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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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September 19, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
United States Department of Justice
Washington, D.C. 20220

Dear Attorney General Sessions:

For several years, in both the Obama and Trump administrations, the Committee has conducted oversight of the Justice Department's lax and selective enforcement of the Foreign Agents Registration Act (FARA).¹ FARA is an important statute that was designed not to prohibit activity but rather to require individuals to register with the DOJ if they are acting as an agent of a foreign government or enterprise to influence U.S. policy or public opinion. This helps ensure transparency and accountability in the public policy arena. In that sense, FARA is a content-neutral regulatory scheme that would not require any entity or individual to refrain from certain types of speech.

Since April 2015, I have sent multiple oversight letters on this topic, and in July 2017, the Committee held a hearing to examine the state of FARA enforcement and consider potential improvements.² As a result of these oversight efforts and the importance that FARA be fairly

¹ The FARA requires individuals to register with the Department of Justice (DOJ) if they act, even through an intermediary, "as an agent, representative, employee, or servant" or "in any other capacity" at the behest of a foreign principal, including a foreign political party, government, or corporation, for purposes of engagement with a United States official to influence U.S. policy or the public. The registration applies to anyone who attempts to influence a U.S. government official on behalf of a foreign principal in an effort to "formulat[e], adopt[], or chang[e] the domestic or foreign policies of the United States." Likewise, an individual whose activities are subject to registration under FARA and who sends informational material "for or in the interest of [a] foreign principal" with the intent or belief that such material will be circulated among at least two persons must transmit the material to the Attorney General no later than 48 hours after actual transmission. Notably, an ongoing failure to register with the DOJ is a continuing offense. 22 U.S.C. § 611 – Definitions: The term "foreign principal" includes - (1) a government of a foreign country and a foreign political party; (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

² Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Eric H. Holder, Jr., Attorney General, U.S. Department of Justice (April 22, 2015), available at [https://www.judiciary.senate.gov/imo/media/doc/2015-04-22%20CEG%20to%20DOJ%20\(Clinton%20FARA\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-04-22%20CEG%20to%20DOJ%20(Clinton%20FARA).pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Loretta E. Lynch, Attorney General, U.S. Department of Justice (July 6, 2016), available at [https://www.judiciary.senate.gov/imo/media/doc/2016-07-06%20CEG%20to%20DOJ%20\(FARA%20follow%20up\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2016-07-06%20CEG%20to%20DOJ%20(FARA%20follow%20up).pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Loretta E. Lynch, Attorney General, U.S. Department of Justice (September 20, 2016), available at [https://www.judiciary.senate.gov/imo/media/doc/2016-09-20%20CEG%20to%20DOJ%20\(FARA%20second%20follow%20up\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2016-09-20%20CEG%20to%20DOJ%20(FARA%20second%20follow%20up).pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Dana Boente, Acting Deputy Attorney General, U.S. Department of Justice (March

and aggressively enforced, I introduced the *Disclosing Foreign Influence Act* (S. 2039), to assist the DOJ in adequately enforcing FARA.

FARA continues to be very relevant. For example, news articles reporting on questionable activities by China's Confucius Institutes across the globe, and specifically in the United States, have caused serious concern. These activities raise legitimate questions about whether the Institute and its employees should register as a foreign agent. The Confucius Institutes are an arm of the Chinese government and are overseen by the Office of Chinese Language International (Hanban) which is part of the Chinese Ministry of Education.³ The Hanban is composed of members from 12 state ministries including its propaganda outlets.⁴ The Chinese government spends billions of dollars in funding every year for propaganda related activities. According to reports, the Confucius Institutes constitute a significant component of those efforts here in the United States.⁵ First established in 2004, the Confucius Institutes now number over 500 globally with hundreds located in the United States at major colleges and universities. The Confucius Institutes have significant reach across our country.

