



Testimony of Dylan Hedtler-Gaudette, Government Affairs Manager
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before the House Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
on “Enhancing the Foreign Agents Registration Act of 1938”
April 5, 2022

Thank you, Chairman Cohen, Ranking Member Johnson, and Members of the subcommittee, for the opportunity to speak with you today about the Foreign Agents Registration Act (FARA)¹ and its importance as an effective transparency mechanism for tracking foreign influence in U.S. politics and policymaking. My name is Dylan Hedtler-Gaudette, and I am the government affairs manager at the Project On Government Oversight.

Founded in 1981, the Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. Combating the potentially corrosive effects of undue foreign influence on the political and policymaking processes of the United States is an essential aspect of the broader effort to ensure that American government works first and foremost for the American people.

FARA is an indispensable tool that can be used to shine a light into the murky crevices of lobbying on behalf of foreign interests, and it is for that reason that I am here to urge Congress to enact reforms to strengthen the efficacy of this law.

As far back as the earliest days of the republic, there has been concern about the harmful impact of foreign influence on domestic politics and policy.² That concern has persisted, and in some ways grown, in the intervening centuries. In 2014, the Project On Government Oversight published a report on FARA in which we analyzed weaknesses in the law and proposed several remedial recommendations.³ That report was titled *Loopholes, Filing Failures, and Lax*

¹ Foreign Agents Registration Act of 1938, 22 U.S.C. Section 611-621, <https://www.law.cornell.edu/uscode/text/22/chapter-11/subchapter-II>.

² “Washington’s Farewell Address, 1796,” United States Department of State, <https://2001-2009.state.gov/r/pa/ho/time/nr/14319.htm>.

³ Ben Freeman and Lydia Dennett, “Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short,” Project On Government Oversight, December 16, 2014,

Enforcement: How the Foreign Agents Registration Act Falls Short. Unfortunately, as recent reporting has highlighted, that title remains as appropriate a description of FARA today as it was in 2014.⁴ Equally as unfortunate is the Department of Justice’s and Congress’s lack of action toward resolving these outstanding issues with FARA, making our recommendations from that 2014 report as salient and necessary today as they have ever been.

Beyond protecting the integrity of the U.S. policymaking process by guarding against undue foreign influence and the corrupting impact such influence can have, strengthening and enforcing FARA is a critical step for Congress to take because it speaks to a bedrock principle of American society; namely, the rule of law. When regular citizens see powerful and politically connected individuals getting away with breaking the law, as is the case when FARA violations happen with impunity, the sense of unfairness and the perception of a two-tiered justice system grow and metastasize into a malignant cancer of public distrust.

All of this being said, it is encouraging that several members of Congress, both Democrats and Republicans, including the ranking member of this subcommittee, have introduced FARA reform legislation in recent years. The fact that this very hearing is happening is a positive sign, underscoring that some members of Congress are taking this matter seriously, as the issue deserves. The time for meaningful FARA reform has come, and I am honored to have the opportunity to testify before this subcommittee and offer some recommendations.

Recommendations

Given the importance of FARA as a key means of both monitoring and countering undue foreign involvement in U.S. domestic and foreign policy, undergirding the law and rendering it stronger and more effective is vital. There are several key reforms that Congress should move forward with that will meaningfully enhance FARA, including:

1. Create a dedicated FARA office within the Department of Justice, rather than continuing to leave FARA enforcement to a “unit” within the National Security Division (NSD). This will help the Justice Department in focusing on and prioritizing FARA enforcement.
2. Close the Lobbying Disclosure Act (LDA) exemption that allows a subset of foreign agents to register under the less rigorous requirements of the LDA where they should appropriately be required to register under FARA.⁵ Closing this loophole will more fully capture and monitor foreign lobbying and prevent foreign agents from engaging in such lobbying without appropriate transparency.

<https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short/>.

⁴ Hailey Fuchs, “How Russian entities are retaining much of their D.C. lobbying influence,” *Politico*, March 22, 2022, <https://www.politico.com/news/2022/03/22/russian-entities-lobbying-disclosure-00019221>.

