



STATE OF FLORIDA

**ASHLEY MOODY
ATTORNEY GENERAL**

May 14, 2020

The Honorable Eliot Engel
Chairman
House Committee on Foreign Affairs
2426 Rayburn House Office Building
Washington, DC 20515

The Honorable James Risch
Chairman
Senate Committee on Foreign Relations
483 Russell Senate Office Building
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Michael McCaul
Ranking Member
House Committee on Foreign Affairs
2001 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Menendez
Ranking Member
Senate Committee on Foreign Relations
528 Hart Senate Office Building
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
2468 Rayburn House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Re: Proposed Modification to the Foreign Sovereign Immunities Act

Dear Congressional leaders:

As the Attorney General of the State of Florida, I write to request that Congress take action to allow States and our citizens to hold China accountable for its actions and inactions in connection with COVID-19. I believe that there are relatively simple changes that can be made to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq.* (“FSIA”), to achieve this goal without undermining the federal government’s strong traditional interest in promoting a uniform, coherent foreign policy.

Over the past several months, states have been grievously harmed by the spread of COVID-19. Many of our citizens have suffered and died from this virus. Our economies were severely restricted to stop the spread. Businesses, big and small, have been devastated. Some will not reopen or survive. States will likely have to make tough budgetary choices for years to come because of this virus, which will continue the harm it has caused well beyond the reopening our economies.

As a State Attorney General, I play a unique role in protecting the citizens of Florida. Each State Attorney General has the right to bring actions on behalf of his or her residents in ways that individuals or traditional litigants cannot.¹ Historically, State Attorneys General have undertaken such actions whether it is in the context of the opioid epidemic or the tobacco litigation to obtain accountability on behalf of their states.

Based on statements by President Trump, Senators and members of Congress of both parties, news reports, and other publicly available information, it is clear that China undertook actions to mislead, misinform, and misdirect the world, resulting in the aggravation and exacerbation of the COVID-19 crisis. For example, as has been widely reported, officials silenced doctors who sounded early alarms about the infectiousness and existence of the virus. It is also alleged that China then spread misinformation about the virus at every point in time to deflect blame for its reckless inaction or wrongful misconduct. Had it made appropriate interventions or disclosures earlier to stop the spread of COVID-19, the spread of COVID-19 may have been limited, thereby, reducing the harm to our citizens.

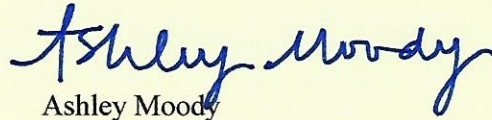
The Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq.* (“FSIA”), limits some legal actions against foreign governments. Currently, FSIA’s exceptions were drafted to cover primarily commercial harms or tortious actions that occur mainly in the United States. While analogies and arguments can be made between the misconduct described herein and the existing exceptions, modest changes to FSIA would clarify and support actions against China, if necessary, to seek redress.

Amending the FSIA in this manner is consistent with the historical trend in sovereign immunity law. In the last fifty years there has been a growing movement to restrict the availability and use of sovereign immunity as foreign government action more and more in this modern world impacts people and places far beyond a foreign country’s boundaries. From roughly 1812 until 1960, United States courts generally declined jurisdiction to hear disputes with foreign sovereigns. Instead, those courts deferred to the desires of the Executive Branch of the federal government. That expansive view of sovereign immunity narrowed dramatically as the effect of foreign government action evolved and its impact grew. In 1962, the United States State Department issued what is known as the “Tate Letter,” which suggested that sovereign immunity and its use should be restricted. This restrictive theory was later codified into the FSIA in 1976. Congress passed FSIA to promote uniformity in how cases involving foreign sovereign immunity were handled. Since 1976, the FSIA has been amended as foreign government action and its effects evolve. The most significant change was the enactment of a terrorism exception in 1996 in response to foreign states funding and sponsoring terrorist activity in other countries. Creating a new exception to the FSIA for actions specifying conduct like that by China continues that evolution and reflects the realities of globalization and commercialization of the world and the profound and dramatic effects that foreign government wrongful conduct can have beyond its borders.

¹ See, e.g., *Hawaii v. Standard Oil Co. of California*, 405 U.S. 251, 257 (1972) (antitrust actions for damages); *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439 (1945) (involving an antitrust action for injunctive relief); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907) (action to enjoin interstate air pollution); *Kansas v. Colorado*, 185 U.S. 125 (1902) (water diversion); *Louisiana v. Texas*, 176 U.S. 1 (1899) (action to prevent spread of communicable disease).

Any proposed legislation should be measured to have a limited impact on our diplomatic relations around the world and could include the ability for the United States to cause the dismissal of an action if the United States resolves a dispute with a foreign government. Such limitations achieve an appropriate balance between the need to provide a forum to hold bad actors accountable and the federal government's interest in having a coherent foreign policy. I respectfully ask that you consider such legislation to address the grievous harm inflicted on our states.

Sincerely,



Ashley Moody
Florida Attorney General

cc: Senator Marco Rubio
Senator Rick Scott
Congressman Matt Gaetz (FL- 1)
Congressman Neil Dunn (FL- 2)
Congressman Ted Yoho (FL-3)
Congressman John Rutherford (FL- 4)
Congressman Al Lawson (FL- 5)
Congressman Michael Waltz (FL-6)
Congresswoman Stephanie Murphy (FL- 7)
Congressman Bill Posey (FL- 8)
Congressman Darren Soto (FL- 9)
Congresswoman Val Demings (FL- 10)
Congressman Daniel Webster (FL- 11)
Congressman Gus Bilirakis (FL- 12)
Congressman Charlie Crist (FL- 13)
Congresswoman Kathy Castor (FL-14)
Congressman Ross Spano (FL- 15)
Congressman Vern Buchanan (FL- 16)
Congressman Greg Steube (FL- 17)
Congressman Brian Mast (FL- 18)
Congressman Francis Rooney (FL- 19)
Congressman Alcee Hastings (FL- 20)
Congresswoman Lois Frankel (FL- 21)
Congressman Ted Deutch (FL- 22)
Congresswoman Debbie Wasserman-Schultz (FL- 23)
Congresswoman Frederica Wilson (FL- 24)
Congressman Mario Diaz-Balart (FL- 25)
Congresswoman Debbie Mucarsel-Powell (FL- 26)
Congresswoman Donna Shalala (FL- 27)