

April 22, 2020

Arizona Supreme Court Task Force on Countering Disinformation
David R. Fuller draft recommendations

DRAFT RECOMMENDATION 1 (FARA):

I. Abbreviated Recommendation:

Track and report those in Arizona who are registered as foreign agents under the Foreign Agents Registration Act (FARA), 22 USCA § 611, et. seq. The Administrative Office of the Courts should approach an Arizona Executive Branch agency to secure a commitment that they compile publicly-available registration information from the United States Department of Justice (USDOJ) and publish Arizona-related information to the state agency's website.

II. Recommendation.

Track and report those in Arizona who are registered as foreign agents under the Foreign Agents Registration Act, 22 USCA § 611, et. seq. (FARA).

The Foreign Agents Registration Act, 22 USCA § 611, et. seq. (FARA) requires certain agents of foreign principals who are engaged in political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities. Disclosure of the required information facilitates evaluation by the government and the American people of the activities of such persons in light of their function as foreign agents. The United States Department of Justice (USDOJ) has a FARA Unit within the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) that is responsible for the administration and enforcement of FARA.

Individuals who promote state-sponsored messages from a foreign government must register under FARA. USDOJ maintains information about registered agents and making this information available to the public in Arizona supports transparency and promotes public awareness.

Arizona Supreme Court Administrative Order 2019-114 that established the Task Force on Countering Disinformation (Task Force), suggested that the Task Force consider legislation that would require foreign agents to identify their content to the public in Arizona. The Task Force spoke with subject-matter experts on FARA and on the legislative process in Arizona. In considering its options, the Task Force determined that legislation that would duplicate federal requirements would be cumbersome or confusing to those required to register and to the public. The Task Force recognizes the federal/international nature of this information along with existing federal reporting requirements and feels that recommending state legislation is not appropriate or efficient; particularly since there is an existing federal law that achieves the same purpose (i.e., FARA). In addition, the Task Force determined that if an Arizona legislative proposal were to be presented, it would require input and implementation details from multiple stakeholders and would more appropriately be proposed by a non-judicial entity, based on a general understanding that regulatory laws are a policy matter. As a result, the Task Force does not recommend state or local legislation requiring foreign agents to identify their content to the public.

Rather than pursue state legislation, the Task Force recommends that the Administrative Office of the Courts (AOC) approach an Arizona Executive Branch agency to secure a commitment that they compile publicly-available registration information from the USDOJ and publish Arizona-related information to that state agency's website. The Task Force identified the Arizona Department of Homeland Security or the Department of Public Safety as potential agencies to post this information, as both are statewide agencies responsible for monitoring and protecting the state's security interests. The Arizona Secretary of State's office was identified as another option, given its statewide responsibilities for elections and registering lobbyists.

The Task Force recommends that the AOC contact the Arizona Department of Homeland Security, the Department of Public Safety, or the Secretary of State's Office by March 2021 to secure a commitment to have the publicly-available federal FARA information posted online in Arizona.