

# News From The States

## EVENING WRAP

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By [Kate Queram](#)

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Today's newsletter is spotlighting a story by Shalina Chatlani, a Stateline reporter and a member of the inaugural class of the New York Times' [Local Investigations Fellowship](#), a one-year program where local reporters produce investigative work about their communities. States Newsroom co-published the Times story this morning.



### The Big Takeaway

In October 2021, the state of Ohio settled [a lawsuit](#) against Centene, a Medicaid managed-care contractor prosecutors said had fleeced the state for millions of dollars by overcharging for prescription medications. The \$88.3 million settlement did not come with an admission of wrongdoing, Ohio Attorney General Dave Yost noted [at the time](#).

Not that he minded.

"I will accept an apology note that has this many zeros behind it," he said.





*An \$88.3 million smile.  
(Photo by Justin Merriman/Getty Images)*

**The case sparked a nationwide reckoning for the insurer**, which paid multimillion-dollar settlements in [at least 17 states](#), where attorneys general claimed credit for avenging taxpayers and forcing the corporation to overhaul its billing practices. On the surface, this was a story of good government. But the reality was more complicated, according to [a New York Times investigation](#), co-published by States Newsroom.

A review of thousands of pages of court documents, emails and other public records in multiple states found that the case against Centene was conceived and executed by a group of powerful private lawyers who used their political connections to go after millions of dollars in contingency fees.

They were hired first in Ohio, without a competitive bidding process; from there, they gathered evidence against Centene of questionable billing practices across the country. Using that information, the attorneys negotiated with the company to set the basic framework of an agreement that could be replicated in multiple states, then approached attorneys general with an offer: hire them, at no direct cost to taxpayers, and recoup millions of dollars Centene had already set aside. To date, the lawyers have been awarded at least \$108 million in fees.





*We're gonna need a bigger rake.  
(Photo by Getty Images)*

**The Centene case is just one example** of private lawyers partnering with elected officials, temporarily gaining powers that are usually reserved for the government, and using them to sue corporations, help set public policy and collect millions of dollars in fees, usually based on a percentage of whatever money they recoup. The practice has become standard fare in the oversight of major industries, shifting the work of accountability away from legislators and regulators to private litigators, who are not required to publicly defend their work, share their tactics or disclose members of their team or what they were paid, leaving taxpayers unable to monitor potential conflicts of interest.

The Centene case was organized by the Mississippi-based law firm Liston & Deas along with at least three other firms, several with close ties to former Mississippi Gov. Haley Barbour of Mississippi, once a national GOP power broker. The team of attorneys included Paul Hurst, who married into Barbour's family and served as his chief of staff; and David H. Nutt, a Mississippi magnate who amassed a giant fortune funding state lawsuits against tobacco companies.

Though he is not listed in any government contracts as a lawyer of record,



Barbour was also a member of the legal team when Liston & Deas vied for the contract in Ohio. At the time, he also worked for Centene as a [federal lobbyist](#).

**His role in the case remains murky**, even three years after Centene signed its first settlements. There is no way for the public to know whether he influenced the outcome or to measure whether Centene paid its full share, because the data used to calculate what Centene overcharged remains hidden from the public under provisions designed to protect [attorney work product](#).



*A portrait of Barbour, right, at the State Capitol in Jackson, where he served as governor from 2004 to 2012.  
(Photo by Rory Doyle for The New York Times)*

Liston & Deas and its partner law firms uncovered that Centene had arranged discounts with CVS Caremark on certain drugs and then pocketed the savings instead of passing them on to Medicaid. In some states, the company also layered on unnecessary management fees that had gone undisclosed. Centene admitted no wrongdoing but agreed to be more transparent about its reimbursement rates.

The first two settlements were announced on the same day in June 2021: \$88 million for Ohio and \$55 million for Mississippi. More fell like dominos from there, often only a month or two apart. That pace was possible in part because Centene had planned for it, setting aside \$1.1 billion to handle subsequent cases



after initial discussions with the private attorneys. Their knowledge of the stockpile made it easy to persuade attorneys general in other states to file similar lawsuits.

Failing that, the team had another option: Whistle-blower lawsuits, which can advance without outside counsel hired by a state attorney general. The attorneys pursued those cases in at least three states, including Texas, where [state law](#) allowed Attorney General Ken Paxton to recoup “reasonable attorney’s fees” for work associated with the lawsuit. In Paxton’s office, that work amounted to 561 hours, for which it received nearly \$25 million in legal fees, or an hourly rate of more than \$44,000.

The Texas attorney general’s office declined to comment.



