

To the office of U.S. Senator John Cornyn

Re: S 5024 (119th Congress), Stop PRC Economic Espionage Act of 2026 • Latest action (2026-07-16): Read twice and referred to the Committee on the Judiciary.

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Economic Espionage Adversarial Entity Designation Act of 2025

The measure, as described from the official record: To simplify the prosecution of economic espionage under 18 U.S.C. § 1831 by automatically treating any entity that is domiciled in a foreign adversary country as a 'foreign instrumentality' of that country, eliminating the need to prove a direct government connection in each case.

THE PROPOSAL

Section 1. Short Title. This Act may be cited as the 'Economic Espionage Adversarial Entity Designation Act of 2025'.

Section 2. Amendment to Title 18. Section 1831 of title 18, United States Code, is amended by adding after the definition of 'foreign instrumentality' a new subsection: (d) Rebuttable Presumption. In any prosecution under this section, if the entity is domiciled in a country designated as a foreign adversary under section 3 of the Export Control Reform Act of 2018 (50 U.S.C. 4812) or equivalent authority, there shall be a presumption that the entity is a foreign instrumentality. The defendant may rebut this presumption by a preponderance of the evidence showing that the entity is not owned or controlled by the government of that country and is not acting on behalf of that government. The court shall instruct the jury on this presumption.

Section 3. Designation Authority. The Attorney General, in consultation with the Secretary of State and the Director of National Intelligence, may by regulation designate specific entities domiciled in a foreign adversary country as foreign instrumentalities if the Attorney General finds that the entity is owned or controlled by that government or is acting on behalf of that government. Such designation shall be subject to judicial review under the Administrative Procedure Act. The Attorney General shall publish an annual list of all designations and the basis for each.

Section 4. Effective Date. This Act shall take effect 180 days after enactment. The amendments shall apply to offenses committed on or after the effective date. Section 5. Sunset. This Act shall expire 5 years after the effective date, unless reauthorized by Congress. Section 6. Funding. This Act shall be carried out using amounts otherwise appropriated to the Department of Justice. No additional funds are authorized.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Funding Source Existing Department of Justice appropriations; no new budget authority.

Funding Amount	Not required; implementation costs absorbed within current DOJ budget.
Sunset Years	5 years
Oversight Body	House and Senate Committees on the Judiciary: receive annual reports from the Attorney General listing all designations and the evidence supporting each, to be submitted by January 31 of each year.
Enforcement Mechanism	Criminal enforcement under existing 18 U.S.C. § 1831 penalties (fines and imprisonment up to 15 years). The rebuttable presumption applies in federal courts; the DOJ retains burden of proof beyond a reasonable doubt on all elements.
Effective Date	180 days after enactment

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 3 (Commerce Clause)
- Article I, Section 8, Clause 18 (Necessary and Proper Clause)
- Fifth Amendment (Due Process Clause)
- Tenth Amendment (reserved powers)

Concerns with the measure as written:

- Fifth Amendment Due Process: An irrebuttable presumption that all entities domiciled in an adversary country are government instrumentalities may deny the entity an opportunity to prove it is independent, violating procedural due process.
- First Amendment: The overbroad definition could chill legitimate commercial and expressive activities by entities that have no connection to the foreign government.
- Tenth Amendment: If the definition inadvertently covers state-owned or state-influenced entities within the U.S. that are domiciled in adversary countries, it could intrude on state sovereignty.
- Article I, Section 8 limits: While the economic espionage statute is generally within Congress's commerce and foreign affairs powers, an arbitrary presumption without a factual nexus may exceed the Necessary and Proper Clause.

WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

Democratic priorities: preserves due process by allowing a rebuttable presumption and judicial review of designations, preventing overbroad criminal liability. Requires annual reporting to Congress for transparency. Republican priorities: strengthens national security by making it easier to prosecute economic espionage from adversary countries without requiring direct proof of government control in every case; provides a clear statutory tool for prosecutors. The balance of a rebuttable presumption and designation authority satisfies both the rule-of-law concerns of Democrats and the enforcement needs of Republicans.

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