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## GOVERNMENT

By Paul Magnusson in Washington

# States' Rights vs. Free Trade

## As trade pacts proliferate, states start to howl about lost sovereignty

The good people of Utah decided 110 years ago that gambling was one vice the state didn't need. So they outlawed it and later added electronic gaming to the ban. Now, Utah's right to make games of chance illegal has been shot down by the World Trade Organization.

WTO judges ruled last fall in a case brought by the government of Antigua and Barbuda that gambling regulations in Utah and most other states conflict with America's obligation not to discriminate against foreigners providing "recreational services." In ruling for the tiny Caribbean nation, which had charged that Utah's wager-phobia infringed on Internet gambling operations based in the islands, the WTO opened the door to millions of dollars in potential penalties. "It's not just gambling," warns Utah state representative Sheryl L. Allen, a Republican who chairs a multistate committee studying free-trade deals. "The states are losing their authority in a lot of areas."

After decades of dozing on the sidelines as Washington promoted a free-trade agenda around the globe, governors, state lawmakers, and judges are waking up to the same startling reality: A growing number of international trade agreements are usurping state powers. Suddenly alarmed that Washington is bargaining away their authority over everything from regulating utilities to controlling land use, states are all but ready to join the chorus of anti-globalization critics.

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The statehouse uprising against trade deals comes at a bad time for President George W. Bush's trade policy. This summer, Congress will debate the Central American Free Trade Agreement (CAFTA) between the U.S., the Dominican Republic, and five Central American nations. It will also consider whether to end U.S. membership in the WTO and extend Presidential authority to negotiate future deals.

Business groups worry that an outside-the-Beltway rebellion will overwhelm Congress's razor-thin support for trade deals. The National Conference of State Legislatures, for example, may withdraw its longtime support for so-called fast-track authority.

Such concerns from the heartland are already stiffening the anti-globalization sentiments of those conservative Republicans who view the WTO as an attempt to impose a one-world government. Elements of the Right and the Left increasingly agree that modern trade deals mostly serve the interests of multinationals intent on moving investment and jobs offshore.

CAFTA is the most likely victim of this rising resistance. But Corporate America fears that objections from the states could also undermine its hopes of reaching the Holy Grail: reducing barriers in developing nations to trade in services. Talks at the 148-nation WTO that would center on trade in services are already a year behind schedule. J. Robert Vastine, president of the Coalition of Service Industries says fears among the states are "wildly exaggerated by people who want to make free trade out to be the devil." But, he concedes, "we are going to need a more carefully thought-out approach to deal with all these concerns in the state capitals."

That won't be easy. The assault on sovereignty is rooted in a series of trade agreements stretching back to the mid-1990s. The 1994 North American Free Trade Agreement and the pact creating the WTO in 1995 both established three-judge panels that can authorize punitive tariffs or fines against violators. These judges put teeth behind vaguely worded commitments -- buried in hundreds of pages of arcane detail -- that nations will use the "least trade-restrictive" regulations and laws "no more burdensome than necessary" to accomplish their social, economic, and environmental goals. The unintended result: "These agreements are not just about trade anymore," says Lori Wallach, a trade-law expert at consumer watchdog Public Citizen. "They're about every aspect of government."

Just ask California Governor Arnold Schwarzenegger. In December the governor's advisers warned that proposed tax incentives meant to encourage road builders to grind up California's annual harvest of 32 million used tires and blend them with asphalt would violate NAFTA by putting Canadian and Mexican recyclers at a disadvantage. Schwarzenegger vetoed the bill.

The next front could be a battle over state contracting rules. In 2003, U.S. Trade Representative Robert B. Zoellick won backing for CAFTA from 22 governors, who pledged to adhere to whatever rules he negotiated for state government contracting in that and future deals. But a third of them have since withdrawn their support.

Under CAFTA, states say they wouldn't be able to give preferences to local contractors. And laws under consideration by 30 state legislatures to prohibit tax dollars from going to contractors who offshore their work would be overturned by most trade agreements. "Procurement rules...would constrain our ability [to favor in-state business], an outcome that is, in my view, unacceptable," wrote Iowa Governor Thomas J. Vilsack, a Democrat, in opting out of future trade deals on procurement.

Trade rules can also come back to bite Washington, even though it led the way in putting them in place. If Bush successfully engineers the introduction of private Social Security accounts, WTO rules would require the feds to let foreign money managers and insurers bid to manage them, says Robert Stumberg, a trade law expert at Georgetown University. "Congress has shifted a tremendous amount of power to the WTO," he says. "But their rules are vague, and until a panel [of WTO judges] tells you, you don't know what the rules mean."

The Bush Administration says it is trying to negotiate better trade deals. It's seeking a rule change in NAFTA to head off "frivolous lawsuits" and is consulting with states about their objections. At states' insistence, for example, CAFTA specifically allows for minority contract set-asides and affirmative action programs. But the Administration continues to point out that the states also have a lot to gain from free-trade deals -- reciprocal treatment for businesses within their own borders. "If states want to pass restrictions on awarding contracts, the costs could be severe for businesses in those states," including the possibility of legal retaliation, says Christopher Padilla, an assistant trade representative who deals with the states.

But heartland capitals are more focused on the cost of free trade than its benefits. Legislators won't "sit idly by while their constituents' jobs are lost to competition from overseas," Utah's Allen wrote in a January letter to Zoellick protesting the USTR's silence on the offshoring issue.

The anti-globalization fire that has belatedly begun burning in the states is being stoked by the U.S.'s record \$671 billion, job-killing trade deficit. And America's scorecard as a defendant in WTO courts isn't helping either: It has won 10 decisions but lost 24, many of which were among the costliest rulings thus far.

The U.S. hasn't yet lost a NAFTA decision, but states are carefully watching two cases filed by Canadian companies. Methanex Corp. ([MEOH](#)) is suing the U.S. for \$500 million over California's ban on the use of MTBE, a gasoline additive that has leaked into the soil and contaminated groundwater. Glamis Gold Ltd. ([GLG](#)) is also suing for \$50 million over California's

attempt to protect Indian burial sites in the Imperial Valley from Glamis' open-pit mining practices. Both claim state regulatory actions amount to expropriation of their assets. Notes Abner J. Mikva, a former Illinois congressman and U.S. Court of Appeals judge who served on a NAFTA panel in 1998: "If Congress had any idea what they were voting on back then, they never would have passed NAFTA."

Even more troubling for Bush & Co. is the anti-globalization wing of the Republican Right, which will eagerly welcome state officials into the fold. "The free traders have lost the moral and intellectual argument because they can't come out and say CAFTA is good for America," says Patrick J. Buchanan, the conservative talk-show commentator who has long railed about America's loss of sovereignty to world organizations.

No more than a handful or two of House Democrats are enthusiastic about CAFTA, and the AFL-CIO and most enviro groups are fiercely opposed. Foes on the Left estimate that as many as 40 House GOP members could vote against the pact, which would likely doom the deal. If that happens, some of the loudest sighs of relief will be heard in state capitals.

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