

116TH CONGRESS
2D SESSION

H. R. 5830

To protect American workers and enterprises from Chinese and other foreign efforts to extraterritorially censor free speech and inhibit lawful advocacy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2020

Ms. CLARKE of New York (for herself, Mr. MALINOWSKI, Mr. SHERMAN, Mr. GALLAGER, and Mr. BANKS) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect American workers and enterprises from Chinese and other foreign efforts to extraterritorially censor free speech and inhibit lawful advocacy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Foreign
5 CENSORSHIP in America Act” or the “Preventing the
6 Foreign Coercive Export of Non-consensual Speech and

1 Orwellian Restrictions by Superpowers Hoping to Intimi-
2 date People in America Act”.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Foreign governments have increasingly
6 sought to extraterritorially intimidate American and
7 non-American companies into policing media content
8 and the free speech rights of staff, employees, and
9 other associated persons.

10 (2) Because the extraterritorial advocacy for
11 human rights abroad is a core tenet of American
12 foreign policy and central to American national secu-
13 rity, the growing extraterritorial suppression of
14 speech of persons and companies represents a long-
15 term threat to American interests.

16 (3) Self-censorship by American companies and
17 other nongovernmental entities in accordance with
18 the stated or unstated wishes of foreign geopolitical
19 rivals will only encourage more of the same.

20 (4) While China’s economic weight affords it
21 unique leverage to seek to compel corporate self-cen-
22 sorship or retaliation against staff expressing con-
23 trary views, including the manager of a basketball
24 team expressing support for human rights, other
25 countries such as North Korea have also sought to

1 stifle free speech through malign measures, includ-
2 ing conducting cyberattacks against a motion picture
3 studio that distributed comedic content regarding its
4 leadership.

5 (5) The United States Congress not only de-
6 fends, but encourages, American persons and per-
7 sons within the United States to be outspoken de-
8 fenders of the rights of those around the world
9 standing up against repression and persecution.

10 **SEC. 3. PROTECTING FREE SPEECH OF AMERICAN WORK-**
11 **ERS FROM FOREIGN CENSORSHIP.**

12 (a) PROHIBITION ON RETALIATION.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (3), a domestic entity may not discharge, sus-
15 pend, cease contracting with, or fail to pursue future
16 contracts with, any existing employee or contractor,
17 or take any other adverse action against any such
18 employee or contractor with respect to his or her
19 compensation, terms, conditions, or privileges of em-
20 ployment or contract, on the basis of protected activ-
21 ity, in the case that such an adverse action was un-
22 dertaken—

23 (A) because a designated foreign govern-
24 ment or entity explicitly or implicitly requests
25 that the domestic entity take such an adverse

1 action, or the domestic entity presumes that a
2 designated foreign authority would prefer such
3 an adverse action;

4 (B) because the protected activity resulted
5 in, or has the potential to result in—

6 (i) financial, reputational, or other
7 damage to the domestic entity's profit-
8 ability or organizational prospects in a
9 country governed by a designated foreign
10 authority with which the protected activity
11 relates; or

12 (ii) economic retaliation by such coun-
13 try; or

14 (C) in response to a protected activity
15 which constitutes protected inaction.

16 (2) GOOD FAITH CLAIMS.—A domestic entity
17 may not discharge, suspend, cease contracting with,
18 or fail to pursue future contracts with, any existing
19 employee or contractor, or take any other adverse
20 action against any such employee or contractor with
21 respect to his or her compensation, terms, condi-
22 tions, or privileges of employment or contract, on the
23 basis of such employee or contractor's actual or con-
24 templated assertion of any protection under this Act,
25 provided such protection was asserted in good faith.

1 (3) EXCEPTIONS.—The prohibition under para-
2 graph (1) does not apply if—

3 (A) the protected activity of the employee
4 or contractor was conducted in such employee
5 or contractor’s official employment or contrac-
6 tual capacity;

7 (B) a reasonable person, considering the
8 context or content of the protected activity,
9 would believe such activity was conducted in
10 such employee or contractor’s official employ-
11 ment or contractual capacity, and such activity,
12 if conducted in an official capacity, would have
13 been contrary to an official policy or the finan-
14 cial or organizational interests of the domestic
15 entity; or

16 (C) the protected activity occurred—

17 (i) in the territory of a country gov-
18 erned by a designated foreign authority
19 which seeks to restrict such activity; and

20 (ii) during an overseas trip or assign-
21 ment such employee or contractor under-
22 took on behalf of the domestic entity.

