

SPECIAL REPORT

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ASIAN STUDIES CENTER

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Michael Cunningham

Chinese influence operations against the United States target not only the federal government, but also political and social organizations at the state and local levels. States are unprepared for the magnitude and persistence of China's influence operations, which far surpass those of previous geopolitical rivals, such as Nazi Germany and the Soviet Union. Beijing targets schools, churches, and community organizations. Its influence is felt on university campuses, in board rooms, and in governors' mansions. Its agents cultivate aspiring politicians, business elites, and academics early in their careers and use these relationships to influence policymaking decades later, largely unbeknownst to their victims. State and local policymakers—particularly state legislators—need a far greater understanding of the threats they face and how to respond to them.

The federal government is just starting to understand the risks posed by the People's Republic of China's (PRC's) infiltration of American political, economic, and social life. Meanwhile, Beijing continues to access a backdoor to America's political system largely undetected. China's influence operations against the United States target not only Congress and the executive branch, but also political and social organizations at the state and local levels. Many of these subnational targets are either unaware of these threats or do not know how to address them.

That states are unprepared for the magnitude and persistence of PRC influence operations is understandable: Never has a foreign adversary had such deep inroads in U.S. state and local politics. The range and persistence of China's operations far surpass those of previous geopolitical rivals, such as Nazi Germany and the Soviet Union. Beijing targets schools, churches, and community organizations. Its influence is felt on university campuses, in board rooms,

and in governors' mansions. Its agents cultivate aspiring politicians, business elites, and academics early in their careers and use these relationships to influence policymaking decades later, largely unbeknownst to their victims.

This *Special Report* provides an overview of some of the threats Beijing poses to state governments. It is not intended as a comprehensive discussion of the PRC's tactics or of how each state is addressing them. Rather, the report offers state and local policymakers—particularly state legislators—a greater understanding of the threats they face and provides some tools to assist them in developing legislation to confront these challenges.

While the mitigation strategies outlined in this report apply to any number of threats posed by China's communist regime, the report focuses on the following particularly urgent issues:

- Preventing companies linked to the Chinese government from obtaining contracts to build critical infrastructure or supply technology to state government organizations.
- Stopping Beijing's infiltration of universities, particularly via gifts and grants.
- Freeing public funds—particularly pension funds—from investments in problematic Chinese entities.
- Pushing back against Chinese lobbying in state and local governments.

The threats discussed in this report are well-documented, observable, and antithetical to the integrity of America's democratic system and the freedoms guaranteed by the U.S. Constitution. As policy communities in the various states debate how to confront these threats, they must act decisively, while taking care to ensure that the constitutional rights of all Americans are preserved. They should recognize that their adversary is the regime in Beijing and avoid narratives and approaches that disadvantage Chinese Americans or visitors from China, most of whom obey the law and have no connection to these threats. At the same time, they must not allow those with ulterior motives to use allegations of "discrimination" or "xenophobia" to shame them into treating these issues as anything less than the national security threats that they are.

China's Infiltration of U.S. State and Local Politics

On September 22, 2015, Chinese President Xi Jinping touched down in Washington to begin his first U.S. trip since becoming Chinese Communist Party (CCP) general secretary three years earlier. What was noteworthy about this trip, however, was that the Washington he touched down in was Washington State; he would not depart for Washington, DC, until two days later.

While in Seattle, Xi charmed prominent business leaders, including Tim Cook, Mark Zuckerberg, and Warren Buffet.¹ Xi also spoke at a local high school.² The capstone of his visit, however, was the China–U.S. Governors Forum, a periodic gathering between Chinese provincial leaders and U.S. state governors. Xi used this forum to promote bilateral cooperation at the state, provincial, and local levels.³

That Xi met with business leaders and state governors before seeing his counterpart in Washington, DC, was at best a slight to President Barack Obama. More important, it showed the importance that Xi places on engagement at the subnational level.

Beijing's subnational outreach did not begin with Xi. Indeed, China's attempts to influence state, city, and local governance have been ongoing for decades and are widespread. The first China–U.S. Governors Forum was held in 2011, the year before Xi's appointment as CCP general secretary. Going back even farther, the first Sino–American “sister city” relationship was established between St. Louis, Missouri, and Nanjing in Jiangsu Province in 1979. As of July 2022, there are 234 sister relationships between U.S. and Chinese cities, and an additional 50 sister relationships between U.S. states and Chinese provinces.⁴

Partnerships and cooperation at the subnational level are not inherently bad. To the contrary, such outreach is so important that in 1956, President Dwight D. Eisenhower created an organization called Sister Cities International to promote subnational engagement with other countries.⁵ Today, more than 500 U.S. cities have relationships with cities in 145 different countries, for a total of around 2,000 sister-city pairs.⁶ Academic exchanges and business cooperation across borders are even more common and play an irreplaceable role in promoting economic and cultural ties between nations and their component states and provinces.

Subnational engagement with China differs from what takes place between liberal democracies in crucial ways. Whereas in democratic countries, local political leaders are elected by their constituents and, except where restrained by constitutional considerations, have the freedom to

enact their own laws and policies, in China's one-party Leninist dictatorship, subnational leaders pursue priorities assigned by Beijing. While they usually have the freedom to develop their own approaches to achieving these goals, they are answerable to their CCP bosses, not to the people they govern. In other words, provincial, municipal, and local leaders are not elected to serve the people they govern; they are *selected* to serve the CCP leadership.

Indeed, Chinese subnational governments and the organizations they control are not autonomous actors, but agents of Beijing, whose ultimate objective is to displace U.S. global leadership.⁷ Thus, when a national or subnational Chinese entity—or an agent of such an entity—proposes to cooperate with a U.S. state, city, university, or business on a given issue, it should be seen for what it is: Beijing seeking to advance its position in the U.S.–Chinese rivalry.

An example of how seriously Beijing takes its engagement with state governments is a report by a Chinese government-affiliated think tank on the “friendliness” of different U.S. governors toward China. *Newsweek* obtained a copy of this report and noted that it listed the governors of 17 states as “friendly,” 14 as “ambiguous,” six as “hardline,” and the rest as “unclear.”⁸ The think tank did not create this list for fun; there is no doubt that it informs both the central and provincial governments’ outreach to the various states.

The Chinese government’s outreach to U.S. states, cities, and communities is widespread. In a shocking revelation of how wide the CCP spreads its net, former Secretary of State Mike Pompeo, who previously served as Director of the Central Intelligence Agency (CIA) and is well-versed in Chinese espionage tactics, told Wisconsin state legislators in 2020 that Chinese agents have been observed infiltrating organizations as seemingly apolitical as parent-teacher associations.⁹

Beijing’s agents seek to cultivate assets at the state and local levels early on. They target up-and-coming political and community leaders, offering them support, friendship, and in some cases, romantic relationships. While many of those they target never gain the influence needed to advance Beijing’s interests, they prefer to err on the side of casting the net as wide as possible. As the former mayor of Fremont, California, recounted, Chinese agents “strike up a relationship with you and see if you move up the line.”¹⁰

The rationale behind China’s attempts to influence U.S. subnational politics and society is two-fold. First, many senior officials and policymakers at the federal level rose through the ranks of city and state politics before reaching the national stage, where their influence will be more useful for Beijing. The efforts a Chinese agent made to target Representative Eric

Swalwell (D-CA) from the time he was on the city council of Dublin, California, is one prominent example.¹¹ Swalwell reportedly cut off ties with the Chinese agent after the FBI apprised him of her identity.¹²

Second, as the federal government increasingly pushes back against Chinese influence operations, China believes—and hopes—that governments at the state level and below will be the weak links through which it can infiltrate the U.S. political system.¹³ One policy advisor to the Chinese government repeated the adage that, in America, “all politics is local,” and suggested that Beijing use promises of trade and investment to gain inroads into states.¹⁴ This suggestion was not original; such tactics are a constant feature of Chinese outreach to subnational entities in the U.S. and other countries. Still, states are often ill-prepared for this infiltration. After all, this is the first time a foreign adversary has devoted so much energy to influencing state and local governments.