⁵ 22 U.S.C. Section 613(h), <https://www.law.cornell.edu/uscode/text/22/613>.

3. Create civil monetary penalties for FARA violations instead of relying solely on criminal proceedings or declaratory injunctions as deterrence mechanisms. Adding a civil monetary option to the accountability framework around FARA will give the Justice Department an effective deterrence and punitive tool that it currently does not have.
4. Require modernized and updated standards for the Department of Justice’s public posting of FARA disclosure materials and documents, including meeting key digital accessibility standards such as those issued under Section 508 of the Rehabilitation Act of 1973⁶ and the latest Web Content Accessibility Guidelines (WCAG).⁷
5. Avoid extending civil investigative demand (CID) authority to the Department of Justice for use in FARA investigations and proceedings. Though FARA is an important transparency mechanism, it is crucial to avoid expanding its scope too far and increasing the opportunities for potential abuse.

While these five proposals comprise the core of our recommendations, I want to encourage Congress to refer to POGO’s 2014 report, which I have included as a supplement to my testimony. In that report, we set forth several more recommendations not listed above, including enhancing the range of required disclosures for FARA registrants and requiring additional proscriptions around foreign agents who make campaign contributions and engage in other political activities related to officials they have lobbied on behalf of foreign principals.⁸

One promising aspect of FARA reform efforts is that there have been proposals offered by a wide range of Members of Congress that include each of these reform ideas. For example, Ranking Member Johnson previously introduced a bill that would close the LDA exemption and require the Department of Justice Inspector General to analyze the department’s approach to FARA enforcement.⁹ A bipartisan cohort of senators, led by Senators Chuck Grassley (R-IA) and Dianne Feinstein (D-CA) introduced a robust FARA reform bill in 2019 that would also create civil monetary penalties for FARA violations and require DOJ to create a comprehensive FARA strategy to enhance enforcement and compliance.¹⁰ Representative Katie Porter (D-CA) introduced her own comprehensive FARA reform bill last year,¹¹ and Representatives Abigail Spanberger (D-VA) and John Katko (R-NY) have sponsored a bill that would bring FARA into the 21st century by explicitly encompassing social media content under the FARA disclosure framework.¹² Senators Cynthia Lummis (R-WY) and Sheldon Whitehouse (D-RI), along with

⁶ Section 508, Rehabilitation Act of 1973, United States Department of Labor,

<https://www.dol.gov/agencies/oasam/regulatory/statutes/section-508-rehabilitation-act-of-1973>.

⁷ Web Content Accessibility Guidelines (WCAG) 2.1, W3C, June 5, 2018, <https://www.w3.org/TR/WCAG21/>.

⁸ “Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short,” 36-37. See footnote 3.

⁹ Disclosing Foreign Influence Act, H.R. 4170, 115th Cong., (2017), <https://www.congress.gov/bill/115th-congress/house-bill/4170?q=%7B%22search%22%3A%5B%22Johnson+Foreign+Agents+Registration+Act%22%5D%7D&r=1>.

¹⁰ Foreign Agents Disclosure and Registration Enhancement Act of 2019, S. 1762, 116th Cong., (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1762> Act.

¹¹ Foreign Political Influence Elimination Act of 2021, H.R. 4847, 117th Cong., (2021), <https://www.congress.gov/bill/117th-congress/house-bill/4847/text?r=9&s=1>.

¹² Foreign Agent Disclaimer Enhancement Act of 2021, H.R. 337, 117th Cong., (2021), <https://www.congress.gov/bill/117th-congress/house-bill/337/text?q=%7B%22search%22%3A%5B%22Foreign+Agent+Disclaimer+Enhancement+%28FADE%29+Act%22%5D%7D&r=1&s=2>.