23 (4) RULE OF CONSTRUCTION ON SOCIAL
24 MEDIA.—For the purpose of determining whether
25 protected activity was conducted in an employee or

1 contractor's official capacity, protected activity on a
2 social media account or other analogous medium of
3 communication which is used both in an official and
4 unofficial capacity, shall be presumed to be used in
5 an unofficial capacity, absent clear and convincing
6 evidence to the contrary.

7 (b) PROHIBITION ON CONTRACTUAL LIMITATIONS.—
8 A domestic entity may not require, as a condition of em-
9 ployment, contract, or any compensation, benefit, or privi-
10 lege related to such employment or contract, a prospective,
11 existing, or former employee or contractor to—

12 (1) limit a protected activity conducted in an
13 unofficial capacity, provided such protected activity
14 would reasonably be expected to trigger the prohibi-
15 tion on retaliation described in subsection (a); or

16 (2) waive or abridge any right or cause of ac-
17 tion under this Act, including requiring an employee
18 or contractor to pursue any claims under this Act in
19 a nonpublic or otherwise confidential manner.

20 (c) NONPREEMPTION.—Nothing in this section shall
21 preempt any Federal or State law (including any local law
22 or ordinance), contract, agreement, policy, plan, or prac-
23 tice that establishes a right or benefit that is more bene-
24 ficial to, or is in addition to, a right or benefit provided
25 to employees or contractors under this Act.

1 **SEC. 4. ENFORCEMENT.**

2 (a) PRIVATE RIGHT OF ACTION.—

3 (1) IN GENERAL.—A person who is injured by
4 an actual or threatened violation of section 3 may
5 bring an action for injunctive relief and monetary
6 damages, including compensatory and punitive dam-
7 ages.

8 (2) COSTS.—The court shall award a prevailing
9 plaintiff costs and fees, including reasonable attor-
10 ney’s fees and expert witness fees.

11 (3) LIMITATION ON MONETARY DAMAGES.—An
12 employee or contractor bringing an action under this
13 subsection to recover monetary damages pursuant to
14 a profit-sharing, revenue-sharing, or analogous ar-
15 rangement with a domestic entity may not recover
16 the portion of the proceeds of such arrangement
17 which would likely have been derived from activities
18 or sales within the country governed by the des-
19 ignated foreign authority with which such employee
20 or contractor’s protected activity relates.

21 (4) STATUTE OF LIMITATIONS.—

22 (A) IN GENERAL.—No action may be com-
23 menced pursuant to this subsection more than
24 the later of—

25 (i) 5 years after the date on which the
26 violation occurs; or

1 (ii) 3 years after the date on which
2 the violation is discovered or should have
3 been discovered through exercise of reason-
4 able diligence.

5 (B) TOLLING.—If an employee or con-
6 tractor, or immediate family member thereof, of
7 a domestic entity is detained or otherwise sub-
8 ject to coercion by a designated foreign author-
9 ity prior to the expiration of the statute of limi-
10 tations, such statute of limitation may be tolled
11 at the discretion of the court, until the date
12 that is one year after such detention or coercion
13 concluded.

14 (5) SUMMARY JUDGMENT.—In an action under
15 this subsection, a court may not grant a motion for
16 summary judgment made by a domestic entity solely
17 based on a document or other evidence produced
18 solely by the domestic entity that describes the enti-
19 ty’s alleged reason for taking adverse action against
20 an employee or contractor.

21 (6) RULE OF CONSTRUCTION.—The private
22 right of action under this subsection is in addition
23 to any other right or remedy under Federal or State
24 law.

