

# States Must Act To Protect American Security From Foreign Adversaries

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# States Must Act To Protect American Security From Foreign Adversaries

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By Christopher Holton

## Introduction

In dozens of states across America, state legislatures have taken a thorough, thoughtful and reasoned approach to the issue of foreign adversaries occupying, owning and controlling land and other real property, including land in close proximity to military bases and installations and critical infrastructure.

Different forms of legislation have sought to provide protection in different ways. Some bills have focused solely on agricultural land in an effort to maintain America's vital food security. Others have focused on restricting foreign adversary ownership of land near military installations, especially after the US Air Force called the proposed acquisition of land by a Chinese entity near one of its bases a threat to national security.<sup>1</sup>

Legislation can be, and has been, structured to include specific remedies, such as: fines; voiding sales; forfeiture, judicial revocation of licenses and business charters; judicial dissolution of business entities; judicial prohibition of an identified agent of

a foreign adversary doing business in the state; and judicially awarded restitution for civil damages for harmed, innocent third parties. These remedies can be fashioned with full due process for all involved.<sup>2</sup>

Nations like China, Russia, North Korea and Iran are quite different from the vast majority of nations around the world. All are adversaries of the US under various levels of sanctions under the Department of the Treasury.<sup>3</sup>

Foreign adversaries are defined in the code of federal regulations as foreign governments or foreign non-government persons who have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons as determined by the U.S. Secretary of State.<sup>4</sup> Legislation can and should recognize this distinction and protect not just individual states, but the entire country from this threat to our national security.

## Threats from China

Obviously, the leading threat is currently from the communist People's Republic of China—a threat that should need no introduction, but which includes:

- A massive military build-up aimed at the US
- Bellicose threats directed at the US and our allies
- State-sponsored, serial intellectual property theft
- Espionage
- Currency manipulation and unfair trade practices
- Violations of American airspace
- Violations of international law
- Gross human rights violations
- State-sponsored organ harvesting

### Massive military build-up aimed at the US.<sup>5</sup>

According to Australian defense analysts the military build-up currently underway by the PRC may constitute the largest military expansion in recent history, writing in that country's 2023 strategic review:

China's military build-up is now the largest and most ambitious of any country since the end of the Second World War. This has occurred alongside significant economic development, benefiting many countries in the Indo-Pacific, including Australia. This build-up is occurring without transparency or reassurance to the Indo-Pacific region of China's strategic intent.<sup>6</sup>

The U.S. Department of Defense notes that this build-up has fueled deliberate and unsafe targeting of U.S. military aircraft in international airspace:

Between the fall of 2021 and the fall of 2023, the United States documented over 180 instances of [the People's Liberation Army] coercive and risky air intercepts against U.S. aircraft in the region," the official said. When allies and partners are included, this jumps to more than 300 instances.<sup>7</sup>

### Bellicose threats directed at the US and our allies.<sup>8</sup>

Beginning in 2017 the Chinese Communist Party began to revise its diplomatic policies to emphasize a far more aggressive and confrontational approach. Dubbed "Wolf Warrior Diplomacy" Chinese diplomats have increasingly issued a variety of sometimes blood-curdling threats against the United States and its allies, typically utilizing social media.

Prof. Peter Martin, author of *China's Civilian Army: The Making of Wolf Warrior Diplomacy* notes: " this aggressive foreign policy has coincided with an increasingly aggressive ideological agenda:

These displays of assertiveness have tended to coincide with political crackdowns at home and with a greater focus on ideology in domestic politics. Under Xi Jinping, Chinese diplomats have watched the Party punish more than 1.5 million officials in a sweeping anti-corruption crackdown and abolish presidential term limits. They've also watched as the government has set

up "re-education" camps in Xinjiang and had to defend these policies to the world. So I think that's what's going on now: a combination of newfound confidence and deep insecurity.<sup>9</sup>

### **State-sponsored, serial intellectual property theft<sup>10</sup>**

According to some estimates, Chinese intellectual property theft, directed and supported as a policy by the Chinese government, costs Americans billions of dollars and thousands of jobs every year. Total numbers of value lost may exceed \$600 billion since 2004.<sup>11</sup>

### **An extensive campaign of espionage targeting Americans<sup>12</sup>**

The Chinese Communist Party utilizes a whole-of-society approach to espionage, targeting American citizens at every level of government as well as in all fields across the public and private sector. Center for Security Policy Senior analyst J. Michael Waller notes that federal officials have repeatedly warned state leaders about the threat posed from espionage:

The People's Republic of China, through its MSS foreign intelligence service and various Chinese Communist Party organs, has targeted governors and lawmakers in most states. Then-secretary of state Mike Pompeo warned of this threat, uncovered during an interagency investigation begun in 2017, to all 50 governors at the National Governors Convention in early 2020. Pompeo

told the governors that "a Chinese Government-backed think tank in Beijing produced a report that assessed all 50 of America's governors on their attitudes towards China. They labeled each of you 'friendly,' 'hardline,' or 'ambiguous.' I'll let you decide where you think you belong. Someone in China already has. Many of you, indeed, in that report are referenced by name."<sup>13</sup>

This whole of society approach to espionage means that not only are federal installations and military sites potential targets by Chinese entities, but State, local and private entities may also find themselves in the crosshairs of Chinese intelligence collection.

