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## **Votes by Reps. Jim Matheson, Chris Cannon and Rob Bishop For CAFTA Grease the Way for Gambling in Utah**

### ***Public Citizen Launches CAFTA Damage Report to Track Results of Misguided CAFTA Votes***

WASHINGTON, D.C. – By voting in favor of the Central America Free Trade Agreement (CAFTA), Utah's three House members opened a new door to attack Utah's ban on legalized gambling, said Public Citizen. If any one of the Utah congressmen had opposed CAFTA, which eked past the U.S. House of Representatives on July 27 by a 217-215 vote, the controversial expansion of the North American Free Trade Agreement (NAFTA) would have failed on a 216-216 tie vote.

Since NAFTA took effect in 1994, the United States has lost 3 million manufacturing jobs, U.S. farm prices have slumped, farm failures have increased and the U.S. trade deficit has exploded to more than \$617 billion – an unsustainable level that threatens our children's futures. More than a million Mexicans lost their farms to NAFTA, escalating hunger there and increasing illegal immigration to the United States. Yet for Utah, CAFTA poses a special threat.

Although CAFTA expands NAFTA to the Dominican Republic and five Central American nations, it is not only about trade. CAFTA contains 1,000 pages of international law that the United States is now obligated to follow thanks to the Utah congressmen and others who provided the votes that passed CAFTA. Among CAFTA's non-trade provisions is a new right for foreign firms to provide gambling services *within* the United States and to use United Nations (UN) and World Bank tribunals to demand payment of U.S. taxpayer funds if these new CAFTA rights are not respected – regardless of existing, contradictory U.S. or state laws. CAFTA specifically requires that state laws, which would include Utah's gambling ban, be consistent with CAFTA's investment and other requirements.<sup>1</sup>

“By casting the deciding votes on CAFTA, Utah's congressmen have made themselves responsible for any future attacks on U.S. gambling regulations that CAFTA makes possible,” said Lori Wallach, director of Public Citizen's Global Trade Watch.

Already, other countries have used the World Trade Organization (WTO) to challenge U.S. gambling laws. In a 2003 case brought by the island nation of Antigua against the U.S. ban on Internet gambling, the WTO ruled this year that unless the United States changes certain laws pertaining to interstate gambling on horse racing, U.S. Internet gambling laws violate the United States' WTO requirements. The Bush administration has acknowledged that complying with the terms of the case brought by Antigua, long a haven for Internet gambling, may be more difficult than it had initially admitted.<sup>2</sup> Antigua also challenged Utah's gambling ban in its WTO case, claiming that a ban on gambling was a form of numerical limit on the amount of Internet gambling services that Antigua and other firms could offer in the state (in WTO parlance, a “zero quota”) – a measure forbidden under WTO's service rules. Because Antigua's lawyers did not properly list the Utah law and several other states' laws in its WTO legal documents, the WTO panel refused to review any of the challenged state laws. However, in ruling that the United States had a WTO obligation to allow foreign

gambling service companies to provide unlimited gambling services within U.S. territory – meaning no limits on the number of gambling operations or their size – and that a ban would be a forbidden “zero quota,” the WTO panel effectively left Utah’s gambling ban vulnerable to future WTO challenge.

CAFTA opens a new door to attack on federal and Utah gambling regulations by empowering foreign gambling companies to use UN and World Bank international courts to challenge U.S. laws, including Utah’s gambling ban, which they could claim undermine the special new rights CAFTA provides foreign corporations. And a CAFTA challenge to Utah’s gambling ban could prove more potent than the previous WTO challenge, because the trade pact governing the WTO does not include the special foreign investor rights and protections contained in CAFTA and permits only countries, not foreign investors themselves (as in CAFTA), to challenge U.S. laws.

The new threat posed by CAFTA is far from hypothetical. First, under similar foreign investor protections contained in NAFTA, Mexico’s national gambling ban has been challenged by a Canadian company called Thunderbird Gaming, which claims that the Mexican government’s closure of its gambling facility violated its NAFTA investor protections. That case is now being decided by a UN tribunal.<sup>3</sup>

Second, since CAFTA was signed in May 2004, many of the online casinos that once operated out of Antigua, a Caribbean island that has been a haven for Internet gambling, have relocated operations to Costa Rica, one of the CAFTA countries.<sup>4</sup> Moreover, the world’s leading Internet gambling company, Sportingbet PLC, recently acquired ParadisePoker.com, a Costa Rican firm, for more than \$300 million.<sup>5</sup> By having a Costa Rican subsidiary, the European company can now use the new CAFTA foreign investor rights that the Utah congressmen’s votes for CAFTA have put into operation to attack Utah’s gambling ban.