25 (b) FEDERAL AND STATE ENFORCEMENT.—

1 (1) FEDERAL ENFORCEMENT.—

2 (A) JUDICIAL ENFORCEMENT.—The Sec-
3 retary of Labor or the Equal Employment Op-
4 portunity Commission may petition any appro-
5 priate district court of the United States for
6 temporary or permanent injunctive relief if the
7 Secretary or Commission determines that sub-
8 section (a) or (b) of section 3 of this Act has
9 been violated.

10 (B) CIVIL PENALTY.—

11 (i) IN GENERAL.—Any domestic entity
12 who commits a violation of this Act may be
13 assessed a civil money penalty by either
14 the Secretary of Labor or the Equal Em-
15 ployment Opportunity Commission, but not
16 both, of not more than the greater of—

17 (I) \$100,000 for each violation
18 constituting other adverse action
19 against any employee or contractor
20 with respect to his or her compensa-
21 tion, terms, conditions, or privileges of
22 employment or contract;

23 (II) \$250,000 for each violation
24 involving the discharge, suspension,
25 cessation of contract with, or failure

1 to pursue future contracts with any
2 employee or contractor; or

3 (III) \$1,000,000 for each willful
4 violation involving the discharge or
5 termination of a United States person
6 who is an employee or contractor, un-
7 dertaken—

8 (aa) at the explicit direction
9 of a political, diplomatic, or intel-
10 ligence official or element of a
11 designated foreign authority;

12 (bb) with actual knowledge
13 of the prohibitions under this
14 Act; and

15 (cc) in connection with
16 peaceful protected activity which
17 could be reasonably understood
18 to align with the foreign policy or
19 national security interests of the
20 United States.

21 (ii) FACTORS TO CONSIDER.—In de-
22 termining the amount of any penalty to be
23 assessed, the Secretary or Commission
24 shall take into account—

1 (I) the previous record of the do-
2 mestic entity in terms of compliance
3 with this Act, or any other Federal,
4 State, or local statutes or regulations
5 which seek to combat foreign influ-
6 ence over domestic activities;

7 (II) whether the violation was
8 willful;

9 (III) the gravity of the violation;

10 (IV) the size of the domestic en-
11 tity, and any secondary implications
12 of a large penalty on its workforce;
13 and

14 (V) the nature of the protected
15 activity, including the diplomatic rela-
16 tionship between the United States
17 and the country governed by a des-
18 ignated foreign authority with which
19 the protected activity relates.

20 (iii) HEARING, APPEAL, AND ADDI-
21 TIONAL MATTERS.—

22 (I) AGENCY OR COMMISSION
23 HEARING.—The domestic entity as-
24 sessed shall be afforded an oppor-
25 tunity for agency or commission hear-

1 ing, upon request made within thirty
2 days after the date of issuance of the
3 notice of assessment. If a hearing is
4 requested, the initial decision shall be
5 made by an administrative law judge,
6 and such decision shall become the
7 final order unless the Secretary or
8 Commission modifies or vacates the
9 decision. Notice of intent to modify or
10 vacate the decision of the administra-
11 tive law judge shall be issued to the
12 parties within thirty days after the de-
13 cision of the administrative law judge.

14 (II) APPEAL.—Any domestic en-
15 tity against whom an order imposing
16 a civil money penalty has been entered
17 after a hearing under this section may
18 obtain review by the United States
19 district court for any district in which
20 it is located or the United States dis-
21 trict court for the District of Colum-
22 bia by filing a notice of appeal in such
23 court within 30 days from the date of
24 such order, and simultaneously send-
25 ing a copy of such notice by registered

1 mail to the Secretary or Commission.
2 The Secretary or Commission shall
3 promptly certify and file in such court
4 the record upon which the penalty was
5 imposed. If any domestic entity fails
6 to pay an assessment after it has be-
7 come a final and unappealable order,
8 or after the court has entered final
9 judgment in favor of the agency or
10 commission, the Secretary or Commis-
11 sion shall refer the matter to the At-
12 torney General, who shall recover the
13 amount assessed by action in the ap-
14 propriate United States district court.