As an extension of the Chinese government, the Confucius Institutes are not only a foreign principal but are also owned and controlled by a foreign principal – the government of China. The connection to the Chinese government is not insignificant in scope or mission as related to “foreign agent” purposes: according to reporting, the strategic goal of the Chinese government is to place its Institutes within existing colleges and universities under the guise of teaching Chinese language, culture, and history.⁶ In exchange for access on college campuses, the Chinese government provides financial support. Reportedly, the Institutes require the teaching to ignore human rights abuses, and stress that Taiwan and Tibet are part of China, among other restrictions.⁷ Restricting and controlling curricula is hardly conducive to academic freedom of expression and is a rejection of the essential tenets of America's academic institutions. China also operates Confucius Institutes within primary and secondary schools. For

14, 2017), available at [https://www.judiciary.senate.gov/imo/media/doc/2017-03-13%20CEG%20to%20DOJ%20\(FARA%20third%20follow%20up\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-03-13%20CEG%20to%20DOJ%20(FARA%20third%20follow%20up).pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Dana Boente, Acting Deputy Attorney General, U.S. Department of Justice (March 31, 2017), available at [https://www.judiciary.senate.gov/imo/media/doc/2017-03-31%20CEG%20to%20DOJ%20\(Anti-Magnitsky%20FARA%20violations\)%20with%20attachments.pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-03-31%20CEG%20to%20DOJ%20(Anti-Magnitsky%20FARA%20violations)%20with%20attachments.pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Dana Boente, Acting Deputy Attorney General, U.S. Department of Justice (April 6, 2017), available at [https://www.judiciary.senate.gov/imo/media/doc/2017-04-06%20CEG%20to%20DOJ%20\(Manafort%20Podesta%20FARA\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-04-06%20CEG%20to%20DOJ%20(Manafort%20Podesta%20FARA).pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Rod J. Rosenstein, Deputy Attorney General, U.S. Department of Justice (July 20, 2017), available at [https://www.judiciary.senate.gov/imo/media/doc/2017-07-20%20CEG%20to%20DOJ%20\(Ukraine%20DNC%20FARA\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-07-20%20CEG%20to%20DOJ%20(Ukraine%20DNC%20FARA).pdf); Letter from Hon. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Jeff Sessions, Attorney General, U.S. Department of Justice (November 15, 2017), available at [https://www.judiciary.senate.gov/imo/media/doc/2017-11-15%20CEG%20to%20DOJ%20\(Uranium%20One%20FARA\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-11-15%20CEG%20to%20DOJ%20(Uranium%20One%20FARA).pdf).

³ Rachele Peterson, *American Universities Are Welcoming China's Trojan Horse*, Foreign Policy (May 9, 2017).

⁴ *Id.* See also Rachele Peterson, *Outsourced to China: Confucius Institutes and Soft Power in American Higher Education*, NATIONAL ASSOCIATION OF SCHOLARS, April 2017, at 22, available at https://www.nas.org/images/documents/confucius_institutes/NAS_confuciusInstitutes.pdf.

⁵ Ethan Epstein, *How China Infiltrated U.S. Classrooms*, Politico (Jan. 17, 2018).

⁶ *Id.*

⁷ *Id.* Politico reported that “each Confucius Institute comes with ‘\$100,000...in start up costs provided by Hanban, with annual payments of the like over a five-year period, and instruction subsidized as well, including the air fares and salaries of the teachers provided from China...textbooks, videos, and other classroom materials...”

example, it's been reported that the Chicago Public School System has "outsourced its Chinese program to Confucius Classrooms."⁸

As a government entity, the Institutes are controlled and managed by government officials and the Institutes act as a mouthpiece for the Chinese government. In 2011, Li Changchun, a member of the Chinese government, stated:

The Confucius Institute is an appealing brand for expanding our culture abroad. It has made an important contribution toward improving our soft power. The 'Confucius' brand has a natural attractiveness. Using the excuse of teaching Chinese language, everything looks reasonable and logical.⁹

That same individual also said that the Institutes are an "important part of China's overseas propaganda set-up."¹⁰ Not surprisingly, a member of China's propaganda ministry reportedly said,

Coordinate the efforts overseas and domestic propaganda, further create a favorable international environment for us...[w]ith regard to key issues that influence our sovereignty and safety, we should actively carry out international propaganda battles against issues such as Tibet, Xinjiang, Taiwan, Human Rights, and Falun Gong. Our strategy is to proactively take our culture abroad...[w]e should do well in establishing and operating overseas cultural centers and Confucius Institutes.¹¹

The Confucius Institute's activities appear to mirror the opinions of the Chinese government. Together with the state funding and other indicia of agency the activities of the Institutes show that they are inherently political in nature and intended to influence U.S. policy and public opinion. This type of activity falls squarely within the scope of FARA's reporting obligations.

