

Can Congress Limit the Ability of China (or other Foreign Nations) to Lobby U.S. Officials? Statutory and Constitutional Considerations

Zack Smith, Thomas Jipping, and Paul J. Larkin

KEY TAKEAWAYS

Foreign citizens are not in the same legal position as U.S. citizens. Congress has far greater leeway to restrict their activities.

Congress can prohibit foreign citizens, or even U.S. citizens, from lobbying on behalf of a foreign government. This would not violate the First Amendment.

A good constitutional case can be made that Congress should close off attempts by agents of hostile foreign governments to influence public officials.

Imagine this: A war rages between the United States and a foreign adversary. The countries have recalled their ambassadors and have severed all diplomatic ties—standard practice when war breaks out.¹ Given these circumstances, common sense says that the foreign country should not be able to lobby Members of Congress either formally or informally. If they did, imagine how they would lobby on key legislation: More spending on national defense? Of course not! Our wartime adversary would say that's a bad idea. And if given the chance, it might lobby or pay American citizens to lobby on its behalf, saying that it's a bad idea. What about a defense compact with a foreign nation? Another bad idea. But a controversial domestic bill that would shift attention and resources away from the war? That's a great idea! Allowing a foreign government with such blatantly adverse interests to lobby Members of Congress and others for their preferred policies sounds absurd when put in these stark terms.

This paper, in its entirety, can be found at <http://report.heritage.org/lm307>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Yet today, foreign governments—including enemies and competitors—can lobby like this.² Thankfully, the United States is not currently in a shooting war with any country, but many countries, particularly geopolitical rivals like China and Russia, have interests adverse to those of the United States. Is Congress powerless to force them to use standard diplomatic channels to make their views known? Should these foreign countries and their emissaries be allowed to lobby Congress, state legislatures, and other government officials directly? The answer to both is certainly no. Of course, there are practical, statutory, and constitutional concerns that must be considered and addressed when Congress takes action. Currently, there is no prohibition on foreign governments lobbying Members of Congress or others. Instead, Congress has enacted a disclosure-based regime under which, broadly speaking, someone lobbying on behalf of a foreign country simply has to disclose that they are doing so and register with the appropriate entity. If they don't, certain civil or criminal penalties could attach.

The first part of this *Legal Memorandum* outlines this current disclosure-based regime and briefly discusses some of the current issues and shortcomings with it. The second part outlines constitutional considerations, including First Amendment considerations, that Congress must consider when passing legislation to ban foreign lobbying.

Statutory Considerations: The Foreign Agents Registration Act

Congress first implemented our current disclosure-based system in the 1930s when the world faced the crisis of an ascendant Nazi Germany and its dangerous ideology.³ To “combat the spread of hidden foreign influence through propaganda in American politics,” Congress passed the Foreign Agents Registration Act (FARA), which then-President Franklin D. Roosevelt signed into law on June 8, 1938.⁴ FARA has undergone three major amendments since its enactment, with the last being in 1995.⁵ A hearing held earlier this year by a subcommittee of the House Judiciary Committee shows that there is a bipartisan consensus that FARA is not currently working as well as it should.⁶ Uncertainty and concerns about selective—and potentially partisan⁷—enforcement abound.

According to the U.S. Justice Department's Counterintelligence and Export Control Section in its National Security Division, which has responsibility for administering and enforcing FARA, that statute essentially “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.”⁸ That sounds simple enough. But who qualifies as a “foreign principal” under the statute? Who qualifies as a foreign “agent”? And assuming someone is a foreign agent acting on behalf of a foreign principal, do they qualify for a registration exemption? These are just a few of the places where uncertainty and ambiguity abound and opportunities for selective enforcement by the Justice Department present themselves—ambiguities that do not serve the underlying goal to make sure that “[d]isclosure 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.”⁹

At a minimum, though, “a government of a foreign country” or a “foreign political party,” such as the Chinese Communist Party (CCP), would qualify as a foreign principal.¹⁰ In fact, commentators have noted that the CCP is effectively the government of China.¹¹ And anyone “who acts as an agent, representative, employee, or servant” for them or any person “who acts in any other 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...within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States” qualifies.¹² Anyone who simply holds himself out as an agent of a foreign principal qualifies as one too.¹³