States Must Defend Their Citizens and the Nation

Legislation and enforcement at the federal level are often insufficient to defend states from Beijing’s attempts to influence governance. Congressional legislation is a slow, painstaking process, held up by divergent interests and competing priorities of the 50 states and a broader range of special interests than at the state and local levels. When lawmakers pass laws to confront China, they must guard against the laws’ dilution by these special interests in ways that make them either excessively broad and ill-defined, too narrow to be effective, or devoid of any concrete enforcement mechanism. When actionable laws are passed, enforcement is sometimes inconsistent across Administrations.

This is not to say that the federal government does not want to deal with these issues; it is simply overwhelmed. China’s infiltration encompasses businesses, universities, religious organizations, police departments, and government bodies as far down as the community level. The federal government lacks both the manpower and the local expertise to combat such a wide range of activities.

Another reason why states cannot count on the federal government to come to their rescue is that some issues are simply not for the federal government to regulate. The U.S. Constitution gives states a high degree of autonomy. While the national security implications of Beijing’s actions at the subnational level mean that there is likely more that Congress can and should do to confront these threats, there are many areas where it simply cannot. The Chinese government understands and takes advantage of the

constant tension between federal government priorities and states' rights: While Washington has to worry about the constitutionality of any action it takes, Beijing simply does whatever it can get away with.

Indeed, many of China's incursions into states, cities, and communities across America can only be adequately confronted at the state level. State governments understand how these developments affect the people and organizations under their stewardship, and they are better equipped than the federal government to pass and enforce laws tailored to their unique challenges and weaknesses.

However, state legislatures must navigate a fine, often ill-defined line between the need to act where the federal government cannot or will not and the constitutional constraints against individual states regulating foreign relations. The Constitution clearly puts the federal government in charge of foreign policy, and in *Arizona v. United States* (2012), the Supreme Court pre-empted Arizona's immigration law partly on grounds that foreign policy is under the exclusive jurisdiction of the federal government.¹⁵ As state legislatures search for ways to address these challenges, they must remember that the ultimate objective is to defend the Constitution amid threats from a foreign adversary, not to undermine it.

State lawmakers are showing themselves capable of confronting this challenge. Over the past two years, legislators in several states have taken action that, while imperfect, at least begins to address these risks in ways that federal legislation does not. While this *Special Report* does not attempt to assess the constitutionality of the various types of state legislation introduced, states should involve their legal experts in the legislative process and make sure not to step beyond their constitutional bounds or attempt to create their own foreign policies. The remainder of this report presents four particularly urgent threats and what some states are doing to confront them. This discussion does not provide definitive solutions to any of these challenges, but it arms state lawmakers with ideas and case studies to jumpstart discussions that can lead to more effective legislative action.

Threat 1: Awarding State Contracts and Infrastructure Projects to Chinese Government-Linked Companies

In July 2021, Texas Governor Greg Abbott signed the Lone Star Infrastructure Protection Act, a bill designed to prevent businesses with ties to "hostile" nations from accessing the state's energy grid and other critical infrastructure.¹⁶ The bill was developed after a Chinese billionaire with ties to the CCP and People's Liberation Army (PLA) and a business empire

in Xinjiang attempted to build a wind farm on land that he purchased near a U.S. Air Force base.¹⁷ The incident sparked widespread concern that the wind farm could be used by China to harm the state's energy grid or spy on or interfere with the air base.¹⁸ Alarming, the Committee on Foreign Investment in the United States (CFIUS) approved the deal, and the Trump Administration was reportedly planning to allow it to proceed, which it likely would have had the Texas state government not intervened.¹⁹

The new law passed both houses of the state legislature unanimously and is the first of its kind at the state level.²⁰ The crisis that spawned it, however, is all too common. Firms with links to the Chinese government routinely bid for, and often win, contracts to build public infrastructure or supply government entities with technology.

To be sure, there is no problem in principle with allowing private global firms to compete on the open market for U.S. business opportunities. The problem is that state contracts and infrastructure projects are not standard business opportunities, and the Chinese firms that bid for them often do not compete on a level playing field.

Market Displacement. The Chinese state-owned enterprises (SOEs) that most frequently bid for these contracts often receive generous subsidies from Beijing, which allow them to outbid their non-Chinese competitors. Studies of public bidding in Europe have found that Chinese SOEs tend to under-bid their competitors by a whopping 30 percent.²¹ As a result, European companies are being priced out of their own home markets.²² The dynamics are similar in the U.S., though the impact on American industry does not yet appear to be as great as in Europe. While the lower price tags save taxpayer dollars, they risk effectively pushing U.S. firms out of their own market by making them unable to compete for the largest, most-profitable projects. This displacement would threaten American jobs and place current and future U.S. infrastructure needs at the mercy of a regime that has, since its establishment in 1949, viewed the United States as an enemy.

Security Risks. More immediate and frightening are the security risks these deals present. People do not hire someone who openly speaks of robbing them, and has a history of breaking and entering, to install the locks or security system to secure their home from robbers. Yet, this is essentially what governments do when they hire Chinese state-owned firms—or private companies with ties to Beijing—to participate in critical infrastructure projects, whether they be railway lines, bus fleets, electrical grids, or mobile networks. It is even more unthinkable that so many federal and state government offices use Chinese technology products in their day-to-day operations.

It is a well-known fact that China's SOEs are direct organs of the CCP. Not as well understood are the risks posed by many seemingly private Chinese enterprises, particularly technology firms. Even the most innocuous Chinese company is under pressure from Beijing to establish a CCP cell. Roughly half of Chinese private enterprises had one of these cells as of 2018.²³ Under normal circumstances, CCP cells rarely get involved in day-to-day operations, but they are ever-present, ensuring that private Chinese businesses are "[integrated] into China's political system."²⁴

When Americans allow firms controlled by a geopolitical rival to build their critical infrastructure, they practically invite the Chinese to embed vulnerabilities they can exploit in times of conflict. When Americans procure technology from a geopolitical foe, they invite that foe inside the systems used by their government and armed forces. Indeed, it is well-documented that Chinese technology firms often insert back doors in their hardware and software that can give them remote access to users' systems and data.²⁵

U.S. Recklessness. While one would expect government offices to naturally avoid purchasing technology from foreign adversaries, such common sense is not always heeded. The U.S. government has recognized the security risks posed by Huawei and ZTE for at least a decade, but federal agencies were not prohibited from purchasing equipment from these and a select group of other Chinese technology companies until 2019.²⁶

Although the list of prohibited companies is far from comprehensive, enforcement has been spotty. In just one widely reported incident, at least three federal departments and agencies—the Drug Enforcement Agency, the Defense Finance and Accounting Service, and the Department of the Army—bought video surveillance equipment from a wholly owned subsidiary of Dahua Technology Company, one of the companies on the prohibited list, as recently as 2021.²⁷ In addition to the prohibition on purchasing equipment from Dahua over national security concerns, the U.S. Department of Commerce added the company to its Entity List in 2019, due to Dahua's ties to genocide against and forced labor of Muslim ethnic groups in China's Xinjiang region.²⁸

The problem is even more pervasive at the state level. An October 2021 report by China Tech Threat revealed that the governments of 40 states continue to use equipment supplied by Lenovo and Lexmark, two private Chinese companies with close ties to CCP and Chinese government bodies.²⁹ Given these figures, no one should have been surprised when cybersecurity firm Mandiant reported in March 2022 that at least six states were targeted by Chinese government-backed hackers in the past year alone.³⁰ While the reports did not specify whether these attacks were facilitated by back doors,

using equipment with such a high likelihood of being compromised essentially invites Beijing's prying eyes into U.S. government offices. Responding to Mandiant's report, a leading cybersecurity expert quipped, "Six states know that they were breached by Chinese spies; that means 44 states don't yet know they've been breached."³¹

So far, the federal government's approach has been to ban its agencies from entering into contracts with a narrow, pre-defined list of companies, as shown above. Obviously, the effectiveness of this approach has been minimal. Yet, even if Congress eventually passes more effective, wide-ranging restrictions, the restrictions will have little power to protect state governments from this threat. State government bodies fall outside the jurisdiction of the federal government. True, the federal government could ban certain businesses from all U.S. sales or operations, essentially taking them out of the running for contracts at any level. Given the minimalist nature of federal legislation on the issue so far, however, such action does not appear likely in the near term.

