

LEGISLATIVE BRIEFER

The Danger of the Foreign Agents Registration Act to Civil Society at Home and Abroad

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The definitions in the Foreign Agents Registration Act (FARA) are both sweeping and vague. This provides the Executive wide discretion for enforcement, creating dangers for civil society, and ultimately undercutting the effectiveness of the Act.

Recently, there have been many attempts by Congress to strengthen FARA enforcement. While well intentioned, without modifying the Act, stronger enforcement could have significant negative consequences. This brief introduces the dangers FARA poses to civil society, both in the US and abroad.

Four Common FARA Misconceptions

1. WHO IS A FOREIGN PRINCIPAL? Some observers believe that FARA is only targeted at the agents of foreign governments. However, a “foreign principal” under the Act includes not only foreign governments, but also foreign individuals, foundations, nonprofits, companies, and other entities.

2. COVERED ACTIVITY Many believe FARA only applies to lobbying or electioneering activity. However, the Act covers an array of “political activities,” which include attempts to influence “any section of the public within the United States” on domestic or foreign policy. Furthermore, these activities do not even need 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” FARA does not require a true principal-agent relationship. The relationship can be far more informal than many appreciate. An entity can be considered an “agent” even if the “agent” acts at the mere “request” or is financed “in major part” by the foreign principal (with both “request” and “major part” being undefined).

4. THE BURDEN IMPOSED BY FARA While often thought of as a transparency statute, the Act creates significant burdens. An “agent” needs to register with the Justice Department, provide regular (publicly available) updates of 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 willfully does not comply faces criminal penalties.

FARA’s Impact on Nonprofits

Most nonprofits—and many policymakers—do not fully appreciate the breadth of FARA, but some organizations have already been caught up by the Act. Recent Justice Department advisory opinions include those that required:

- A U.S. religious organization to register as a “foreign agent” for helping prepare banners for foreign attendees to a March for Life rally because in printing banners for a foreigner it acted as a “publicity agent” under the Act. [Nov. 19, 2019 advisory opinion.](#)
- A U.S. environmental nonprofit to register because it received a grant from a foreign government to improve multi-national corporations’ product sourcing practices to reduce the effect on the environment in tropical countries. [March 13, 2020 advisory opinion.](#)
- A consultant of a foreign non-governmental foundation to register for helping the foundation educate members of the U.S. public about development, democracy, and good governance issues abroad. [Aug. 6, 2019 advisory opinion.](#)

As FARA becomes more visible, it is increasingly “weaponized” by politicians, commentators, and others. Given the broad language, it is easy to accuse groups and individuals of violating the Act. For example, in 2018 the House Natural Resources Committee held a hearing to investigate whether four prominent U.S. environmental nonprofits violated the Act, focusing on whether they ever acted at the “request” of a foreign principal. This has led to fears about FARA’s politicization.

FARA’s ill-defined terms, the burden of its requirements, and the threat of criminal prosecution, could discourage beneficial cross-border civil society activity. Further, its breadth creates problems for enforcement. If the Act were fully complied with, the Justice Department would be overwhelmed with superfluous registrations. The Act’s breadth and vagueness also leads it to being highly vulnerable to Constitutional challenges, potentially jeopardizing the Justice Department’s enforcement priorities.

Finally, FARA’s broad language has repeatedly been [used to justify](#) anti-democratic “foreign agent” laws in countries like Russia, Nicaragua, and Hungary, that are then used to stigmatize and shut-down civil society groups.

Remedy

The U.S. needs a modern approach to dealing with foreign influence in our globalized world. FARA should target foreign government attempts to influence U.S. democratic decision-making, not entangle civil society groups for simply engaging in cross-border conduct.

FARA’s definitions need to be amended and clarified. This is a multi-faceted problem, but any comprehensive reform should at least amend the Act to only target the agents of foreign governments or political parties or those acting on their behalf. The Act should also be amended to clearly state that it covers only true principal-agent relationships.

For more information on FARA, visit our resource page or contact Nick Robinson at nrobinson@icnl.org.