Still, as one witness at the recent committee hearing made clear, even in “the 1980s [when] FARA was primarily used against lobbyists of foreign governments and political parties, and even for this more limited goal, it was widely seen as being underenforced.”¹⁴ Nonetheless, it remains clear that those lobbying on behalf of foreign governments or foreign political parties must register¹⁵ under FARA or face potential civil and criminal penalties.¹⁶

Constitutional Considerations

The Supreme Court of the United States has twice upheld FARA over constitutional challenges.¹⁷ But the relevant constitutional question here is slightly different. Can Congress go beyond requiring identification and disclosure by agents of foreign governments and actually regulate or limit the activities of those agents? Can Congress, for example, require that all contacts by agents of foreign governments with federal officials be conducted

through the U.S. Department of State? And can Congress go even further and prohibit such an agent from lobbying altogether? As explained below, the answer to all of these questions is yes.

Examining the freedom of foreign nations or foreign political parties to influence government in the United States begins with recognizing that these entities are not in the same legal position as U.S. citizens. Foreign governments or officials, for example, do not have the right to participate in the political process as candidates or voters. Foreign citizens (and foreign governments) are banned from contributing to the political campaigns of those running for federal, state, or local office.¹⁸ And Articles I and II of the U.S. Constitution require that legislative or executive branch officeholders must be citizens.¹⁹ In addition, the states' power to decide who may vote in elections²⁰ includes placing limits on holding state office parallel to what Article I provides for elected federal officials.²¹

In sum, the Constitution treats foreign governments and officials differently from citizens in important ways. The Fourteenth Amendment provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”²² In contrast, Congress may define the rights afforded to immigrants until they become citizens.²³ So again, there is no constitutional prohibition against banning lobbying by foreign governments—or even foreign nationals.²⁴

The trickier situation presents itself when American citizens lobby on behalf of foreign governments. Citizens, unlike foreign governments or officials, have the First Amendment right to “petition the Government for a redress of grievances.”²⁵ Because of this, some might argue that this guarantee, combined with the First Amendment’s right to freedom of speech, should allow American lobbyists to press the case of foreign governments and interests. But that is a specious argument. Of course, American citizens are free to petition the government for “redress of grievances” regardless of the nature of the grievance and regardless of who benefits from the government’s ultimate action. Maybe a citizen believes we should be providing more humanitarian aid to a certain country. Maybe a citizen believes we should be providing more military aid to a country. Maybe a citizen believes in—and wants the government to take action on—a whole host of issues that might benefit a foreign country. All of these are fine so long as that American citizen is *not legally acting on behalf of a foreign government as a lobbyist*. Congress can prohibit this latter action.

Why? Two reasons support this conclusion. First, the activity of lobbying²⁶ implicates the First Amendment’s Petitioning Clause more than its Free Speech Clause. True, the two clauses are closely related because both

protect the expression of a particular viewpoint, but certain restrictions on lobbying by American citizens on behalf of American citizens are already codified.²⁷ If some restrictions on that type of lobbying are permissible, then certainly restrictions on, or even prohibition of, lobbying on behalf of foreign governments are permissible.

This leads to the second point: that lobbying on behalf of a foreign government is materially different from lobbying on behalf of an American citizen. The former poses risks to the nation's security that are not present when someone lobbies on behalf of a state, municipality, or private business. The Constitution itself contains many provisions that make clear that the President and Congress can treat foreign nations differently from American citizens²⁸ and can also regulate the conduct of the formal and private representatives or agents of foreign governments.²⁹

Furthermore, consider that speech and petitioning of the government by citizens is generally a public activity designed to persuade or inform anyone who will listen.³⁰ *Lobbying*, in contrast, involves efforts to persuade elected or appointed officials to use government power to benefit certain parties or interests. The resulting public interest in regulating lobbying is further magnified when the lobbying is done on behalf of foreign governments. To emphasize, the key issue is not *whether* American citizens can support or promote the interests of foreign governments, but *how* they do so. Acting in their own capacity as citizens, Americans can speak, publish, advocate, or in other ways argue in favor of foreign interests and urge the American government to do so. Acting as an agent or representative of a foreign government, however, is a different matter.³¹

