FOREIGN ABUSE OF U.S. COURTS

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY

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C O N T E N T S

TUESDAY, JULY 22, 2025

OPENING STATEMENTS

WITNESSES

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

FOREIGN ABUSE OF U.S. COURTS

Tuesday, July 22, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND ARTIFICIAL INTELLIGENCE, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

Members present: Representatives Issa, Jordan, Fitzgerald, Cline, Kiley, Lee, Fry, Johnson, Raskin, and Ross.

Also present: Representatives Knott and Moore of North Carolina.

Mr. ISSA. [Presiding.] The Committee will come to order.

I want to thank the witnesses today for joining us to deal with a number of important issues. I apologize, I'm having a Ronald Reagan teleprompter moment here. Let me get the script.

One page off. The difference between being here too long and not being too long is that I still recognize when the opening statement and the script have been reversed—for now.

The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone here today on a hearing on foreign abuse of U.S. courts. I want to include that this is the title, but not by any means the limitation, and there are a multitude of bills which have been made available to everyone here that we believe are open and available for discussion. We have a distinguished panel, and I recognize that you are able to go into areas beyond any one piece of legislation.

I will now recognize myself for that opening statement.

Again, I want to thank the witnesses and make it clear that the Chinese Communist Party is waging what they call "legal warfare" using the U.S. courts. Although this is not new, the previous administration elevated it by covering repeatedly a number of the areas in which the CCP has been, in fact, using our system against us.

This is over and above the 10,000 attacks a day that occur on the internet. This is over and above their spying. This is over and above the abuses that occur on companies in China. This is, in fact,

using our patent system, our trademark system, and our courts to their advantage. We take this seriously, so that we will not be abused any longer. Legislation and rule changes by the administration need to happen and happen now.

Let's make it clear, there are legal actions that Chinese businessmen and others do, and we want to make sure they are protected, just as we want to make sure that American companies, European companies, and individuals all over the world have access to our courts, to our patent, and trademark system, and to our economy.

In fact, some of our own laws have made it easier for the Chinese to take advantage of us. Our courts are the backbone of our Constitution, and we will protect it. Legislation that sanctions the PRC alone cannot be enough. We also have to strengthen the system itself from this type of activity.

One of them is, in fact, an open and transparent disclosure of who is truly behind a litigant. That includes third-party funding of litigation. It also includes, and should include a thorough recognition that often there are a series of shell companies, even U.S. subsidiaries, that, in fact, have little to do with anything except covering their true source.

All of that is not new. We see it in criminal operations, in human trafficking, in drug smuggling, in commercial fraud, and that is not limited to any one country. The fact that it is backed by a power country who is using and weaponizing this is particularly disturbing.

As we all are aware, often we are just a few weeks, a few months, or maybe a few hours in new technology ahead of China compromising it and using it. That includes a lookalike of the F–13. That includes a duplicate of the CERN supercollider new version. That one will be out before ours is built here in the United States.

We are not going to be able to fix it here all today and it is not all within our jurisdiction. What is within our jurisdiction is to look at and to make available greater transparency to empower our judges to order that transparency and, in fact, to make it clear that a case should not go forward if, as is Constitutional, a person accused of anything criminally is entitled to be faced by their accusers, their true accusers, which would include those who have people step forward. That is our law.

In civil matters, that often is a one-way street. Defendants, under Rule 26, have to disclose if they are insured, have to disclose, quite frankly, their own financial condition, and even the financial condition of their principals. That is not always the case in the case of the plaintiff, and we need to have that.

In preparation for this hearing, I have met with a great many companies and law firms who use third-party litigation funding or who partner with other companies. None of them object to, in fact, the transparency of disclosing that. Many of them have cautioned that the discretion by the judge as to admissibility to the jury is a different story. I want to make that clear because it is not the intention of this Chair or of any legislation I have yet seen to interfere with a judge's decision on admissibility. When it comes to the right to know, whether in camera or otherwise, this information is

critical in making the decision about protective orders and the conduct of the case.

The Subcommittee has broad jurisdiction as to the courts, but we want to use it wisely. In this case, recognizing that transparency is one of the most important tools that we have, we want to make sure that it is brought to the attention of everyone.

As I said earlier, this hearing does include a number of other pieces of legislation that I believe our panel is able to answer, and we appreciate your indulgence when those questions are asked.

With that, I recognize the Ranking Member for his opening statement.

Mr. JOHNSON. Thank you, Mr. Chair. Thank you to the witnesses for being here today.

This Subcommittee has held a series of bipartisan hearings over the last few years on the threat from the government of China. As a strategic competitor, China is seeking to develop cutting-edge technology to win the so-called AI arms race with the United States. It also competes for soft power around the world, competes for economic predominance, and competes for strategic resources. There is nothing wrong with competition. There is a problem with breaking the rules to get ahead, and that is what China has sought to do.

Over our hearings, we have examined cases of economic espionage, threats to American intellectual property, cybersecurity risks, and the different ways these actions by China threaten U.S. national security.

Today, we are here to examine the use of our court system by Chinese actors. We absolutely agree that China is seeking to gain ground in our strategic competition by encouraging Chinese businesses to harm American companies, and that can include through our court system.

I have enjoyed working with Chair Issa and my colleagues on these bipartisan hearings, and I sincerely hope we can continue to examine the threat from the government of China to our national security, our economy, and our power abroad on a consensus basis.

There are areas where we have disagreed. Last Congress, this Committee slated a partisan bill for markup that would have prevented companies on certain sanctions lists from obtaining new U.S. patents or enforcing the ones they already own, devaluing U.S. patents and violating international agreements. While the Preventing Adversarial Patents Act was removed before it could be considered by the Committee, the bill was a reminder that there are significant disagreements between the two parties on this issue.

I worry that this hearing on China's, quote, "abuse" of the U.S. courts maybe a Trojan horse to disguise a different, a very different agenda. I fear that, as a so-called solution to the China threat, I will hear proposals like:

First, you can only file a case if you disclose all the funders of your cause.

Second, you can file a suit if you are rich enough to pay a huge bond in case you lose.

Third, let's start limiting discovery rules and make them more restrictive.

Fourth, we'll flip the presumption of enforcing foreign judgments wholesale and adopt China's restrictive approach.

The answer to a threat cannot be Republicans' tort reform wish list. Our constituents deserve better than a system where only the well-connected and the rich survive. That is exactly what we would get from that list. This world I just outlined would mean that the big guys, the oligarchs, get their day in court, but the little guys, the Davids to those Goliaths, would be shut out.

America's justice system has for so long been a shining light of equality in the world, and we must safeguard this impartial justice system now more than ever. Becoming more like China won't stop China. It won't work in our court system, and it won't work in our trade practices.

It is a reasonable concern. Our democracy has been under fire by want-to-be authoritarian Donald Trump and his White House cronies—the very big guys who could benefit from all the proposals I just mentioned, who do not care about justice and the rule of law.

These folks are the ones who let Democratic Senators get tackled to the ground at news conferences and who block Members of Congress from Federal facilities. These are the leaders who tell the DOJ to investigate Members of Congress who dare criticize the President and who nominate far-Right MAGA loyalists like Emil Bove to Federal judgeships, knowing that these sycophants will put Trump's whims above the Constitution.

If we start chipping away at our impartial justice system and make it harder to access, Americans will lose their ability to challenge these assaults on our rights against these rich, connected oligarchs. We cannot let our system become the playground for the big guys, the oligarchs like Donald Trump and his cronies. That's not justice, and we must protect the system where, no matter their status, anyone can walk into a U.S. courtroom and be treated as an equal.

Again, I thank the Chair and our witnesses, and I look forward to exploring this important issue.

With that, I yield back.

Mr. ISSA. The gentleman yields back. I now am pleased to recognize the Ranking Member of the Full Committee for his opening statement.

Mr. RASKIN. Thank you very much, Mr. Chair. Thanks to the witnesses for joining us today.

Like its ally, the authoritarian government of Russia, the authoritarian government of China presents a serious threat to American democracy. Our economy and our national security, and China's intensifying economic and technological competition with the United States, has at times led to pitched battles in courtrooms across America. We have seen cases affecting our national security, intellectual property, and the safety of Chinese dissidents living here in the United States.

It would be great if we had a partner in the White House to help us respond to the threat of these repressive, autocratic regimes, but Donald Trump has consistently bragged about his marvelous personal relationships with Vladimir Putin, whom he has called a genius for invading Ukraine and has consistently praised, and President Xi, who Trump called a brilliant guy who controls 1.4 billion

people with an iron fist, and whom he has praised for sending Uyghurs to labor camps, saying this was exactly the right thing to do.

Trump has been systematically dismantling the programs that protect America against espionage, propaganda, and malign political and intellectual interference by Russia and China, while simultaneously dismantling the domestic programs that make us strong. His administration has been deleting the programs designed to combat malign foreign power interference in our elections, including the Foreign Influence Task Force at the FBI, the Global Engagement Center at the Department of State, the Critical Infrastructure Partnership Council at the Department of Homeland Security, while simultaneously cutting billions of dollars in critical foreign aid to poor countries for development and democracy assistance and for humanitarian programs, which China is now gladly taking up in our place. They are filling the void left by Donald Trump's abandonment of the space of foreign assistance.

Trump, in the meantime, has been systematically destroying Radio Liberty, Radio Free Europe, Radio Free Asia, and other broadcast vehicles that we use to counter Chinese and Russian propaganda and disinformation all over the world. Trump has put Kari Lake in charge of world communications—an election denier, a January 6th denier, and all-around mindless repeater of garbage conspiracy theories and lies, totally consistent with the Chinese and Russian agendas for the destruction of American democracy.

This hearing is important, but it ignores the structural shift in our government in favor of the autocracies and kleptocracies who are Donald Trump's political soul brothers. It is also, of course, a distraction from the mounting failures, scandals, and embarrassments of this administration.

Republicans this month passed a bill to throw 17 million Americans off their Medicaid health insurance. The rescission package Congress passed last week cuts a billion dollars from public broadcasting and billions more from foreign aid—all which is nothing but music to the ears of propagandists and foreign recruiters for China and Russia.

Meantime, Trump is refusing to release the Epstein files—more than 100,000 documents which he was demanding for years to blow the lid off of what he, Pam Bondi, Kash Patel, Dan Bongino, and the MAGA media were describing as a massive global child sex abuse and human trafficking ring for the rich and powerful.

Bondi, acting under the direct supervision of Donald Trump, ordered more than 1,000 FBI agents to work as part of continuing 24-hour shifts pouring over more than 100,000 documents in the Epstein file—photographs, videos, emails, and texts. They were instructed to immediately flag all references to Donald Trump, all appearances of Donald Trump, all images, likenesses, pictures, and videos of Donald Trump. At the same time, Kash Patel has been administering loyalty tests and lie detector tests to FBI agents.

This is a profoundly troubling and suspicious turn of events, as Donald Trump seeks to sweep the whole thing under the rug. Our colleagues in the Majority have now canceled all bills because they don't want to go before the Rules Committee to have to face more votes on whether or not to release the Epstein files.

We are examining the threat from China as though Donald Trump is not ceding more global power to China every single day, but he is. During his first term, he received millions of dollars personally from the Chinese Government and State-owned companies—to say nothing of the valuable trademarks Chinese authorities rushed to grant him and Trump family members. In exchange, he opposed sanctions against Chinese telecom companies and banks, even when they threatened our national security. He even tried to cancel military exercises with Japan and South Korea because Russia and China voiced objections to it.

His second term has seen more catering and appeasement for the autocrats. Over the last six months, the administration has weakened America's soft power abroad by defunding foreign aid programs systematically and closing embassies. It has hurt America's economy with illegal and arbitrary tariffs that leave us isolated and hapless in the world.

In this second administration, Trump appears to be hellbent on remaking his administration in the image of Xi's regime—cracking down on media outlets he disapproves of; destroying academic freedom with attempted hostile takeovers of colleges and universities, including America's oldest university, Harvard; attacking attorneys for representing clients or causes he disfavors; purging libraries and censoring books; sending masked agents in unmarked vans to arrest foreign students without arrest warrants for voicing opinions he disagrees with; shipping people to El Salvador's notorious prison of torture, and using AI to surveil individuals' social media posts and to create a mega-database of all Americans' information.

Look, in America, everyone is allowed to petition the court for relief, regardless of the depth of their pockets or their country of origin. Making it harder for litigants to access the courthouse doors, even in the name of strategic competition with a foreign power, would make us less like America. That's not acceptable, obviously. Yet, that is exactly what some have suggested, instead of actually developing government policies that make us strong versus China and prevent illegal subversion and interference from China and Russia.

In the context of our competition with China, we should never forget that,

> Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.

That is Ben Franklin.

This has been a matter on which there has been strong bipartisan agreement in the past. I hope Republicans and Democrats on this Committee can continue to uphold this basic, yet vital framework, as difficult as Donald Trump has made it.

I yield back the balance of my time.

Mr. ISSA. I thank the gentleman for his opening statement.

I will note that, in September, we have both the FBI Director and the AG coming. We are not ignoring any of your concerns, and I thank the Ranking Member.

Without objection, all other opening statements will be included in the record.

It is now my privilege to introduce our witnesses. If you don't mind, I would like to go out of order a little bit.

We have the gentleman from North Carolina, Mr. Moore, here to introduce his witness. You don't get that on this Committee, but we would like you to introduce your witness.

Mr. MOORE of North Carolina. Well, thank you and good morning.

It is an honor to introduce a constituent of mine, Brad Muller, who is going to be testifying before the Committee. I will read briefly about his bio, and then I will just talk like we do from North Carolina about him.

Brad is the marketing and communication strategist with more than 35 years of experience, and he works presently for Charlotte Pipe and Foundry. If you like pipes, if you have ever drunk water, then you have probably drank out of one of their pipes. They are the leading producer of pipes in the United States. They are a fifth-generation company based in Charlotte. They were founded, I believe, in 1901.

Mr. MULLER. Correct.

Mr. MOORE of North Carolina. You weren't there, though, then, I don't think?

Mr. MULLER. No.

Mr. MOORE of North Carolina. Brad has got a very distinguished background. He actually was in Washington for 10 years, where he worked for USAID in the Bush Administration handling the—he was the desk officer and managing foreign aid programs for Afghanistan, and later, for Central and Eastern Europe after the 1989 fall of the Berlin Wall.

He later went to work for the late Michael Deaver, who was the former Deputy Chief of Staff to President Reagan, on a variety of public affairs, international relations, and trade issues.

He is extremely active in the community. He is known internationally really as an expert on trade issues. I can tell you, I consider it a real honor to have Brad back home to be one of my constituents. This company has such an amazing reputation.

If you want to find out information about how trade is affecting businesses right here, how unfair trade is hurting businesses and causing job loss, you have an amazing expert to testify today.

I am proud to have a fellow Tar Heel from the great State of North Carolina here with you today and appreciate the Committee hearing from him. Treat him nice, if you don't mind. Thank you.

[Laughter.]

Mr. MULLER. Thank you, Congressman.

Mr. MOORE of North Carolina. Thank you, Mr. Chair.

Mr. ISSA. Thank you, and I promise to treat him nicely. As a matter of fact, I consulted with JM Eagle of California and they believe that you are a superb witness, since you are the two competing top two.

With that, I would like to introduce Ms. de La Bruyère—hopefully, I got that close to right—who is a Senior Fellow at the Foundation for Defense of Democracies, a think tank focusing on national security and foreign policy. Her work at FDD focuses on China policy. Ms. de La Bruyère also is the Co-Founder of Horizon Advisory, a consulting firm focused on the implications of China's approach to geopolitics. Welcome.

Mr. Julian Ku is the Faculty Director of International Programs, and the Maurice A. Deane Distinguished Professor of Constitutional Law, at Hofstra Law. Professor Ku's research is focused on the relationship of international law, the U.S. Constitution, and China's relationship with international law.

Mr. Bradford Muller has been well-introduced, and we are thrilled to have you here today.

Last, we go to Mr. deLisle, who is the Stephen A. Cozen Professor of Law at the University of Pennsylvania. Professor DeLisle also holds appointments as a Professor of Political Science and Director of the Center for the Study of Contemporary China at Penn. His research focuses on China's engagement in international order, law, and legal institutions and their relationships to the politics and policies of China and the U.S.–China relationship.

We welcome all our distinguished witnesses. Pursuant to Committee rules, I would ask that you rise to take the oath. Customarily, raise your right hand.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Thank you. Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

For all the witnesses, please be aware that, although we ask that you stay within five minutes, your entire opening statement, along with additional material that you either have today or that you can supplement, will be made in order and a permanent part of the record.

I thank you.

Ms. de La Bruyère, it is your five minutes.

STATEMENT OF EMILY DE LA BRUYÈRE

Ms. DE LA BRUYÈRE. Thank you for the opportunity to testify today. It's an honor to be speaking before you and the Committee and alongside my distinguished co-witnesses.

Beijing competes with cooption, not confrontation. The Chinese Communist Party does not directly attack its adversaries' systems. Instead, Beijing seeks to supplant them, subvert them from the inside, such that they advance Beijing's agenda rather than obstructing it.

In the military domain, for example, China positions to control critical information systems, value chains, even political stakeholders, such that it can decide where missiles are positioned and how they're perceived rather than having to launch them itself.

In trade, China has not sought to supplant the World Trade Organization, for example. Instead, Beijing has sought to manipulate it by holding others to its rules without following them itself, such that China can weaponize international free trade.

Inside the United States, the Chinese Communist Party uses the American legal system to advance Beijing's agenda, punish its opponents, and neutralize U.S. defenses. Benefitting from the reality that China's centralized, opaque system allows it to out-resource competitors in courts, to coopt key stakeholders, and to manipulate

information, this poses a threat to American security and prosperity.

Offensively, Beijing works to shape U.S. laws and regulations and their implementation—in many cases, via U.S. entities that have been coopted by dependence on or resources from the PRC.

Beijing has also proven its willingness to use the U.S. legal system to punish those who stand in its way. Beijing does so, for instance, with SLAPP lawsuits that are intended to censor and intimidate critics by burdening them with costly legal defenses.

Beijing also does so with IP lawsuits that, through the discovery process, granted access to valuable technology. On the flip side, China provides IP litigation funding for its companies to protect them from facing the consequences for their tech theft.

Beijing also defensively games U.S. laws and regulations, circumventing and neutering American efforts to defend against Chinese bad practices. In response to U.S. tariffs and other trade restrictions, for instance, China transships through third-party countries, often obscuring country of origin. China also localizes in countries that have preferential trade relationships with the United States, and China localizes in the United States.

Doing so allows Beijing not only to avoid U.S. trade restrictions, but it also allows China to benefit from preferential policies that are intended to support U.S. domestic and partner industry. Moreover, localization in the United States allows Beijing to maintain and to expand its united front—the network of coopted stakeholders through which it undermines the U.S. system from the inside.

This entire program, offensive and defensive, benefits from Chinese Government resourcing. Directly and indirectly, the Chinese State provides the resources necessary for its agents to outlast and outspend their competitors and their targets in U.S. courts.

The Chinese State also provides subsidies and guidance for go-out companies, such that they can expand their presence abroad.

The Chinese State provides policy insurance mechanisms that are intended to derisk investments that might be vulnerable to regulatory hurdles, as well as instructions for navigating U.S. procurement and policy.

Because Chinese abuse of the U.S. legal system is systemic, it demands a systemic response. Tactical measures, like anti-SLAPP legislation and protections to defend American companies from exposing their IP to China via discovery are important.

The U.S. response cannot end there. Chinese and Chinese-backed entities should have increased information-sharing and transparency requirements when bringing cases. Those receiving direct or indirect funding from the Chinese Government should face a higher pleading standard in the U.S. Should American entities that work with them. The U.S.-based actors that engage with Chinese State-backed and government-linked players operating in or importing into the U.S. market should have to disclose as much.

The law firms and lobbyists that work with those entities should not be eligible for U.S. Federal Government funding or Defense Industrial Base procurement.

More generally, sovereign immunity should not be extended to PRC entities. Foreign entity of concern provisions should be ex-

panded to apply to all government authorities and support programs and strengthened with presumptions of denial.

Across the board, the definition of a Chinese entity should be tightened, such that Beijing cannot circumvent through shell companies, joint ventures, or localization.

China is an adversary. This has been internalized in the United States, if belatedly, has the strategic imperative of decoupling from China economically and industrially. To do that, the United States also has to decouple its legal system.

Thank you.

[The prepared statement of Ms. de La Bruyère follows:]

CONGRESSIONAL TESTIMONY: FOUNDATION FOR DEFENSE OF DEMOCRACIES

House Judiciary
Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet

Foreign Abuse of US Courts

EMILY DE LA BRUYÈRE

Senior Fellow
Foundation for Defense of Democracies

Washington, DC
July 22, 2025

FDD
FOUNDATION FOR DEFENSE OF DEMOCRACIES

www.fdd.org

Chairman Issa, Ranking Member Johnson, and distinguished members of the subcommittee, thank you for the opportunity to testify today.

Beijing competes not through confrontation but through co-optation. The Chinese Communist Party does not directly attack or dismantle adversarial systems. Instead, it subverts them from the inside, such that they advance rather than obstruct Beijing's interests.