### **The use of currency manipulation and unfair trade practices<sup>14</sup>**

In August of 2019 the U.S. Department of Treasury formally designated the People's Republic of China a currency manipulator, as required under *The Omnibus Trade and Competitiveness Act of 1988*.

### **Violations of American airspace<sup>15</sup>**

In January of 2023, U.S. media reports covered the appearance of a Chinese lighter-than-air craft, described as a "spy balloon" which violated U.S. airspace for multiple days before finally being shot down by U.S. fighter jets. While U.S. officials had initially downplayed the surveillance and reconnaissance capabilities of the balloon, it is believed the balloon was likely equipped with far more sophisticated electronic eavesdropping equipment than previously admitted, and the intercepted balloon was only one of several such surveillance efforts in recent years.<sup>16</sup>

In particular the balloon took a flight path which took it over several sensitive U.S. defense sites, many of the same sites near where Chinese entities have attempted to secure property. Additionally, the PLA has recently begun flying nuclear weapons-capable bombers into the U.S. air defense zone, in a move reminiscent of similar Soviet flights during the Cold War.<sup>17</sup>

### **Violations of international law<sup>18</sup>**

As part of a deliberate policy on the part of the People's Republic of China, the PLA undertakes regular efforts to deny the United States and its allies access to international waters in the South China Sea. Maintaining freedom of navigation is one of the United States most basic primary national interests. As the Brookings Institute report on Chinese actions in the South China Sea notes, "If all China were doing was issuing verbal warnings, that would be one thing. But its behavior has been more reckless of late with its navy failing to comply with agreed upon rules of behavior with the United States, thereby increasing the risk of incident and conflict."<sup>19</sup>

### **Gross human rights violations<sup>20</sup>**

The United States continues to document China's flagrant violations of human rights against its own people, including "mass arbitrary detention, Orwellian-style surveillance, political indoctrination, torture, forced abortions and sterilization, and state-sponsored forced labor"<sup>21</sup> rising to the level of meeting the international standard of genocide in the case of the CCP-directed repression of the Uighur minority in Xinjiang.<sup>22</sup>

### **State-sponsored organ harvesting<sup>23</sup>**

Particularly egregious is the CCP-promoted policy of forced organ harvesting, utilizing organs harvested from executed prisoners. Legislation has been proposed at the federal level to civilly and criminally penalize those who benefit from the practice of forced organ-harvesting which is a billion-dollar industry in China as Michael Ngyuen of the Markkula Center for Applied Ethics notes.<sup>24</sup>

### **Responsibility for Covid-19 Pandemic**

Due to its policy of deliberately and knowingly lying to international health organizations during the COVID-19 pandemic and its refusal to cooperate with international investigations and research into the COVID-19 virus<sup>25</sup>, the People's Republic of China must also be held responsible for the collective deaths of some seven million people worldwide<sup>26</sup>, as well as over 18 trillion dollars in damage, just to the U.S. economy.<sup>27</sup>

### **Unrestricted Warfare and Land-Ownership**

None of these threats from China can be viewed in isolation, but rather must be understood within the context of a multi-spectrum, highly unconventional conflict which the People's Republic of China has been waging against the United States, in accordance with the People's Liberation Army (PLA) doctrine of *Unrestricted Warfare*, for several decades. Authored by two PLA colonels, *Unrestricted Warfare* is predicated on the idea of using a combination of asymmetric attacks, ranging from cyberwarfare to subversion and espionage, to economic warfare to weaken an opponent

before any conventional military engagement. Indeed, economic or financial warfare is a major part of any such effort according to this doctrine.<sup>28</sup>

Part of that economic warfare effort is the strategic acquisitions by state-backed Chinese companies and Chinese Communist Party (CCP) members of U.S. real estate and especially agriculture land, by paying top dollar to U.S.-based companies or land-holders.

China has been particularly active in attempting to acquire land in the US. From 2010 to 2020 Chinese ownership of US farmland increased from \$81 million to \$1.8 billion.<sup>29</sup> In many cases these properties are acquired near military installations. Not only has China attempted to establish an outpost near Grand Forks Air Force Base, home to some of America's state of the art intelligence, surveillance and reconnaissance assets, but in Texas they acquired tens of thousands of acres in the same county as Laughlin Air Force Base, a major pilot training installation.

