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The Foreign Agents Registration Act: Its Structural Failures and the Case for Reform

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THE FOREIGN AGENTS REGISTRATION ACT: ITS STRUCTURAL FAILURES AND THE CASE FOR REFORM

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ABSTRACT

The Foreign Agents Registration Act (FARA) is one of the oldest national security statutes still in force in the United States. Enacted in 1938 amid growing concern about Nazi propaganda, FARA aims to promote transparency by enabling both the government and the public to identify foreign influence on U.S. policy and public opinion. The Act requires "agents" of "foreign principals" to register if they engage in covered activities within the United States. Since its passage, FARA has been amended twelve times, with the most comprehensive change occurring in 1966. However, for most of its history, FARA has been underenforced and treated largely as an administrative responsibility. From 1966 to 2015, just seven cases were brought under the Act.

In the wake of Russian interference in the 2016 election, FARA has increasingly become an enforcement priority for the Department of Justice across both Republican and Democratic administrations. However, the Act's antiquated framework undermines its legitimacy and usefulness as a national security enforcement tool. Its overbreadth and vagueness threaten civil society by sweeping in routine activities and enabling politically influenced enforcement. At the same time, structural limitations—including its requirement that conduct occur within the United States and the difficulty of proving agency relationships—render it ill-suited to address modern foreign digital misinformation. To better align FARA with its purpose, this paper argues that the core definitions of "agent," "foreign principal," and "political activities" should be narrowed. Additionally, it recommends that Congress enact a separate statute tailored to foreign digital misinformation, as FARA is unlikely to be effectively adapted to the evolving technological landscape.

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INTRODUCTION

The Foreign Agents Registration Act (FARA) is one of the oldest national security statutes still in force in the United States.[1] Enacted in 1938 against the backdrop of mounting concern over Nazi propaganda within the United States, FARA was designed to promote transparency in foreign influence.[2] It required individuals disseminating propaganda to disclose information about their clients, contractual terms, and activities when working on behalf of a foreign government or principal.[3] Importantly, Congress did not prohibit foreign advocacy, but tried to ensure that Americans could identify when foreign governments were seeking to shape public opinion or government policy.

Post World War II, FARA has been used chiefly to register individuals engaged in lobbying and other political activities in the United States. It has been amended twelve times, with the last significant changes occurring in 1966.[4] Under the Act, "agents" of "foreign principals" engaged in covered activities, like domestic lobbying or advocacy, must register with the FARA Unit of the Department of Justice (DOJ).[5] The registration requirements are onerous,[6] and foreign agents must periodically update their status with DOJ,[7] which compiles a list of all foreign agents and foreign principals and makes them publicly available.[8] While FARA compels registration and disclosure, it does not ban any particular activity.[9] Congress's theory was that the "spotlight of pitiless publicity [would] serve as a deterrent to the spread of pernicious propaganda."[10] However, the comprehensive reporting requirements and criminal penalties, including fines up to

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[1] Selina Polisi, *How Weak FARA Enforcement Lets Global Corporations and Foreign States Shape U.S. Policy*, INT'L BUS. DIGEST (Nov. 17, 2025), https://www.hofstrajibl.org/2025/11/how-weak-fara-enforcement-lets-global-corporations-and-foreign-states-shape-u-s-policy/.

[2] JACOB R. STRAUS, CONG. RESEARCH SERV., IF10499, FOREIGN AGENTS REGISTRATION ACT: AN OVERVIEW (2024), https://www.congress.gov/crs-product/IF10499.

[3] *Id*.

[4] *Statutory Chronology*, CAPLIN & DRYSDALE, https://www.fara.us/resources-statutory (last visited Nov. 28, 2025).

[5] 22 U.S.C. § 611.

[6] 22 U.S.C. § 612 (providing the comprehensive statutory requirements for a complete registration statement); *see also* 22 U.S.C. § 614 (prohibiting agents of foreign principals from disseminating informational materials without a "conspicuous statement" identifying their foreign-principal relationship).

[7] 22 U.S.C. § 612(b) (requiring "every agent of a foreign principal who has filed a registration statement" to file a supplemental statement "within thirty days after the expiration of each period of six months succeeding such filing.").

[8] *See Foreign Agents Registration Act – Browse Filings*, United States Department of Justice**,** https://efile.fara.gov/ords/fara/f?p=1381:1:13421584712053 (last visited Nov. 28 2025) (providing a lists of both active and terminated foreign agents and foreign principals; the lists may be sorted by date range, country or location, and the type of covered activity).

[9] H.R. REP. NO. 75-1381, at 2–3 (1937) ("Such propaganda is not prohibited under the proposed bill. The purpose of this bill is to make available to the American public, the sources that promote and pay for the spreading of such foreign propaganda . . . The passage of this bill will force propaganda agents representing foreign agencies to come out 'in the open' in their activities, or subject themselves to the penalties.").

[10] *Id*. at 2.

$250,000 or up to five years of imprisonment, serve as major additional deterrents.[11]

Starting in 2016, FARA became a top enforcement priority for DOJ after being overlooked for decades. However, its use has demonstrated a sweeping scope and an inability to serve as an effective national security enforcement mechanism. More than eight decades after its passage, the statute's text and framework have failed to keep pace with the complexities of modern foreign engagement. The Act now functions as a vague, overbroad, and antiquated regime whose enforcement endangers civil society and fails to address foreign digital misinformation. While the recent increase in enforcement activity is a positive sign that DOJ is combating foreign interference, the statute's current framework risks doing more harm than good. Congress should significantly narrow FARA and clarify its core definitions to preserve the statute and safeguard civil society, while separately enacting a modern law tailored to digital misinformation.

Section I of this paper describes the evolution of the statute. Section II provides an overview of the current statute. Next, Section III discusses how the statute is overbroad and vague. Section IV analyzes the danger the statute poses to civil society. Section V examines FARA's shortcomings regarding digital information. Finally, Section VI proposes potential reform efforts.

I. EVOLUTION OF THE FOREIGN AGENTS REGISTRATION ACT

A. Legislative History

In 1937, the House Committee on the Judiciary described the purpose of FARA:

> Incontrovertible evidence has been submitted to prove that there are many persons in the United States representing foreign governments or foreign political groups, who are supplied by such foreign agencies with funds and other materials to foster un-American activities, and to influence the external and internal policies of this country, thereby violating both the letter and the spirit of international law. . . .
>
> As a result of such evidence, this bill was introduced, the purpose of which is to require all persons who are in the United States for political propaganda purposes . . . to register with the State Department and to supply information about their political propaganda activities, their employers, and the terms of their contracts. This required registration will publicize the nature of subversive or other similar activities . . . so that the American people may know

[11] 22 U.S.C. § 618(a)(2); 18 U.S.C. § 3571.

> those who are engaged in this country by foreign agencies to spread doctrines alien to our democratic form of government, or propaganda for the purpose of influencing American public opinion on a political question.[12]

After World War II, Nazi propaganda ceased to be a major concern for DOJ. Consequently, FARA mostly faded into the background, with only nine cases brought in the early 1960s.[13] However, another use for FARA emerged. During the 1960s, while Congress was debating amendments to the Sugar Act, it came under considerable pressure from foreign lobbyists seeking to influence the legislation.[14] Accordingly, Congress sought measures to curb unregulated foreign advocacy.[15] It ultimately turned to FARA, aiming to shift the statute's focus "from its original emphasis on subversive activity to an emphasis on protecting government decision making from foreign influence."[16]

The 1966 amendments expanded definitions for the terms "foreign principal" and "agent of a foreign principal," and added new definitions for "political activities" and "political consultants"; clarified exemptions for individuals and companies; outlined registration deadlines and required disclosures; revised labeling and filing requirements for political propaganda; and gave the Attorney General enforcement authority.[17]

Senator J. William Fulbright, then chairman of the Senate Foreign Relations Committee, said:

> The basic purpose of the bill is to update the Foreign Agents Registration Act to reflect the changes in the nature of the U.S. role in world affairs today. A quarter of a century ago, the original targets of this act were the subversive agent and propagandist. But as our interests through the world have multiplied, the efforts of foreign and domestic politics have become correspondingly greater and more subtle. The place of the old foreign agent has been taken by the professional lobbyists and public opinion manipulators whose object is not [to] subvert the Government but to influence its politics to the

[12] H.R. REP. NO. 75-1381, at 1–2.
[13] JACOB R. STRAUS, CONG. RESEARCH. SERV., R46435, FOREIGN AGENTS REGISTRATION ACT (FARA): BACKGROUND AND ISSUES FOR CONGRESS (2020), https://www.congress.gov/crs-product/R46435.
[14] Daniel M. Berman & Robert A. Heineman, *Lobbying by Foreign Governments on the Sugar Act Amendments of 1962*, 28 LAW & CONTEMP. PROBS. 416, 416 (stating that "lobbying by representatives of foreign governments reached something of an all-time high in intensity" when Congress was considering the Sugar Act Amendments of 1962).
[15] Straus, *supra* note 13.
[16] Joshua R. Fattal, *FARA on Facebook: Modernizing the Foreign Agents Registration Act to Address Propagandists on Social Media*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 903, 911(2019).
[17] Straus, *supra* note 13.

