

Huawei asks court to rule US security law unconstitutional

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In this Monday, May 20, 2019, photo, a man uses his smartphone outside a Huawei store in Beijing. Chinese tech giant Huawei has filed a motion in U.S. court challenging the constitutionality of a law that limits its sales of telecom equipment. (AP Photo/Ng Han Guan)

Fighting to maintain its access to major markets for next-generation

communications, Chinese tech giant Huawei is challenging the constitutionality of a 2018 U.S. law that bars it from selling telecoms equipment to U.S. government agencies and contractors.

In a motion filed late Tuesday in eastern Texas federal court, Huawei argues for summary judgment in the case in filed in March against the U.S. government. It says the law violates a constitutional prohibition against "trial by legislature" of individual entities.

Congress thus acted unconstitutionally when it "adjudicated Huawei's guilt and blacklisted it," the motion argues.

The motion comes as the U.S. and China are embroiled in a broader trade war in which both sides have imposed billions of dollars of punitive tariffs against each other's products. Chinese state media suggested Wednesday that the country's rich supply of rare earths—key elements for high-tech manufacturing—could be used as leverage against the U.S. in the dispute.

Huawei is the biggest global maker of network equipment and enjoys a lead in 5G, or fifth-generation, technology. It also is the No. 2 maker of smartphones. The Trump administration says the company can be legally compelled to spy on behalf of the Chinese government and is thus a threat to international cybersecurity.

"This decision threatens to harm our customers in over 170 countries, including more than 3 billion customers who use Huawei products and services around the world," Huawei's chief legal officer, Song Liuping, said at a news briefing Wednesday.

Huawei, whose U.S. headquarters is in Plano, Texas, said in Tuesday's motion that the U.S. national defense law that punishes it as an alleged agent of Beijing's ruling Communist Party also violates its rights by

presuming its guilt without a fair trial.

The summary judgment motion seeks to accelerate the legal process to give U.S. customers access to Huawei equipment sooner, Huawei said in a statement.

Song said the "state-sanctioned campaign" against the company will not improve cybersecurity.



In this Monday, May 20, 2019, photo, shoppers visit a Huawei store in Beijing. Chinese tech giant Huawei has filed a motion in U.S. court challenging the constitutionality of a law that limits its sales of telecom equipment. (AP Photo/Ng Han Guan)

"Politicians in the U.S. are using the strength of an entire nation to come after a private company," he said. "This is not normal."

But just because something might strike us as not quite fair or outright wrong doesn't necessarily make it unconstitutional, said Steven Schwinn, a professor at John Marshall Law School in Chicago.

He said Huawei's arguments, while strong on U.S. lawmakers' punitive intent, fall short constitutionally.

Schwinn and other legal scholars aren't sanguine about Huawei's chances.

"Given that this relates to national security we can expect the courts to be fairly deferential to the government and we ought to think of that as the thumb on the scale in favor of the government in all of these claims," he said.

The presiding judge has scheduled motions through Sept. 10 so Schwinn said it was unlikely the case would be dismissed before then.

Separately, the U.S. Commerce Department this month placed Huawei on its "Entity List," effectively barring U.S. companies from selling their technology to it and other Chinese firms without government approval. Huawei relies heavily on U.S. components, including computer chips, and about one-third of its suppliers are American.

The backdrop is China's longstanding huge trade surplus with the U.S. and complaints that Beijing and Chinese companies use unfair tactics to acquire advanced foreign technologies.

The most recent round of negotiations between Beijing and Washington ended earlier this month without an agreement after President Donald

Trump more than doubled duties on \$200 billion in Chinese products. China responded by raising tariffs of 5% to 25% on \$60 billion worth of American goods.



In this Monday, May 20, 2019, photo, a couple watch content on a smartphone near a Huawei store in Beijing. Chinese tech giant Huawei has filed a motion in U.S. court challenging the constitutionality of a law that limits its sales of telecom equipment. (AP Photo/Ng Han Guan)

At least three Chinese state media outlets on Wednesday suggested the country's supply of rare earths could be used as a weapon.

People's Daily, the official newspaper of the ruling Communist Party,

said in an editorial that the U.S. is a major buyer of China's rare earth materials and "highly dependent" on such resources. The editorial was titled "The U.S. should not underestimate China's ability to enact countermeasures."

Chinese President Xi Jinping visited rare earth-related businesses in southeastern Jiangxi province earlier this month. He called rare earths "an important strategic resource" while stressing the importance of owning independent core technologies, the state-run China Daily reported.

As a weapon, the nationalistic Global Times said, rare earths "convey that China will not succumb to U.S. pressure." If the U.S. does not exercise restraint, it will see that "China is far from running out of cards, and we have the will and determination to fight the U.S. to the end," the editorial said.

An official of China's top economic planning agency did not rule out using rare earths as a countermeasure against "the U.S.'s unwarranted suppression."

The actions against Huawei have already affected the company's U.S. partnerships. Google said it would continue to support existing Huawei smartphones, but future devices won't include its flagship apps and services, including maps, Gmail and search—a change that will likely make Huawei phones less appealing.

Song said the U.S. has not provided any evidence to show that Huawei is a security threat.

"There is no gun, no smoke, only speculation," he said, accusing the U.S. of setting a "dangerous precedent."

"Today it's telecoms and Huawei," he said. "Tomorrow it could be your industry, your company, your consumers."

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