



United States Department of State

Washington, D.C. 20520

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April 20, 2017

MEMORANDUM FOR WHITE HOUSE COUNSEL DONALD F. McGAHN

FROM: Katherine D. McManus, Deputy Legal Adviser and Designated Agency Ethics Official, United States Department of State

SUBJECT: Request for a Waiver Pursuant to Section 3 of Executive Order 13770

Jonathan Wachtel has begun work as the Director of Communications at the U.S. Mission to the United Nations (“USUN”). Immediately prior to joining the Department of State, Mr. Wachtel worked as a journalist with 21st Century Fox. Because Mr. Wachtel would not be able to fully perform the duties of Director of Communications at USUN if he were prohibited from communicating with his former employer, the Department is seeking a waiver pursuant to section 3 of Executive Order 13770.

Executive Order 13770, “Ethics Commitments by Executive Branch Personnel,” Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 6 of the Ethics Pledge provides that, for a period of two years from the date of his appointment, Mr. Wachtel is obligated not to participate in any particular matter involving specific parties that is directly and substantially related to his former employer. Section 2 of Executive Order 13770 defines “particular matter involving specific parties” to include “any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.” Section 2 defines “directly and substantially related to [his] former employer” as “matters in which the appointee’s former employer . . . is a party or represents a party.”

Performing the official duties of Director of Communications for USUN will require Mr. Wachtel to participate personally and substantially in particular matters involving specific parties that are directly and substantially related to 21st Century Fox, as defined in Executive Order 13770. The Director of Communications is responsible, among other duties, for serving as the primary spokesperson for the Mission and the U.S. Representative, answering all media inquiries; serving as the

UNCLASSIFIED

principal advisor to the U.S. Representative and senior Mission staff on media relations and public affairs; managing the preparation of op-ed pieces and articles; coordinating and approving all press interviews and reviews; and approving all guidance and information for the Representative's use in preparation for interviews. 21st Century Fox owns several media properties that are involved in covering the Department of State, USUN, and the foreign affairs of the United States, including *FOX News Channel*, *FOX Business Network*, FOX Television Stations, and *National Geographic Channel*.

In the course of performing his official duties, Mr. Wachtel will be expected to meet with, communicate with, and supervise meetings and communications with journalists and staff of media properties owned by 21st Century Fox. Mr. Wachtel may also be personally and substantially involved in other particular matters involving 21st Century Fox, such as decisions about the Department's and Administration's public affairs strategies that could affect 21st Century Fox's access to information, interviews, and other resources of journalistic value.

The Office of the Legal Adviser for the Department of State requests that you approve a waiver pursuant to section 3 of Executive Order 13770 permitting Mr. Wachtel to work on certain matters that may constitute particular matters involving specific parties directly and substantially related to 21st Century Fox. It would be highly impractical for other employees to take Mr. Wachtel's place in handling all meetings, communications, and other matters involving employees of 21st Century Fox. The Director of Communications at USUN is the principal advisor to the U.S. Representative to the United Nations on press matters. To achieve the Department's public diplomacy and press strategy goals, it is important that the Director of Communications at USUN have the capacity to be aware of all press queries to USUN and to communicate USUN's messaging clearly and consistently to any and all media outlets and platforms.

A number of other factors may be relevant to your waiver decision. While Mr. Wachtel continues to hold assets in a Fidelity 401(k) in which he invested while employed by 21st Century Fox, he will not otherwise have a continuing relationship with 21st Century Fox and he will not have a financial interest in 21st Century Fox. The Press and Public Diplomacy Section at USUN seeks to effectively communicate U.S. foreign policy and information about the Mission to the United States and global community, which necessitates cooperation with the full range of accredited journalists.

Additionally, principles of federal ethics law restrict Mr. Wachtel from showing preference or favoritism toward employees of 21st Century Fox in the course of his official duties. We would counsel Mr. Wachtel on the application of the federal ethics rules and have no reason to question his integrity in this regard.

The following waiver certification details the scope of the waiver that the Office of the Legal Adviser requests that you grant.

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Certification and Waiver Pursuant to Section 3 of Executive Order 13770

Pursuant to section 3 of Executive Order 13770, I hereby certify that Jonathan Wachtel is granted a waiver of restrictions under paragraph 6 of the Ethics Pledge on his involvement, as Director of Communications at the U.S. Mission to the United Nations (“USUN”), in certain particular matters involving specific parties directly and substantially related to his former employer, 21st Century Fox.

Scope of Waiver

Mr. Wachtel is permitted to work on the following matters in the course of his official duties, even if they constitute particular matters involving specific parties directly and substantially related to 21st Century Fox, as defined in section 2 of Executive Order 13770:

- Communications with employees of 21st Century Fox in the course of briefings involving a broad group of journalists;
- Meetings and communications with employees of 21st Century Fox to provide information about U.S. foreign policy, USUN, or the Department of State more generally, such as responding to press queries or requests for briefings or interviews;
- Interviews between employees of 21st Century Fox and the Director of Communications at USUN or other government officials.

The waiver would not permit Mr. Wachtel to work on the following matters:

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- 4 -

- Particular matters that directly and predictably affect his financial interests, as defined in 18 U.S.C. § 208;
- Funding or contracts with 21st Century Fox.

Basis for Waiver

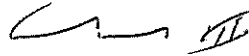
- Performing the official duties of Director of Communications at USUN will require Mr. Wachtel to participate personally and substantially in particular matters involving specific parties that are directly and substantially related to 21st Century Fox, as defined in Executive Order 13770.
- It would be highly impractical for other employees to take Mr. Wachtel's place in handling all meetings, communications, and other matters involving employees of 21st Century Fox. The Director of Communications at USUN is the principal advisor to the U.S. Representative to the United Nations on press matters. To achieve the Department's public diplomacy and press strategy goals, it is important that the Director of Communications at USUN have the capacity to be aware of all press queries to USUN and to communicate USUN's messaging clearly and consistently to any and all media outlets and platforms.
- Mr. Wachtel will not have a continuing relationship with 21st Century Fox. Nor will he have a financial interest in 21st Century Fox.
- Opportunities for the Director of Communications to use his position to further the interests of 21st Century Fox at the expense of other outlets would be constrained by the mission and working methods of the Press and Public Diplomacy Section at USUN, which seeks to effectively communicate U.S. foreign policy and information about the Mission to the United States and entire global community, necessitating cooperation with the full range of accredited journalists.
- Principles of federal ethics law restrict Mr. Wachtel from showing preference or favoritism toward employees of 21st Century Fox in the course of his official duties. The State Department will counsel Mr. Wachtel on the application of the federal ethics rules, and there is no reason to question his integrity in this regard.

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- 5 -

Accordingly, this limited waiver is hereby granted with the understanding that Mr. Wachtel will comply with the remaining provisions of the Ethics Pledge and with government ethics rules.



Donald F. McGahn II
Counsel to the President

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