In the military domain, Beijing positions itself to control critical information systems, supply chains, and even political stakeholders such that it can determine whether and how missiles are positioned and perceived — rather than needing to launch the missiles itself. In commerce, Beijing has sought not to supplant the World Trade Organization but to manipulate it, by holding others to its rules without following them itself, so that China can weaponize international free trade.

And inside the United States, the Chinese Communist Party uses the American legal system to advance Beijing's agenda, punish its opponents, and neutralize U.S. defenses — benefiting from the reality that China's centralized, opaque system allows it to out-resource competitors in courts and Congress, co-opt key stakeholders, and manipulate information. This is a threat to U.S. security and prosperity.

Chinese abuse of the U.S. legal system takes offensive and defensive forms. It includes bids to shape U.S. policy as well as to impose costs on adversaries in U.S. courts. It features evasions of U.S. law as well as influence campaigns meant to ensure that such evasions remain possible. Across the board, Beijing's manipulation benefits from the reality that Chinese entities have the same access to U.S. courts, law firms, and lobbyists as any others. And Beijing's campaign is fueled by a deliberate Chinese government program that provides the resources and direction necessary to turn the U.S. system against itself.

Sovereign Vulnerability: The Green Charter Township Case

I saw a microcosm of this Chinese abuse of the U.S. legal system firsthand in Green Charter Township, Michigan, last summer. Gotion — the U.S. subsidiary of China's battery giant Gotion High-Tech Co., Ltd. — announced plans to build a $2.36 billion plant there in 2022. Gotion benefits from hefty state subsidies and is rapidly expanding internationally as part of the People's Republic of China's (PRC's) gambit to capture global battery markets. Despite its Chinese ownership, Gotion's project was, at this time last year, positioned to benefit from federal tax incentives created under the Inflation Reduction Act (IRA) and local government incentives, including some $800 million from the state of Michigan alone.

The local community in Green Charter did not want the Chinese factory there. But Gotion reportedly inked a deal with the township board of trustees behind closed doors.[1] This is a

[1] Kyle Davidson, "Anti-Gotion Activists Speak out at Michigan House Subcommittee as Project Remains on Hold," *Michigan Advance*, May 7, 2025. (https://michiganadvance.com/2025/05/07/anti-gotion-activists-speak-out-at-

second typical Chinese move: use secrecy and targeted political influence campaigns to navigate a system intended to be open and transparent.

Still, local opposition was strong and determined. Just months after township trustees approved the Gotion development in August 2023, a township vote recalled the board. The new trustees rescinded support for the Gotion project.[2] Gotion promptly filed a federal lawsuit.[3] Now, a township with limited financial and legal resources is locked in a court battle against a major Chinese company with the weight of the Chinese state behind it. A U.S. David faces a Chinese Goliath in American courts. And here is a third quintessential Chinese move: Use the resource demands of the U.S. legal system and the resource supply of the Chinese government to steamroll anyone who threatens Beijing's interests.

A Larger, Systemic Chinese Campaign

The Green Charter Township case received a degree of political and media attention. But it is also just one manifestation of a far more extensive Chinese campaign to manipulate the U.S. legal system — and one that stems from and is supported by a deliberate Chinese government program.

Offensive Thrusts

Offensively, Beijing uses the U.S. legal system to advance its interests — at the expense of America's. This includes efforts to shape laws themselves, in many cases via U.S. stakeholders that have been co-opted by dependence on and resources from the PRC. In 2023 and 2024, Congress sought to outlaw new sales of DJI drones in the United States. The Shenzhen-based company responded with a multimillion-dollar lobbying blitz. As part of that campaign, DJI reportedly leaned on local police departments, presenting themselves as voices of U.S. law and order but really acting in the interest of the military-tied, state-supported Chinese drone maker on whose low-cost supply they depended — and whose non-market model has effectively cemented Chinese control over the drone industry.[4]

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michigan-house-subcommittee-as-project-remains-on-hold); Jamie Hope, "Legislators Ask State to Send $275K to Green Township for its Fight Against Gotion," *Michigan Capitol Confidential*, May 30, 2024. (https://www.michigancapitolconfidential.com/news/legislators-ask-state-to-send-275k-to-green-township-for-its-fight-against-gotion)

[2] Nicole Long, "Massive shake-up in Green Charter Township: Five Board Members Recalled over Gotion Battery Plant Proposal," *UpNorthLive*, November 8, 2023. (https://upnorthlive.com/news/local/massive-shake-up-in-green-charter-township-five-board-members-recalled-over-gotion-battery-plant-proposal)

[3] Paula Gardner, "Gotion, Tiny Michigan Town Square off in Court over $2.6B Battery Factory," *Bridge Michigan*, May 8, 2025. (https://www.bridgemi.com/business-watch/gotion-tiny-michigan-town-square-court-over-26b-battery-factory)

[4] Heather Somerville, "Why First Responders Don't Want the U.S. to Ban Chinese Drones," *The Wall Street Journal*, August 7, 2024. (https://www.wsj.com/politics/national-security/congresss-plan-to-outlaw-chinese-drones-met-with-protest-c95cf1fe)

And then there are the lawsuits levied by PRC companies after their identification as Chinese military-civil fusion contributors.[5] Those lawsuits seek to neuter U.S. law, impose costs on the U.S. security establishment, and spread a narrative about the risks — and expense — of trying to defend against Beijing.

The list goes on. It includes the Chinese Embassy in Washington reportedly pressuring U.S. executives to lobby against China-related bills;[6] ByteDance-owned TikTok flooding congressional offices with calls from social media influencers;[7] and, of course, the broader reality that in a world where effectively every Big Law and Big Lobby shop has some dependence on a Chinese customer, all are co-opted by Chinese interests.

Beijing has also proven its willingness to use the U.S. legal system to punish those who stand in its way. Beijing does so with strategic lawsuits against public participation, or SLAPP suits, intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense. Beijing also does so with intellectual property (IP) lawsuits that, through discovery, give China access to valuable technology — and, on the flip side, with government funding for IP litigation defense that protects Chinese companies from facing consequences for their theft. This entire system benefits from Chinese government resourcing. Both directly through litigation funds and indirectly through general government grants, subsidies, and investment, the Chinese state provides the backing necessary for its agents to outspend and outlast their targets in U.S. courts.

Take, for example, BYD's lawsuit against the Alliance for American Manufacturing (AAM). BYD is a subsidized Chinese battery, electric vehicle, and now semiconductor giant. AAM is a nonprofit partnership of U.S. manufacturers and the United Steelworkers dedicated to protecting U.S. industry and labor. In 2020, BYD filed a defamation suit in U.S. federal court against AAM and several of its leadership. AAM found itself forced to battle its way through the U.S. legal system, all the way up to the Supreme Court, at tremendous expense and despite ruling after ruling that BYD's claims were specious.[8]

Where the Chinese state fuels efforts in U.S. courts, the goal tends to be simple: stifle any advocacy that might threaten Beijing's interests. Beijing saps the resources of its direct targets. Beijing also sends a message to other U.S. actors that it is too risky and costly to voice concerns about China or its agents. Self-censorship becomes the norm. Healthy and transparent debate —

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[5] "China's Hesai Loses Lawsuit against US Government for Blacklisting," *Reuters*, July 11, 2024. (https://www.reuters.com/sustainability/boards-policy-regulation/chinas-hesai-loses-lawsuit-against-us-government-blacklisting-2025-07-12)

[6] Michael Martina, "Chinese Embassy Lobbies U.S. Business to Oppose China Bills – Sources," *Reuters*, November 15, 2021. (https://www.reuters.com/business/exclusive-chinese-embassy-lobbies-us-business-oppose-china-bills-sources-2021-11-12)

[7] Haleluya Hadero, "Online Influencers Turn to Lobbying as TikTok Bill Steams Forward," *Associated Press*, March 12, 2024.

[8] Bethany Allen, "Libel Lawfare," *The Wire*, July 28, 2024. (https://www.thewirechina.com/2024/07/28/libel-lawfare-chinese-companies-defamation-suit-anti-slapp)

including about the security risks, non-market commercial behaviors, and even human rights abuses associated with Chinese companies — withers.

Defensive Maneuvers

Beijing's manipulation of the U.S. legal system does not end at offensively advancing Chinese interests. Beijing also defensively games U.S. laws and regulations, circumventing and neutering U.S. efforts to defend against Chinese bad practices.

Over the past decade, Washington has implemented a raft of defenses against Chinese non-market policies, military-civil fusion strategy, and espionage and influence campaigns. But again and again, Beijing has evaded both the letter and the intent of U.S. law. In response to American tariffs and other trade barriers, for example, China trans-ships through third-party countries, often obscuring the country of origin. China also localizes in countries that have favorable trade relationships with the United States.

And China localizes in the United States, including through joint ventures and investments that evade foreign entity of concern provisions, foreign investment review, and other restrictions.[9] In doing so, China not only avoids trade barriers but in fact *benefits* from preferential policies intended to support U.S. domestic and partner industry. And localization in the United States helps Beijing maintain and expand its United Front — the network of co-opted stakeholders, from local government to Big Law, through which it undermines the U.S. system from the inside.

Again, this program benefits from Chinese government support and direction. The Chinese state provides subsidies, as well as guidance, to "Go Out" companies to fuel their development of footholds abroad. Beijing offers policy insurance mechanisms designed to de-risk investment that might be vulnerable to foreign investment review or other regulatory hurdles. And government departments, government-associated research institutes, and government think tanks offer instructions for navigating U.S. procurement and trade policy.[10] On top of everything, Beijing is building out global trade and logistics systems that allow it to control information on the movement of goods and therefore to manipulate international customs regimes.

Decoupling the U.S. Legal System From China

Because Chinese abuse of the U.S. legal system is systemic, it demands a systemic response. Tactical measures like anti-SLAPP legislation and protections to defend American companies from exposing their IP to China via discovery are important. But the U.S. response cannot end there. Washington must also change the reality that Beijing — a non-market, anti-rule of law,

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[9] See, for example: Ana Swanson and Lazaro Gamio, "Trump's Tariffs Drive a Rise in Trade Crime," *The New York Times*, May 27, 2025. (https://www.nytimes.com/2025/05/27/business/economy/trump-tariffs-trade-crime.html)
[10] Emily de la Bruyere and Nathan Picarsic, "When the Iron is Hot: The Chinese Communist Party's Subversion of US Recovery Investment," *Horizon Advisory*, June 16, 2020. (https://www.horizonadvisory.org/ccpsubversionreport)

strategic adversary of the United States — is able to claim the same standing and treatment in the U.S. legal system as any other actor.

Chinese and Chinese-backed entities should have increased information-sharing and transparency requirements when bringing cases. Those receiving direct or indirect government funding should receive face a higher pleading standard in U.S. courts. So should American entities that work with them: U.S.-based actors that engage with Chinese state-backed and government-linked players operating in or importing into the U.S. market should have to disclose as much. Law firms and lobbyists that work with Chinese customers should not be eligible for U.S. federal government funding or defense-industrial base procurement.

More generally, sovereign immunity should not be extended to PRC entities. Foreign entity of concern provisions should be expanded to apply to all government authorities and support programs — and strengthened with presumptions of denial.

Across the board, the definition of a Chinese entity should be tightened such that Beijing cannot circumvent rules through shell companies, joint ventures, or localization schemes. The U.S. Commerce Department's definition of a "person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary" offers a valuable starting point.

China is an adversary. This has been internalized in the United States, if belatedly. So has the strategic imperative of decoupling the U.S. and Chinese economic and industrial systems. But to do so, the United States must decouple its legal system.

Thank you for the opportunity to testify on this important topic.

Mr. ISSA. Thank you. Professor Ku.

STATEMENT OF JULIAN G. KU

Mr. KU. Thank you, Mr. Chair, Ranking Member Johnson, and the distinguished Members of this Committee. Thank you for this opportunity to address what I call China's asymmetric lawfare challenge to the United States judicial system.

I just want to define lawfare as a term for us to understand here. Lawfare is the systematic use of judicial proceedings to accomplish strategic or military goals and political goals. This involves manipulating legal processes to undermine, discredit, or impose substantial financial burdens on adversaries through judicial mechanisms.

The Chinese party-State lawfare demonstrates consistent patterns. Initiating entities maintain a sensible independence from the Chinese Government. Chinese plaintiffs often retain most prestigious, the best U.S. law firms to represent them. If their litigation is often in the preliminary phase and it doesn't impose substantial costs on defendants.

I call these tactics asymmetric lawfare because China is exploiting the weaknesses in its own legal system to gain advantages in U.S. courts while the U.S. and U.S. plaintiffs cannot reciprocally use China's legal system for its own strategic goals. These tactics that we're going to discuss here can only really be employed by China and never by the United States.

Obviously, China's lawfare raises particular concern because China's unique control over its private sector through its data and banks, Communist Party cells, and united front partnerships means ostensibly private Chinese companies are vulnerable to being co-opted to serve the party-State's political goals.

Now, I want to give two examples of what I call Chinese party-State lawfare to illustrate the problem: The first case is from Long Island where I'm from. It involves Ma Ju, a Hui Muslim activist who has testified before Congress and the U.N. against China's repression of his ethnic minority within China. He was served papers in Nassau County Court in New York State seeking enforcement of a $12.5 million judgment that was issued in China. Ma claimed that this judgment was fraudulently obtained and that he couldn't defend himself before fleeing China. Despite this the court in Nassau County ordered Ma to pay the full $12.5 million court judgment based on the Chinese court's ruling.

This is not isolated. The U.S. authorities have identified at least seven similar lawsuits filed by Chinese entities over six years with three under FBI investigation that's reported. More broadly, Chinese companies have increasingly pursued commercial litigation in U.S. courts as plaintiffs, not as defendants, and often against Chinese nationals who happen to also be wanted by the Chinese party-State for either claims of corruption or maybe for political opposition to the party. That's one example of the kind of lawfare that we're up against.

Another case from California: Mao Zedong's former Chair of the Communist Party—his secretary Li Rui became a prominent critic of the Communist Party at the end of his life. Mr. Li agreed with—through his daughter to donate his personal diaries to Stanford's Hoover Institution. After his death in 2019 though, the widow of

Mr. Li in China filed suit in Beijing claiming ownership of the diaries. The Beijing court ruled in Ms. Zhang's favor ordering Stanford to return the original diaries despite Stanford's attempt to defend itself. Stanford argues that it received inadequate notice in Chinese courts and was denied an opportunity to contest when it tried to appear.

Ms. Zhang, who has recently passed away but sued in U.S. court alleging copyright infringement and seeking title based on the Beijing court judgment. The U.S. trial court allowed some of her claims to proceed and the case dragged on for over six years, 5–6 years. It demonstrates even if it doesn't result in a positive judgment or a successful judgment for Ms. Zhang, it demonstrates some of the ways the Chinese party-State uses lawfare for ideological purposes beyond just harassing opponents.

Furthermore, it raises a different problem, which is Ms. Zhang was very unclear of the sources of her funding. She was a widow without any sort of obvious means of wealth, and she funded a six-year massive lawsuit in California courts which went on for years where Stanford has the resources to defend itself, but not all U.S. defendants would necessarily be able to do so.

I want to close by discussing some possible solutions. One would be taking on the American Law institute's proposal to change the rules in the United States for enforcing foreign court judgments to require reciprocity before enforcing a foreign judgment or at least change the rules to require the foreign—someone like defendants to essentially allow defendants a better chance to defense against Chinese court judgment enforcement.

Finally, there are things we can do to bolster disclosure of foreign funding of litigation through third-party litigation or through amendments to the Foreign Agent Registration Act to address litigation funding. These enforcements will protect American courts' integrity from manipulation by the Chinese party-State while preserving what makes our legal system exceptional and valuable. Thank you for your attention.

[The prepared statement of Mr. Ku follows:]

WRITTEN STATEMENT OF JULIAN G. KU,
MAURICE A. DEANE DISTINGUISHED PROFESSOR OF CONSTITUTIONAL LAW,
HOFSTRA UNIVERSITY

HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND THE INTERNET

Why the U.S. Should Harden Its Defenses Against China's Asymmetric Lawfare

JULY 22, 2025

Chairman Issa, Ranking Member Johnson, and distinguished members of this Subcommittee, thank you for the opportunity to submit this testimony on the challenge that China's asymmetric lawfare poses for the United States and our judicial system.

I am a legal scholar specializing in the inter-relationship of international, foreign, and U.S. law. In recent years, I have focused my research on studying the role of international and domestic law on U.S.-China relations.

My testimony today will begin by describing how the Chinese government and governing Communist Party (the "party-state") uses law as a tool to achieve its political and strategic goals. I will then describe some examples of how the party-state has used lawfare in the U.S. legal system such as in the harassment of Chinese nationals in the U.S. and in order to suppress embarrassing historical documents. Finally, I will conclude by discussing two areas where Congress can "harden" America's defenses against this kind of lawfare: mandatory disclosure of foreign government and foreign political party third-party litigation funding and the adoption of rules limiting the enforcement of Chinese court judgments by American courts.

I. China's Lawfare Strategy and Tactics[1]

Lawfare is the systematic employment of judicial proceedings and legal frameworks to accomplish strategic military or political goals. This strategy encompasses the manipulation of legal processes to undermine, discredit, or impose substantial procedural and financial obligations upon adversaries through judicial mechanisms and related legal instruments.[2]

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[1] This section draws on earlier work I have published elsewhere. *See* Julian Ku, *The Chinese Party-State's Use of Asymmetric Lawfare to Suppress History*, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA (December 5, 2024), https://chrissmith.house.gov/uploadedfiles/2024-12-5-_writtentestimony_of_julian_ku-_combating_the_ccps_historical_revisionism_and_erasure_of_culture.pdf; Julian Ku, *China's Successful Foray Into Asymmetric Lawfare*, LAWFARE (Sept. 29, 2021), https://www.lawfaremedia.org/article/chinas-successful-foray-asymmetric-lawfare.

[2] *See* Jill I. Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1097 (2021).

In the U.S., this term was originally used to characterize attempts to weaponize legal doctrine against United States counterterrorism operations.[3] However, the People's Liberation Army (PLA) of the People's Republic of China has historically incorporated "lawfare", alongside public opinion warfare and psychological warfare, as a fundamental element of its comprehensive Three Warfares strategic framework. Chinese military doctrine conceptualizes this approach as the deployment of legal reasoning to establish the legitimacy of one's own conduct while simultaneously challenging the lawfulness of adversarial actions.[4]

The strategic objectives of Chinese lawfare includes the psychological demoralization of adversaries through legal channels, the imposition of operational constraints upon opposing forces, and the acquisition of political advantage through legal positioning. The operational toolkit for such lawfare encompasses the full spectrum of Chinese domestic legal instruments as well as international legal mechanisms. Contemporary evidence suggests that the entire Chinese party-state, rather than just the PLA, have adopted these tactics to exploit the United States court system.

Recent patterns reveal that certain Chinese corporate entities and individuals have initiated legal proceedings within the United States under the pretense of commercial disputes, while advancing Chinese governmental policy objectives. Civil litigation targeting Chinese nationals subject to allegations of bribery or corruption within China appear to have been designed to harass these individuals and coerce their repatriation to Chinese jurisdictions.[5] Analogous legal actions have been deployed against Chinese political dissidents residing in the United States.[6] Similarly, the rise in the number of Chinese companies litigating patent disputes in the U.S. system against U.S. and other non-Chinese parties, especially in cases supported by third-party litigation funds, could constitute a manifestation of lawfare as well if used to suppress economic competition or to acquire strategically valuable intellectual property.

These legal actions demonstrate similar tactical elements: the initiating entity maintains ostensible independence from Chinese governmental or Communist Party structures, Chinese plaintiffs typically retain representation from prestigious United States law firms with

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[3] *See* Charles J. Dunlap, Jr., *Law and Military Interventions: Preserving Humanitarian Values* in 21ST CENTURY CONFLICTS 4 (Nov. 29, 2001).

[4] Han Yanrong, "Legal Warfare: Military Legal Work's High Ground: An Interview with Chinese Politics and Law University Military Legal Research Center Special Researcher Xun Dandong," *Legal Daily* (PRC), February 12, 2006, cited in Dean Cheng, *Winning Without Fighting: Chinese Legal Warfare*, THE HERITAGE FOUNDATION (May 21, 2012), https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare.

[5] Aruna Viswanatha and Kate O'Keefe, *China's New Tool to Chase Down Fugitives: American Courts*, WALL ST. J. (July 29, 2020), https://www.wsj.com/articles/china-corruption-president-xi-communist-party-fugitives-california-lawsuits-us-courts-11596032112. A broader study of this phenomenon was produced by the U.S.-China Economic and Security Review Commission. *See* U.S.-China Economic and Security Review Commission, *Rule by Law: China's Increasingly Global Legal Reach* (2023), available at https://www.uscc.gov/hearings/rule-law-chinas-increasingly-global-legal-reach.

