

Don't Let Trans-Pacific Partnership (TPP) Gut State Laws

The partnership's potential to undermine state laws should concern Congress.

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by Eric T. Schneiderman

State laws and regulators are increasingly important as gridlock in Washington makes broad federal action on important issues an increasingly rare event. From environmental protection to civil rights to the minimum wage, the action is at the state level. Ironically, one thing that may get done soon in Washington is a trade agreement, the Trans-Pacific Partnership, which has the potential to undermine a wide range of state and local laws.

One provision of TPP would create an entirely separate system of justice: special tribunals to hear and decide claims by foreign investors that their corporate interests are being harmed by a nation that is part of the agreement. This Investor-State Dispute Settlement provision would allow large multinational corporations to sue a signatory country for actions taken by its federal, state or local elected or appointed officials that the foreign corporation claims hurt its bottom line.

This should give pause to all members of Congress, who will soon be asked to vote on fast-track negotiating authority to close the agreement. But it is particularly worrisome to those of us in states, such as New York, with robust laws that protect the public welfare — laws that could be undermined by the TPP and its dispute settlement provision.

To put this in real terms, consider a foreign corporation, located in a country that has signed on to TPP, and which has an investment interest in the Indian Point nuclear power facility in New York's Westchester County. Under TPP, that corporate investor could seek damages from the United States, perhaps hundreds of millions of dollars or more, for actions by the Nuclear Regulatory Commission, the New York State Department of Environmental Conservation, the Westchester Country Board of Legislators or even the local Village Board that lead to a delay in the relicensing or an increase in the operating costs of the facility.

The very threat of having to face such a suit in the uncharted waters of an international tribunal could have a chilling effect on government policymakers and regulators.

Or consider the work my office has done to enforce the state of New York's laws against wage theft, predatory lending and consumer fraud. Under TPP, certain foreign targets of enforcement actions, unable to prevail in domestic courts, could take their cases to TPP's dispute resolution tribunals. Unbound by an established body of law or precedent, the tribunals would be able to simply sidestep domestic courts. And decisions by these tribunals

cannot be appealed.

Proponents of TPP note that similar tribunal constructs have been included in other international trade agreements involving the United States, often in order to encourage and protect our investments in countries with shaky, corrupt or even nonexistent civil justice systems. But more than in past trade agreements, a number of the nations expected to participate in TPP have the resources and legal sophistication to exploit the agreement and turn it against our laws and system of justice.

Maybe that's why the agreement is being negotiated in secret. If it weren't for WikiLeaks and a few media outlets, we wouldn't even know about this dangerous provision. The effort by negotiators to keep their discussions from the public is telling.

The beneficiaries here would be a discrete group of multinational business interests that should be entitled to treatment no better and no different than any other plaintiff receives in the trial and appellate courts of this country. The separate and unaccountable system of justice that TPP would create poses a major risk to critical statutes and policy decisions that protect our citizens — and it has no place in a nation committed to equal justice under law.

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