

ALERT

FARA Lawsuit Against Steve Wynn Dismissed by Federal Appeals Court

June 17, 2024

On Friday, June 14, the U.S. Court of Appeals for the D.C. Circuit upheld the lower court's dismissal of a 2022 lawsuit brought by the U.S. Department of Justice (DOJ) to compel casino magnate Stephen A. Wynn to register under the Foreign Agents Registration Act (FARA) for his activities on behalf of the People's Republic of China (PRC).

In May 2022, the DOJ sued Wynn in the U.S. District Court for the District of Columbia to register under FARA for his alleged activities on behalf of the PRC. According to the original complaint, in 2017 Wynn contacted former President Trump and members of the Trump Administration to convey a request by the PRC to cancel a visa request for a Chinese national who was charged with corruption by the PRC and sought asylum in the United States. It is alleged that Wynn acted at the behest of Chinese officials in order to further the interests of his casino business in the Macao Special Administrative Region of the PRC. In October 2022, Judge James E. Boasberg dismissed the action for failure to state a claim, noting that he was bound by D.C. Circuit precedent (*U.S. v. McGoff*), which interpreted an ambiguous FARA provision to mean that the continuing criminal offense of a FARA violation ends on the date that lobbying activities cease.

A three-judge panel of the D.C. Circuit upheld the dismissal, agreeing that Wynn no longer had an ongoing obligation to register under FARA for his alleged lobbying/political activities on behalf of the PRC. "Because Wynn's duty to register ended almost seven years ago, *McGoff* dictates that there is no legal basis for the government to compel him to register now, and the district court properly dismissed the case," the panel wrote. The DOJ now has two options if it seeks to pursue further appeal: 1) DOJ can seek en banc reconsideration by

Authors

Tessa Capeloto
Partner
202.719.7586
tcapeloto@wiley.law

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the entire D.C. Circuit, or (2) DOJ could file a cert petition with the U.S. Supreme Court. Given the difficulty of prevailing on any further appeal, it would not be surprising if DOJ declines to do so.

Notably, the Retroactive Foreign Agents Registration Act (RFARA), which was introduced by a group of bipartisan Senators along with companion legislation in the House in 2023, has shown no sign of movement since it was introduced. This legislation would require individuals/entities who fall within the purview of FARA to register as foreign agents even after ceasing to engage in FARA-registerable activity for a foreign principal. The bill aims to provide DOJ with explicit legal authority to enforce retroactive registrations under FARA in the wake of the *Wynn* decision. Now that DOJ has lost its *Wynn* appeal, there may be greater congressional appetite for movement on RFARA or a push for similar legislation to provide DOJ with the statutory tools necessary to require retroactive registrations.

Wiley's **FARA Handbook** provides additional information on FARA. Please contact the attorneys listed on this alert with any questions.

Maddie Van Aken, a Legislative and Reporting Coordinator at Wiley Rein LLP, contributed to this alert.