Allowing PRC-controlled entities to own property near such installations comes with substantial and obvious risks, including monitoring of U.S. techniques and procedures as well as signals intelligence (SIGINT) in which passive collection of US signals and communications would be undetectable and could be accomplished simply by placing antennas tuned to the right frequencies. It is no wonder that the Air Force termed the Grand Forks project a threat to national security, with Air Force Assistant Secretary Andrew Hunter declaring in a letter that the proposed project to build a wet cornmill “presents a significant threat to national security with both near- and long-term risks of significant impacts to our operations in the area,”

Efforts to block Chinese control of such property must extend to all PRC-entities, including PRC-based companies and PRC nationals. Every Chinese

company—without exception—is majority owned or controlled by the Chinese Communist Party or the People's Liberation Army. In other words, there is no distinction between public and private in China's hybrid communist political and crony capitalist economic system. This has been documented by the congressionally mandated, bipartisan U.S.-China Economic and Security Review Commission.<sup>30</sup>

“China's government has developed numerous avenues through which to monitor corporate affairs and direct nonstate firms and resources toward advancing the Chinese Communist Party's (CCP) priorities. Within this expanded framework of government control, traditional definitions of state control in an entity no longer apply because any entity may be compelled to act on behalf of the Chinese government's interest, regardless of the state's formal ownership. Control of Chinese firms is blurred, contrary to the precise division between state and nonstate firms implied in corporate ownership registration. Historically, nonstate firms have sought state investment to overcome political and regulatory barriers. China's government is also now increasing investments in nonstate firms to advance its technology development goals and policy objectives, further obscuring the distinction between state and nonstate. Under General Secretary of the CCP Xi Jinping, the Party has systematically expanded its representation in corporate governance. Whereas traditional



regulatory intervention in corporate affairs occurs through Chinese bureaucratic mechanisms prescribed by law, there are no such constraints on the CCP. Consequently, it can be impossible to identify the extent of the exercise of CCP influence. The CCP is also supplanting the role of Chinese government agencies in market monitoring and regulatory enforcement. Chinese corporate laws affords the state unique and substantial governance rights as an investor and imposes a legal obligation to serve state development goals on all firms.”

Second, there have been instances of Chinese nationals buying US land who are later discovered to be high-ranking members of the Chinese Communist Party. That is exactly what happened in Texas where a former officer in the Chinese People’s Liberation Army and official in the Chinese Communist Party named Sun Guangxin acquired 140,000 acres of land in the same county as Laughlin Air Force Base, a major pilot training installation.<sup>31</sup> That prompted the Texas legislature to block Sun’s project and in 2021 Governor Abbott of Texas to sign the Lonestar Infrastructure Protection Act into law to prevent such projects.<sup>32</sup>

## **State initiatives to address foreign land ownership**

The federal government’s response to this has been inconsistent at best. CFIUS (the Committee for Foreign Investment in the US) punted on the issue.<sup>33</sup> While sanity prevailed with the intervention of the U.S. Air Force in the North Dakota case, states cannot

afford to wait for federal government intervention or for gridlock in Congress to break free in order to address the threat of foreign adversary land ownership. Despite all of the attention focused on this issue recently due to China’s aforementioned actions, state regulation of foreign land ownership is not a new issue. According to the National Agriculture Law Center, 24 states already have restrictions or prohibitions against foreign land ownership. Others require permission for such purchases.<sup>34</sup>

Some critics have opposed applying state-level legislation to foreign individuals and companies as well as government entities. But when a foreign adversary makes a move to acquire land, it’s not the Chinese government signing contracts and agreements. It is done through holding companies, foreign cut-outs and fronts. Legislation can be structured in such a way as to effectively police these activities and entities. Furthermore, legislation can be written in such a way as to hold harmless realtors, land title attorneys and land owners in such transactions and expressly does not hold such private individuals and entities accountable to be the enforcement arm of government. That should be the job given to the state attorney general or some other officer of the state.

It has been speculated that it will be impossible to know if a foreign adversary moves to acquire land, but that is not necessarily so. Under existing law, foreign purchases of agricultural land, as an example, must be reported to the US Department of Agriculture, in recognition of the fact that foreign control of land and our food security is a major concern:<sup>35</sup>

*“...foreign investors in U.S. agricultural land are required to submit forms describing their transactions to USDA. This is required by the Agricultural Foreign Investment Disclosure*

*Act of 1978 (AFIDA). But AFIDA was not designed as a national security program, and AFIDA forms are focused on data collection rather than identifying potential national security concerns."*

## **Conclusion**

Lawmakers and interested parties should keep in mind that in some states foreign land ownership legislation does NOT apply to legal permanent residents in the United States. Legislation can be tailored so that it would not impact every foreign national, such as those here on work visas.<sup>36</sup>

Additionally directing foreign landownership restrictions to nations designated as foreign adversaries sends the message that legislation is not part of a protectionist or anti-foreign movement and recognizes that America serves as the breadbasket of the world. Canadian, German and Italian firms' own millions of acres of US farmland because our agriculture industry is so productive; and it is proper for America to welcome commercial relations with friends and allies.<sup>37</sup>

America needs a government that prevents our potential adversaries from buying our arable land and to prevent those adversaries from controlling even a portion of our domestic food supply. Even more urgently, we also need to protect the safety and security of our critical infrastructure and military installations from prying eyes and ears, not just from communist China, but also other foreign adversaries, now and in the future.

