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Press Call Transcript

Republican and Democratic State Legislators Release Letter Signed by 300 Colleagues From All 50 States Urging End of ISDS in NAFTA

- **Operator** - Good afternoon, and welcome to today's call. All lines have been placed on mute to prevent any background noise. After the speaker's remarks, there will be an opportunity to ask questions. At that time, to ask a question, you would press star one on your telephone keypad. I will now turn the call over to your host, Lori Wallach.
- **Lori Wallach** - Hello everybody. Good afternoon. Thank you to our speakers and to the reporters who have joined the call. Today, a letter signed by 312 state legislators representing all 50 US states, Republicans and Democrats alike, has been sent to the US Trade Representative calling on elimination of ISDS in the NAFTA renegotiations, the North American Free Trade Agreement, renegotiations. And the speakers you're going to hear from--two state senators and two state representatives from our very diverse states, Ohio, Texas, Maine, and Washington State, Democrats and Republicans, half and half, represent the diversity of the opposition to investor state dispute settlements.

The extreme investor rights and enforcement system that both promotes job outsourcing and has subjected many domestic laws to attack, under the 25 years of NAFTA, resulting in \$392 million being paid out. You will also be hearing today from a speaker, Dan Ikenson, from the CATO Institute. The improbable scenario of Public Citizen and the CATO Institute agreeing on an issue highlights the fundamental issues of rule of law and democracy and sovereignty that are raised by the ISDS regime. This is especially important at this moment given that NAFTA renegotiations are basically balancing on the knife's edge of being done, not being done, being something that could replace the old NAFTA, being something that maybe doesn't go forward. We have to see how various pieces play out.

But, with all the focus on whether or not Canada's going to be in the next round of negotiating a deal, our position here today reiterates--and the state legislators' letter--reiterates that what's in the agreement is more important than even who is in the agreement. And that's true of the model for US trade agreements going forward. There's been enormous corporate pushback to keep ISDS in the agreements of the US, and, in fact, there has been efforts, some of them somewhat underwhelming, like the ALEC-sponsored state legislator letter in May calling for ISDS to stay in NAFTA, which had 12 signatories, 12 as compared to the 312 that we have representing all 50 states, saying ISDS should come out of NAFTA. The opposition to ISDS is very broad. From the national conference of state legislatures, representing the legislatures including which the current speakers are members and the State Association of Attorneys Generals, hundreds of small business organizations, hundreds of the nation's leading legal and economic professors, all of whom have sent letters in the last year calling for ISDS to come out of NAFTA.

Plus, there's been stark criticism of ISDS from voices disparate as US Supreme Court Justice Roberts, Senator Elizabeth Warren, Public Citizen, and a pro-free trade think tank such as the Libertarian CATO Institute. And with no further ado, I'm going to introduce Dan Ikenson to briefly share why CATO has also opposed ISDS being in NAFTA. And then, we will turn to our state senators and representatives. Dan Ikenson, please.

- **Dan Ikenson** - Thank you very much Lori. Can you all hear me? Lori, can you hear me?
- **Kenny Yuko** - We can hear you, Dan.
- **Dan Ikenson** - Okay, excellent. Well, as Lori mentioned, it's really not very often that she and I or her organization and mine agree that often on trade and investment issues. But, on ISDS, I think we both see it as a problem, as something that should be purged, not only from the NAFTA, but from other trade agreements as well. And I think purging it from NAFTA would set an excellent precedent for trade and investment policy going forward. I think we arrived at these conclusions for--for different reasons. You know, people sometimes--they scratch their heads and ask why someone from CATO would oppose investor protections. Isn't that--isn't that bad for business? Well, like--like most of my colleagues here, I'm not pro-business. I'm not anti-business. But, I'm pro-market. And I think there's an--there's a difference there, and it's an important thing--and important point to heed.

