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# Showdown with Beijing looms as more US lawmakers back Hong Kong democracy bill

Robert Delaney and Mark Magnier

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US lawmakers rushed to back legislation meant to support Hong Kong's anti-government protesters this week, boosting the chances that the bills will become law.

Yet questions about the effectiveness of the legislation, which failed to clear congressional hurdles in earlier versions, have increased in tandem with the mounting endorsements.

Lawmakers from Texas, Arizona, Vermont and New Jersey co-sponsored the Hong Kong Human Rights and Democracy Act of 2019, bringing the number of supporters to 25 Democrats and Republicans in the House of Representatives.

Seven senators, including Texas Republican John Cornyn, have joined 10 who had already signed on to an identical bill in their chamber.

Sponsors and other advocates say the unrest that has rocked Hong Kong for more than three months – intermittently paralysing transport links, shutting street-level commerce and slashing local tourism revenue – will prompt a “yes” vote before the end of the current congressional session.

The recent spike in cosponsors of the bills, introduced by Republicans Marco Rubio of Florida in the Senate and Chris Smith of New Jersey in the House, “is a response to what’s been going on recently in Hong Kong”, said Michael Davis, a global fellow at the Woodrow Wilson International Centre in Washington, a top policy think tank.

Davis is also a former law professor at the University of Hong Kong.

Should House Speaker Nancy Pelosi and Senate Majority Leader Mitch McConnell bring the bills to votes in their chambers, they will need simple majorities for passage: 218 votes in the House and 51 votes in the Senate.

As an indication of the bipartisan nature of the bills’ support, a letter to congressional leaders written by Davis and posted on Change.org was signed by former Republican House speaker Newt Gingrich as well as a host of human rights activists, including Wei Jingsheng.

The Hong Kong Human Rights and Democracy Act is intended to act as an amendment to the US-Hong Kong Policy Act of 1992, which kept US business and other ties to the city intact after its 1997 handover from Britain to China, Davis said. The current law means, for example, that

Washington's punitive tariffs on imports from China do not apply to goods sent from Hong Kong.

The US-Hong Kong Policy Act is an "up or down" tool, based on the assessments of US consular officials in Hong Kong, Davis explained.

In contrast, the 2019 legislation, which needs to clear the foreign affairs committees of the two congressional chambers, "fills in the blanks" and requires more oversight from Washington all the way up to the Secretary of State, he said.

The renewed legislation "allows the targeting of individuals that have done things that undermine basic freedoms in Hong Kong" and requires reporting about specific incidents that throw the city's autonomy into question.

The bills would require reports on, for example, the disappearance in 2015 of five associates of a Causeway Bay bookstore that sold volumes banned in mainland China, Davis said.

Richard Bush, a senior fellow with the Brookings Institution and author of *Hong Kong in the Shadow of China: Living with the Leviathan*, pointed out that the 1992 act's requirement for an annual report on Hong Kong's continued autonomy expired in 2007.

After Hong Kong's "umbrella movement" in 2014, the requirement was placed in an annual appropriations bill, Bush said, "but that has to be done every year and it's not automatic. Requiring a report in this new legislation would negate the need for an annual mandate".

Notwithstanding its ability to monitor Hong Kong more closely, the legislation does not have unanimous support.

Many analysts express doubts whether such a law would influence Beijing's policies towards the Hong Kong special administrative region, making it far from clear whether the exercise would end up as anything more than a symbolic gesture.

The only unanimous viewpoint is that it would damage the already-frayed US-China relationship.

US Representative Rick Larsen, a Democrat from Washington state, said he does not currently favour the bill, partly because it is unclear that applying economic pressure would be the best or most effective way to alter China's behaviour.

A better initial step, he suggested, might be to issue clear, strong statements of support for the Hong Kong demonstrators and their quest for expanded democracy.

"The first thing we need to say is that the Hong Kong regime needs to be responsive" to concerns of the Hong Kong people, Larsen said at a United States Institute for Peace event.

"Pulling off the extradition bill that [Hong Kong Chief Executive Carrie Lam Cheng Yuet-ngor] did was a good thing, but it was way too late."

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“The question is whether we should treat Hong Kong more aggressively, negatively” because of China’s weak human rights record in the territory, said Larsen, a member of both the House Armed Services Committee and the bipartisan US-China Working Group.

