

The Logan Act: An Overview of a Sometimes Forgotten 18th Century Law

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The Logan Act, which has been the subject of [much recent debate](#), generally makes it illegal for U.S. citizens to engage in unauthorized diplomacy with foreign countries with intent to “influence the measures or conduct” of a foreign government or to “defeat the measures of the United States” Prosecutors have only brought two Logan Act indictments since its enactment, neither of which led to conviction. As stated by [one commentator](#), the Act has been called a “dead letter,” an “anachronism,” a “curious federalist antique,” “the most moribund of federal statutes,” and an “eighteenth century relic that slumbers in splendid disregard.” [Others](#) have noted that the statute is not completely moribund—the State Department has occasionally enforced the Logan Act’s prohibitions by way of [passport suspensions](#) and travel restrictions, and there has been a successful [court martial](#) of a U.S. serviceman for conduct of the kind barred by the statute. But regardless of the debate over the Logan Act’s precise history, its sparse use in its intended criminal context is undisputed, which raises significant legal questions for Congress.

This Sidebar explores the Logan Act, and addresses why the statute has had such limited usage, including a brief explanation of some of the constitutional concerns that surround the law. Finally, this Sidebar concludes with a discussion of what Congress could do to modify the statute to make it less susceptible to some of these concerns.

Background. The Logan Act has [its origins](#) in a late-18th century foreign policy conflict with France during the Federalist-dominated John Adams Administration. George Logan, a member of the opposition Republican Party, traveled to France to meet with French ministers and to attempt to reduce the tensions between the two countries. This trip met with a backlash back home, particularly among the Federalists who controlled the government. Upon Dr. Logan’s return, Congress passed what would come to be known as the Logan Act in an effort to criminalize any future “private diplomacy.”

Since the Logan Act’s enactment in 1799, there apparently have been only two prosecutions under the statute, neither of which led to a conviction. In 1803, a grand jury indicted a Kentucky farmer named [Francis Flourney](#) for writing an article in the *Frankfort Guardian of Freedom* arguing for a separate Western United States allied to France. The case went no further than the indictment. Then, in 1853, one [Jonas P. Levy](#) was “arrested and held to bail” under the Logan Act for having written a letter to the President of Mexico. This case, as well, was ultimately dropped. It appears that no indictment under the Logan Act has been brought in the 165 years since.

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Nonetheless, over the course of the law's existence, there has been no shortage of people calling for the Logan Act to be used against persons outside the executive branch. Some of the accused include a [confidante](#) to President-elect Franklin Roosevelt, activists during the [Vietnam War](#), a former [attorney general](#), a [presidential candidate](#), and sitting [Senators](#). As then-Senator Bob Dole [stated](#) in 1980, in reference to [former Attorney General Ramsey Clark's attempt](#) to resolve the Tehran hostage crisis, the Logan Act "has never been ruled unconstitutional. It is the law of the land, it is on the books, and it should be enforced." As Senator Dole explained, the purpose of the Logan Act is to "protect the President's position under article 2, section 3 of the Constitution as the sole representative of the United States in dealing with foreign nations." This so-called "one voice" principle is still alive and well today, and even has been recognized by the [Supreme Court](#). But why have criminal charges under the Act been so rare?

Constitutional Questions Surrounding the Logan Act. One probable reason for the Logan Act's neglect is that a number of questions exist about its constitutionality. Most notably, [commentators have questioned](#) the Logan Act's enforceability in the face of First Amendment challenges and whether the statute is unconstitutionally vague under the Fifth Amendment's Due Process Clause.

First Amendment: The Logan Act directly regulates speech based on its content because it criminalizes communications about international diplomacy. As a result, under the Supreme Court's First Amendment [case law](#), the statute would have to meet the exacting requirements of "strict scrutiny," wherein, a regulation on speech must be [necessary](#) to achieve a compelling state interest. While it could be argued that the "one voice" principle represents a compelling interest, some [scholars](#) have suggested that the law goes further than necessary to achieve that interest. For example, Francis Flournoy's article in the *Frankfort Guardian* would seem to be conduct that is squarely protected by the First Amendment as it is understood today. It would be difficult to argue that jailing individuals for writing op-eds in their local newspapers is necessary for the "one voice" doctrine. Even [supporters](#) of the law's continuing viability have acknowledged that a First Amendment challenge "might be viable in the context of a particular prosecution."