I believe that we need very clear rules that provide for equality of opportunity. That also means that I'm opposed to rules that sort of tilt the playing field toward one outcome that favors one group over another. Clearly, you know, we're free trade oriented. So, we're opposed to protectionism, which is by definition, you know, the practice of intervening in the market to achieve or avoid specific outcomes. So, we--we don't really have free trade.

We've never really had free trade. I think trade policy over the decades has looked toward freeing trade. But, really what we have are free trade agreements, which are not free trade, but managed trade. And managed trade implies a certain degree of results orientation. The NAFTA, for example, includes measures that will liberalize trade and, I think, impose greater restrictions on trade. There is protectionism baked into these agreements. So, one does not, you know, need to dislike or distrust business or to--or to be skeptical of its--of its pursuit to find fault with ISDS. Those of us who believe in markets see ISDS as an anti-market mechanism. It creates negative externalities. There are costs that are borne by those who don't benefit by the policies. Companies don't need these kinds of subsidies. And when we talk about it out in the--often, we talk about the problems with ISDS going outbound that in maybe it subsidies outsourcing. It makes--it ends up sharing risk for US companies abroad.

But, on the inbound side, we have a problem too, and I think that's what this letter is--is most concerned about. We have something in trade agreements called "national treatment" where we extend or forward the same treatment to foreign goods and investments and services as--as we do to domestic goods and services and investments. But, ISDS turns that on its head. ISDS give foreign companies greater rights in the United States, and, in fact, if you look at the trade promotion authority language--I don't know how this has ever really been reconciled.

One of the objectives is says on foreign investment--it says: "The principle negotiating objects on foreign investment are designed to reduce or eliminate artificial or trade distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than domestic investors in the United

States.” This seems, to me, to be an affront to that principle. Finally, USTR Lighthizer has put it this way--and I’ve always found this to be a proper way of putting it. He says: “It’s always odd to me when the business people come around and say, ‘Oh, we just want our investments protected.’ I mean, don’t we all? I would love to have my investments guaranteed. But, unfortunately, it doesn’t work that way in the market.” And he’s right. And I hope that he will see clear to getting rid of that before this NAFTA is finalized. I’ll turn it back to you Lori.

- **Lori Wallach** - Thank you very much Dan. I’d like now to introduce Senator Maralyn Chase, who is a Democrat from Washington State and one--was one of the leaders in organizing this letter to give her colleagues, state legislators, a voice directly into the NAFTA renegotiation. The senator represents Washington’s 32nd legislative district, and has done so since 2011 and is the chair of the Senate economic development and international trade committee, having been on that committee in both the Washington State House and now the Senate. Senator Chase.
- **Maralyn Chase** - Thank you Lori, and hello everyone. I appreciate your attendance on this call. Today, along with my colleagues from around the country, 312 state legislators from over 50 states--that’s just an amazing number. We publicly release a letter that supports the efforts to remove the controversial ISDS mechanism from NAFTA. Now, as a Democratic chair of the Senate Economic Development and International Trade Committee, I have worked within NCSL on a bipartisan basis to pass and maintain NCSL’s long standing resolution that opposes including ISDS in US trade agreements. In the current renegotiations of NAFTA, USPR Lighthizer’s efforts to remove ISDS from NAFTA have been met with hysterics from the corporate backers of ISDS.

But, the reality is that on a bipartisan basis, state legislators oppose ISDS. As Lori mentioned, [unintelligible] organized a pro-ISDS letter in May, and only 12 legislators signed onto it. We knew that state legislators have been long calling for ISDS to be removed from our trade deals. So, I initiated this letter with some of my colleagues and received an overwhelming response from Democratic and Republican state legislator colleagues from across the country. We don’t agree on much. But, we do agree on this.