When Congress declares war on a foreign nation, the United States can use its full economic, political, and military power to wage war against that country. As explained above, it can certainly prevent that nation from seeking to undermine the war effort through private communications and other persuasive activities directed at American public officials. But a formal declaration of war need not exist for Congress to enact such prohibitions. Congress has not formally declared war since 1942 but has utilized Authorizations for the Use of Military Force (AUMFs) against either national or subnational foes. These resolutions may be different in form, but they are sufficiently similar in substance to justify similar restrictions, and even prohibitions, on lobbying on behalf of the foreign nation that is the subject of the AUMF. Any time Congress authorizes the use of military force against another nation, it has the ancillary power to halt all lobbying on behalf of that other nation, or foe, regardless of who seeks to do the lobbying.

But Congress can act even in the absence of an AUMF. After all, we are entering a “new cold war” against major adversaries like Communist China.³² It is undisputed that China poses a grave threat to the security of the United States, and it routinely seeks to gain an advantage over the United States by engaging in harmful activities such as the ongoing theft of America’s intellectual property.³³ Given the basic distinction between foreign governments and citizens, Congress should be able to regulate contacts between foreign governments and American public officials when faced with threats that are less formal than those seen during wartime or armed conflict. Doing so could, in fact, help to avoid escalation to that more dramatic level.

If Congress does not want to halt lobbying efforts by the Communist Chinese government and party completely, it could take lesser action such as requiring that the State Department be notified of any communications by those who are lobbying on behalf of foreign governments and allow someone from the State Department to be present at any such in-person or virtual meeting. Congress could also require all such virtual meetings to be recorded and submitted to the State Department, enabling the federal government to ensure that no such contacts go unnoticed and unobserved. The ability to do this is an important feature of the federal government’s authority over foreign policy, though again, unlike an outright prohibition, this might run into many of the same administrative problems that currently plague FARA enforcement.³⁴ As a recent Congressional Research Service report discussing FARA stated:

Balancing constitutional protections of free speech and the right to petition against foreign influence has historically been a challenge. The right to petition the government has long been considered a protected and “preferred” freedom “enshrined in the First Amendment.” Rooted in English common law, the colonists brought the right to petition with them to the New World, and it became engrained in American life. Generally, the right to petition focuses on the ability of citizens to contact their elected officials through various means. This might include traditional forms of petition (e.g., postcards, form letters, documents signed by multiple citizens) as well as the ability to hire representation to lobby the government. Consequently, laws that address foreign influence have generally avoided censorship in favor of transparency in order to “preserve in this country the freedom of speech and freedom of the press.”³⁵

But it can hardly be censorship to prohibit one’s adversaries from trying either covertly or overtly to influence foreign and domestic policies that favor the adversary to the detriment of the United States.³⁶

Conclusion

Since 1938, Congress has regulated lobbying on behalf of foreign governments by forcing their agents to identify themselves and disclose various items of information to the federal government. That pre-Cold War—indeed, pre-World War II—regimen needs re-examination. Unlike the publication of facts or opinions, the lobbying of Members of Congress or other federal, state, or local government officials occurs in places where the public cannot ordinarily go, such as congressional offices and private gatherings off Capitol Hill or in a Member’s home state.

Some foreign nations are not allies of the United States, nor are they merely economic rivals. They wish us ill and work to see that happen. It is time for a public debate on the question of whether Congress should close off attempts by the agents of such governments to influence our nation’s public officials. The Constitution does not stand in the way, and there is a good case to be made that we should take this step. Let us hope that the debate begins soon.

Zack Smith is Legal Fellow and Co-Manager of the Supreme Court and Appellate Advocacy Program in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation. **Thomas Jipping** is Senior Legal Fellow in the Meese Center. **Paul J. Larkin** is the John, Barbara, and Victoria Rumpel Senior Legal Research Fellow in the Meese Center.

