DEPARTMENT OF JUSTICE

Washington

October 14, 2011

CERTIFICATION OF PUBLIC INTEREST WAIVER FOR MATTHEW COLANGELO

FROM: Lee J. Lofthus
Designated Agency Ethics Official, Department of Justice

SUBJECT: Waiver from Restrictions Related to the NAACP Legal Defense Fund (LDF), in *Florida v. Holder*, 1:11-cv-01428 (D.D.C.2011), a Voting Rights Act challenge.

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee Matthew Colangelo in the position of Acting Deputy Assistant Attorney General, Civil Rights Division, in the Department of Justice. Mr. Colangelo shall not be restricted from participating in matters relating to *Florida v. Holder*, 1:11-cv-01428 (D.D.C.), a challenge by the State of Florida under the Voting Rights Act, subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Colangelo's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Colangelo's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed _____ Date 10-14-2011

Lee J. Lofthus
Designated Agency Ethics Official
Department of Justice

Memorandum

Subject:	Waiver Request Under E.O. 13490 for Acting Deputy Assistant Attorney General Matthew Colangelo to participate in *Florida v. Holder*	**Date:**	September 29, 2011

To: Lee J. Lofthus
Assistant Attorney General

From: Thomas E. Perez
Assistant Attorney General
Civil Rights Division

Through: Janice Rodgers
Departmental Ethics Officer

The purpose of this memorandum is to request waiver of the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, in order that Matthew Colangelo, Acting Deputy Assistant Attorney General, may participate in matters relating to *Florida v. Holder*, 1:11-cv-01428 (D.D.C. 2011), a Voting Rights Act challenge in which Mr. Colangelo's former employer, the NAACP Legal Defense and Educational Fund, has intervened.

E.O. 13490, Ethics Commitments by Employees in the Executive Branch

As you are aware, the Executive Order provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. Sec. 1, paragraph 2. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. § 2641.201(h), except that it shall also 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." E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct; however, the E.O. specifically includes regulations and contracts:

> 5 C.F.R. § 2641.201(h)(1): *Particular matter involving a specific party or parties* - (1) *Basic concept*. The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), only those

particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

(2) *Matters of general applicability not covered.* Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability are not particular matters involving specific parties. International agreements, such as treaties and trade agreements, must be evaluated in light of all relevant circumstances to determine whether they should be considered particular matters involving specific parties; relevant considerations include such factors as whether the agreement focuses on a specific property or territory, a specific claim, or addresses a large number of diverse issues or economic interests.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

Specific Waiver Request

On August 1, 2011, the State of Florida filed *Florida v. Holder*, in which it seeks a declaratory judgment that recently-enacted changes to the Florida Election Code fully comply with Section 5 of the Voting Rights Act. On September 6, 2011, the NAACP Legal Defense and Educational Fund (LDF), on behalf of the Florida Conference of the NAACP, moved to intervene as defendant-intervenors, presumably to argue that Florida's voting changes violate Section 5 and should not be approved.

Mr. Colangelo served as Director of the Economic Justice Group for LDF until March 5, 2010. Mr. Colangelo became Counsel to the Assistant Attorney General on March 8, 2010. He is the principal reviewer of the Civil Rights Division's Voting Rights Section, which is litigating *Florida* on behalf of the Department. Unique among the staff of the Office of the Assistant Attorney General, Mr. Colangelo has substantial experience in voting rights litigation. (Former Principal Deputy Assistant Attorney General Samuel Bagenstos and former Deputy Assistant Attorney General Julie Fernandes also had substantial voting rights litigation experience but have recently left the Division.) Moreover, Florida previously submitted the proposed Florida Election Code changes to the Division for administrative review under Section 5. Our Voting Section, under Mr. Colangelo's responsibility, reviewed the law for almost 60 days before the subsections at issue in *Florida* were withdrawn and this case was filed. The Florida Election Code changes were enacted on May 19, 2011, more than a year after Mr. Colangelo left LDF. As such, of course, Mr. Colangelo did not have any involvement in this case or access to client confidences on this matter while with LDF. Because he is subject to the E.O. limitation on contact with his former employer, Mr. Colangelo has never discussed the *Florida* matter with LDF or its clients.

The Division seeks a waiver of the E.O. so that Mr. Colangelo may review the Voting Section's work on this matter and assist the Assistant Attorney General on issues relating to this case. We do not seek a waiver of the restriction on meeting or communicating with his former employer, and he will not appear in court or participate in any matters that would require direct interaction with LDF or its clients.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. It directly serves the public interest that the Department have the benefit of Mr. Colangelo's participation in this case by providing oversight of the Voting Section's defense, given the significance of this challenge to our enforcement of Section 5 and his unique experience. The Department will face a severe hardship if Mr. Colangelo cannot be assigned to review this case, for several reasons. First, he has significant experience with both the general subject matter and with the particular Florida law at issue; a new reviewer would be required to come up to speed on both the subject matter and the state statute at issue in very short order. Second, as the front-office reviewer assigned to oversee the Voting Section, Mr. Colangelo has a daily working relationship with that Section; assigning a new reviewer for this matter imposes additional reporting burdens and significant inefficiencies on the Section and the front office. Third, this matter is extremely time-sensitive, in that the state would like to implement its law as quickly as possible; requiring a new reviewer to become familiar with the issues presented in a matter of weeks or months will impose additional burdens on an already-stretched staff. Finally, the recent departure of both PDAAG Samuel Bagenstos and DAAG Julie Fernandes heightens all of these burdens because a replacement reviewer could well need to be someone not currently working in the front office, and who has not previously worked with the Voting Section.

Although Mr. Colangelo does not have a "covered relationship" with LDF under the standards of conduct because more than a year has passed since he was employed there, *see* 5 C.F.R. § 2635.502(b)(1)(iv), we also believe that a reasonable person with knowledge of the relevant facts would not question the integrity of the Department's programs and operations based on his participation in overseeing *Florida v. Holder*, and that, should such questions arise, the Department's interest in your participation outweighs any possible concern. Mr. Colangelo had no involvement in this case while with LDF (because the case did not exist), has not discussed this case with anyone from LDF, has had no access to client confidences through his prior employment, and has not been employed by LDF for more than 18 months.