[6] Marie Tsai, *He Escaped China. Harassment Followed Him to a New York Courtroom*, RADIO FREE ASIA (March 19, 2025), https://www.rfa.org/english/special-reports/china-lawfare-transnational-repression/.

established reputations, and the litigation characteristically fails to progress beyond preliminary discovery phases while imposing substantial financial burdens upon defendants. To date, these legal actions have not always resulted in substantive judicial victories for Chinese plaintiffs, yet they achieve their strategic objectives through the imposition of procedural costs and reputational damage upon targeted individuals.

I have called these tactics "asymmetric lawfare" because China's party-state can use the weaknesses of its own legal system to gain advantages in the U.S. and because the U.S. government has no ability to use the Chinese legal system to achieve its own strategic or national security goals.[7] Not only does the Chinese legal system limit or prohibit many of the legal tactics described here such as third-party funding of litigation,[8] but skepticism about the judicial independence of Chinese courts in cases involving important domestic political interests is more than warranted. As a practical matter, the lawfare tactics described here can be employed only by China, and never by the United States.

It is also important to keep in mind why Chinese party-state lawfare should raise more concern than other kinds of abusive foreign litigation. Unlike most strategic and economic competitors to the U.S., China's unique mixture of influence and direct control over its private sector through state-owned banks, Communist Party cells, and United Front partnerships means ostensibly private Chinese companies are very vulnerable to being coopted or compelled to serve the party-state's political and strategic goals.[9]

II. Case Studies of Chinese Lawfare in U.S. Courts

In this section, I describe two recent examples of likely Chinese party-state lawfare tactics in U.S. courts.

A. Civil Litigation to Harass Dissidents in the U.S.

First, there has been a rise in the number of Chinese companies engaging in commercial litigation against Chinese nationals in U.S. courts that also are wanted by the Chinese party-state

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[7] Julian Ku, *China's Successful Foray Into Asymmetric Lawfare*, LAWFARE (Sept. 29, 2021), https://www.lawfaremedia.org/article/chinas-successful-foray-asymmetric-lawfare.

[8] It is not clear that third-party litigation funding is legal under Chinese law with some Chinese courts invalidating such agreements as against the "public interest." *See* Wang Heng and Du Lanxin, *Developments of third-party funding in mainland China*, GLOBAL ARBITRATION REVIEW (May 10, 2024) (discussing *Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited*, Shanghai Jingan District People's Court, Case No. (2020) Hu 0106 Min Chu 2583, Civil Judgment; and *Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited*, Shanghai Second Intermediate People's Court, Case No. (2021) Hu 02 Min Zhong 10224, Civil Judgment.) https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2025/article/developments-of-third-party-funding-in-mainland-china#footnote-7

[9] *See* Jude Blanchette, *From "China Inc." to "CCP Inc.": A new paradigm for Chinese state capitalism*, HINRICH FOUNDATION (February 2021), https://www.hinrichfoundation.com/media/swapcczi/from-china-inc-to-ccp-inc-hinrich-foundation-february-2021.pdf.

for legal or political reasons. This spring, Radio Free Asia documented another example of this trend by telling the story of Ma Ju, a Chinese national living in Long Island, New York.[10] Ma, who has testified before the U.S. Congress and the United Nations against China's policies repressing his Hui Muslim ethnic minority group, was served with papers at his Long Island home seeking enforcement of a $12.5 million Chinese court judgment against him. Ma says that this Chinese court judgment was fraudulently obtained, but since he had to flee China (he is seeking political asylum in the U.S), he was never able to fairly defend himself in China when the court case was brought there.

Nonetheless, U.S. courts, including New York state courts, will generally enforce foreign court money judgments absent clear evidence of fraud or fundamental unfairness in the Chinese proceeding. The local Nassau County court ordered Ma to pay the $12.5 million judgment, which he is appealing, but which he has little chance to win due to the general rule most U.S. courts follow that tends to give deference to foreign court civil judgments.

Ma's case is not an outlier. U.S. authorities have identified at least seven similar civil lawsuits filed by Chinese entities in American courts over the past six years, with three currently under FBI investigation.[11] These cases follow a consistent pattern of harassment, family threats, and eventual legal action designed to impose financial and psychological costs on dissidents, even those supposedly safe in the United States.

B. Lawfare to Suppress Historical Memories

The litigation over Mao Zedong's former secretary Li Rui's personal diaries is another example of how the party-state can use asymmetric lawfare to exploit their own court system's weaknesses to gain advantages in deferential U.S. courts. Li Rui, who later in his life had become a prominent Chinese Communist Party critic, had agreed through his daughter to donate his personal diaries to Stanford University's Hoover Institute. However, after Li's death in 2019, Li's widow Zhang Yuzhen filed suit in Beijing claiming ownership of the diaries, arguing they contained personal information, and that Li intended for her to control their publication.[12]

The Beijing court ruled in Zhang's favor, ordering Stanford to return the archives despite the university's attempts to participate in the proceedings. Stanford argues it was never given adequate notice of the Chinese court case and was denied the opportunity to contest its rights when it tried to appear. In response, Stanford filed a "quiet title claim" in U.S. federal court to affirm its ownership rights, arguing the donation was proper and the Chinese judgment should not be enforced due to procedural unfairness.

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[10] Marie Tsai, *He Escaped China. Harassment Followed Him to a New York Courtroom*, RADIO FREE ASIA (March 19, 2025), https://www.rfa.org/english/special-reports/china-lawfare-transnational-repression/.
[11] *Id*.
[12] *See* Guo Rui, *Widow of Mao Zedong's Secretary Li Rui Sues in Chinese Court to Demand Return of Diaries from Stanford University*, SOUTH CHINA MORNING POST, April 25, 2019.

Zhang counterclaimed in U.S. court, alleging copyright infringement and public disclosure of private facts among other issues. The U.S. trial court has allowed some of Zhang's claims to proceed while dismissing others and is currently considering trial briefs before issuing a judgment.[13] This case represents a direct confrontation between Chinese and American legal systems over the same disputed property.

This litigation demonstrates how the Chinese party-state employs lawfare for ideological purposes beyond harassing political opponents or fugitive officials. Although Zhang's recent passing may moot the Stanford case, it opens possibilities for future lawfare tactics in U.S. courts, such as challenging ownership of other important Chinese Communist Party historical archives at institutions like Harvard's Yenching Library or filing lawsuits to delay or suppress artwork displays that criticize Chinese leaders.

The Stanford case illustrates two troubling features of Chinese lawfare in U.S. courts. First, by winning a court judgment in Beijing, the party-state was able to gain a legal advantage for its claims in the U.S. thus forcing Stanford to fund a years-long expensive litigation to defend its rights. Second, although Zhang was, by all accounts, a widow of limited means, she was somehow able to retain top high-priced U.S. legal counsel to fund a years-long litigation against Stanford without disclosing whether she received third-party funding. Like Mr. Ma's case, the combination of these two features gives the party-state an advantage in pursuing its political and strategic interests through the U.S. court system. Without changes on the U.S. side, these legal avenues can continue to be exploited by adversarial Chinese interests.

III. How to Harden the U.S. Court System Against Chinese Party-State Lawfare

Addressing the growing threat of asymmetric lawfare by the Chinese party-state and other authoritarian regimes presents a complex challenge that strikes at the heart of what makes the American legal system exceptional. The very features that establish the United States as a global leader in rule of law—judicial independence from political interference, equal treatment of foreign and domestic litigants, international comity that respects foreign court decisions, and procedural fairness that gives all parties meaningful access to justice—are precisely the vulnerabilities that the Chinese party-state can exploit. These principles have made America an attractive destination for international commerce and investment, fostering economic growth and diplomatic relationships built on legal reciprocity. However, authoritarian regimes now weaponize these democratic values, using fraudulent or politically motivated foreign judgments as Trojan horses to infiltrate American courts. Any solution must carefully balance preserving the integrity and openness of the U.S. legal system while preventing its abuse by foreign adversaries who operate under fundamentally different concepts of justice and due process.

A. Enforcement of Chinese Court Judgments

[13] U.S. District Court for the Northern District of California Oakland Division, "The Board of Trustees of the Leland Stanford Junior University, Plaintiff, vs. Zhang Yuzhen, et al, Defendants, Case No. 19-cv-02904 SBA, Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings," September 28, 2022.

One promising legislative approach would involve restructuring the evidentiary framework surrounding foreign judgment enforcement, particularly those originating from authoritarian judicial systems with documented patterns of political manipulation like China. Currently, the patchwork of state laws governing foreign judgment recognition creates an uneven playing field where defendants in U.S. court, like Mr. Ma in Long Island, must affirmatively prove that Chinese court proceedings were fundamentally unfair—a burden that can be extraordinarily difficult and expensive to meet, especially when dealing with opaque foreign legal systems like China's that may deliberately obscure evidence of bias or procedural violations.

The reality is that while American courts have generally been willing to enforce Chinese judgments, Chinese courts have been more reluctant. A US court first recognized a Chinese judgment in 2009, and a Chinese court first did so in 2017. Article 293 of the revised 2023 Civil Procedure Law of the People's Republic of China allows PRC courts to recognize and enforce foreign judgments based on the principle of reciprocity. China's recent amendments to its Civil Procedure Law suggest an evolving approach, but American courts should not provide the same kind of deference to Chinese courts that it might provide to other jurisdictions with more independent legal systems.

Congress could enact comprehensive federal legislation that reverses the burden on U.S. defendants, requiring parties seeking to enforce judgments from designated countries with compromised judicial independence to demonstrate that their foreign proceedings met robust due process standards equivalent to those required in U.S. courts. This could include requirements to prove adequate notice, genuine opportunity to be heard, absence of political interference, and adherence to international standards of judicial impartiality.

Additionally, Congress could establish expedited dismissal procedures similar to anti-SLAPP statutes, allowing defendants to quickly challenge suspicious foreign judgments without enduring years of costly litigation. A federal framework modeled after the SPEECH Act, which already protects Americans from foreign defamation judgments that violate First Amendment principles, could extend similar protections against any foreign judgment that contravenes fundamental American legal principles or constitutional rights. Such reforms would not prohibit enforcement of Chinese judgments but conditions enforcement on fair treatment of American judgments in Chinese courts.

B. Third Party Litigation Funding

The opacity surrounding third-party litigation funding presents another critical vulnerability that foreign state actors can exploit to wage covert legal warfare against American interests. Under current disclosure rules, foreign governments or their state-controlled enterprises can secretly finance lawsuits in U.S. courts through complex networks of shell companies, investment funds, or intermediary organizations, effectively allowing hostile foreign powers to manipulate American legal proceedings while concealing their involvement from judges, opposing parties, and the public. This lack of transparency not only undermines the integrity of judicial

proceedings but also creates national security risks when foreign adversaries can use anonymous litigation funding to advance strategic objectives, gather intelligence, or pressure political dissidents.

Policymakers should consider comprehensive reforms that mandate full disclosure of litigation funding sources for cases involving foreign government or foreign political party plaintiffs. These reforms could take the form of amendments to the Foreign Agents Registration Act (FARA) that specifically address litigation funding, new Federal Rules of Civil Procedure requiring disclosure of all funding sources above certain thresholds, or standalone legislation creating a national registry of litigation funders with enhanced reporting requirements for foreign entities. Such transparency measures would enable courts to identify potential conflicts of interest, allow opposing parties to investigate funding sources that might reveal ulterior motives, and help the American public understand when foreign governments are attempting to use the U.S. legal system as a tool of international influence or repression.

These ideas build on existing disclosure requirements in other contexts. The Foreign Agents Registration Act (FARA) already requires disclosure of foreign government influence activities.[14] Similarly, campaign finance laws mandate disclosure of foreign contributions to political activities.[15] The Committee on Foreign Investment in the United States (CFIUS) reviews foreign investments for national security implications.[16] Extending these principles to litigation funding seems like a natural and necessary evolution.

It is important to keep in mind that the First Amendment does not protect foreign governments' right to secretly influence American litigation. In *Bluman v. Federal Election Commission*, the D.C. Circuit held that restrictions on foreign political participation serve compelling governmental interests and do not violate the First Amendment.

IV. Conclusion

The integrity of the U.S. judicial system depends on transparency and fairness. Chinese government funding of litigation without disclosure undermines both principles, while the lack of reciprocity in judgment enforcement creates systemic disadvantages for American litigants and businesses as well as further opportunities for Chinese lawfare tactics. We cannot allow this asymmetric relationship to continue.

I believe that the U.S. legal system must be protected from foreign interference while remaining open to legitimate international cooperation. I hope members of this committee will agree that these threats require action by Congress to take practical steps to protect our national interests,

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[14] 22 U.S.C. § 611 et seq.
[15] 52 U.S.C. § 3012.
[16] 31 C.F.R. Part 800.

and promote genuine international legal cooperation based on mutual respect and equal treatment.

Thank you for your attention to these critical issues. I look forward to your questions and to working with this Subcommittee to protect the integrity of American courts from manipulation and exploitation by the Chinese party-state.

Mr. ISSA. Thank you. Mr. Muller?

STATEMENT OF BRADFORD MULLER

Mr. MULLER. Chair Issa, Ranking Member Johnson, and the Members of the Committee, thank you for inviting me to testify today.

Charlotte Pipe and Foundry is the Nation's leading maker of cast iron and plastic pipe and fittings for plumbing. We're a fifth-generation family owned business. We've been in continuous operation in the United States for 124 years.

We employed 1,800 associates and through our wholly owned subsidiary Neenah Foundry we have another 1,000 employees spread across 11 plants across the United States.

In 2017, we filed AD/CVD petitions through our trade association against imports of cast iron pipe and fittings. The Department of Commerce determined that Chinese exporters had undersold and subsidized cast iron pipe in the United States up to 345 percent less than fair value. For cast iron fittings Commerce determined the Chinese had undersold those products up to 494 percent. Duties to counteract these unfair trade practices have been in place since August 2018.

Over the last seven years unscrupulous foreign entities have turned to transshipping pipe and fittings through third countries and deploying other forms of evasion and customs fraud to obscure the true origin of their products to avoid paying these duties.

The Enforce and Protect Act, or EPA, grants U.S. Customs and Border Protection tools to combat customs fraud. In the seven-years since our orders were issued, we have received 10 positive EPA determinations of transshipping against producers of our products, primarily in Malaysia and Cambodia. When Customs investigated the locations of these alleged producers, they found an empty warehouse, a bus stop, even a massage parlor, but no foundries.

Despite Customs' good faith efforts, they have been unable to stop the illegal flow of imports. These entities have no intention of ever paying the duties. When caught transshipping these companies simply dissolve and the bad actors reconstitute under a new shell company and resume their unlawful activity.

Chinese shippers have been so successfully evading U.S. trade enforcement that they freely advertise their capabilities to, quote, "avoid high duties by exporting goods from China to Southeast Asian countries where we change containers and then re-export to the best Nation country."

Multiple news outlets are reporting on the many ways Chinese companies exploit gaps in domestic enforcement to bypass tariffs, duties, and other trade restrictions. I was quoted in the front page story of *The New York Times* on May 27th, lamenting the whack-a-mole nature of the process of tracking down these fraudulent shell companies and shutting them down only to see them right back in business under a new name. *CNBC* uncovered a, quote, "web of illicit activity that's propping up these shipments from China." *Reuters* wrote about, quote, "Chinese exports offering sweet deals to U.S. businesses that come wrapped in fraud." The *Financial Times* reported on how, quote, "Chinese exporters are stepping

up efforts to avoid tariffs by shipping goods via third countries to conceal their true origin."

Evasion and transshipment have been so successful that Customs' effort to collect duties has become futile. Based on our calculations Chinese producers of our products have successfully evaded more than $44 million of dumping duties, money that they have robbed of the U.S. Treasury, and we have spent $7 million of our own money filing trade cases and EPA petitions in an unsuccessful attempt to enforce U.S. trade law.

Customs simply does not have the tools to overcome this determined fraud and current penalties for such behavior are woefully inadequate. To address this Representative Ross and Representative Sewell have referred to the House Ways and Means Committee the Fighting Trade Cheats Act to strengthen enforcement against trade fraud.

This bill attacks evasion of AD/CVD orders by increasing penalties, denying a person and their affiliates engaged in fraud an importer of record number, and allowing private enforcement action to gain immediate injunctive relief against illegal trade flows.

To put it bluntly, the AD/CVD process is broken. Without far stronger remedies industries will be reluctant to undertake these cases. The cost to file and win these cases is exceedingly high and the promise of relief has become nonexistent in the face of lax trade enforcement.

I'd like to thank Chair Issa, Ranking Member Johnson, and the Committee again for investigating these threats to American economic security and for allowing me to testify today.

[The prepared statement of Mr. Muller follows:]

Testimony before the Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet of the Committee on the Judiciary

"Foreign Abuse of U.S. Courts"

Bradford Muller – Vice President, Corporate Communications

Charlotte Pipe and Foundry Company

Tuesday July 22, 2025

Chairman Issa, Ranking Member Johnson and other members of the Committee, thank you for inviting me to testify today.

Charlotte Pipe and Foundry is the nation's leading maker of cast iron and plastic pipe and fittings for plumbing systems. A fifth-generation family business, Charlotte Pipe has been in continuous operation in the United States for 124 years.

We employ about 1,800 associates in eight plants around the country. Through our wholly owned subsidiary Neenah Foundry we employ another 1,000 associates working in three foundries making manhole covers and rings, tree grates and other street castings.

AD/CVD Duties

In 2017, the U.S. producers of cast iron soil pipe and fittings for plumbing filed AD/CVD petitions through their trade association, the Cast Iron Soil Pipe Institute (CISPI), against imports of these products from the People's Republic of China.

On March 20, 2019, The International Trade Commission (ITC) voted unanimously in favor of CISPI in their AD/CVD petition against imports of cast iron soil pipe from China.

As part of the investigation, the Department of Commerce determined that Chinese exporters had undersold and subsidized cast iron soil pipe in the United States in a range of 250 to 345 percent less than fair value. Duties to counteract these unfair trade practices went into effect immediately.

In addition to the pipe case, CISPI filed an AD/CVD case against Chinese producers of cast iron fittings in 2017. In that investigation, Commerce determined that Chinese exporters had undersold and subsidized cast iron fittings in a range of 41 to 494 percent less than fair value. Duties to counteract these unfair trade practices have been in effect since August of 2018.

Sunset Reviews of AD/CVC Orders

In October 2024, The International Trade Commission determined that "revoking the existing AD/CVD orders on cast iron soil pipe from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."

As a result of the Commission's affirmative determinations, the existing orders on imports of these products from China remain in place. This followed the Commission's affirmative determinations on the existing orders on imports of cast iron fittings from China, which also remain in place.

However, evasion of these AD/CVD duties has been so successful that no importers appealed the orders during the Sunset Reviews. Why pay high priced trade lawyers to contest the orders when they can evade them at little cost or risk?

CISPI Files 10 Successful EAPA Investigations

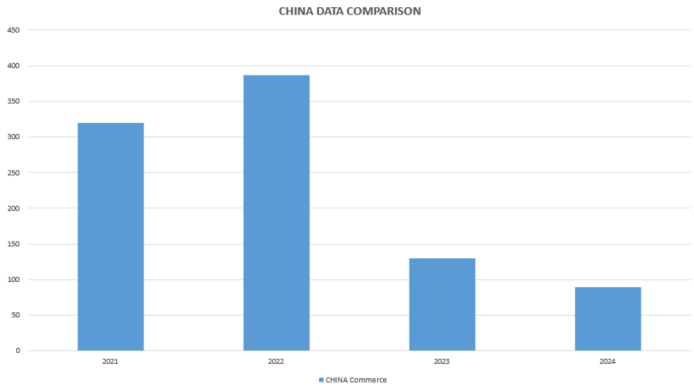
Over the last seven years, unscrupulous foreign entities engaged in unfair trade practices have turned to transshipping goods through third countries and deploying other forms of evasion and customs fraud to obscure the true origin of their products to avoid AD/CVD duties.

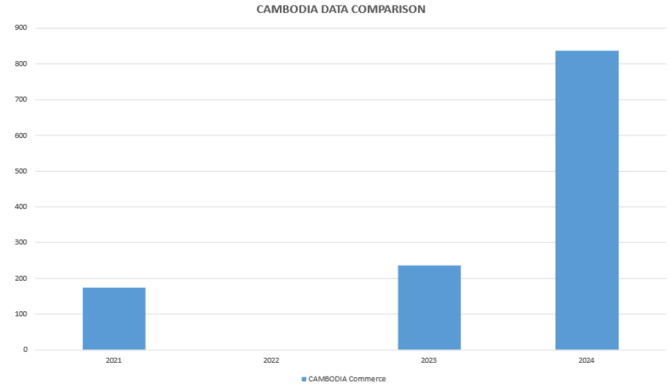
The Trade Facilitation and Enforcement Act of 2015 granted U.S. Customs and Border Protection (CBP) new tools to combat evasion, such as Enforce and Protect Act (EAPA) investigations.

In the six years since the AD/CVD orders were put in place, CISPI has received 10 positive determinations of evasion of lawful duties against producers and importers of our products in EAPA cases. These cases are prohibitively expensive for petitioners and have done nothing to eliminate fraud.