15 (III) PAYMENT OF PENALTY.—

16 All penalties collected under authority
17 of this section shall be paid into the
18 Treasury of the United States.

19 (2) FEDERAL ENFORCEMENT ACCOUNT-
20 ABILITY.—On an annual basis, the President shall
21 make publicly available a report, which may contain
22 a classified annex, containing a list of all Federal
23 enforcement actions undertaken pursuant to this Act
24 in the prior year by—

25 (A) the Department of Labor;

1 (B) the Equal Employment Opportunity
2 Commission; and

3 (C) such other bodies which the President
4 determines appropriate for enforcing the provi-
5 sions of this Act.

6 (3) STATE ENFORCEMENT.—If the attorney
7 general of a State has reason to believe that an in-
8 terest of the residents of the State has been or is
9 being threatened or adversely affected by a practice
10 or action that violates section 3, the attorney general
11 of the State may, as *parens patriae*, bring a civil ac-
12 tion on behalf of the residents of the State in an ap-
13 propriate district court of the United States to ob-
14 tain appropriate relief.

15 (c) VENUE.—An action under this section may be
16 brought in—

17 (1) the district court of the United States that
18 meets applicable requirements relating to venue
19 under section 1391 of title 28, United States Code;
20 or

21 (2) another court of competent jurisdiction.

22 **SEC. 5. DEFINITIONS.**

23 In this Act:

24 (1) PROTECTED ACTIVITY GENERALLY.—The
25 term “protected activity” means protected action,

1 protected inaction, or enhanced China-related pro-
2 tected activity, except that such term does not in-
3 clude any activity that—

4 (A)(i) in the case of an activity that takes
5 place in the United States, violates a Federal
6 law or regulation (or advocates for any such ac-
7 tivity which constitutes a Federal felony of-
8 fense);

9 (ii) in the case of an activity that takes
10 place outside of the United States, would vio-
11 late such a Federal law or regulation had the
12 activity been conducted in the United States (or
13 advocates for any such activity that constitutes
14 a Federal felony offense); or

15 (iii) in the case of an activity that takes
16 place in a State, territory, or unit of local gov-
17 ernment and involves an act that constitutes a
18 felony offense, violates a State law, territorial
19 law, or local ordinance that prohibits such an
20 act or advocates for such activity;

21 (B) undermines or inherently conflicts with
22 an outcome or objective that such employee or
23 contractor ordinarily aims to achieve in their of-
24 ficial employment or contractual capacity, and
25 achieving such an outcome or objective is a rea-

1 sonably central component of such employee or
2 contractor's typical responsibilities;

3 (C) is undertaken by an employee or con-
4 tractor who routinely conducts work on behalf
5 of a domestic entity whose principal and over-
6 riding purpose is advocating for or otherwise
7 furthering outcomes or objectives of a des-
8 ignated foreign government or entity (including
9 a domestic entity registered under the Foreign
10 Agents Registration Act of 1938), which are
11 fundamentally opposed to a principal desired
12 outcome or objective of the activity;

13 (D) is undertaken with the intent to, or
14 the reasonably foreseeable effect of, denigrating
15 a person or class of persons on the basis of any
16 protected characteristic which is subject to any
17 employment protections enforceable by the
18 Equal Employment Opportunity Commission or
19 an analogous state or territorial agency of any
20 state or territory in the United States; or

21 (E) the average person applying contem-
22 porary community standards of the United
23 States would determine to be, taken as a whole,
24 patently obscene and lacking in serious political,
25 literary, artistic, or scientific value.

1 (2) PROTECTED ACTION.—The term “protected
2 action” means—

3 (A) any speech, conduct, or other advocacy
4 related to a designated foreign government or
5 entity’s actual, historic, or potential current or
6 future gross violation of internationally recog-
7 nized human rights (as such term is defined in
8 section 502B(d) of the Foreign Assistance Act
9 of 1961 (22 U.S.C. 2304(d))), or such govern-
10 ment or entity’s facilitation or support of, or
11 activities related to, such a violation;

12 (B) any speech, conduct, or other advocacy
13 related to political, social, or similarly sensitive
14 matters, provided such matters generally relate
15 to conditions or practices within a country gov-
16 erned by a designated foreign authority, or do-
17 mestic or international policies of a designated
18 foreign government or entity, on which such
19 designated foreign authority censors or imposes
20 official or unofficial publishing or advocacy re-
21 strictions (including but not limited to religious
22 activities, cultural activities, territorial claims,
23 sovereignty status, political leaders, internal
24 party dynamics, alleged abuses of power, and
25 corruption), if such censorship or restriction