Endnotes

1. See, e.g., Andrew Glass, *Wilson Cuts Diplomatic Ties with Germany, Feb. 3, 1917*, POLITICO (Feb. 3, 2019), <https://www.politico.com/story/2019/02/03/this-day-in-politics-february-3-1140636>; John Kelly, *In the Days After Pearl Harbor, Axis Diplomats Were Sent to Luxury U.S. Resorts*, WASH. POST (Mar. 11, 2020), https://www.washingtonpost.com/local/in-the-days-after-pearl-harbor-axis-diplomats-were-sent-to-luxury-us-resorts/2020/03/11/2bc84b4c-63ac-11ea-acc8-80c22bbee96f_story.html (stating that “Franklin Roosevelt wanted Axis diplomats out of their Washington embassies as quickly as possible and had them sent to remote mountaintop resorts” until they could be returned to their home countries).
2. It happens either directly or indirectly. See, e.g., Michael Martina, *Chinese Embassy Lobbies U.S. Business to Oppose China Bills—Sources*, REUTERS, Nov. 15, 2021, <https://www.reuters.com/business/exclusive-chinese-embassy-lobbies-us-business-oppose-china-bills-sources-2021-11-12/>; Ana Swanson, *Nike and Coca-Cola Lobby Against Xinjiang Forced Labor Bill*, N.Y. TIMES (Updated Jan. 20, 2021), <https://www.nytimes.com/2020/11/29/business/economy/nike-coca-cola-xinjiang-forced-labor-bill.html>; Hailey Fuchs, *How Russian Entities Are Retaining Much of Their D.C. Lobbying Influence*, POLITICO (Mar. 22, 2022), <https://www.politico.com/news/2022/03/22/russian-entities-lobbying-disclosure-00019221>.
3. JACOB R. STRAUS, CONG. RSCH. SERV., R46435, FOREIGN AGENTS REGISTRATION ACT (FARA): BACKGROUND AND ISSUES FOR CONGRESS (2020).
4. *Id.*
5. *Id.*
6. *Enhancing the Foreign Agents Registration Act of 1938 Before the Subcomm. on the Const., Civ. Rights, and Civ. Lib. of the H. Comm. On the Judiciary*, 117th Cong. (Apr. 5, 2022) (explaining the practical problems with FARA including confusion over who should register and for which activities), available at <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4905>.
7. See Isaac Stanley-Baker, *DeSantis Spokeswoman Belatedly Registers as Agent of Foreign Politician*, WASH. POST (Jun. 8, 2022), <https://www.washingtonpost.com/politics/2022/06/08/christina-pushaw-desantis-foreign-agent-saakashvili/>; Misty Severi, *DeSantis Defends Press Secretary from “Smear” Reporting of Foreign Work*, WASH. EXAM. (Jun. 8, 2022), <https://www.washingtonexaminer.com/news/desantis-defends-press-secretary-from-smear-reporting-foreign-work>; Caitlin Oprysko, *Blue Star Amends FARA Paperwork*, POLITICO (May 31, 2022), <https://www.politico.com/newsletters/politico-influence/2022/05/31/blue-star-amends-fara-paperwork-00036135>; see also Nick Robinson, “Foreign Agents” in an Interconnected World: FARA and the Weaponization of Transparency, 69 DUKE L.J. 1075 (2020), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4013&context=dlj>.
8. FARA: FOREIGN AGENTS REGISTRATION ACT, U.S. DEP’T OF JUST., <https://www.justice.gov/nsd-fara> (last visited Jun. 7, 2022).
9. *Id.*
10. See 22 U.S.C. § 611(e) (defining “government of a foreign country”), (f) (defining “foreign political party”).
