

**Alliance for American Manufacturing
Statement Submitted
For the United States House of Representatives
Select Committee on the Chinese Communist Party
September 19, 2024, Hearing Entitled
“How the CCP Uses the Law to Silence Critics and Enforce its Rule”**

The Alliance for American Manufacturing (AAM) appreciates the opportunity to submit this statement in contribution to today’s hearing entitled, “*How the CCP Uses the Law to Silence Critics and Enforce its Rule.*” AAM shares the Select Committee’s concern regarding the abuse of the United States’ legal system by the People’s Republic of China (PRC) and entities owned, controlled, supported, and/or championed by it. Moreover, we urge Congress to thoroughly examine how gaps in U.S. statutory safeguards intended to protect the exercise of First Amendment rights are being abused particularly in the context of public policy advocacy.

About AAM

AAM is a non-profit, non-partisan partnership formed in 2007 by some of America’s leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and create new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America’s economic and national security, as well as to providing good jobs for future generations. AAM achieves its mission through research, public education, advocacy, strategic communications, and coalition building around the issues that matter most to America’s manufacturers and workers.

Specious Defamation Claims Made by PRC-Backed Company Against AAM

In 2021 AAM faced unfounded civil claims in U.S. Federal Court from PRC-backed company BYD Ltd. for merely exercising its First Amendment rights and taking part in public policy debates. BYD is a PRC-based company that is, by its own estimation, “one of the world’s largest manufacturers and suppliers of electric vehicles...”¹ BYD’s revenue in 2021 was \$33 billion.² By contrast, AAM is a small non-profit organization that was forced to defend itself against specious defamation claims all the way to the United States Supreme Court. AAM’s experience exemplifies how powerful entities backed by the PRC can exploit the U.S. legal system to silence voices, hinder debate, and shape our public discourse.

Looking back, it’s not shocking that AAM became the subject of a lawsuit from a PRC champion. AAM is a leading voice in Washington, D.C. and in state capitals for the interests of American manufacturing and its workers. Since our inception, we have repeatedly sounded the alarm against China’s predatory economic, trade, and investment policies, which represent a clear and present danger to the American worker, our innovation base, and our national security.

In 2019, AAM played a leading role alongside a coalition of labor and industry stakeholders in advocating for the *Transportation Infrastructure Vehicle Security Act* (TIVSA) – enacted in

¹ <https://www.harderllp.com/wp-content/uploads/2020/04/Dkt-1-Complaint.pdf>

² “BYD had 211B RMB in revenue in 2021. This was US\$33B.” <https://www.nextbigfuture.com/2022/03/bydvstesla2021.html>

December 2019 as part of the *FY 2020 National Defense Authorization Act*. The TIVSA law restricts certain federal assistance administered by the Federal Transit Administration (FTA) from being used under certain circumstances to purchase rail cars, buses, and other forms of rolling stock from China's state-owned, backed, and controlled companies. Congress took this action because U.S. tax dollars in the form of federal financial assistance for public transportation infrastructure projects were flowing to Chinese firms with reported connections to China's Communist Party (CCP), the People's Liberation Army (PLA), and firms like Huawei.³ Firms like BYD were securing lucrative transit contracts in major U.S. cities, and their business models of importing near complete vehicles, components, and subcomponents from China to the United States for minor final assembly threatened to displace domestic supply chains. Moreover, serious national security concerns – which are even more widely adopted today among policymakers and the public – were being raised about the wisdom of U.S. tax dollars enabling, if not supporting, China's penetration into and operational control over critical U.S. infrastructure. The TIVSA law enjoyed strong bipartisan support in the Congress, was signed into law by President Trump, and is being implemented by the Biden administration.

The TIVSA law has impaired BYD's ability to supply its electric bus rolling stock vehicles into certain federally assisted transit infrastructure markets.

From AAM's vantage, what happened following the December 2019 enactment of TIVSA should serve as both a case study in China's U.S. lawfare strategies and a cautionary tale for American policymakers. As a non-profit organization exercising its constitutional right to communicate to policymakers and the public on issues relevant to domestic manufacturing interests, in March of 2020 AAM published a blog post on its website that discussed a report on forced labor produced by the Australian Strategic Policy Institute (ASPI). ASPI is an independent, non-partisan think tank established by the Australian Government that is devoted to strategic policy issues in the Indo-Pacific region. The ASPI report identified 82 different international companies with Uyghur forced labor in their supply chains. AAM's blog post included one reference to BYD as among the list of companies identified in that report. In May 2020, AAM published a separate and unrelated blog post that discussed BYD's \$1 billion contract to supply personal protective equipment (PPE) to the State of California and repeated well-supported information concerning the connection between BYD and the Chinese government. Both blog posts included relevant citations and hyperlinks to independent, third-party reports, reporting and sources.

