

Bibikhadisa Saidova

Professor James Thurber

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Modernizing FARA: Navigating Foreign Influence in the Digital Age

Introduction:

In an age of technology, legislation needs to keep up with the rising threats social media platforms present to democracy. In this modern era interconnectedness, the influence wielded by foreign entities online are a matter of grave concern. The Foreign Agents Registration Act (FARA), which was enacted in 1938, aimed to promote openness and responsibility by mandating that agents acting on behalf of foreign principals must report their actions and financial information to the government.

However, as the influence landscape continues to evolve onto social media platforms, it has become increasingly clear that FARA is ill-equipped to address the rising threat posed by foreign influence campaigns in the digital age. This paper delves into the pressing need for reforms to FARA, emphasizing the necessity of updating legislation to effectively counter the challenges presented by social media and emerging technologies. By exploring the gaps in the current regulatory framework, we can better understand the urgency of implementing measures that keep pace with the evolving threat landscape and ensure the integrity of democratic processes.

Background:

The Foreign Agents Registration Act (FARA) was enacted in 1938 as a transparency mechanism for foreign agents. FARA serves as a legal requirement for those who represent foreign nations and engage in political (or other specified) activities. These agents must regularly and publicly disclose their connection with the foreign principal. They are obligated to disclose their activities, any funds received or disbursed, and any other support provided for these activities. FARA is designed to promote transparency and ensure that the public has access to information regarding foreign influence and activities within the United States.¹ This act was created in response to Nazi propagandists attempting to influence American politics in the lead up to World War II.²

While FARA served an essential purpose when it was enacted in 1938, many critics argue that the law is now fundamentally outdated and in need of significant revision.³ In particular, the definition of a foreign principal and an agent is viewed as being too broad and not reflective of the current global landscape. This has resulted in potential loopholes that some foreign agents have been able to exploit, leading to concerns about the integrity of the political process. As technology and globalization continue to rapidly advance, it is becoming increasingly clear that FARA must be updated to ensure that it remains an effective tool in mitigating the risks posed by foreign influence and interference in US politics and policy.

Identifying The Problem:

¹ “Foreign Agents Registration Act,” United States Department of Justice, August 4, 2023, <https://www.justice.gov/nsd-fara#:~:text=FARA%20requires%20certain%20agents%20of,in%20support%20of%20those%20activities>

² For more information on concerns about Nazi and other subversive groups influencing American policy, see Francis R. O’Hara, “The Foreign Agents Registration Act—The Spotlight of Pitiless Publicity,” *Villanova Law Review*, vol.10, no. 2 (Spring 1965), p. 436.

³ David H. Laufman and Matthew T. Sanderson, “FARA: Issues and Recommendations for Reform,” *Politico*, July 16, 2021, <https://www.politico.com/f/?id=0000017c-33cf-dddc-a77e-37df03770000>, 5-6.

Under FARA, individuals or companies engaged in influencing the U.S. public on behalf of foreign entities must register with the Department of Justice (DOJ). This law mandates that these agents disclose their activities, income, and expenses related to their influence campaigns through the submission of paperwork. Agents must provide the DOJ with copies of certain materials they share and attach disclaimers to ensure transparency and inform targets of the campaign about the responsible entity.⁴ Notably, the regulations surrounding the labeling of disseminated materials have not undergone a significant update in almost two decades since the *Lobbying Disclosure Act of 1995 and its Amendments to FARA*.⁵ This has left the government ill-suited to address the rise of social media platforms such as Twitter, Facebook, Instagram, and TikTok.

Social media platforms are powerful tools for shaping public opinion and influencing political outcomes. Foreign actors exploit these platforms to target specific demographics, spread disinformation, and amplify divisive narratives. FARA's jurisdiction and enforcement mechanisms struggle to keep pace with the rapid dissemination of content on social media, making it difficult to identify and regulate foreign influence activities effectively.

In recent years, the Department of Justice has broadened its enforcement of FARA, including requiring registration from some Russian and Chinese media outlets. This has brought on concerns that FARA is being used as a foreign policy tool rather than strictly a transparency mechanism. The enforcement actions against these media outlets have had significant repercussions, including retaliation against U.S. media abroad and the implementation of similar "foreign agent" laws by other countries.⁶

⁴ "Foreign Agents Registration Act."

⁵ "Foreign Agents Registration Act."

⁶ Nick Robinson. "Fixing the FARA Mess." Just Security, March 16, 2022.

