

William D. Araiza

*Judicial and Legislative Checks on Ex Parte OMB Influence over Rulemaking*

54 Admin. Law Rev. 611 (2002)

Abstract by Dipal Shah

Professor Araiza details the possibility for judicial and legislative checks on the practice of ex parte Office of Management and Budget (OMB) participation in rulemaking in this article. Araiza maintains that past and current attitudes towards OMB contacts necessitate a judicial and legislative check. Through an analysis of *Whitman v. Am. Trucking Ass'ns*, and several other cases, Araiza assesses Supreme Court reluctance of free-standing conceptions of administrative procedure. Araiza foresees that such unwillingness probably will extend to demands for restrictions on OMB participation in the rulemaking process.

The article turns next to substantive judicial review of regulatory results, and maintains that this review may not appropriately police against OMB misconduct. Araiza then speculates on the limit on OMB conduct, and the potential for legislative safeguards to curb OMB actions. Araiza concludes that presidential administrations are extremely important in order to ensure that the OMB oversight does not impair the fundamental procedural fairness of the rulemaking process.