Written by **William F. Jasper** on March 11, 2015

Will GOP Use Kerry's "We Didn't Know" NAFTA Defense on TPP?

After voting for "Fast Track" for NAFTA and then for NAFTA itself, then-Senator John Kerry (shown in pink tie) professed total surprise when a NAFTA court trampled U.S. state laws and overruled U.S. courts — precisely as this magazine had warned would happen. "We didn't know" this would happen, he said. "We didn't know," he pleaded, that the provision for establishing NAFTA courts to attack and undermine our national sovereignty was hidden in Chapter 11 of the hundreds of pages of the NAFTA pact — which he had helped rush through Congress on Fast Track.

Republican leaders are now helping President Obama push Fast Track and hope to win approval by Congress in the coming weeks. If they are successful with that vote, the next step will be to press for hurried passage of the massive, still-secret Trans-Pacific Partnership (TPP) agreement. If they succeed with that, we can expect even more disastrous results for America than has already been wrought by the North American Free Trade Agreement (NAFTA).

According to various news accounts, Senator Orrin Hatch (R-Utah), who serves as chairman of the Senate Finance Committee, is hoping to bring up Trade Promotion Authority (TPA, otherwise known as Fast Track) as soon as possible following the Senate's Easter recess, which ends on April 12.

For those too young, too old, or too numb to remember the 1992-93 battles over NAFTA and NAFTA Fast Track, we are about to see a repeat of those epic conflicts. And if the American people permit President Obama and his GOP allies in Congress to railroad these measures through, we will face an even greater betrayal than we did when President Clinton and his Republican allies in Congress rammed the North American Free Trade Agreement (NAFTA) through.

While the NAFTA battle was being fought, *The New American* warned that among the many dangers posed by the pact would be the creation of NAFTA tribunals (in Chapter 11 of the agreement) that would override our domestic laws and, even, our Constitution. That didn't happen immediately, of course; it took a few years for the tribunals to be established and lawsuits to be filed. But as was to be expected, when that process kicked into gear and the NAFTA tribunals started making outrageous decisions, the NAFTA promoters expressed shock that such a predictable outcome could have happened. When the highest court in Massachusetts ruled against a Canadian real estate company's claim, the company, Mondev International, appealed the decision to the U.S. Supreme Court.

The Supreme Court declined to hear Mondev's appeal. Normally that would be the end of the matter. At least that's the way it was pre-NAFTA. But Mondev decided to take their case to a NAFTA court, which, in 2004, ruled in favor of the Canadians, overruling the highest courts of the State of Massachusetts and the United States.

John Kerry, who was then a U.S. Senator for Massachussetts attempted to absolve himself from any culpability (he had voted for NAFTA) by claiming ignorance. "When we debated NAFTA," Kerry told the *New York Times*, "not a single word was uttered in discussing Chapter 11. Why? Because we didn't know how this provision would play out. No one really knew just how high the stakes would get."

And just how high are those stakes? Hofstra University law professor Peter Spiro said the NAFTA ruling "points to a fundamental reorientation of our constitutional system. You have an international tribunal essentially reviewing American court judgments."

Georgetown University law professor John D. Echeverria said at the time: "This is the biggest threat to United States judicial independence that no one has heard of and even fewer [sic] people understand."

NAFTA supporter Andrew Reding of the World Policy Institute notes that this is merely part of the "integration" process that will bring about "international government." He writes: "With economic integration will come political integration…. One of the purposes of NAFTA and other international trade agreements is to set the principles by which such decisions are to be made, including the critical question of how to 'harmonize' differing labor, consumer, environmental, and other standards. By whatever name, this is an incipient form of international government."

The NAFTA courts are not the only institutions getting in on this action. A few short months ago, on October 20, 2014, the World Trade Organization ruled that the U.S. Country of Origin Labeling (COOL) law is illegal, even though a U.S. federal court had upheld the law. COOL, which requires imported foreign meat to carry a label naming the country of origin, was challenged as discriminatory by meat exporters from our NAFTA partners Mexico and Canada. It should be noted that the COOL law does not prohibit or restrict any product; it merely says American consumers have a right to know where foreign meat is coming from so they can make an informed decision on whether or not to buy it. To most Americans that probably sounds not only reasonable, but also an issue that we have a right to decide for ourselves, without international interference. That was also the opinion of the U.S. Court of Appeals for the District of Columbia Circuit. The U.S. court ruled against Canada and Mexico and concluded that COOL complies with the U.S. Constitution and that Congress had authority to enact the law.

But WTO considers itself above the U.S. Constitution, above U.S. laws, and above U.S. courts. Not surprisingly, the WTO ruled against COOL and the right of Americans to know if the food they're eating was produced in a foreign country.

More cases are pending before NAFTA and WTO courts. And if the TPP is passed, we will, most assuredly, be afflicted with new TPP tribunals that will offer even more potential for subversive attacks on every aspect of our political and economic systems.

However, none of this fazes Secretary of State John Kerry, who, apparently, has forgotten his surprise at discovering that the NAFTA accord he had helped rush through Congress contained the "hidden" dangers he had previously missed. On February 25, Secretary Kerry appeared before the House Foreign Affairs Committee to stress the need for TPA Fast Track to push through the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership (TTIP).

"So we actually hurt ourselves in achieving our larger interests of trade and growing our markets if we wind up trying to micromanage it through congressional day-to-day without the TPA," Kerry told the committee. "TPA is what actually empowers the negotiators to be able to close a deal and allow those leaders and other countries to make the tough decisions they need to make," he said.

Republican Senator Orrin Hatch and Senate Majority Leader Mitch McConnell are among those still in

the Congress, who, like then-Senator Kerry voted for Fast Track and NAFTA more than two decades ago. They are hoping that their constituents have forgotten and that they can pull off this charade once again. If we allow them to do so, we may not last much longer as a sovereign, independent nation, before the "fundamental reorientation of our constitutional system" referred to by professor Spiro advances to the fully-functioning "international government" referred to by Andrew Reding. Our senators and representatives must be put on notice now that we are holding them accountable and won't accept any "we didn't know" defenses.

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