FARA defines a “political consultant” as one who provides information or guidance to others about the domestic or international policies of the United States, or the political or public interests, policies, or relationships of a foreign country or political party. The term “political activity” broadly applies to any action that an individual believes will, or intends to, exert influence on any agency or official of the United States government, either in relation to the development, adoption, or modification of domestic or foreign policies of the United States, or in relation to the political or public interests, policies, or relations of a foreign government or political party.⁷ FARA’s “foreign principal” definition is so broad; it encompasses all U.S. citizens living abroad, any foreign individuals, and “organizations lacking even any indirect relationship with foreign governments or foreign political parties.”⁸ These definitions are far too broad to function in an online space; they could apply to millions of social media users around the globe. In order for the Department of Justice to enact meaningful change the scope of FARA must be narrowed to an enforceable degree.

Goal: Transparency and Visibility in Foreign Agents’ Social Media Campaigns:

FARA has played a significant role in enhancing transparency around the activities of foreign agents in the United States. It requires individuals acting in a political or quasi-political capacity to register as an affiliate of a foreign entity and report on their actions and finances associated with their role.⁹

In order for FARA to be effective in the digital sphere the scope of the law must be narrowed. The act in its current form is simply too old to adequately address issues surrounding

⁷ 22 U.S.C. § 611 et seq, (o).

⁸ Laufman and Sanderson, 6.

⁹ “Foreign Agents Registration Act.”

social media.¹⁰ Once key terms such as “political consultant,” “foreign agent,” and “informational materials” are redefined the DOJ can begin to focus on transparency. The current broad definition of “political consultant” under FARA encompasses individuals who inform or advise others on various aspects of domestic or foreign policies, including those related to foreign countries or political parties.¹¹ However, in the online realm, where the dissemination of information and influence campaigns occurs at an unprecedented scale, such a broad definition is inadequate and impractical.

Enhancing transparency in the digital sphere requires the DOJ to closely scrutinize online advertising practices. With micro-targeting and personalized advertising becoming more prevalent, it is essential to bring more transparency to the funding sources and intentions behind political advertisements. Strengthening disclosure requirements for online platforms and advertisers will enable citizens to make more informed decisions and protect the integrity of the democratic process.

Evaluation of FARA Impact:

While these problems are significant they haven’t been easy to address; there have been many failed efforts to reform FARA. The Disclosing Foreign Influence Act and the Foreign Agents Registration Amendment Act of 2018 are two notable legislative proposals that have been put up in recent years. Both initiatives sought to strengthen enforcement measures but faced challenges in Congress.¹² The difficulties in enacting FARA reform legislation highlight the intricacies of

¹⁰ Josh Rosenstein. “Federal Lobbying Law: High-Level Summary.” The Bryce Harlow Workshop on Ethics and Lobbying. American University. 27 January 2024. Interview.

¹¹ 22 U.S.C. § 611(p).

¹² Parks, “A Review of Pending FARA Reform Bills.”

striking a balance between the need for openness and responsibility in lobbying for foreign interests, while also considering concerns about excessive interference, the possibility of abuse, and the practical consequences for individuals obligated to register under FARA.

The law is currently so broad that it can hardly be enforced. From 1966 until 2015, the DOJ only brought seven criminal cases under FARA.¹³ There has been a slight uptick since then, with ten cases brought from 2015 to now. Only one of these cases addressed political activity on social media. In 2018 a jury brought an eight-count indictment of 13 Russian nationals and three Russian companies for criminally interfering with the US political system by adopting false personas on US social media sites “to produce, purchase, and post advertisements...expressly advocating for the election of then-candidate Donald Trump” and organizing “coordinated political rallies in the United States.”¹⁴ Threats of this nature are still everpresent. With the rise of artificial intelligence technology it is more important than ever that the United States government is able to monitor the political activity of foreign agents.

Reforms and Recommendations:

Congress has amended FARA language overtime to better meet the needs of modern society. The original law was very broad; when FARA was passed there was no explicit language detailing what activities foreign agents must disclose.¹⁵ The language has changed as

¹³ Tarun Krishnakumar, “Propaganda by Permission: Examining ‘Political Activities’ Under the Foreign Agents Registration Act,” *Journal of Legislation* 47, no. 2 (May 19, 2021): 44–74.

¹⁴ “Recent Fara Cases,” *Foreign Agents Registration Act*, June 22, 2022.