Effective State Contracts. Many in state and local governments worry about the threats associated with embedding Chinese technology in their infrastructure and government offices, but so far, there have been few legislative solutions. Where laws have been passed, they have mostly been tactical responses to an acute concern, rather than forward-looking attempts to protect themselves from these threats long-term.

For the most part, state legislation related to Chinese technology purchases largely follows the federal government's approach of prohibiting purchases from a pre-defined list of particularly egregious Chinese companies. This is not always the case, though. State legislatures appear to have a growing appetite for broader, more effective restrictions akin to the Texas law.

One such state is Georgia, where Governor Brian Kemp in May signed into law Senate Bill 346. The law amends Georgia's Official Code to prohibit any "company owned or operated by the Government of China" from bidding or submitting a proposal to provide goods or services for any state agency.³² State agencies must require companies submitting bids or proposals to certify that they are not owned or operated by China.³³ Any company found by the state's Department of Administrative Services to have submitted a false declaration will have its contract terminated and is subject to a hefty fine.³⁴

This law, in theory, applies to infrastructure projects as well as provision of technology, but the discussion around the bill made clear that it is focused mostly on the latter. Based on the media discourse around the bill, its greatest

focus is on preventing companies beholden to Beijing from providing technology products to state government offices, universities, and school districts.³⁵ State Representative Martin Momtahan (R–District 17), who sponsored the bill in the House, characterized it as being aimed at protecting the data of people and businesses from Chinese malware and intrusions.³⁶

Georgia’s new law is more fit-for-purpose than any law so far at the federal level. Rather than banning technology from a narrow list of companies, it targets all companies owned or operated by the Chinese government, requires companies seeking public contracts to certify that they qualify under this requirement, and lays out concrete penalties for false certifications. However, passing a law is just the first step. A law is only effective if enforced, as the above-mentioned revelations of federal agencies continuing to buy technology from a banned Chinese company show.

The greatest challenge this law will face may be its somewhat vague definitions. How, for example, will the state determine whether a company is “owned or operated by the Chinese government?” Most Chinese technology companies successful enough to be considered for a contract in the U.S. are at least partially Chinese-government owned. Does the prohibition only apply when the government has a commanding share of over 50 percent, or would even a fraction of a percentage make a company ineligible? Even more ambiguous is the definition of being operated by the Chinese government. Does this refer only to instances where a Chinese government body is directly involved in a company’s day-to-day operations, or would a few government contracts or a limited amount of investment by a CCP-linked guidance fund be sufficient evidence of the government’s interest in the firm? As explained, the Chinese government has leverage over all companies registered within its borders and can exert this leverage as desired, but any attempt to use this reasoning to justify a broad interpretation of such a vague term would be sure to face pushback.

These ambiguities will likely place a considerable burden on state agencies and regulators who review bids and proposals, and might even render the bill unenforceable. In recent years, Chinese technology companies have gone to great lengths to hire U.S. policy and legal experts, and they will not hesitate to challenge any action taken against them. The lawsuit that the Xiaomi Corporation—a private Chinese technology company with alleged ties to the Chinese government—filed against the U.S. government due to its inclusion on a blacklist of Chinese military companies is one example of how aggressive China’s technology companies can be in this area.³⁷ Xiaomi won the lawsuit, and its victory has emboldened other Chinese technology firms to take similar action.³⁸

Georgia's state legislature, like that of Texas, deserves credit for passing a law that goes beyond the negative list system favored by the federal government. This was not an easy task, as seen in the amount of opposition from some lawmakers. Opponents said the prohibition was too broad and called for a list of prohibited companies instead.³⁹ State Senator Jeff Mullis (R–District 53), who sponsored the bill, wisely resisted this narrative, responding that the law did not target Chinese companies per se, only those owned or operated by the Chinese government.⁴⁰ Still, the bill passed along partisan lines, with only four Democrats supporting the bill in the House and one in the Senate.⁴¹ The general unease of many, particularly on the left, about broad restrictions will pose a challenge to other states seeking to pass similar laws.

Additional Challenges. Even the broadest attempts to exclude Chinese government-controlled companies from state contracts will fail to fully protect state institutions if they cannot account for two additional challenges: (1) the risk of U.S. companies using China-provided technology to service government contracts, and (2) the fact that rules about government procurement do not apply to critical infrastructure that is not owned or controlled by the government.

In Florida, both the House and Senate introduced draft bills in 2021 aimed at tackling the first of these problems. The almost identically worded House Bill 439 and Senate Bill 810 proposed prohibiting entities of the Florida state government from purchasing goods that are made in China or for which 25 percent of the parts are produced in China.⁴² Had the bill passed, all new contracts with state entities would require an exit clause indicating that the contract would be terminated should the vendor be found to service it using products that would be excluded under the act.⁴³ However, both bills, which also sought to prohibit state entities from contracts with large U.S. technology firms, died in committee.

Most of the legislation enacted or being developed also fails to consider that some of the critical infrastructure at stake is privately owned and, thus, not subject to bans on government purchases. The Chinese billionaire's attempted wind farm project in Texas, discussed at the beginning of this section, is one example of this phenomenon. No government contract was involved; it was purely a private-sector endeavor, yet it had concrete implications for Texas' electrical grid.

Another example comes from Florida, where in November 2021, private high-speed rail operator Brightline announced the purchase of artificial-intelligence-based surveillance and security solutions from a company named Remark.⁴⁴ Although Remark is itself a U.S. company, it reported in March that "substantially all" of its inventory and equipment come from

an unnamed business partner in China.⁴⁵ Media cited U.S. Senator Marco Rubio (R-FL), who said that firms like Remark “should not be allowed anywhere near critical infrastructure in America,” emphasizing that private rail lines like Brightline’s are critical infrastructure.⁴⁶

So far, Texas is the only state to pass a law that prohibits investment of firms linked to foreign adversaries into critical infrastructure, regardless of whether any government contract is involved. While the Texas law might not go as far as that of Georgia in protecting government bodies from Chinese technology, it has more precise definitions. The law provides a list of adversarial countries and prohibits engagements that would enable access to critical infrastructure by any company that is headquartered in one of those countries, that is majority owned or controlled by citizens of one of the countries, or that is majority owned by a company that itself is majority owned or controlled by citizens of an adversarial country or directly controlled by the government of such a country.⁴⁷

As the legislatures of states around the country move to tackle the threats posed by involvement of Chinese companies in public contracts, they would be wise to follow the examples of Texas and Georgia in extending their ban beyond a negative list of predefined companies. They should, however, ensure that definitions are precise so that the ban can be enforced as envisioned. They should further ensure that any bans or prohibitions include not just Chinese companies but all companies using technology from China and apply not only to direct government contracts but to any projects that touch critical infrastructure or national security.