> satisfaction of his client. The trench coat has been replaced by the gray flannel suit.[18]

On June 30, 1966, President Lyndon Johnson signed the amendment into law.[19]

In 1995, Congress amended FARA once more with the passage of the Lobbying Disclosure Act (LDA).[20] The LDA and FARA are distinguishable in that covered activity under FARA must be carried out on behalf of a foreign principal, whereas the LDA governs domestic lobbying efforts.[21] The amendment permits lobbyists representing commercial, non-governmental entities to register under the LDA rather than under FARA if they are not representing a foreign government or political party.[22] This has allowed most lobbyists working on behalf of foreign commercial entities to avoid FARA registration, which has more burdensome registration and reporting requirements.[23] Moreover, Congress removed the term "political propaganda" from FARA and substituted it with the undefined term "informational materials."[24] Whenever a foreign agent disseminates "informational materials" on behalf of a foreign principal, it must include a "conspicuous statement" which identifies the agent and foreign principal, and advises that DOJ can provide additional information.[25] This requirement applies to "*all* informational materials disseminated by registered foreign agents, including those posted on social media or sent by text message."[26]

B. Dormancy and Revival

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[18] 111 Cong. Rec. 6984 (1965) (statement of Sen. James Fulbright).

[19] 111 Cong. Rec. 15066 (1966) (including a message from President Johnson that he had approved and signed the FARA amendment into law).

[20] Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691. Despite its focus on domestic lobbying, the LDA included four FARA amendments.

[21] Murad Hussain, *W(h)ither FARA's "Other Activities" Exemption?: Thoughts on the Past, Present, and Future of 22 U.S.C. § 613(d)(2)*, ARNOLD & PORTER (Aug 12. 2024), https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2024/08/faras-other-activities-exemption (explaining that the LDA "shifted lobbying registration obligations for private foreign commercial entities out of FARA and into the LDA, but left FARA as the registration framework for lobbying on behalf of foreign governments.").

[22] 22 U.S.C. § 613(h). Furthermore, if the representation is not on behalf of a foreign government or political party, but a foreign government or political party is the principal beneficiary, the LDA exemption does not apply.

[23] Aaron Futerman, Adam S. Hickey, Mickey Leibner, *The US Foreign Agents Registration Act (FARA): Key Issues to Watch in 2025*, MAYER BROWN (Dec. 17, 2024), https://www.mayerbrown.com/en/insights/publications/2024/12/the-us-foreign-agents-registration-act-fara-key-issues-to-watch-in-2025.

[24] 22 U.S.C. § 614; Fattal, *supra* note 16, at 911 (explaining that Congress thought that "the term 'propaganda' was an unnecessary remnant of the original law, and found that the phrase 'informational materials' better reflected the shift in the Act's focus towards public disclosure.").

[25] *Frequently Asked Questions: What Should the Conspicuous Statement Say?*, U.S. DEP'T OF JUST., https://www.justice.gov/nsd-fara/frequently-asked-questions (last visited *Nov. 25, 2025).*

[26] Straus, *supra* note 13 (adding that the "label can be on a web home page, a running header or footer on a website, or on an 'About Us' page.").

FARA's revival in the wake of Russia's meddling in the 2016 election[27] has brought increased scrutiny to a statute once described by DOJ as "a *malum prohibitum* enactment not well known outside the legal/lobbying community."[28] Between FARA's last comprehensive amendment in 1966 and 2015, DOJ brought just seven prosecutions under FARA.[29] Of them, only one resulted in a conviction at trial, two pleaded guilty to FARA charges, two were convicted of non-FARA charges, and two had their cases dismissed.[30] However, the statute's under-enforcement was not unknown. In fact, from 1974 to 2014, six Government Accountability Office (GAO) and NGO reports flagged a consistent pattern of under-enforcement.[31] The statute's limited enforcement reflects structural and bureaucratic constraints: the FARA unit is understaffed and underfunded, and relies on voluntary compliance.[32] According to a 2016 report, the FARA unit often investigates potential violations only after reading about them in the media.[33] FARA's chronic under-enforcement led one journalist to speculate that "if you're going to indict and prosecute lobbyists for failing to disclose their activities, roughly half of Washington would be under arrest."[34] Indeed, in 1990, GAO found that only about half of all foreign lobbyists required to register under FARA actually did so.[35]

After decades of relative dormancy, the investigation into Russian interference in the 2016 election brought FARA back into focus as a key tool for countering and exposing foreign influence. Seven people were charged by DOJ

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[27] Senator Chuck Grassley, *The Foreign Influence We're Ignoring*, WALL ST. J. (June 9, 2019), https://www.wsj.com/articles/the-foreign-influence-were-ignoring (describing Special Counsel Mueller's investigation as "captivat[ing]" Washington and noting that FARA ought to be used to weed out "surreptitious foreign influence in our political discourse.")

[28] U.S. Dep't of Just., U.S. Att'ys' Manual § 2062, https://www.justice.gov/archives/usam/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement (last visited Nov. 15, 2025) (archived page). The term *malum prohibitum* is a Latin term that refers to an act deemed unlawful because the law says so, not because it is inherently evil.

[29] OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT (2016) at i, https://web.archive.org/web/20250902103208/https:/oig.justice.gov/reports/2016/a1624.pdf.

[30] *Id*.

[31] *Id.* at 27–28 (identifying six reports from 1974, 1980, 1990, 2008, and two from 2014 which commonly found the following issues: "timeliness and adequacy of information submitted on behalf of registrants, not making full use of its authority to enforce the act and related regulations, efforts to have civil investigative demand authority (CID) passed denied, and the lack of tools required and necessary to enforce the statue properly.").

[32] Ken Silverstein, *I've Covered Foreign Lobbying for 20 Years and I'm Amazed Manafort Got Busted*, POLITICO MAG. (Oct 30, 2017), https://www.politico.com/magazine/story/2017/10/30/paul-manafort-indictment-foreign-lobbying-russia-probe-215764/.

[33] Joseph J. Schatz and Benjamin Oreskes, *Want to be a 'foreign agent'? Serve in Congress first*, POLITICO (Oct. 2, 2016, 7:30 AM), https://www.politico.com/story/2016/10/congress-foreign-lobbying-228982.

[34] Silverstein, *supra* note 32.

[35] Ken Silverstein, *Washington Lobbyists For Hire And The US As The Avatar Of Human Rights: An Undercover Report*, ASIA-PACIFIC JOURNAL (July 12, 2007), https://apjjf.org/ken-silverstein/2461/article.

under FARA in the wake of Special Counsel Robert Mueller's investigation.[36] This equaled the total number of FARA charges filed between 1966 and 2015.[37] It caused the Washington Post to speculate that FARA "could become a fundamental protection for the integrity of our trade and military choices."[38] Indeed, DOJ's approach changed following Mueller's use of FARA. In 2019, former National Security Division chief John Demers announced that DOJ was transitioning "from treating FARA as an administrative obligation . . . to one that is increasingly an enforcement priority."[39]

Since then, the commitment to using FARA as a national security tool has been consistent across both Republican and Democratic administrations. Under Attorney General Barr's leadership, the first Trump Administration made revitalizing and bolstering the FARA unit "one of [its] first significant initiatives."[40] In 2020, DOJ initiated more FARA investigations than ever before.[41] The Biden Administration charged a record number of FARA cases and completed a record number of inspections.[42] It also brought the first administrative civil case in over 30 years.[43]

On her first day in the second Trump Administration, Attorney General Bondi essentially suggested that FARA cases were "a form of prosecutorial overreach and weaponization," and that DOJ should first look to civil remedies.[44] However, the Administration has since shifted its enforcement priorities and plans to use FARA to combat domestic terrorism and political violence.[45] The evolving

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[36] Zephyr Teachout, *How Mueller revived a law that protects us all against foreign money*, WASH POST: POSTEVERYTHING (Apr. 19, 2019), https://www.washingtonpost.com/outlook/2019/04/17/how-mueller-revived-law-that-protects-us-all-against-foreign-money/.

[37] OFF. OF THE INSPECTOR GEN., *supra* note 29, at i.

[38] Teachout, *supra* note 36.

[39] Katie Benner, Justice Dept. to Step Up Enforcement of Foreign Influence Laws, N.Y. Times (Mar. 6, 2019), https://www.nytimes.com/2019/03/06/us/politics/fara-task-force-justice-department.html.

[40] *Id*.

[41] Brandon L. Van Grack and Haydn Forrest, *FARA's Next Big Year*, JUST SECURITY (Jan. 31, 2022), https://www.justsecurity.org/80024/faras-next-big-year/.

[42] Amaris Keys, *Democracy in Danger: A Foreign Lobbying Law Rendered Toothless Once More*, BRIBERY MATTERS (Mar. 6, 2025), https://www.briberymatters.com/post/democracy-in-danger-a-foreign-lobbying-law-rendered-toothless-once-more.

[43] *Justice Department Sues to Compel a U.S. Businessperson to Register Under the Foreign Agents Registration Act*, U.S. DEP'T OF JUST (May 17, 2022), https://www.justice.gov/archives/opa/pr/justice-department-sues-compel-us-businessperson-register-under-foreign-agents-registration. Former Assistant Attorney General Matthew G. Olsen of DOJ's National Security Division said that the suit "demonstrate[d] the department's commitment to ensuring transparency in our democratic system." DOJ brought suit to compel Stephen Wynn to register under FARA for his work on behalf of the China; Wynn was advised to register but declined to do so. In 2024, the D.C. Circuit upheld the district court's dismissal of the suit finding that he had no obligation to register.