Food security is national security. If Americans don't act, China will.

## **Appendix 1: Recent State Legislation on Foreign Land Ownership**

State laws regulating and restricting ownership of immovable property by foreign adversary nations and principals of foreign adversary nations have taken different forms, particularly with the laws that have been added to the books over the past two years.

Here are 16 examples of such laws that have passed recently.

### **Alabama**

Restricts ownership or control of agriculture or forest land and land in close proximity to military installations and critical infrastructure by principals of foreign countries of concern.

<https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2023RS/HB379-enr.pdf>

### **Arkansas**

Restricts ownership or control of agriculture land by a principal, business, government or agent of a foreign country subject to International Traffic in Arms Regulations as defined by the Code of Federal Regulations.

<https://www.arkleg.state.ar.us/Bills/Detail?id=SB383&ddBienniumSession=2023%2F2023R>

### **Florida**

Restricts ownership or control of agriculture land and land in close proximity to military installations and critical infrastructure by foreign countries of concern.

<https://www.flsenate.gov/Session/Bill/2023/264/?Tab=BillText>

### **Idaho**

Prohibits ownership, acquisition or control of agriculture land, forest land, mineral rights and water rights by a foreign government or a business controlled by a foreign government.

<https://legislature.idaho.gov/sessioninfo/2024/legislation/h0496/>

### **Indiana**

Prohibits the purchase, lease or acquisition of land within 10 miles of a military installation or agriculture land by a citizen of China, Iran, North Korea, or Russia or a country designated as a threat to critical infrastructure by the governor.

<https://iga.in.gov/legislative/2024/bills/house/1183/details>

## **Louisiana**

Prohibits a foreign adversary from purchasing, leasing or acquiring land

<https://legis.la.gov/legis/BillInfo.aspx?i=244512>

Restricts foreign adversaries from owning or having an interest in agriculture land.

<https://www.legis.la.gov/legis/ViewDocument.aspx?d=1381897>

## **Montana**

Prohibits the sale, lease or rental of agriculture land or critical infrastructure or land in direct line of sight with a military installation to foreign adversaries or corporations domiciled in foreign adversary nations.

<https://leg.mt.gov/bills/2023/billpdf/SB0203.pdf>

## **North Dakota**

Prohibits acquisition of real property by foreign adversaries and prohibits political subdivisions from granting development permits to foreign adversaries.

<https://ndlegis.gov/assembly/68-2023/regular/bill-overview/bo2371.html>

## **Ohio**

Prohibits acquisition of agriculture land by foreign adversaries, the terrorist exclusion list maintained by the Department of State, terrorist sponsoring nations as designated of the Department of State, and individuals and entities listed under Executive Order 13224 and Executive Order 13268.

<https://codes.ohio.gov/ohio-revised-code/section-5301.256>

## **Oklahoma**

Restricts ownership of land by an alien except rights to personal property accorded to a citizen of the United States under the laws of the nation to which such alien belongs or by treaties with such a nation with the United States.

<http://www.oklegislature.gov/BillInfo.aspx?Bill=SB212&Session=2300>

## **South Dakota**

Prohibits ownership of agriculture land by a foreign government, foreign person or foreign entity from China, Cuba, Iran, North Korea, Russia or Venezuela.

<https://sdlegislature.gov/Session/Bill/25259>

## **Tennessee**

Restricts non-resident aliens, foreign businesses, foreign governments or agents/fiduciaries thereof from ownership of real property if the laws of the country of their origin prohibits citizens of the US from owning land.

<https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB0040&GA=113>

## **Utah**

Prohibits acquisition of land by any entity owned or controlled by the government of China, Iran, North Korea, or Russia or any company that the Secretary of Defense is required to identify and report as a military company.

<https://le.utah.gov/~2024/bills/static/HB0516.html>

## **Virginia**

Prohibits acquisition of agriculture land by foreign adversaries.

<https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0765>

## **West Virginia**

Bars citizens or entities organized or controlled by citizens or governments of any country designated as a Country of Particular Concern by the Department of State from participating in any public auction of land or from purchasing unsold land.

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