11. See, e.g., DEAN CHENG ET AL., ASSESSING BEIJING’S POWER: A BLUEPRINT FOR THE U.S. RESPONSE TO CHINA OVER THE NEXT DECADES 5–6 (2020), <https://www.heritage.org/asia/report/assessing-beijings-power-blueprint-the-us-response-china-over-the-next-decades>; ELIZABETH C. ECONOMY, THE THIRD REVOLUTION: XI JINPING AND THE NEW CHINESE STATE 1–2 (2018); Paul J. Larkin, Jr., *Suing China Over COVID-19*, 100 BOSTON U.L. REV. ONLINE 91, 100 & n.53 (2020).
12. 22 U.S.C. § 611(c), (d).
13. *Id.*
14. *Enhancing the Foreign Registration Act of 1938*, supra note 6 (written testimony of Nick Robinson, Senior Legal Advisor, ICNL), available at <https://docs.house.gov/meetings/JU/JU10/20220405/114580/HHRG-117-JU10-Wstate-RobinsonN-20220405.pdf>. He went on to say: “With a rise in concern about foreign influence, the Act has been going through an identity crisis, with disagreement about whether enforcement should focus solely on foreign government lobbying, or also foreign media networks, Confucius Institutes at universities, foreign funded think tanks, or foreign election interference. The problem is that the Act is both a poor fit for some of these concerns and strikingly sweeping, capturing much other conduct that most people would not think should be registrable. ¶ When there was broad understanding that the Justice Department would focus FARA enforcement on foreign government lobbyists, few of the broad array of Americans potentially affected by the Act gave it much attention. However, as the Department has applied FARA in new areas this has created both uncertainty and spreading consternation.”
15. In 1995, Congress passed the Lobbying Disclosure Act. JACOB R. STRAUS, CONG. RSCH. SERV., R44292, THE LOBBYING DISCLOSURE ACT AT 20: ANALYSIS AND ISSUES FOR CONGRESS (2015). At the same time, it also passed four key FARA amendments. These said: “(1) FARA is limited to agents of foreign governments and political parties. Lobbyists of foreign corporations, partnerships, associations, and individuals are required to register under the Lobbying Disclosure Act, where applicable, but not FARA.” This matters partly because the LDA is administered by the clerks of the House and Senate, respectively, not the Justice Department. “(2) The so-called ‘U.S. subsidiary exemption’ is eliminated from FARA. This Subsection grants an exemption to activities on behalf of a foreign-owned company in the United States that further[s] the bona fide commercial, industrial, or financial interests of the U.S. subsidiary.” Finally, “(3) The applicability of the so-called ‘lawyers’ exemption’ is clarified by changing the exemption’s application only to communications with agency officials in the context of those specific instances set out in this amendment. These include judicial proceedings, law enforcement proceedings, and agency proceedings required by statute or regulation to be conducted on the record.” The fourth amendment simply swapped out the original term in the act, “political propaganda,” for the more benign term, “information materials.” STRAUS, CONG. RSCH. SERV., R46435, FOREIGN AGENTS REGISTRATION ACT, supra note 3, at 11.

