

Testimony before the House Select Committee on Strategic Competition between the United States and the Chinese Communist Party

Committee Hearing: “How the CCP Uses the Law to Silence Critics and Enforce its Rule”

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## **Written Testimony: Libel Lawfare: How Chinese companies use libel lawsuits to chill free speech in democracies**

Bethany Allen

Head of China Investigations and Analysis at the Australian Strategic Policy Institute

In the Xi Jinping era, Chinese companies — even those that are wholly privately owned, rather than state-owned — are heavily incentivized and at times required by law to prioritize the interests and bottom lines of the Chinese Communist Party. This is true of companies operating only within China’s market, and also those with operations abroad.

That makes it difficult to assess when Chinese companies are acting purely in their own best market interests, and when and to what extent they are acting to support Chinese government priorities. This difficulty, in turn, can make it hard to know how democratic societies should respond to certain kinds of actions by Chinese companies.

One example of this conundrum is the growing number of libel lawsuits that Chinese companies have filed against researchers, media outlets, and non-profit groups abroad. As I recently wrote for *The Wire China*, in fall 2020, Chinese electric vehicle giant BYD sued<sup>1</sup> the small U.S. advocacy group Alliance for American Manufacturing (AAM), claiming that several posts on AAM’s website were part of a “malicious, fraudulent, outrageous, and reckless campaign to damage BYD’s reputation and brand with false allegations and misleading rhetoric.”<sup>2</sup>

Yet the AAM blog posts were simply summaries of BYD-related news that many mainstream news outlets had covered. One of the posts cited recent research, widely covered by news outlets, linking BYD to Uyghur forced labor in China. Perhaps more to the point, AAM had

been involved in advocacy in support of regulations that would prevent U.S. local governments and agencies from giving public contracts to Chinese companies that receive Chinese government support and subsidies, such as BYD. The regulations were implemented and BYD was blocked from being granted valuable contracts in the U.S. It's plausible that there was an element of strategic retaliation in the lawsuit.

Moreover, BYD, with its deep pockets, hired celebrity libel lawyer Charles Harder in its suit against AAM, which had only a few dozen employees and a small annual budget.

The frivolous libel claim, combined with the enormous disparity in resources between BYD and AAM, gives this lawsuit a striking resemblance to a SLAPP suit (“Strategic Lawsuits Against Public Participation”). SLAPP suits are a tactic used by groups, usually with extensive resources at their command, to intimidate protesters and members of civil society with frivolous lawsuits that drain their resources and have a chilling effect on future criticism. Many states have anti-SLAPP statutes, but BYD skirted DC’s anti-SLAPP statute by filing in federal court. There is no federal anti-SLAPP law. Though a judge eventually dismissed the case as frivolous, it took almost two years for the suit to finally end, and it cost AAM nearly \$400,000.

Separately, BYD also sued Vice Media in 2021 for an article mentioning the same report linking BYD to Uyghur forced labor in China.<sup>3</sup> Legal procedures likewise dragged on for months before a judge dismissed the case.

Other Chinese companies, including Huawei and the now-defunct CEFC China energy, have also sued researchers who claimed that the companies had close ties to the Chinese party-state. In addition to the above examples, I am personally aware of other legal threats and actual lawsuits that are not yet in the public record.

I believe that some of these lawsuits, as well as the much larger number of unreported legal threats, have in certain circumstances caused people and organizations to be more circumspect about what they write or say publicly about these companies.

Are Chinese companies simply starting to act like the very aggressive U.S. companies who first began the SLAPP trend decades ago, which resulted in the implementation of anti-SLAPP legislation in the first place? Have they been empowered to use aggressive legal tactics in areas where the Chinese party-state has also been rhetorically aggressive on the world stage, such as in rejecting evidence of human rights violations in Xinjiang? Or in some cases have Chinese companies taken direct counsel from the Chinese party-state about the value of using (and abusing) the laws in democratic countries to fight for their interests?

If the answers to these questions were known, it would be easier to formulate an appropriate response. Without having more clarity, there are several possible options that can still be considered.

First is to pass federal anti-SLAPP legislation. AAM and Vice Media likely would have been able to get BYD's libel suits thrown out much more quickly if such legislation applied to federal courts. This response is actor-agnostic and would avoid targeting Chinese companies specifically — and would thus protect Chinese companies with legitimate legal complaints from being unfairly targeted or blocked from taking action to preserve their interests.

A second possible option has been put forward by Stanford legal scholar Diego Zambrano, whose work focuses on transnational litigation and transnational repression. Zambrano has called for a “foreign sovereign anti-SLAPP law,” which would be more targeted than a general federal anti-SLAPP law since it would apply only to entities determined to be acting as an agent of a foreign government or power.<sup>4</sup> That would have the advantage of making it easier to pass in the United States, where there is little political appetite for a general federal anti-SLAPP law.

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<sup>1</sup> Bethany Allen, “Libel Lawfare,” *The Wire China*, July 28, 2024,

<https://www.thewirechina.com/2024/07/28/libel-lawfare-chinese-companies-defamation-suit-anti-slapp/>

<sup>2</sup> “BYD files defamation suit against D.C.-based lobbying group Alliance for American Manufacturing (AAM),” Dec. 22, 2020,

<https://en.byd.com/news/byd-files-defamation-suit-against-d-c-based-lobbying-group-alliance-for-american-manufacturing-aam/>

<sup>3</sup> “BYD Files Federal Defamation Lawsuit Against VICE Media in Southern District of NY,” April 11, 2020,

<https://en.byd.com/news/byd-files-federal-defamation-lawsuit-against-vice-media-in-southern-district-of-ny-case-120-cv-03281/>

<sup>4</sup> Diego Zambrano, “Testimony Before the U.S.-China Economic and Security Review Commission,” May 4, 2023, [https://www.uscc.gov/sites/default/files/2023-05/Diego\\_Zambrano\\_Testimony.pdf](https://www.uscc.gov/sites/default/files/2023-05/Diego_Zambrano_Testimony.pdf)