

Dear Majority Leader McConnell, Minority Leader Reid, Speaker Boehner, Minority Leader Pelosi, and Ambassador Froman:

As members of the legal community, we write to oppose the inclusion of Investor-State Dispute Settlement (ISDS) provisions in the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). As you consider trade authority legislation and negotiate these agreements, we urge you to protect the rule of law and our nation's sovereignty by ensuring ISDS is not included.

ISDS grants foreign corporations a special legal privilege, the right to initiate dispute settlement proceedings against a government for actions that allegedly cause a loss of profit for the corporation. Essentially, corporations use ISDS to challenge government policies, actions, or decisions that they allege reduce the value of their investments. These challenges are not heard in a normal court but instead before a tribunal of private lawyers.

This practice threatens domestic sovereignty and weakens the rule of law by giving corporations special legal rights, allowing them to ignore domestic courts, and subjecting the United States to extrajudicial private arbitration. Corporations are able to re-litigate cases they have already lost in domestic courts. Further, they are able to do so in a private system lacking procedural protections. As more multi-national corporations are based outside of the U.S., more such challenges will be brought against the U.S.

ISDS proceedings lack many of the basic protections and procedures of the justice system normally available in a court of law. There is no appeals process. There is no oversight or accountability of the private lawyers who serve as arbitrators, many of whom rotate between being arbitrators and bringing cases for corporations against governments. The system is also a one-way ratchet because corporations can sue, forcing governments to spend significant resources, while governments impacted by foreign corporations cannot bring any claims.

In recent years, corporations have challenged environmental, health, and safety regulations, including decisions on plain packaging rules for cigarettes, toxics bans, natural resource policies, health and safety measures, and denials of permits for toxic waste dumps. Hundreds of cases have been filed against approximately 100 governments over the past few years.

ISDS threatens domestic sovereignty by empowering foreign corporations to bypass domestic court systems and privately enforce terms of a trade agreement. It weakens the rule of law by removing the procedural protections of the justice system and using an unaccountable, unreviewable system of adjudication.

For the above reasons, we urge you to ensure ISDS is not included in the TPP and the TTIP.

Thank you for your consideration.

Sincerely,

Erwin Chemerinsky

Dean of the School of Law, Distinguished Professor of Law, Raymond Pyke Professor of First Amendment Law, University of California, Irvine

Joel Rogers

Sewell Bascom Professor of Law, Political Science, Public Policy, and Sociology, University of Wisconsin-Madison

Marley S. Weiss

Professor of Law, University of Maryland Francis King Carey School of Law

David Abraham

Professor of Law, University of Miami School of Law

Constance Anastopoulo

Associate Professor of Law, Charleston School of Law

Tawia Ansah

Associate Dean for Academic Affairs & Professor of Law, Florida International University College of Law

Fran Ansley

Distinguished Professor of Law Emeritus, University of Tennessee College of Law

Robert H. Aronson

Betts, Patterson & Mines Professor Emeritus, University of Washington School of Law

Marianne Artusio

Associate Professor of Law, Director, Institute of Aging and Longevity Law, Touro Law Center

Michael Asimow

Visiting Professor of Law, Stanford Law School

Brook Baker

Professor, Northeastern University School of Law

Mark Barenberg

Isador and Seville Sulzbacher Professor of Law, Columbia Law School

Phyllis Bernard

Professor of Law & Director of the Center on Alternative Dispute Resolution, Oklahoma City University School of Law

Susan Bisom-Rapp

Professor of Law, Thomas Jefferson School of Law

Christopher L. Blakesley

Barrick Distinguished Scholar & Cobeaga Law Firm Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas

Mercer Bullard

Professor of Law & Mississippi Defense Lawyers Association Distinguished Lecturer, University of Mississippi School of Law

Robert Burgdorf

Professor Emeritus, David A. Clarke School of Law

William Burnham

Professor of Law Emeritus, Wayne State University Law School

Brandon Butler

Practitioner in Residence, Intellectual Property Law Clinic, American University, Washington College of Law

Emily Calhoun

Professor Emerita, University of Colorado Law School

Robert Calhoun

Professor of Law, Golden Gate School of Law

Gilbert Carrasco

Professor of Law, Willamette University College of Law, and Professor of Public Law, Kuwait International Law School, Willamette University

Paul Carrington

Harry R. Chadwick, Sr. Professor Emeritus of Law, Duke University School of Law

Michael Carroll

Professor of Law and Director, Program on Information Justice and Intellectual Property, American University, Washington College of Law