1 would be unconstitutional or otherwise unlawful
2 if implemented in the United States by the
3 United States Government;

4 (C) any speech, conduct, or other advocacy
5 related to the international activities of a des-
6 ignated foreign authority, or any designated
7 foreign authority-affiliated entity or designated
8 agent of influence acting on its behalf, which
9 may result in imprisonment or other official or
10 unofficial sanction if undertaken in such coun-
11 try (including but not limited to licit or illicit
12 transfers of technology, overt, covert, or clan-
13 destine action, or overseas influence or disinforma-
14 tion campaigns);

15 (D) any speech, conduct, or other advocacy
16 contesting, purposefully or incidentally, a pre-
17 ferred governmental narrative of a designated
18 foreign authority with respect to historical or
19 current events (including but not limited to the
20 creation or use of maps or other geographic
21 identifiers which depict disputed territories or
22 describe disputed territorial classifications);

23 (E) any speech, conduct, or other advocacy
24 regarding senior officials of a designated for-
25 eign authority on the basis of decisions or ac-

1 tions undertaken in such official's official or
2 personal capacity; or

3 (F) the provision by an employee or con-
4 tractor of financial or in-kind support, using ex-
5 clusively resources other than resources of an
6 employing or contracting domestic entity which
7 has not provided consent for such use, to any
8 person engaging in an activity which would con-
9 stitute protected activity if the employee or con-
10 tractor personally engaged in such activity.

11 (3) PROTECTED INACTION.—The term “pro-
12 tected inaction” means refraining from or refusing
13 to undertake activity, including nonexcepted activity
14 conducted in an employee or contractor's official ca-
15 pacity, on the basis of sincerely held philosophical,
16 ethical, or patriotic objections, that—

17 (A) counters or otherwise inhibits pro-
18 tected action or enhanced China-related pro-
19 tected activity, even if such activity occurs
20 abroad;

21 (B) facilitates or supports a human rights
22 violation of a designated foreign government or
23 entity; or

24 (C) facilitates or supports an overseas
25 propaganda or disinformation effort of a des-

1 ignated foreign authority or designated agent of
2 influence, provided that the activity which the
3 employee or contractor refrained from or re-
4 fused to undertake has the direct and foresee-
5 able impact of meaningfully, or the intent of
6 reasonably directly, contributing to a matter de-
7 scribed in subparagraph (A), (B), or (C).

8 (4) ENHANCED CHINA-RELATED PROTECTED
9 ACTIVITY.—The term “enhanced China-related pro-
10 tected activity” means any speech, conduct, or other
11 advocacy, which is not protected action or protected
12 inaction, and which relates to—

13 (A) actions of the government or ruling
14 party of the People’s Republic of China, or any
15 special administrative region or equivalent re-
16 gion, to restrict, limit, or otherwise inhibit free-
17 dom of speech or assembly, freedom of religion,
18 or other fundamental human rights or free-
19 doms, including through arbitrary detention,
20 pervasive surveillance, or censorship;

21 (B) any aspect of a public policy debate
22 within the United States which can reasonably
23 be understood to predominantly pertain to
24 China, or the relationship between the United
25 States and any country or countries in the

1 Indo-Pacific region, with respect to which the
2 government or ruling party of the People’s Re-
3 public of China has lobbied or otherwise sought
4 to encourage or discourage elected or appointed
5 officials of the United States from pursuing or
6 implementing a particular policy; or

7 (C) revealing or otherwise discussing ma-
8 lign international activities (including cyberat-
9 tacks, unfair trade practices, intellectual prop-
10 erty violations, influence or disinformation cam-
11 paigns, illicit data collection efforts, and global
12 surveillance or censorship efforts) of the govern-
13 ment, ruling party, or any affiliated commercial
14 enterprise of the People’s Republic of China.

