



Via Electronic Mail

FARA Unit
National Security Division
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America First Legal Foundation Petition to Require Adam Silver and the National Basketball Association to Register Under the Foreign Agents Registration Act as Agents of the Chinese Communist Party

Dear Mr. Olsen:

The Foreign Agents Registration Act was enacted to protect the critical national interests of the United States by requiring public disclosure by persons engaging in propaganda and other activities for or on behalf of foreign governments and foreign political parties so that citizens may be informed of the identity of such persons and be able to appraise their domestic statements and actions in the light of their foreign associations.¹

The evidence is that Adam Silver and the National Basketball Association knowingly and intentionally advance the political and propaganda interests of the Chinese Communist Party and its instrumentalities in exchange for market access to the People's Republic of China and billions of dollars in revenue. Specifically, Mr. Silver and the NBA provided publicity services to the People's Republic of China Minister of Foreign Affairs, Qin Gang. Accordingly, America First Legal Foundation petitions the Department of Justice to require that Mr. Silver and the National Basketball Association register as foreign agents.

I. THE PETITIONER'S INTEREST IN THIS MATTER

The Petitioner is a national, nonprofit legal foundation working to promote the rule of law, prevent executive overreach, protect due process and equal protection, and educate Americans about the individual rights guaranteed under the Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and

¹ 22 U.S.C. § 611 *et seq*; *Meese v. Keene*, 481 U.S. 465, 469 (1987) (quoting 56 Stat. 248, 77 Cong. Ch. 263, (Apr. 29, 1942) (cleaned up)).

disseminating it through reports, press releases, and media, including social media platforms, all to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution and laws of the United States.

II. ADAM SILVER AND THE NATIONAL BASKETBALL ASSOCIATION MUST REGISTER AS “FOREIGN AGENTS”

There is substantial credible evidence that Mr. Silver and the National Basketball Association advance the political and propaganda interests of the Chinese Communist Party and its instrumentalities.² In exchange for doing so at the Chinese Communist Party’s request or direction, Mr. Silver and the Association receive billions of dollars. Accordingly, the Petitioner believes that the Department of Justice has a non-discretionary duty to require Silver and the National Basketball Association to register as foreign agents.

A. The definitional framework

The Act defines a “foreign principal” as “a government of a foreign country,” “a foreign political party,” and/or a foreign corporation.³ It further defines an “agent of a foreign principal” as “any person who acts as an agent, representative, employee, or servant, 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 another person, “engages within the United States in political activities for or in” the foreign principal’s interests; “acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or” in the

² See generally Letter from Rep. Troy E. Nehls and Sen. Rick Scott to Adam Silver (Mar. 10, 2023) (Exhibit 1), <https://bit.ly/3ZXTiNk>; Fan Feifei, *Ant Group announces partnership with NBA China*, CHINA DAILY (Feb. 21, 2023), <http://bit.ly/42anHKs>; Matthew Foldi, *China woos the Washington Wizards*, THE SPECTATOR (Jan. 25, 2023), <https://bit.ly/3mQV4By>; Rich Calder, *NBA lost ‘hundreds of millions’ of dollars due to China TV blackout, Adam Silver says*, N.Y. POST (Jun. 4, 2022) <http://bit.ly/3l8Fktc>; Mark Fainaru-Wada and Steve Fainaru, *ESPN analysis: NBA owners, mum on China relationship, have more than \$10 billion invested there*, ESPN (May 19, 2022), <https://es.pn/3ZInCvT>; Russell Flannery, *‘Now Is A Great Time To Be Investing In China’: Avenue Capital Group CEO Marc Lasry*, FORBES (May 16, 2021) (Lasry is co-owner of a National Basketball Association franchise called the “Milwaukee Bucks”), <http://bit.ly/3yCLiWx>; Eddy Rodriguez, *GOP Senator Accuses NBA of Promoting Chinese Communist Party’s Interest Over Uniform Change*, NEWSWEEK (Jul. 10, 2020), <http://bit.ly/3yAdvx9>. The NBA’s most recent “partnership” with Ant Group is particularly troubling. Ant Group is a subsidiary of Alibaba. Alibaba, in turn, is closely tied to and collaborates with the Chinese Communist Party on a host of initiatives designed to enhance the Party’s power and authoritarian control. See, e.g., Pei Li and Cate Cadell, *Alibaba is the force behind hit Chinese Communist Party app: sources*, REUTERS (Feb. 18, 2019), <https://reut.rs/3ZUs8qK>; see also US Dep’t of Edu. Office of General Counsel, *Institutional Compliance with Section 117 of the Higher Education Act of 1965* at 25-27 (Oct. 2020), <https://bit.ly/3yozwil>.