Threat 2: Beijing’s Infiltration of American Universities

In October 2017, University of Washington sophomore Vera Zhou was detained in China after being caught using a virtual private network (VPN) to access her homework.⁴⁸ During her nearly two-year ordeal of re-education followed by house arrest, she says the university did not provide any support or publicly advocate for her release. Nor did it offer much help when Zhou finally returned to the U.S. in September 2019. She found herself on a student loan default list due to her extended inability to enroll in classes and had to study at a community college for a year before she was able to re-enroll at the University of Washington.⁴⁹

What caused a respected U.S. academic institution to ignore one of its students who was wrongly detained by the Chinese regime? According to then-Secretary of State Mike Pompeo, the university was not willing to pressure China over the incident because it feared jeopardizing a “multi-million-dollar deal” with the country, a claim the university denies.⁵⁰

If Pompeo's explanation for the university's inaction is accurate, it is but one dramatic manifestation of China's rapidly outsized influence over America's institutions of higher learning. Over the past two decades, colleges and universities throughout the country have sought the financial benefits and prestige involved in cooperative endeavors with Chinese institutions and entities. This is partly due to China's status as the largest source of foreign students to the U.S., with over 317,000 enrolled in the 2020–2021 academic year, most of them paying full tuition.⁵¹ Not only are partnerships and research collaboration a source of funding for American institutions; universities also hope that their relationships in China will result in more Chinese students enrolling in their programs.

Sino–U.S. academic cooperation takes many forms. The best-known format is that of the notorious Confucius Institutes, which for years were embraced as a model of U.S.–Chinese cooperation in the field of education before the federal government began to warn universities that they were being used to spread CCP propaganda and facilitate espionage on U.S. campuses.⁵² On the surface, these warnings appear to have been effective—of the once 118 Confucius Institutes in the U.S., 104 have either closed or are in the process of closing.⁵³ A report released by the National Association of Scholars in June found, however, that over half of the 104 universities have continued to cooperate with the Chinese partners that funded their Confucius Institute and have replaced the institute with an identical program under a different name.⁵⁴

Confucius Institutes are just part of the problem. Universities throughout the 50 states receive gifts or grants from a diverse array of Chinese organizations, from government-controlled universities to private-sector technology firms to direct CCP entities. On the surface, there often does not appear to be anything unusual about these engagements. For a university to cooperate with or receive grants from individuals and organizations in foreign countries is common and not inherently risky. To engage with or receive money from a hostile regime or entities controlled by such a regime, however, is.

Despite the fact that two successive presidential Administrations have emphasized the unprecedented threat that China poses to the United States and the American way of life, Chinese money continues to penetrate top U.S. academic institutions. Counting only contributions that have been publicly disclosed, 115 U.S. institutions received a total of almost \$1 billion from China between 2013 and 2020.⁵⁵ The majority of this money goes to the most prestigious institutions. Harvard leads the pack with \$93.7 million in Chinese contributions during the period.⁵⁶ Stanford reportedly received

over \$64 million in anonymous donations from China between 2010 and 2021.⁵⁷ These are just two prominent examples.

The financial benefits that universities reap from China give Beijing considerable leverage. When China provides monetary support to any party, it expects something in return. In this case, Beijing hopes to tie the interests of American academic institutions to its own and use them to project Chinese soft power in the U.S., spread CCP propaganda, and obtain access—with or without the university’s knowledge—to sensitive research and intellectual property that will help to advance China’s technological development.⁵⁸

Financial grants and gifts from China have been cited as contributing to a “hostile” environment on university campuses, in which free speech that is unfriendly to CCP interests is increasingly not tolerated.⁵⁹ Chinese students who do not toe the party line on issues Beijing deems sensitive are routinely harassed by their compatriot peers.⁶⁰ An incident at a Cornell University lecture in March, in which dozens of Chinese students jeered and taunted a Uyghur student who talked about her brother’s detention in a Xinjiang re-education camp, is a case in point.⁶¹

That universities allow these actions to go largely unpunished is yet another manifestation of how dependent they have become on China. Even more troubling, a report by the Department of Education found that foreign donors influence universities’ teaching and research.⁶² A country as ideologically opposed to American values as China should never be allowed to influence academic teaching or research.

Federal Reporting Requirements Are Largely Unenforced. Federal action to regulate Chinese gifts and grants to U.S. institutions of higher learning has been mainly based on Section 117 of the Higher Education Act of 1965, which requires colleges and universities to report foreign gifts and contracts with total values of \$250,000 or more.⁶³ The law does not prohibit foreign gifts or contracts; it simply requires transparency of the sources of financial contributions. Legislative proposals have been introduced in both the House and the Senate to lower the reporting threshold and to require faculty members to also disclose their gifts from foreign sources, but there has not been any serious attempt to go beyond a disclosure-based approach.⁶⁴

Historically, Section 117 enforcement has been lax. The Trump Administration’s Secretary of Education Betsy DeVos attempted to reverse that trend, launching what was likely the biggest push to enforce the reporting requirement in history. The effort uncovered rampant underreporting across universities, to the tune of billions of dollars.⁶⁵ Some universities were found to anonymize their foreign contributions, while others, including

Yale, failed to report any foreign contributions for years at a time, despite significantly increasing their overseas operations.⁶⁶

A report by the Department of Education that showcases the trends uncovered during these investigations points out that this underreporting exists not because the reporting requirements are too burdensome or complex. To the contrary, the department found that

institutions manage to track every cent owed and paid by their students...[and] have sophisticated systems for managing, soliciting, and tracking contributions, grants, and contracts over time and from many thousands of sources, foreign and domestic...at a very high level of granularity.⁶⁷

Given these capabilities and the relatively clear nature of Section 117, the underreporting appears to be intentional.

The department's efforts to enforce the Section 117 requirements have stopped since Joe Biden became President in 2021. As a result, universities seem to have ceased reporting foreign contributions altogether, a clear violation of the law. American universities reported \$1.6 billion in foreign gifts between July 1, 2020, and January 20, 2021, the last half year of Donald Trump's presidency.⁶⁸ During the first year of the Biden Administration, however, the total amount of reported donations dropped to a meager \$4.3 million. In the words of Representative Mike Gallagher (R-WI), "The math doesn't add up. And making matters worse, it appears that the Biden administration has not launched even one new investigation into foreign funding in universities."⁶⁹

States Can Move Beyond Simple Reporting. Fortunately, Americans do not have to depend solely on the federal government to cleanse their universities of the CCP's influence. Most of the universities in the U.S. fall under the jurisdiction not only of the federal government, but of a state government as well. Many of these institutions receive funding from city or state governments, giving these subnational authorities even more potential leverage over them, should they decide to wield it. Where a state owns an institution, it has the unquestionable authority to refuse money from any source. Given the inability or unwillingness of the federal government to consistently monitor universities' financial ties to China, it is critical that states exercise their authority.

If states are to be more successful than their federal counterparts, they will have to, at the very least, ensure that institutions report their foreign contributions. This will require a degree of enforcement rarely seen at the federal level. To truly rid U.S. universities of the influence of foreign

adversaries, however, something more than simple transparency will be required.

State action on foreign grants and gifts into educational institutions is currently in a nascent stage. As of July 2022, only a handful of states had laws or proposals aimed at mitigating this issue.