Representatives Ken Buck (R-CO) and Ro Khanna (D-CA), led a bill in their respective chambers to update and modernize FARA disclosure reporting and public posting, which would align with my fourth recommendation above.¹³

The takeaway here is that Congress has shown substantive, bipartisan interest in reforming FARA, and a general consensus has been achieved in terms of the key reform contours. The next step is to focus congressional attention and energy on moving forward and transforming these commonsense reforms from ideas into codified law.

FARA: A Brief Summary, Then and Now

Enacted in 1938 by the 75th Congress, FARA was originally a response to widespread concern about Nazi Germany's propaganda efforts in the United States.¹⁴ Since its passage, FARA has been amended on several occasions in order to bring the bill up to date and to render it reflective of modern realities, with the last round of FARA reforms coming in 1995 in the context of the original creation of the Lobbying Disclosure Act (LDA).¹⁵ In the intervening 27 years, technology has developed significantly, and foreign actors have engaged in ever more sophisticated efforts to influence U.S. policy, further underscoring the overdue and critical need for a new round of FARA reforms.

Some key areas of concern worth highlighting within FARA are registration rates, compliance with disclosure requirements, and transparency and public access in relation to disclosed informational materials.¹⁶ We note in our 2014 report that there are significant problems with all three of these areas under the FARA framework.¹⁷ Our conclusion was that FARA is riddled with loopholes and undermined by poor enforcement and insufficient transparency processes. These conclusions were largely corroborated by a report issued by the Department of Justice's inspector general in 2016.¹⁸ The inspector general report also highlighted declining rates of FARA registrations and noted how few FARA cases had been pursued by DOJ, citing just seven in the nearly 50 years from 1966 to 2015.¹⁹

More recent examples of FARA violations that have caused alarm are myriad, ranging from instances stemming from Special Counsel Robert Mueller's investigation into Russia's actions

¹³ Foreign Agents Registration Modernization (FARM) Act of 2021, H.R. 5859, 117th Cong., (2021), <https://www.congress.gov/bill/117th-congress/house-bill/5859/text?r=1&s=1>.

¹⁴ Cynthia Brown, "The Foreign Agents Registration Act (FARA): A Legal Overview," Congressional Research Service, December 4, 2017, [https://crsreports.congress.gov/product/pdf/R/R45037#:~:text=Enacted%20in%201938%20to%20promote,Department%20of%20Justice%20\(DOJ\)](https://crsreports.congress.gov/product/pdf/R/R45037#:~:text=Enacted%20in%201938%20to%20promote,Department%20of%20Justice%20(DOJ)).

¹⁵ "The Foreign Agents Registration Act (FARA): A Legal Overview," 1-2. See footnote 14.

¹⁶ Jacob R. Straus, "The Foreign Agents Registration Act: An Overview," Congressional Research Service, March 7, 2019, <https://crsreports.congress.gov/product/pdf/IF/IF10499>.

¹⁷ "Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short," Executive Summary. See footnote 3.

¹⁸ Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act, Office of the Inspector General, United States Department of Justice, Executive Summary, September 16, 2016, <https://oig.justice.gov/reports/2016/a1624.pdf>.

¹⁹ Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act, Executive Summary. See footnote 18.

during the 2016 presidential election,²⁰ to charges of FARA violations against a former Obama administration official (though the individual accused was later acquitted),²¹ to recent FARA cases that related to lobbying on behalf of Sri Lanka, China, Malaysia, and other foreign nations.²² These patterns of opacity, violations, and a disinterest in or inability to hold those who break the law accountable are key reasons why we are proposing the creation of civil monetary penalties and the modernization of the transparency aspects of FARA (the third and fourth recommendations above, respectively).

It is also important to remember that inconsistent and insufficient enforcement of FARA makes it difficult to accurately capture the true extent to which foreign lobbying that should be regulated under FARA isn't being tracked. This is, at its core, a matter of prioritization at the Department of Justice. That is why we are supporting the creation of a dedicated FARA office and the creation of a comprehensive strategy for enforcement. Combining this enhanced focus at the Department of Justice with the closure of a glaring loophole — the LDA exemption — will help more fully and appropriately encompass all of the foreign agents, and activities of those agents, that should be subject to strong transparency strictures.