Recently, in Washington State, a Canadian aquaculture company used NAFTA to try to bully our state legislature and the governor by threatening a \$76 million ISDS case after we passed popular legislation banning net-pen aquaculture after the damaging escape of over 200,000 Atlantic salmon into the Puget Sound ecosystem. Fortunately, our legislature and our governor did not succumb to those threats and implemented the ban. But, we are continuing to watch to ensure that our democratic decision making is not undermined by an ISDS case. USTR Lighthizer’s position to remove ISDS from NAFTA has strong Democratic as well as Republican support. And that’s what this broadly bipartisan letter of state legislators demonstrates. If reports are true that ISDS has been largely gutted from NAFTA and if that is what is in the final text that would be an immense improvement for state lawmaking. In the increasing globalized economy, it is imperative that international trade agreements protect and promote national sovereignty.

With the current dispute settlement system, multinational corporations circumvent the domestic legal system of the host country for an arbitral tribunal. By removing investor state dispute resolutions and settlements from trade deals, we encourage adherence to the domestic laws and regulations implemented for the public good while curbing broad corporate power. I thank you for your time in listening this. And back to you Lori.

- **Lori Wallach** - Thank you very much Senator Chase. And I’d now like to introduce Representative James White, who is in the Texas state legislature, Republican representing the 12th legislative

district since 2010. Representative White is the Chairman of the House Committee on Corrections, and he sits on the International Trade and Intergovernmental Affairs Committee of the Texas House. Representative White, please share your views. Do we have Representative White's line open? Alright. I'm going to ask my colleagues on the phone to try and find out if there's a technical problem there. And I'm going to introduce Senator Kenny Yuko, who is a Democrat from Ohio.

We are going back and forth between Democrats and Republicans. We're going to do a double senator and a double Democratic. Senator Kenny Yuko has represented Ohio's 25th Senate district since 2004. He served as both Chair and ranking member of the Commerce and Labor Committee, and he was also a member on the Committees on Health and Aging and Veteran's Affairs. And he currently serves as the leader of the Ohio State Senate Democratic Caucus. Senator Yuko.

- **Kenny Yuko** - Thank you, Lori. Again, my name is Kenny Yuko. I am the Senate minority leader from northeast Ohio, and my district includes parts of Cleveland and its surrounding suburbs, give you a little bit of a geographical picture of where we're at. Now, the impact on NAFTA in Ohio, based on my own personal experiences--you know, my background is I'm a 44 year member of the Labor's International Union in North America.

For 25 years I served as an organizer. I worked in the steel mills back in the '70s when we used to have J&L Steel, Republic Steel, US Steel, all in the northeast area, big powerful steel mills that are no longer--I mean, there's a mere shadow of what they used to be. What's happened is we've lost 150,000 jobs in Ohio because of overseas trades. And it's devastated, not only our workforce, but our economies, our local communities, and our quality of life all throughout Ohio. And we have to sit back and analyze what we've done and how this has happened. You know, it was an unintended consequences, so to speak, when we passed the NAFTA, when it first passed. And the answer is yes. The answer is absolutely yes.

You know, I spent last Saturday in Youngstown, Ohio, which was once a very crowd producer of the automobile industry. They current are--or most recently made the Cruze--Chevy Cruze at the Lordstown Plant. And once again, we sat there with our sisters and brother from the United Auto Workers and from the Communication Workers of America, and we listened to their plight because, you know what? They've lost jobs. And their jobs have gone overseas, and that's left them without an ability to provide for their families, to provide healthcare, to provide for a pension, to provide to be able to send their kids to college and whatnot. And they're devastated. They want--they want to--things to be better, and they're just not getting better. You know, we've talked about it at our rally we had with the Good Jobs Nation tour last Saturday. We kept hearing over and over and over again--promises were made. But, promises were also broken. And as--as long as we have that going on for us, we're going to continue to move in a downward trend. Now, the race to the bottom was created by ISDS. Make no mistake about it.