[44] Adam S. Hickey, *FARA Enforcement in 2025: From the Bondi Memo and NSPM-7 to Case Resolutions and Quieter Administrative Developments*, MAYER BROWN (Jan. 12, 2026), https://www.mayerbrown.com/en/insights/publications/2026/01/fara-enforcement-in-2025-from-the-bondi-memo-and-nspm-7-to-case-resolutions-and-quieter-administrative-developments.

[45] Matthew T. Sanderson, *FARA Back from the Dead: Trump Revives FARA Enforcement*, CAPLIN & DRYSDALE (Sep. 25, 2025), https://www.fara.us/trump-revives-fara-enforcement-2025-memo (noting that despite the Bondi Memorandum Attorney General Bondi's February 2025 memo

approach has reintroduced ambiguity into FARA enforcement, making it unclear how and when the statute will be applied.[46]

Perhaps unsurprisingly, DOJ's "zero-tolerance crackdown toward nondisclosure has triggered a[n] . . . increase in registrations."[47] In 2015, there were 346 active registrants[48] and 545 foreign principals.[49] In 2025, there were 595 active registrants[50] and 972 foreign principals.[51] That is a seventy-two percent and a seventy-eight percent increase, respectively.

As FARA enforcement becomes an increasingly top priority under both Democratic and Republican administrations, the threats it presents to civil society and its failure to address many digital foreign influence challenges make it, at best, ineffective and, at worst, counterproductive.

II. OVERVIEW AND OPERATION: HOW THE STATUTE FUNCTIONS

Although enforcement efforts have increased, FARA remains largely reliant on voluntary compliance.[52] Individuals and entities must sufficiently understand the statute to determine when registration and disclosure obligations arise. Central to this framework are the definitions of "foreign principal" and "agent of a foreign principal," as well as what constitutes a covered activity.

It is critical to recognize that FARA has broad triggers and vague exemptions, and, if interpreted literally, could require registration for routine business transactions across a spectrum of industries.[53] To help individuals and organizations determine if they need to register, the FARA Unit issues advisory

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seemingly pausing FARA enforcement, the "regulated community should no longer consider FARA to be a low enforcement priority for the Trump Administration.").

[46] *See* discussion *infra* Section IV.B.

[47] Spencer S. Hsu and Rosalind S. Helderman, *Gregory Craig found not guilty of lying to investigators probing work to aid Ukraine president*, WASH. POST (Sep 4, 2019), https://www.washingtonpost.com/local/legal-issues/gregory-craig-found-not-guilty-of-lying-to-investigators-probing-work-to-aid-ukraine-president/2019/09/04/b1273304-cf26-11e9-b29b-a528dc82154a_story.html (reporting that in the three years after the Mueller investigation, FARA registrations had risen by over thirty percent).

[48] *Active Registrants in a Date Range*, U.S. DEP'T OF JUST., https://efile.fara.gov/ords/fara/f?p=1381:130:15395653496265 (last visited Nov. 29, 2025) (listing active registrants from January 1, 2015 to December 31, 2015).

[49] *Active Foreign Principals in a Date Range*, U.S. DEP'T OF JUST., https://efile.fara.gov/ords/fara/f?p=1381:130:15395653496265 (last visited Nov. 29, 2025) (listing foreign principals from January 1, 2015 to December 31, 2015).

[50] U.S. DEP'T OF JUST., *supra* note 48 (listing active registrants from January 1, 2025 to December 31, 2025).

[51] U.S. DEP'T OF JUST., *supra* note 49 (listing foreign principals from January 1, 2025 to December 31, 2025).

[52] Jahad Atieh, *Foreign Agents: Updating FARA to Protect American Democracy*, 31 U. PA. J. INT'L L. 1051, 1062 (2010).

[53] Robert K. Kelner et al., *The Foreign Agents Registration Act (FARA): A Guide for the Perplexed*, COVINGTON (Jan. 31, 2023), https://www.cov.com/en/news-and-insights/insights/2018/01/the-foreign-agents-registration-act-fara (listing "law firms, lobbying and public relations firms, consulting firms, nonprofit advocacy groups, charitable organizations, ethnic affinity organizations, regional trade promotion groups, think tanks, universities, media organizations, trade associations, U.S. subsidiaries of foreign companies, and other commercial enterprises").

opinions to those seeking guidance. The opinions are also made publicly available. While meant to provide clarity, they are often heavily redacted, highly fact-specific, and sometimes inconsistent with one another.[54]

A. Foreign Principals and Agents

A foreign principal is defined as a foreign government or political party; any person outside the United States; or any entity organized under the laws of another country or having its principal place of business there.[55] This encompassing definition means that a host of entities fall under the foreign principal definition, "including corporations, nonprofits, foundations, media organizations, and most persons based outside of the United States."[56]

The definition of "agent" in the FARA context "is much broader than how principal–agent relationships are traditionally defined" and represents "one of the most controversial and confusing aspects" of the statute.[57] It is described as:

> any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person [engages in covered activities].[58]

While the term is broadly defined, it is limited to individuals within the United States who work for a foreign principal outside the United States.[59] However, agency under FARA is a two-part inquiry: even if the relationship is established, registration is required only if the individual engages in covered activities.

B. Covered Activities

The four covered activities that require FARA registration are: 1) engaging in "political activities; 2) acting "as a public relations counsel, publicity agent, information-service employee or political consultant; 3) soliciting, collecting,

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[54] Nick Robinson, *FARA Is a Catchall Statute—and That's a Problem*, LAWFARE (Jan 22, 2025, 8:00 AM), https://www.lawfaremedia.org/article/fara-is-a-catchall-statute-and-that-s-a-problem (highlighting a recent advisory opinion that "found that a potential registrant was an agent under the act because they had acted in 'coordination' with a foreign principal. However, the word 'coordination' appears nowhere in FARA.").

[55] 22 U.S.C. § 611(b).

[56] Nick Robinson, *"Foreign Agents" in an Interconnected World: FARA and the Weaponization of Transparency*, 69 DUKE L.J. 1075, 1097 (2020).

[57] *Id*. at 1099 (noting that the agency relationship under FARA is "much wider and more ambiguous" than as defined in the Restatement of Agency).

[58] 22 U.S.C. § 611(c)(1).

[59] § 611(b)(2)–(c)(1)(i).

disbursing, or dispensing "things of value"; and 4) representing the interests of a foreign principal before an agency or official of the United States government.[60] Each must be done for or in the interests of the foreign principal.[61] The first (political activities) and second (acting as a public relations counsel, publicity agent, information-service employee, or political consultant) categories are the broadest and most frequently serve as the basis for prosecutions.[62]

Political activities include any actions by a foreign agent intended to influence U.S. government agencies, officials, or the American public on (1) domestic or foreign policy issues, or (2) the political or public interests of a foreign government or political party.[63] This definition captures not only traditional lobbying or direct communication with government officials, but nearly any form of cross-border engagement and most public-facing advocacy activities.[64] It affects NGOs and other civil society groups involved in foreign policy advocacy, or supported by foreign entities, because their activities inherently seek to shape public opinion or policy.

However, the category of acting as a political consultant and information-service employee is perhaps equally broad. Under the Act, a political consultant is "any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of" a foreign government or party. Given the text, "it is arguably a registrable activity if, during a phone conversation with a friend in France, you respond to her 'request' to tell her your views on U.S. trade policy."[65] Meanwhile, an "information-service employee" includes almost anyone who shares information on behalf of a foreign principal.[66] For example, an NGO staff member who shares a foreign ministry's public report on disaster relief on behalf of a foreign principal could be considered an "information-service employee" because the report involves the facts or conditions of another country.[67]

All covered-activity categories condition registration on conduct undertaken "for or in the interests of" a foreign principal.[68] However, that phrase, "for or in the interests," is undefined in the statute, and its breadth has been subjected to debate.[69] "It could be interpreted narrowly—for instance, the activity has to be explicitly on behalf of the foreign principal—or liberally—the activity merely has to be indirectly beneficial to the foreign principal."[70] However,

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[60] § 611(c)(1).
[61] *Id*.
[62] Monica Romero, *How Far Will FARA Go? The Foreign Agents Registration Act and the Criminalization of Global Human Rights Advocacy*, 96 WASH. L. REV. 695, 699 (2021).
[63] § 611(o).
[64] Robinson, *supra* note 56, at 1098.
[65] Robinson, *supra* note 54.
[66] Romero, *supra* note 62, at 699–700.
[67] Robinson, *supra* note 56, at 1099. Robinson provided the following example which formed the foundation for the above hypothetical: "providing someone in the United States with a weather report from Bali on behalf of a foreign principal would seemingly make one an 'information-service employee,' since the weather report involves the "conditions" of another country."
[68] § 611(c)(1)(i)–(iii).
[69] Romero, *supra* note 62, at 700.
[70] Robinson, *supra* note 56, at 1099.

regardless of its interpretation, FARA has no de minimis threshold and may apply even to minimal conduct that constitutes a covered activity.[71]

C. Exemptions

An agent of a foreign principal is exempt from registration if the activities fall within one of the statutory exemptions. Whether one qualifies for an exemption requires a fact-specific evaluation.

