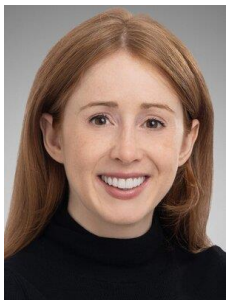
Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

# State FARA Laws Pose Unique Constitutional Challenges

By **Alexandra Langton** (April 1, 2026, 5:12 PM EDT)


Alexandra Langton

In 2025, Texas, Nebraska, Louisiana, Arkansas and Oklahoma enacted state-level foreign agent registration and disclosure regimes that were loosely modeled on the federal Foreign Agents Registration Act. And in the first few months of 2026, several states — Alabama, Florida, Iowa, Missouri and West Virginia, to name a few — have already introduced similar bills.

The practice of requiring disclosure of efforts to influence state policy is nothing new. All states and Washington, D.C., have lobbying laws. Moreover, the legislative impulse to regulate foreign influence is easy to understand, particularly when it is framed around addressing activities by entities from so-called hostile foreign countries or countries of concern.

However, the state-level "baby FARA" laws focusing on foreign influence efforts present several unique constitutional challenges, and highlight questions about how far states can and should extend regulatory tools beyond traditional lobbying regimes to capture a wide range of foreign-affiliated activity.

The first and most obvious constitutional challenge is whether these laws wade into territory that is already regulated by federal law and by the federal government's primacy in foreign affairs matters. Second, the laws present potential First Amendment concerns regarding speech and petitioning the government. Third, many of these statutes rely on vague and indeterminate concepts to trigger registration and penalties, raising independent due process concerns about notice and the risk of arbitrary or selective enforcement.

**Preemption and Whether FARA Reaches State Lobbying**

The degree to which FARA already reaches state lobbying remains a live interpretive question — at least with respect to activities on behalf of nongovernmental principals. The answer to that question directly bears on whether states may impose their own registration requirements without running afoul of federal preemption principles. And any potential judicial resolution of the issue will have significant implications for the emerging landscape of state-level foreign influence regulation.

The constitutional doctrine of preemption refers to the principle that federal law overrides conflicting state law, whether because Congress expressly says so (express preemption), because federal regulation takes up the entire field (field preemption), or because state law conflicts with federal objectives or requirements (conflict preemption).

Although FARA contains no express preemption clause, baby FARA laws are vulnerable to both conflict and field preemption.

Conflict preemption concerns are especially salient when state regimes depart from the federal statute by redefining who qualifies as a foreign principal, imposing registration obligations at substantially lower thresholds, or eliminating exemptions that — at the federal level — serve as guardrails to prevent routine commercial, academic or civic activity from being swept in.

Field preemption arguments are also likely because FARA can be understood as part of a comprehensive federal framework governing foreign influence transparency, and parallel state systems risk undermining national uniformity in an area that is closely tied to foreign affairs.

Both theories turn on a threshold question that remains unresolved: whether FARA already reaches lobbying that is conducted at the state level.

FARA requires registration by agents of foreign principals that engage in political activities, among other triggers, within the U.S. The term "political activities" means:

> [A]ny 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 or a foreign political party.

The statute further defines the term "United States," "when used in a geographical sense," to include "the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States."

Under regulations interpreting the statute, an "agency or official of the Government of the United States" likely does not include nonfederal officials, because the definitions cover only institutions and personnel within the federal government.

The regulation interpreting the statute at Title 28 of the Code of Federal Regulations, Section 5.100, specifies that an "agency" includes "every unit in the executive and legislative branches of the Government of the United States, including committees of both Houses of Congress," and that an "official" includes "Members and officers of both Houses of Congress as well as officials in the executive branch of the Government of the United States."

State officials, however, could be covered targets because they qualify as "any section of the public within the United States."

So, the analysis comes down to whether the state policy is a covered subject matter. The definition of "political activities" requires that the relevant activity must concern either "the domestic or foreign policies of the United States" or "the political or public interests, policies, or relations of a government of a foreign country or a foreign political party."

Lobbying state officials on behalf of foreign governmental interests fits squarely within the latter clause. The first clause is less straightforward when considering, for example, lobbying by foreign corporate

interests on state policy.

If the term "United States" is understood in a geographic sense, then the phrase would naturally encompass state-level policy, consistent with the statutory definition. However, there is a reasonably strong counterargument that the term is not being used geographically here because it modifies policies, which is not obviously a geographic term.

Moreover, there is no interpretive authority addressing the meaning of the term "United States" when used in this nongeographic context. As a result, practitioners — and any courts that are interpreting state FARA statutes — must rely primarily on the statutory text.

One could argue that, because Congress referred to "domestic or foreign policies of the United States" — rather than "the Government of the United States" — the phrase is meant to use "United States" in a geographic sense, encompassing policies that are operative within U.S. territory, including state and local policies, as opposed to referring solely to the policies of the federal government.