Two additional statutory provisions potentially trigger the Confucius Institutes' obligation to register under FARA. First, because they produce and distribute content and secure access within the United States, the institutes arguably have "engage[d] directly or indirectly in the ... dissemination of oral, visual, graphic, written, or pictorial information..." and therefore may have served as a "publicity agent."¹² Second, because these activities concern "conditions" of a foreign government or "foreign country," the Institutes may have served as an "information-service employee" by "furnishing, disseminating, or publishing" their programs.¹³ Further, because of the propaganda nature of its activity, the Institutes are not engaged in "bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts" and thus fall out of the exemption located in 22 U.S.C. § 613(e).

⁸ *Id.*

⁹ Ethan Epstein, *How China Infiltrated U.S. Classrooms*, Politico (Jan. 17, 2018).

¹⁰ *Id.*

¹¹ *Id.* See also Marshall Sahlin, *Confucius Institutes: Academic Malware*, The Asia-Pacific Journal, Volume 12, Issue 46 (Nov. 16, 2014), <https://apjif.org/2014/12/46/Marshall-Sahlin/4220.html>.

¹² 22 U.S.C. § 611(h).

¹³ 22 U.S.C. § 611(i).

Similarly, on November 13, 2017, DOJ's National Security Division announced that it required T&R Productions, LLC to register under FARA as an agent for ANO TV-Novosti, the "Russian government entity responsible for the worldwide broadcasts of the RT Network" and on December 11, 2017, RTTV America registered as well.¹⁴ Reportedly, DOJ has required the same of Xinhua News Agency and China Global Television Network.¹⁵ In a press release regarding RT, DOJ said the following:

Americans have a right to know who is acting in the United States to influence the U.S. government or public on behalf of foreign principals. The Department of Justice is committed to enforcing FARA and expects compliance with the law by all entities engaged in specified activities on behalf of any foreign principal, regardless of its nationality.¹⁶

Further, that same press release said:

Congress passed FARA in 1938, intending to ensure that the American public and our lawmakers know the source of information that is provided at the behest of a foreign principal, where that information may be intended to influence U.S. public opinion, policy and laws.¹⁷

Those statements apply equally to the Confucius Institutes, which are controlled by a foreign government, receive financial support therefrom, and engage in activity to influence the U.S. Government and public on behalf of foreign principals.

In sum, the Confucius Institutes may be obligated to register under FARA because: (1) through their production and distribution of information in the United States they seek to "influence...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 China, for or in the interests of China, and are therefore most likely engaged in "political activities";¹⁸ and (2) they have acted as an agent for the Chinese government in producing and distributing the content constituting those political activities.

DOJ must explain to Congress and the American people why the Confucius Institutes and their employees have not been required to register.

Accordingly, please answer the following no later than October 3, 2018:

1. What actions has DOJ taken to assess whether any Confucius Institute or its employees should register under FARA for work on behalf of the Chinese government?

¹⁴ Department of Justice Press Release, *Production Company Registers Under the Foreign Agent Registration Act as Agent for the Russian Government Entity Responsible for Broadcasting RT* (November 13, 2017).

¹⁵ Kate O'Keeffe and Aruna Viswanatha, *Justice Department Has Ordered Key Chinese State Media Firms to Register as Foreign Agents*, Wall Street Journal (Sept. 18, 2018).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 22 U.S.C. § 611(o).

2. Has DOJ sent a letter of inquiry to any Confucius Institute, any of its affiliated entities, or any of its employees? If so, please provide a copy. If not, why not?
3. Under 28 C.F.R. § 5.2, any present or prospective agent of a foreign entity may request an advisory opinion from the Justice Department regarding the need to register. Has any Confucius Institute or any of its affiliated entities or employees ever requested an opinion in relation to work done on behalf of China? If so, please provide a copy of the request and opinion.
4. Please explain why DOJ has not required any Confucius Institute or its employees to register under FARA.
5. Please provide all prosecutorial memoranda, correspondence between DOJ and all Confucius Institutes, and all reports and summaries of interviews relating to the Confucius Institutes and their obligations to register under FARA.¹⁹

Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. The Committee complies with all laws and regulations governing the handling of classified information. The Committee is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Should you have further questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

¹⁹ When the Senate Committee on the Judiciary constituted a special subcommittee to investigate how the DOJ investigated the Billy Carter case in the 1980s, the Committee was provided materials including prosecutorial memoranda, correspondence between DOJ and Billy Carter and other records relating to the investigation. See Alissa M. Dolan and Todd Garvey, *Congressional Investigations of the Department of Justice, 1920-2012: History, Law, and Practice*, Congressional Research Service at 24 (Nov. 5, 2012).