1. *Diplomatic and National Security*. FARA provides several diplomatic exemptions for duly accredited diplomats and other foreign officials from governments recognized by the U.S. Department of State.[72] This exemption reflects the principle of sovereign equality and acknowledges that legitimate diplomatic and consular activities fall within the established channels of international relations. Additionally, under his foreign affairs powers, the President may exempt a foreign agent of a foreign government should he deem the defense of that country "vital to the defense of the United States."[73]

2. *Commercial*. The commercial exemption applies to individuals or entities engaged in bona fide "private and nonpolitical" commercial transactions undertaken on behalf of a foreign principal[74] or those activities "not serving predominantly a foreign interest."[75]

These activities are not intended to influence U.S. public policy or government decision-making. The exemption recognizes that ordinary trade, marketing, and business operations should not trigger registration merely because they involve foreign principals. Under this exemption, entities owned by a foreign principal, including foreign governments, are deemed "private" unless they "are directed by a foreign government or political party, or they directly promote the public or political interests of the foreign government."[76] Distinguishing between "private and nonpolitical" and "political" activities is often difficult and, despite DOJ efforts to clarify, remains unclear. However, it is clear that the DOJ has a narrow view of what counts as "private and nonpolitical." For example, an advisory opinion concluded that a nonprofit organization hired by a foreign country to promote tourism required registration because "advertisements cannot be construed

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[71] Kelner et al., *supra* note 53 ("A single meeting, for example, with a U.S. official by an executive of a company headquartered outside the United States, or by its U.S. subsidiary on behalf of the foreign parent, might satisfy the 'representation' trigger. And the mere act of hosting a conference, distributing a policy report, requesting a meeting, or reaching out to opinion leaders on behalf of a foreign principal could satisfy the 'political activities' trigger.").

[72] 28 C.F.R. § 5.304(b) provides: "For the purpose of section 3(d) of the Act, activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered 'private,' even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government."

[73] Romero, *supra* note 62, at 701.

[74] 22 U.S.C. § 613(d)(1).

[75] 22 U.S.C. § 613(d)(2).

[76] 28 C.F.R. § 5.304(b).

as private and nonpolitical activities."[77] The FARA Unit reasoned that "tourism creates an influx of capital and a host of jobs for the indigenous population, both of which [were] obviously in the political and public interests" of the foreign country.[78]

In recent years, when evaluating the second commercial exemption, DOJ has focused on whether activities predominantly serve a foreign interest rather than *only* a foreign governmental one.[79] The implications of this approach further broaden FARA's reach by making the exemption less available to entities that conduct business with foreign nongovernmental entities.

For example, an advisory opinion issued in October 2024 said that the commercial exemption did not apply to a U.S. nonprofit planning to host an event abroad in partnership with a foreign nonprofit.[80] It stated that the U.S. nonprofit's payment of travel expenses for American attendees amounted to "political activities" and the exemption was inapplicable because the conference would "directly advance [the foreign nonprofit's] interests and provide a platform for foreign political speakers to espouse their views."[81]

However, a June 2025 advisory opinion took a different analytical approach. The opinion concluded that a nonprofit organization could avail itself of the commercial exemption despite being controlled by a foreign principal.[82] The FARA Unit reasoned that the activities "directly advance[d]" the objectives of the U.S. nonprofit, which were "focus[ed] entirely on addressing conduct and harms in the United States."[83] Moreover, it emphasized that the organization's "political activities [were] not directed by a foreign government or foreign political party and [did] not directly promote the public or political interests of a foreign government or foreign political party."[84] In doing so, the opinion seemingly took note of the absence of governmental or political party interests as an important, and perhaps determinative, factor in its analysis. This stands in stark contrast to the October 2024 opinion, which held that the presence of a foreign nonprofit's interests was sufficient to negate the exemption.

Yet, in November 2025, both advisory opinions were removed by DOJ, and now neither is publicly available. The removal of published advisory opinions is

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[77] Letter from Joseph E. Clarkson, Chief, Registration Unit, U.S. Dep't of Justice, to [addressee deleted] (Jan. 20, 1984), https://www.justice.gov/nsd-fara/page/file/1046156/dl?inline=.
[78] *Id*.
[79] Robert K. Kelner, Brian D. Smith, and Alexandra Langston, *DOJ Posts (then Takes Down) Seventeen New Advisory Opinions Regarding the Foreign Agents Registration Act*, COVINGTON (Nov. 3, 2025), https://www.cov.com/en/news-and-insights/insights/2025/11/doj-posts-then-takes-down-seventeen-new-advisory-opinions-regarding-the-foreign-agents-registration-act (explaining that "DOJ's analysis for the last few years . . . has begun to focus on whether activities, based on the totality of the circumstances, predominantly serve a foreign interest generally, rather than focusing only on foreign *governmental* interests.").
[80] Christopher E. Babbit et al., *What Foundations and Other Nonprofits Need to Know About the Foreign Agents Registration Act*, WILMERHALE (Oct. 16, 2025), https://www.wilmerhale.com/en/insights/client-alerts/20251016-what-foundations-and-other-nonprofits-need-to-know-about-the-foreign-agents-registration-act.
[81] *Id*.
[82] *Id*.
[83] *Id*.
[84] *Id*.

"unusual" and thus it is unclear how much the regulated community can rely on them.[85] The breadth of this exemption is noteworthy, as is the confusion surrounding the Trump DOJ's current analytical approach in applying it.[86]

3. *Religious, Scholastic, Fine Arts, or Scientific Pursuits*. Those engaging in "bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts" are exempted from FARA registration.[87] However, the exemption does not cover persons or entities engaged in political activities as defined by the statute.[88] A September 2024 advisory opinion concluded that the exemption was not available to a U.S. medical practitioner appointed by a foreign government to represent it at "medical conferences and meetings around the world, including in the United States."[89] The opinion notes that U.S. health officials and medical professionals attend these conferences, and part of the practitioner's role would be to advocate "for healthcare spending and collaboration."[90] The practitioner was found to be an "agent" engaged in "political activities."[91] Thus, the FARA Unit concluded that the exemption was inapplicable, and registration was required.[92] However, the FARA Unit did not describe why attending a medical conference would not be a bona fide scientific pursuit.[93]

4. *Humanitarian Aid*. The so-called Humanitarian exemption allows for those engaging in *only* the "soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering" to avoid registration.[94] This exemption is limited; any activity beyond solicitation and fund collection renders it inapplicable. A July 2023 advisory opinion denied the exemption to a consulting firm for "one of the world's largest humanitarian agencies" that responds to "crises worldwide resulting from armed conflicts, violence, disasters, and epidemics."[95] The FARA Unit concluded that the consulting firm's activities went far beyond the scope of

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[85] Kelner, Smith, and Langston, *supra* note 79.

[86] *See* discussion *infra* Section IV.B. The second Trump Administration has focused on treatment of FARA as part of its setting of DOJ priorities, however its rollout has been tumultuous. In February 2025, Attorney General Bondi issued a memorandum that seemingly paused enforcement action. However, in July 2025, the commercial exemption advisory opinion was released. In September 2025, the White House released a National Security Presidential Memorandum which ordered FARA investigations. Soon after, in November 2025, DOJ then pulled the advisory opinions.

[87] 22 U.S.C. § 613(e).

[88] 28 C.F.R. § 5.304(d) (stating that "the exemption provided by [22 U.S.C. § 613(e)] shall not be available to any person described therein if he engages in political activities . . . for or in the interests of his foreign principal.").

[89] Letter from Evan N. Turgeon, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Sep. 13, 2024), https://www.justice.gov/nsd-fara/media/1376781/dl?inline.

[90] *Id*.

[91] *Id*.

[92] *Id*.

[93] *Id*.

[94] 22 U.S.C. § 613(d)(3).

[95] Letter from Jennifer Kennedy Gellie, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (July 6, 2023), https://www.justice.gov/d9/2023-09/2023.07.06_advisory_opinion_commercial_exemption.pdf.

the exemption because it planned to disseminate information, lobby Congress, and alter executive branch policy.[96]

Further, the exemption "does not include the solicitation of funds in the United States meant for other humanitarian purposes, such as for housing or education, or for the *disbursement* of any humanitarian funds in the United States."[97] So while this exemption may seem like an option for some nonprofit organizations, it is limited.

5. *Legal Representation*. FARA contains an exemption for lawyers who represent disclosed foreign principals before any court or agency of the United States government.[98] The representation must be part of an official proceeding or inquiry for the exemption to be triggered.[99] However, the exemption is not applicable where a lawyer or law firm agrees to provide legal representation to further a foreign principal's political activities by "attempt[ing] to influence or persuade agency personnel or officials other than in the course of judicial proceedings [or associated investigations]."[100]

The practical implications of the exemption mean that lawyers and law firms may need to register to achieve their clients' objectives. For example, in the media context, advocacy efforts to sway U.S. audiences or policymakers could nullify the exemption. A June 2021 advisory opinion found the exemption inapplicable to a law firm representing a foreign corporation seeking to collect and enforce a judgment issued in a foreign country.[101] The FARA Unit reasoned that the law firm had engaged in political activities because it had meetings with U.S. government officials regarding the judgment and had hired a public relations consultant to advise on U.S. media relations.[102] The lobbying of U.S. government officials, combined with devising a media campaign to gain U.S. public support for its cause, led to the "plain" conclusion that the firm had engaged in political activities.[103] As a result, the line between permissible legal defense and registrable political activity becomes precarious for attorneys involved in high-profile or politically sensitive cases.[104]

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[96] *Id*. However, the consulting firm's activities did qualify for an exemption under 613(d)(2).
[97] Robinson, *supra* note 56, at 1106 (emphasis in original).
[98] 22 U.S.C. § 613(g).
[99] *Id*.
[100] *Id*.
[101] Letter from Jennifer Kennedy Gellie, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (June 1, 2021), https://www.justice.gov/nsd-fara/page/file/1431291/dl?inline=.
[102] *Id*.
[103] *Id*.
[104] *See Prominent Global Law Firm Agrees to Register as an Agent of a Foreign Principal*, U.S. DEP'T OF JUST. (Jan. 17, 2019), https://www.justice.gov/archives/opa/pr/prominent-global-law-firm-agrees-register-agent-foreign-principal. Skadden, Arps, Slate, Meagher & Flom LLP acted as an agent of Ukraine "by contributing to a public relations campaign directed at select members of the U.S. news media in 2012." After receiving inquiries from the FARA Unit, a Skadden partner made false and misleading statements which enabled the firm to avoid registration. As part of the settlement, Skadden agreed to register retroactively, effectuate a robust compliance program, and "pay the U.S. Treasury more than $4.6 million, which it received in fees and expenses for its work with Ukraine."

