Secret Settlement Reform: Lessons for Policymakers

How did they get away with it for so long?

That was the question society had to reckon with during the rise of the #MeToo movement. And although there is no single answer, one phenomenon showed up repeatedly: secret settlements, sometimes called NDAs, "hushing contracts," or "invisible settlements." Bill Cosby, Bill O'Reilly, R. Kelly, Jeffrey Epstein, Matt Lauer, Larry Nasser, Roger Ailes, Michael Jackson, and so many others reportedly paid hefty sums to muzzle their victims[1] and prevent them from sharing their experiences.

In the wake of these revelations, secret settlements finally started receiving the attention they deserve. The current conditions are ripe for reform: bills targeting NDAs are being proposed and debated; at least sixteen states have enacted laws that restrict secret settlements; and polls suggest widespread bipartisan support for these measures.

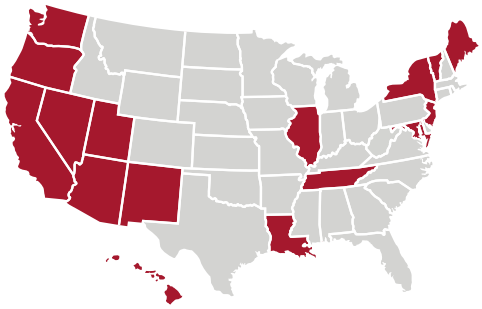
Washington
H.B. 1795 (2022)

Nevada
A.B. 248 (2019)

Utah
H.B. 55 (2024)

Illinois
S.B. 75 (2019)

Oregon
S.B. 726 (2019)



Maine
H.P. 771 (2022)

California
S.B. 820 (2018)
S.B. 331 (2021)

Vermont
H. 707 (2018)

Hawaii
H.B. 2495 (2022)

New York
S. 7507-C (2018)
A. 8421 (2019)

Arizona
H.B. 2020 (2018)

New Jersey
S. 121 (2019)

New Mexico
H.B. 21(2020)

Louisiana
H.B. 197 (2019)

Tennessee
H.B. 594 (2019)

Maryland
S.B. 1010 (2018)

Figure 1: State Legislative Activity to Restrict Secret Settlements as of August 2024

Key Takeaways

The #MeToo movement has returned secret settlements to the spotlight. The debate around reforms suffers from a lack of empirical evidence, leading those who oppose and support reform to rely largely on personal accounts and heated rhetoric. Critics warn that measures to restrict secret settlements will lead to dramatic changes to litigation—some warning of spikes and others forecasting drought. Many predict that these measures—intended to assist victims of sexual abuse will backfire—"[s]exual harassers [will] never make payments to victims without getting silence in return."

In 2025, a team of researchers, led by David Freeman Engstrom and Nora Freeman Engstrom of Stanford Law School and Jonah B. Gelbach of UC Berkeley Law published a paper that provides long overdue empirical evidence about what happens to litigation patterns in the wake of reform. The answer: not much.

The study leverages the STAND Act in California, which prohibits NDA provisions in settlement agreements for sexual assault, sexual harassment, or workplace discrimination claims. After analyzing more than a quarter-million case filings from both before and after the Act took effect, the researchers found that, contrary to critics' dire predictions, California's STAND Act did not lead to sharp increases or decreases in case filings; nor did it appear to yield significantly more protracted litigation or more intense legal battles.

Policymakers who are looking to reform secret settlements without upending the current litigation ecosystem should consider adopting key elements of the STAND Act: (1) allow parties to maintain the confidentiality of settlement amounts; and (2) allow parties to maintain the confidentiality of the victim's identity.

Policy Debate

These reforms are meant to empower survivors to speak out (if they wish), provide the public with accurate and important information, and make the world safer by preventing repeat offenses and deterring future misconduct. But not everyone celebrates reform. Critics worry that the proposed changes will disrupt the fragile settlement ecosystem. They claim that confidentiality bans will undercut victims' negotiating leverage, depress settlement sums, clog courts, and even prevent victims from coming forward at all.

Because secret settlements are private contracts inaccessible to the public, they are notoriously difficult to study. Academics don't know how many claims are settled with NDAs, what NDAs typically say, or why, exactly, parties opt for these provisions. And, until now, scholars have not been able to study what happens in the wake of reform. In this empirical void, advocates and opponents have been consigned to rely on anecdotal evidence to support their claims—and policymakers have been condemned to make hugely consequential judgments based on hunches and heated rhetoric but very few facts.

Case Study: California's STAND Act

Published in 2025 in the Chicago Law Review and recently honored with the National Civil Justice Institute's 2026 Civil Justice Scholarship Award, *Shedding Light on Secret Settlements: An Empirical Study of California's STAND Act* provides empirical evidence to answer key questions at the core of this reform debate. Will defendants still settle, even if secrecy isn't on the table? How do transparency reforms actually alter the litigation landscape? Will case filings disappear? Or will they spike and drag on, as litigation turns scorched earth?

The study zeroed in on California, one of the first states to implement a transparency reform. Enacted in 2018 in direct response to the Harvey Weinstein scandal, California's STAND Act outlaws any provision in a settlement agreement that prevents the disclosure of factual information related to a claim filed in civil court or complaint filed with an administrative agency regarding sexual assault, sexual harassment, or workplace discrimination.

After analyzing more than a quarter-million case filings from the Los Angeles County Superior Court and conducting interviews with nearly two dozen practitioners, the study uncovered something surprising: litigation patterns were largely the same before and after the STAND Act took effect.

This finding extended across multiple metrics: there was only a modest drop in case filings, cases lasting more than 18 months rose slightly, and the researchers found no evidence that the STAND Act increased litigation intensity or docket activity. In fact, the data showed a small drop in docketed events.

