

The logo for POLITICO, featuring the word "POLITICO" in white, uppercase, sans-serif font centered within a solid red square.

How to fix FARA, according to FARA lawyers

Caitlin Oprysko

September 29th, 2021

With Daniel Lippman

FIRST IN PI — ABA TASK FORCE LAYS OUT PROPOSALS TO FIX FARA: As the Justice Department has set out on a path to more aggressively enforce the statute governing foreign influence activities over the past half decade, a new task force of FARA lawyers released a new report today outlining their recommendations for how best to fix a law for which they say reforms have “never been more essential or timely.”

— “We set out to, in essence, reimagine what the Foreign Agents Registration Act should be, without — as much as possible — being bound by the ... barnacle encrusted structures of statute that was enacted in 1938, and which has undergone only modest amendment since,” said **David Laufman**, a partner at **Wiggin & Dana** who co-chaired the **American Bar Association’s** FARA task force. Laufman, a DOJ alum who previously oversaw the department’s FARA Unit, said that endeavor meant taking the law “back down to its studs,” with few changes off limits, even the law’s name.

— The task force includes a range of stakeholders, from former officials in charge of enforcing FARA who are now advisers on compliance, to those in academia and think tanks. The task force’s other co-chair was **Caplin & Drysdale’s Matt Sanderson**. The group also solicited input from nonprofits and other entities implicated by FARA, as well as the Justice Department itself. The latter was “not forthcoming with any views,” however, Laufman told PI.

— The group’s 60-page report offers nearly two dozen recommendations for fixing the World War II-era statute, most of which require congressional action but some of which can be adopted unilaterally by the Justice Department. Several of the task force’s proposed fixes include making changes to or better defining key terminology, either to destigmatize compliance or to “sharpen the focus of the statute to eliminate ambiguities,” Laufman said. The report recommends ditching the term “foreign agent” in favor of “a term that elicits less stigma and causes less confusion,” such as “representative.” (They recommend renaming the law accordingly, making the FARA acronym a thing of the past.) It also advises lawmakers to narrow the definition of the term “foreign principal” to focus on foreign governments or political parties and those that act on their behalf.

— Other steps the task force recommends Congress take include increasing the stakes of failing to comply with FARA by requiring foreign principals to certify under penalty of perjury that documents filed with DOJ are accurate; reformulating FARA’s legal standard for media organizations; “harmonizing” disclosure requirements under FARA with those of the Lobbying Disclosure Act; protecting filers’ private information; repealing filing fees; and granting DOJ administrative subpoena authority to enforce FARA.

— Laufman noted that the task force, which has been at work on the report for several years now, endeavored to create a “very balanced” product that wouldn’t prevent the Justice Department from fulfilling legitimate national security objectives covered by FARA. “We know the Justice Department needs to be nimble,” he told PI, especially as the shape of malign foreign influence activities evolve. But the report offers some steps the department can take on its own to be more proactive and transparent in helping the regulated community follow the law.

— Much of that includes issuing more robust public guidance on the statute in general. But the task force also said DOJ could better define key triggers of registration, like what constitutes a political consultant under the law or what constitutes political activity. The report also argues for clearer interpretation of FARA exemptions, including those for “bona fide trade or commerce” or “bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts,” those for LDA registrants or those for lawyers engaged in legal representation. And in the department’s advisory opinions, which guide lawyers advising lobbyists on whether or not they need to register as foreign agents, the group is pushing for more opinions and fewer redactions.

— Even though the task force didn’t set out to offer fixes based on what might be politically viable in today’s polarized Congress, “it’s our hope that the task force report ... can play a role in helping to craft FARA reform legislation that for the first time in years may actually have legs,” Laufman said, pointing to a bill introduced in the last Congress by Sen. **Chuck Grassley** (R-Iowa) that Sen. **Bob Menendez** (D-N.J.), the chair of the Foreign Relations Committee with oversight of FARA, said he wanted input on.

Good afternoon and welcome to PI. Hope you all have had the chance to read [what is easily the most important congressional news of the day](#). Send lobbying tips and gossip: coprysko@politico.com. And be sure to follow me on Twitter: [@caitlinoprysko](#).

A message from HCA Healthcare:

HCA Healthcare has treated more COVID-19 inpatients than any other health system in the U.S. By analyzing our vast repository of COVID-19 data, we have a unique ability to leverage and share learnings to improve patient outcomes and public knowledge. The insights gained from our research and collaborations with the CDC and NIH will greatly accelerate the discovery of new approaches to care. [See how we show up for our patients, communities and each other.](#)

PRO-BIF GROUPS TAKE TO SHAMING LAWMAKERS: As tomorrow’s vote on the bipartisan infrastructure bill looms with its prospects for passage still murky, several groups pushing the bill are calling out lawmakers for playing politics with the legislation. The **National Association of Manufacturers’ Jay Timmons** is the latest, with a blistering statement this afternoon asserting that “it is impossible to claim to be ‘for the worker’ and for the middle class while actively derailing generational investments to the infrastructure these people use every day.”