6. *Lobbyists*. Agents who have properly registered under the LDA are exempt from registering under FARA[105] so long as they are (i) engaged in "lobbying activities" as defined by the statute and (ii) the representation is not on behalf of a foreign government or political party.[106] Thus, the exemption benefits lobbyists who represent commercial, nongovernmental foreign individuals or entities already registered under the LDA. If a foreign government or political party is the principal beneficiary of the lobbying, the exemption does not apply even if the foreign principal is not the lobbyist's client.[107] Many would-be foreign agents choose to register under the LDA because, when compared to FARA, it is "far less burdensome and less stigmatized."[108]

D. Filing Requirements

An "agent of a foreign principal" ineligible for an exemption must register with DOJ within ten days after agreeing to be an agent or performing a covered activity.[109] To do so, the agent must submit a registration statement and $305 filing fee per foreign principal.[110] This form includes the name, address and contact information of the registrant; names, addresses, and citizenship of all the registrant's partners, officers, and directors; a description of the registrant's regular business and ownership structure; names and addresses of foreign principals for whom the agent is acting, a list of the activities to be performed by the agent on behalf of the foreign principal, and the amount of compensation the agent is to receive; and whether the agent has or will disseminate informational materials on behalf of the foreign principal.[111] The registrant must update this form every six months by submitting a supplemental statement and $305 filing fee per foreign principal.[112]

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[105] 22 U.S.C. § 613(h).

[106] *Frequently Asked Questions: What is the exemption for registration under the Lobbying Disclosure Act?*, U.S. DEP'T OF JUST., https://www.justice.gov/nsd-fara/frequently-asked-questions (last visited Nov. 30, 2025).

[107] 28 C.F.R. § 5.307. The term "principal beneficiary" is not defined by the statute, so entities often rely on advisory opinions to determine whether registration is required.

[108] Alex Manning, *The Foreign Agents Registration Act (FARA)*, GLOBAL BUSINESS ALLIANCE, https://globalbusiness.org/wp-content/uploads/2024/04/FARA-Primer-2.pdf (last visited Nov. 29, 2025).

[109] *Frequently Asked Questions: When is registration due?*, U.S. DEP'T OF JUST., https://www.justice.gov/nsd-fara/frequently-asked-questions (last visited Nov. 25, 2025).

[110] *Frequently Asked Questions: How is registration effected?*, U.S. DEP'T OF JUST., https://www.justice.gov/nsd-fara/frequently-asked-questions (last visited Nov. 25, 2025).

[111] REGISTRATION STATEMENT, U.S. DEP'T OF JUST., https://www.justice.gov/nsd-fara/media/1322891/dl?inline.

[112] *Frequently Asked Questions: What forms are needed for a first time registration?*, U.S. DEP'T OF JUST., https://www.justice.gov/nsd-fara/frequently-asked-questions (last visited Nov. 25, 2025) (listing the following as additional requirements: *"*Exhibit A, describing the foreign principal; Exhibit B, describing the nature and terms of the agreement; Exhibit C, articles of incorporation, association, bylaws or partnership agreement; Short Form Registration Statements (forms for individuals). If the registrant is filing a primary registration as an individual, he or she does not need to file a short form.; Exhibit D if the agent receives, or collects money or other things of value as part of a fundraising campaign.").

III. PROBLEMS OF OVERBREADTH AND VAGUENESS

The primary problem with FARA is its extraordinary reach. If DOJ were to aggressively pursue all unregistered foreign agents, many organizations could face liability for benign activities that fall well outside FARA's intended purpose. While the issues with the statute are widespread, they fundamentally stem from the definitions of "foreign principal," "agent of a foreign principal," and "political activities."

The term "foreign principal" includes not only governments and political parties, but also any foreign entity, including foundations, corporations, charities, universities, and even U.S. citizens domiciled abroad. The statute's usefulness as a national security tool is undermined by treating all foreign entities alike. This overinclusive definition creates regulatory risk for a vast range of cross-border relationships unrelated to covert influence. This is particularly true for nonprofits and civil society. For example, a religious organization in the United States had to register under FARA because it prepared banners for foreign attendees to carry at a rally in Washington, D.C.[113] The FARA Unit reasoned that the foreign attendees were foreign principals under the act, and the religious organization would be acting as a "publicity agent" by preparing signs.[114] It is problematic that the foreign attendees fall within the ambit of a statute intended to expose covert foreign influence. By forcing the organization to register, DOJ effectively treated the group as if it were a lobbyist hired by a foreign intelligence service. In doing so, it demonstrated that the sweeping definition of "foreign principal" blurs the line between innocuous cross-border interactions and actual foreign influence.

The definition of "agent" is even more troublesome. As mentioned previously, one is an "agent" if he undertakes a covered activity at the direction, control, or request of a foreign principal.[115] One can also be an agent if he is financed or subsidized "in major part" by a foreign principal.[116] However, none of the operative words are defined, including the ambiguous terms: "request" or "in major part." The inclusion of "request" is an enormously broad trigger that threatens routine cross-border interactions. For example, a request from a foreign entity to arrange a meeting with U.S. government officials, or simply a request for advice on how to influence U.S. public opinion, may require registration.[117]

DOJ regulations add only the circular clarification that "control and any of its variants" include the power to determine the activities of another "directly or indirectly . . . through contract or otherwise."[118] Thus, one can seemingly be an agent in the absence of a contractual or even formal relationship. In a statute marked by vague terms, the lack of clarity is unhelpful, leaving potential agents to determine for themselves whether they fall within the requisite scope of influence. For example, the broad definition required a nonprofit organization to register as a

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[113] Letter from Brandon L. Van Grack, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Nov. 19, 2019), https://www.justice.gov/nsd-fara/page/file/1232921/dl?inline=.
[114] *Id*.
[115] 22 U.S.C. § 611(c)(1)
[116] *Id*.
[117] Kelner et al., *supra* note 53.
[118] 28 C.F.R. § 5.100(b).

foreign agent for accepting support for environmental sustainability work.[119] In 2021, DOJ considered clarifying the meaning of agent,[120] but ultimately declined to do so, saying that it "is a fact-intensive exercise better suited to the advisory-opinion process."[121]

FARA's definition of "political activities" is the statute's most far-reaching and destabilizing feature because it is framed so broadly that it encompasses ordinary advocacy, educational efforts, and even nonpolitical work by civil society organizations. Because the statute captures action intended to influence "any section of the public within the United States," it does not require electioneering, lobbying, or political speech.[122] Instead, political activities can include educating the public about developmental issues abroad, even if the subject matter has nothing to do with U.S. policy and does not involve U.S. officials. [123] This type of activity bears no resemblance to the covert Nazi propaganda that FARA was initially designed to expose, nor to the kind of influence described by Senator Fulbright when the term "political activities" was added to the statute in 1966.[124] In fact, the modern interpretation of "political activities" runs counter to Congress's express objective in enacting the revisions, which were meant to "make [the term's] meaning, and the committee's intent, more precise and eliminate any possible ambiguities."[125] As currently construed, the term chills lawful advocacy, enables arbitrary enforcement, and abandons the statute's purpose to unmask covert foreign influence.

The problems created by the definition of "political activities" are compounded by the Act's mental-state requirement, which examines whether the foreign agent "believes" his conduct may influence the government or public.[126]

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[119] Letter from Brandon L. Van Grack, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Mar. 13, 2020), https://www.justice.gov/nsd-fara/page/file/1287616/dl?inline= (concluding that an environmental organization that received grant money from a foreign government to improve its product-sourcing practices in tropical countries must register under FARA because it constitutes a political activity).

[120] *Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations*, 86 FED. REG. 70787 (2021), https://www.federalregister.gov/documents/2021/12/13/2021-26936/clarification-and-modernization-of-foreign-agents-registration-act-fara-implementing-regulations.

[121] *Amending and Clarifying Foreign Agents Registration Act Regulations,* 90 FED. REG. 40 (2025), https://www.federalregister.gov/documents/2025/01/02/2024-30871/amending-and-clarifying-foreign-agents-registration-act-regulations.

[122] § 611(o).