*Texas AG Ken Paxton, on a day he did not decline to comment.  
(Photo by Bob Daemmrich for The Texas Tribune)*

The rash of settlements is part of a shift in the role of state attorneys general, who have traditionally focused on advising state officials on legal matters and representing local agencies in court. That changed drastically almost 30 years ago, when states came together to sue tobacco companies and won a \$206 billion settlement to cover the cost of medical care related to smoking. The



lawsuit [helped redefine the position of attorney general](#) as one of the most powerful in state government — and a natural place to launch a political career by suing corporations, affecting public policy and building a reputation as a champion of the people.

**But they can't do it alone.** Complex litigation against large companies can require years of investigation and legal work, with no guarantee of success. Increasingly, states have turned to private lawyers willing to work on contingency as a way to stretch limited resources. The rise of that model kicked off a new [wave of lobbying](#) in which contract-hungry law firms pour money into AG races and sponsor conferences at high-priced resorts, where private lawyers mingle with public officials and pitch their ideas for lawsuits.

Some states have since capped contingency fees and increased oversight of private firms working for the government, but there remain concerns about undue influence and conflicts of interest. In some cases, the private attorney model may not even be in the best interest of the state. Centene, for example, might have faced stricter penalties through a federal whistle-blower case helmed by the U.S. Department of Justice. That route would have likely involved a more thorough investigation, required more transparency and generated more attention, experts said.

Attorneys in the case said they had not filed any type of federal action against Centene. A spokesperson for the Justice Department confirmed that it had inquired about the cases in Ohio but took no further action. The department declined to comment further.

## **Pharmacy benefits**

- [Alabama infant mortality decreases, but still higher than national average](#)
- [Arkansas health care workers support national call to protect IVF](#)
- [California doctors struggle to make payroll one month after ransomware attack](#)
- [Michigan Democrats hail ACA ahead of anniversary, blast GOP efforts to repeal it](#)
- [New Jersey county broke law when seeking prison health service contracts, comptroller says](#)

