To amend title 28, United States Code, to provide a civil action against a foreign state for deliberate concealment or distortion of information with respect to an international public health emergency, and for other purposes

IN THE SENATE OF THE UNITED STATES

Mr. COTTON introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 28, United States Code, to provide a civil action against a foreign state for deliberate concealment or distortion of information with respect to an international public health emergency, and for other purposes

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4This Act may be cited as the “Holding the Chinese
5Communist Party Accountable for Infecting Americans
6Act of 2020”.

7 SEC. 2. FINDINGS; PURPOSE.

8(a) FINDINGS.—Congress finds the following:
1 (1) The Communist Party of China covered up
2 the existence and downplayed the seriousness of the
3 coronavirus disease 2019 (COVID–19), at least as
4 early as December 2019.
5
6 (2) Chinese Government officials engaged in a
7 campaign to silence and delegitimize doctors, includ-
8 ing Dr. Li Wenliang, who were warning their col-
9 leagues and others about COVID–19.
10
11 (3) Chinese Government officials ordered the
12 destruction of laboratory samples and research re-
14
15 (4) Chinese Government officials have detained
16 or otherwise silenced researchers, journalists, and
17 citizens who attempted to share information that
18 could have proven unflattering to the response of the
19 Chinese Government to the COVID–19 outbreak.
20
21 (5) Chinese Government officials have expelled
22 United States journalists who were covering the
23 COVID–19 outbreak in China.
24
25 (6) Chinese Government officials have at-
COVID–19 infections and deaths in China, leading world health experts to make flawed analyses that severely underestimated the nature and seriousness of COVID–19.

(8) Academic studies have shown that, had appropriate interventions occurred to stop the spread of COVID–19 even just weeks earlier, the spread of COVID–19 would have been severely curtailed.

(9) The cover-up of COVID–19 by the Chinese Government—

(A) has caused significant death, injury, and economic harm in the United States and around the world; and

(B) is, at minimum, grossly negligent behavior causing significant injury.

(b) PURPOSE.—The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that are responsible for, or complicit in ordering, controlling, or otherwise directing acts intended to deliberately conceal or distort the existence or nature of COVID–19, if such acts are found to have likely contributed to the global COVID–19 pandemic.
SEC. 3. DEFINITION.

In this Act, the term “COVID–19” means the coronavirus disease 2019 (COVID–19).

SEC. 4. RESPONSIBILITY OF FOREIGN STATES FOR DELIBERATE CONCEALMENT OR DISTORTING INFORMATION ABOUT INTERNATIONAL PUBLIC HEALTH EMERGENCIES.

(a) IN GENERAL.—Chapter 97 of title 28, United States Code, is amended by inserting after section 1605B the following new section:

“§ 1605C. Responsibility of foreign states for deliberate concealment or distorting information about international public health emergencies of international concern

“(a) RESPONSIBILITY OF FOREIGN STATE.—A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury or death, or injury to property or economic interests, occurring in the United States and caused by—

“(1) the spread of COVID–19; and

“(2) a tortious act or acts, including acts intended to deliberately conceal or distort the existence or nature of COVID–19, of the foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office,
employment, or agency, regardless where the
tortious act or acts of the foreign state occurred.

“(b) EXCLUSIVE JURISDICTION.—

“(1) ORIGINAL JURISDICTION.—The United
States District Court for the Southern District of
New York, the United States District Court for the
Northern District of California, the United States
District Court for the Northern District of Illinois,
and the United States District Court for the South-
ern District of Texas shall have original and exclu-
sive jurisdiction over all actions in which a foreign
state is subject to the jurisdiction of a court of the
United States under this section.

“(2) APPELLATE JURISDICTION.—The United
States Court of Appeals for the Federal Circuit shall
have exclusive jurisdiction of an appeal from a final
decision of an action under this section.

“(c) STAY OF ACTIONS PENDING FOREIGN STATE
NEGOTIATIONS.—

“(1) INTERVENTION.—The Attorney General
may intervene in any action in which a foreign state
is subject to the jurisdiction of a court of the United
States under this section for the purpose of seeking
a stay of the civil action, in whole or in part.

“(2) STAY.—
“(A) In general.—A court of the United States shall stay a proceeding under this section against a foreign state or any official, employee, or agent of the foreign state, if the Secretary of State certifies that the United States is engaged in good faith discussions with the foreign state defendant, or any other defendant, with respect to the resolution of a claim against such a defendant.

“(B) Duration.—

“(i) In general.—A stay under this section may be granted for not more than 180 days.

“(ii) Extension.—

“(I) In general.—The Attorney General may petition the court for an extension of the stay for additional 180-day periods.

“(II) Recertification.—A court may grant an extension under subclause (I) if the Secretary of State recertifies that the United States remains engaged in good faith discussions with the foreign state defendant or any other defendant concerning the
resolution of a claim against the for-
eign state or any official, employee, or
agent of the foreign state, as to whom
a stay of claims is sought.

“(d) DISMISSAL OF ACTIONS FOLLOWING FOREIGN
STATE AGREEMENT.—

“(1) INTERVENTION.—The Attorney General
may intervene in any action in which a foreign state
is subject to the jurisdiction of a court of the United
States under this section for the purpose of seeking
the dismissal of the case.

“(2) DISMISSAL WITH PREJUDICE.—A court of
the United States may dismiss with prejudice a pro-
ceeding under this section against a foreign state or
any official, employee, or agent of the foreign state
if the Secretary of State certifies that the United
States and the foreign state have entered into an
agreement with respect to the resolution of a claim
against such a defendant, regardless of whether the
plaintiff is a party to such agreement or consents to
the dismissal.

“(e) RULE OF CONSTRUCTION.—A foreign state shall
not be subject to the jurisdiction of the courts of the
United States under this section on the basis of a tortious
act or acts that constitute mere negligence.
“(f) DEFINITION.—In this section, the term ‘COVID–19’ means the coronavirus disease 2019 (COVID–19).”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Table of sections.—The table of sections for chapter 97 of title 28, United States Code, is amended by inserting after the item relating to section 1605B the following:

“1605C. Responsibility of foreign states for deliberate concealment or distorting information about international public health emergencies of international concern.”.

(2) Conforming amendment.—Section 1605(g)(1)(A) of title 28, United States Code, is amended by striking “or section 1605B” and inserting “, section 1605B, or section 1605C”.

(e) Severability.—If any provision of this Act or any amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of the provisions and amendments to any other person not similarly situated or to other circumstances, shall not be affected by the holding.

(d) Applicability.—The amendments made by this section shall apply to a civil action—

(1) pending on, or commenced on or after, the date of enactment of this Act; and
(2)(A) arising out of an injury to a person from COVID–19 on or after January 1, 2020; or

(B) arising out of an injury to property or business during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID–19).