“By acquiring Costa Rican gaming operations, giant European firms now have a platform from which to launch attacks on federal, state and local gambling restrictions in an effort to secure an even greater share of the diverse and lucrative U.S. gambling market,” said Wallach. “This is a threat that was brought to the attention of all three Utah congressmen.”

A memorandum prepared for the Utah congressmen that explains in detail the new CAFTA threat to U.S. gambling regulations is available at: [http://www.citizen.org/documents/Gambling\\_Utah\\_Memo.pdf](http://www.citizen.org/documents/Gambling_Utah_Memo.pdf)

In the WTO gambling case, the WTO panel ruled that the United States could maintain its Internet gambling ban if it changed the Interstate Horseracing Act to apply equally to U.S. and foreign firms. Doing so would allow the use of a “public morals” exception, which has not been employed previously in the history of the WTO. The exception allows countries to maintain laws that would otherwise violate WTO requirements if the defending country can meet a hard-to-prove test that such laws are “necessary” to protect public morals and if the law in question affects foreign and domestic suppliers equally. The WTO panel ruled that the special nature of Internet gambling and the fact that the United States banned all Internet gambling would trigger the public morals exception, suggesting that U.S. laws limiting non-Internet gambling, such as exclusive provider arrangements with Indian tribes or state bans of bricks-and-mortar gambling, would not qualify for such an exception. The public morals exception would be especially difficult to justify if the law in question were specific to a particular state, rather than a federal law applied uniformly across the United States.

The CAFTA provisions creating the new foreign investor rights noticeably exclude the public morals exception found in the WTO, meaning that the United States would have no such defense at its disposal if a foreign investor challenges the Utah ban under CAFTA.<sup>6</sup> In the lead-up to the CAFTA vote, the U.S. Trade Representative (USTR) sought to calm concerns raised by various lawmakers about the threat to U.S. gambling regulations by circulating a side letter signed by Costa Rica and the United States regarding gambling. These assurances were apparently accepted by Cannon’s office, which released a post-CAFTA press statement that tried to downplay the threat.<sup>7</sup> However, the side document circulated by USTR – which as a side letter is not even subject to the CAFTA enforcement mechanism – merely states that “nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States ... from adopting, maintaining, or enforcing any measure *consistent with the Agreement* relating to sportsbooks or other gambling activities within

their respective national territories” [emphasis added].<sup>8</sup> Yet if a U.S. domestic law does not violate CAFTA, it is not subject to challenge; and if it does, the side letter provides no protection.

Using NAFTA rules similar to the foreign investor protections contained in CAFTA, foreign corporations have filed at least 42 cases against governments, including the Thunderbird gambling case, and obtained \$35 million in compensation from taxpayers in the NAFTA nations.<sup>9</sup> The proven threat from NAFTA’s foreign investor provisions have led the National Conference of State Legislatures, the National League of Cities, and the National Association of Towns and Townships to send a letter to Congress expressing their concerns about CAFTA’s expansion of those investor protections.

CAFTA also was opposed by the Central American Council of Churches, numerous Central American Catholic bishops, the American Jewish World Service, the American Friends Service Committee (Quakers), the Presbyterian Church (U.S.A), the United Methodist Church’s General Board of Church and Society, the United Church of Christ’s Justice and Witness Ministries, and Lutheran World Relief as an immoral attack on some of the hemisphere’s poorest inhabitants.<sup>10</sup>

To track the outcome of a handful of pro-CAFTA votes, including those of Utah’s congressmen, Public Citizen is launching a new project – the *CAFTA Damage Report* – that will track the fallout from the agreement. The *CAFTA Damage Report* will be regularly updated and available at [www.tradewatch.org](http://www.tradewatch.org).

