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## The Danger of the Foreign Agents Registration Act (FARA) to Civil Society at Home and Abroad

*The definitions in the Foreign Agents Registration Act (FARA) are both sweeping and vague, providing the Executive wide discretion for enforcement, creating dangers for civil society at home and abroad.*

Given concerns over the interference of Russia in the U.S. Presidential election, several bills have been introduced into the U.S. Congress to strengthen enforcement of the Foreign Agents Registration Act (FARA), a historically rarely enforced 1938 statute. While well intentioned, strengthening enforcement, without modifying the Act's definitions, would likely have significant negative consequences for civil society. To understand these dangers it is useful to begin with four common misconceptions about the Act:

1. Who is a Foreign Principal? Some observers believe that FARA is only targeted at the agents of foreign governments. In fact, a "foreign principal" under the Act equally includes not just foreign governments, but also foreign individuals, foundations, nonprofits, companies, or other entities.
2. Covered Activity. Some seem to believe FARA only applies to lobbying or electioneering activity. In actuality, the activities covered under the Act are far broader. It extends to "political activities" defined to include an attempt to influence "any section of the public within the United States" on domestic or foreign policy. Nor do the activities even have to be political. For example, an "agent" soliciting or disbursing contributions or other things of value on behalf of a foreign principal is also covered by the Act.
3. FARA's "Principal-Agent Relationship." Under FARA, the relationship between the principal and agent can be far more attenuated than many people appreciate. FARA does not require a true principal-agent relationship. Instead, an entity can be considered an "agent" of a foreign principal even if the "agent" acts at the principal's mere "request" or is financed "in major part" by the principal (with "major part" being undefined in the Act).
4. The Burden Imposed by FARA. The Act is often thought of as just a transparency statute. At one level, this is true, but it underplays the burdens it creates. An "agent" under FARA needs to register with the Department of Justice (DoJ), provide regular updates to DoJ of its activities covered by the Act, and when providing information to the public must make a "conspicuous" statement that it is acting on behalf of a foreign principal. An agent that knowingly does not comply with these rules faces criminal penalties.

Below are three illustrative scenarios to help show how enforcing FARA as currently written could undermine much beneficial civil society activity:

Scenario One: A Dutch foundation brings a youth swimming team to the United States for a competition for the disabled. An employee of that foundation travels with the team to help coordinate and pay expenses. The employee would arguably need to register under FARA because they are “disbursing” money in the United States on the behalf of a foreign principal. (See 22 U.S. Code Sec. 611(c)(1)(iii)).

Scenario Two: A South Korean think tank writes a report on policies that the international community might adopt to effectively address the North Korean nuclear threat. It requests that a U.S. nonprofit organize a public meeting in the U.S. to share the report’s findings. The U.S. nonprofit would arguably have to register under FARA because they are acting at the “request” of a foreign principal in a way that may influence a “section” of the U.S. public on a policy issue. (See 22 U.S. Code Sec. 611(c)(1)(i)).

Scenario Three: The son of a Canadian philanthropist was killed by a drunk driver while attending college in the United States. The philanthropist provides a substantial donation to a U.S. nonprofit dedicated to combatting drunk driving, including developing policies that would reduce such deaths. The U.S. nonprofit would arguably have to register under FARA because they are subsidized “in major part” by a foreign principal and are attempting to influence U.S. policymakers on a policy issue. (See 22 U.S. Code Sec. 611(c)(1)(i)).

FARA’s sweeping and vague terms, the burden of its requirements, and the threat of criminal prosecution, threaten to chill or stop beneficial cross-border civil society activity if the enforcement of FARA were strengthened without amending and clarifying its definitions.

Additionally, FARA’s broad and vague provisions, and the wide discretion given to the Executive in its enforcement, create the danger that FARA’s enforcement could have a disparate impact. Indeed, FARA’s sweeping language has repeatedly been [used to justify](#) anti-democratic “foreign agent” laws in countries like Russia or Hungary, where such legislation is used to stigmatize civil society groups that receive foreign funding and are critical of the government.

Finally, part of the reason that FARA has traditionally been under-enforced is the vagueness of the statute. If the Act were to be fully enforced as currently written, the Department of Justice and the public would struggle to understand who is required to register. FARA is an outdated and overbroad Act that needs to be changed.

### Fixing FARA

To address concerns over FARA’s sweeping and vague definitions, these definitions need to be amended and clarified. This is a multi-faceted problem, but, as an immediate step, the Act should be amended to make clear that it covers only true principal-agent relationships. The Act should also only target the agents of foreign governments or political parties. Finally, the Department of Justice should adopt an enforcement strategy that explicitly addresses concerns about it being used to undermine civil society at home or used as justification for anti-democratic “foreign agent” laws abroad.