It--the NAFTA's ISDS provisions do incentivize the outsourcing of jobs by providing special benefits to companies that go overseas. That is an absolute lack of fairness. That's what's killing our workforce and those who represent them. The special treatment that we have for foreign investors--it eliminates many of the costs and the risks that make companies think twice [unintelligible] countries that have weaker labor and environmental standards. And that does not include us and bode well for people here in Ohio. The potential impact of an ISDS on state level policy--as a state lawmaker. I can tell you, I'm concerned that NAFTA's ISDS provisions open up state level policy making that attack by multinational corporations. That could undermine our ability to respond to the needs of our constituents. And we've got phone calls from these folks every single day because they're concerned.

They're concerned for their current job ability and their future with their pensions and whatnot as they retire. A good example also what's--what we're dealing with is--and I've seen the natural gas company launch a \$250 million ISDS case against Canada because Quebec passed a moratorium on fracking under the St. Lawrence River for environmental reasons. You know, the State of Ohio here, we have a very robust fracking industry. And it's really not that difficult to imagine what would happen here with a similar situation going on in Ohio. It's not fair because companies should have to follow state laws that promote better quality of life and shouldn't be guaranteed a profit because of their unfair practices. So, in wrapping up--I know we only have a couple minute here each. So, I don't want to overextend my privileges here.

But, the people in Ohio have felt the pain of a bad trade policy. Trade unions and others have been pushing for a long time for changes because we have to make our trade policy that is at least fair or at least a little more worker friendly. That's why over 300 lawmakers have come together to demand that one of the worst provisions of NAFTA be removed. When we stop incentivizing outsourcing, we can bring jobs back home where they belong, focus on our workers, and watch America grow again. Thank you very much. Appreciate being here.

- **Lori Wallach** - Thank you very much Senator Yuko. I understand that Representative White is now on. Sir, are you on? We understand there's a technical difficulty.
- **James White** - No--okay, I think I was probably the technical difficulty. But, yes, I'm on. Okay.
- **Lori Wallach** - Sure, thank you very much. This is Lori Wallach from Public Citizen, and I introduced you, and I understand there is a complication there. So, we apologize for the technical difficulty, sir. And, if I may ask you to give your comments--the two senators have spoken. And just to remind reporters, this is--this is Representative James White, who is a Republican from Texas representing the 12th legislative district since 2010. Sir.
- **James White** - Yes. Thank you so much for that, and I'll--I'll--will exercise brevity in my remarks. But, this is a very important issue. I'm one that is supportive of going in and reviewing all of these trade negotiations. I believe that consumers and producers around the world should be able to engage in peaceable, you know, contact through commerce. But, I think also that we need to make sure everybody's playing by the same rules. So, I'm very, very heartened that the--that our current administration, the Trump administration, is going through looking at these trade deals. Our economies in all of these countries have changed from the time a lot of these trade deals were put in place. So, this is a good opportunity to look at some of these issues. And one of them is this ISDS provision. And it is very concerning to me.

I'm someone who believes in American sovereignty. I'm someone that wants our Constitution and our people to uphold the tenth amendment. And so, I have some very strong concerns about ISDS where it attempts to undermine our US sovereignty. The idea that our court system, our federal, state, local court system can be circumvented through a trade deal and actually having our local economies turned over to a tribunal of three attorneys--and I believe my position is supported by the Chief Justice, who recently, in a case, was a dissenting voice, and he outlined the alarming powers of these arbitration panels to review our national laws and effectively annul the authoritative acts of a legislature, the executive, and the judiciary branches. So, I'm very glad that I also see very strong allies from the Liberty movement that include the CATO Foundation that are looking into this. And, you know, I just tell folks I'm just so, so proud to serve in the state legislature. History proves that the state legislature's got all this kicked off with to begin with back in 1788 with our Constitution. So, we need to make sure that we're helping our federal partners uphold our Constitution. And let's

have a real good strong trade deal that's not only good for Mexico and Canada, but good for American worker and upholds and respects our national laws, our state laws, and our local laws too. Thank you for having me today on your call.

