

## White House Trims Trade Panel Lobbyist Ban To Resolve Suit

By **Alex Lawson**

*Law360, New York (August 13, 2014, 5:29 PM ET)* -- The Obama administration on Wednesday issued new rules opening the door for federally registered lobbyists to serve on government trade advisory panels in an effort to settle an ongoing suit lodged by industry lobbyists that were allegedly locked out of committee participation by the old policy.

In the wake of a D.C. Circuit decision raising questions about the sweeping ban's compliance with the First Amendment, the Office of Management and Budget published updated guidance in the Federal Register saying that it would only apply the ban to lobbyists acting as individuals and not on behalf of businesses or other groups.

"OMB is now issuing revised guidance ... to clarify that the ban applies to persons serving on advisory committees, boards and commissions in their individual capacity and does not apply if they are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or state or local governments," the agency said.

The agency handed down the new guidance in order to settle a lawsuit pending in Washington, D.C., federal court in which six lobbyists seeking slots on International Trade Advisory Committees have alleged that the ban is unconstitutional.

A joint filing from the the lobbyists and the U.S. Department of Commerce and the U.S. Trade Representative's office, the agencies that jointly manage the ITACs, indicated that the case is poised to settle once the government formally hands out revised eligibility criteria for the ITACs and implements the new guidance.

"The government expects that implementation process to take approximately two weeks," they said. "Accordingly, the parties respectfully request that they be permitted to inform this court on or before Sept. 3, 2014, whether this case is resolved."

The lobbyists filed suit against the government in 2011, arguing that the administration's ban effectively pressured them into limiting their First Amendment right to petition the government to qualify for the benefits that come along with ITAC positions.

U.S. District Judge Amy Berman Jackson **tossed the case** two years ago, unconvinced by the lobbyists' arguments pertaining to constitutionality. But the D.C. Circuit differed and **sent the case back**, saying

that First Amendment questions were valid, but giving the government wiggle room to justify its restrictions.

On remand, though, the parties quickly entered into deliberations aimed at settling the matter, which culminated in Wednesday's updated guidance.

Mayer Brown LLP partner Charles A. Rothfeld, who represents the lobbyists, cheered the new rules as a significant win, noting that the old policy may have done more harm than good.

"This change vindicates the First Amendment rights of these individuals, while also allowing trade agencies to benefit from their technical expertise," Rothfeld said. "The government offered no substantial justification for denying these individuals the right to serve on industry trade advisory committees, and the rules actually harmed the public interest in transparency by driving many lobbyists to deregister."

The lobbyists are represented by Charles A. Rothfeld and Joseph P. Minta of Mayer Brown LLP.

The U.S. is represented by U.S. Department of Justice attorneys Jean Lin, Stuart F. Delery, Ronald Machen Jr. and John R. Griffiths.

The case is *Autor et al. v. Pritzker et al.*, case number 1:11-cv-01593, in the U.S. District Court for the District of Columbia.

--Additional reporting by Scott Flaherty and Stewart Bishop. Editing by Katherine Rautenberg.