

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR ANDREW VARCOE, SPECIAL ASSISTANT TO THE PRESIDENT

FROM: Scott F. Gast, Senior Counsel to the President *sf*
Designated White House Ethics Official

SUBJECT: Waiver Certification Under Section 3 of Executive Order 13770 and
Authorization to Participate Under 5 C.F.R. Section 2635.502

Pursuant to section 3 of Executive Order 13770, "Ethics Commitments by Executive Branch Employees" ("Ethics Pledge") and 5 C.F.R. § 2635.502(d), I am issuing this memorandum to provide a limited waiver of the restrictions found in paragraph 6 of the Ethics Pledge and authorization to participate in certain matters under section 2635.502(a). This limited waiver allows you to participate in certain particular matters involving specific parties involving your former employer, Boyden Gray & Associates, PLLC, and your former client, the Competitive Enterprise Institute, notwithstanding the limitations found in paragraph 6 of the Ethics Pledge and section 2635.502(a).

In addition to other restrictions found in the Ethics Pledge, paragraph 6 establishes certain restrictions related to an appointee's "former employers"¹ and "former clients."² In particular, paragraph 6 prohibits all appointees from:

- Participating in any particular matter involving specific parties in which a "former employer" or "former client" is a party or represents a party for two years from the date of their appointment; and
- Participating in any official meeting or communication with a former employer or former client, except where such meeting or communication relates to a particular matter of general applicability and the meeting or other event is open to all interested parties.

In addition, Section 2635.502(a) states, in part:

¹ A "former employer" is defined by the pledge as "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that 'former employer' does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession." Executive Order 13770, Sec. 2(j).

² A "former client" is defined by the pledge as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13770, Sec. 2(i)

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his/her household, or knows that a person with whom he has a covered relationship is or represents a party to such a matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his/her impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee

Authorization under section 2635.502(d) may be granted by the designated White House Ethics Official when:

. . . an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a), but would raise a question in the mind of a reasonable person about his/her impartiality . . . [but] the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

After careful consideration, I have determined that it is appropriate and in the public interest to provide a limited waiver of the restrictions in section 1, paragraph 6, of the Executive Order and 5 C.F.R. §2635.502(a) to allow you to participate in particular matters involving specific parties, including meetings and communications, where Boyden Gray & Associates is or represents a party or parties, in matters affecting public policy issues which are important to the priorities of the Administration. This waiver shall not include matters in which you participated personally and substantially while serving as an attorney at Boyden Gray & Associates or where you represented a party involved in the matter.

Additionally, I have determined that it is appropriate and in the public interest to provide a limited waiver of the restrictions in section 1, paragraph 6, of the Executive Order and section 2635.502(a) to allow you to participate in particular matters involving specific parties, including meetings and communications, with your former client, the Competitive Enterprise Institute, in matters affecting public policy issues which are important to the priorities of the Administration. This waiver shall not include matters in which you participated personally and substantially while serving as an attorney for the Competitive Enterprise Institute.

The Administration has an interest in you interacting with these entities in these limited instances to ensure the Administration's interests are protected and advanced. Disqualification from such activity would limit your ability to effectively carry out your duties on behalf of the Administration. Furthermore, in accordance with section 2635.502(d), the need for your services outweighs the concern that a reasonable person may question the integrity of the White House Office's programs and operations.

This limited waiver does not affect the application of any other provision of law, including any other provision of the Ethics Pledge (including section 1, paragraph 7); the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635); the criminal bribery, graft and conflict of interest statutes (18 U.S.C. §§ 201-209); or the Hatch Act (5 U.S.C. § 7323).