[123] Letter from Brandon L. Van Grack, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Aug. 6, 2019), https://www.justice.gov/nsd-fara/page/file/1217636/dl?inline=. This advisory opinion required a consultant hired by a foreign NGO to register because teaching members of the U.S. public about development, democracy, and good governance qualified as a political activity since it sought to "influence targeted segments of the American public." The FARA Unit acknowledged that the consultant pledged not to lobby U.S. government officials on behalf of the foreign NGO.

[124] 111 Cong. Rec. 6985 (explaining that the amendments were meant to ensure that the "public and officials [would] be better equipped to protect the integrity of the decision-making process of our Government.") (statement of Sen. James Fulbright).

[125] 111 Cong. Rec. 6984 (statement of Sen. James Fulbright).

[126] § 611(o) ("any activity that the person engaging in believes will, or that the person intends to . . .").

Because the standard is based on perceived rather than actual political impact, civil society actors (and others) could fall within the statute because they recognize their public-facing work might incidentally influence policy or public opinion. This invites uncertainty and self-censorship. Thus, some organizations may scale down their advocacy efforts to avoid being targeted,[127] or, in an era of increasing enforcement, register when perhaps they would not have before.[128]

Additionally, the statute's failure to include a de minimis threshold for covered activities expands its scope to include trivial, low-significance interactions. Unlike the LDA, which exempts entities from registration based on specific financial thresholds, FARA contains no minimum level of contact, activity, or funding to trigger registration.[129] For example, a U.S. nonprofit was made to register because it and a foreign organization entered into a funding agreement that paid for the foreign organization to travel to the United States and raise its public profile.[130] While the FARA Unit conceded that these "political activities may (or may not) represent a small portion of the services it is providing pursuant to the [funding agreement], it is important to note that there is no de minimis threshold."[131]

Despite potential constitutional issues rooted in the statute's overbreadth, vagueness, and compelled speech structure, courts have had very few opportunities to weigh in. No case has ever considered a facial challenge to the act on overbreadth grounds.[132] This is likely due to decades of underenforcement; thus, there is "a dearth of caselaw or other precedent available to help interpret its application."[133]

Additionally, those cases that do address FARA's constitutionality are before the development of modern public disclosure jurisprudence.[134] In *Attorney General v. Irish Northern Aid Committee*, the Southern District of New York turned away a facial challenge to the Act.[135] The court said FARA "is founded upon the

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[127] Nick Robinson, *The Danger of the Foreign Agents Registration Act to Civil Society*, INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW (July 2023), https://www.icnl.org/post/analysis/the-danger-of-the-foreign-agents-registration-act-to-civil-society (explaining that "FARA's ill-defined terms, the burden of its requirements, and the threat of criminal prosecution, can discourage beneficial cross-border civil society activity.").

[128] Doug Rutzen and Nick Robinson, *The Unintended "Foreign Agents"*, JUST SECURITY (Mar. 16, 2018), https://www.justsecurity.org/53967/unintended-foreign-agents/ (noting that because "FARA is so sweeping and vague" increasing enforcement "could unintentionally capture even routine activity of a significant number of nonprofits."); *see also* Hsu *supra* note 47 (highlighting that registrations increased 30 percent in three years after the Mueller investigation).

[129] 2 U.S.C. § 1602(10) (defining "lobbyist" as someone paid by a client to perform services that involve more than one lobbying contact, unless lobbying makes up less than 20 percent of that person's work for the client over a three-month period).

[130] Letter from Jennifer Kennedy Gellie, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Oct. 15, 2021), https://www.justice.gov/file/1191161/dl?inline.

[131] *Id*.

[132] Romero, *supra* note 62, at 712, fn 120.

[133] Brian Svoboda, *Taking Stock of Newly Released FARA Advisory Opinions*, PERKINS COIE (June 18, 2018), https://perkinscoie.com/insights/update/taking-stock-newly-released-fara-advisory-opinions (analyzing DOJ's decision to publish full advisory opinions rather than short summaries, and assessing their practical value).

[134] Romero, *supra* note 62, at 712 citing *Meese v. Keene*, 481 U.S. 465 (1987); *Viereck v. United States*, 318 U.S. 236, 251 (1943).

[135] 346 F. Supp. 1384 (S.D.N.Y. 1972).

indisputable power of the Government to conduct its foreign relations and to provide for the national defense" and that disclosure was sufficiently related to that legitimate interest.[136] It added that "[t]he governmental interest may fairly be said to outweigh any possible infringement of the First Amendment rights of the defendant's members."[137] This 1972 district court case remains the most comprehensive First Amendment analysis of FARA.[138] With no substantial legislative amendments since 1966 and no judicial decisions narrowing its scope, concerns about FARA's overbreadth and vagueness remain pressing.

IV. A DANGER TO CIVIL SOCIETY

A. Stigmatizing Effect

FARA's structure and terminology create a powerful stigmatizing effect that often extends beyond the registration requirements and causes reputational harm.[139] The label "agent of a foreign principal" evokes sentiments of espionage and betrayal, even though the transactions that require registration are typically routine international dealings.

Many civil society organizations "pride themselves on being independent and acting solely in furtherance of their mission."[140] Being forced to describe themselves in a way that suggests they are under the control of a foreign entity creates reputational risk.[141] This branding can damage an organization's credibility with donors, partners, and the communities it serves, particularly because registration records are publicly available and widely misunderstood.[142] Professor Stephen Vladeck, a law professor at Georgetown, noted that there is "a bit of a stigma" associated with FARA registration, causing some foreign agents to avoid it.[143] However, failing to register under FARA carries serious criminal penalties, and the reputational harm that follows public disclosure of noncompliance can be

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[136] *Id*. at 1390–91.
[137] *Id*. at 1391.
[138] Romero, *supra* note 62, at 712.
[139] Lori Taylor et al., *Data, Disclosure, and Discrepancies: An Analysis of FARA Reporting and Reform,* TEXAS A&M UNIVERSITY: THE BUSH SCHOOL (June 30, 2025), https://bush.tamu.edu/wp-content/uploads/2025/06/Taylor_Final-Report_DataDisclosure-Discrepancies-FARA_24-25.pdf (noting that registration "carries a stigma, suggesting the [registrant] lacks independence and operates under foreign influence, and often oversimplified or misleading characterization.").
[140] *Comments on Civil Liberties Concerns Created by Proposed Amendments to FARA's Regulations*, INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW (March 2, 2024), https://www.icnl.org/wp-content/uploads/ICNL-FARA-Comment-to-Justice-Department-Final-2025.pdf.
[141] Taylor et al., *supra* note 139.
[142] *Understanding the Foreign Agents Registration Act (FARA) and its impact on Nonprofit Organizations*, ANAFP, https://www.anafp.org/FARA (last visited Dec. 2, 2025).
[143] Justin Wm. Moyer, *'I'm not Paul Manafort': On FARA registry, foreign agents come into the light*, WASH. POST (Dec. 31, 2017), https://www.washingtonpost.com/local/im-not-paul-manafort-on-fara-registry-foreign-agents-come-into-the-light/2017/12/31/482a8792-e716-11e7-86d5-49919905d3e1_story.html

significant.[144] In a letter to the then-FARA Unit chief, Jennifer Gellie, fourteen leading nonprofit organizations noted that many civil service organizations may refrain from engaging in any activities that could trigger the Act's criminal penalties, even if that speech is constitutionally protected.[145] The result is not merely a chilling effect on speech, but also on advocacy across a range of issues, from human rights to environmental conservation. In 1937, when the House Committee on the Judiciary introduced the bill that ultimately became FARA, it said that the "bill does not in any way impair the right of freedom of speech, or a free press, or other constitutional rights."[146] As interpreted today, FARA departs sharply from that assurance, burdening speech that Congress vowed to protect.

B. Discretionary and Politically Motivated Enforcement

W.E.B. Du Bois was prosecuted under FARA in 1951 after he distributed an anti-nuclear peace petition on behalf of a French organization.[147] However, his prosecution, brought in the height of the McCarthy era, was in part meant to discredit him due to his alleged Communist sympathies.[148] Despite being acquitted, his career was "ruined" as he was "blacklisted" and branded "un-American."[149] Du Bois exemplifies how FARA can be used for political purposes, making it especially dangerous for much of civil society.

FARA's breadth has "created a legal minefield ripe for politically motivated prosecutions as its definitions create an exceptionally wide field of potential liability."[150] This gives officials a pretext to investigate nonprofits, journalists, or advocacy groups whose messages are not aligned with their own.[151] Thus, as enforcement increases and the act becomes more politicized, it "functions

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[144] Norman Spencer, *Compliance with the Foreign Agent Registration Act (FARA) and National Security Regulations*, Norman Spencer L. Group, https://www.nycriminallawyers.com/compliance-with-the-foreign-agent-registration-act-fara-and-national-security-regulations/ (last visited Dec. 2, 2025) (explaining that the "reputational damage associated with FARA violations can be equally consequential, impacting future business prospects and partnerships.").

[145] Letter from Alliance for Justice et al. to Jennifer Kennedy Gellie, Chief, FARA Registration Unit, U.S. Dep't of Justice (Feb. 11, 2022), https://www.icnl.org/wp-content/uploads/FARA-ANPRM-Sign-On-2022.pdf.

[146] H.R. REP. NO. 75-1381, at 2 (1937).

[147] Andrew Lanham, *When W. E. B. Du Bois Was "Un-American"*, BOSTON REVIEW (Jan. 13, 2017), https://www.bostonreview.net/articles/when-civil-rights-were-un-american/.