15 (5) COUNTRY OF CONCERN.—The term “coun-
16 try of concern” means—

17 (A) China, including any special adminis-
18 trative regions or equivalent regions, but ex-
19 cluding, Taiwan for so long as such remains
20 governed in a distinct and separate manner; or

21 (B) any other country, provided such coun-
22 try is not a member of the North Atlantic Trea-
23 ty Organization (NATO), a major non-NATO
24 ally designated under section 517 of the For-
25 eign Assistance Act of 1961 (22 U.S.C. 2321k),

1 a strategic partner of the United States, or a
2 member, as of the date of enactment of this
3 Act, of the Organisation for Economic Co-oper-
4 ation and Development, which the President
5 publicly certifies to Congress on an annual
6 basis—

7 (i) seeks, or consistently sought within
8 the prior 10 years, to restrict protected ac-
9 tivities of employees or contractors or oth-
10 erwise meaningfully inhibit or alter the do-
11 mestic speech of domestic entities on topics
12 subject to the protections of this Act;

13 (ii) poses a legitimate risk of under-
14 mining official United States foreign policy
15 objectives, furthering gross violations of
16 international recognized human rights (as
17 such term is defined in section 502B(d) of
18 the Foreign Assistance Act of 1961 (22
19 U.S.C. 2304(d)), or interfering with the
20 open debate and discussion of topics re-
21 lated to such country, by virtue of the ac-
22 tual or attempted actions described in
23 clause (i); and

24 (iii) is—

1 (I) designated as a country of
2 particular concern for religious free-
3 dom pursuant to section 402(b)(1) of
4 the International Religious Freedom
5 Act of 1998 (22 U.S.C. 6442(b)(1));

6 (II) a country sanctioned under
7 the Chemical and Biological Weapons
8 Control and Warfare Elimination Act
9 of 1991 (22 U.S.C. 5601 et seq.), or
10 which was sanctioned under such Act
11 at any point of time prior to the date
12 of enactment of this Act; or

13 (III) a country the government of
14 which the Secretary of State deter-
15 mines has repeatedly provided support
16 for acts of international terrorism for
17 purposes of section 1754(c) of the Ex-
18 port Control Reform Act of 2018 (50
19 U.S.C. 4813(c)), section 620A of the
20 Foreign Assistance Act of 1961 (22
21 U.S.C. 2371), or section 40 of the
22 Arms Export Control Act (22 U.S.C.
23 2780).

24 (6) DESIGNATED FOREIGN GOVERNMENTS AND
25 ENTITIES.—The term “designated foreign govern-

1 ment or entity” means any designated foreign au-
2 thority, designated foreign authority-affiliated entity,
3 or designated agent of influence.

4 (7) DESIGNATED FOREIGN AUTHORITY.—The
5 term “designated foreign authority” means any gov-
6 ernment or governmental element, or political party
7 or party element exercising substantial control or in-
8 fluence over government functions or decision mak-
9 ing, or government or party official of a country of
10 concern.

11 (8) DESIGNATED FOREIGN AUTHORITY-AFFILI-
12 ATED ENTITY.—The term “designated foreign au-
13 thority-affiliated entity” means any state-owned, pri-
14 vate, or otherwise non-governmental entity domiciled
15 within, based within, or having its principal place of
16 business or operations within a country of concern,
17 unless such entity is specifically exempted by order
18 of the President or his or her designee. Such term
19 shall include variable interest entities and inter-
20 national subsidiaries affiliated with such designated
21 foreign authority-affiliated entities.

22 (9) DESIGNATED AGENT OF INFLUENCE.—The
23 term “designated agent of influence” means any do-
24 mestic or international entity or person—

1 (A) registered under the Foreign Agents
2 Registration Act of 1938 on behalf of a des-
3 igned foreign authority or designated foreign
4 authority-affiliated entity;

5 (B) the President determines and publicly
6 certifies is otherwise acting as an overt, covert,
7 or clandestine agent of a designated foreign au-
8 thority; or

9 (C) understood or reasonably suspected by
10 the domestic entity undertaking an adverse ac-
11 tion or seeking to impose a contractual limita-
12 tion which is prohibited under this Act to be an
13 overt, covert, or clandestine agent of a des-
14 igned foreign authority.

