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June 30, 2017

MEMORANDUM FOR WHITE HOUSE COUNSEL DONALD F. McGAHN II

FROM: Katherine 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

On May 22, 2017, the United States Senate confirmed Terry E. Branstad as Ambassador to the People's Republic of China. Ambassador Branstad was previously Governor of Iowa, a position from which he resigned upon confirmation. Because Ambassador Branstad would not be able to fully perform the duties of Ambassador to China if prohibited from engaging in particular matters involving his former employer, the State 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, Ambassador Branstad 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 [her] former employer" as "matters in which the appointee's former employer . . . is a party or represents a party."

Performing his official duties will require Ambassador Branstad to participate personally and substantially in particular matters involving specific parties that are directly and substantially related to the State of Iowa. It is likely that Ambassador Branstad will be asked as part of his official duties to participate in particular matters that involve U.S. states as parties, including the State of Iowa. For example, he will support and participate in state-specific matters, including

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trade delegations, sub-national cooperation and exchanges, meetings and advocacy, and a variety of other programs and activities. As part of these duties, he will need to engage with Chinese authorities on issues of concern to the State of Iowa and Iowa companies that the State of Iowa represents.

Furthermore, in the past Mission China's Foreign Commercial Service Offices and Mission China's Agricultural Trade Office have assisted a number of Iowa delegations to China, and have also provided fee-for-service promotional events. China is Iowa's fourth largest export market, and Iowa's top five categories of export products in 2016—processed foods, machinery, chemicals, agricultural products, and transportation equipment—are all the subject of high-profile and sensitive U.S.-China diplomacy. Therefore, it is likely that similar matters involving the State of Iowa or parties it represents will arise during Ambassador Branstad's service.

Ambassador Branstad will also be called upon to work on trade, regulatory, and advocacy matters, which could include the highly restrictive Chinese requirements for imports of processed foods, policies and agreements concerning the import of U.S. beef and poultry, the restrictive approval regimes for approval of agricultural biotech products, and Chinese industrial policies regarding machine tools, agricultural equipment, and transportation equipment. Although these policy issues and matters of bilateral diplomacy will not always involve U.S. states as parties, it is possible that particular matters in which the State of Iowa is a party, or represents a party such as Iowa businesses, could arise.

Although some of the matters in which Ambassador Branstad will engage may fall under the exception in the Executive Order's definition of "particular matters involving specific parties" for communications about particular matters of general applicability in meetings or events open to all interested parties, we expect that many matters involving the State of Iowa or parties it represents would not be subject to this exception.

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 Ambassador Branstad to work on certain matters that may constitute particular matters involving specific parties directly and substantially related to the State of Iowa. In particular, the waiver should permit Ambassador Branstad to engage in state-specific advocacy and support that involve the State of Iowa or parties it represents.

It would be highly impractical for other employees at the U.S. Embassy in China to take Ambassador Branstad's place in handling matters specific to Iowa or parties it represents. Personal engagement by the Ambassador is often critical in state-specific matters due to the importance of the Ambassador's status to Chinese interlocutors, and because the Ambassador speaks as the President's personal representative. Engagement by the Ambassador is often expected and is helpful to the success of state-specific trade, promotional, and other similar events.

A number of other factors may be relevant to your waiver decision. Ambassador Branstad is no longer employed by Iowa, nor does he have a continuing financial relationship with Iowa (except for his participation in a defined benefit plan). Additionally, principles of federal ethics law restrict Ambassador Branstad from showing, in the course of his official duties, preference or favoritism toward Iowa or any parties it represents. We have counseled and will continue to counsel Ambassador Branstad on the application of the federal ethics rules and have no reason to question his integrity in this regard. Finally, the State Department has already granted Ambassador Branstad a limited authorization pursuant to 5 CFR § 2635.502(d), permitting him to engage in certain particular matters in which Iowa is or represents a party, from which he would otherwise be barred under the ethics regulations for one year after his resignation. The State Department concluded that its interest in Ambassador Branstad's participation for one year after his resignation as Governor of Iowa in matters in which Iowa is or represents a party outweighs any concerns that a reasonable person might question the integrity of the State Department's programs and operations. This limited authorization extends only to particular matters in which Iowa is or represents a party that involve bilateral engagement with the Chinese government and for which his participation as Ambassador is expected; it does not extend to other matters in which Iowa is or represents a party.

Certification and Waiver Pursuant to Section 3 of Executive Order 13770

Pursuant to section 3 of Executive Order 13770, I hereby certify that Terry E. Branstad is granted a waiver of the restrictions under paragraph 6 of the Ethics Pledge on his involvement, as Ambassador to the People's Republic of China, in certain particular matters involving specific parties directly and substantially related to his former employer, the State of Iowa.

Scope of Waiver

Ambassador Branstad 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 the State of Iowa as defined in section 2 of Executive Order 13770:

- Advocacy and support that involve the State of Iowa or a party it represents and which involves bilateral engagement with the Chinese government, including but not limited to trade delegations and trade matters, promotional events, sub-national cooperation and exchanges, meetings and advocacy, and other state-specific matters.

The waiver would not permit Ambassador Branstad to work on the following matters:

- Particular matters that directly and predictably affect his financial interests, as defined in 18 U.S.C. § 208; and
- Particular matters involving specific parties that directly and predictably affect the State of Iowa, and which do not involve bilateral engagement with the Chinese government.

Basis for Waiver

- Performing the official duties of Ambassador to China will require Ambassador Branstad to participate personally and substantially in particular matters involving specific parties that are directly and substantially related to the State of Iowa, as defined in Executive Order 13770. The U.S. Embassy has previously engaged with Chinese authorities on numerous issues of concern to individual U.S. states, including the State of Iowa and parties it

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represents, and such engagement is expected to continue. The U.S. Embassy and the Ambassador should be able to assist all U.S. states and their citizens in equivalent fashion.

- It would be highly impractical for other employees to take the Ambassador's place in handling all matters in which Iowa is or represents a party. Personal engagement by the Ambassador is often critical in state-specific matters due to the importance of the Ambassador's status to Chinese interlocutors, and because the Ambassador speaks as the President's personal representative. Engagement by the Ambassador is often expected and is helpful to the success of state-specific issues, including trade delegations and trade matters, sub-national cooperation and exchanges, meetings and advocacy, and a variety of other similar matters.
- Ambassador Branstad has resigned as Governor of Iowa and has no financial relationship with Iowa, except for his continued participation in a defined benefit plan.
- Principles of federal ethics law restrict Ambassador Branstad from showing, in the course of his official duties, preference or favoritism toward the State of Iowa or parties it represents. The State Department has counseled and will continue to counsel Ambassador Branstad on the application of the federal ethics rules and has no reason to question his integrity in this regard.

Accordingly, this limited waiver is hereby granted with the understanding that Ambassador Branstad 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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