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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

COMMITTEE ON THE JUDICIARY

STATEMENT

**IN SUPPORT OF JACKSON LEE AMENDMENT #006 AND
JACKSON LEE AMENDMENT #008
TO H.R. 5063
THE "STOP SETTLEMENT SLUSH FUNDS ACT OF 2016"**

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MAY 11, 2016

- Mr. Chairman, I have two amendments at the desk, the Jackson Lee #006, an amendment to except cases from H.R. 5063 where settlement funds are directed to the remediation of generalized harm other than restitution to identifiable victims; and the Jackson Lee Amendment #008, an amendment to except cases from H.R. 5063 where settlement funds are directed to states to remediate the generalized harm of unlawful conduct beyond harms to identifiable victims.
- Thank you for this opportunity to briefly explain my amendments.
- Mr. Chairman, H.R. 5063, as currently drafted is flawed and misguided.

- This bill seeks to exempt only those payments to parties other than the government to provide restitution for actual harm “directly and proximately caused by the party making the payment.”

Jackson Lee Amendment #006

- Earlier this week, the Justice Department filed a federal civil rights lawsuit against the state of North Carolina and other parties declaring North Carolina House Bill 2’s restroom restriction unlawfully discriminatory.
- Attorney General Loretta Lynch stated on Monday that this complaint was about “a great deal more than just bathrooms.”
- She explained:
 - “This is about the dignity and respect we accord our fellow citizens and the laws that we, as a people and as a country, have enacted to protect them – indeed, to protect all of us. And it’s about the founding ideals that have led this country – haltingly but inexorably – in the direction of fairness, inclusion and equality for all Americans.”
- Enforcing these rights is as important today as they were during the enactment of the Civil Rights Act over fifty years ago.
- H.R. 5063 would prohibit remediation of generalized harm in civil rights cases, restricting relief for non-parties to the litigation and non-identifiable victims of discrimination.
- Professor David Uhlmann observed during last month’s hearing on this bill “fails to adequately address the fact that generalized harm arises in civil cases,” including cases involving “harm to our communities . . . that cannot be addressed by restitution.”
- In these cases, Professor Uhlmann concluded, third-party payments are appropriate.

- Yet, the Majority witness, Daniel Lungren, specifically testified on behalf of the Chamber that the bill should prohibit “the U.S. government from entering into a settlement agreement requiring a defendant to donate to an organization or individual not a party to the litigation.”
- The Jackson Lee Amendment #006 would remedy this flaw by creating an exception to cases where settlement funds are directed to the remediation of generalized harm other than restitution to identifiable victims.
- For instance, in the settlement of an EEOC sexual harassment case of female laundry workers and a consent decree resolving the case provides that:
 - In addition to paying \$582,000, Suffolk Laundry will adopt new procedures to prevent sexual harassment and will train its managers and staff on identifying and preventing sexual harassment and retaliation.
 - The policies and staff training will be available in Spanish.
 - EEOC will monitor Suffolk Laundry’s compliance with these obligations and Title VII of the Civil Rights Act of 1964 for a period of four years.
- Because of this consent decree, these women will receive due compensation for the abuse they suffered and, there is confidence, with the consent decree in place and the conditions of that consent decree, that no more employees will be victimized in the future.
- In another example of an EEOC sex discrimination lawsuit where Cintas Corporation settled to pay \$1.5 million, the corporation entered into a further agreement:
 - To hire an outside expert to revalidate the criteria used to screen, interview and select employees and the interview guides used in employee hiring.

- To provide training to the individuals involved in the selection of employees, whereby such training would cover record retention and an explanation of what constitutes an unlawful employment practice under Title VII.
 - To continue to provide diversity, harassment and antidiscrimination training annually to employees.
 - To post a notice informing employees that federal law prohibits discrimination, and to report to EEOC over an approximate 28-month period information and materials on training programs; recruiting logs; descriptions and explanations for any changes made to the employee hiring process; its expert revalidation findings; unprivileged materials and reports from any audits made of a facility's employee hiring or recruitment methods or practices, should an audit be done; record retention and reporting on applicant data.
- According to EEOC General Counsel, David Lopez, the injunctive relief obtained provides confidence and a strong foundation for eliminating barriers in recruiting and hiring women and will prevent the reoccurrence of this type of situation.
 - The Jackson Lee Amendment #006 would have a direct impact on these very types of cases by providing an exception to cases where funds are directed to the remediation of generalized harm, as highlighted in the above agreements that falls within the category of other than direct restitution to the identifiable victims.
 - Accordingly, I urge adoption of the Jackson Lee Amendment #006.

Jackson Lee Amendment #008

- Mr. Chairman, I also urge adoption of the Jackson Lee Amendment #008, which seeks to address the additional case exception for those instances where funds are directed to states to remediate the generalized harm of unlawful conduct beyond harms to identifiable victims.

- One clear example of where such an exemption is needed is concerning the Deepwater Horizon Settlement agreements directing payments to states as third parties for general remediation of harms.
- Under current law, the Environmental Protection Agency (EPA) may include Supplemental Environmental Projects (SEPs) in settlement agreements to offset the harms of unlawful conduct by requiring parties to undertake an environmentally beneficial project or activity that is not required by law, but that a defendant agrees to undertake as part of the settlement of an enforcement action.
- In 2012, the EPA and Justice Department resolved the civil liability of MOEX Offshore through a settlement agreement resulting from the Deepwater Horizon oil spill, that included funds to several Gulf states, including Texas, where Texas was not party to the complaint, but received \$3.25 million for SEPs and other responsive actions.
- Professor Joel Mintz of Nova Southeastern University College of Law, a former chief attorney with the EPA, noted in his written statement on H.R. 5063, that the proposed bill would prohibit these agreements.
- That is, many of the important benefits now provided by EPA's SEPs program would be excluded by H.R. 5063.
- The bill's definition, according to Professor Mintz, excludes "any payment by a party to provide restitution for or otherwise remedy the actual harm (including to the environment), directly and proximately caused by the alleged conduct of the party that is the basis for the settlement agreement."
- As such, this exception is too narrowly drawn to allow for numerous beneficial uses of SEP monies.
- Thus, for example, the bill would appear to ban the following entirely legitimate, appropriate uses of SEP funds that are currently permitted by EPA:

- Pollution prevention projects that improve plant procedures and technologies, and/or operation and maintenance practices, that will prevent additional pollution at its source;
 - Environmental restoration projects including activities that protect local ecosystems from actual or potential harm resulting from the violation;
 - Facility assessments and audits, including investigations of local environmental quality, environmental compliance audits, and investigations into opportunities to reduce the use, production and generation of toxic materials;
 - Programs that promote environmental compliance by promoting training or technical support to other members of the regulated community; and
 - Projects that provide technical assistance or equipment to a responsible state or local emergency response entity for purposes of emergency planning or preparedness.
- Each of these types of programs provide important protections of human health and the environment in communities that have been harmed by environmental violations.
 - However, because they are unlikely to be construed as redressing “actual (environmental) harm, directly and proximately caused” by the alleged violator, the bill before this committee would prohibit every one of them.
 - The Jackson Lee Amendment #008 would eliminate this harmful prohibition by implementing a common sense exception for these very types of cases.
 - Accordingly, I urge my colleagues to support both of the Jackson Lee Amendments.
 - Thank you.