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Alert: The Bipartisan Innovation Act Language on "Malign Foreign Talent Recruitment Program Prohibition"

The Bipartisan Innovation Act is the bill merging the House's America COMPETES Act and the Senate's USICA. On April 6, 2022, the White House announced [a bipartisan and bicameral Congressional briefing](#) to discuss the urgent need to invest in made-in-America semiconductors as well as research and development that will protect our economic and national security.


One of our most serious and shared concerns is the broad definition of "Malign Foreign Government Talent Recruitment Program" that may be misinterpreted or misused for targeting Asian American and immigrant scientists. As the merged bill is headed into conference, Rep. Judy Chu, Chair of Congressional Asian Pacific American Caucus, has pledged that "[i]n this conference, I will work to ensure that the final legislation does not include broad xenophobic, anti-China rhetoric that could endanger the lives of Asian American communities here at home. I will also push back on any language that encourages the racial profiling of Asian Americans by our own government. I'm optimistic that the final package will increase American resiliency and I am hopeful that this process will set a tone for future policy debates to be focused on policy, not fear." Read more: <https://bit.ly/3j15gNI>.

The Bipartisan Innovation Act has this current language on Subtitle E—Malign Foreign Talent Recruitment Program Prohibition: <https://bit.ly/3KxdzBY>. Please take a look at this important provision as it will impact all scientists and academics when the bill becomes law. If you wish to share your thoughts, please send a message to contact@apajustice.org.

According to [Meritalk](#) on April 8, 2022, Democratic and Republican leaders in Congress named a whopping 107 members to a conference committee that will work out differences between the House and Senate versions of a competition and innovation bill (Bipartisan Innovation Act) that includes \$52 billion in semiconductor funding, funding for a new tech directorate at the National Science Foundation, and big boosts in Federal research and development funding. Altogether, the conference will consist of 26 senators – split evenly among Democrats and Republicans – and 81 representatives – with 50 Democrats and 31 Republicans. The conference members were announced April 7 by the offices of House Speaker [Nancy Pelosi](#), D-Calif.; House Minority

Leader [Kevin McCarthy](#), R-Calif.; Senate Majority Leader [Chuck Schumer](#), D-N.Y., and Senate Minority Leader [Mitch McConnell](#), R-Ky.

Southern Illinois University (SIU) Professor Mingqing Xiao - The Last Academic Indicted under the Now-defunct "China Initiative" Goes to Trial

<p>SIU Southern Illinois University CARBONDALE</p> <p>Faculty Senate 900 South Normal Avenue Woodsy Hall C-319 MC 4712 Carbondale, IL 62901 (618) 453-5244 F: (618) 453-5222</p> <p>Faculty Senate Resolution: Resolution to Support Professor Mingqing Xiao</p> <p>Whereas, The Faculty Senate Operating Paper Section 1.0-B-1a states: "The Faculty Senate is the body empowered to act as agent for the university faculty with delegated power to formulate board policies in regard to the educational functions of the university;" and</p> <p>Whereas, The Faculty Senate Operating Paper Section 1.0-B-1c states: "The Faculty Senate is charged with the responsibility for encouraging and facilitating active and effective faculty involvement in policy determination and decision-making particularly in all academic units at all levels within the university; and</p> <p>Whereas, The SIU Mission Statement reads: "SIU embraces a unique tradition of access and opportunity, inclusive excellence, innovation in research and creativity, and outstanding teaching focused on nurturing student success. As a nationally ranked public research university and regional economic catalyst, we create and exchange knowledge to shape future leaders, improve our communities, and transform lives;" and</p> <p>Whereas, Article VI, Section 1 of the Statutes of the Board of Trustees of Southern Illinois University reads: "Southern Illinois University shall operate under the following principles of academic freedom and responsibility. The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either individual teacher or the institution as a whole. [The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties]. The common good depends upon the free search for truth and its free exposition;" and</p> <p>Whereas, The Mission Statement of the SIU Office of Sponsored Projects Administration (OSPA) reads: "OSPA is the official University office through which all external Sponsored Proposals must be submitted and through which all Sponsored Awards must be accepted. The office facilitates, supports, and advances all research efforts within the institution and its research community. The office also signs off on all submitted proposals, including federal certifications and statements, and works on behalf of the SIU Board of Trustees, with the obligation to ensure compliance with state and federal rules and regulations governing all research activities. OSPA fosters and upholds the highest ethical standards for all research as part of its obligations and administration;" and</p> <p>Whereas, OSPA represents the university to review, approve, and submit grant proposals externally;" and</p> <p>Whereas, Mingqing Xiao is a full professor of Mathematics at Southern Illinois University, Carbondale; and</p> <p>Whereas, Professor Xiao is currently being prosecuted by the United States Department of Justice for allegedly failing to report his work with a Chinese University and fail failing to report that he received a grant from the National Science Foundation of China on a grant application to the National Science Foundation; and</p> <p>Whereas, Professor Xiao has been placed on administrative leave and is currently under disciplinary investigation by the University; therefore</p> <p>Resolved, The Faculty Senate calls on the University to immediately end its disciplinary investigation and restore Professor Xiao to regular, full-time status; and</p> <p>Resolved, The Faculty Senate recommends that the University provide material and legal support for Professor Xiao's defense against prosecution by the Department of Justice.</p> <p>12/14/2021 Fall</p> <p>Date of Resolution Approval: Semester: Digitally signed by Yueh-Ting Lee 12/15/2021</p> <p>Yueh-Ting Lee Date</p> <p>President, Faculty Senate</p> <p>01/15/2022</p>	
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Professor Xiao is the last academic to be indicted under the now-defunct "China Initiative." The ill-conceived counterintelligence program was created purportedly to stop China from spying and stealing our intellectual property, but it drifted to criminalizing innocent Chinese American academics for administrative issues such as disclosure of perfectly lawful activity. The "China Initiative" was shut down in February 2022 as the DOJ admitted that it was not "the right approach." However, the prosecution of Professor Xiao continues after the DOJ claimed to have reviewed all existing prosecutions and investigations without release of any detail. The trial of Professor Xiao is scheduled to start in the U.S. District Court for the Southern District of Illinois in East St. Louis, Illinois, on April 25, 2022.

