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,

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Please note: Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.