16. 22 U.S.C. § 618.
17. See *Meese v. United States*, 481 U.S. 465, 477–85 (1987); *Viereck v. United States*, 318 U.S. 236, 241–47 (1943).
18. FOREIGN NATIONALS, FEDERAL ELECTION COMM’N, <https://www.fec.gov/help-candidates-and-committees/foreign-nationals/> (last visited Jun. 8, 2022); see also JACOB D. SHELLY, CONG. RSCH. SERV., LSB 10358, “THINGS OF VALUE” AND THE FOREIGN CONTRIBUTION BAN 1 (Oct. 28, 2019) (stating that “Concerns over foreign interference in domestic affairs date to America’s founding when delegates to the constitutional convention feared that the new nation would make a tempting target for European powers willing to pay for influence and compliance.... In response, the Constitution’s drafters tried to inoculate federal leaders and institutions from outside meddling”).
19. U.S. CONST. art. I, § 2, cl. 2; *id.* § 3, cl. 3; *id.* art. II, § 1, cl. 4.
20. *Ariz. St. Legislature v. Ariz. Indep. Redistributing Comm’n*, 576 U.S. 787 (2015).
21. Some states have also codified the ban on foreign campaign contributions in state law. Florida, for example, recently did so. See FLA. STAT. § 106.08(1)(a)(12) (effective Jul. 1, 2022), available at <https://www.flsenate.gov/Session/Bill/2022/921/?Tab=BillHistory>.
22. U.S. CONST. amend. XIV.
23. U.S. CONST. art. I, § 8, cl. 4 (“[The Congress shall have Power] To establish a uniform Rule of Naturalization....”).
24. David Bernstein, *Freedom of Petition*, in HERITAGE GUIDE TO THE CONST. (Matthew Spalding & David F. Forte eds, 2d ed. 2014) (stating that the “Supreme Court first confronted the right to petition and its cognate, the right of assembly, in *United States v. Cruikshank* (1876), declaring that the right was an ‘attribute of national citizenship’”). The same is true of foreign business entities in which a foreign government maintains a controlling interest—though practical problems of proving that controlling interest may arise depending on how the business entity is structured. The more difficult situation arises when a U.S. business entity, which is wholly owned by a foreign business entity, which itself may be wholly, or partially, owned by a foreign government, seeks to lobby members of the U.S. government. The Supreme Court has made clear that corporations do possess some constitutional rights. See, e.g., Adam Winkler, *The Long History of Corporate Rights*, 98 B.U. L. REV. 64 (2018) (briefly explaining some of those rights and the differing theories about why corporations possess them). But no one would suggest that the Chinese government could simply set up a U.S. shell corporation and lobby to its heart’s content. Even if many of the same concerns surrounding lobbying by U.S. citizens apply to U.S. business entities, as discussed *infra*, even U.S. citizens can be prohibited from lobbying on behalf of a foreign government. The same would be true of U.S. business entities, and if they are wholly or partially owned by a foreign government, they would likely be deemed always to be lobbying on behalf of the foreign government.
25. U.S. CONST. amend. I.
26. *Lobby*, DICTIONARY.COM, <https://www.dictionary.com/browse/lobby> (last visited Jun. 8, 2022).
27. 18 U.S.C. § 207 (restrictions on lobbying by certain former officials).
28. For example, the President has the prerogative whether to recognize a foreign nation and may choose or decline to do so as he or she sees fit. See *Zivotofsky v. Kerry*, 576 U.S. 1 (2015); U.S. CONST. art. II, § 3 (“[The President] shall receive Ambassadors and other public Ministers....”). By contrast, all persons born in the United States are citizens regardless of what a President might like. See *supra* note 22.
29. Many of the Framers were lawyers or engaged in business, and anyone engaged in either activity would have been familiar with the principles governing the authority and responsibilities of agents. See Gary Lawson, *A Private-Law Framework for Subdelegation*, in THE ADMINISTRATIVE STATE BEFORE THE SUPREME COURT 130–44 (Peter J. Wallison & John Yoo eds., 2022).
30. Even a private communication sent to a government official in the Executive or Legislative Branches should effectively be treated as a public act because (unless the communication is classified) the recipient is free to disclose it to the public.
31. Of course, many of the same difficult issues present in FARA may be present here too. Would someone lobbying on behalf of a foreign corporation wholly owned by a foreign government be prohibited? Partially owned? What about a wholly owned American subsidiary corporation? We need not resolve these difficult issues here.
32. Hal Brands & John Lewis Gaddis, *The New Cold War: America, China, and the Echoes of History*, FOREIGN AFFAIRS (Nov./Dec. 2021), <https://www.foreignaffairs.com/articles/united-states/2021-10-19/new-cold-war>.
33. See, e.g., DENNIS C. BLAIR & JOHN M. HUNTSMAN, JR., THE REPORT OF THE COMMISSION ON THE THEFT OF AMERICAN INTELLECTUAL PROPERTY (2013) (“The scale of international theft of American intellectual property (IP) is unprecedented—hundreds of billions of dollars per year, on the order of the size of U.S. exports to Asia.... China has been the principal focus of U.S. intellectual property rights (IPR) policy for many years.... China is the world’s largest source of IP theft.”); FBI News, Remarks of FBI Director Christopher Wray at the Hudson Inst., *The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States*, July 7, 2020, <https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states> (“The greatest long-term threat to our nation’s information and intellectual property, and to our economic vitality, is the counterintelligence and economic espionage threat from China. It’s a threat to our economic security—and by extension, to our national security.”).
34. As a policy matter too, an outright prohibition might be preferable. See, e.g., Kevin Roberts, Interview on China in Focus, NTD TV (Feb. 2022), <https://www.youtube.com/watch?v=y03f5BE5uQ4> (stating that “What must be done, number one, is to make sure that lobbyists in Washington, D.C., who are lobbying directly or indirectly on behalf of the Chinese communists cannot do that. We have to disallow that....”).

35. STRAUS, CONG. RSCH. SERV., R46435, FOREIGN AGENTS REGISTRATION ACT, *supra* note 3, at 2–3.
36. That Congress may constitutionally bar a foreign nation and its agents from lobbying *Congress and state or local governments* does not mean that Congress can bar *the President* from speaking or consulting with a foreign government. Any such law would raise materially different issues. See *Zivotofsky v. Kerry*, 576 U.S. 1 (2015) (Congress cannot interfere with the President’s Article II power to decide whether to recognize a foreign government).