EAPA No.	***Country***	***Parties***	***Date Filed***	***Outcome***
7454, 7455	Cambodia	Lino Metals; Blue Star Casting; HiCreek (Cambodia)	March 2020	Affirmative determinations
7621, 7623, 7624, 7708	Cambodia	Lino Metals; Little Fireflies International; Phoenix Metal; Granite Plumbing Products	July 2021 Feb. 2022 (Phoenix)	Affirmative determinations
7785, 7786	Malaysia	LDL Trading (Copperfit Industries); Vanguard Metal Fabrication (Malaysia)	Oct. 2022	Affirmative determinations
7819, 7820	Malaysia	Besttn Industry (Kingway); United Metal Ind. (Malaysia)	April 2023	Affirmative determinations

Despite CBP's good faith efforts, they have been unable to stop the flow of imports that continue to injure the domestic industry, with Chinese producers brazenly shutting down sham shell companies and creating others to avoid paying duties. In fact, the charts below show that as Chinese exports to the U.S. have fallen, Cambodian exports have risen in direct correlation. Yet Cambodia does not have foundries that make cast iron pipe and fittings.





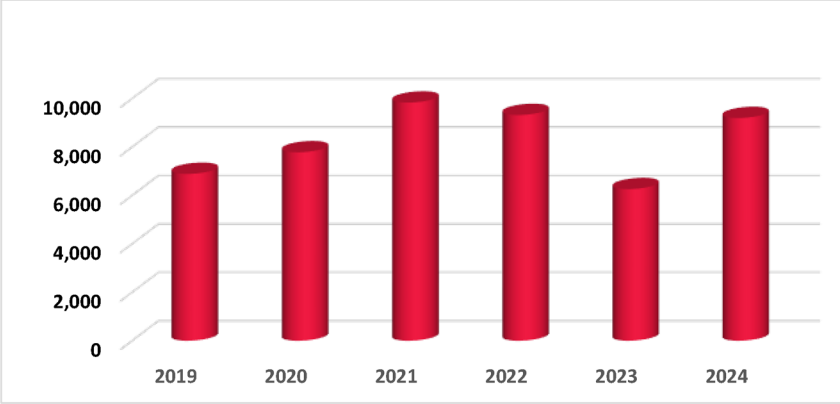
For example, lawyers for Phoenix Metal admitted during an unsuccessful appeal of an affirmative EAPA determination that the company was created by the same individuals and entities behind HiCreek Co. because of the affirmative EAPA determination against HiCreek; that HiCreek ceased operation after an affirmative EAPA determination against that company rather than pay AD/CVD duties; and that Phoenix Metal would do the same if its appeal was unsuccessful.

In other words, these entities have no intention of ever paying the duties. When caught and confronted with transshipment, these shell companies simply dissolve rather than pay the duties, and the bad actors reconstitute under a new shell company and continue their evasion.

This is happening on an ongoing basis, rendering Customs' efforts to collect duties futile. In fact, based on our calculations, Chinese producers of cast iron soil pipe and fittings have successfully evaded more than $44.5 million of dumping and countervailing duties – money they have robbed of the U.S. Treasury.

CBP simply does not have the resources or the tools to overcome this determined fraudulent activity and collect duties even after positive EAPA determinations have been made. Current penalties for such behavior are woefully inadequate, lacking sufficient deterrent value to discourage bad actors from engaging in evasive action.

As you can see from the chart below, total tonnage from foreign producers actually went *up* in the three years immediately following imposition of AD/CVD duties in 2018 and have remained elevated.



PIERS DATA – TOTAL IMPORT TONS
CAST IRON SOIL PIPE AND FITTINGS

Advertising Evasion

Chinese shippers have become brazen in their campaign of trade fraud, freely advertising their capabilities to circumvent U.S. trade remedies and "avoid high duties" by "exporting goods from China to Southeast Asian countries" where they "change containers and then re-export to the destination country."

Duty Evasion – China

From: Claire <claire@kingtrans.com.cn>
Sent: Thursday, May 18, 2023 5:15:18 AM
To: [redacted]
Subject: [redacted] How to import Stainless Steel Flanges from China without cost constraints?

Hi,

Good day! Very glad to express my sincere gratitude to you for taking time to read this email.

Our company Kingtrans is an experienced freight forwarder since 2004, specializing in helping other importers to save cost, especially in the area of avoiding high duties.

As far as I know, there has a high tariff on imported Stainless Steel Flanges from China.
We can provide the professional trading solution ?? **Re-exporting**, in this way, high tariffs can be avoided.

Re-exporting operation process:

1. Exporting goods from China to Southeast Asian countries
2. Change containers in Southeast Asian countries and then re-export to the destination country.

The routing for the containers will be as:
China→Southeast Asian countries→Destination countries

Re-exporting is the way many importers who suffered from anti-dumping will choose, with 18 years experience, our company help different importers handle nearly a hundred containers of goods every month.

If you're interested or want more details, just contact me.

Thanks & Regards

Claire Xue
Kingtrans Co., LTD.
Mobile: +86 19842302231
Wechat/WhatsApp: +86 18807421354

JCTRANS ID: 151861

STAINLESS SHEET/STRIP EVASION OF AD/CVD DUTIES- CHINA

Dear Purchasing Manager,

Good day!

This is Yannis from Kingtrans Container Line (Shenzhen) CO., LTD, China. We do the trans-shipment business to avoid anti-dumping duties.

As we know, stainless steel sheet and strip imported from China to America is suffering from very high anti-dumping duties, here we would like to provide the professional shipping solution to avoid the high anti-dumping duties. And we have done this trans-shipment business for 12 years.

To avoid the limitations, we send the container to other countries outside of China, and export it to destinations by using document (CO or FORM A) originated from areas like Malaysia, Thailand, Taiwan, Indonesia, Bangladesh, Philippine etc., this arrangement will help you to save a lot of anti-dumping duties.
The route for the containers will be as:(take Malaysia for example)
CHINA ----> Malaysia (reloading the containers in bonded warehouse) ----> America

Documents issued details:
a. Malaysia company's CO
b. Master Bill of Lading under Malaysia company
c. Malaysia company's Packing List
d. Malaysia company's Invoice

If you are interested in such shipping solution, welcome inquiry anytime.

Thanks for your reading.

Best regards
Yannis Lee
Kingtrans Container Line(Shenzhen) CO., LTD
Add: Roon 906,BLK B,Guanghao International Center,No. 441,Meilong Road,Longhua New Dist.,Shenzhen
Tel: +86-13751084547
E-mail: yannis@kingtrans.com.cn
Skype: yannis_lqy
QQ: 847869805

Multiple news outlets are reporting on the many ways Chinese companies exploit gaps in domestic enforcement regimes and jurisdiction of the courts to bypass tariffs, duties, and other trade restrictions.

New York Times – front page May 27, 2025

> "As President Trump's tariffs have ratcheted up in recent months, so have the mysterious solicitations some U.S. companies have received, offering them ways to avoid the taxes. Shipping companies, many of them based in China, have reached out to U.S. firms that import apparel, auto parts and jewelry, offering solutions that they say can make the tariffs go away.
>
> 'We can avoid high duties from China, which we have already done many in the past,' read one email to a U.S. importer.
>
> 'Beat U.S. Tariffs,' a second read, promising to cap the tariffs 'at a flat 10%.'
>
> The proposals — which are circulating in emails, as well as in videos on TikTok and other platforms — reflect a new flood of fraudulent activity, according to company executives and government officials. As U.S. tariffs on foreign products have increased dramatically in recent months, so have the incentives for companies to find ways around them.
>
> The Chinese firms advertising these services describe their methods as valid solutions. For a fee, they find ways to bring products to the United States with much lower tariffs. But experts say these practices are methods of customs fraud.
>
> The companies may be dodging tariffs by altering the information about the shipments that is given to the U.S. government to qualify for a lower tariff rate. Or they may physically move the goods to another country that is subject to a lower tariff before shipping them to the United States, a technique known as transshipment."

CNBC – May 19, 2025

> "Chinese exporters are offering lucrative deals to U.S. customers with promises of bearing the full burden of tariffs. Look beneath and there's a web of illicit activity that's propping up these shipments from China.
>
> By using the 'delivered-duty-paid' shipping approach where sellers pay for all import duties, and by under-invoicing shipments, some Chinese sellers are able to offer U.S. customers pre-tariff prices, while still turning a profit, according to legal experts."

Reuters – May 19, 2025

> "Chinese exporters are offering sweet deals to U.S. businesses. They often come wrapped in fraud. Chinese exporters are understating the value of goods or mislabeling them to draw lesser duties."

The Federalist – May 9, 2025

> "Inside China's Massive Tariff-Dodging Scheme That Kills Its Competition: China's decentralized export machine bypasses traditional retail channels, pays no income taxes, evades tariffs, and undercuts American businesses."

Financial Times – May 5, 2025

> "Chinese exporters are stepping up efforts to avoid tariffs imposed by President Donald Trump by shipping goods via third countries to conceal their true origin."

Legislative Remedies – The Fighting Trade Cheats Act

To address this rampant cheating, House Ways and Means Committee members Mike Bost (R-IL-12) and Terri Sewell (D-AL-7) introduced the **Fighting Trade Cheats Act (H.R. 1284)** to strengthen enforcement against this form of trade fraud.

The FTCA attacks evasion of AD/CVD orders in three ways:

- Enhanced Penalties – Triples penalties for customs fraud to increase deterrence.
- Suspends Import Authority – Deny a person and their affiliates of an Importer of Record number for five years for those proven to have engaged in fraud.
- Private Enforcement Action – Provides opportunity for immediate injunctive relief; Limits standing to industries that suffer actual harm (no consumer claims); No claims for negligent violations; Authorizes the government to obtain discovery information or intervene in litigation.

These provisions are consistent with other statutes that afford injured parties rights to pursue civil actions under federal penalty statutes.

Another remedy is the **Protecting American Industry and Labor from International Trade Crimes Act of 2025 (H.R. 1869)** – bipartisan legislation which will strengthen enforcement by the Department of Justice (DOJ) against trade-related crimes. It would require the DOJ to:

- Establish a task force within the DOJ to combat China's trade crimes and protect American workers and manufacturer.
- Authorize $20 million in funding for fiscal year 2026 to support the task force.
- Provide training and technical assistance to other federal, state, and local law enforcement agencies, expanding investigations and prosecutions, and allowing for parallel criminal and civil enforcement actions.

- Submit an annual report to Congress assessing the DOJ's efforts, statistics on trade-related crimes, and fund utilization.

It is my understanding that the Judiciary Committee could grant clearance for the PAIL Act to move forward, and the bill could be amended to the National Defense Authorization Act (NDAA).

To put it bluntly, the AD/CVD process is broken and in need of far stronger remedies. Short of the remedies provided in the FTCA and PAIL Act, industries will be very reluctant to undertake AD/CVD cases in the future. The costs to file and win these cases are exceedingly high and the promise of relief has become non-existent in the face of lax trade enforcement.

I'd like to thank Chairman Issa, Ranking Member Johnson and the Committee again for investigating these threats to American economic and national security, and for allowing me to testify before you today.

Mr. ISSA. Thank you. Professor DeLisle?

STATEMENT OF JACQUES DELISLE

Mr. DELISLE. Thank you. Chair Issa, Ranking Member Johnson, and the Member of the Committee, thank you for the opportunity to testify.

I'm going to address two types of concerns that I think arise in the context of what would be described as problematic uses of U.S. courts and legal processes more broadly by entities linked to the PRC or the Chinese Communist Party.

The first category is essentially what one might call abuse, targeting individuals and entities in lawsuits brought against in the U.S. and U.S. courts. For example, against exiled dissidents or U.S. companies that are rivals of favored Chinese companies, that attempt to deny U.S. parties access to U.S. courts, to the application or the attempted application of Chinese law, and enforcement of Chinese judgments in ways that harm such U.S. parties' interests.

The second kind of problem is what one could call avoidance of accountability. That is, Chinese parties seek to avoid the application or challenge the validity of U.S. laws either through keeping cases or evidence out of U.S. courts, or by avoiding the application and enforcement of U.S. law.

How to address these problems? Well, it's challenging. The challenge stems in part from the fact that the problematic cases; and they do exist, are not facially or easily distinguishable, certainly not at a wholesale level, from many ordinary claims that should be allowed to proceed in the U.S. under principles of applicable U.S. law and fair access to justice. These are things that should be heard in our courts and often align with the interests of U.S. parties, indeed of U.S. nonparties the cases that have similar interests.

The U.S. courts have a number of tools available to deal with these problems. Some of them might be sharpened; some of them might be used better, but they exist and they have been used often quite well and are better than many of the alternative more broadbrush or wholesale tools that might be contemplated.

In terms of vexatious litigation targeting dissidents in exile or disfavored companies for the benefit of Chinese companies U.S. courts can and have evaluated the claims in individual cases, sometimes finding them credible; sometimes finding them not. The U.S. courts can dismiss cases and impose Rule 11 sanctions, something which perhaps they should do more often. They can deny abusive or burdensome discovery requests; easy enough to do under the usual rules of U.S. discovery in proceedings in the U.S., and requests for production of evidence for use in Chinese proceedings especially when they come from parties or individuals rather than courts in China could be scrutinized more closely, tightening in effect the 28 U.S.C. 1782 process.

The U.S. can and is increasingly going to have to deal—U.S. courts are going to have to deal with the question of recognizing or not recognizing antisuit injunctions. China started to issue these particularly in the FRAND SEP cases for technology.

Forum nonconveniens motions, which are often attempted by Chinese parties to get cases out of U.S. courts, can be denied, and

are often denied on the grounds of the public interest in the U.S. and having U.S. parties bring their cases and applying U.S. law, or on the basis of the burdensome effect on U.S.-based parties of litigating in China, or on a judgment in the particular context, in which case would be litigated in China given the parties, the courts, and the nature of the claims can decide that this would not be an adequate or available alternative forum in a Chinese court.

The U.S. courts can also use choice of law rules to deny the application of Chinese law, whether it's inappropriate or where such law would offend U.S. public policy. We see this going on with respect to blocking statutes where U.S. courts have been unwilling to allow Chinese parties to plead State secrets law, data, or cybersecurity laws, or personal information protections laws as reasons for not to comply with discovery requirements.

The U.S. courts can decline to enforce problematic Chinese court judgment rules and can invoke notions of reciprocity and comity to restrict such enforcement, either retail or wholesale, given the lack of Chinese enforcement of U.S. judgments in many cases, and U.S. courts have and do uphold relevant U.S. regulatory laws and their application against Chinese parties' challenges. Think of CFIUS decisions, PCAOB disclosure requirements, Huawei exclusion from markets for national security reasons, the TikTok ban, and so on.

Here I would note the U.S. sovereign and official immunity doctrines that limits the extraterritorial reach of U.S. statutes have taken away some methods that might be available for dealing with problematic Chinese behavior.

The point here in all this is the problem of abuse and avoidance of accountability. The tools are there and the legal tools we have or can readily imagine being available are quite suited to the kind of granular fact- and case-specific analysis that courts are suited to do. A more broad-brush approaches have challenges and problems. They risk embedding in U.S. law the idea that because abuses by Chinese actors can and sometimes do occur U.S. law and courts must assume that they occur. That is at odds with notions of due process and fair access to justice and harms the interests of U.S. parties.

Disclosure requirements or other measure that would impede access to U.S. courts would create quite messy mini trials on collateral issues of the degree of entanglement with the Chinese State. That is a very complicated issue that could be over-expansive and chill the bringing of legitimate claims even by U.S. parties that happen to have some limited connection to China.

Measures that explicitly are clearly targeting China risk accelerating a spiral of tit-for-tat moves by China that would indeed adversely affect the interests of the U.S. and U.S. parties. Those may be costs worth bearing, but they are costs that need to be calculated. They also risk making more credible China's narrative that U.S. law and courts are political tools wielded to keep China down and serve U.S. geopolitical—

Mr. ISSA. I thank the gentleman.

Mr. DELISLE. Thank you.

[The prepared statement of Mr. deLisle follows:]

Testimony of Jacques deLisle
Stephen A. Cozen Professor of Law, Professor of Political Science
Director, Center for the Study of Contemporary China
University of Pennsylvania

before the
Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet
of the Committee on the Judiciary

July 22, 2025

Chairman Issa, Ranking Member Johnson, and Distinguished Members of the Committee. Thank you for the opportunity to testify today.

My testimony today draws on more than thirty years of experience conducting research, scholarship, and teaching on Chinese law, Chinese politics, and China's legal interactions with the United States and the international order. My comments are also based on my experience as an expert witness in dozens of cases involving Chinese law and many of the issues of U.S. law in China-related cases that the following discussion addresses. I am the Stephen A. Cozen Professor of Law, Professor of Political Science, Director of the Center for the Study of Contemporary China, and former Director of the Center for East Asian Studies at the University of Pennsylvania. Previously, I served in the Office of Legal Council at the U.S. Department of Justice, where my work included China-related issues. I am also a member of the U.S. Department of State's Advisory Council on International Law, the International Academy of Comparative Law, and the National Committee on U.S.-China Relations.

The stated purpose of this hearing is to address how the "Chinese Communist Party" "abuse[s]" U.S. courts, including by using U.S. judicial processes to harass those whom the Chinese regime disfavors (such as critics in exile or U.S. companies), to avoid accountability under, or effective subjection to, U.S. law (including that which protects the rights of U.S. parties). Such phenomena can and sometimes do occur at the behest, or to the benefit of, the CCP and the Chinese state or party-state more generally.

Cases that might be rightly classified as CCP- or Chinese state-orchestrated abuses of U.S. legal process or attempts to subvert U.S. law often are not simply or categorically distinguishable from the many cases in which parties—including China-linked ones—bring more ordinary claims to which U.S. courts have been open and, in keeping with principles of the rule of law, should be open. U.S. courts have, and use, doctrinal and procedural tools—and could in some cases wield them more effectively—to address the relevant abuses or attempts to evade responsibility. Many of the identified concerns are best—if imperfectly—addressed and redressed through courts'

applying in individual cases the means that U.S. law does, or with minor, often judicial, adjustment, could provide.

Legislative reforms that would prohibit, restrict, or significantly chill a wide range of China-linked parties from access to U.S. courts, or that would broadly presume that decisions by Chinese courts are unfair or the product of political dictates, should be undertaken with due care and caution. Such measures may be superfluous (given the existing or potential capacity of U.S. courts to address the relevant concerns) or ineffective (missing the indirect, opaque, or informal influence on Chinese parties to litigation and courts that are often identified as sources of concern). Broad measures can create impediments to access to justice in cases beyond their stated or intended targets, with adverse consequences for the interests of parties with unobjectionable claims (including U.S. parties), other stakeholders (including Americans), American principles of fair access to justice, and even U.S. national interests on a global scale. They also risk failing to address—or focus on—trends in Chinese legal developments that pose significant threats to U.S. interests.

Abuse and Avoidance of Accountability, and Courts' Capacity to Address

Several forms of abuse of U.S. law or avoidance of subjection to accountability under U.S. law have been at issue in U.S. legal proceedings involving Chinese parties or Chinese interests in recent years.

The PRC has made requests to extradite PRC nationals in the United States for return to China to face prosecution. Where such a request targets an individual for political reasons, such as being a dissident or a critic of the regime, it would be an abuse of U.S. legal process to serve the political aims of the Chinese party-state—and to do so in ways inimical to principles reflected in U.S. law and international human rights law. Such requests are typically framed as seeking return of a fugitive to face prosecution for non-political offenses such as corruption, fraud, or disrupting public order, and so on. The United States does not have an extradition treaty with the PRC and is extremely unlikely to enter into one. U.S. authorities routinely reject PRC requests for extradition, particularly where there are suggestions of political persecution. Such cases do not reach U.S. courts and thus do not create opportunities for abuse of judicial processes.

PRC non-state parties (typically companies) bring civil lawsuits against individuals (often PRC nationals, or people of PRC origin, in the United States) or against companies (Chinese, U.S., or other) seeking remedies for ostensibly not-politically-related harms, such as fraud or breach of contract or fiduciary duties, or other matters arising (typically) from commercial activities. Defendants sometimes claim that these cases are not what they purport to be and are, instead, vexatious lawsuits brought at the behest of Chinese authorities (whether framed as the CCP, the

PRC, or the Chinese party-state).[1] When such claims are accurate, it would, of course, be a case of political abuse of U.S. courts and judicial process.