[148] *Recommendations To The Justice Department On FARA Concerning Its Impact On Civil Society*, INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW (Feb. 11, 2022), https://www.icnl.org/wp-content/uploads/ICNL-Comments-on-FARA-ANPRM-2022.pdf.

[149] Lanham, *supra* note 147.

[150] Joseph D. Terwilliger, *How the Foreign Agents law is used to silence American dissidents*, MRONLINE (Jan. 7, 2025), https://mronline.org/2025/01/07/how-the-foreign-agents-law-is-used-to-silence-american-dissidents/.

[151] Robinson, *supra* note 54, ("The 118th Congress saw a significant spike in congressional investigations against nonprofits, particularly by House Republicans. One of the most frequent justifications for investigations was that an organization should have registered under FARA. Common targets included prominent U.S. environmental organizations, groups advocating for Palestinian rights, and human rights nonprofits. These congressional investigations caught the attention of many in civil society given FARA's expansive scope.").

increasingly like a sword of Damocles hanging over broad sections of U.S. civil society . . . with no one being quite sure if—or when—it might drop on them."[152]

Further complicating the regulatory landscape is the volatility in enforcement priorities within DOJ. In February of 2025, Attorney General Pam Bondi issued a memorandum that paused most FARA enforcement actions.[153] However, in September of 2025, President Donald Trump issued National Security Presidential Memorandum 7 (NSPM-7), which ordered investigations into potential FARA violations. [154] NSPM-7 directs the National Joint Terrorism Task Force to investigate "non-governmental organizations and American citizens residing abroad or with close ties to foreign governments, agents, citizens, foundations, or influence networks engaged in violations of the Foreign Agents Registration Act or money laundering by funding, creating, or supporting entities that engage in activities that support or encourage domestic terrorism."[155] Whether the President has the authority to designate any group as a domestic terrorist organization is a topic not addressed by this paper.

The possibility of applying FARA in a domestic-terrorism framework is especially troubling because NSPM-7 sweeps an enormous range of ideologies — from labor organizing to pro-immigration advocacy to racial-justice and transgender activism — into its definition of the domestic-terrorism threat.[156] The focus of NPSM-7 is "more on civil society and NGOs rather than on for-profit businesses or state-owned enterprises."[157] Additionally, unlike the Bondi Memorandum, scrutinized activity is not limited to work on behalf of a foreign government or to traditional espionage. The fluctuations in enforcement demonstrate how the act is susceptible to political winds and compound the chilling effect on civil society, as organizations cannot predict whether their cross-border work will be ignored or scrutinized.[158]

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[152] *Id*.

[153] Memorandum from the Off. of the Att'y Gen on General Policy Regarding Charging, Plea Negotiations, and Sentencing, at 4 (Feb. 5, 2025), https://www.justice.gov/ag/media/1388541/dl?inline ("Recourse to criminal charges under the Foreign Agents Registration Act (FARA) . . . shall be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors.").

[154] Memorandum on Countering Domestic Terrorism and Organized Political Violence, 90 FED. REG. 47225, 47226 (Sep. 30, 2025), https://www.govinfo.gov/content/pkg/FR-2025-09-30/pdf/2025-19141.pdf.

[155] *Id*.

[156] *See generally* Faiza Patel, *Trump's Orders Targeting Anti-Fascism Aim to Criminalize Opposition*, BRENNAN CTR. FOR JUST. (Oct. 9, 2025), https://www.brennancenter.org/our-work/research-reports/trumps-orders-targeting-antifascism-aim-criminalize-opposition (analyzing NSMP-7 and identifying the threats it poses to nonprofit organizations ideologically opposed to President Trump and his administration).

[157] Caitlin Oprysko and Daniel Barnes, *Trump's FARA revival*, Politico (Sep. 26, 2025, 7:17 PM), https://www.politico.com/newsletters/politico-influence/2025/09/26/a-new-chapter-for-fara-00583302.

[158] Joseph Burns and Kellen Dwyer, *FARA Enforcement Gets a Major Shake-Up Under New Presidential Directive*, JD SUPRA (Sep. 30, 2025), https://www.jdsupra.com/legalnews/fara-enforcement-gets-a-major-shake-up-4818224/ (explaining that NSPM-7 "signals the potential for a far more active enforcement environment, particularly for organizations that receive foreign funding or engage in lobbying, public relations, or other forms of advocacy on behalf of foreign entities.").

The uncertainty and politics surrounding FARA are all too familiar.

> History shows that the enforcers of FARA consider the political and historical climate in which the law is being prosecuted . . . In all FARA cases, there is a political undertone relating to why the case was brought in the first place lending credence to the argument that FARA enforcement is somewhat unpredictable and unevenly applied.[159]

It appears that this Trump Administration may administer the statute in this way, too.[160]

V. DIGITAL INFORMATION BATTLEGROUND

While FARA's breadth poses serious problems for civil society, its structure is simultaneously too limited to respond adequately to foreign digital misinformation. Thus, ironically, the statute is ill-suited to address the very threat that in many ways sparked its revival.[161] In an era when foreign actors often orchestrate misinformation campaigns anonymously and extraterritorially, FARA frequently stands idly by because those actors do not fall within the statute's antiquated regime.

A. Territorial Gap

A primary reason why FARA is unable to meaningfully regulate covert foreign disinformation in the modern information sphere is its territorial trigger. For FARA to be implicated, there must be a foreign principal and an agent acting for that foreign principal engaging in covered activities "within the United States."[162] For example, a common critique and suggested area of FARA reform is that the statute does not regulate any contact between lobbyists and politicians that occurs outside the United States. [163]

Today, foreign online propagandists are often based abroad, not in the United States.[164] These actors can reach U.S. audiences through a variety of channels, including social media, without ever entering the country. A literal interpretation of the statute, therefore, means that those propagandists should not be considered "foreign agents." This issue is not necessarily unique to FARA, as

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[159] Michael Castrovilla, *The Inherently Political Nature of the Foreign Agents Registration Act: A Statute in Need of Improvement*, 10 NAT'L SEC. L.J. 176, 192 (2023).
[160] Hickey, *supra* note 44 (commenting that the shift in FARA enforcement in 2025 "likely foreshadows evolving alignment with other White House priorities.)".
[161] Grassley, *supra* note 27 (discussing charges brought against Russians who sought to "sow discord in American politics through social media and the release of hacked Democratic National Committee emails.").
[162] 22 U.S.C. § 611(c)(1)(i)-(iv).
[163] Atieh, *supra* note 52, at 1072.
[164] Fattal, *supra* note 16, at 924.

courts have struggled to identify the proper venue for a host of cybercrimes because, in a digital environment, the elements can be dispersed and occur far from the defendant's location.[165]

Despite the statutory language, DOJ has broadly interpreted the phrase "within the United States." In one advisory opinion, the FARA Unit concluded that registration was required even though the reported activities took place "physically outside the United States at the time of performance or delivery of the service" because they were of the sort that would "normally require registration under the Act."[166] In another opinion, DOJ said that since a company's platform, including the foreign principal's website, was "clearly viewable in the United States,"[167] the element was satisfied. An additional opinion stated that activities were considered "within the United States" because they "originate[d]" there, even though the services would eventually be provided remotely to the foreign principal.[168]

In doing so, DOJ has effectively interpreted "within the United States" to include any activity that is accessible in, has digital effects on, or originates in the United States. While the government's interpretation allows it to address FARA's territorial gap, this approach is not a long-term solution.[169] It does not comport with the language of the statute; however, if no party challenges DOJ's position in court, it is unlikely the government will narrow its interpretation, as that would allow some covert foreign actors to escape scrutiny.[170]

B. Agency Proof Problem

Digital misinformation campaigns also expose FARA's inability to establish the kind of principal-agent relationships the statute presupposes. Even setting aside the territorial gap described above, simply identifying who the "agent" is and who the "foreign principal" is becomes challenging in the online environment. FARA requires that the purported agent act at the "order, request, or under the direct control" of a foreign principal,[171] but online propaganda networks rarely operate through such a discernible relationship. Instead, foreign

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[165] *Id*. citing *United States v. Saavedra*, 223 F.3d 85, 86 (2d Cir. 2000).

[166] Letter from Heather H. Hunt, Chief, FARA Registration Unit, U.S. Dep't of Justice, to [addressee deleted] (June. 22, 2017), https://www.justice.gov/nsd-fara/page/file/1070091/dl?inline=.

[167] Letter from Jennifer K. Gellie, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Feb. 17, 2023), https://www.justice.gov/d9/2023-04/20230217_advisory_opinion_commercial_exemption.pdf. Notably, this would be the case for any publicly available website thus serving as another example of FARA's breadth.

[168] Letter from Jennifer K. Gellie, Chief, FARA Unit, U.S. Dep't of Justice, to [addressee deleted] (Feb. 14, 2023), https://www.justice.gov/d9/2023-04/20230214_advisory_opinion_commerical_exemption.pdf.

[169] *See* Fattal, *supra* note 16, at 925 ("[T]he statutory language could be amended to 'engages in political activities *aimed at* the United States' to more explicitly define the statutory conduct elements in these terms.").

[170] Robert K. Kelner, Brian D. Smith, and Alexandra Langston, *DOJ Releases New FARA Advisory Opinions Affecting Digital Media Platforms*, Covington (May 31, 2023), https://www.cov.com/news-and-insights/insights/2023/05/doj-releases-new-fara-advisory-opinions-affecting-digital-media-platforms (stressing that no party has challenged DOJ's broad interpretation of "within the United States" in court).