- **Lori Wallach** - Thank you very much Representative White. And our last speaker is a Republican State Representative from Maine, Representative Stacy Guerin. She served in the state legislature in Maine since 2010, representing the 111st district and is a member of the legislature's Inland Fisheries and Wildlife Committee and is that House Republican lead on the judiciary committees in two of the past legislatures and is part of--is a member of the Maine Citizen Trade Policy Commission, which is a legislatively enacted bipartisan body to overlook the impact of trade policy on Maine's economy and public policy. Representative? Oh, good Lord, we may have had another technical difficulty. Let me--let me ask--let me ask my colleagues to double check on the representative's situation. And in the interim, operator, while we're sorting that out, may I please ask you to open the lines for questions and answer?
- **Operator** - The lines are now open for questions. If you would like to ask a question, you can do so by pressing star one on your telephone keypad. Again, please press star one on your telephone keypad. We do have a question in queue, several. Our first question comes from James Russell with Quorum Report. Your line is live.
- **James Russell** - Hi. Thanks. And this is actually for Representative White, considering we are a Texas outlet. Good to hear you again, Representative.
- **James White** - Yeah. How are you doing?
- **James Russell** - Yeah. So, I'm interested--were there any issues in Texas that have recently occurred that compelled you to sign on to this letter?
- **James White** - Well, let me tell you what compelled me to sign on to this letter. One, we should not have any trade deal that undermines US and state sovereignty. Okay? We should not have any type of tribunal outside of our Constitutional judicial system. Okay? So, you know, do I have a list of grievances or examples of this undermining anything in east Texas? No. But, again, I am supportive of the Trump administration in reviewing all of these trade deals. And this looks like something that we need to go in and look at and make sure that we have things that are consistent with our state and local political and economic values.
- **Lori Wallach** - This is Lori Wallach. I'll just add that one of the best summations of the elements of cases where these ISDS tribunals ruled against the US--and there have been 21 NAFTA ISDS cases against the US. And the elements where we've lost a piece of a case--the best, I think, summation of it is a Columbia University Law School paper for the Center of Sustainable Investment that literally is a summation of all those ruling of which elements of which cases we've lost because that's a signal for--think of whatever's the hot local issue--of how, based on past cases, a future case could go were there to be continued exposure. And operator--.
- **Operator** - We do have several more questions in queue. But, we also have Miss Guerin on the line at this time.
- **Lori Wallach** - Wonderful. Representative, may we please hear your comments? We had jumped to Q&A while we were sorting out our technical difficulties with your line. If you could introduce yourself and share your comments--and then, we'll resume Q&A.

- **Stacy Geurin** - Well, thank you very much. I'm Representative Stacy Geurin from the beautiful state of Maine, just entering our foliage season, if any of you want to come up for vacation. We'd be happy to have you. The renegotiation of NAFTA, I feel, is an ideal opportunity to fix is [unintelligible] agreement and stand for liberty. One of the biggest problems with the existing NAFTA is its failure to protect the sovereignty of the United States, specifically in chapter 11. NAFTA provides special legal rights to foreign corporations to challenge policies they claim will reduce their profits. Over many years, state legislators, on a bipartisan basis, have objected to these interstate dispute settlement provisions, which is the [unintelligible] to challenge legitimate state laws from tobacco policy to funeral home regulation to drinking water protections.

As I have been meeting with constituents this summer, while I've been out campaigning, I've asked their opinion on ISDS, and most are shocked to learn that international tribunals of three private lawyers have the ability to make decisions that can overrule the laws we have in Maine and in the United States. And I can tell you every single citizen that I've spoken with in Maine supports the removal of the ISDS provisions. The sovereignty of our state and federal laws is of great concern to Maine's citizens. And I'm also a member of the Maine Citizen Trade Commission, which I believe you mentioned in the introduction. We are tasked with overseeing the impact of trade policy on Maine's economy and public policy. Our commission voted unanimously--and this is a bipartisan commission--in support of the removal of ISDS from US trade agreements. Our commission, in a letter to Ambassador Lighthizer, cited that the ISDS panels are neither democratically elected, nor accountable to any public entity, nor are they required to consider basic principles of law. Under this system, the US government can only be a defendant and the investor takes no corresponding responsibility that that when--even when the US government wins, the US people lose because valuable resources, an average of \$8 million a case, are expended [unintelligible] claims. In the letter we're releasing today, it reaffirms that position and strongly supports the efforts of the US Trade Representative Robert Lighthizer to remove ISDS from the renegotiated agreement with Canada and Mexico.