Regardless of whether the law is unconstitutional in a particular case, the law may be facially unconstitutional if it is overbroad. The law's overbreadth [must](#) be "substantial...judged in relation to the statute's plainly legitimate sweep." Overbreadth, however, is closely related to vagueness (discussed in more detail below) because both doctrines turn on a careful reading of the statute's language. The less clear a statute that deals with expression, the more protected conduct that is threatened, leading to First Amendment vulnerability. What to make of the Logan Act's key terms, however, is very much in dispute.

Vagueness: The second major question about the Logan Act's validity is whether it is void for vagueness. According to the [Supreme Court](#), a statute can be impermissibly vague if it either fails to provide people of ordinary intelligence a reasonable opportunity to understand what is prohibited, or if the law authorizes or encourages arbitrary and discriminatory enforcement.

At least one [federal court](#), apparently the only one to have considered the Logan Act's constitutionality, has suggested that the statute may be unconstitutionally vague. In 1964, in *Waldron v. British Petroleum Co.*, the U.S. District Court for the Southern District of New York considered a claim that defendants unlawfully interfered with a plaintiff's business, which was centered on an oil contract he had acquired from the government of Iran. In response to this claim, the defendants argued that the plaintiff could not assert his claim because his "business" was illegal under the Logan Act. In resolving this issue, the court stated (without deciding) that there was "a doubtful question with regard to the constitutionality" of the Logan Act. Specifically, the court reasoned that the statute's uses of the terms "defeat" and "measures" were "vague and indefinite" because those terms failed to possess clear definitions. The court went so far as to urge Congress in a footnote to amend the statute to eliminate these supposed problems.

A few scholars have disputed whether the Logan Act is as vague as *Waldron* claims. These authors argue that legislative history and interpretive principles—particularly the rule of lenity, which states that a court should resolve statutory ambiguities in favor of criminal defendants—provide enough guidance to conclude the Act is sufficiently specific. For example, with respect to “measures,” one author suggests that the history of the term dictates that it be defined to require a concrete “plan or course of action.” Other scholars have argued that the intent requirement of the Logan Act can save it from vagueness challenges. In particular, because the law requires a specific intent to “defeat the measures of the United States” or “influence the measures or conduct” of a foreign government in reference to a dispute with the United States, these scholars argue that the Act’s application will be sufficiently narrow and sufficiently easy to understand in any particular case.

Would a Court Uphold the Logan Act? It is impossible to say what a modern court would do if presented with an actual Logan Act indictment. One potentially relevant precedent is the 2010 case *Holder v. Humanitarian Law Project (HLP)*. In that case, the Supreme Court considered the viability of a statute with some similarities to the Logan Act. The law in question prohibited the provision of “material support” to certain designated “foreign terrorist organizations.” The Court upheld the law against First Amendment and vagueness challenges.

While acknowledging that the law was a content-based prohibition on speech that demanded strict scrutiny, the Court deferred to Congress and the Executive in their detailed findings that “even seemingly benign support” can bolster terrorist organizations. The regulation in question was therefore necessary to achieve the compelling end of preventing terrorism. The vagueness challenge also failed because the law was sufficiently specific as applied to the plaintiffs and barred their specific conduct.

The *HLP* case would not necessarily dictate the outcome of a challenge to the Logan Act. Unlike the law in *HLP*, there are no executive or legislative findings supporting the Logan Act, which the Court in *HLP* regarded as significant. Further, the Logan Act seems to restrict broader categories of speech than the statute at issue in *HLP*. Nonetheless, the case may provide helpful guidance as to what a constitutional analysis of the Logan Act might look like.

Congress and the Logan Act. For those who support the Logan Act and its goal that the United States speaks with one voice in its foreign policy, but are concerned about possible constitutional violations, one option would be to amend the Logan Act to fix vagueness and other constitutional concerns. At the same time, it might be difficult to preserve the purpose of the Act while eliminating the constitutional issues. One scholar, writing in 1966, foresaw these issues and proposed converting the act into a registration statute, modeled after the Foreign Agents Registration Act, which has generally withstood constitutional attack. Another option could be to give the Executive the power to issue regulations forbidding intercourse with specific countries on specific topics, avoiding the threat of overbroad or vague statutory language. A third option could be to remove the criminal penalties, either by making the law a simple “declaration of principle” or by using administrative penalties, like passport revocations. At least one court has suggested that a passport revocation for Logan Act violations might be acceptable.

More broadly, current law as a whole contains a host of restrictions governing how citizens can interact with foreign entities. The material support statute at issue in *HLP* is one such restriction, but laws against espionage, disclosure of classified information, and laws governing the formation of organizations subject to foreign control represent a handful of other examples. But because of its inactivity, the Logan Act’s role in this tapestry of regulations remains an open question.

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