On April 4, 2022, defense attorneys for Professor Xiao filed a motion to compel discovery of any material evidence in the possession, custody, or control of the DOJ's National Security Division. On December 14, 2021, the SIU Faculty Senate passed a resolution calling on the University to immediately end its disciplinary investigation and restore Professor Xiao to regular, full-time status. It also and recommended that the University provide material and legal support for Professor Xiao's defense against prosecution by the Department of Justice.

SIU Professor Edward Benyas has accepted the invitation to give an onsite report about the trial of Professor Xiao in the May 2 APA Justice monthly meeting.

Read more about the case of Professor Xiao at: https://bit.ly/APAJ_MingqingXiao

APS Webinar: In Their Own Words: The Stories of Xiaoxing Xi, Anming Hu, and Gang Chen

On April 18, 2022, the American Physical Society (APS) will host a webinar titled "**In their own words: the stories of Xiaoxing Xi, Anming Hu and Gang Chen.**" APA Justice is a co-sponsor of this event.

Concerns over research espionage by China are leading to hundreds of investigations into US researchers, nearly all of them of Chinese national origin. This webinar features three researchers, Xiaoxing Xi, Anming Hu and Gang Chen, who were arrested by the US Department of Justice. Professor Xiaoxing Xi was arrested in May 2015 and his case was closed in September 2015. Professor Anming Hu was arrested in February 2020 and was acquitted of all charges in September 2021; he was reinstated in his faculty position at the University of Tennessee, Knoxville in February 2022. Professor Gang Chen was arrested in January 2021 and charges were dropped in January 2022. APS has taken a strong stance on investigations of researchers; APS wrote to Attorney General Merrick Garland in support of Gang Chen and recently filed [an amicus brief](#) on behalf of Xiaoxing Xi.

Despite the happy outcomes of the cases against Xiaoxing Xi, Anming Hu and Gang Chen, and positive actions such as the [shuttering of the China Initiative](#) and recent [White House guidance](#) to aid researchers on key areas of research security, the damage wreaked by these cases is lasting, both for them and for many other scientists who watched their cases unfold and whose faith in the US justice system and in the promise of the US has been shaken.

Register to attend the webinar: <https://bit.ly/3utZHD0>

Supreme Court Makes It Easier to Sue Police over Wrongful Arrests

According to [the Washington Post](#) on April 4, 2022, the Supreme Court made it a little easier for those who contend they were wrongly arrested and charged to pursue malicious prosecution suits against police. The court, on a 6-to-3 vote, said the plaintiff does not need an acquittal or some statement of innocence from a judge or prosecutor to pursue a Fourth Amendment lawsuit under civil rights laws. The amendment protects against unlawful seizures. "A plaintiff need only show that his prosecution ended without a conviction," Justice Brett M. Kavanaugh wrote for the majority. That is only one of the hurdles a plaintiff must clear, though, and Kavanaugh characterized the ruling as a narrow one. "Requiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary to protect officers from unwarranted civil suits — among other things, officers are still protected by the requirement that

the plaintiff show the absence of probable cause and by qualified immunity,” he wrote.

The Institute for Justice (IJ) filed an amicus brief in this case: <https://bit.ly/37Cxi90>. IJ believes that the Supreme Court decision is a hugely important case that wipes out a big accountability loophole across the board. The decision will take one tool away from law enforcement officers who charge their victims with crimes to avoid liability. It will have an impact on federal claims, but it will be relatively limited at this stage. One of the pending cases before the Supreme Court, [Mohamud v. Weyker](#), addresses the issue of whether a constitutional remedy is available against federal officers for individual instances of law enforcement overreach in violation of the Fourth Amendment. Adam Shelton, IJ Fellow, explained its relevance to the appeal filed by Professor Xiaoxing Xi and his family to reinstate the damage claims and hold the FBI accountable in the [March 2022 APA Justice monthly meeting](#), along with ACLU and Advancing Justice | AAJC.

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