- **Lori Wallach** - Thank you very much Representative Geurin. And to return back to our Q&A--thank you for that first question. And operator, if you can tell us who's next in the queue--and all four state senators and representatives, standby as--as we get some more questions.
- **Operator** - Once again, the lines are open for questions. Please press star one on your telephone keypad to ask a question. Our next question comes from Mike Ludwig with Truth Out. Your line is live.
- **Mike Ludwig** - Hi. Thanks for having the call. This question is for anybody but Lori or Dan, if you want to take a stab at it as well. We know that NAFTA has got some political deadlines. And let's say maybe they don't all get met and the sitting Mexican president isn't--the guy in Mexico is going to end up signing this. If ISDS is not in the final draft of this deal, is it going to be easier to get AMLO to sign on? Is that something that the Trump administration should be thinking about if he ends up being the person who's going to sign off on this?
- **Lori Wallach** - Thank you Mike. I will--Dan, chime in. But, I will address that to start with. This is Lori. First of all, I think that, as a first order, it is certainly necessary for a NAFTA replacement deal to get through the US Congress to have ISDS out. And the deadlines which relate to the fast track procedure for different stages of an agreement ultimately being finished and then move forward are tricky. And that [unintelligible] situation of first impression, which is--it is the case that they

have given the formal fast track required 90 day notice in order to sign an agreement by November 30th, i.e., in time for the--the Mexican president with whom they've negotiated to sign it.

And, while AMLO, incoming president, has given a blessing to the overall deal, it is not necessarily the exact deal that he would negotiate. So, it--it seems likely that one way or another, the outgoing Mexican president is going to be signing something November 30th. And it could be a deal if a deal is forthcoming with Canada that involves all three countries. Or it could be a deal that is with Mexico, which maybe then gets put on the shelf and negotiations with Canada continue. The fast track statute that delegates trade authority is not specific with respect to whether or not the parties to an agreement have to sign at the same time. And, in fact, with respect to some past agreements, such as CAFTA, the parties haven't all signed at the same time. The Central America deal--Costa Rica wasn't in the position to sign until after a referendum. So, it is, I think, a--a technical legal issue of how the process goes forward with respect to Canada versus Mexico's timing. But, I do think as a matter of US domestic political reality, as we saw at the transpacific partnership, one of the things that ensured that there could not be a majority put together to pass that agreement in the entire year after it was signed and sat around moldering in 2016, the inclusion of ISDS meant Liberty Republicans said, "No way. We're not accepting that threat to our sovereignty." And progressive Democrats--many--most Democrats said, "No way. We're not going to allow that usurpation of who decides what policies are agreeable within a country or give foreign investors special rights beyond what the Constitution and our courts give."

So, that, I think, is the same dynamic with respect to ISDS and the prospects for a NAFTA redo to be able to get through the US Congress. And I don't know--Dan or any of our state officials, if you have something to add?