Indiana passed House Bill 1549 in April 2021. The 39-page bill outlines large-scale amendments of the Indiana Code's provisions about education. Section 53 of the bill required the state commission for higher education to prepare three reports on or before November 1, 2021, based on information collected from each state educational institution. One of these is a report on "protection from foreign malfeasance."⁷⁰ This report was to outline what each institution in the state is doing to protect personal data, research, intellectual property, and controlled or classified information from appropriation or misuse by foreign governments or entities.⁷¹ Specifically, it required a description of each institution's export controls, "insider threat" programs, compliance with the federal government's foreign gift reporting requirements and prohibitions on contracting with certain foreign technology entities, and business engagements with foreign entities.⁷²

Another report required by this section centers on free speech on college campuses.⁷³ While not specifically presented as being related to the threat posed by foreign adversaries, the information required in this report—which focuses not only on courses and instructors, but also on peer interactions and campus groups—gets at the heart of one of the concerns that education officials have about China's infiltration of institutions of higher learning—the erosion of free speech.⁷⁴

Indiana's law is broader than the federal Section 117 requirements in that it not only requires a report on Section 117 compliance, but on multiple common forms of foreign malfeasance. State officials have worried about infiltration of their universities by foreign adversaries, in particular China, due to the large numbers of graduate students from China at Indiana University and Purdue University, both of which have special clearance to conduct research for the Department of Defense.⁷⁵ Their concerns played out in August 2020, when the FBI arrested a PhD student studying computer science at Indiana University. The student was charged with concealing his status as a Chinese military officer and is suspected of transferring research he did for the university on military radar technology to a Chinese university, which subsequently applied for a patent.⁷⁶ Incidents like this expose security loopholes in state universities which, if not addressed, could—and should—end the ability of these universities to continue their defense-related research.

On the other hand, Indiana’s law only requires reports; it mandates no further action. While the reports scrutinized universities’ compliance with federal mandates, they did not create higher standards than those federal mandates that have been shown to be lax. Furthermore, the reports had to be submitted by November 2021, and the section requiring these reports expired on July 1, 2022. However, the law mandates that these reports can include recommendations for further action by the General Assembly to address the problems identified in them, indicating that the section was likely intended as the first step in a more comprehensive process of cleansing academic institutions from inappropriate foreign influence.

State legislatures can learn from the expanded scope of this Indiana law, but for examples of more concrete action, they will need to look elsewhere. Florida, which passed a law aiming to eliminate foreign interference in state educational institutions just two months after Indiana’s governor signed HB 1549, is one such example.

House Bill 7017, which Florida Governor Ron DeSantis signed into law in June 2021, requires institutions to report twice a year on all foreign grants, gifts, or contracts with values of \$50,000 or more.⁷⁷ Undisclosed gifts are subject to a penalty of 105 percent of the gift’s value, and whistleblowers who report undisclosed gifts are entitled to a reward worth 25 percent of the penalty recovered.⁷⁸ The law also requires authorities to randomly inspect at least 5 percent of the gifts disclosed.⁷⁹

The Florida law goes beyond mere reporting, however. It also prohibits education institutions from participating in any agreement or accepting any grant from any entity controlled by a “foreign country of concern”—including China—that constrains the institution’s “freedom of contract,” allows the foreign country to direct or control the curriculum or values of the program, or promotes an agenda that is “detrimental to” the security of the U.S. or its residents.⁸⁰ These restrictions should, at least in theory, prevent institutions in the state from establishing Confucius Institute–like programs or from allowing donors to influence their curricula.

HB 7017 also takes the additional step of seeking to prevent illicit transfer of research to foreign adversaries. It requires universities that receive state funds and have research budgets of at least \$10 million to screen applicants for research-related employment. University administrators are required to establish a “research integrity office” to conduct these reviews.⁸¹ Universities are also required to establish an approval and monitoring program for employment-related international travel and “foreign activities” of faculty and research staff.⁸²

Finally, the legislation requires applicants for grants or contracts from the state or any of its political subdivisions to disclose current or prior “interest of, any contract with, or any grant or gift received from a foreign country of concern.”⁸³ This requirement applies to all grants or contracts worth \$50,000 or more that were received or in force any time in the previous five years.⁸⁴ Such a requirement would clearly apply to academic institutions that receive funding from the state.

The Florida law shows noticeable improvements over the federal legislation and is more actionable than that of Indiana. While its effectiveness will undoubtedly depend on its level of enforcement, it is worthy of emulation, and it appears that some states are already taking note. In March 2022, the Louisiana Senate introduced draft Senate Bill 227, which follows that of Florida almost word for word.⁸⁵ Louisiana’s bill remains under review, and there is no clearly defined timetable for its passage, but the fact that another state is taking the broad approach Florida took points to progress in this regard.

The experiences of Indiana, Florida, and Louisiana show that states are starting to take the risks associated with foreign influence of Chinese universities seriously. Each of the state laws reviewed in this section goes farther than the federal government in attempting to crack down on infiltration of their academic institutions by foreign adversaries. Though it is too early to gauge the effectiveness of these laws, they are positive signs.

Florida’s ban on contracts or grants that give foreign adversaries undue influence over academic programs and curricula is a particularly important addition. While it may be politically difficult to ban all gifts and grants from Chinese entities, surely those that are known to give a foreign adversary influence over how certain subjects are taught in premier institutions of higher learning should be off limits. Florida’s lawmakers certainly feel this way, as evidenced by the law’s unanimous passage in both houses of the state legislature.⁸⁶

Threat 3: Public Funds that Invest in Chinese Companies

The California Public Employees’ Retirement System (CalPERS) is the largest state-owned public pension fund in the country, with assets totaling over \$400 billion as of 2021.⁸⁷ As of June 2020, it had more than \$3 billion invested in Chinese companies, including over \$450 million in 14 companies that appear on investment blacklists due to ties with the Chinese military and at least another \$490 million in SOEs that, while not on any blacklists, are known to fund Beijing’s Belt and Road Initiative, a

key element of its drive for global influence.⁸⁸ The fund also invested \$6 million in an SOE that U.S. officials say builds illegal military installations in the South China Sea.⁸⁹

California Governor Gavin Newsom has received criticism for CalPERS' China investments. In 2021, *The Washington Free Beacon* lamented that he “has called on CalPERS...to divest from tobacco companies and companies linked to the Turkish government,” but appears to have no such qualms about the fund's investments in China.⁹⁰

CalPERS' investments in China far predate Newsom's term as governor, and California is not the only state that invests public funds in problematic Chinese companies. States throughout the country invest their public funds, including pension funds, in Chinese companies. The \$40 billion Pennsylvania State Employees' Retirement System has roughly 2 percent China exposure.⁹¹ For the \$156 billion Washington State Investment Board, that number is 3.5 percent.⁹² The Iowa Public Employees' Retirement System, which is smaller with \$35 billion in total investments, reported in 2021 that China accounted for a whopping 20 percent of its non-U.S. portfolio.⁹³

The Problem. The problem is not investment in Chinese companies per se. China has many dynamic businesses, and institutional investors have long viewed it as a high-growth market. The problem with official state funds carrying out large-scale investment in Chinese companies is two-fold—many Chinese companies are either financially risky investments, or they contribute to China's technological development and military modernization, which poses a threat to U.S. national security.