Courts have a variety of means to dispose of these types of suits—ones that are also used in cases of ordinary, non-political litigation. Parties who bring frivolous or vexatious lawsuits can have their claims dismissed and be sanctioned under Rule 11 of the Federal Rules of Civil Procedure (and state law equivalents). Rule 11 is arguably an underused tool, but truly harassment-motivated and legally unfounded claims by parties who claim to be pursuing legitimate civil claims but who are in fact following hidden directives from the CCP to intimidate or impose significant financial costs on critics of the regime or politically disfavored companies would seem to be a relatively compelling occasion for courts to use such measures.[2]

To be sure, a more liberal use of Rule 11or other measures to end proceedings in vexatious civil cases will not reliably shield defendants in such suits from having to bear the stress and costs of litigation, including beyond the preliminary phases of a lawsuit. But addressing the problem of such suits ultimately requires the skillsets and procedures of courts because of the case-specific factual determinations that need to be made. Whether a civil suit in U.S. court has the abusive features at issue here requires an inquiry into facts and motives that does not map onto any simple categorization. Chinese companies with ties to the CCP or the Chinese state often do not act at their behest or even in their interests. In many of their business dealings, Chinese state-owned or state-linked or state-invested enterprises pursue commercial goals. A vast range of enterprises in

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[1] See, for example, Emily Feng, Sherry Fei Ju and Lucy Hornby, "China Turns to US Courts in Effort to Silence Exiled Businessman," *Financial Times*, June 15, 2017 (concerning Guo Wengui); "Chinese Conglomerate HNA Sues Exiled Tycoon Guo," Reuters, June 16, 2017, https://www.reuters.com/article/world/chinese-conglomerate-hna-sues-exiled-tycoon-guo-idUSKBN1970GL/ (same); Aruna Viswanatha and Kate O'Keefe, "China's New Tool to Chase Down Fugitives: American Courts," Wall Street Journal, July 29, 2020 (concerning Peng Xuefeng); Marie Tsai, "He Escaped China. Harassment Followed Him to New York," Radio Free Asia, Mar. 19, 2025.

[2] In some cases of vexatious civil litigation, especially that involving targeted persons in exile, another route to early dismissal could be available. Courts also have the ability to dismiss such suits relatively early in the process on grounds of *forum non conveniens*. Because cases of this alleged type ordinarily involve activity that occurred in China, claims for redress for actions that violate / are actionable under Chinese law, Chinese parties on at least one and often both sides, evidence and witnesses located in China, and, often, courts can find grounds for dismissal on the grounds that such factors warrant dismissal of the case, for trial in China.

This is a problematic solution. In principle, it would require the defendant to assert that Chinese courts provide an adequate and available alternative forum (which would be in tension with the defendant's claims about Chinese party-state character and behavior) and defendant would face the risk of the Chinese plaintiff's subsequent attempt to enforce a Chinese court judgment—indeed, a default judgment if defendant did not participate in the Chinese litigation—in U.S. court (and under the relatively deferential review of foreign court judgments in the recognition-and-enforcement context).

These are, of course, major problems in ordinary commercial litigation. But they should be less daunting in the truly vexatious litigation case, where the targeted dissident or disfavored company defendant likely has nothing to lose in terms of future ability to operate in China or with Chinese parties and—if the defendant's characterization of what happened in the case is trued—make a strong argument against judgment recognition and enforcement by a U.S. court (a point addressed later in this document).

China, including formally and/or functionally private ones, have significant ties to the CCP and the Chinese state, through the party committees that companies are required to establish, through industrial policy measures that provide capital or regulatory support to companies, or through company leaders who are members of the CCP or state legislative or consultative bodies for reasons that in many cases are non-political, such as the professional opportunities or chances to undertake the equivalent of "lobbying" that such positions offer.

On the other hand, as many criticisms and accounts of vexatious litigations assert, Chinese plaintiffs that are formally and often functionally private entities can be, in practice, pressured or required or otherwise enlisted to do the CCP's or state authorities' bidding. But that, of course, does not mean that they do so in every, or even many, cases.

On the other side of such litigation, claims by defendants that they are being politically targeted by CCP- or PRC-driven litigation by nominally non-CCP and non-state parties cannot be taken at face value. Persons who are experienced in or knowledgeable about China will often know how to articulate a plausible, if unfounded, tale of persecution and retribution to seek to avoid adverse legal consequences (whether losing a costly civil fraud case or being denied asylum in an immigration proceedings). Such assertions are not uncommon and not all of them will be true or withstand scrutiny in court proceedings, including during the discovery phase of litigation. Nor should such assertions, even if true, necessarily preclude findings in favor of politically-motivated plaintiffs on valid non-political claims.

Anecdotal evidence suggests that U.S. courts are capable of addressing the relevant types of behavior. U.S. courts have evaluated and credited evidence of coercive measures by CCP or Chinese state-linked actors who have sought to coerce or intimidate targeted Chinese individuals in the U.S.—including through threatened civil actions—and U.S. courts have imposed criminal sanctions on those engaged in such behavior, including for violations of FARA.[3] U.S. courts have handled several cases involving claims of vexatious litigation, undertaking fact-intensive, case-specific, and procedural context-sensitive evaluations, resulting (for example) in: enforcement of a Chinese court judgment against a defendant claiming the action was CCP-driven and targeted him for his criticism of CCP/PRC minorities policies and asserting (in a position rejected by the court) that the Chinese judgment was the product of unfair proceedings in Chinese court; rejection of a counterclaim of abuse of process by a defendant in a fraud and bribery suit who asserted the plaintiff was acting as a proxy of the CCP and PRC government but did not allege sufficient acts (including post-filing acts) by plaintiff; and dismissal of a defamation claim against a U.S. company by a Chinese competitor for failure to plead facts that would meet an "actual malice"

[3] "Federal Jury Convicts Three Defendants of Interstate Stalking of Chinese Nationals in the U.S. and Two of Those Defendants for Acting or Conspiring to Act on Behalf of the People's Republic of China," U.S. Attorney's Office, Eastern District of New York, June 20, 2023, https://www.justice.gov/usao-edny/pr/federal-jury-convicts-three-defendants-interstate-stalking-chinese-nationals-us-and;

standard.[4] In my experience as an expert witness, U.S. courts have admitted and evaluated evidence concerning claims that the real party at interest and the funder and director of the litigation was the CCP or PRC, rather than the nominally private party to the case.

PRC courts and parties to litigation can seek to use the U.S.'s broad discovery rules to gather information from persons and entities in the United States. This process for acquiring information can be abused in ways that include information that CCP or PRC authorities might use to serve their interests, or the interests of Chinese competitors of targeted U.S. (or other) parties (including concerning sensitive business information or intellectual property or companies' relations with the U.S. government).

Where such discovery requests are part of litigation in U.S. courts, the courts have available to them the ordinary mechanisms of protective orders and the like to deny problematic discovery requests, including in response to arguments made by targets of discovery requests alleging the type of abuse at issue here.

Where the primary litigation is occurring in PRC courts, the principal concern is the mechanism provided by 28 U.S.C. § 1782, which permits a foreign tribunal or a party to litigation in a foreign tribunal to seek information from persons and entities in the U.S., potentially to the full extent of U.S. law's unusually (by international standards) capacious discovery rules. The statutory requirements (that the request target someone found in the requested court's jurisdiction, that the information be for use in a foreign or international tribunal's proceeding, and that the request come from an "interested person") are easily met. Such requests are often handled *ex parte*. The number of such requests from China has been rising.[5]

Here, too, the U.S. courts have the tools—ones that they might be well advised to sharpen—to address abuse and potential abuse. Under the Supreme Court interpretation of 28 U.S.C. § 1782, courts have discretion to deny such requests based on (among other grounds) the unduly intrusive or burdensome nature of the request.[6] With rising suspicion of or wariness toward China in the U.S. generally and in U.S. court decisions specifically, U.S. courts can be expected to take seriously the arguments of those resisting discovery on the grounds at issue here. For cases seeking discovery for use in Chinese proceedings, courts have available additional mechanisms to better protect U.S. parties' interests, including not granting § 1782 requests without the targeted party having an opportunity to be heard, or directing foreign requesters to go through the Hague Convention process. U.S. courts also could make more exacting use of principles developed primarily in the context of requests to order production of evidence abroad for use in U.S. courts:

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[4] See *Tianzhu Coal Co* v. *Ma Ju*, 83 Misc.3d 1270(A) (N.Y. Sup. Ct. Nassau Co., Aug. 12, 2024); *Xinba Construction Group* v. *Jin Xu, et al.,* No. ESX-L-2889-18 (N.J. Super. Ct. Law Div. Sept. 20, 2019); *BYD Co.* v. *Alliance for American Manufacturing*, 554 F.Supp.3d 1 (D.D.C. 2021).
[5] See Yanbai Andrea Wang, "Exporting American Discovery," 87 *University of Chicago Law Review* 2089 (2020).
[6] See *Intel Corp.* v. *Advanced Micro Devices,* 542 U.S. 241 (2004).

the extent to which noncompliance would undermine important interests of the United States (the state where the information is located).[7]

Very recently, Chinese courts have begun to use anti-suit injunctions (and, incipiently, anti-anti-suit injunctions), particularly in cases involving intellectual property, including especially disputes over FRAND licensing rates for standard essential patents.[8] Such injunctions can be abusive in the sense at issue here if they result in the judicially sanctioned setting of improperly low rates (in this context, for the benefit of Chinese companies at the expense of foreign competitors and counterparties), in part by denying those parties access they otherwise would have to redress in U.S. or other courts. Properly used, anti-suit injunctions (and anti-anti-suit injunctions) can help to avoid duplicative, wasteful, and confusing multiple litigations, and can accommodate—and weight appropriately—the (relative) interests of multiple interested sovereigns in regulating activity and protecting parties' rights. Such devices can be abused, of course, including by courts acting on behalf of political masters.

As is addressed in a later section, abuses in the form of anti-suit injunctions (and anti-anti-suit injunctions) are among the rising problems and may warrant solutions to supplement existing judicial tools. But no workable and desirable standard will avoid the need for courts to assess, often on a case-by-case basis, which injunctions to accept and which not to—often based on assessments and applications of somewhat flexible principles of international comity.

Chinese parties to litigation in U.S. courts sometimes seek the application in such cases of Chinese law, which can be a form of achieving the extraterritorial application of Chinese law. This process, too, can be abused by parties acting at the behest of the CCP or the PRC to extend the reach abroad of laws that serve their interests or agenda, including in ways that repress, harass, or otherwise harm parties in or of the United States. As is addressed in a later section, Chinese laws, including those that avowedly serve China's interests, increasingly assert extraterritorial reach.

Here, again, U.S. courts have means to address such abuse and to distinguish cases of abuse from the many ordinary China-involved cases that raise choice of law questions. Application of ordinary choice of law rules to arguably abusive cases—particularly where there is allegedly an egregious effort to extend the extraterritorial reach of Chinese law to parties, interests, and actions that are closely connected to the U.S. and where the U.S. has a strong interest in applying its laws—would properly lead to a rejection of calls to apply Chinese law. In cases where a U.S. court might find Chinese law to be applicable (despite claims of the type of abuse at issue here), the court has

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[7] See *Societe Nationale Industrielle Aerospatiale* v. *U.S. District Court*, 482 U.S. 522 (1987).

[8] See Josh Zumbrun, "China Wields New Legal Weapon to Fight Claims of Intellectual Property Theft," *Wall Street Journal*, Sept. 26, 2021; Yang Yu & Jorge L. Contreras, Will China's New Anti-Suit Injunctions Shift the Balance of Global FRAND Litigation?, PATENTLY-O BLOG (Oct. 22, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id= 3725921; "SPC Issues China's First Anti-Anti-Suit Injunction (AASI) in IP Case," NPC Observer, Apr. 24, 2025, https://www.chinajusticeobserver.com/a/spc-issues-china%E2%80%99s-first-anti-anti-suit-injunction-%28aasi%29-in-ip-case.

a well-established option in U.S. law to refuse to apply foreign law because it is inconsistent with the forum jurisdiction's public policy.[9]

Parties who have obtained favorable judgments in Chinese courts can, and do, seek to have U.S. courts recognize and enforce such judgments. Such recognition and enforcement cases have been challenged on grounds akin to the "vexatious litigation" matters addressed above, with targets of enforcement proceedings in U.S. courts claiming that these cases in which awards based on the adjudication of nominally commercial disputes and the like are not what they purport to be but are, instead, the product of Chinese courts acting unjustly under the direction of Chinese authorities (whether framed as the CCP, the PRC, or the Chinese party-state) for political ends. When such claims are accurate, it would, of course, be a case of abuse of U.S. courts and judicial process. And the risk of such abuse is potentially greater because of the generally deferential review by U.S. courts of foreign court judgments in recognition and enforcement contexts.

U.S. court enforcement of Chinese court judgments has been very rare,[10] which has limited any potential for abusive use of the process, and such cases generally have not involved allegations of the types of abuse at issue here. U.S. courts, moreover, have the authority and, in some contexts, the obligation not to recognize or enforce Chinese court judgments where typically alleged abusive features. Recognition is not permissible for judgments rendered by a system that does not provide impartial tribunals or comport with due process. U.S. courts have not found Chinese courts generally to have these characteristics, and rightly so (for reasons both principled and pragmatic). Against this background, challenges to recognition and enforcement must turn on assessments specific to the Chinese judicial proceeding in question, including: the Chinese court lacked jurisdiction; the defendant received inadequate notice; the judgment was obtained by fraud; the judgment conflicts with another final and conclusive judgment; the judgment was based on a legal claim repugnant to the public policy of the recognizing / enforcing state; or the particular judgment was the result of a proceeding that lacked fairness / due process.[11] Such case-specific inquiries are within the institutional competence of U.S. courts and not amenable to more "wholesale" approaches. To the extent that such abuses are a concern, closer scrutiny and a more expansive interpretation of the public policy exception are potential responses.

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[9] See generally Symeon Symeonides, "The Public Policy Exception in Choice of Law: The American Version (April 6, 2025),http://dx.doi.org/10.2139/ssrn.5207438.

Cases in which choice of law analysis points toward applying Chinese law will, sometimes, be cases in which a U.S. court would have the option, and reasons, to grant a motion to dismiss on *forum non conveniens* grounds, given the lesser interest of the U.S. in interpreting and applying Chinese law. Such a motion would ordinarily be problematic for the defendant for reasons similar to those addressed in connection with fnc and vexations litigation discussed above. As with those cases, however, the downside for the defendant would be less in abusive cases of the type addressed here.

[10] See Donald Clarke, "Judging China: The Chinese Legal System in U.S. Courts," 44 *University of Pennsylvania Journal of International Law* 455 (2022-2023).

[11] These factors, among others, are found in the Uniform Foreign Money Judgments Recognition Act, which has been adopted, or adapted, in most states. See also Ronald A. Brand, "Recognition and Enforcement of Foreign Judgments," Federal Judicial Center (April 2012), https://www.fjc.gov/sites/default/files/2012/BrandEnforce.pdf.

Many of the concerns raised about China-related cases in U.S. courts involve not abusive (or repressive, or exploitative) measures of the types considered above but, instead, assert problematic efforts to avoid accountability under U.S. law, including (but not only) by depriving U.S. (and other) parties of remedies to which they are entitled.

Anti-suit injunctions by Chinese courts of the abusive sort described above would have this type of preclusive effect on parties who ought to be able to seek remedies against, and hold to account, Chinese defendants. A somewhat related, also newly emerging concern is Chinese civil procedure laws that assert exclusive jurisdiction for Chinese courts over a widening range of cases, including disputes related to the creation or dissolution or PRC legal persons and the validity of intellectual property rights granted through examination in Chinese territory. These have yet to produce much litigation in Chinese courts.[12]

Chinese defendants relatively often seek to avoid accountability or attempts by plaintiffs to seek legal redress by seeking dismissal of claims on grounds of *forum non conveniens*. Here, too, courts have tools to prevent inappropriate dismissals and attendant denials of remedies or plaintiffs seeking remedies in U.S. courts, and the reasonableness of such a decision generally turns on case-specific factors, such as the relative ease and burden on the parties of access to evidence and of litigating in either forum, and whether a Chinese forum would be available to the plaintiff and would be adequate—a question which often turns on the degree of similarity of Chinese law to U.S. law concerning the claims at issue in the case, and the likely quality and fairness of the particular Chinese tribunal that would hear a case of the type in question between the types of parties involved in the case. Where there is a U.S. interest in having the case heard in a U.S. court and where the case involves application of U.S. law, U.S. courts can, and do, deny fnc motions on the grounds of such "public interest" factors.[13]

To be sure, such assessments may be challenging for U.S. courts. But courts are often aided by expert testimony on Chinese law and courts. Courts can, of course, require parties to offer evidence on such issues. As China-related cases have become more common and relevant case law has accrued, courts are increasingly capable of addressing the relevant issues of adequacy and availability of Chinese forums and the weighing of public and private interest factors. To the extent that concerns remain, offering background training to U.S. judges on issues in Chinese law and courts could help address those concerns.

U.S. courts have mitigated the consequences of possibly overly generous fnc dismissals by granting conditional dismissals, allowing plaintiffs to return to U.S. court if a Chinese forum turns out not to be available or adequate. U.S. courts also can police such decisions at the back end in

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[12] See Civil Procedure Law of the People's Republic of China, art. 279. These issues are addressed in the final section of this document.
[13] See Clarke, supra note 10.

many cases because the efficacy of a Chinese court judgment may depend on recognition and enforcement by a U.S. court.

"Blocking statutes"—defined broadly as (in this context) Chinese laws that are claimed to prohibit disclosure of information by PRC-based witnesses—can pose challenges of avoidance of accountability and denials of proper redress as well. In litigation in U.S. courts, often over claims of intellectual property infringements by Chinese parties, Chinese parties and witnesses have sometimes asserted that they are precluded by Chinese laws from disclosing information sought by U.S. parties in discovery. Examples include invocations of Chinese laws concerning the disclosure of state secrets (broadly construed to include information relating to the operations of state-owned enterprises, or enterprises' interactions with state regulatory authorities in China and so on), bank confidentiality laws (framed as broadly prohibiting disclosure of client information), archives laws, and cybersecurity, data security, and personal information protection laws (which prohibit the disclosure of information or its transfer abroad for use in foreign judicial proceedings, at least absent approval by Chinese state authorities, who have substantial discretion to refuse to grant such approvals).

In these contexts, too, the credibility of such claims and the importance to discovery-seeking parties of the information sought involves case-specific determinations of the sort that courts are equipped to make. U.S. courts have been willing—and increasingly so—to reject such invocations of blocking statutes, sanctioning Chinese parties and witnesses for non-compliance with discovery orders, or deciding substantive issues related to the non-provided evidence adversely to the Chinese party, or determining that Chinese blocking statutes do not apply to the request at issue. Such decisions limit the concerns otherwise raised by blocking statutes.[14]

Issues of true conflicts of law (that is, where a foreign party's compliance with applicable forum state law would require violation of the foreign party's home state's applicable law) and (in the context of U.S. proceedings) the related issue of "foreign sovereign compulsion" defenses are another source of concern about Chinese parties avoiding accountability under U.S. law or depriving parties the benefit of U.S. law and undermining the U.S. interest in the applicability of its laws. In the most noted recent China-related case of this general type, plaintiffs alleged harm due to price-fixing by Chinese producers and sellers of Vitamin C. Defendants asserted that they were required by Chinese law—in the form of relatively informal directives from Chinese state authorities—to engage in the challenged anti-competitive behavior, and offered a statement to that effect from China's Ministry of Commerce (MOFCOM).[15]

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[14] See, e.g., *Gucci v. Li,* 2011 WL 6155936 (SDNY 2011), vacated on other grounds, 768 F.3d 122 (2021); "SEC Resolves China Audit Case with Deloitte, *New York Times*, Jan. 28, 2014; In re Sealed Case, 932 F.3d 915 (D.C. Cir. 2019); *In re Valsartan, Losartan, and Irbesartan Products Liability Litigation*, 2021 WL 6010575 (D. N.J. 2021).

[15] *Animal Science Products, Inc.* v. *Hebei Pharmaceutical Co.*, 585 U.S. 33, 138 S.Ct. 1865 (reversing *In re Vitamin C Antitrust Litigation*, 837 F.3d 175 (2nd Cir. 2016). See also, Eleanor M. Fox, "China, Export Cartels and Vitamin C: American Second?" *Competition Policy International* (March 2018).

Whatever one's views of the outcome in the Vitamin C case or other similar cases, the relevant inquiries, again, are often if not always relatively granular, involving the specific actions by parties and by Chinese state authorities. Indeed, the Supreme Court characterized the inquiry as case-specific and not readily susceptible to a general rule. U.S. law after the Vitamin C case gives U.S. courts significant discretion to reject such defenses. Such defenses are ultimately rooted in flexible principles of comity and the (limited) deference such principles mandate. Courts need not take as determinative submissions from Chinese (or other foreign state) authorities about the content of relevant foreign law (including whether it compels the action in question)—a rule that rejects both thoroughgoing claims that foreign states are judges of the meaning of their own law and sharp complaints from PRC sources about the affrontery of that U.S. legal position.[16]

Chinese entities subject to U.S. law and regulation sometimes object to U.S. laws and regulations and their application and sometimes do (or contemplate doing so) through challenges in U.S. courts. In recent years, controversies have included: U.S. requirements (under Sarbanes-Oxley and the supplemental Holding Foreign Companies Accountable Act) of accounting disclosures by U.S.-listed Chinese firms that Chinese parties claimed were prohibited by Chinese law (and that U.S. law deemed important for the protection of U.S. investor interests); prohibitions on sales and use of Huawei equipment for certain U.S. uses on the grounds of national security threats—along with broader, related issues arising from U.S. moves to put Chinese firms on "entities lists"; CFIUS (as enhanced by FIRRMA) determinations prohibiting investments by Chinese companies in the US; and the "TikTok ban" passed by Congress.