Andrea Charlow
Associate Dean & Professor of Law, Drake University Law School

Neil Cogan
Professor of Law and Former Dean, Whittier Law School

Amy Cohen
Professor of Law, Ohio State University Moritz College of Law

Liz Ryan Cole
Professor of Law, Vermont Law School

Angela Cornell
Clinical Professor of Law, Cornell University Law School

Robert Covington
Professor of Law Emeritus, Vanderbilt University

Dan Danielsen
Associate Dean for Academic Affairs & Professor of Law, Northeastern University School of Law

Thomas J. Davis
Professor, Arizona State University

Helen de Haven
Associate Professor of Law, Atlanta's John Marshall Law School

John Drobak
George A. Madill Professor of Law, Professor of Economics, and Professor of Political Economy,
Washington University School of Law

Charles Dykman
Professor, University of Wisconsin Law School

John Echeverria
Professor of Law, Vermont Law School

Pamela Edwards
Professor of Law, CUNY School of Law

Stephanie Farrior
Professor of Law, Director, Center for Applied Human Rights, Vermont Law School

Stephen Feldman

Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science,
University of Wyoming College of Law

Barbara Fick

Associate Professor of Law, University of Notre Dame Law School

Martha Field

Langdell Professor of Law, Harvard Law School

Catherine Fisk

Chancellor's Professor of Law, University of California, Irvine School of Law

Barbara Flagg

Professor of Law Emerita, Washington University School of Law

Sean Flynn

Professorial Lecturer, American University, Washington College of Law

Sally Frank

Professor of Law, Drake University School of Law

Andrew Friedman

Lecturer-in-Law, Columbia Law School

Mary Ellen Gale

Professor of Law, Whittier Law School

Charlotte Garden

Assistant Professor, Seattle University School of Law

Stephen Gottlieb

Jay and Ruth Caplan Distinguished Professor of Law, Albany Law School

Steven Greenberger

Associate Professor of Law, DePaul University College of Law

Peter Halewood

Professor of Law, Albany Law School

Joseph Harbaugh
Professor Emeritus and Dean Emeritus, Nova Southerastern University Law Center

Leora Harpaz
Professor Emeritus, Western New England University School of Law

Michael Harper
Professor of Law, Boston University

Lynne Henderson
Professor Emerita, William S. Boyd School of Law, University of Nevada, Las Vegas

Roger Henderson
Ralph W. Bilby Professor of Law Emeritus, University of Arizona

Christoph Henkel
Associate Professor of Law, Mississippi College School of Law

Jennifer Hill
Lecturer, University of Miami School of Law

Cynthia Ho
Clifford E. Vickrey Research Professor of Law, Loyola University of Chicago School of Law

David R. Hodas
Professor of Law and H. Albert Young Fellow in Constitutional Law, Widener University School of Law

Ann Hodges
Professor of Law, University of Richmond

K. Babe Howell
Associate Professor, City University of New York School of Law

Marcus Hurn
Professor of Law, University of New Hampshire School of Law

Elizabeth Iglesias
Professor of Law, University of Miami School of Law

Tim Iglesias
Professor of Law, University of San Francisco School of Law

Philip Joseph Jimenez
Professor of Law, Santa Clara University School of Law

Lise Johnson
Head, Investment Law and Policy, Columbia Center on Sustainable Investment, Columbia Law School

Timothy Stoltzfus Jost
Professor, Washington and Lee University

David Kairys
Professor of Law, Temple University School of Law

Howard Kalodner
Dean and Professor of Law Emeritus, Western New England University School of Law

Robin Kar
Professor of Law and Philosophy, University of Illinois College of Law

Gregory Keating
Vice Dean and William T. Dalessi Professor of Law and Philosophy, USC Gould School of Law

Kay Kindred
Sara and Ralph Denton Professor Of Law, William S. Boyd School of Law, University of Nevada, Las Vegas

Kenneth Kirwin
Professor Emeritus, William Mitchell College of Law

Charles Knapp
Joseph W. Cotchett Distinguished Professor of Law, University of California, Hastings College of the Law

Susan Koniak
Professor, Boston University School of Law

Alexia Kulwicz
Labor Education Department Assistant Professor, University of Wisconsin – Extension

Ariana Levinson
Associate Professor of Law, University of Louisville Louis D. Brandeis School of Law