Chinese entities have always presented an element of financial risk due to their lack of transparency. This risk has grown in recent years amid excessive intervention by the government and regulators, as investors' large-scale losses due to the regulatory onslaught against China's Internet companies over the past 18 months has shown.⁹⁴ Many investors remain bullish on China, but a growing number question whether the risk now outweighs the opportunity. One senior manager of a multinational investment bank reported in September 2021 that many institutional investors are now rethinking their China strategies, as the crackdowns shattered their trust in the Chinese government and threw into question whether they can still reliably profit in the country.⁹⁵

This risk is amplified by the fact that the Chinese government withholds financial information about Chinese companies. This was one of the reasons why in 2020 the Trump Administration ordered the Federal Retirement Thrift Investment Board to suspend plans to invest in China, a decision that the Biden Administration has upheld. As one of the Trump Administration's

economic advisors explained, “China is an international outlier in not permitting U.S. regulators to access the audits of its companies listed on U.S. exchanges, which puts our investors at risk.”⁹⁶ While each investor, institutional or otherwise, has the right to determine his own risk tolerance, government pension funds must be held to a higher standard.

Even more important, many of the large Chinese companies that attract this investment have ties to the Chinese government and military. Some of these companies are already blacklisted by the federal government, meaning that no American person or entity should invest in them. Even more have ownership or business ties with problematic government or defense organizations in China that could be discovered through simple pre-investment due diligence but which, inexplicably, are not on any of the federal government lists. Private equity firms and major investment banks continue to invest heavily in these types of companies, often paying no heed to the blacklists, the violations of which often do not result in any punishment.⁹⁷

Private-sector investors should not invest in blacklisted companies with verifiable ties to the Chinese military. It is even more inappropriate for funds managed by state governments do so. In 2020, then-Secretary of State Pompeo warned that CalPERS is “invested in companies that supply the People’s Liberation Army (PLA) that puts our soldiers, sailors, Airmen and Marines at risk.”⁹⁸ The same can be said of any other public fund that invests in these companies.

States Are Responsible for Their Investments. State governments may be tempted to look to the federal government for a solution or at least for guidance on which Chinese companies they can trust with their public funds. This approach is ill-advised. State pension funds fall under the jurisdiction of state governments; the federal government lacks authority to regulate them. Furthermore, the federal government might not even be in a position to provide much guidance, given its own poor record in this area. Though federal authorities can and do release blacklists and sanctions lists, these lists are far from comprehensive and tend to be ineffective. While it would be a start for states to enforce blacklist compliance in the funds they manage, such action alone would be insufficient.

Few states have taken concrete action to reduce their funds’ financial exposure to China, but a growing number are taking small steps in that direction. In Florida, for example, the State Board of Administration temporarily placed new investments in China on hold, pending a risk assessment.⁹⁹ The Pennsylvania State Employees’ Retirement System has not directed any new investment money to China since April 2021.¹⁰⁰ Neither of these

states has announced plans to put a permanent stop to investments in China, let alone divest from those in which they currently have a position. A spokesman for the Pennsylvania fund specified that the fund has not even discussed reducing investments in China.¹⁰¹

Of those states that have taken concrete action, most have broadly followed the federal government's example of providing a list of companies for which investment is prohibited. For example, Illinois has a Prohibited Investment List, based on the requirements set out by the state's Public Pension Code.¹⁰² This is a relatively short list based on narrow categories, such as "Iran Restricted Companies," "Sudan Restricted Companies," and "Companies that Boycott Israel."¹⁰³ Some Chinese companies are included on this list, but they represent just a small fraction of problematic entities, as most Chinese defense contractors, for example, have not been caught violating sanctions against Iran or Sudan.

Iowa's legislature is in the process of reviewing a draft bill, Senate File 2271, that would require public funds to prepare a publicly available report of all direct or indirect holdings of "prohibited companies" within 180 days after the bill becomes law and would require them to divest from all direct holdings in such companies within 180 days of identifying them.¹⁰⁴ Direct holdings are defined as direct investment via purchases of publicly traded shares of the company, while indirect holdings are investments in the company via vehicles such as mutual funds.¹⁰⁵ The draft bill identifies prohibited companies as those owned or controlled by the Chinese government or military that the federal government has included in lists of companies in which U.S. citizens are prohibited from investing.¹⁰⁶

Iowa's draft bill is innovative in that it addresses the problem of indirect investment via actively managed funds. While it does not call on state funds to end these indirect investments, the requirement that they identify and report them is a much-needed step to introducing transparency to otherwise opaque investment vehicles that likely erode the effectiveness of other measures to clean up public investments. Many such funds invest heavily in China, and the vast quantities of investments make it difficult to single out those that might pose reputational or national security risks.

The difficulty of uncovering indirect investment into problematic Chinese entities via managed funds is likely the reason why the Iowa bill recommends that state funds hire a third party to prepare their prohibited company reports and also requires that the funds update their reports on a quarterly basis.¹⁰⁷ Whether they can successfully identify all such investments is another question. This is especially true in the case of mutual funds.

Blackrock in particular is infamous for its investments in Chinese

companies closely linked to the CCP and involved in surveillance and other unethical endeavors.¹⁰⁸ In December 2021, the nongovernmental organization Consumers' Research sent letters to the governors of the 10 states whose pension funds have the most investments in Blackrock funds, urging them to consider these risks “both from an ethical standpoint as well as the fiduciary responsibility owed to U.S. pension holders and retirees.”¹⁰⁹

Iowa's draft bill deserves praise for its attempt to bring to light indirect investments in problematic Chinese companies, but it has a significant weakness—it relies on prohibited investment lists prepared by the federal government. Such lists are, by nature, minimalist in scope. Any system based on a negative list will inevitably leave investors with the erroneous understanding that any company not on the list is approved for investment. The experiences of CalPERS and many other pension funds and private-sector institutional investors that find themselves invested in companies that are not named on these lists, despite having clear ties to the CCP and Chinese military, show that this is a dangerous message.

Federal and state bodies lack the capacity to vet every Chinese company and provide a definitive list of which companies are safe investments and which pose financial or national security threats. Even if a government or other party could create such a list, it would be impossible to stay up to date on every new company. Even those on a prohibited investment list can find ways to get around sanctions by, for example, establishing a new entity with no formal ownership ties to the prohibited entity. Nor is it possible to keep abreast of every development of every company to catch new contracts with China's defense establishment, significant investment by the Chinese government, or any number of risks that might emerge after the creation of the initial list.

Beyond Negative Lists. The New Hampshire House of Representatives this year introduced a draft bill that, if passed, will serve as an example of legislation that is not based on an ineffective negative list. House Bill 1257-FN would require the investment committee of the state's retirement system to “sell, redeem, divest, or withdraw” any investment in companies located in China.¹¹⁰ While the requirement does not apply to investments through actively managed funds, likely sparing the vast majority of particularly problematic investments, this succinct draft bill goes beyond the others identified in this *Special Report* in that it would apply to all companies located in China, rather than being limited to those that have already managed to end up on the federal government's radar as national security threats.

More state legislatures should consider laws that go beyond negative lists. They should debate alternative approaches, from banning China investments in certain high-risk sectors, such as technology, to prohibiting investment in Chinese companies across the board, subject to case-by-case exceptions. Each state should take the approach that best minimizes the adverse effects on pension funds without compromising national security or exposing pensioners' retirement money to overly risky investments. Investment barriers are not ideal, and state policymakers should ensure that trade and investment do not become politicized. Nevertheless, state pension funds differ from private investments. These are public funds, and the PRC is a geopolitical adversary. Fund managers should be more careful about the financial and national security risks to which they expose pensioners, and ultimately, their state governments.

One common criticism of attempts to divest wholesale from certain types of companies is that the difficulty of identifying all such investments places an undue burden on investors. This claim is not without merit. Each of the bills mentioned in this section requires action from fund managers. Iowa's likely requires the greatest commitment of time and resources, given the requirement to report prohibited indirect investments. States that are concerned about the strain on their resources can follow Iowa's example of hiring third-party consultants to help with these lists.