In such settings, there has been little apparent reason to try to keep such cases from adjudication by U.S. courts. In this area, the patterns are ones primarily of coordination among the coordinate branches. The accounting disclosure issues were addressed initially by negotiations between U.S. and Chinese authorities in the shadow of enforcement actions that could and would have been decided by U.S. courts and achieved outcomes adverse to Chinese parties (as well as actions that have led to the mandatory or voluntary delisting of Chinese companies from U.S. exchanges).[17]

The U.S. court handling the Huawei case upheld the FCC's ban on the asserted national security grounds, in part because of the rulemaker's reliance on the expertise of national security-related departments of the U.S. government.[18] One troubling caveat is in order here: the decision was based on *Chevron* deference to the expertise and reasonable interpretation of executive branch

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[16] MOFCOM's amicus brief to the Supreme Court asserted that rejecting "a foreign sovereign's explanation of its own law can imply only two things: that a U.S. court knows a country's laws better than its own government, or that the foreign government is not being candid"—positions that were "profoundly disrespectful" and risked creating "international discord."

[17] See Robin Hui Huang, "The U.S.-China Audit Oversight Dispute: Causes, Solutions, and Implications for Hong Kong," 54 *International Lawyer* 151 (2021); Rebecca Parry and Qingxiu Bu, "The Future of China's U.S.-Listed Firms: Legal and Political Perspectives on Possible Decoupling," 14 *William and Mary Business Law Review* 641 (2023).

[18] *Huawei Technologies* v. *FCC*, 2 F.4th 421 (5th Cir. 2021).

agencies. With the Supreme Court's overturning of *Chevron*, this tool in courts' toolkits to consider and reject challenges to U.S. regulation by Chinese entities, including closely state-linked ones, has been weakened.

Although a U.S. entity owned by Chinese investors prevailed in challenging an adverse CFIUS order rejecting a purchase of ostensibly sensitively located property, it proved to be short-lived and Pyrrhic victory for similarly situated claimants. In response to the successful due process challenge by the plaintiff in the case (Ralls), CFIUS began issuing "Ralls Letters" or "Due Process Letters" providing the unclassified evidence upon which CFIUS relied and, it appears, satisfying courts' due process concerns.[19]

Legislation (the Protecting Americans from Foreign Adversary Controlled Applications Act) that required TikTok, in effect, to shut down in the U.S. unless its Chinese corporate owner sold the company, was upheld by the U.S. Supreme court against a First Amendment challenge, with the Court accepting the government's argument (under an intermediate, rather than strict, scrutiny test) that the law was adequately tailored to serve the important government interest of protecting against a national security threat from the PRC (posed by the prospect of China's capture of personal data of U.S. users).[20] Whatever the wisdom or lack of wisdom of the TikTok ban as a matter of national security, any assertedly problematic "pro-China" or "pro-CCP" effects of the law's non-implementation are attributable to the decisions of the executive branch, not the courts.

Finally, U.S. immunity doctrines have limited some forms of holding PRC state actors to account for actions that have effects on the U.S. and on U.S. persons. Whatever one thinks of the wisdom of these limitations, sovereign immunity per se is of less consequence than sometimes imagined. The U.S. has long adopted, and China has recently accepted, the so-called restrictive theory of sovereign immunity, which renders foreign states and their instrumentalities subject to the jurisdiction of foreign courts for a wide range of commercial and tortious activities that occur or have sufficient effects in a forum state.[21] Those principles, as well as applicable doctrines of waivers of sovereign immunity, render such sovereign and sovereign-linked entities vulnerable to counterclaims when they bring suit in U.S. court (a pattern alleged to be the reality behind the formality in the "vexatious litigation" cases discussed earlier). Many of the Chinese actors alleged to abuse, or to seek to avoid accountability under, U.S. law are exceedingly poor candidates for sovereign immunity, given their indirect ownership and informal (or concealed) links to the Chinese state and the fact that their alleged or self-described actions that are the subject of litigation in the U.S. often would fall easily within exceptions for actions that are commercial activity or

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[19] See *Ralls Corp.* v. *CFIUS*, 758 F.3d 296 (D.C. Cir. 2014). See also Qingxiu Bu, "Ralls Implications for the National Security Review," 7 *George Mason Journal of International Commercial Law* 115 (2016); James Brower and Nicholas Weigel, "Are CFIUS Decisions Legally Vulnerable?" *Lawfare*, Jan. 16, 2025, https://www.lawfaremedia.org/article/are-cfius-decisions-legally-vulnerable.

[20] *TikTok* v. *Garland*, 604 U.S. __, 145 S.Ct. 57 (2025).

[21] See Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*; Foreign State Immunity Law of the People's Republic of China (2024).

relatively ordinary torts (if they were found to be sovereign entities or instrumentalities potentially entitled to immunity).

Many, but not all, actions by Chinese state authorities and party authorities, often acting through the state, that cause harms with effects in the U.S. and on persons in the U.S. are beyond redress in U.S. courts. For example, the commercial activity exception has been construed to exclude arguably commercial transactions related to the proceeds of a quintessentially sovereign, non-commercial act of a Chinese local government expropriating the property of a Chinese plaintiff who brought suit in a U.S. court.[22] For another example, the act of state doctrine often precludes review in U.S. courts of actions taken by a foreign sovereign—including China—in its own territory. But there are exceptions, and the doctrine is grounded in judicial principles of comity and thus potentially subject to reinterpretation that would weaken protections for foreign states from U.S. litigation.[23]

The Alien Tort Statute once offered a seemingly promising route to U.S. judicial recourse for foreign (including Chinese) victims of abuse by those exercising state power (including of the Chinese state), but a series of Supreme Court decisions has severely limited its reach. The Torture Victims Protection offers somewhat similar redress in a narrow range of circumstances. Official immunity broadly protects heads of state, former heads of state, and other senior officials of foreign governments (including China) from suit in U.S. courts. Such immunity has blocked suits against Chinese officials, including by plaintiffs asserting claims based on harms due to Chinese authorities' repressive actions, including in the suppression of Falun Gong. In many cases, U.S. courts defer to executive branch recommendations in favor of immunity.[24] U.S. Supreme Court decisions expanding presidential immunity would be hard to square, as a matter of legal principle, with any prospective judicial moves to contract head-of-state immunity for foreign (including Chinese defendants).

On these questions of immunity and related issues, there is, thus, some limited potential room for the judiciary to expand mechanisms for holding Chinese party and state actors to account and there may be plausible reasons (including reasons of justice) for doing so, but the impediments to doing so are formidable and may not serve the foreign policy interests of the United States, the determination of which is generally left to the president and, to a degree, Congress, rather than the judiciary.

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[22] *Yang Rong et al* v. *Liaoning Province Government*, 452 F.3d 883 (D.C. Cir. 2006).

[23] See generally Anne-Marie Burley, "Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine," 92 *Columbia Law Review* 1907 (1992); John Harrison, "The American Act of State Doctrine," 47 *Georgetown Journal of International Law* 507 (2016).

[24] On these issues in the context of litigation involving CCP or PRC state actors, see generally Jacques deLisle, "Human Rights, Civil Wrongs and Foreign Relations: a 'Sinical' Look at the Use of U.S. Litigation to Address Human Rights Abuses Abroad," 52 *DePaul Law Review* 473 (2002-2003). On the shrinking ambit of the ATS, see, e.g., Edward T. Swaine, "*Kiobel* and Extraterritoriality: Here, (Not) There, (Not Even) Everywhere," 69 *Oklahoma Law Review* 23 (2016-2017).

Potential Collateral Damage from Attempted Solutions

As addressed in the preceding section, many of the types of abuse or potential abuse or avoidance or potential avoidance of accountability by or on behalf of the CCP or PRC state authorities are or can be handled effectively—and often are best handled—by U.S. courts using existing procedural and doctrinal means, perhaps enhanced by more energetic use of some mechanisms or relatively marginal reinterpretations of existing doctrine. More "wholesale" solutions often come with significant downsides and risks.

First, legislative (or other) solutions that would broadly bar arguably CCP- or state-linked parties from access to U.S. courts could come perilously close to embedding in U.S. law the problematic proposition that because certain types of abuse, interference, and manipulation by CCP or Chinese state authorities in, or with an indirect impact on, U.S. judicial proceedings can, and sometimes do, occur, U.S. law—and therefore U.S. courts—must, in effect, assume that it has occurred in any case within the scope of such law's reach. Simply, "could" would be take to imply "does" or "did." Down that path lies disregard for principles of due process, fair access to justice, and more.

Second, such attempted solutions could harm significant interests of U.S. parties and stakeholders—the protection of which would be the ostensible goal of such Chinese party-restricting measures. Complex transnational litigation over claims that involve U.S. and Chinese actors and actions often does not have simple or clear alignments of parties and interests, in the case or more broadly. Formally Chinese entities often are significantly invested in by U.S. entities or individuals or have interests that are aligned with interests of U.S. parties. Claims brought, or opposed, by Chinese parties, or regulations or enforcement actions challenged by them, sometimes provide public goods or perform, in effect, a private attorney general function, aligning with U.S. parties and non-parties interests, as well as systemic U.S. interests in the rule of law.

Third, some specific measures that have been suggested to address relatively specific problems or potential problems risk creating additional complexity in litigation and related costs and indirect consequences. If, for example, civil claims by certain Chinese parties are barred, are they to be precluded from raising otherwise proper counterclaims if they are sued in U.S. court and, if so, may or must the principal litigation against them proceed?

A foreign sovereign anti-SLAPP law targeting CCP- or Chinese state-linked abuses has evident appeal, but it comes bundled with difficulties beyond those found in domestic law.[25] They include addressing questions about the extent to which non-citizens—a category that typically would include defendants in relevant China-related suits—enjoy the same constitutional rights that U.S. citizen plaintiffs may invoke in SLAPP suits. The claims of improper, political motivation at issue in China-related anti-SLAPP litigation would be easy to assert and relatively challenging for courts to evaluate. Plaintiffs (whether Chinese, American, or other) with legitimate claims could

[25] See Diego A. Zambrano, "Foreign Dictators in U.S. Court," 89 *University of Chicago Law Review* 157 (2022).

face significant costs and uncertainty—and difficulty in obtaining important evidence—to meet the burden of proof of that such laws would impose on them.

Laws that would require disclosure of, or prohibit, funding or direction of litigation by foreign non-parties to a case, including (and perhaps limited to) foreign state actors or sovereign wealth funds (perhaps limited to designated states, including China) may appealingly resonate with norms of transparency and laudable goals such as countering politically motivated vexatious lawsuits masquerading as commercial or other civil disputes.[26] But such requirements, too, could lead to complex and costly mini-trials on litigation-funding. In the China-related context, it would raise vexing questions about whether, for example, some percentage of state ownership or indirect corporate control (including via party committees that are found in many enterprises of many types) would sufficient to trigger disclosure requirements or prohibitions. Non-narrow readings of such provisions could deter or impede ordinary, apolitical claims by some China-linked parties from proceeding, denying them equal or fair access to U.S. courts in such cases.

Fourth, broad, especially high-visibility legislative, attempts to address problems or perceived problems of abuse of U.S. law and courts or evasion of legal accountability in U.S. courts by various categories of Chinese parties could exacerbate a tit-for-tat dynamic in U.S.-China legal relations, the costs of which might—or might not—exceed the benefits. In both U.S. and PRC law and courts, principles of reciprocity and comity play a very large role in determining whether to give effect to the other side's court judgments, grant various forms of judicial cooperation, and so on. Measures that do, or that seem to, or that can relatively easily be construed as, cutting of Chinese actors' access to justice in the U.S. risk mirror-image reaction from Chinese courts and PRC authorities. To be sure, existing limits to what Chinese law, courts, and practice do provide (including challenges with judgment enforcement, evidence acquisition, and access to courts) limit the risks, and U.S. law should not be unduly constrained by implied threats of retaliation. But restrictive Chinese measures may well prove more flexible and expansive in practice than those adopted or implemented by the U.S. and in U.S. courts.[27]

Such developments could contribute to a more general spiral of restrictions that would exacerbate restrictions and challenges on both sides—arguably a "race to the bottom." Features of Chinese law that are often the focus of U.S. complaints are often lifted from the U.S. playbook and are framed by China as responses to U.S. measures that harm Chinese interests. Examples include China's adoption of national security review of inbound investment, putting U.S. firms and individuals on "unreliable entities lists" (with attendant sanctions and prohibitions on activities in China), an anti-foreign sanctions law and regulations, and the adoption and implementation of laws with expanding extraterritorial reach.[28]

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[26] Proposed legislation of this general type includes the Protecting Our Courts from Foreign Manipulation Act.
[27] See the discussion in the final section of this document and sources cited therein.
[28] See the discussion of the Anti-Foreign Sanctions Law and issues of extraterritorial reach in the final section of this document. See also Zhengxin Huo, "Creating an Extraterritorial Application System of Chinese Law," 18 *Frontiers of Law in China* 531 (2023); Songling Yang, "China's Approach to the Anti-Foreign Sanctions Mechanism and Its

Fifth, measures, especially high-profile legislative ones, that explicitly target Chinese actors and actions or that are clearly designed to do so, or presented as doing so (even when the texts do not refer explicitly to China), risk feeding—and making more credible to audiences in China and abroad—a long-running official and orthodox Chinese narrative that U.S. law and U.S courts are weapons that Washington wields to political ends, including to attempt to prevent China's rise. In this account, the legislation embodying the TikTok ban and proposals to amend the FSIA to permit COVID-related suits against the PRC or the CCP are striking examples of a pervasive pattern, and U.S. courts are among the means of implementing this anti-China agenda.

We should not be quick to dismiss the possibility that such an account of politicized U.S. law and justice gains traction (in part thanks to China-targeting U.S. measures) around the world, particularly in the Global South (where China's influence is considerable and growing) but also in the Global North (where U.S. secondary sanctions, including those targeting China are part of a broader complaint about U.S. legal overreach). Chinese denunciations of US China-targeting legal measures and legal overreach can resonate with and reinforce broader perceptions that U.S. courts are political actors or do the bidding of political actors. All of this risks worsening an already-serious erosion of U.S. "soft power" and claims to the normative high ground in a sharpening competition with China for international influence.[29]

Finally, if much more narrowly, the U.S. adoption of measures that broadly presume thoroughgoing unfairness of Chinese law and courts, and that invite charges of China-targeting unfairness and politicization of U.S. law and courts, would be a disheartening message to the many Chinese lawyers, legal scholars, judges, and legal activists who have worked hard, with some hard-fought success and often at great risk, to advance access to justice, legal fairness, and rule-of-law values in China—not infrequently inspired by values learned from or attributed to the United States.[30]

Coda: Emerging/Growing Challenges from Legal Change in China

Recent and ongoing trends in Chinese law and legal policy pose challenges for U.S. interests that are not so amenable to management by U.S. courts using currently available means, or by proffered or contemplated solutions addressed in earlier sections of this document. I will note two significant areas here.

International Legality," 58 *Vanderbilt Journal of Transnational Law* 157 (2025); Meirong Jin and Qian Li, "China's Anti-Monopoly Merger Control and National Security," 13 *Journal of National Security Law and Policy* 471 (2023).

[29] See Jacques deLisle, Rethinking a Liberal International Order for Asia?: The United States and the Impact of the Ukraine War" in 1 *Korea Policy* 22 (2023) and "The Chinese Model of Law, China's Agenda in International Law, and Implications for Democracy in Asia and Beyond" in Gilbert Rozman, ed. *Democratization, National Identity, and Foreign Policy in Asia* (2021).

[30] See Jacques deLisle, "The Chinese Legal System" in William A. Jospeh, ed. *Politics in China* (4th ed. 2024), at 278-285; Hualing Fu and Maggie Lewis, "From Reform and Opening to Opening without Reform: Lessons from the Ford Foundation's Law Program in China," Ford Foundation, June 22, 2023, https://www.fordfoundation.org/work/learning/learning-reflections/from-reform-and-opening-to-opening-without-reform-lessons-from-the-ford-foundation-s-law-program-in-china/.

One cluster of developments threatens to impede U.S. parties' access to justice in non-China tribunals that would otherwise be open to them. Chinese courts have begun to issue global anti-suit injunctions (as well as at least one anti-anti-suit injunction), including against U.S. tech companies seeking legal redress against Chinese counterparts. If accepted and effective, such U.S. parties could pursue their claims only, if at all, in Chinese courts. In a related vein, reforms to China's Civil Procedure Law have expanded the range of cases over which Chinese courts purportedly have exclusive jurisdiction.[31]

Another, broader development is the expanding extraterritorial reach of Chinese law, creating—among other things—mounting problems of conflicts of laws and challenges to other states' (including the U.S.'s) regulation of behavior of their own nationals and in their own territory. Examples of this pattern are diverse and wide-ranging. Blocking statutes have been a growing issue for some time (and are addressed earlier in this document), and have grown with the adoption of Chinese laws addressing data security, cybersecurity, and more. Chinese authorities have become more insistent that Chinese laws apply to the behavior of Chinese firms and individuals abroad, creating situations in which it can be impossible to comply with both home country and host country (including US law).[32] China's criminal laws now purport to reach acts by foreigners outside PRC territory who commit crimes against the PRC or its citizens and acts committed outside China that have consequences in PRC territory—propositions that test the limits of international law concerning states' jurisdiction to prescribe (that is, to adopt laws regulating persons and conduct).[33] More subject matter-specific laws, including China's National Security Law for Hong Kong and recent provisions interpreting China's Taiwan-targeting Anti-Secession Law and related provisions of China's Criminal Law have raised concerns about apparent or purported reach to encompass speech and advocacy (as well as acts) outside of PRC territory and by non-PRC nationals that the PRC deems threatening to China's security and unity.[34] Finally (but not least), China has enacted an Anti-Foreign Sanctions Law, related regulations, blocking measures, and an "unreliable entities list" process that, collectively, authorize sanctions and

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[31] See the discussion earlier in this document; see also Matthew S. Erie, Legal Systems Inside Out: American Legal Exceptionalism and China's Dream of Legal Cosmopolitanism, 44 *University of Pennsylvania Journal of International Law* 731 (2023).

[32] Ji Li, *The Clash of Capitalisms: Chinese Companies in the United States* (2018); Ji Li, *Negotiating Legality: Chinese Companies in the US Legal System* (2024); Matthew S. Erie and Jacques deLisle, Chinese Developmentalism and Law in Matthew Erie, Jacques deLisle, and Jaclyn Neo, eds, *Chinese Developmentalism in the Global Legal and Economic Order* (forthcoming 2026)

[33] See Criminal Law of the People's Republic of China, arts. 6-10 (2023).

[34] See Law of the People's Republic of Chian on Safeguarding National Security in the Hong Kong Special Administrative Region (2020); Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice, Opinions on Punishing Crimes of Separatism and Inciting Separatism by 'Taiwan Independence' Diehards in Accordance with Law (May 2024); Donald Clarke, "Hong Kong's National Security Law: A First Look," June 30, 2020, https://thechinacollection.org/hong-kongs-national-security-law-first-look/; Jacques deLisle, "The Anti-Secession Law in China's Taiwan Strategy, Then and Now" in Bonny Lin and I-Chung Lai, eds., *Employing Non-Peaceful Means Against Taiwan: The Implications of China's Anti-Secession Law* (October 2024), https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-10/241015_Lin_Means_Taiwan.pdf?VersionId=4PU_wYq.V6AFbR22H8QsRyQFgV2c6X7q

prohibitions against those who comply with foreign—including U.S.—sanctions that endanger China's national sovereignty, security, or development interests, apply discriminatory measures against Chinese entities, or violate "normal" market principles, or interfere in China's internal affairs. This legal regime also prohibits Chinese firms from complying with "unjustified" extraterritorial application of foreign sanctions, and gives Chinese parties injured by other actors' compliance with foreign sanctions a right to recover damages (with the evident aim of deterring such compliance).[35]

These are not a scattered or random collection of legal developments. They dovetail with stated goals of China's Xi Jinping-era agenda for China's "foreign-related rule of law," which calls for using "legal methods to safeguard" China's "sovereignty, security, and [economic] development interests."[36] In the same vein, China's recently adopted Foreign Relations Law declares that the state will "strengthen the construction of foreign-related rule of law" and asserts—and codifies—China's "right" to counter, or take restrictive measures against acts—including by foreigners and foreign states—that "endanger [China's] sovereignty, national security and development interests in violation of international law or fundamental norms governing international relations.[37] This agenda presents broad growing challenges to the reach of U.S. law, to U.S. national interests, and to U.S. international influence within, and beyond, legal affairs, and well beyond the problems posed by how U.S. courts handle potentially abusive or accountability-avoiding efforts by CCP- or state-linked Chinese parties to litigation in U.S. courts.

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[35] See Anti-Foreign Sanctions Law of the People's Republic of China (2021); Provisions on Unreliable Entity List (Ministry of Commerce Order No. 4 2020); Rules on Blocking Unjustified Extraterritorial
Application of Foreign Legislation and Measures (Ministry of Commerce 2021); Timothy Webster, "Retooling Sanctions: China's Challenge to the Liberal International Order," 23 *Chicago Journal of International Law* 178 (2022); Ryan Martinez Mitchell, "Sino-American Sanctions Convergence?" 7 *Cardozo International and Comparative Law Review* 741 (2024).