Unhappy with the truthful, well-sourced statements, and in a transparent attempt to stifle AAM's First Amendment protected speech and effective public policy advocacy, BYD commenced its litigation strategy against AAM and several of its employees. On November 25, 2020, the day before Thanksgiving and less than a year after enactment of the TIVSA law, BYD filed suit in U.S. District Court alleging that AAM's statements about BYD were defamatory.

BYD's complaints and appeals were dismissed by each court at every venue, yet BYD had the financial resources to perpetuate its strategy undaunted by its dismissals. Notably, the District Court rejected BYD's claims that its status as a private company meant it was not controlled or influenced by, or connected to, the PRC:

³ See Radarlock papers about [BYD](#) and [CRRC](#) at:
<https://www.americanmanufacturing.org/wp-content/uploads/2020/03/BYD.pdf>
<https://www.railwayage.com/wp-content/uploads/2019/11/Raderlock-CRRC-Report-October-2019.pdf>

Even granting BYD's claim that it is a private company, the Court agrees that "[b]eing a private corporation . . . is not exclusive of, or a bar against, being 'under the control of' or being an 'arm of the state.'" Reply in Supp. of Defs.' Mot. to Dismiss ("Repl. Supp. Mot. Dismiss") at 15, ECF No. 25. Especially in China.⁴

BYD's meritless lawsuit dragged on for almost two years of dismissals and unsuccessful appeals. The case was dismissed *twice* by the Federal District Court for the District of Columbia, and that dismissal was affirmed by the appellate Federal Circuit Court (DC). The courts determined time and again that, even taking BYD's allegations to be true, BYD failed to plead facts that would establish AAM's statements were defamatory. Yet, the courts noted, in any case, that AAM's statements appeared to be well-supported by the reports cited.

In October of 2022, the Supreme Court definitively ended BYD's baseless litigation against AAM when it denied BYD's petition for review of the U.S. District and Circuit Courts' dismissal of its claims. The Supreme Court's denial of BYD's petition for certiorari affirmed the rulings of the U.S. District Court and the U.S. Court of Appeals for the District of Columbia that BYD failed to meet its pleading obligations in its libel suit.⁵

Congress Should Address Gaps in U.S. Statutory Safeguards

From AAM's vantage, the meritless defamation claims were very clearly intended to divert AAM's time and resources away from our organizational purpose, which involves taking part in public policy debates in support of the U.S. manufacturing sector and its workers. BYD's meritless suit against AAM was intended to stymie its exercise of its First Amendment rights and hinder its public policy advocacy activities. Put simply, BYD's lawsuit was intended to stifle AAM's voice in Washington, D.C.

Throughout the ordeal, AAM was left with little recourse in its defense of BYD's claims because U.S. Federal Courts have determined that the District of Columbia's municipal law intended to guard against such frivolous lawsuits did not apply to cases dismissed by Federal Courts pursuant to the Federal Civil Rules of Procedure. It is foolish to believe that the PRC's lawfare tactics are not purposefully exploiting such gaps in legal protections for harmless defendants. Congress must, therefore, act to prevent the U.S. legal system from being exploited by the PRC as a cudgel against law abiding U.S. citizens and constitutionally protected acts in the United States.

For example, as AAM's case demonstrates, State and municipal Anti-Strategic Lawsuits Against Public Participation Act (Anti-SLAPP) laws, particularly the District of Columbia's (D.C.), should be amended to provide relief to defendants confronting spurious defamation suits that land in Federal courts because of diversity jurisdiction. Because U.S. Federal courts have concluded that D.C.'s Anti-SLAPP law cannot be applied by Federal courts exercising diversity jurisdiction, public policy advocacy organizations in Washington, D.C. – like AAM – are vulnerable to

⁴ BYD Co. Ltd. v. Alliance for Am. Manuf. et al, No. 1:2020cv03458 - Document 27 (D.D.C. 2021)

⁵ In BYD Co. Ltd. v. Alliance for American Manufacturing et al, No. 1:20-cv-03458-TNM (D.D.C.) the District Court dismissed BYD's complaint alleging defamation for failure to plead actual malice (Aug. 6, 2021). Unbowed, BYD appealed this dismissal to the U.S. Circuit Court of Appeals, District of Columbia, which affirmed the judgment of the District Court on May 10, 2022. On August 8, 2022, Plaintiff filed a petition for certiorari with the United States Supreme Court, asking the Court to review the Court of Appeals' judgment and to clarify the pleading standard applicable to defamation claims. On October 11, 2022, the Supreme Court denied Plaintiff's petition for certiorari.

frivolous defamation suits that stifle free speech, stymie policy advocacy activities, and drain organizational resources.

