Sept. 14, 2016), http://www.ecos.org/wp-content/uploads/2016/09/9_14_16-ECOS-Regional-Associations-Letter-of-Concern-w-Slush-Fund-Act.pdf (http://www.ecos.org/wp-content/uploads/2016/09/9_14_16-ECOS-Regional-Associations-Letter-of-Concern-w-Slush-Fund-Act.pdf).

[x]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f10) *Id.*

[xi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f11) *Id.*

[xii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f12) *Id.*

[xiii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f13) *Id.*

[xiv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f14) *Id.*

[xv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f15) Lee, *supra* note viii.

[xvi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Willis%20Blog%20.docx#_ednre f16) *Id.*

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