- **Dan Ikenson** - This is Dan. I will just add a slight morsel here. And, I mean, I largely agree with Lori's assessment of the timing and the importance of--of having chapter 11 taken out of the new NAFTA because the next Congress is likely to be more in favor of killing ISDS than--than the current one. And I don't really have a good sense as to whether or not--where AMLO comes down on this issue, you know. To be honest, I mean, the--the public face of--of--of somebody from a poorer country, poorer than the United States, might say, "We don't like ISDS." But, in fact, there is a school of thought that having it helps to attract investment. I don't think any of the data support that really. But, I don't think that it's--it's a make or break issue for--for--for him. It's more of an issue here in the United States for the sovereignty issues we've been discussing, but also, you know, for the market distortions that--that--that they create.
- **Lori Wallach** - Anything from our state legislators on that point, or should we take the next question? And just for reporters to keep in mind--and this gets to--to what Dan was just referring to, the vote of a deal sign now would be in 2019. Operator, next question please.
- **Operator** - Thank you. Our next question comes from Maria Curry [sp] with Inside US Trade. Your line is live.
- **Maria Curry** - Hey, thanks for doing this. My question is do you consider it a step in the right direction that the minimum standard of treatment is not included in the pared down version of ISDS that covers most sectors? And that's open to anyone.
- **Lori Wallach** - Well, just to update, for people who are not inside US trade and are not following the details, the--maybe actually, Maria, to update you--so, here's the state of play of what is in the US Mexico agreement and Canada has signed off on this piece of it already, had before they left in May. So, chapter 11B, which is the part of the text that is the existing investor state dispute settlement

language, is gone. Eleven B is removed. And with respect to Canada, there is no more investor state anything. With respect to Mexico, there are two annexes that replace 11B, the investor state part of the NAFTA text. And the US Mexico annexes--the first annex is--it creates--it changes the process with respect to the tribunals and various conflict of interest rules but--and other issues around damages. But, the most important thing is it requires any issue to be brought to domestic courts and administrative bodies and for a 30 month period to pass for exhaustion of domestic remedies. You cannot take any extra review unless you've gone through and used up all the domestic remedies that can suit your problem.

And then, the only remedies that can be sought using this new procedures are with respect to direct expropriation, so seizure, which is defined as transfer of title or physical occupation. So, the government literally takes your property and makes the road, and you cannot, through Mexican courts, get your money back to the property you owned that was seized for public use. That case, after 30 months of exhausting domestic remedies, can be brought as well as direct discrimination after the--an investment has been established. So, actually, minimum standard of treatment is gone and indirect expropriation is gone. Compensation for performance requirements, transfers--all of that is gone. That was in the original ISDS. And as well, there's no right to invest. Pre-establishment of investment claims are gone. And that is an outcome that is certainly within line with our domestic law. It is not special rights for foreign investors and is--is an outcome that, I think, though Public Citizen would prefer nothing at all, is an outcome that is, I think, could be widely supported, especially after the domestic exhaustion.

There is a second annex, which, I think, everyone is very keen to see with--with to date as well as the first annex. The things are gone, we know are gone when you just see the text. The text hasn't been released. The second annex is a narrow carve back in for the nine US companies that have contracts with the federal government of Mexico in oil and gas projects. It's 14 contracts and nine companies. And how that is written and how it operates and what it covers, I think, is a--is a--it is something we're only going to know when we see the final text. So, overall, has what the administration done in the US Mexico agreement been a huge step in the right direction in ISDS? Yes, especially given--with respect to the past cases. Nineteen of the 21 cases in ISDS--all of the ISDS cases against the US have been NAFTA. Nineteen of the 21 cases have been Canadian firms.

And with respect to Canada, 37 of the 38 cases which have paid out over a quarter billion dollars of Canadian taxpayer money are all US firms. So, the US Canada ISDS being ended is extremely important going forward, not just for the Washington State case we heard Senator Chase mention wouldn't be possible.

But, also it's the most egregious example of functioning court systems of multinational companies using this parallel justice system to extract taxpayer money over matters that, in a well-functioning court system, if you're respecting the country's sovereignty--I don't think one would consider the US and Canadian courts as not functioning with respect to property rights, as a general matter. So, the sovereignty overreach is most explained in those 19 Canadian cases against the US and the 37 US cases against Canada, which would be eliminated. So, that is my two cents on that. And other speakers, would you care to join in?