However, it is not unprecedented for a state to prohibit investments in a certain country or sector of the economy. As mentioned, California has ordered CalPERS to divest from tobacco companies and companies linked to the Turkish government. Other states, including New York, began requiring their public funds to divest from Russia after its invasion of Ukraine.¹¹¹ Admittedly, China's economy is 10 times the size of Russia's, and it attracts many times as much U.S. investment.¹¹² Some states might not find a wholesale exit from China investments to be possible or even warranted. Nevertheless, if states can divest from Turkey and Russia, they can at least make progress toward ending investment in problematic Chinese entities.

One way to minimize concerns, largely from the Left, that broader bans discriminate against Chinese companies—concerns that can impede the passage of legislation in many states—would be for any bans that are adopted to apply not only to China but to a list of “foreign adversaries.” Such lists are common in state and federal legislation, and usually include China, Russia, Iran, North Korea, Cuba, and Venezuela.

The effectiveness of any legislation depends on how well it is defined and on the cost of noncompliance. Any legislation will initially receive pushback from the funds it affects. Compliance will be burdensome, but the burden

is justified, given the risks. The burden will be just as high for regulators as for the funds they regulate, so states will have to ensure that regulators are sufficiently funded and staffed to ensure compliance.

Threat 4: Chinese Lobbying of State and Local Governments

Lobbying is the most intractable of the issues outlined in this *Special Report* and is one of the factors making it so hard to pass legislation to tackle the other issues. The Chinese government takes a comprehensive approach to lobbying, enticing or coercing not only formal lobbyists, but also businesses, individuals, and organizations, to do its bidding. Beijing's lobbying efforts are far more complex than the straightforward process that U.S. policymakers are used to and are so successful that Americans coaxed into lobbying on behalf of China's interests may not even realize that they are doing Beijing's bidding. These unwitting tools of Chinese influence often think they are serving the needs of a U.S. business or a sector of the U.S. economy.

Leading U.S. companies from Nike to Apple to Coca-Cola lobbied against the Uyghur Forced Labor Prevention Act, which, despite their efforts, was signed into law in December 2021.¹¹³ Although the Foreign Agents Registration Act (FARA) requires those lobbying on behalf of a foreign government to register their activities, none of these companies was required to do so. This is because, so far as they or the federal government were concerned, they were not lobbying on behalf of China. In the case of the Uyghur act, many of them were lobbying to protect their supply chains from disruption due to sanctions. More broadly, U.S. companies have lobbied against bills that are tough on China for fear of Chinese retaliation that might hurt their investments or cause them to lose market share in the country.¹¹⁴

As the above examples show, Beijing is so good at tying the interests of businesses and other parties to its own that it usually does not need to ask for this support. When it does, however, it makes no secret of what it expects and what is at stake. In November 2021, the Chinese embassy in Washington sent letters to U.S. corporate executives, instructing the recipients to persuade Members of Congress to drop or change certain bills deemed unfriendly to China.¹¹⁵ The letters explicitly called on the recipients to “play a positive role in urging members of Congress to...stop touting negative China-related bills [and to] delete negative provisions...before it is too late.”¹¹⁶

State Officials as “Useful Idiots.” Beijing does not only target businesses; it seeks to buy or coerce support from state governments as well.

In March 2020, while China was scrambling to overcome the international backlash caused by its early coverup of the coronavirus outbreak that turned into the global COVID-19 pandemic, diplomats in its consulate in Chicago emailed a Wisconsin state senator urging him to pass a resolution praising China's coronavirus response.¹¹⁷ The state senator was sensible enough to decline the request.

Not all state officials are so sensible however. Unbelievably, the New York state legislature has an active draft of legislation that would make October 1, the anniversary of the communist takeover of China, a state holiday called "China Day."¹¹⁸ That October 1 would be chosen for this holiday rather than lunar new year or any number of traditional holidays that are uncontroversial and celebrated by Chinese communities in the U.S. and throughout the world is striking. Analysts say this is a clear case of lobbying of state lawmakers by the Chinese consulate in New York and by United Front groups.¹¹⁹

This lobbying of state officials has implications not only for the states themselves, but for the nation as a whole. These implications were summed up by an unnamed U.S. official quoted in *Newsweek*: "Say you are governor of a state that has tremendous economic investments in China, or that has a good relationship with China exporting soybeans or grain. China can use that relationship" to entice or coerce the governor to lobby Washington to influence policy developments to benefit China.¹²⁰

Similar dynamics are at play in elections for national office. One prominent example is the pressure that presidential candidates are under, due to the electoral college system, to win certain states. Such dynamics were a constant subject of media speculation during the Trump Administration, as simmering trade tensions drove concerns that China would retaliate by disadvantaging agricultural sectors in key states like Iowa ahead of elections in 2018 and 2020.¹²¹

FARA Is Not Enough. The federal government is woefully under-equipped to confront such challenges. FARA, in existence since 1938, requires anyone lobbying on behalf of a foreign government to register as a foreign agent, but that is as far as it goes.¹²² It does not prohibit lobbying of U.S. policymakers and candidates by foreign powers, nor is there any serious effort to craft legislation that would do so.

Yet, despite the fact that FARA requires no action besides registration, both compliance and enforcement have historically been lax. Casino owner Steve Wynn, for example, has repeatedly refused to register as a foreign agent in connection to his unsuccessful 2017 effort to convince President Trump to cancel the visa of a Chinese businessman wanted by Beijing at the request of China's Ministry of Public Security.¹²³ This May, the Department

of Justice took the unusual step of suing Wynn, whom the department believes complied with the Chinese request in hopes that his businesses in China's Macau Special Administrative Region would benefit.¹²⁴

One reason for this lax enforcement is that it only applies to lobbying on behalf of "foreign principals," a term usually assumed to mean foreign governments and political parties, not companies.¹²⁵ Most Chinese entities do not register as foreign missions, so their lobbyists do not need to register under FARA. This is despite the outsized influence that the Chinese government has over Chinese businesses. While all lobbyists must register under the Lobbying Disclosure Act of 1995, they do not have to register as foreign agents.¹²⁶

Some efforts have been made to address this loophole. In May 2022, a bipartisan group of U.S. Senators led by Chuck Grassley (R-IA) introduced a draft bill to amend the Lobbying Disclosure Act. The amendment, titled the "Disclosing Foreign Influence in Lobbying Act," would require disclosures under the 1995 law to include the names and addresses of every foreign government entity or foreign political party that participates in "the direction, planning, supervision, or control" of any of the registrant's lobbying activities.¹²⁷

Grassley's bill does not go as far, though, as one introduced a year earlier by Senators Mike Gallagher (R-WI) and Tom Cotton (R-AR) titled the "Chinese Communist Party Influence Act." While the Disclosing Foreign Influence in Lobbying Act would only work insofar as a lobbyist knows that the Chinese government is involved in the lobbying efforts of the company he or she represents, the Gallagher and Cotton proposal would amend FARA to repeal exemptions from registration for agents representing Chinese businesses.¹²⁸ In other words, the proposed act essentially assumes, quite reasonably, that any Chinese company is, to some degree, a CCP operative and, thus should be treated as such with regard to lobbying disclosures.

