



## **Hundreds of State Lawmakers Want a NAFTA Without Corporate Tribunals**

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There isn't much that Democrats and Republicans agree on these days, especially when it comes to President Trump. However, there is one White House initiative that state lawmakers from both parties are getting behind: the push to eliminate a controversial corporate tribunal system in the 1994 North American Free Trade Agreement (NAFTA) between the United States, Mexico and Canada.

In a letter released on Wednesday, more than 300 state lawmakers from across the political spectrum told US Trade Representative Robert Lighthizer that they "strongly support" his efforts to eliminate NAFTA's current Investor-State Dispute Settlement system, or ISDS, as the US and Canada continue to renegotiate the trade agreement. Ending NAFTA's ISDS system has been a longstanding goal for organized labor and progressives in the US and beyond.

In contrast, a recent letter asking Lighthizer to preserve NAFTA's ISDS system only attracted signatures from 12 state lawmakers, almost all of them Republicans. The letter was written by the American Legislative Exchange Council, a conservative group that advances corporate interests in state legislatures.

"We don't agree on much, but we do agree on this," said Maralyn Chase, a Democratic state senator from Washington State, during a press conference with reporters on Wednesday.

### **Foreign Corporations Undermine State Laws**

ISDS is a standard and highly controversial feature of most international "free-trade" deals. The ISDS system gives special rights to foreign corporations or "investors" operating in another country by allowing them to bring disputes with the host state before private corporate tribunals rather than the host country's judicial system.

ISDS is supposed to shield investors from the risk of doing business in countries with corrupt or disorganized legal systems, but critics on the left argue the tribunals allow multinational corporations to undermine labor standards as well as environmental and public health laws, all at the expense of the tax-paying public.

Libertarian conservatives, on the other hand, oppose the special rights ISDS gives to foreign corporations, which they view as distortion of the free market that undermines national sovereignty.

“Companies don’t need these kinds of subsidies,” said Daniel Ikenson, a trade policy expert at the Cato Institute, a libertarian think tank.

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ISDS cases also suck up millions of tax dollars, with the average case costing a government \$8 million to litigate, according to Public Citizen’s Global Trade Watch. In the US, foreign corporations (most often from Canada) have used NAFTA’s ISDS system to win at least \$392 million in damages from taxpayers and launch challenges against toxic chemical bans and public health initiatives.

Chase pointed to Cooke Aquaculture, a Canadian firm that threatened to sue the US government for \$72 million if Washington’s state legislature passed a ban on Atlantic salmon farming. The ban was introduced after 200,000 non-native salmon escaped from the company’s fish farms into Puget Sound in 2017.

“If reports are true — that ISDS has been largely gutted from NAFTA — and if that is in the final text, that would be an immense improvement for state lawmaking,” said Chase, who added that the bipartisan National Conference of State Legislatures has long opposed ISDS provisions in trade agreements.

Critics say ISDS also incentivizes the outsourcing of jobs by reducing financial risks for companies that move manufacturing plants to cheaper labor markets such as Mexico, a major reason why the Trump administration is working to ditch the ISDS system as it revises NAFTA with Canada and Mexico.

Negotiations with Canada are ongoing, but the US recently announced a preliminary agreement to rework NAFTA between Canada and Mexico. Under that version of the deal, ISDS would be eliminated in Canada and the US. In Mexico, ISDS would be heavily scaled back, and corporations would be required to exhaust their options in the Mexican legal system for resorting to ISDS, which would only be available in cases involving the direct expropriation of property by the government.

The preliminary agreement does include a carve-out for a handful of US oil and gas firms that have contracted with the Mexican government since the country began privatizing fossil fuel production, which has disappointed some ISDS critics. This provision would allow about nine US-based companies to use the old ISDS system, presumably to get their money back if Mexico’s leftist president-elect Andrés Manuel López Obrador decides to reverse course on denationalizing energy production.

However, the actual text of the preliminary agreement with Mexico and the ongoing negotiations between the US and Canada remain under wraps, to the dismay of civil society groups that have demanded the NAFTA renegotiation process be transparent.

### **Republicans in Congress Support ISDS**

Trump routinely attacked NAFTA for sending jobs to Mexico on the campaign trail, reminding voters in the Rust Belt states that his opponent's husband, former President Bill Clinton, championed the deal. This helped Trump swipe votes from Hillary Clinton in traditionally Democratic areas of swing states such as Michigan and Ohio. Lighthizer and his staff are now working furiously to fulfill Trump's campaign promise to renegotiate NAFTA to the benefit of American workers.

This has put the Trump administration at odds with big business groups and their allies in the GOP who want the special corporate rights provided by ISDS preserved in the new NAFTA agreement. In March, 103 Republican lawmakers, led by Senate Finance Committee Chairman Orrin Hatch (R-Utah), warned the Trump administration that the new NAFTA agreement would lose key congressional support if ISDS were eliminated. Congress must approve new trade deals before they take effect.

Global Trade Watch Director Lori Wallach said Trump should be more worried about losing support from a bipartisan coalition that opposes ISDS, including progressives, libertarian Republicans and lawmakers from districts that lost manufacturing jobs under NAFTA. She said ISDS provisions in the Trans-Pacific Partnership were a major reason why President Obama failed to convince Congress to approve the deal back in 2016.

"ISDS is broadly supported by its large corporate beneficiaries, but it's not in the public interest or in line with the Constitution or our federal system," Wallach said.

The Trump administration officially notified Congress about impending changes to NAFTA earlier this month, and the administration faces an October 1 deadline for releasing the text of the agreement under a federal law that has allowed the White House to fast-track talks with Canada and Mexico. The US recently announced a preliminary agreement with Mexico, and negotiations with Canada have resumed despite months of feuding between Canadian Prime Minister Justin Trudeau and Trump on trade.

Trump has threatened to strike a bilateral agreement with Mexico and leave Canada out of a new NAFTA agreement if negotiations between the two countries go south, but experts say it would be politically difficult and economically risky to finalize the deal without Canada on board.