- **Dan Ikenson** - This is Dan. I'm not going to challenge anything that Lori said. You're very well versed in all of these statistics and all of these provisions. But, I think it's definitely progress to strip out these various standards. But, I think we need to be concerned that some industries, some companies will still have access to a battery of provisions that other companies and industries don't have access to. And that creates market distortion. So, from a--from my--a market oriented think tank's perspective, that's--that's problematic. It'll encourage risk taking from some industries or some firms in some industries, and it will discourage it from others. To have a proper functioning,

you know, capitalist economy, you need challengers to be able to be the risk takers, to challenge the incumbents.

This is taking companies that should be more risk averse and encouraging them to take these risks because--because the risk is--is spread out [unintelligible]. So, we--here was also an opportunity to actually just to kill it and to set a precedent going forward. But, here we just have--you know, we have the potential for this to be a resuscitated again down the road because the shell of the--of the agreement will remain in place. So, that's my concern. But, yes, it's progress.

- **Operator** - I have no further questions in queue at this time.
- **Lori Wallach** - I would say, just to add one sort of closing thought on the status, I agree, as I mentioned, that it would be better to just have no extra judicial system at all. However, it is the case that actually the shell is gone. Eleven B is gone. So, Chapter 11B--so, what, I think, everyone needs to do is when the NAFTA text is posted on October 1st, to look at what those two US Mexico annexes say. The first one seems less likely to either cause the problems that Dan has mentioned or from Public Citizen's perspective, to subject legitimate domestic laws to attack and extrajudicial tribunals.

The second annex is the one that needs to be closely scrutinized. And if, as some have described it, it only applies to the existing nine contractors, with respect to whether or not they can get their money back, if the oil and gas sectors renationalized, which the new president has suggested might happen, or if it is something broader and opens a different kind of a door, I think, is the question that everyone will be looking at as people are generally trying to figure out their overall position on at least the US Mexico part of the NAFTA replacement. But, what certainly is the case is that, but for the broad nationally diverse 50 state bipartisan voices of state legislators, including those on the call today, as well as the small business leaders and the economics and law professors and federal legislators from both parties all speaking up against investor state dispute settlements, given the very strong push by the companies Dan has described, our beneficiaries of these special rights and treatments and--and millions in cash, there would not be progress, much less the prospect--and we'll see when the text comes out--of actually have reversed a regime that is so broadly supported by its large corporate beneficiaries, but is not in the public interest, is not in line with our constitution or federalist government system and it not supported by a shockingly politically diverse array of organizations, elected officials, and scholars.

So, with that, I would recommend all the reporters on the call--look at the letter. And I want a special thanks to our state legislators. Thank you all very much for joining the letter, leading on the letter, and joining on this call. And I just want to give a chance for anyone to have any last comments.

- **Maralyn Chase** - This is Senator Chase. I also want to thank you Lori and Public Citizen and my colleagues on the call and my colleagues who signed the letter. I think this is--this--these NAFTA changes represent a real movement forward, and I know that our fishermen are grateful that--and our lawmakers are grateful and our governor is grateful that we will no longer have to deal with--with a--an aquaculture firm who [unintelligible] and then turn around and sue us because his expectations of profit [unintelligible] were thwarted. So, thank you for your work on this and this new information.
- **Kenny Yuko** - This is Senator Yuko, Lori. Thank you for having us. Really appreciate the opportunity.
- **Lori Wallach** - Thank you to you both. Anyone else?

- **Stacy Geurin** - This is Representative Stacy Geurin, and it's a pleasure to work with all of you. I-- I really enjoy it when we can work together from all sides of the issue to protect US sovereignty.
- **Lori Wallach** - Thank you Representative. Well, with special thanks again to all the representatives. I think the reporters who've joined the call and also my colleagues at Public Citizen who helped organize all of this. I wish everyone a very good afternoon and thank you again. Bye bye.
- **Operator** - This concludes today's teleconference. You may now disconnect your lines.

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