[171] 22 U.S.C. § 611(c)(1).

disinformation efforts can involve anonymous operators using automated bots[172] and troll farms,[173] with their content amplified by unsuspecting U.S. users.[174] This makes it extraordinarily difficult to prove the "direction or control" element of the statute. In this specific context, it fortunately precludes treating Americans as agents because FARA requires "that violators of the act must run afoul of its terms 'willfully.'"[175]

Ultimately, the structure of modern disinformation campaigns makes it nearly impossible for FARA to identify a foreign agent, rendering the statute largely inapplicable to the very forms of foreign interference it is now expected to address.

VI. AREAS FOR REFORM

While FARA serves a noble purpose, it is a statute in need of reform. In 1966, the last time FARA was comprehensively amended, Congress did so to provide "a face-lifting job on a statute that has served the Nation well but which has not been revised to keep it abreast of the times."[176] If Congress in 1966 could conclude—less than three decades after FARA's 1938 enactment—that the statute had already become outdated and required substantial revision, it should be even more capable of reaching that judgment today. However, nearly sixty years later, Congress has failed to implement any changes to the act that would modernize it and make it more effective. As FARA increasingly becomes a national security tool for DOJ, Congress would be wise to implement a de minimis exemption, narrow its definitions, and modernize its application.

First, Congress should implement the Restatement of Agency definition when defining "agent of a foreign principal." According to the Restatement:

> Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's

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[172] Carl Miller, *What are 'bots' and how can they spread fake news?*, BBC NEWS: BITSIZE, https://www.bbc.co.uk/bitesize/articles/zjhg47h (last visited Nov. 15, 2025). (explaining what bots are and how they work).

[173] Davey Alba, *How Russia's Troll Farm Is Changing Tactics Before the Fall Election*, N.Y. TIMES (Mar. 29, 2020), https://www.nytimes.com/2020/03/29/technology/russia-troll-farm-election.html (describing troll farms and how Russia used them to influence elections in the United States).

[174] Eli Rosenberg, *Twitter to tell 677,000 users they were had by the Russians. Some signs show the problem continues*, WASH. POST (Jan. 19, 2018), https://www.washingtonpost.com/news/the-switch/wp/2018/01/19/twitter-to-tell-677000-users-they-were-had-by-the-russians-some-signs-show-the-problem-continues/; Alan Suderman and Ali Swenson, *Well-known right-wing influencers duped to work for covert Russian operation, U.S. prosecutors say*, PBS NEWS (Sep. 5, 2024, 10:24 AM) https://www.pbs.org/newshour/politics/well-known-right-wing-influencers-duped-to-work-for-covert-russian-operation-u-s-prosecutors-say (reporting covert Russian influence operation targeting U.S. audiences through right-wing influencers with millions of followers).

[175] Joshua R. Fattal, *The Justice Department's New, Unprecedented Use of the Foreign Agents Registration Act*, LAWFARE (Dec. 18, 2019, 8:00 AM), https://www.lawfaremedia.org/article/justice-departments-new-unprecedented-use-foreign-agents-registration-act.

[176] 111 Cong. Rec. 6985 (1965) (statement of Sen. James Fulbright).

> control, and the agent manifests assent or otherwise consents so to act.[177]

By adopting this definition, FARA would align with the commercial world it regulates. The current definition contains undefined, ambiguous terms such as "request" and "in major part." The Restatement approach is more straightforward and narrower in scope: it requires control and consent. The International Center for Not-for-Profit Law has also advocated for this approach. It argued that "[a]ny broader reading of the agency provision would capture a wide swath of First Amendment protected speech and conduct as well as continue to generate confusion, chilling First Amendment rights."[178]

Similarly, the definition of foreign principal should also be narrowed. Currently, it ensnares civil society and even U.S. citizens abroad. Instead, Congress should consider restricting it to "foreign governments or political parties, or those acting on their behalf, since these are the foreign actors whose influence seems to generate the most concern."[179] This definition would also be consistent with the type of foreign propaganda the Act was intended to guard against when it was passed in 1938. However, this type of reform is unlikely to occur as the Senate is currently considering a bill to broaden the definition of foreign principal. If it passes, the definition will include any nonprofit organization that receives "anything of value" from any entity of China, North Korea, Russia, Iran, Cuba, Venezuela, or "country of concern."[180]

Another significant definitional change Congress should undertake is constraining the meaning of "political activities." As has been discussed, political activities currently include any activity that is intended to, or even believed to, influence the U.S. government or public regarding 1) foreign or domestic policy of the United States or 2) the political or public interests of a foreign country or foreign political party.[181] As noted previously, it even encompasses promoting tourism in another country.[182] Congress should limit the term to conduct intended to change government policy or decision-making. This means political activities would not include efforts to influence public opinion. This would eliminate much of the benign public-facing activity that civil society undertakes, including education, journalism, advocacy, and more. Currently, much of this activity may be registrable under the Act because it could influence public opinion. Congress could also amend the statute to require registration when the foreign agent has knowledge and intent, rather than merely belief. The transition from a subjective to an objective approach would ensure that only purposeful activity is registrable. Notably, the recently issued DOJ proposed revisions would no longer make tourism promotion

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[177] RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. LAW INST. 2006).
[178] ICNL, *supra* note 140, at 12.
[179] Robinson, *supra* note 56, at 1145 (noting that "when FARA was amended in the early 1990s, the Senate version of the amendment originally would have narrowed the definition of 'foreign principals.'").
[180] FRONT Act, S.2305, 119th Cong., 2025.
[181] § 611(o).
[182] Clarkson, *supra* note 77.

registrable as a political activity, so perhaps there is some appetite to limit the definition of political activities.[183]

Finally, to address the territorial gap in the technology context, Congress *could* update the phrase "within the United States" to a standard that focuses on digital conduct directed at the United States. For example, one suggestion is to amend the statute to say, "engages in political activities aimed at the United States."[184] This would enable FARA to capture digital misinformation produced abroad that currently evades enforcement per a literal reading of the statute. However, this proposed change could broaden FARA's reach by capturing any foreign person or entity that posts content accessible to U.S. audiences. Without modifying "agent," "foreign principal," and "political activities," this revision could potentially cover foreign journalists, academics, nonprofits, and people who post online. Such an amendment would need strong limiting principles and should not be implemented without them. Additionally, it is hard to envision an amendment that could solve the agency proof problem without overhauling the statute entirely. That is the challenge of working with a 1938 statute. Thus, Congress would be wise to draft a new statute that addresses digital misinformation in a modern, targeted, and medium-specific way.

The outlined changes would have a profound effect on civil society as the challenges it faces can often be sourced from the statute's broad definitions. The stigma stems from the requirement to register. If political activities were treated differently or agency relationships were redefined, many organizations would not need to register. Similarly, confusion would be minimized, as narrower definitions would lead to more predictable outcomes. This would reduce the need for complicated, often inconsistent advisory opinions. A more focused FARA would also eliminate the gray areas that too frequently allow enforcement to hinge on political discretion. By limiting FARA to foreign government and foreign political party direction, the statute would leave less room for DOJ and Congress to target disfavored groups under the guise of protecting national security.

However, such reforms are ultimately unlikely. The revelation that the Act could be an effective enforcement tool has "stimulated a variety of bipartisan legislative proposals to expand FARA's scope."[185] Recently, Congress has supported legislation to gut exemptions[186] and enhance DOJ's enforcement capabilities.[187] For that reason, the most realistic path to meaningful reform lies with the courts, which can address FARA's overbreadth, vagueness, and constitutional issues through facial and as-applied challenges.

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[183] Matthew T. Sanderson, *DOJ (Finally) Publishes Proposed Revisions to FARA Regulations*, CAPLIN & DRYSDALE (Dec. 27, 2024), https://www.fara.us/doj-finally-publishes-proposed-revisions-to-fara-regulations.
[184] Fattal, *supra* note 16, at 925.
[185] Romero, *supra* note 62, at 697.
[186] Foreign Influence Transparency Act, H.R.1819, 118th Cong., 2023; Disclosing Foreign Influence in Lobbying Act, S.856, 119th Cong., 2025.
[187] Foreign Agents Disclosure and Registration Enhancement Act, S.1364, 118th Cong., 2023.

CONCLUSION

The Foreign Agents Registration Act is meant to be a targeted national security tool designed to expose covert foreign influence in American politics without encroaching on constitutionally protected rights. However, the statute has not fulfilled its promise. Instead of serving as a shield against genuine threats, it has too often been used in ways that extend far beyond its purpose.

To restore FARA to its intended role, substantial reform is required. The statute's core definitions must be narrowed and clarified so that routine cross-border work by NGOs and other civil society organizations does not trigger registration. Regulating this type of benign work is fundamentally at odds with FARA's original aim of identifying covert foreign influence. In the absence of legislative reform, the Department of Justice must administer the statute in a way that aligns with national security objectives rather than in ways that invite politicization or discourage legitimate advocacy. At the same time, Congress must acknowledge that the statute is ill-equipped to address the proliferation of foreign digital misinformation and draft a separate statute to address it.

At its core, FARA represents an important democratic value: transparency. But when a law meant to illuminate is weaponized, change is required. Therefore, to best serve the United States' national security and Constitution, Congress should reform the Foreign Agents Registration Act.