On the other hand, one could also argue that Congress' omission of "the Government" more plausibly reflects an intent to refer only to the policies of the national government, not its several states. Under this view, "United States" is operating in an institutional sense, describing the federal polity, rather than the geographic space.

That reading is reinforced by the fact that elsewhere in the definition of "political activities," Congress expressly linked the term "policies" to identifiable institutional actors — the "Government of the United States" in the first clause, and "a government of a foreign country or a foreign political party" in the second.

Each reading carries plausible textual support, and the question of whether influencing state policy on behalf of foreign corporate interests constitutes political activities under FARA remains unsettled.

Without clarifying authority from courts or the U.S. Department of Justice, the statute provides no definitive answer as to whether Congress intended to sweep state-level policymaking into FARA's scope where the target is not a foreign government but a foreign private entity operating within the U.S.

As a result, baby FARA statutes that purport to regulate lobbying conducted on behalf of foreign principals, particularly foreign private principals, may be vulnerable to preemption challenges to the extent that a court concludes that Congress, through FARA, has already occupied the field or established federal boundaries for when foreign influence activity must be disclosed.

Conversely, if a court determines that FARA leaves a gap with respect to state-level lobbying by foreign private interests, then state FARA laws may be viewed as complementary rather than preempted.

**Speech and Petitioning**

The second constitutional concern is that these state FARA laws regulate communications that are aimed at petitioning government action, which places them within First Amendment territory, as lobbying and advocacy are generally considered protected forms of speech and petitioning. The modern donor-disclosure line of cases applies heightened scrutiny to compelled disclosure and requires a sufficiently important governmental interest supported by a narrow fit.

State FARA laws that sweep in ordinary commercial activity as a means to combat foreign influence could potentially raise tailoring problems under that standard.

Moreover, because these laws regulate core political activity, states will bear the burden of demonstrating that their goals, which are typically framed in terms of transparency or countering foreign interference, cannot be achieved through less restrictive and more neutral alternatives.

At the federal level, in Meese v. Keene in 1987, the U.S. Supreme Court upheld the federal statute's "political propaganda" designation on the grounds that it operated purely as a disclosure mechanism: It did not prohibit the distribution of materials, nor did it attach punitive or stigmatizing consequences. Specifically, the court reasoned that the political propaganda label was "neutral, evenhanded, and without pejorative connotation."

Baby FARA laws, by contrast, often go further. Many publicly label individuals and entities as agents of hostile or adversarial foreign principals. Several states also omit or narrow the exemptions that traditionally limit the federal statute, such as for commercial activities, legal representation or academic work, thereby increasing both the breadth and the expressive burden of the designation.

These differences sharpen the constitutional concerns that the court flagged, but avoided, in Meese, raising the possibility that state-level schemes could be viewed as impermissibly stigmatizing or chilling.

**Vagueness**

Relatedly, several baby FARA laws raise independent due process concerns under the constitutional vagueness doctrine. Laws that impose civil or criminal penalties generally must provide clear notice of what conduct is covered, and must establish enforceable standards to prevent arbitrary or discriminatory enforcement.

Many state regimes rely on indeterminate concepts, such as acting at the request of a foreign adversary, without the limiting definitions. Where registration obligations turn on subjective intent or amorphous relationships, rather than clearly defined activities, regulated parties may be forced to guess about the law's reach, heightening the risk of selective enforcement.

**What to Expect Next**

***Litigation Targets***

Expect early test cases to focus on states that depart most sharply from the federal model. Texas is a likely first target: Its statute not only requires registration for lobbying on behalf of foreign adversaries, but it also prohibits lobbyists from receiving compensation for such work, an aggressive step compared to FARA.

Additionally, Nebraska, Arkansas, Louisiana and Oklahoma have enacted laws that omit key federal exemptions, such as for commercial activity, academic work and legal services. Those omissions raise overbreadth concerns where arguably benign corporate, nonprofit or in-house advocacy may be swept in.

***Administrative Guidance and Amendments***

Expect a wave of agency guidance — including definitions, FAQ, filing mechanics and deadlines — as implementation begins, especially in states with novel or opaque provisions. Legislatures may also pursue corrective amendments once compliance frictions surface, likely prompting renewed debate over why existing state lobbying frameworks are insufficient and how far disclosure regimes should reach beyond traditional lobbying.

***Federal Spillover***

States' expanding regulatory reach and the resulting litigation could influence how courts and the DOJ understand FARA's reach. Outcomes in state courts — and any parallel federal commentary — may shape DOJ guidance, enforcement priorities and even future statutory reform, especially on threshold questions like whether and when FARA already covers state-level lobbying, including work for foreign private principals.

---

*Alexandra Langton is an associate at Covington & Burling LLP.*