

Limited Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Principal Deputy Counsel to the President, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Mr. Robert F. Bauer solely with respect to his former client the Democratic National Committee (DNC), and with respect to his former employer Perkins Coie LLP (Perkins Coie) in its capacity as counsel to the DNC and to President Barack Obama in his personal capacity. This waiver is necessary so that Mr. Bauer, when representing the interests of the President and the United States as Counsel to the President, may participate appropriately in such matters as the President's SF-278 Personal Financial Disclosure Form, due May 15, 2010, in which Perkins Coie represents the President, and in evaluating the campaign finance decision in *RNC v. FEC*, in which Mr. Bauer previously appeared on behalf of the DNC to support the government's position.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (EO), Section 1, requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not for a period of two years from the date of his appointment participate in any particular matter involving specific parties that is directly and substantially related to his former employers or former clients. (Ethics Pledge, Paragraph 2.) For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communications relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restrictions contained in paragraph 2 of the Ethics Pledge may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec. 3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency was the most appropriate designee to grant such waivers, after consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

Before his service as Counsel to the President, Mr. Bauer and Perkins Coie represented the President in his personal capacity, and Mr. Bauer's former firm continues to represent the President on such matters. If the ethics pledge were literally applied, when representing the interests of the President and the United States as Counsel to the President, Mr. Bauer would not be able to advise the President appropriately on particular matters that are directly and substantially related to Perkins Coie's representation of the President in his personal capacity. For example, Mr. Bauer could not discuss with Perkins Coie the President's SF-278 Personal Financial Disclosure Form. Such a result would be inconsistent with the purposes of the Ethics Pledge, which did not contemplate the situation in which the personal lawyer to the President enters government service as an advisor to the President. A waiver is also appropriate as a policy matter, to ensure that the Counsel to the President is not precluded, in advising the President, from discussing with personal counsel to the President matters that relate to the President's

official responsibilities. Accordingly, Mr. Bauer is provided a limited waiver of paragraph 2 of the Ethics Pledge permitting him, when representing the interests of the President and the United States as Counsel to the President, to be involved in particular matters in which he previously represented the President or in which Perkins Coie is or was counsel to the President in his personal capacity, to communicate with Perkins Coie.

Before joining the White House, Mr. Bauer also represented the DNC on such matters as *RNC v. FEC*, and Mr. Bauer's former firm continues to represent the DNC. Among the responsibilities of the Counsel to the President are advising the President and White House officials on such matters as the campaign finance and related legal issues that arise in the *RNC* case, which may involve his former client the DNC, and his former employer Perkins Coie, in its capacity as counsel to the DNC. Mr. Bauer is, moreover, a leading national authority on campaign finance and related matters and the government will benefit greatly from his expertise. Accordingly, I have determined that a waiver of the requirements of paragraph 2 of the Ethics Pledge is in the public interest in order to allow Mr. Bauer, when representing the interests of the President and the United States as Counsel to the President, to be involved in particular matters involving specific parties in which his former client the DNC is a party or in which his former employer Perkins Coie represents or has represented the DNC or the President in his personal capacity.

This waiver is limited: it does not cover any former clients of Mr. Bauer's other than the DNC, or any interactions with Perkins Coie that do not involve its work as counsel to the DNC or to the President in his personal capacity. Nor will Mr. Bauer serve as the final decision-maker on any of the matters covered by the waiver. Mr. Bauer does not have any continuing financial interest in his former client the DNC. His only continuing financial interest in Perkins Coie is the repayment of his capital account pursuant to his partnership agreement. Until Mr. Bauer has received all of contractual repayments from Perkins Coie, pursuant to 18 U.S.C. § 208, he may not participate personally and substantially in any particular matter that would have a direct and predictable effect on the ability or willingness of Perkins Coie to provide these payments to him. This waiver of the requirements of paragraph 2 of the Ethics Pledge for Mr. Bauer does not constitute a waiver of 18 U.S.C. § 208. Mr. Bauer will, of course, otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

/s/ Norman L. Eisen

Dated: May 7, 2010

Special Counsel to the President and
Designated Agency Ethics Official