

Audio recording and transcription of press call with Senator Warren and prominent academics can be found [here](#).

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As White House Spotlights Conflict With Democratic Presidential and Congressional Candidates by Escalating Toward TPP Lame-Duck Vote, Sen. Warren and Hundreds of Academics Urge Rejection

Economic and Legal Scholars Cite Multinational Corporate Rights to Unlimited Taxpayer Funds Via ISDS Tribunal System Named by VP Candidate Kaine as Basis for His Opposition

WASHINGTON, D.C. – The investor-state dispute settlement (ISDS) regime at the heart of the Trans-Pacific Partnership (TPP) that would newly empower thousands of multinational corporations to challenge U.S. policies before panels of three private lawyers to demand taxpayer compensation is the target of a [letter](#) sent to Congress today by leading pro-free trade U.S. economics and law professors calling on Congress to reject the TPP.

The White House has escalated its efforts to pass the TPP in the lame-duck session, with Cabinet secretaries who are promoting the TPP crossing paths with Democratic presidential and congressional candidates campaigning against the TPP.

Last year, several dozen legal scholars joined congressional Democrats in raising concerns about the ISDS regime and demanding that a final TPP deal exclude the parallel legal system for multinational corporations. President Barack Obama scorned the critics, declaring they were “making this stuff up.” Today’s letter, signed by more than 200 prominent academics, including Obama’s Harvard Law School mentor Professor Larry Tribe, warns that the ISDS regime [threatens the rule of law and undermines our nation’s democratic institutions](#). The academics call on Congress to reject the pact because the final deal would greatly expand the ISDS regime.

U.S. Sen. Elizabeth Warren (D-Mass.) praised the letter: “Today’s letter from top legal experts makes clear: ISDS undermines the American judicial system and tilts the playing field further in favor of big multinational corporations,” Warren said. “This provision empowers companies to challenge laws and regulations they don’t like, with friendly corporate lawyers instead of judges deciding their disputes. Congress should not approve a TPP agreement that includes ISDS.”

Tribe, Nobel laureate Joseph Stiglitz, former California Supreme Court Justice Cruz Reynoso, and Columbia University Professor and UN Senior Adviser Jeffrey Sachs are among the signers, many of whom have supported past U.S. trade agreements. The letter spotlights the danger of the ISDS provisions, which was the same reason Democratic vice presidential nominee [Tim Kaine](#) cited for opposing the final TPP deal.

The U.S. has dodged ISDS liability to date because past treaties have covered only a limited number of foreign investors operating here. [Research conducted by Public Citizen](#) shows that the TPP, which includes Japan, Australia and other nations with more than 9,000 corporate subsidiaries in the United States, would double U.S. ISDS exposure. Nearly \$3 billion in ISDS

awards has been paid to corporations under U.S. treaties alone and claims worth more than \$70 billion are pending.

[Recent investigative reports](#) by a Pulitzer-Prize-winning journalist and a new [Columbia Global Reports book](#) reveal how critics have understated the threats posed by the ISDS regime, which – if the TPP is approved – would empower thousands more multinational corporations to challenge U.S. federal, state and local laws, court decisions and government actions before panels of three private lawyers. Under ISDS, the panel of lawyers can award the companies unlimited taxpayer money, including for loss of expected future profits. The decisions cannot be appealed.

“In recent years, corporations have challenged a wide range of environmental, health and safety regulations, fiscal policies, bans on toxins, denials of permits including for toxic waste dumps, moratoria on extraction of natural resources, measures taken in response to financial crises, court decisions on issues ranging from the scope of intellectual property rights to the resolution of bankruptcy claims, policy decisions on privatizations of prisons and health care, and efforts to combat tax evasion, among others,” the letter notes.

The experts lament that despite the Obama administration’s [claims to have addressed growing concerns about the ISDS system](#), “the final TPP text simply replicates nearly word-for-word many of the problematic provisions from past agreements, and indeed would vastly expand the U.S. government’s potential liability under the ISDS system.” They fear that the expansion of ISDS in the TPP and in ongoing negotiations with Europe “threatens to dilute constitutional protections, weaken the judicial branch and outsource our domestic legal system to a system of private arbitration that is isolated from essential checks and balances.”

This letter adds to a rising chorus of opposition to ISDS from prominent members of Congress such as [Warren](#); the [National Conference of State Legislatures](#); pro-free trade think tanks such as the [Cato Institute](#); and [hundreds of labor, environmental, consumer and faith organizations](#).

[View the letter and list of signers.](#)

What the signers are saying:

Jeffrey Sachs, professor of economics, Columbia University:

“We need trade agreements that protect worker rights and the environment. ISDS gravely threatens environmental protection and worker rights, and the rule of law more generally, as evidenced by the current lawsuit by TransCanada suing the U.S. government for \$15 billion over the cancellation of the climate-wrecking Keystone XL Pipeline.”

Jeffrey Sachs: jsachs1@law.columbia.edu

Cruz Reynoso, former California Supreme Court Justice and professor of law emeritus, University of California, Davis:

“The right of foreign corporations and investors to challenge U.S. policies which allegedly violate investor rights is a frontal attack on our judicial system.”

Cruz Reynoso: creynoso@ucdavis.edu

Alan Morrison, associate dean, George Washington Law School:

“The United States Constitution simply does not allow Congress to assign the duty to assess the legality under the TPP of federal and state laws to the unreviewable discretion of three private individuals, instead of to our federal court system with full-time and unconflicted judges.”

Alan Morrison: abmorrison@law.gwu.edu

Lisa Sachs, professor of law, director of Columbia Center on Sustainable Investment:

“A multilateral agreement presents an opportunity to promote the rule of law, strengthen domestic judicial systems and ensure the rights of all, including the most vulnerable, are equally advanced. ISDS in its current form undermines each of those objectives. The whole system needs a rethink to better balance all stakeholders' interests and rights.”

Lisa Sachs: lsachs1@law.columbia.edu

Kevin Gallagher, professor of economics, Boston University:

“ISDS accentuates the regulatory risks that characterize the latest trade and investment pacts by granting foreign investors far greater rights over national democratic decision-making. Putting governments and their citizens back in charge of settling disputes is the first step toward the comprehensive reform that is needed.”

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