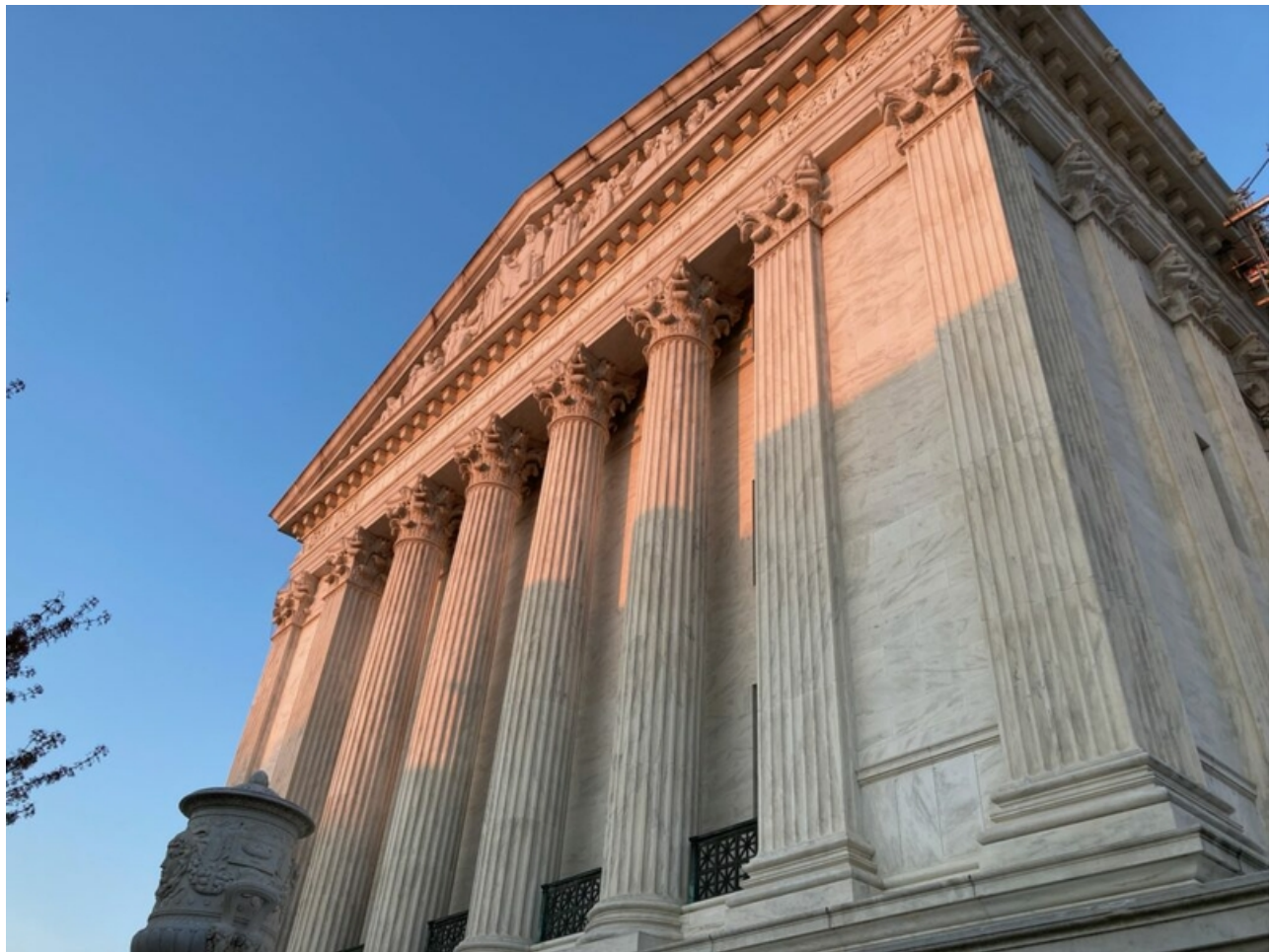




## Also Trending

A plan to divvy up water from the Rio Grande between a trio of western states violates a [century-old compact](#) and commits the federal government to actions it has not approved, attorneys for the government argued Wednesday in oral arguments before the U.S. Supreme Court.

“States, by their mere consent, cannot impose on non-consenting parties their view of the law,” said Frederick Liu, assistant to the solicitor general. “Rather, that view of the law has to be litigated on the merits by the non-consenting party.”



*Guess who's back, back again.  
(Photo by Danielle Prokop/Source New Mexico)*

**It was the final hearing in a decade-long legal battle** that began in 2014 when Texas sued New Mexico over groundwater pumping that allegedly infringed on Rio Grande water owed to the Lone Star State under the 1938 Rio Grande Compact, [Source New Mexico reported](#). By November 2022, the states had



agreed to [a consent decree](#) that provided extra allocations to address supply shortages and updated historical compliance measurements while still complying with the rules of the compact.

Attorneys for the states described the plan as a “fair and lasting solution” devised under the jurisdiction of state and reclamation — and not federal — law. The government’s complaints aren’t even related to the content of the deal itself, according to Jeff Wechsler, an attorney for New Mexico.

“The United States is really arguing about, how does New Mexico satisfy its obligations?” he said. “That is, which specific water users within New Mexico must shut down wells, how New Mexico should be administering water.”

It will likely be months before the court issues a decision, which seems likely to be a split ruling. But state officials seemed confident Wednesday that it would break in their favor.

“I think the state’s position was argued well,” said New Mexico State Engineer Mike Hamman.

### **Well as in “good” or well as in “water?”**

- [Nevada solar power project threatens prime desert tortoise habitat, conservationists warn](#)
- [\(North Carolina\) Troubled waters: NCDEQ proposes adding 400+ miles of streams, rivers to impaired list](#)
- [Bill to allow development on Tennessee wetlands advances in House](#)
- [Volunteers monitored the air pollution in Wisconsin. A new worldwide report shows how bad it is.](#)



### **From The Newsrooms**

#### **Gov & Politics**

- [Massive \\$1.2 trillion spending package that would avert a shutdown released by Congress](#)
- [Louisiana progressives want to boot](#)
- [Oklahoma group weighing open primary ballot initiative to increase inclusion, reduce divisiveness](#)
- [After suggesting digital sales tax,](#)



[embattled Democratic Party chair](#)

[Virginia Gov. Glenn Youngkin blasts Democratic version](#)

## Education

- [Alaska House passes rural-school internet bill on fast-track timeline after education veto](#)
- [Grant dollars help Iowa community colleges' aviation programs soar](#)
- [College financial aid program designed to exclude Mississippi's poorest students has helped children of millionaires](#)
- [Property tax relief bill in the works to lower Nebraska school tax by half or more](#)

## Criminal Justice

- [Wrongfully convicted men running out of time in 2024 Georgia Legislature to secure compensation](#)
- ['Yearning for help': Michigan teen dating violence survivors and allies call for more education on abuse](#)
- [New Hampshire's fetal homicide law, used for the first time last week, was 20 years in the making](#)
- [U.S. Supreme Court hears Texas case on politically motivated arrests](#)



## One Last Thing

After realizing the extent to which it is really, truly, hilariously [bad at PR](#), the British royal family is now looking to [hire a communications assistant](#), for which they are willing to pay a salary of 25,642.50 pounds per year (or about \$32,500). This feels *spectacularly* on-brand for a privileged and out-of-touch group of rich people who have never once had to contemplate the truth of the adage “you get what you pay for.” Pip pip cheerio!



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