³ 22 U.S.C. § 611(b)(1).

foreign principal's interests; "disburses ... money or other things of value for or in" the foreign principal's interests; or represents the foreign principal's interests "before any agency or official" of the United States government.⁴

A foreign agent registration statement must be "detailed"⁵ with a "degree of specificity necessary to permit meaningful public evaluation of each of the significant steps taken by a registrant to achieve the purposes of the agency regulation."⁶ Department of Justice regulations further require registrants to "keep and preserve" eight different categories of "books and records," including "communications to and from all foreign principals and all other persons, relating to the registrant's activities on behalf of, or in the interest of any of his foreign principals"; communications "relating to political activity on the part of any of the registrant's foreign principals"; and "bookkeeping and other financial records."⁷ Such records must be "readily accessible for inspection" by the Department of Justice.⁸

Any person who willfully violates any provision of FARA or any regulation thereunder shall, upon conviction thereof, be punished by a fine of not more than \$250,000 or by imprisonment for not more than five years.⁹

B. The facts suggest Mr. Silver and the National Basketball Association are agents of a foreign principal

The sordid history of the National Basketball Association's close relationship with, and financial ties to, the Chinese Communist Party are well-documented.¹⁰ However, the incident recounted in the above-cited Congressional letter of March 10, 2023, establishes that Mr. Silver and the National Basketball Association are agents of a foreign principal as a matter of law.

Specifically, on or about January 21, 2023, Mr. Silver and the National Basketball Association provided the People's Republic of China Minister of Foreign Affairs, Qin Gang, and the Chinese Communist Party's "China Media Group" public relations services and a propaganda opportunity at the Capital One Area in Washington, D.C. During this event, which was, upon information and belief, arranged with Mr. Silver's consent by National Basketball Association representatives, a high-ranking Chinese Communist Party official was given a significant public relations platform and a venue for the distribution of things of value ("zodiac rabbits"), all to provide the

⁴ 22 U.S.C. § 611(c)(1)(ii) (cleaned up).

⁵ 22 U.S.C. § 612.

⁶ 28 C.F.R. § 5.210.

⁷ 28 C.F.R. § 5.500.

⁸ 28 C.F.R. § 5.500(b).

⁹ See 22 U.S.C. § 618(a); 18 U.S.C. § 3571.

¹⁰ See *supra* note 2; Kurt Helin, *Adam Silver discusses 'complicated' relationship between NBA, China*, NBC SPORTS (Apr. 8, 2021), <http://bit.ly/3FgBHbK>.

Chinese Communist Party with favorable publicity.¹¹ As a result, Mr. Silver and the National Basketball Association arguably are the Chinese Communist Party’s “public relations counsel,” “publicity agent,” and “information-service employee” for Foreign Agents Registration Act purposes,¹² and therefore required to register.¹³

CONCLUSION

Mr. Silver and the National Basketball Association have never provided a full public accounting of their activities on behalf of, or at the direction or request of, the Chinese Communist Party. Congressional hearings, or a grand jury investigation, are likely necessary to uncover all relevant facts. Regardless, there are ample facts to warrant an investigation by the Department of Justice to determine whether Mr. Silver and the National Basketball Association have engaged in activities covered by the Foreign Agents Registration Act but knowingly failed to register as an agent of a foreign principal as required by law. Under these circumstances, your duty to investigate and, as appropriate, to enforce the law is clear and non-discretionary.

Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

Senior Counselor and Director of Oversight
and Investigations

America First Legal Foundation

CC: Senator Rick Scott
Senator Marco Rubio
Senator Dan Sullivan

¹¹ Embassy of the People’s Republic of China in the United States of America, *Chinese Foreign Minister Qin Gang Sends Spring Festival Greetings To NBA Teams and Fans* (Jan. 22, 2023), <http://bit.ly/401eMZU>.

¹²The term “public-relations counsel” means any person who “engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to” the principal’s political or public interests, policies, or relations. 22 U.S.C. § 611(g). The term “publicity agent” means “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h). The term “information-service employee” means “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any [foreign] government” or political party. 22 U.S.C. § 611(i).

¹³ 22 U.S.C. § 611(c)(1).

Senator Eric Schmitt
Representative Troy E. Nehls
Representative Kevin Hern
Representative Byron Donalds
Representative W. Gregory Steube
Representative Burgess Owens
Representative Ryan Zinke
Representative Andy Biggs
Representative Lauren Boebert