With this being said, the Department of Justice has taken some encouraging steps over the past few years. These steps, which have contributed to a substantial increase in the number of FARA registrants since 2016, include issuing a notice in December of 2021 of proposed rule-making with the intent of updating FARA regulations and enhancing the department's emphasis on enforcement.²³

A Note of Caution: Civil Investigative Demand Authority

While it is vital that Congress enact reforms to modernize and strengthen FARA, and thus shed brighter light on foreign lobbying activities and the influence those activities have on U.S. policy, it is also essential to safeguard the privacy and general due process rights of Americans who may be investigated for potential FARA violations. It is all too easy to envision a scenario in which politically disfavored or marginalized stakeholders become the object of government harassment under the guise of a FARA investigation.

More specifically, Congress must be cautious in granting the Department of Justice civil investigative demand (CID) authority for purposes of FARA investigations. CID is a powerful

²⁰ Morgan Chalfant and Alex Gangitano, "Mueller fuels foreign lobbying crackdown," *The Hill*, December 31, 2018, <https://thehill.com/business-a-lobbying/business-a-lobbying/423149-mueller-fuels-foreign-lobbying-crackdown>.

²¹ Andy Wright and David Peet, "Greg Craig: The Government's Latest Swing at FARA Enforcement and What Comes Next," *Just Security*, October 2, 2019, <https://www.justsecurity.org/66341/greg-craig-the-governments-latest-swing-at-fara-enforcement-what-comes-next/>.

²² Recent FARA Cases, United States Department of Justice, <https://www.justice.gov/nsd-fara/recent-cases>.

²³ Brandon L. Van Drack and Haydn Forrest, "FARA's Next Big Year," *Just Security*, January 31, 2022, <https://www.justsecurity.org/80024/faras-next-big-year/>; Advanced Notice of Proposed Rulemaking, Federal Register: Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations, United States Department of Justice, December 13, 2021, [https://www.federalregister.gov/documents/2021/12/13/2021-26936/clarification-and-modernization-of-foreign-agents-registration-act-fara-implementing-regulations#:~:text=\(FARA%20or%20the%20Act\)%20was,on%20political%20or%20policy%20matters.](https://www.federalregister.gov/documents/2021/12/13/2021-26936/clarification-and-modernization-of-foreign-agents-registration-act-fara-implementing-regulations#:~:text=(FARA%20or%20the%20Act)%20was,on%20political%20or%20policy%20matters.)

and expansive tool that has the potential to infringe on fundamental constitutional liberties. The use of CID can lead to invasive requirements for the provision of sensitive private documents and other materials with little in the way of upstream checks and safeguards, such as prerequisite independent judicial authorization.

Between the need to be thoughtful and proactive in protecting the liberties and privacy of Americans in the abstract and the need to avoid the expense and harm of government harassment in more concrete terms, not to mention the ease with which investigations and the tools used can be weaponized, expanding CID authority to the Department of Justice under FARA is fraught with danger. It is for these reasons that, as a matter of constitutional prudence, we oppose expanding CID authority for use in the FARA context.

Conclusion

FARA is an indispensable transparency instrument for keeping an eye on foreign influence in U.S. policy, and it has longstanding weaknesses that must be addressed. Solving for those weaknesses is relatively straightforward, and there is bipartisan, bicameral interest in a broad set of specific reforms, ranging from closing the LDA exemption, to adding civil monetary penalties, to creating a dedicated FARA office. POGO urges Congress to build on the Justice Department's recent positive steps by enacting statutory reforms that will both improve the law's efficacy and the department's enforcement of it.

This law is essential not only because it limits the potential corrupting effects of foreign influence on the U.S. political and policymaking processes, though it certainly does that. FARA — and the rigorous, fair enforcement of it — is crucial to the rule of law, without which the American system of government falls apart. Nobody is above the law, and that includes politically well-connected foreign agents on K Street.