“We do have a mechanism in place in the law, but we’re also not backing that up with resources and rhetoric, especially rhetoric,” he said.

In the past, the most effective human rights sanctions have been those that were applied multilaterally, with Iran as a prime example, said a former US Treasury Department official who did not want to be identified.

This bill, on the other hand, adopts a unilateral approach, he said. Whether one agrees with the Iran deal or not, the financial sanctions that many allies directed against Tehran, from the mid-2000s on, were a driving force in convincing Iran to negotiate, the official argued.

In this case, he said, the question was: “Is threatened action by Congress the best way to effect a positive change, or does it exacerbate the situation?”

“If I was in Congress, I’d be thinking extremely carefully about that.”

Factors worth considering, the former Treasury official said, are the collateral damage from the proposed law, including its potential to hurt the people of Hong Kong, undercut the local economy and harm American companies.

“Is it just that we want to feel better and send a message?” he said. “I’d be very careful.”

Even Davis, who wrote a letter in support of the two bills to Pelosi, allowed that their passage would anger the Chinese government.

“Whatever you do here, whether it’s a bill or a resolution, there’s going to be some pushback from Beijing, and a dismissal of US initiatives as interference in China’s internal affairs,” he said.

However, “when the Sino-British treaty was signed and the Basic Law was enacted, Beijing officials would go to the capitals of the world and ask those countries to support a distinct treatment for Hong Kong”.

The Sino-British Joint Declaration on Hong Kong is the agreement under which the two governments agreed China would reassume control of Hong Kong. The Basic Law is Hong Kong’s mini-constitution.

Too often, some analysts said, America has had an inflated view of its leverage and ability to shape global events, whether it has expressed that perspective through statements, threats or outrage. These pronouncements can undermine its intent and prove counterproductive.

“America’s perennial problem is that we think we have influence where we don’t, and I don’t think we have much here,” said Joshua Eisenman, a senior fellow for China studies with the American Foreign Policy Council, a conservative Washington think tank.

Eisenman said the Hong Kong Human Rights and Democracy Act was an important moral statement. “However, the flip side is that it also fuels the Communist Party’s false claims that the protests are driven by foreign ‘black hands,’” he said.

“While I strongly support the sentiment, we need to be realistic with ourselves about the influence we really have over Beijing's calculus in Hong Kong.”

A former top US official in Hong Kong also argued that the bill's machinery adds few, if any, tools to Washington's ability to respond to events in the protest-racked city.

“I don't have any particular problem with that bill, but I don't think it's necessarily going to solve the problems of Hong Kong,” said Kurt Tong, a partner at the Asia Group consultancy, who had been the US Consul General to Hong Kong and Macau before retiring in July.

Tong said the two main pillars of the act – sanctions and annual certification – are already covered under existing law.

Individuals seen as undercutting Hong Kong human rights can be sanctioned under the Magnitsky Act, a 2012 law available to punish human rights violators worldwide.

And on annual certification of Hong Kong's autonomy, the 1992 policy act already provides scope for the US president to pare or eliminate Hong Kong's special trade and financial status.

To support Hong Kong's autonomy and vitality, Tong said, it might be more constructive for Washington to consider allowing Hong Kong residents to enter the US without a visa and permitting air travellers to pre-clear US Customs and Immigration at Hong Kong's airport.

The US also might consider sending more of its officials to Hong Kong to highlight trade, the economy and the territory's role as a model of economic growth and rule of law for China, he said.

“The certification aspect might not add all that much,” Tong said. “However, as an expression of US concern, I think it's significant.”

Still others argued that the wisdom of the US assessing punitive tariffs on tens of billions of dollars of goods in a trade war against China was questionable enough, let alone potentially extending those same punitive steps to Hong Kong.

“I'm not even in favour of those measures against a totalitarian state, let alone Hong Kong,” said Ian Vasquez, a senior analyst at the Washington-based Cato Institute, a conservative think tank. “I don't think that's the way to spur political freedom.”

“I share the goal and support the demonstrators, but the United States has limited options beyond declaring their well-founded objections and outrage,” he said.

Inherent in any US statement that it will not tolerate the actions of a foreign state, he noted, is that it intends to back up its threat.

“It's not just a moral statement that's being made, but it implies that the United States will somehow use force to back up that statement,” Vasquez said. “You can't be bluffing about that.”

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