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Hundreds of Academics Urge Trump to Remove Controversial Investor-State Dispute Settlement from NAFTA

As Corporate Lobby Rages Against Proposed ISDS Rollback, Law Professors and Economists Say ISDS Undermines Rule of Law and Subsidizes Offshoring

WASHINGTON, D.C. – More than 200 U.S. economics and law professors weighed in on the contentious North American Free Trade Agreement (NAFTA) debate in a [letter](#) today to President Donald Trump, urging him to remove Investor-State Dispute Settlement (ISDS) from the deal. While the corporate lobby has gone into overdrive defending the controversial ISDS regime, the legal and economics scholars' letter reveals why even staunch “free traders” oppose ISDS.

Nobel laureate Joseph Stiglitz, former Labor Secretary Robert Reich, former California Supreme Court Justice Cruz Reynoso, Columbia University professor and UN Senior Adviser Jeffrey Sachs and prominent New York professor and advocate Zephyr Teachout are among the signers, many of whom supported NAFTA. (See signer statements below.)

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 of dollars are pending in ongoing NAFTA cases.

The professors join an increasingly diverse consensus against ISDS that spans the political spectrum. [GOP members of Congress](#) recently released a letter to U.S. Trade Representative Robert Lighthizer denouncing ISDS; and more than [100 small businesses](#) did the same in a letter to Lighthizer this summer. Stark criticism of ISDS has come from voices as disparate as U.S. [Supreme Court Chief Justice John Roberts](#), the [National Conference of State Legislatures](#); pro-free trade think tanks such as the [Cato Institute](#); U.S. [Senator Elizabeth Warren \(D-Mass\)](#), and [hundreds of labor, environmental, consumer and faith organizations](#). More than [400,000 petitions](#) were recently delivered to Congress by a coalition of 40 civil society organizations from U.S., Mexico, and Canada at an event hosted by several Democratic members of the U.S. House of Representatives.

The professors note in their letter that they oppose ISDS because it “undermines the important roles of our domestic and democratic institutions, threatens domestic sovereignty, and weakens the rule of law... ISDS grants foreign corporations and investors rights to skirt domestic courts and instead initiate proceedings against sovereign governments before tribunals of three private-sector lawyers. In those proceedings, foreign investors can demand taxpayer compensation for laws, court rulings and other government actions that the investors claim violate loosely defined rights provided in a trade agreement or investment treaty. The merits of those rulings are not subject to appeal, but are fully enforceable against the U.S. government in U.S. courts... U.S. firms that seek to offshore their investment to venues that do not have reliable domestic legal

systems can purchase risk insurance or look for safer jurisdictions; remaining issues can be addressed through state-state dispute resolution, as is the norm under all other areas of international economic law.... [E]xposing the U.S. Treasury and our legal system to ISDS liability also has the perverse effect of subsidizing offshoring to or investing in countries with riskier or less developed legal systems by lowering the risk premium of relocating investment there.”

The letter specifically calls for the removal of ISDS from NAFTA — and demands a broader rejection of the corporate-rigged system. Signatories urged Trump to eliminate ISDS from other existing pacts and to abandon negotiations on deals that include ISDS, such as the Transatlantic Trade and Investment Partnership (TTIP) and a bilateral investment treaty with China.

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

What the signers are saying:

Joseph Stiglitz, Nobel Prize-winning economist and professor, Columbia University:

“People defending agreements like NAFTA tend to describe the workers who get hurt as collateral damage in a good war for free trade. Workers are not collateral damage but rather the target of agreements with investment terms at their core. With capital and technology moveable, the comparative advantage held by the U.S. and EU is rule of law, and investment agreements give away this advantage by providing better treatment than our robust domestic property rights regime for firms that relocate. Why would such terms be included? Because these are corporate agreements negotiated behind closed doors with corporate advisors inside and civil society locked out. The reality is not the perfectly working markets of text books but monopoly and monopsony with these agreements setting terms that privilege certain interests and hurt others. One interest – workers – have lost relative bargaining power under these terms.”

Jeffrey Sachs, professor of economics, director of the Earth Institute, 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.”

Jeffrey Sachs: jsachs1@law.columbia.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 NAFTA 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

Zephyr Teachout, associate professor of law, Fordham University:

“In New York, we are proud of the organizing that led to our statewide ban on fracking, but democratic environmental victories like New York’s fracking ban could be threatened by multinational companies challenging our laws via ISDS. Canada is facing a \$250 million ISDS claim under NAFTA because Quebec halted fracking while studying its environmental implications. A tribunal of three private lawyers has no business deciding whether taxpayers

should be on the hook for millions because a multinational corporation thinks our environmental laws violate its NAFTA investor rights.”

Zephyr Teachout: zteachout@law.fordham.edu

Cruz Reynoso, former California Supreme Court Justice; 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

William J. Snape III, assistant dean and professor of law, American University, Washington College of Law; senior counsel, Center for Biological Diversity:

“The idea that a multinational corporation can sue a national government in a secret court in order to second guess that national government’s environmental or public health standard is nothing less than absurd. These “investment tribunals” are kangaroo courts and nothing in our Constitution remotely allows them to function the way they now do”

William Snape: wsnape@wcl.american.edu

(Professor Snape is also a former member of the Trade and Environment Policy Advisory Committee who recently ended his 12-year membership on the committee over President Trump’s climate change policies, sending a [public resignation letter](#) spelling out NOT A HOAX with the first letter of each paragraph.)

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

“The rumored removal of ISDS from NAFTA would finally respond to the bipartisan concerns about the system, which gives unique, unjustified and outsized power to multinational corporations at the expense of tax payers, policy makers, domestic legal systems, and affected individuals and communities. There are other well-established means to settle disputes that respect the rule of law and do not pose such risks to equality and democratic governance.”

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