¹⁵ Under the 1938 FARA, foreign agents were required to disclose details including: (1) their name, business address, and residential address; (2) name of the principal or person on whose behalf they were acting as agents; (3) copies of all contracts (or statement of terms and conditions, if oral) of employment under which such person acts or agrees to act as agent; (4) date of commencement of activities and contract; (5) compensation to be paid as well as names of all foreign principals contributing to such contribution; and (6) charter documents of registrant, if applicable. *Id.* § 2.

the law has been amended twelve times.¹⁶ I have three recommendations for how the act should be further amended to increase clarity and enforceability.

Recommendation 1: Modernize FARA for the digital age

In the digital age, it is widely acknowledged that FARA should be revised to accurately represent the current state of political activities, with particular emphasis on the influence of social media. This entails evaluating the manner in which foreign influence efforts use internet channels to target American people. FARA legislation should explicitly cover the manner in which disclosures are made on social media, guaranteeing clarity about the foreign sources of particular material or campaigns.¹⁷ When amending FARA, Congress needs to establish clear criteria for media registration. There needs to be objective criteria to ensure the DOJ supervises genuine foreign influence efforts as a transparency mechanism without being seen as a policy tool.

Recommendation 2: Redefine key terms to promote enforceability

By refining key terms such as "political consultant," FARA can target individuals or entities specifically involved in strategic communication and targeting campaigns aimed at influencing United States public perception or policy decisions. Similarly, redefining the term "foreign agent" would allow for a more precise identification of individuals or organizations acting on behalf of foreign principals.

Once these key terms are redefined within the framework of FARA, the DOJ can focus on enhancing transparency in the digital sphere. By narrowing the scope of the law, the DOJ can

¹⁶ "Foreign Agents Registration Act."

¹⁷ Ben Freeman, "Biden and the Democratic Congress: A Perfect Storm for Foreign Lobbying Reform?"

better allocate resources and target enforcement activities against foreign agents and propagandists operating in online spaces. This targeted approach would enable the DOJ to prioritize investigations and prosecutions aimed at combating disinformation campaigns and reinforcing the integrity of democratic processes in the face of evolving threats.¹⁸

Recommendation 3: Revert the term “informational materials” back to “political propaganda”

FARA enforcement and language has evolved overtime. When originally passed, FARA primarily targeted conventional political propagandists from 1938 until the amendments of 1966, which redefined the focus of the law to protect the integrity of the government’s decision-making process. The shift in focus was due to the evolving landscape of foreign influence, which in the 1960s, predominantly involved increasingly sophisticated Cold-War era activities. The term “political propaganda” was removed entirely in the 1995 amendments and replaced with “informational materials.”¹⁹ FARA was amended to stay up-to-date with US threats.

However, in light of the rapid spread of disinformation and propaganda on social media, the law may need to revert to some aspects of its earlier purpose. Present-day social media propagandists disseminate “political propaganda” more than actual “information materials,” which is not fully captured by FARA's current wording. The new term “informational materials” isn’t defined at all so it’s unclear what registrants are required to disclose.²⁰ While other laws, such as the LDA, address foreign lobbying, FARA is presently the only law capable of countering the

¹⁸ Laufman and Sanderson, 2-3.

¹⁹ Joshua R Fattal, “FARA on Facebook: Modernizing the Foreign Agents Registration Act to Address Propagandists on Social Media,” N.Y.U. J. Legis. & Pub. Pol’y, July 8, 2019. 910-911.

²⁰ Laufman and Sanderson, 46.

efforts of foreign-based social media propaganda.²¹ The scope of FARA needs to narrow significantly for the law to actually be enforceable and reverting to earlier language is one possible method of doing so.

Conclusion:

To summarize, the Foreign Agents Registration Act (FARA), initially intended to enhance transparency and responsibility for foreign influence inside the United States, has significant challenges in the era of digital technology. The emergence of social media and the rapid development of digital platforms have surpassed the current legal framework, making FARA less efficient in dealing with the nuances of modern foreign social media campaigns.

The need for FARA reform is clear. Thomas M. Susman highlights three pivotal factors in understanding why FARA laws remain so broad. He explains that Congress doesn't prioritize making these reforms, fails to come to compromises, and tends to pursue longlasting legal provisions that will stand the test of time.²² Despite this, it's imperative that they narrow the scope of this law so it is enforceable in today's digital landscape. To more effectively address genuine threats to democratic integrity without encroaching on foreign policy discourse, the Department of Justice can redefine key terms, increase the transparency of foreign agents' social media campaigns, and establish precise criteria for media registration.

²¹Fattal, 912

²² Thomas M. Susman "FARA: Issues and ABA Recommendations for Reform" The Bryce Harlow Workshop on Ethics and Lobbying. American University. 27 January 2024. Interview.

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