

Australian parliamentary staffer initiates legal challenge to “foreign interference” laws

Mike Head
10 August 2020

John Zhang, a part-time staff member of an Australian state Labor parliamentarian who was subjected to raids by the federal spy agency and police in June, last week applied to challenge the constitutional validity of the foreign interference legislation.

Whatever the outcome of the case, it will shed light on the profoundly anti-democratic implications of the laws, which seek to criminalise any political conduct that allegedly involves cooperation with an overseas or international organisation.

The documents filed by Zhang in the High Court, the country’s supreme court, point to the nebulous nature of the accusations hurled against him and Shaoquett Moselmane, the Labor MP. Moselmane was forced to seek indefinite leave from the New South Wales parliament after his home and office were raided.

Australian Security Intelligence Organisation (ASIO) and Australian Federal Police officers ransacked Zhang’s home and business as well. The raids triggered hysterical headlines, such as “ASIO chases Chinese agents in the House.”

Personally authorised by Attorney-General Christian Porter, the raids marked an escalation of the anti-China witch hunting being conducted by Australian governments and the corporate media, in line with the US Trump administration’s increasingly aggressive conflict with China.

The operation was the first major public use of the “foreign interference” laws that the Liberal-National government pushed through parliament—backed by the opposition Labor Party—in 2018. These laws were hailed by leading figures in the Washington political elite as setting a global precedent for targeting China’s supposed growing international influence.

Prime Minister Scott Morrison immediately supported the raids, underscoring the government’s direct involvement. Morrison effectively junked the

presumption of innocence and prejudiced any chance of a fair trial in the event of a “foreign interference” prosecution.

More than six weeks later, no charges have yet been laid against Moselmane and Zhang, who both deny being “Chinese agents.” The High Court documents show that the raids were based on allegations that Zhang used a private social media chat group with Moselmane to encourage the MP to advocate for Chinese state interests.

Invoking the vague language of the foreign interference laws, Zhang was accused of failing to disclose to Moselmane that he was acting “on behalf of, or in collaboration with” the “Chinese state and party apparatus.” This was said to include “the Ministry of State Security and the United Front Work Department.”

The Ministry of State Security supervises China’s intelligence and security agencies, roughly paralleling Australia’s Home Affairs Ministry. The United Front Work Department is alleged to be China’s main overseas propaganda and political influence organ, although its activities mirror the diplomatic and public relations activities conducted by many countries, including the US and Australia.

Zhang, an Australian citizen who emigrated from China in 1989, is specifically challenging the offence of “reckless foreign interference,” contained in section 92.3 of the federal Criminal Code, upon which the AFP search warrants were based. He argues that this offence violates the implied freedom of political communication in the Australian Constitution.

The AFP documents accused Zhang of engaging in conduct that was “covert or involves deception,” just because he used a private social media platform, as millions of people do. The AFP alleged that Zhang was “reckless” to the risk that his conduct “would influence the NSW branch of the Australian Labor Party’s policy positions and the views of members of the NSW

electorate on China.”

This offence, punishable by 15 years’ imprisonment, illustrates how far these laws can extend. The Criminal Code defines “reckless” as simply being “aware of a substantial risk” that the “result” (in this case “influence a political or governmental process”) would occur and knowing that it was “unjustifiable to take the risk.”

Zhang is also seeking to quash the raid search warrants for “lacking clarity” and making it unclear “whether the target was Mr Moselmane, the NSW branch of the ALP, or members of the electorate as a whole.”

Zhang is further claiming parliamentary privilege over items seized relating to his employment at parliament house, as is Moselmane, a member of the NSW Legislative Council, the state’s upper house.

No date has yet been set for the High Court to consider Zhang’s case. The 1901 Australian Constitution contains no bill of rights, or any other guarantee of free speech. During the 1990s, however, the High Court said the document implicitly prohibited laws that blocked political discussion within the framework of the current parliamentary order, unless the laws served a “legitimate end” of government.

Even that limited protection of free speech has been eviscerated in recent years. Last year, the High Court unanimously endorsed the sacking of a federal public servant for criticising—even anonymously—the country’s brutal refugee detention regime. Earlier High Court rulings allowed the banning of the distribution of leaflets in public places.

Whatever the High Court rules, the raids against Moselmane and Zhang are a direct threat to free speech. Moselmane, a Muslim MP who represents an area of Sydney with a large Chinese population, has hardly been “covert” in his views. He has made speeches, including in state parliament, calling into question Australia’s alignment behind the intensifying US confrontation with China, opposing the foreign interference laws and crediting China’s swift response to the COVID-19 pandemic with saving lives globally.

The pursuit of Moselmane and Zhang opens anyone up to potential prosecution who voices anti-war views, opposition to the foreign interference laws or criticism of the Trump administration’s attempts to divert attention from its homicidal response to the pandemic by accusing China of letting the coronavirus loose on the world.

The raids are a warning of a wartime-like atmosphere being whipped up by the political establishment and the corporate media to intimidate opponents of the

intensifying offensive against China by the US, which is seeking to maintain the global dominance it acquired through World War II.

As the WSWs and the Socialist Equality Party have warned, the foreign interference laws contain sweeping offences, ranging from treason to breaching official secrecy and cooperating with a “foreign” organisation. These provisions could be used to criminalise political dissent, including opposing Australian involvement in a catastrophic US-led war against China.

The Trump administration is insisting that the Australian government step up its involvement in the US confrontation with China, including by sending warships into the South China Sea, providing greater access to ports and military bases and strengthening the US-led “Five Eyes” worldwide surveillance and cyber-warfare network.

At the same time, Morrison’s government—like Trump’s—is seeking to divert, in a reactionary nationalist and anti-Chinese direction, the deepening working-class unrest over mass unemployment, dire financial stress and soaring social inequality, all magnified by the global COVID-19 disaster.

The Labor Party, which demanded Moselmane’s suspension from parliament, is equally committed to this course. It has been in the forefront of the anti-China offensive since 2010, when US “protected sources” in the party’s inner cabal executed a backroom coup to install Julia Gillard as prime minister. She aligned the country completely behind the Obama administration’s anti-China “pivot to Asia.”

Increasingly, Australia’s people have been placed in the vanguard of the conflict with Beijing. But concerns remain in Washington about deep anti-war sentiment, and the dependence of sections of Australia’s wealthy elite on exports to China. Hence the ratcheting up of the witch hunt to send a chilling message not to deviate from the pro-US commitment.



To contact the WSWs and the
Socialist Equality Party visit:

wsws.org/contact