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For Immediate Release:
Oct. 25, 2017

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Across the Political Spectrum, Trade and Legal Experts Agree: ISDS Must Be Eliminated From NAFTA, Revealing Unusual Consensus

*Corporate Lobby Isolated in Its Strident Defense of the Controversial Regime
That Was First Inserted Into U.S. Trade Deals With NAFTA and That Elevates
Individual Corporations to Equal Status With Nations*

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WASHINGTON, D.C. – Trade experts and constitutional scholars from the left and the right who battle over most issues – including the North American Free Trade Agreement (NAFTA) – joined together at the National Press Club today to support the elimination of Investor-State Dispute Settlement (ISDS) from NAFTA. Corporate lobbying groups have shrilly attacked an administration proposal to limit the corporate protections in NAFTA provided by the ISDS regime and its related substantive investor protections.

The improbable consensus across the political spectrum against ISDS shows how isolated the corporate lobby is on the issue. Ironically, while the U.S. Chamber of Commerce, National Association of Manufacturers and others have expressed outrage at the prospect of NAFTA's corporate protections being scaled back, the [American Auto Policy Council](#) has called ISDS unnecessary and noted that including it could imperil the deal given broad opposition to ISDS.

The panelists reflected the breadth of consensus against ISDS – from the [National Conference of State Legislatures](#) and [state attorneys general](#) to [small business organizations](#) and unions to hundreds of the nation's leading legal and economics professors, who today [released](#) a [letter](#) calling on the administration to remove ISDS from NAFTA. Stark criticism of ISDS has come from voices as disparate as [U.S. Supreme Court Chief Justice John Roberts](#) and pro-free trade think tanks such as the [Cato Institute](#) to [U.S. Senator Elizabeth Warren \(D-Mass.\)](#), [unions](#) and [environmental](#) groups.

After the Trans-Pacific Partnership debate elevated ISDS from obscurity, demands to remove it from NAFTA have emerged in recent letters from [GOP members of Congress](#) and [100 small business](#) leaders, and more than [400,000 petitions](#) to the administration. Congressional Democrats have long opposed these terms that make it less risky and expensive for corporations to outsource jobs and empower corporations to attack domestic policies by going before tribunals

of three corporate lawyers who can order unlimited compensation be paid to the corporations by taxpayers.

Multinational corporations already have pocketed \$392 million from North American taxpayers under NAFTA ISDS attacks on toxic bans, environmental and public health policies, and more. Tens of billions are pending in ongoing NAFTA cases.

Dan Ikenson, director of Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies and longtime supporter of free trade agreements, outlined his arguments against ISDS published in [his recent Forbes piece](#): "ISDS should be removed from free trade agreements because it undermines how the free market is supposed to work. It is protectionism that socializes investment risk. Multinational companies that invest internationally should be savvy enough to conduct the appropriate cost-benefit analysis for their investments. The U.S. government should not be subsidizing outsourcing through ISDS."

Jeffrey Sachs, prominent professor of economics at Columbia University and United Nations senior adviser, described the legal and economic arguments against ISDS outlined in a [letter](#) that he and more than 200 law and economics professors from across the country sent today to President Donald Trump: "ISDS is a threat to legal order and to sovereignty. It fails on basic principles of rule of law and due process. There is broad consensus across the political spectrum opposing ISDS; ISDS is a central danger and risk that should not be included in any trade or investment agreements."

Bruce Fein, a constitutional law expert and former associate deputy attorney general under President Ronald Reagan, raised the constitutional questions surrounding ISDS that he noted in his [recent Washington Times op-ed](#) on the subject: "ISDS is completely wrongheaded and unconstitutional. According to the appointments clause of our constitution, private individuals who are not accountable to our legislative or executive branch have no authority to interpret and render final judgment over U.S. laws."

Lori Wallach, director of Public Citizen's Global Trade Watch and [long-time progressive critic](#) of U.S. trade policy, noted: "The corporate lobby's crazed campaign to protect the expansive privileges they slunk into NAFTA is unsurprising, but the more they scream about the administration proposals to limit their use of ISDS tribunals to grab millions in taxpayer funds and grease the skids to outsource American jobs, the more the public realizes NAFTA's rigged rules need replacing."

Haley Sweetland Edwards, correspondent at *Time*, and author of [Shadow Courts: The Tribunals that Rule Global Trade](#) moderated the panel.

[Watch event video here.](#)

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