Along with the new right for foreign firms to provide gambling services within the United States, there are other aspects of CAFTA that may prove disturbing for Utah residents:

- **CAFTA is not likely to be a source of good jobs for Utah’s workers:** In his July 27 press release, 2<sup>nd</sup> District Representative Jim Matheson said that economic growth was the deciding factor behind his support for CAFTA. “The bottom line for me is that CAFTA will create jobs here in Utah by boosting opportunities for our exporters.”<sup>11</sup> After his CAFTA vote, 1<sup>st</sup> District Representative Rob Bishop side-stepped concerns about the loss of Utah jobs by saying that it “would be better to purchase something from Central America ‘with 80 percent of the material produced in the U.S. than a shirt from China with less than 5 percent of the material U.S.-produced.’”<sup>12</sup> The notion that CAFTA would create U.S. jobs or economic gains is dubious. According to the U.S. International Trade Commission (USITC), the government’s official, bipartisan source for trade projections, the U.S. trade deficit with the CAFTA countries will *increase* by \$100 million once CAFTA is fully phased in.<sup>13</sup> This should come as no surprise; under NAFTA, a modest trade deficit with Mexico and Canada grew 538 percent to more than \$110 billion. According to the non-partisan Economic Policy Institute, NAFTA has cost the state of Utah a net loss of more than 8,000 jobs.<sup>14</sup>
- **CAFTA is not expected to provide new opportunities for high-tech companies:** Matheson’s July 27 press release focused on how CAFTA would provide gains for U.S. high-tech business and included a quote from an Intel spokeswoman who stated that “more than 75 percent of Intel’s revenue currently comes from outside the U.S.”<sup>15</sup> Cannon’s press release predicts similar gains for U.S. high-tech exports.<sup>16</sup> Yet a methodical study of the precise CAFTA provisions relating to high-tech products and services and the CAFTA regional market for such goods published by the Washington Alliance of Technology Workers (WASHTECH) found that CAFTA did not offer new high-tech business opportunities. The study revealed that more than 60 percent of U.S. exports of high-tech goods to CAFTA countries *already* enter duty-free and that there is extremely limited demand for such goods and services in these poor countries, five of which have a *combined* annual economic activity less than that of Utah.<sup>17</sup> The WASHTECH study also found that under NAFTA, which contains similar copyright provisions as CAFTA, the amount of losses due to copyright violations tripled in Mexico.<sup>18</sup> Meanwhile, nearly all the congressional lawmakers representing the nation’s leading high-tech regions in northern California, Washington state, Massachusetts’ Route 128 Corridor and North Carolina’s high-tech Research Triangle opposed CAFTA.

The *CAFTA Damage Report* will track whether high-tech employment in Utah changes because of increased CAFTA trade.

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**Background:**

*Public Citizen's Global Trade Watch has studied more than 90 deals accepted by members of Congress for trade votes during the period 1992-2004 and found that more than 80 percent of promises on such deals were not kept or were reversed by subsequent events. We divided these deals into pure pork barrel promises, of which 70 percent were broken; and ameliorative policy fix promises, of which 90 percent were broken. For our full report, "Trade Wars – Revenge of the Myth: Deals for Trade Votes Gone Bad," see <http://www.citizen.org/documents/tradewars.pdf>.*

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<sup>1</sup> "The parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state governments." (CAFTA Art. 1.4)

<sup>2</sup> "U.S. trade officials have contradicted earlier claims by conceding that complying with a World Trade Organization ruling against U.S. Internet gambling restrictions will be difficult because of likely congressional opposition. When the WTO issued its ruling in a case brought by Antigua, U.S. officials publicly insisted that implementation would only require clarification of a narrow issue. In documents filed in July to a WTO arbitrator deciding the deadline for the U.S. to comply, U.S. officials pointed out that about a dozen bills on Internet gambling have failed to pass Congress. This will complicate the administration's efforts to comply with the WTO gambling decision, they said. The arguments came to light in the Aug. 19 decision by the WTO arbitrator that gives the United States until April 2006 to comply with the ruling." See "USTR Contradicts Earlier Claims About Implementing Gambling Ruling," *Inside U.S. Trade*, Aug. 26, 2005.

<sup>3</sup> Notice of Arbitration and Statement of Claim Under the Arbitration Rules of the United Nations Commission on International Trade Law and The North American Free Trade Agreement, *International Thunderbird Gaming Corporation v. Government of Mexico*, Aug. 1, 2002.

