



## U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

November 19, 2019

### **Via FedEx and E-mail**

[addressee deleted]

Re: Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name deleted]:

This is in response to your letter dated September 19, 2019 (“September 19 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client, [foundation], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based on our review of your request, as well as additional information provided in your November 7, 2019 email (“November 7 Email”), we have determined that, should the [foundation] engage in the proposed activities, it would be obligated to register under FARA.

According to the September 19 Letter, [foundation] is a tax-exempt organization comprised of [text deleted] U.S. citizens who are concerned about “[text deleted].” There are a number of autonomous national [foundation]s founded by [foreign individual] in [foreign country], including one based in the United States (American foundation).<sup>1</sup> Collectively, [foundation] has over 120,000 active members, volunteers and donors. Central to the [American foundation]’s mission is “[text deleted].”

The September 19 Letter sets forth several activities proposed to be undertaken by the [American foundation], and U.S. persons who are members of the [American foundation], on behalf of foreign [foundation]s and their foreign members. The activities include:

- Preparing banners with names of foreign [foundation]s that will be carried in [an event], where foreign [foundation] members will speak to people about their efforts;
- Arranging the attendance of foreign [foundation] members at social events in Washington, DC, and possibly introducing foreign [foundation] members to U.S. Government officials;
- Coordinating meetings of foreign [foundation] members and/or foreign government officials<sup>2</sup> with U.S. government officials in order to “explain their work in their home

<sup>1</sup> For clarity, our opinion will refer to [foundation]s of other nations as “foreign [foundation]s.”

<sup>2</sup> In the November 7 Email, you informed us that “there is a possibility that some of the activities raised in the request letter might involve foreign government officials. For example, it is a possibility that a [American

- country regarding [text deleted];”
- American [foundation] members arranging such meetings in their personal capacities; and
- Posting content on [American foundation]’s website about the visit of foreign [foundation]s to the United States or about the activities of the foreign [foundation]s in their home country with reference to U.S. interests.

The letter then inquires whether the activities would be considered “political activities”<sup>3</sup> under the Act and/or whether they qualify for the exemption pursuant to Section 613(e) for persons engaging or agreeing to engage “only in activities in furtherance of bona fide religious . . . pursuits.”

Generally speaking, absent an exemption, a party is an “agent of a foreign principal” that must register under FARA, if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States, in pertinent part:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

*See* 22 U.S.C. § 611(c)(1).

First, foreign [foundation]s and their members are “foreign principals” under the Act. *See* 22 U.S.C. § 611(b)(2),(3). If the [American foundation] or its members engage in activities on behalf of foreign [foundation]s or their foreign members, they would be acting “at the order, request, or under the direction or control, of a foreign principal.” 22 U.S.C. § 611(c)(1).

Next, we consider whether the specified activities would require registration under FARA. If the [American foundation] prepares banners for foreign [foundation]s, it would be required to register because it would be acting as a “publicity agent” under the Act by engaging

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foundation] member might introduce a foreign government official to a US Member of Congress or help to arrange meetings.”

<sup>3</sup> The Act defines “political activity” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country.” 22 U.S.C. § 611(o).

“directly or indirectly . . . in the publication or dissemination of . . . visual . . . or pictorial information.”<sup>4</sup> It is unclear, based on the information provided, whether arranging the attendance of foreign [foundation] members at social events in [US city], would be considered “political activities.” Such arrangements would not be considered “political activities” if the interactions are purely social, and not intended to influence any U.S. Government official or the public regarding the domestic or foreign policies of the United States or the political or public interests of a foreign government. If the [American foundation] arranges meetings between foreign [foundation] members or foreign government officials and U.S. Government officials, as described in your letter, such activity would be “political activity.” Registration under FARA would still be required even if the [American foundation] members arrange the aforementioned meetings in their personal capacities. Lastly, there would be no obligation to register under FARA if the [American foundation] posts content on its website about the visit or activities of foreign [foundation]s, as long as the postings are not conducted at the request, direction, or control of a foreign principal.

Finally, we consider whether the [American foundation]’s activities would be exempt from registration pursuant to Section 613(e), which provides an exemption for “any person engaging in or agreeing to engage only in activities in furtherance of bona fide religious . . . pursuits.” (emphasis supplied). As provided in Section 5.304(d) of the implementing regulations for FARA, this exemption “shall not be available to any person . . . if he engages in political activities as defined in Section 1(o) of the Act for or in the interests of his foreign principal.” As discussed above, several of the proposed activities of the [American foundation] would be considered “political activities.” Accordingly, the [foundation] may not avail itself of the exemption under Section 613(e) as concerns certain political activities, and thus, would be required to register under FARA.

If the [American foundation], or any of its members, choose to engage in the above-described activities on behalf of foreign [foundation]s or its members, it should effectuate a registration within ten (10) days of such agreement or prior to any activity. If you have any questions regarding this matter, please contact [name deleted] by telephone at (202) 233-0776.

Sincerely,

Brandon L. Van Grack  
Chief, FARA Unit

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<sup>4</sup> See 22 U.S.C. §611(h).