Congress could amend D.C.'s Anti-SLAPP law to deter entities from using spurious litigation to stifle First Amendment protected speech, such as public policy advocacy, in the United States. Likewise, Congress could authorize a Federal Anti-SLAPP law applicable to cases filed in Federal courts. We applaud Congressman Raskin of Maryland for his work on this very issue and welcome the participation of the Select Committee in that process to ensure that issues examined at today's hearing are fully addressed.

AAM Continues its Public Policy Work Undeterred

Moving forward, AAM will continue to exercise its Constitutional right to advocate for the U.S. manufacturing sector and its workers. We will not be deterred from working to strengthen implementation of the TIVSA law itself, nor will we hesitate to identify additional actions that must be taken by Congress or the administration to limit the access of Chinese state-owned and -supported entities to taxpayer-backed infrastructure projects, especially when U.S. economic and national security are at stake.

Accordingly:

- AAM strongly urges Congress to close loopholes in the TIVSA law whereby entities covered by the funding restriction seek to "spin-off" U.S. operations as a means of evading the law.
- AAM was appreciative that Congress expanded application of the TIVSA funding restriction already applicable to the Federal Transit Administration (FTA) to also cover purchases of electric buses, railcars, and other rolling stock equipment using federal assistance administered by the Federal Aviation Authorization (FAA).
- Congress must remain vigilant against ongoing market penetration attempts by TIVSA-covered entities to access additional sources of federal assistance infrastructure funding. AAM is concerned that this is already occurring, or may soon occur, with respect to the Clean School Bus program, Diesel Emissions Reduction Act (DERA) opportunities, and the IRA-funded Clean Ports Program – all administered by the Environmental Protection Agency (EPA).

Meanwhile, the U.S. auto sector and its extensive domestic supply chain face a growing threat from Chinese competitors, buoyed by the Chinese state. The Chinese auto industry's growth has been exponential and now leads the world in EV production and sales by wide margins. China's auto champions – including mammoth entities like BYD, SAIC Motor, and battery maker CATL – appear to be expanding rapidly without consideration to supply and demand and basic market forces, so much that the Chinese auto sector is estimated to have a production overcapacity of millions of vehicles per year. That overcapacity is now facing outward, in search of new markets to soak up the largesse.

On February 23, 2024, the Alliance for American Manufacturing issued a [report](#) entitled, "[*On a Collision Course: China's Existential Threat to America's Auto Industry and its Route Through*](#)

Mexico,” that documents the threat of Chinese autos to U.S. national security and economic stability. The report states that “[t]he introduction of cheap Chinese autos – which are so inexpensive because they are backed with the power and funding of the Chinese government – to the American market could end up being an extinction-level event for the U.S. auto sector, whose centrality in the national economy is unimpeachable.”⁶

Congress must address this danger before it is too late. Our report outlines a series of policy recommendations to stymie the CCP’s penetration of the U.S. market with automobile imports from Chinese manufacturers. AAM welcomed President Biden’s expansion of existing Section 301 tariffs on Chinese automobiles, but additional action will be needed to address potential circumvention via Mexico, Southeast Asia, or other regions.

Conclusion

AAM will continue to exercise its protected right to advocate for America’s manufacturing base and its workers, but Congress must address abuse of the United States’ legal system by the PRC and entities championed by it. We urge Congress to thoroughly examine how gaps in U.S. statutory safeguards intended to protect the exercise of First Amendment rights are being abused particularly in the context of public policy advocacy.

Enclosed with this statement is a July 28, 2024, article published in *The Wire China*, entitled “[Libel Lawfare](#).”⁷ The article details AAM’s experience and efforts to create a federal anti-SLAPP statute applicable to federal courts.

AAM appreciates the Select Committee’s work on this matter.

⁶ <https://www.americanmanufacturing.org/research/on-a-collision-course-chinas-existential-threat-to-americas-auto-industry-and-its-route-through-mexico/>

⁷ <https://www.thewirechina.com/2024/07/28/libel-lawfare-chinese-companies-defamation-suit-anti-slapp/>