While these proposals would likely improve the registration regime and increase transparency of Chinese lobbying in the U.S., they would be powerless to stop these pernicious activities from taking place. Nor is there any indication that federal authorities or lawmakers plan to take more concrete action, such as banning lobbying by companies controlled by foreign adversaries. A recent report by Heritage Foundation analysts Zack Smith, Thomas Jipping, and Paul Larkin shows that banning some forms of lobbying by Chinese entities is permissible under the U.S. Constitution and calls on the federal policy community to discuss such an approach.¹²⁹

State Lawmakers Must Be Vigilant Against Chinese Lobbying. As mentioned above, the Constitution gives the federal government exclusive

jurisdiction over foreign relations, and any attempt to restrict lobbying of foreign governments clearly falls under this category. This may be why there has been so little discussion of this challenge at the state level, despite Beijing's active interference and influence. Nevertheless, there is quite a bit that states can do, beyond passing laws and regulations, to protect their interests from Chinese lobbyists. A good first step would be for state governments to ensure that those lobbying them on China's behalf are registered as foreign agents as required by FARA and to report those who are not.

Disclosure and registration are insufficient, however, if the goal is to stop this lobbying of subnational governments by America's greatest strategic adversary.

One way some states are starting to explore as a constitutionally permissible method to reduce foreign influence over their government entities is to require state agencies and state political bodies to disclose gifts from foreign sources and to require entities applying for state grants or contracts to disclose conflicts of interest involving foreign countries. This is most clearly spelled out in Florida House Bill 7017. The bill, passed in 2021 and highlighted previously under "Threat 2: Beijing's Infiltration of American Universities," basically applies the same reporting requirements imposed on universities to Florida state agencies and political subdivisions.¹³⁰ The law also prohibits certain government organizations from entering into agreements with or receiving grants from "foreign countries of concern," roughly the same list of foreign adversaries that is explained under "Threat 3: Public Funds that Invest in Chinese Companies" in this *Special Report*.¹³¹

Florida's law is not related to lobbying per se, but it does address the broader issue of China using monetary gifts to buy favor or influence the policy of state governments. If states can push back against these practices when it comes to universities under their jurisdiction, it seems reasonable that they can also apply them to their own government bodies. How effective this law will be at decreasing Beijing's influence over Florida government bodies is yet to be seen.

More important than any law on lobbying will be vigilance by individual lawmakers and other officials of state governments. Even if the federal government were to introduce legislation banning lobbying by foreign governments and their agents, its effectiveness would be dampened by the discreet and unconventional ways in which Beijing conducts its lobbying. The best defense against this source of Chinese influence is, thus, for state legislators to follow the example of the Wisconsin state senator who saw a Chinese influence operation for what it was and refused to lend his voice to Beijing's preferred narrative.

Recommendations for State Policymakers

There are important lessons that can be derived from understanding China’s activities and the effectiveness—or lack thereof—of federal and state laws already on the books. The efforts of those states that have already begun to address these challenges can also serve as models for other states to explore.

Following are recommendations for state lawmakers to formulate laws that are reasonable, constitutional, and able to address the threats described here.

General Recommendations. State lawmakers should:

- **Chart their own course and avoid replicating approaches that consistently fail at the federal level.** For example, they should avoid the tendency to publish “negative lists” to govern which Chinese entities or individuals U.S. businesses or government organizations can interact with. These lists enable politicians to score political points by *appearing* to address national security threats, but they are too narrow to be effective.
- **Ensure that laws contain clear definitions.** Chinese companies have become expert at arguing and winning cases in U.S. courts, and they have the resources to hire the best American lawyers to represent them. If a Chinese company is disadvantaged by a state law, the likelihood that it will take the state government to court over the law’s interpretation will be much higher if definitions are not clear and concise.
- **Make legislation targeted and actionable.** State lawmakers should avoid legislation that calls for nothing more than registration or disclosure of threats and should ensure that each law directly targets the problem it is designed to address, rather than tip-toeing around the problem due to fear of upsetting Beijing or appearing xenophobic. All laws should have clear enforcement mechanisms and sufficient funding to ensure that they are enforced.
- **Make a reasonable attempt to avoid wording laws in ways that could be misconstrued as being xenophobic toward Chinese Americans.** Where necessary, rather than singling out China, laws can target a list of “foreign adversaries,” which should include Russia, Iran,

North Korea, Cuba, and Venezuela in addition to China. Doing so can pre-emptively disprove allegations that laws are passed for any reason other than to keep states and communities safe.

Recommendations for Addressing Chinese Infiltration of Critical Infrastructure and Government Offices. State lawmakers should:

- **Craft legislation to protect U.S. infrastructure and state government offices from Chinese infiltration.** Such legislation must be broad and include all Chinese companies and technologies that pose a threat to the U.S. Lawmakers must resist political pressure to limit bans and prohibitions to a pre-defined list of companies or technologies.
- **Ensure that all technology purchased or employed in government offices or by operators of critical infrastructure is free from the influence of foreign adversaries, such as China.** Government employees, appropriately, are required to undergo security clearances before accessing sensitive data, but in most cases, technology has an even greater capacity than human beings to infiltrate systems on behalf of foreign adversaries. State legislatures should thus establish mechanisms for vetting technology prior to its acquisition or use.
- **Ensure that bans and prohibitions target not only Chinese companies, but their technologies as well.** An American company should not be allowed to use Chinese technology to build critical infrastructure or service a state contract.
- **Ensure that whatever measures are developed apply not only to state contracts, but also to any projects touching critical infrastructure,** including but not limited to privately run transportation systems and energy firms.
- **Prohibit China and other foreign adversaries from bidding for state contracts.** State legislatures can debate the most appropriate form these measures take, but it seems reasonable to either prohibit companies from allowing foreign adversaries like China—or those that use technologies from these companies—from proposing or bidding for state contracts or infrastructure projects outright or to require that bids or proposals by foreign firms undergo a strict security clearance process prior to submission.

Recommendations for Stopping China’s Infiltration of Academic Institutions. State lawmakers should:

- **Take direct action to end funding of academic institutions by foreign adversaries.** A simple reporting regime will not suffice. Experience at the federal level shows that requirements to report foreign funding are difficult to enforce and, thus, ineffective.
- **Require detailed reports of these inflows—at the very least—if an outright ban on gifts and grants from foreign adversaries proves politically infeasible,** and follow Florida’s example in banning contributions and contracts that give the foreign adversary influence over teaching or research.

Recommendations for Addressing State Funds’ Investments in China. State lawmakers should:

- **Avoid using negative lists of companies that are banned for investment when crafting legislation aimed at preventing state funds from investing in China.** Such lists are never effective, and may even be counterproductive by giving the erroneous impression that any company not on the list is safe for investment.
- **Ban investments in China’s technology sector and other sectors that pose national security risks.** This is the most effective way to prevent state funds from investing in Chinese companies that threaten U.S. national security. States might opt for an even broader ban given the lack of transparency by Chinese companies and resulting risks to pensioners’ retirement funds.
- **Stop investing in managed funds (such as mutual funds) with exposure to problematic sectors or businesses in China.** If this is not politically feasible, then, at the very least, require state funds to pull out of direct investment in Chinese companies and sectors with national security implications.

Recommendations for Stopping Chinese Lobbying in States. State lawmakers should:

- **Exercise vigilance** and, at the very least, be aware of Beijing's lobbying practices within their jurisdictions and report any concerns or failures of lobbyists to register as foreign agents to the federal authorities.
- **Learn to recognize and resist Beijing's attempts to influence their policymaking.** They should recognize that Chinese lobbying efforts are often conducted via third parties and are hard to detect.

Conclusion

Infiltration by the Chinese government is a long-term fixture of U.S. state and local politics, and federal laws are often insufficient to address this threat. State legislatures must confront China's influence within their borders head on, developing laws that are both effective and constitutional.

This *Special Report* discussed some of the most common ways that Beijing influences political and social life at the state and local levels, and how some states are now addressing these actions. While this report did not provide definitive solutions to these challenges, it offered recommendations that state lawmakers and other officials throughout the country can use as a reference point as they debate these issues and formulate their own responses to these threats.

Endnotes

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