<sup>4</sup> Michael Kaplan, "Gambling: An Offshore Bet; With its advanced technical infrastructure, loose laws and beautiful women, Costa Rica has become a haven for hundreds of American sports-betting," *Cigar Aficionado*, Jan./Feb. 2004; Jerry Spangler, "Online gaming may recruit Costa Rica in its U.S. push," *Deseret Morning News*, June 30, 2005.

<sup>5</sup> Amy Lee, "Online Gaming to Make M&A Leap," *Financial Times*, June 17, 2005.

<sup>6</sup> Sean Hewens, "Potential Investor-State Challenges to U.S. Gambling Laws," Harrison Institute for Public Law, Georgetown University Law Center, May 16, 2005.

<sup>7</sup> Rep. Chris Cannon, "Cannon Statement on CAFTA Passage," Congressional Press Release, July 28, 2005. Cannon argued that "Congress is the only body that can change U.S. laws, and nothing in CAFTA interferes with a state or local government's right to regulate." Cannon ignores that CAFTA explicitly requires the U.S. Executive Branch, governors, Congress, state legislatures and local authorities to conform all existing and future federal, state and local laws to CAFTA-established international law that goes far beyond trade matters (including laws that are non-discriminatory). Other provisions of CAFTA also submit the United States to the jurisdiction of international tribunals established under the auspices of the United Nations (UN) or World Bank. (CAFTA Art. 10.16.3), while the standard of review for these tribunals is not U.S. law but rather international law set out in CAFTA. Finally, CAFTA establishes a double standard – greater rights are given to foreign investors operating within the United States than are provided by the U.S. Constitution for U.S. citizens and businesses.

<sup>8</sup> Letter signed by Costa Rican Minister of Foreign Trade Alberto Trejos to U.S. Trade Representative Robert Zoellick, May 28, 2004.

<sup>9</sup> Public Citizen, "NAFTA's Threat to Sovereignty and Democracy: The Record of NAFTA Investor-State Challenges," February 2005.

<sup>10</sup> "CAFTA Fails Standards of Justice," sign-on letter circulated by Washington Office on Latin America; American Jewish World Service, "AJWS Announces Opposition to CAFTA," press release, June 23, 2005.

<sup>11</sup> Rep. Jim Matheson (D-Utah), "Matheson Puts Utah's Interest First with CAFTA Vote," Congressional Press Release, July 27, 2005.

<sup>12</sup> Lisa Roskelly, "Bishop Provides CAFTA Swing Vote," *Standard Examiner*, July 29, 2005.

<sup>13</sup> U.S. International Trade Commission, "U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economywide and Selected Sectoral Effects," USITC Investigation No. TA-2104-13, Publication 3717, Aug. 2004, at xii and xxii.

<sup>14</sup> Robert E. Scott and David Ratner, "NAFTA's Cautionary Tale: Recent History Suggests CAFTA Could Lead to Further U.S. Job Displacement," Economic Policy Institute Issue Brief, July 2005.

<sup>15</sup> Rep. Jim Matheson (D-Utah), "Matheson Puts Utah's Interest First with CAFTA Vote," Congressional Press Release, July 27, 2005.

<sup>16</sup> Rep. Chris Cannon, "Cannon Statement on CAFTA Passage," Congressional Press Release, July 28, 2005.

<sup>17</sup> The U.S. Department of Commerce's Bureau of Economic Analysis reports that the personal income of households in Salt Lake City was equal to \$27.5 billion in 2003. For the state of Utah, personal income was \$59.8 billion that same year. The International Monetary Fund reports that five CAFTA countries had a combined national income of \$58 billion in 2003, while Guatemala was the CAFTA target country with the highest national income at \$24.7 billion that same year. See Bureau of Economic Analysis, "Regional Economic Accounts: CA 1-3 Personal Income," U.S. Department of Commerce, extracted Aug. 26, 2005; International Monetary Fund, World Economic Outlook Database, Sept. 2004.

<sup>18</sup> "The Real Pirates of the Caribbean: U.S. High Tech Industry's False CAFTA Promises Disguise Bad Policy," Washington Alliance of Technology Workers, May 2005.