> "[S]ecret settlements have recently roared back onto legislative agendas, and what happens next will have profound implications for litigant autonomy, court transparency, adjudicative accuracy, judicial efficiency, and public policy."

Interviews with practitioners bolstered these findings. Out of all the attorneys interviewed, only one indicated that taking secrecy off the table negatively impacted plaintiff leverage in settlement negotiations. And even then, the attorney estimated that this would only impact about 10% of cases. The others agreed that settlement amounts did not drop post-reform.

Aside from finding that the passage of the STAND Act did not result in the dramatic harms critics predicted, the researchers found evidence that the STAND Act has measurably improved the lives of assault and harassment survivors by unlocking what the researchers call "the liberation effect."

The study uncovered how forced silence can lead to feelings of isolation, difficulty landing jobs, and fear of enforcement. As one survivor put it: "I never would have agreed to be silenced if I knew the long-term impact it would have on my health, my personal relationships, and the safety of others." Thus, the STAND Act is viewed by at least some plaintiffs and lawyers as "a tremendous relief" because it prevents victims from being "retraumatized . . . . by having their abusers follow them around in their lives, looking over their shoulder to see if they can be either sued —or even worse, brought into a secret arbitration." By voiding NDAs, survivors are no longer legally bound by their abusers and can therefore contribute without fear to collective efforts to change the conditions that harmed them, connect with others who suffered similar harms, and provide the public with important and accurate information. In sum: the STAND Act empowers victims by reviving their autonomy and choice.

> *"I never would have agreed to be silenced if I knew the long-term impact it would have on my health, my personal relationships, and the safety of others."*
>
> **— Anonymous Survivor**

Policy Lessons

Why did litigation and the settlement landscape remain stable after the passage of the STAND Act? After considering a variety of possible explanations, the paper concludes that the most plausible explanation is that the STAND Act takes a Goldilocks approach: it goes far, but not too far, in its reform. Thus, the STAND Act may provide a helpful roadmap for policymakers. Two components of the STAND Act matter most:

01 Allows parties to maintain the confidentiality of settlement amounts.

There is evidence that defendants want to keep settlement amounts secret, worried that disclosure could create an influx of similar demands and disrupt the litigation marketplace. There is also evidence that plaintiffs may be satisfied with the ability to disclose the facts of the dispute. Thus, a "cash carveout" appears to allow for a mutually acceptable middle ground.

02 Allows parties to maintain the confidentiality of the victim's identity.

One of critics' chief concerns with NDA reform is that these changes disregard victims' own desire for privacy, subject them to brutal backlash, and ultimately disincentivize survivors from coming forward. The STAND Act honors the claimant's request for secrecy.

Other Policy Considerations

In considering policy reform, it is useful to understand the differences between the laws states are passing. Reforms vary, but we identify two chief categories: (1) claim type, and (2) reform approach.

Claim Type

Most reforms cover the use of secret settlements in sexual misconduct as well as employment discrimination cases more generally. In these states, then, a settlement agreement that resolves a case alleging religious, racial, or age discrimination would also be covered. But some reforms—including those in Hawaii, Louisiana, and Tennessee—cover only sexual harassment, the case type most closely associated with the #MeToo movement.

Reform Approach

State efforts generally fall into one of three buckets: phantom reforms, government-centric reforms, and real reforms. Phantom reforms and government-centric reforms are likely to result in minimal impact. It is through real reforms that states can expect to see meaningful change.

Reform Approach	State
Phantom Reform Confidentiality allowed if complainant's stated preference	Illinois, Maine, New Mexico, New York, Utah
Government-Centric Reform NDA void only if government is a party	Arizona, Louisiana, Tennessee
Real Reform NDAs unenforceable in all covered cases	California, Hawaii, New Jersey, Nevada

A. Phantom Reforms

These states deem covered NDAs unenforceable but water down the reform by tying the prohibition to the complainant's preference. For example, the New York General Obligations Law states that settlement agreements may not include a term to prevent disclosure of underlying facts and circumstances "unless the condition of confidentiality is the complainant's preference."

Cons: Although this approach appears to give victims a choice, it essentially renders the law meaningless since, as a practical matter, victims will be pressured to "prefer" confidentiality. This is different from the STAND Act which permits only the identity of the victim and the settlement amount to remain confidential, not the underlying facts.

B. Government-Centric Reforms

States adopting this approach void NDAs only if the government is one of the parties.

Cons: Limiting coverage to government defendants drastically reduces the scope of these reforms, since only a tiny sliver of the workforce can be expected to see any effect.

C. Real Reform

These states deem NDAs unenforceable when used in covered cases. If a defendant attempts to enforce an unenforceable settlement provision, the plaintiff can sue and recover attorneys' fees and expenses.

This type of reform is more likely to result in meaningful change as compared to the other two approaches.

Conclusion

Through a study of more than a quarter-million cases, fortified with semi-structured interviews with experienced practitioners, researchers have found that it is possible for policymakers to promote litigation transparency without clogging courts, depriving litigants of leverage, or making litigation more of a bare-knuckled fight.

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[1] We realize that there is disagreement as to whether those who have endured sexual violence are more respectfully referred to as "survivors" or as "victims." In keeping with the views of the Rape, Abuse & Incest National Network (RAINN), we use both terms interchangeably. *See Key Terms and Phrases*, RAINN, https://perma.cc/2BF8-SRTE (explaining that "[s]ome people identify as a victim, while others prefer the term survivor," and so neither term is, in fact, preferred).

Reference
David Freeman Engstrom, Nora Freeman Engstrom, Jonah B. Gelbach, Austin Peters & Garrett M. Wen, Shedding Light on Secret Settlements: An Empirical Study of California's STAND Act, 92 U. Chi. L. Rev. 103 (2025).

Available at
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