[36] See Chinese Communist Party Central Committee, "Plan for Construction of a Rule-of-Law China, 2020-2025" (January 2021) ¶ para 25; 'Xi Stresses Development of Foreign-Related Legal System', (Xinhua 29 November 2023) <https://perma.cc/EV3V-ARMU>;

[37] Foreign Relations Law of the People's Republic of China, arts. 29, 33 (2023). See also See generally Jacques deLisle, "China and Sovereignty in International Law: Across Time and Issue Areas," 9 *UC Irvine Journal of International, Transnational, and Comparative Law* 1 (2024).

Mr. ISSA. The remainder of your opening statement will be placed in the record.

Without objection, Mr. Knott will be permitted to participate in today's hearing for the purpose of questioning the witnesses if a Member yields him time for that purpose. We welcome the gentleman.

Mr. KNOTT. Thank you.

Mr. ISSA. I now recognize the Chair of the Full Committee, Mr. Jordan.

Chair JORDAN. Pursuant to the rules, the gentleman is recognized.

Mr. KNOTT. Thank you, Mr. Chair. It is my privilege to be here. I am familiar with one of the witnesses and the company that he comes from, Charlotte Pipe and Foundry. I have had the privilege of touring their facilities. I know them well. This is a company that does it the right way. They put their heads down. They do great work. They deliver world-class products that will compete against anybody. What any company cannot compete against is fraud, manipulation, unfair markets, and lack of free markets.

Mr. Muller, thank you for coming and testifying today. I want to be quick and to the point. What legislative proposals are you familiar with that could protect industries like yours that benefit not only just North Carolina, but the entire country and then the world by extension?

Mr. MULLER. Thank you, Congressman. In addition to the Fighting Trade Cheats Act which I mentioned, which would impose stiffer penalties on these bad actors, take import licenses away, and allow us a private right of action to enforce U.S. trade law there is also the Protecting American Industry and Labor from International Trade Crimes Act. I urge Congress to pass and fund that would stand up a trade fraud crime unit at the Department of Justice.

The bill calls for $20 million in funding. As I mentioned in my testimony, on our two products alone we believe more than $40 million has been uncollected in duties by Customs. If they just had been able to collect on our products we could double the funding of this trade crime unit to $40 million.

We believe that to stop this behavior we have to start prosecuting some of these bad actors because they continue to set up these shell companies. When confronted they dissolve them and they're right back in business with a new shell company.

Mr. KNOTT. In your experience, sir, how do these foreign entities gain entry into the United States? Do they have participants in the United States? Are they blind actors? Are they willing and knowing? What is your experience?

Mr. MULLER. There are U.S.-based importers that engage in this fraud. We know some of those. Glendale Fire in California is one. Wells in Chicago. Wells Plumbing is another. These are U.S.-based importers that are engaged in this illicit activity. Those are the companies that we should be targeting with something like the PAIL Act.

Mr. KNOTT. With your experience, sir, given the amount of fraud and sort of the suppressed pricing that the Chinese Communist

Party engages in how responsive have the United States authorities been fielding your complaints in this area?

Mr. MULLER. Well, we tip our hat to Customs. In fact, we met with them last week, our trade association, and we have engaged very cooperatively with Customs. They do their best to enforce the law. We try to educate them on our products, how to spot the fraudulent products coming in. We are very pleased with Customs. They just don't have enough tools to stop this behavior.

Mr. KNOTT. Right. Professor Ku, let me transition to you quickly. What are ways that we can disincentivize the Chinese Communist Party on a macro level from continuing to engage in this? Because it is not just Charlotte Pipe and Foundry obviously. It is everything from biopharma, to engines, and to computing. The theft and obstruction are real and across every sector. How do we dissuade them from continuing this?

Mr. KU. Thanks. There is no easy answers here. I wish there was a silver bullet. I think passing the legislation could certainly help.

I do think that making clear that the first and foremost that we take these things seriously, then that we force bad actors to disclose the network of funding. The problem in transshipment is some of the bigger problems we see is the way the Chinese party-States intertwine with each other.

Mr. KNOTT. Yes.

Mr. KU. We have to assume unfortunately that a lot of what look like normal private companies we want to welcome here to the United States have to unfortunately play by different rules because we can't trust them, because they're intertwined with the party-State at home.

It's just unfortunate. That's the way we have to be tougher. We have to demand greater disclosure of connections between Chinese companies and the party sort of work partnership groups that they're involved with.

Mr. KNOTT. Is there a way to separate doing business with Chinese companies from the Chinese Communist Party?

Mr. KU. I think there is. We should do business with whoever, but we have to assume that those companies which are private much of the time can be co-opted very quickly in a way that we can't in the United States—

Mr. KNOTT. Right.

Mr. KU. —force a private company to do something that the government wants us to do. Once it's due—you have to proceed cautiously. It's really just—it's not the United States Government's fault; it's China's government's fault for creating this weird web of influence and control that makes unfortunately even honest Chinese companies suspect.

Mr. KNOTT. Yes. To the witnesses, thank you. Mr. Chair, I yield back.

Mr. ISSA. I thank the gentleman.

I would note for everyone in attendance the reference to H.R. 1284, which is a bipartisan bill for the private right of action, just to make sure everyone can look that up. Thank you, Mr. Muller, for mentioning it.

With that, we go to the Ranking Member, Mr. Johnson, for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair. For many years the American judicial system has been a shining light of fairness and impartiality to the world, a system independent from undue influences or of the other branches with checks and balances that promote accountability.

Professor deLisle, can you please walk me through some of the specific attributes in the U.S. judicial system that broadly speaking make it a fairer venue to resolve disputes compared to the Chinese court system?

Could you turn your mic on, please?

Mr. DELISLE. I'm sorry. There are—yes, the contrasts are quite strong. The U.S. judicial system is of course open to pretty much anyone who has a cognizable claim, who has a claim that is covered by U.S. civil law regardless of national origin, regardless of perhaps the motives behind the lawsuit. The U.S. courts have historically been quite insulated from political pressure.

Of course, in every system there is some link between politics and courts. Courts apply the laws adopted by political bodies; Congress in our case, and judges of course are selected even in our system by political processes. The contrasts remain profound.

One of the unfortunate developments in China in recent years has been a ratcheting up of the position that courts should take into account party policy and national interests and should be accountable to the party; and should be subject to various forms of toeing the line as it were. There are—

Mr. JOHNSON. Well, let me stop you right there because now we are starting to see some blending. Unfortunately, many of our judges have been under vicious attack from our Executive Branch and MAGA-loving Members of Congress. When judges make a ruling Donald Trump doesn't like, our felon-in-chief takes to social media and he bashes and slanders that judge in a way that often leads to threats of violence from Trump's base. At the same time his cronies in Congress race to file articles of impeachment against that judge without a legitimate shred of evidence of a crime, a high crime or a misdemeanor.

Professor deLisle, you have spoken about the unique—you were speaking about the unique qualities of the Justice Department of the United States that make it among the fairest systems in the world, but if we keep politicizing our courts like threatening to punish or fanning the flames of violence against judges who dare rule against President Trump or his interests, how could this impact the impartiality and dependability of our courts in the long term?

Mr. DELISLE. That obviously is a concern. I have spent a great deal of time watching Chinese courts for the last 30 or 40 years and I have seen progress and backward motion on this issue. The form in which the erosion of the shoots of judicial independence and fair-mindedness of Chinese courts have been—here the accomplishments were quite impressive for several decades—under threat because of the demand that courts take political concerns more directly into account.

At one point the President's Supreme People's Court in China several years ago said that party policy was one of the principles along with law that should decide cases. We've seen judges face

lifetime responsibility for so-called erroneous decisions. We've also seen populist pressures on courts, how people in the streets expressing opposition to the way courts are ruling. Those are the hallmarks of threats to court independence and judicial independence.

Stepping outside my lane as a Chinese law expert here, there are things that look to me disturbingly familiar now going on in the United States.

Mr. JOHNSON. Thank you. Some proposals I have heard from my colleagues during my tenure on this Committee would diminish access to the U.S. court system putting logistical and huge financial barriers in place for folks for trying to bring a lawsuit. This would mean effectively that only the wealthy or the well-connected could fully take advantage of our judicial system to resolve their disputes and the little guys would be left behind.

Professor deLisle, you are an expert in the civil judicial system. Is it a good idea to make this system harder or exponentially more expensive to access? If we start mandating that anyone who wants to bring a suit has to pay exorbitant fees to get in the door how could that impact our impartial system of justice in this country?

Mr. DELISLE. I see my time is expired. May I answer?

Mr. ISSA. Of course.

Mr. DELISLE. OK. A cornerstone of the U.S. judicial system is fair access to justice. You should be able to go to court if you have a legitimate claim. That applies to Chinese parties as well as U.S. parties. We've talked about how to screen that out. There are many things either in the form of fees or in the form of creating barriers where you must prove the legitimacy of your claim. We talk about some of the disclosure requirements which could chill and impede access.

One of the things I think that U.S. courts, as I mentioned earlier, could do to deal with problematic issues from China is to take measures to dismiss claims before they proceed to a point of being highly burdensome to parties. I would advocate that we look at that stage rather than closing off litigants wherever they're from before they can get through the courthouse door.

Mr. JOHNSON. Thank you and I yield back.

Mr. ISSA. I thank the gentleman.

If I could ask your indulgence for just one clarification. Professor, you mentioned political pressures in the nature in both countries. Briefly can you simply say is there any real comparison between our lifetime appointment of Federal judges and their likelihood to rule against the politics that may have got them the job and the Chinese Government broadly?

Mr. DELISLE. I'm not sure there's a simple answer to that question. These are obviously matters of degree. I don't think either system exists at a complete pole. As I suggested earlier, there had been welcome signs of progress in China and there's been some, but not complete backsliding. I don't think in my personal opinion, the U.S. is where it has been or should be. Judges are human beings, and they worry about the way they are addressed and discussed by the politically powerful. That's probably something universal. I certainly see it in China.

Mr. ISSA. Thank you. We are now go to the gentleman from Wisconsin, Mr. Fitzgerald, for his questioning.

Mr. FITZGERALD. Thank you, Chair.

Professor Ku, the United States maintains a number of sanctions, export controls, or other measures to prevent certain individuals or entities affiliated with an adversarial nation from gaining access to strategic technologies or to prevent equipment produced by such persons from being utilized in sensitive U.S. industries. A lot of times the sanctions include restrictions on certain property rights and generally, however, these do not apply to a sanctioned entity's patent portfolio, meaning a sanctioned entity can continue to license its patents to U.S.-based companies, or assert them in court. Some see the circumvention of sanctions and the subsidization of the activities of a sanctioned entity.

Let me ask you why have IP rights generally been excluded from other property rights restrictions under U.S. sanctions and how could adversarial nations like China, which I know we have been talking about, take advantage of that loophole to the detriment of U.S. innovation, or obviously the other thing discussed is our national security?

Mr. KU. This is a complicated question. I agree that it's a strange thing. Obviously, it depends on how we design our sanctions regime which this body Congress has designed, but also which is implemented by the Commerce Department.

You could have sanctions that are much stricter and that are completely across the board which in some cases would prevent even property licensing from occurring. That what's going on here is that people have—the Commerce Department or entities essentially try to make compromises to account for different interests, right? Licensing is very valuable.

It's very valuable for U.S. companies in many companies. To lose that revenue is a substantial and significant cost. There's no legal reason why we cannot impose such rules across the board. It's more of a practical problem of balancing the different economic and political interest that we have here in the United States.

Mr. FITZGERALD. Thank you. Ms. de La Bruyère, you've written extensive on China's military civil fusion, I guess you'd call it. China has utilized companies like Huawei and DT to advance its Made in China 2025 initiative or plan I guess you'd call it.

Huawei held over 3,300 active U.S. past patents in 2024 which is unbelievable to me. It's generated the company hundreds of millions of dollars in annual licensing revenue. When we allowed some of these State sponsored companies like Huawei to profit off the U.S. patent system, either through licensing agreements or injunctions, obviously we're subsidizing the continued kind of theft of American intellectual property and certainly helping to advance China's industrial agenda.

What should Congress do about this, if anything, considering eliminating and licensing of asserting the U.S. patents while uncertain national security related sanctions list?

Ms. DE LA BRUYÈRE. One big challenge about fighting back against China's military-civil fusion strategy and general tech offensive is that we haven't as a system quite caught up to how advanced Beijing is. Therefore, the leverage it acquires and the risks

of not only China stealing technology, but also the U.S. becoming increasingly dependent on Chinese technology. The way that alongside, say, U.S. investment into the Chinese tech program and more concrete U.S. tech partnerships with China end up fueling our adversary.

We haven't recognized that as a system, we haven't imposed restrictions on things like tech licensing from Chinese entities that are very real threats. One potential avenue that the U.S. could take is that where we through fiat restrictions, for example, impose barriers on U.S. tech partnerships with China. Those could also cover tech licensing partnerships, and other IP agreements beyond simply formal drug ventures, formal export of technology, et cetera.

Mr. FITZGERALD. Thank you. Right now, I'm Chairing the Subcommittee on antitrust. We've been investigating kind of this cartel-like behavior at a number of U.S. industries where there's collusion. However, with foreign companies, you can have an American corporation working with someone in China, and it kind of falls into a different category. I was wondering if you had any thoughts on that.

Ms. DE LA BRUYÈRE. Well, China's entire industrial and we'll call it private sector, but it's not a private sector is a cartel because fundamentally Beijing and the Chinese Communist Party control that through incentive shaping and through direct directives for lack of a better word. That means that we should think of Chinese companies, including their outpost in the United States, as being arms of the Chinese system and colluding.

Mr. FITZGERALD. Thank you. Chair, I'm out of time. I yield back.

Mr. ISSA. I thank the gentleman. We now go to the Ranking Member of the Full Committee, the gentleman from Maryland for five minutes.

Mr. RASKIN. Professor deLisle, you said that in China, the courts are supposed to decide according to party policy as well as the law which is kind of amusing. I just finished reading Alexei Navalny's book Patriot where he said in Russia, they talk about telephone justice to describe either the literal or metaphorical coercion that the government plays in the decision of particular cases. I'm wondering is this the same thing happening in academia in China where scholars and deans are intimidated or coerced into deciding things according to official government edict.

I ask, of course, because we're in a situation now where Donald Trump is trying to coerce colleges and universities, including Harvard, to accept his dictates with respect to student admissions, faculty hiring, and curricular and academic content. I'm wondering if that's something you find in China too.

Mr. DELISLE. The short answer is yes. Before talking to that, I want to stress that in many cases in Chinese courts, many Chinese judges and lawyers admirably apply the law fairly and play their roles the way one would hope they would play them and sometimes do so against the kinds of pressures that have been long present in China and that seem increasingly present in the United States. I've been dealing with Chinese counterparts in academia, in law, political science, and other fields for many years.

There have always been restrictions. The restrictions have gotten tighter. The ability to publish one's work, to express one's views,

is definitely under pressure. The reach of the party and State into universities has shrunk, what was once more capacious academic space.

There have also been restrictions on Chinese scholars coming to the U.S., which has been a place where they are able to express ideas more freely and gather information. All those pressures are there. As with courts, some of this gets a little closer and more personal. What we're feeling now on American university campuses resonates in uncomfortable ways with what I've seen in China. That is the pressure of not only the concern about whether you will harm your university by saying certain things, or the concern about the loss of the resources necessary to do research are real as well as the interventions in what we hire and what we teach.

Mr. RASKIN. Are there attempts to impose government edicts and dictates on lawyers and on law firms?

Mr. DELISLE. In the United States or in China?

Mr. RASKIN. In China.

Mr. DELISLE. In China. Yes, there are always restrictions on law firms and lawyers. Those who have represented dissidents or targets of repressive policies have faced threats to their law licenses. Chinese courts do have significant discretion not to take cases that people might bring that are politically disfavored. While this is not Soviet style justice and many, many cases are handled in perfectly ordinary ways, the more politically sensitive the case, the more party and State officials take interest in the case, the less likely it is to get to court or to be handled fairly once there.

Mr. RASKIN. I see. I had the impression that there was very little traditional independence. You're saying that in a lot of cases in China, the courts operate relatively free from direct governmental coercion or control?

Mr. DELISLE. It depends on the type of case, the type of court, and the type of parties. The kinds of things that your question points to, the politically sensitive areas, things which would be deemed adverse to the interest or preferences are—

[Simultaneous speaking.]

Mr. RASKIN. We could very easily in America slide into that kind of system where the vast majority of contract, tort, property disputes are handled without any direct political interference. When it comes to Constitutional cases, the interpretation of Executive powers or Legislative powers, there could be much more political interference.

Mr. DELISLE. That kind of bifurcation is a hallmark of systems which have only made limited progress toward rule by law or that have back slid from robust democratic rule of law. It's one of the things that can be quite insidious. Ernst Frankel, a German scholar from many years ago, describe the idea of a dual system, a dual State where some cases are channeled through the ordinary legal process with fair process. Other cases, politically sensitive ones, face a very different regime wherein the preferences of those in power determine the outcome.

Mr. RASKIN. Can you explain the doctrine of true conflict where American courts will sometimes not impose U.S. law against a foreign entity if that entity's country has a law that's in true conflict with our laws?

Mr. DELISLE. A true conflict situation is where a party is subject to the laws of two countries. That often happens with entities or individuals who work in China and here, some border straddling activity. A true conflict is where you cannot comply with one State's laws without violating another.

To take one example from U.S. litigation, the Vitamin C Antitrust Litigation where the claim was that Chinese law required price collusion and U.S. antitrust laws, of course, prohibited it. We're seeing more of this. One of the areas where it may become quite serious is in China's antiforeign sanctions law where they will prohibit companies subject to Chinese jurisdiction from complying with U.S. sanctions whereas those companies are obliged to comply with U.S. sanctions.

The courts are going to have to face this and they have to decide what to do. The ordinary international legal principles rooted ultimately in comity are to decide which State has the stronger interest and to apply its law or to refuse to apply foreign law that is repugnant to the public policy of the host jurisdiction, the foreign jurisdiction.

Mr. RASKIN. Thank you. I yield back, Mr. Chair.

Mr. ISSA. I thank the gentleman. We now go to the gentleman from Virginia, Mr. Cline, for five minutes.

Mr. CLINE. I thank the Chair. I want to thank our witnesses for being here. As was stated, foreign entities invest substantial sums in litigation financing, potentially influencing court decisions to align with their interests.

There's no greater actor than China engaged in this activity. Additionally, adversarial governments or corporations linked to them, they use this strategy to shape legal outcomes in Federal courts, advancing their geopolitical agendas. This practice raises national security concerns, particularly when it involves sensitive military and commercial technology or leveraging U.S. disclosure laws for strategic gain.

I introduced the Protecting our Courts from Foreign Manipulation Act which would require disclosure from any foreign person or entity participating in civil litigation as a third-party funder—litigation funder in U.S. Federal courts and ban sovereign wealth funds in foreign governments from participating. Litigation finances the third-party litigation funder either directly or indirectly.

Ms. de La Bruyère, your work has exposed how the CCP uses nonmilitary and nontraditional tactics to gain advantage. Do you see a strategic use of U.S. litigation as part of the CCP's toolkit? Would a bill like the one I explained help address that risk?

Ms. DE LA BRUYÈRE. Use of litigation is absolutely a part of the CCP's toolkit. Beijing uses litigation to censor and intimidate its opponents and cases of this abound. They not only harm the direct opponents, but they also create a general silencing across the U.S. where it's simply too dangerous to speak about even known risks about Chinese entities because of litigation concerns.

Beijing also uses targeted litigation to acquire intellectual property, including through the discovery process. Importantly, these efforts are in many cases funded by the Chinese Government, both directly and indirectly, including through, for example, targeted

subsidy programs that support Chinese companies dragging out these cases in U.S. courts.

Mr. CLINE. Now, some would argue that adding transparency requirements to seal litigation, like identifying foreign State interest behind a party, might chill access to the courts or create an administrative burden. From a national security and economic standpoint, is there a real cost to doing nothing? How would you respond to critics who say greater transparency in litigation is unnecessary or even harmful?

Ms. DE LA BRUYÈRE. I believe there's absolutely an economic and security cost to doing nothing. I also think that the U.S. has proven out a system evident, for example, the FARA regime of having transparency requirements for foreign adversaries and foreign entities that allow the U.S. to protect its security in that direction without undermining the integrity of the U.S. legal system. That's by having a targeted campaign that seeks just generally information on the activities of foreign agents and is, again, targeted at foreign adversaries.

Mr. CLINE. Professor Ku, I introduced the bill to address how foreign adversaries, especially the Chinese Community Party, may be using U.S. courts as a strategic tool. In your view, how real is the threat of foreign abuse of U.S. courts and how might Congress strike the right balance between maintaining judicial openness and protecting national security?

Mr. KU. Yes, the answer is kind of boring but obvious is disclosure. Disclosure may create some administrative obstacles. It doesn't prevent people from bringing cases.

We want to allow foreign companies to feel like the U.S. judicial system is open to them. There's really no reason why a foreign government really needs its rights protected in the same way. So, disclosing or maybe restricting foreign government involvement in these litigations which they're not actually directly involved in or through third-party litigation or at least forcing disclosure would go a long way.