— **Third Way**, a centrist think tank backed by the business community, made a similar plea [in a letter](#) to House Republican members of the Problem Solvers Caucus, the majority of whom have not said whether they will break with Minority Leader **Kevin McCarthy** to vote for the infrastructure bill. “We have reason to doubt your commitment to solving problems,” Third Way President **Jonathan Cowan** wrote to the lawmakers today.

— Cowan did not mince words: “Such naked partisanship — choosing gridlock over progress for purely tactical reasons — is exactly what you pledged to fight in becoming a ‘Problem Solver,’” he wrote, telling the lawmakers that “your time to take up that fight has arrived” and warning that voting against the bill, which is in danger of failing, would “drain the ‘Problem Solver’ notion of all meaning.”

THE STORY BEHIND TAYLOR’S DEPARTURE FROM NISKANEN: “**Jerry Taylor**, the co-founder and president of the **Niskanen Center**, recently resigned from the Washington, D.C.-based think tank [after being charged with violently attacking his wife.](#)” **POLITICO’s Daniel Lippman** reports. “Taylor, who previously had been a longtime top official of the **Cato Institute**, was arrested in early June on a misdemeanor charge of assault and battery of a family member in Arlington, Va.”

— “He denies the accusations, but says he pleaded guilty in exchange for the charges being dismissed as long as he successfully completes a domestic violence and substance abuse prevention program.” On July 20, Arlington’s Juvenile and Domestic Relations District Court found “that the facts were sufficient in the case to sustain a conviction but deferred a finding on the case until next July as long as Taylor exhibits good behavior, completes an ‘abuser’s intervention program,’ undergoes a substance abuse evaluation, follows all treatment recommendations and abides by a protective order requiring him to forgo any contact with the complainant and her daughter. Taylor is appealing the protective order.”

EXXON LOBBYIST PARTS WAYS WITH OIL GIANT AFTER STING: “**Exxon Mobil Corp.** has parted ways with **Keith McCoy**, its lobbyist who divulged aspects of the company’s climate strategy in a secretly recorded video,” **E&E News’ Corbian Hiar** reports. “‘Mr. McCoy no longer works for the company,’ Exxon spokesperson **Casey Norton** said in an email to E&E

News yesterday afternoon. It's unclear when McCoy left the company or if the oil major is still providing him legal representation related to congressional investigations spawned from his recorded comments.”

— But though McCoy, whose comments to the environmental group **Greenpeace UK** have sparked a congressional inquiry about fossil fuel companies’ lobbying on climate issues, has left the company, “experts predicted the move would increase congressional scrutiny of Exxon and its former lobbyist. The company disputed McCoy's comments, which undermined Exxon's public support for a carbon tax, and his description of lawmakers as fish who he could ‘reel’ in.”

— House Oversight Chair **Carolyn Maloney** (D-N.Y.) and Environment Subcommittee Chair **Ro Khanna** (D-Calif.) indicated the company isn’t in the clear just because McCoy is gone. “The Oversight Committee plans to get to the truth about how the fossil fuel industry has misled the public about climate change and obscured its own role in creating this global crisis,” the lawmakers said in a statement. “Fossil fuel companies will not be able to hide the truth, regardless of whether the people who engaged in this conduct have left the company.”

RESTAURANT ASSOCIATION REGISTERS COMPLAINTS WITH

RECONCILIATION: The **National Restaurant Association** today expressed “grave concern” with Democrats’ reconciliation bill, writing to congressional leaders that the bill’s labor provisions, coupled with corporate tax increases intended to help pay for the package and the absence of more relief funds for the industry, amount to several more “burdens” on an already-struggling restaurant industry.

— To underscore their point, the trade group released a new survey of restaurant operators that found “deteriorating business conditions are impacting operators’ outlook to the point that they state a recovery from the pandemic will be prolonged well into 2022.” Operators blamed a rise in cases of coronavirus driven by the Delta variant for continuing to depress business, while 85 percent of respondents reported thinner profit margins thanks to higher labor costs, higher occupancy costs and higher food costs.

BUSINESS ROUNDTABLE TAPS GM CHIEF AS NEXT CHAIR: **Mary Barra**, the **General Motors** chief executive, who is overseeing her company’s transition to electric vehicles, will be the next business leader to chair the **Business Roundtable**. Barra will replace **Walmart** President and CEO **Doug McMillon**, whose two-year term will expire at the end of this year, and will become the group’s first female leader at a time when the business community continues to deal with the fallout of the Covid pandemic and, if congressional Democrats have their way, potential changes to the corporate tax code that the business group has lobbied hard against.