15 (10) DOMESTIC ENTITY.—

16 (A) IN GENERAL.—For the purposes of the
17 Act, the term “domestic entity” means—

18 (i) any entity, without regard to the
19 country where such entity is domiciled or
20 incorporated, that—

21 (I) conducts business or organi-
22 zational activities in the United States
23 (or outside of the United States at a
24 facility that is officially or unofficially

1 affiliated with the United States Gov-
2 ernment); or

3 (II) pays salary, wages, or other
4 compensation for work performed in
5 the United States or that has control
6 over employment or contracting op-
7 portunities in the United States; and
8 (ii) the Federal Government.

9 (B) LIMITED FEDERAL EXCLUSION AU-
10 THORITY.—The President may, upon 90 days
11 prior notice to Congress, exclude a component
12 of a Federal agency or the Armed Forces, or a
13 corporate contractor thereof, from the definition
14 under this paragraph, to the extent such exclu-
15 sion is in the interests of United States foreign
16 policy or national security.

17 (11) EMPLOYEE.—The term “employee” means
18 any person, including supervisors, employed in a cov-
19 ered context by a domestic entity.

20 (12) CONTRACTOR.—The term “contractor”
21 means an individual who provides work in a covered
22 context for a domestic entity under the terms of an
23 independent contract with such domestic entity or
24 an individual who uses a loan-out corporation or
25 similar corporate structure to facilitate such work.

1 (13) COVERED CONTEXTS.—The term “covered
2 context” means employment or contractual activities
3 which—

4 (A) occur within the United States (includ-
5 ing any overseas Federal facilities thereof), re-
6 gardless of the nationality, citizenship, domicile,
7 or place of incorporation of the employee, con-
8 tractor, or domestic entity; or

9 (B) are conducted by an employee or con-
10 tractor of a domestic entity who typically per-
11 forms work within the United States, regardless
12 of whether such employee or contractor handles
13 matters of an international nature or is tempo-
14 rarily assigned to a foreign jurisdiction for a
15 period of 6 months or less (except to the extent
16 such activity relates to official overseas travel to
17 a country of concern exempted from the prohi-
18 bition on retaliation pursuant to section 3 of
19 this Act).

20 **SEC. 6. ANNUAL REPORTING ON CENSORSHIP OF FREE**
21 **SPEECH WITH RESPECT TO INTERNATIONAL**
22 **ABUSES OF HUMAN RIGHTS.**

23 Section 116(d) of the Foreign Assistance Act (22
24 U.S.C. 2151n(d)) is amended—

1 (1) in paragraph (11)(C), by striking “and” at
2 the end;

3 (2) in paragraph (12)(C)(ii), by striking the pe-
4 riod at the end and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(13) wherever applicable, each instance in
7 which each country has attempted to extraterritori-
8 ally intimidate or pressure a company or entity to
9 censor or self-censor the speech of its employees,
10 contractors, customers, or associated staff with re-
11 gards to the abuse of human rights in such country,
12 or sought retaliation against such employees or con-
13 tractors for the same, including any instance in
14 which the government of China has sought to
15 extraterritorially censor or punish speech that is oth-
16 erwise legal in the United States on the topics of—

17 “(A) repression and violation of funda-
18 mental freedoms in Hong Kong;

19 “(B) repression and persecution of reli-
20 gious and ethnic minorities in China, including
21 in the Xinjiang Uyghur Autonomous Region
22 and the Tibet Autonomous Region;

23 “(C) efforts to proliferate and use surveil-
24 lance technologies to surveil activists, journal-

1 ists, opposition politicians, or to profile persons
2 of different ethnicities; and

3 “(D) other gross violations of human
4 rights; and

5 “(14) wherever applicable, each instance in
6 which a company or entity located in or based in a
7 third country has censored or self-censored the
8 speech of its employees, contractors, customers, or
9 associated staff on the topic of abuse of human
10 rights in each country or sought to retaliate against
11 such employees for the same, due to intimidation or
12 pressure from or the fear of intimidation by the for-
13 eign government.”.

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