I don't think it would burden people from bringing cases. One last thing, I'll just note that it was very unclear that this could happen the other way, U.S. companies could get involved in third-party litigation within China. It could put U.S. companies at a disadvantage.

Mr. CLINE. According to Westfleet Advisors' most recent report, third-party financing is behind over 30 percent of U.S. patent litigation. According to Bloomberg, more than one-half of the U.S. patents are issued to foreign entities and our country has no record of when or to whom they are transferred. Isn't this a national security and economic security risk?

Mr. KU. For me, anyways, I think it is. As we point out, we require people to register as foreign agents in other contexts, if you have a blog or something and you're promoting the views of the Chinese Communist Part. Actually, if you're filing a lawsuit, it's not required to be disclosed. It's odd, strange. We can distinguish between bad actors or at least potentially bad actors and just the average person who's involved in a lawsuit. Our system has proven we can do that, and we can do that here as well.

Mr. CLINE. Would we reduce—well, I have five seconds left. With that, I'll just yield back. Thank you, Mr. Chair.

Mr. ISSA. There's a first. We're getting our time back. I thank the gentleman from Virginia, and I go to the gentlelady from North Carolina for her five minutes. Ms. Ross.

Ms. ROSS. Thank you, Mr. Chair and the Ranking Member for holding this hearing. Thank you to all our witnesses for testifying today. I am going to focus most of my questions for Mr. Muller because we are bipartisan cheerleaders from North Carolina and our businesses.

I also want to thank Mr. Muller for your testimony, your ideas about what Congress can do better but also for your service to this country. In particular, at the beginning of your service working for USAID, we know how important foreign relations are.

You told us that Charlotte Pipe has filed multiple claims against Chinese litigants at the International Trade Commission and that Chinese companies clearly have been dumping products at competitive low prices. I participated with our North Carolina Secretary of State at a North Carolina Chamber event. It can actually just devaState a small company that doesn't have the resources that you do. How much time and money has your company invested in filing these multiple antidumping suits at the ITC?

Mr. MULLER. Well, I mentioned previously in my testimony, it's almost $7 million of our own money. Another way to answer your question, I was hired by Charlotte Pipe and Foundry 23 years ago to run the marketing department, to be the Vice President of Marketing, which I did for a number of years. In 2006, I took on a government affairs role and kind of wore two hats at Charlotte Pipe.

In the last five years, I've been working exclusively on government affairs. My time and salary have been dedicated to try to work through these issues, both at the State level and at the Federal level. It continues to occupy—I joke that I shed half my job and I'm twice as busy.

Ms. ROSS. Small businesses simply couldn't afford to have that kind of advocacy?

Mr. MULLER. No. In fact, I also have represented the American Foundry Society. They have 1,000 corporate member foundries throughout the United States, steel, aluminum, and cast iron. Eighty percent of those foundries are small businesses, 100 people or less.

They don't have the resources to fight like we do. Many of them are going out of business. Twenty years ago, there were 2,000 foundries in America, and we're down to about 1,700. These are vital for national security. You can't make tanks or plans or ships without foundries, steel, cast iron, and aluminum foundries.

Ms. ROSS. Well, thank you for representing your company and also those small businesses by extension. In 2017, Charlotte Pipe discovered that a Chines manufacturer had stolen your name, trademark, and logo and was using it to sell unaffiliated products in East Asia. Since then, you filed trademark infringement claims in both China and Singapore. Can you tell us the status of those claims?

Mr. MULLER. Yes, thank you for that question. I did testify on the Senate side before Senator Tillis and his Intellectual Property

Subcommittee on this topic. We only discovered by accident that China had stolen our brand identity and was going to market in Southeast Asia as Charlotte Pipe and Foundry.

There's a building in Shanghai with our logo on the side. A gentleman was passing out Charlotte Pipe business cards at a trade show in Singapore. That's how we discovered the theft.

We filed to get our IP back in Singapore. We lost but then won on appeal. We also had to hire a Chinese law firm at great expense to fight for our IP to get it back in China. That is stalled in the courts of Beijing.

No decision has been made. The case has basically gone cold. We can't get any information from the Chinese Government, from our Chinese law firm as to the status of that case. We know they're still going to market. On Chinese websites, you can still see that they're going to market as Charlotte Pipe.

Ms. ROSS. Just not to be too repetitive. When I went to this North Carolina Chamber event, they brought in two small businesses that have experienced similar kinds of appropriation of their intellectual property. Those small businesses simply do not have anybody who can stand up for them.

They either have to move on, or they have to find some other way. I want to thank you for suggesting some very concrete bipartisan steps we can take to help right these wrongs. Thank you for your testimony.

Mr. MULLER. Thank you.

Ms. ROSS. I yield back.

Mr. ISSA. I thank the gentlelady. We now go to the gentleman from California, Mr. Kiley, for his questions.

Mr. KILEY. Thank you, Mr. Chair. Thank you to our witnesses for this important discussion which I think really covers two main areas, one being the CCP's evasion of policy and law and international rules to press its own advantage. The second being its manipulation of our legal system in conjunction with its political control over its own [inaudible] has benefited itself at the expense of the United States.

I wanted to ask, first, Ms. de La Bruyère—did I get it right? Close? All right. If you could comment on how this discussion relates to what's probably the most important issue when it comes to our competition with China. That is the CCP's efforts to evade export controls when it comes to leading edge semiconductors/how they're trying to steal technology to advance their own foundry.

Ms. DE LA BRUYÈRE. Absolutely. Generally, this falls within this first category you listed of China abusing the U.S. legal system in order to evade and to neuter our defenses. There are offensive things, though, China also does to this and including, for instance, using litigation to obtain tech through discovery.

The other important thing is that as the U.S. has become increasingly serious about imposing restrictions on China from tech to trade, Beijing has also become increasingly serious and adept at first at the point of framing, making sure that there are loopholes or weaknesses within those restrictions. Then at the point of enforcement, evading them. Across export controls and other means to restrict tech access, Beijing consistently lobbies and influences to make sure that it will continue to maintain tech access. Then, of

course, there's the network of shell companies, of localization efforts, of backdoor activity that China engages to directly evade U.S. restrictions that have already been levied.

Mr. KILEY. Thank you. Professor Ku, there's this issue we also discussed where U.S. court system recognizes judgments in Chinese courts, but the opposite is not always true, even though judgments in our courts follow from a legal system that's developed over centuries to assure fairness through things like due process and discovery, access to counsel, whereas that's far from the case in the Chinese legal system. Why is it that we continue to allow that lack of reciprocity? How might we go about changing?

Mr. KU. Well, this is a big issue. The United States courts have always been more deferential to foreign courts than foreign courts have been to the United States' court judgments. This is not just Chinese courts.

The United States courts tend to enforce foreign judgments. We just generally—U.S. courts generally do this. The other complication is that it's often left to State law.

Different States might enforce some slightly different standards. It often is in State courts, not Federal courts. The State court judges might not be as attuned or worried about or concerned about the issues that we're discussing here, which might've happened in the case I mentioned on Long Island.

That's part of the problem. There have been efforts, and the American Law Institute years ago did propose that Congress adopt Federal Legislation to require reciprocity for U.S. courts before we enforce foreign court judgments. That would apply to China as well.

China itself does have a reciprocity requirement before they will enforce the U.S. court judgment. There have been proposals, but it's been complicated. It creates a lot of effort. That would be the way that Congress could get involved here to create a fair system for—especially now that we see Chinese companies taking advantage of the way U.S. courts give deference to Chinese courts.

Mr. KILEY. How do you think China would respond if we passed along those lines?

Mr. KU. I don't know if this is the top of their agenda. They'd actually wouldn't worry too much about it because we would adopt essentially their rule, reciprocity, right? I don't think they would have any basis to object to that.

Mr. KILEY. Thanks very much. I yield back.

Mr. ISSA. Would the gentleman yield?

Mr. KILEY. Happy to.

Mr. ISSA. What you're saying is they might not be too concerned if we actually had our reciprocity match their reciprocity? They would be outraged as they often are?

Mr. KU. Well, they could be outraged. They wouldn't have any reasonable basis to be outraged. The rule would be not just the United States, but most countries in the world have a reciprocity requirement.

Mr. ISSA. We use Rule 26 for disclosure by the defendants of their third-party funding, if you will, of their defense and/or payment. In China, do they have a similar rule? Does it require the plaintiff to also disclose?

Mr. KU. I'm not familiar with that specific rule in China. I do know that there have been disputes. It's uncertain—court judgments have—some Chinese courts have disallowed third-party litigation funding for agreements that have been disclosed. I'm not sure disclosure is required under Chinese court system. I do know that Chinese courts—some Chinese courts have refused to allow people to proceed if they had a third-party litigation agreement.

Mr. ISSA. OK. They're just outright prohibited?

Mr. KU. Well, there's no general rule. I know courts have—in China have ruled that it is inappropriate or not allowed or prohibited in this case.

Mr. ISSA. Thank you. Seeing no one else on your side for now, we now go to the gentleman from South Carolina. Hopefully, you'll deal with your North Carolina friend as well as everyone has. It's been pretty good so far.

Mr. FRY. Mr. Chair, I couldn't agree more. He's outside the district, but we're in the footprint of Charlotte. Most of the United States is actually in the footprint of the Charlotte.

Mr. ISSA. The gentleman is recognized then.

Mr. FRY. Thank you, Mr. Chair. Professor, you were talking earlier with Mr. Kiley about enforcement of judgments. I'm just curious. What would be the prudent way in which Congress or the courts could review these judgments in foreign countries to ensure that substantive and procedural due process were honored?

Mr. KU. As Ms. de La Bruyère mentioned, there are already standards. The courts are already empowered to review. The problem is that the standard is too deferential.

The courts should be given a different standard where presumption is reversed. It could be with respect to certain countries that Congress identifies foreign adversaries. Congress has identified foreign adversaries. OK. These standards should not be given to courts in these countries. That might be one way to do it, right, which I think would be kind of a scalpel, right? It would focus without creating problems with other countries.

Mr. FRY. If you took countries of concern, right?

Mr. KU. Countries of concern.

Mr. FRY. These countries. Would it be a de novo, almost a de novo review of their procedural and substantive processes to make sure that the hearing was fair in the foreign country?

Mr. KU. Right. We do have a standard where they do have to meet a standard of fundamental fairness. What I'm worried about is a lot of courts just don't do that. Maybe the way to give litigants even more is a presumption that the parties seeking to enforce a foreign judgment has the burden to prove that the prior judgment was adopted fairly.

One of the problems mentioned is that it's hard to get access to information on the original court judgment. In China, for instance, it'd be hard to travel there as Mr. Muller discovered. He can't travel there because he's worried about being arrested. Creating a presumption, putting the burden on the party seeking to enforce the foreign court judgment or the Chinese court judgment would solve a lot of these problems.

Mr. FRY. In your experience, Professor, do you believe that when domestic courts are enforcing foreign judgments that is almost a rubberstamp exercise?

Mr. KU. I wouldn't go so far as to call it a rubberstamp. It isn't as—I'll just put it this way. It's not as rigorous as other countries. Other countries are much more skeptical of foreign court judgments than on average U.S. courts are, especially I'll include State courts. Part of it is there's no Federal standard.

Mr. FRY. Thank you for that. To briefly shift a little bit, what do you suggest just overall that Congress, the Executive Branch, or even domestic companies can do to stop China from evading trade controls as an example?

Mr. KU. Yes, this is a real problem. The first problem is identifying—admitting the problem exists. In educating folks to realize that the party State as they call it is intertwined with Chinese businesses.

Even if Chinese businesses don't really want to, they are essentially manipulated often or forced to participate in a Chinese strategic plan which can be nefarious. That is the first step in getting everyone to be aware of what you can do. Then, we have tools which we can do to harden our system. I like to use the term hard.

We shouldn't change our system. We need to make it tougher for—make it harder to manipulate the bad foreign actors. I think disclosure, education, awareness will go a long way to solving some of our problems.

The transshipment problem might be the solution. It might be empowering the people who know best. The parties are being injured by the bad actors to go to court. Bring their evidence to court because we just don't have necessarily enough enforcement resources in the United States.

Mr. FRY. Right. In the instance of the piping company, they're much more equipped to recognize the problems in the industry as it pertains these shipments into the United States.

Mr. KU. Right. We've adopted this in other mechanisms as a way—False Claims Act and other ways to enforce. Giving private actors who already have the incentives might be a good way to do that to make it tougher for transshipment and other types of evasion.

Mr. FRY. Ms. de La Bruyère, what should U.S. companies and law firms with a presence or operational nexus with China be doing to insulate themselves from risks associated with engaging in this space?

Ms. DE LA BRUYÈRE. First, that they should limit their engagement with China to the greatest extent possible. That's a role Washington can play too. If the U.S. Government imposes costs in the same way that China does to its entities, calls for a choice to be made between the U.S. and the Chinese markets, that will create an incentive both for U.S. companies to invest at home and to protect themselves from the risks of exposure to the Chinese market because China is adept at leveraging short-term incentives to which our market entities are very vulnerable in exchange for long-term strategic advantage that will destroy our market entities and our system. There's a role for Washington simply to restrict that exposure, or to put costs in it, and at the same time to create great-

er incentives for investment at home so that it's not just surrendering things for U.S. entities. It's also gaining a new opportunity.

Mr. FRY. Mr. Chair, I see my time has expired, and I yield back.

Mr. ISSA. I thank the gentleman. I now recognize the Ranking Member for unanimous consent.

Mr. JOHNSON. Yes, two articles, Mr. Chair, I'd like to offer for the record. First, *Bloomberg Law* that is entitled, "Litigation Finance Doesn't Pose Security Risks." Second, is a *Law360* article entitled, "A Boogeyman National Security Threat and Litigation Funding."

Mr. ISSA. Thank you. I will now—without objection, so ordered. I now will offer unanimous consent that a statement by the American Property and Casualty Insurance Association concerning the same litigation or legislation be placed in the record. Another one from the Alliance of American Manufacturing, a statement submitted for this hearing in support of the hearing. Without objection, all these will be placed in the record.

I'll now recognize myself for some closing questions. This has been a very good hearing, and I appreciate all your input. There were a couple of things that came out during this that I'd like to touch on.

First, it's a broad question. Rule 11 sanctions which sanction parties are basically for wrongful actions, that's currently made at the discretion of the judge. It has no requirement that it equals the damage.

It can be $10,000 even if it cost you $50,000 just to file the motion. Do you believe Congress has a role and should consider legislation that would effectively strengthen and make it much more of a shall requirement when there had been the findings normally found in Rule 11 sanctions? Just briefly, does anyone disagree with that as an area that would help stop wrongful legislation when it is onerous and deliberately deceiving?

Good. My next one is Rule 26 which was alluded to. Under Rule 26, defense has a requirement to make available including documentation under Rule 34 that you have to produce any insurance or other third-party defense funding that pays for the defense and/or could pay all or part of the settlement. If that is the case, my question to each of you—and I'll start from left to right with the professor there—has that requirement in some way diminished the ability of defendants to protect themselves or to be able to get that protection such as insurance for defense? Has the requirement to disclose it ever reduce the availability?

Mr. DELISLE. That's beyond my scope of expertise about what's happened to parties in U.S. courts that have had to disclose that.

Mr. ISSA. Well, wait a second. Wait a second. You came here as an expert. I want to hold you a little accountable. You basically—and from the dais, it's been said that if we have to disclose the plaintiff's funding, that it's going to somehow diminish their ability to have access to the court. Do you have any knowledge, and you should have knowledge, I would think, of whether there's been some sort of adverse effect because of Rule 26?

Mr. DELISLE. As I said, I'm not an expert on what happened with Rule 26 with U.S. insurance claims. My concern about the issue of foreign disclosure, particularly what to be the proposal to require disclosure of foreign government or party linked funding perhaps,

targeting China perhaps more generally, is that's much messier than asking someone to disclose an insurance policy. It does—

Mr. ISSA. OK. Well, I got your opinion now solidly on one side, but not the other. Let me go—well, Mr. Muller, you've been involved in your litigation. If you brought in a partner to help in that litigation to share in the losses, the profits, the payments, would that discourage you if you had to disclose it?

Mr. MULLER. No. In fact, through our trade association, we partnered with our competitor, McWane, out of Birmingham, in our trade cases.

Mr. ISSA. It's an open disclosure. Professor Ku, you're—both of the next two witnesses. When it's been disclosed either that you're insured, has that somehow made it unavailable or hindered, even though it's often something the plaintiff is prepared to settle for?

If they want damage, they look at how much you have and that affects it. Even with that, has it actually done any harm? Because one of the things we're hearing is that somehow if you disclose, you by definition will take away someone's ability to get that. Your opinions on that based on the history of those.

Mr. KU. Right. I'll be a little professory, and say I haven't studied it very carefully. I don't think that it would and I'm not aware of any sites that show that it does discourage plaintiffs or disincentivize these lawsuits.

Mr. ISSA. Of course, we're talking to the defendant that's currently the only one having to—

Mr. KU. Right, of course. Defendants as well, right, that they're unwilling to go to court.

Ms. DE LA BRUYÈRE. I don't know of any cases where that has disincentivize participation.

Mr. ISSA. OK. Now, I just want to try to understand if there were three parties and they're suing. Mr. Muller, I'm going to go back to you since you do seem the one that doesn't have to study. You've lived it.

If when you go and you partner with somebody, you don't have a problem disclosing. Those are co-plaintiffs. Or even if they're hidden plaintiffs, you don't have a problem disclosing them.

Mr. MULLER. No, no. We have no hidden plaintiffs in our trade cases.

Mr. ISSA. In that case, they also are subject to being subpoenaed and deposed, right?

Mr. MULLER. Certainly, they would, yes.

Mr. ISSA. OK. What I'm trying to understand here in closing is this whole question of the goose or the gander. If it's fair for the defendant to have their finances known, to have their source of funding for possible payment if they lose or the defense and it doesn't have a chilling effect and it's been in place for years even though Rule 26 doesn't work both ways, the question is, why would be bad at all if there had to be an open recognition?

Professor, I'm going to go back to you briefly. I asked you if you knew, and you said you hadn't studied. OK. I'm going to take you to one thing that you said earlier. I don't want to be personal, but you are at Penn, correct?

Mr. DELISLE. Yes.

Mr. ISSA. Your university took 105 million between 2018–2022 from the Chinese Government related business entities alone. You opined considerably on political, and the influence and the difference. You were unwilling to differentiate between Chinese Communist judges who serve at the pleasure of the Chinese Government and lifetime appointment Federal judges.

Then you even talked about the universities in China. Isn't there and hasn't there been a concerted effort by the Chinese Communist government through their proxies to, in fact, influence universities in America through very generous gifts, the tip of the iceberg being 105 million to Penn?

Mr. DELISLE. I don't think I was unwilling to distinguish between Chinese judges and U.S. judges.

Mr. ISSA. You said they were more similar than not.

Mr. DELISLE. I'm not sure that I said that either. What I said is I don't think either side is at the polar end of the spectrum. There is many times fair justice, fair judges, and good lawyering in China.

I have the concerns I expressed about trends in the United States. There still is a very significant gap. I don't want to be misunderstood as suggesting that there is not.

Mr. ISSA. Would that gap be considered pretty much night and day, not absolute but considerably different, so much so that the level of justice is inherently different?

Mr. DELISLE. At this point, yes. Although I'd say there are worrisome signs about the direction in both places. As to your question about funding, universities and others received funding from a great many sources.

The degree to which those come with influence and strings attached varies hugely. The amount you refer to is obviously a drop in the bucket of an institution the size of Penn, much smaller than the cuts Penn has suffered from U.S. sources, for instance. I have never knowingly had any contact with Chinese money coming into Penn. I know there is a wariness of accepting it. In some cases for good reason.

Mr. ISSA. Thank you. I'd like to allow the Ranking Member to have some of these minutes I've taken. The gentleman is recognized.

Mr. JOHNSON. Well, I think so long as we can adhere to our rule as much as possible that each of us gets five minutes of questions, I'm happy with whatever the content of any questions might be from the Chair. However, I would just take the opportunity to point, Professor deLisle, that you are the Stephen A. Cozen Professor of Law and Professor of Political Science and the Director of the Center for Study of Contemporary China, correct?

Mr. DELISLE. Yes, sir.

Mr. JOHNSON. You are not the president of the university?

Mr. DELISLE. Fortunately, not.

Mr. JOHNSON. You're not deciding campus-wide policies on admission, school finances, or speech, correct?

Mr. DELISLE. I am not. I try to shake some money loose from the central administration, but that's a rather different undertaking.

Mr. JOHNSON. All right. With that, I will yield back. I thank the Chair for the time for rebuttal.

Mr. ISSA. Thank you. Clarification is always what we seek. I want to make sure this Committee always stands for that. I want to thank our witnesses.

Today's hearing is expansive but not complete. For that reason, I would ask that you be willing to supplement answers to questions that are given to you in writing in the next few days? Thank you.

With that, this concludes today's hearing. I want to again thank our witnesses. Without objection, this Committee stands adjourned.

[Whereupon, at 11:57 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, and the Internet can be found at: *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118511*.

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