John Levy
Chancellor Professor of Law, Emeritus, William and Mary Law School

Stephen Loffredo
Professor of Law, City University of New York School of Law

David Luban
University Professor and Professor of Law and Philosophy, Georgetown University Law Center

Tayyab Mahmud
Professor of Law and Director, Center for Global Justice, Seattle University School of Law

Alfred Dennis Mathewson
Henry Weihofen Chair in Law, University of New Mexico School of Law

Martha McCluskey
Professor of Law, SUNY Buffalo

Ann McGinley
William S. Boyd Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas

Isabel Medina
Professor of Law, Loyola University New Orleans College of Law

Carlin Meyer
Emeritus Professor of Law, New York Law School

Gary Minda
Professor of Law Emeritus, Brooklyn Law School

Joel Mintz
Professor of Law, Nova Southeastern University Law Center

Kathleen Morris
Associate Professor of Law, Golden Gate University School of Law

Gregory S. Munro
Professor, University of Montana School of Law

Cynthia Nance
Dean Emeritus and Nathan G. Gordon Professor, University of Arkansas School of Law

Sean Nolon
Professor of Law & Director, Dispute Resolution program, Vermont Law School

Christiana Ochoa
Professor of Law, Indiana University Maurer School of Law-Bloomington

James O'Fallon
Professor Emeritus, University of Oregon School of Law

Stephen Pepper
Professor of Law, University of Denver Sturm College of Law

Mark Peterson
Clinical Professor of Law, Lewis & Clark Law School

Deana Pollard-Sacks
Roberson King Professor of Law, Texas Southern University

James Pope
Professor of Law, Rutgers Law School –Newark

Peter Reich
Professor of Law & Director, Environmental Law Concentration, Whittier Law School

Maritza Reyes
Associate Professor of Law, Florida A&M University College of Law

Paula Rhodes
Associate Professor, University of Denver Sturm College of Law

Cesar Rosado Marzan
Assistant Professor of Law, Chicago-Kent College of Law, Illinois Institute of Technology

Howard Rosenberg
Professor Emeritus, University of Denver Sturm College of Law

John P. Sahl
Professor of Law and Faculty Director, Miller-Becker Center for Professional Responsibility, The University of Akron School of Law

Mortimer D. Schwartz
Professor of Law Emeritus, University of California, Davis School of Law

Paul Secunda
Professor of Law, Director, Labor and Employment Law Program, Marquette University Law School

Ann Shalleck
Professor of Law and Carrington Shields Scholar, American University, Washington College of Law

Jana B. Singer
Professor of Law, University of Maryland Francis King Carey School of Law

Emily Spieler
Edwin W. Hadley Professor of Law, Northeastern University School of Law

Joan Steinman
Distinguished Professor of Law, Chicago-Kent College of Law, Illinois Institute of Technology

Jeffrey Stempel
Doris S. and Theodore B. Lee Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas

Beth Stephens
Professor of Law, Rutgers Law School

Katherine Stone
Arjay and Frances Fearing Miller Distinguished Professor of Law, UCLA School of Law

Mateo Taussig-Rubbo
Professor, SUNY Buffalo Law School

Paul Tractenberg
Board of Governors Distinguished Service Professor and Alfred C. Clapp, Jr. Distinguished Public Service Professor of Law, Rutgers University School of Law-Newark

Lea VanderVelde
Josephine Witte Professor of Law, University of Iowa College of Law

Neil Vidmar
Russell M. Robinson II Professor of Law, Duke University School of Law

Joan Vogel
Professor of Law, Vermont Law School

Adrienne E. Volenik
Clinical Professor of Law Director, Education Rights Clinic, University of Richmond School of Law

William L. Want
Professor, Charleston School of Law

Michael Waxman
Professor of Law, Marquette University Law School

Paul Whitehead
Professor of Practice, Penn State University

Lauren Willis
Professor of Law and Rains Senior Research Fellow, Loyola Law School Los Angeles

Peter Winship
James Cleo Thompson Sr. Trustee Professor of Law, SMU Dedman School of Law

Mary Wood
Philip H. Knight Professor of Law, University of Oregon School of Law

Richard Wright
Distinguished Professor of Law, Chicago-Kent College of Law, Illinois Institute of Technology

William Yeomans
Fellow in Law and Government, American University, Washington College of Law

Noah Zatz
Professor of Law, University of California, Los Angeles

cc: Chairs & Ranking Members of Finance & Ways & Means Committees

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