

In Victory for ISS and Glass Lewis, D.C. Circuit Upholds Lower Court Ruling That Proxy Voting Advice Does Not Constitute a ‘Solicitation’ Subject to Federal Proxy Rules

Posted in: Litigation, Proxy Advisors, SEC

Posted on: July 1, 2025

“In sum, the best reading of section 14(a), grounded in the ordinary meaning of ‘solicit’ in its statutory context, is that the term refers to a request for proxy authority or a directed plea to exercise such authority in a particular manner. Proxy-voting advice rendered by a third party for a fee falls outside that definition. It is simply a recommendation. The SEC’s effort to expand ‘solicitation’ to include such advice cannot be reconciled with the statutory text and its adoption of that definition in the 2020 Rule was contrary to law.”

—D.C. Circuit Court of Appeals

On July 1, 2025, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit unanimously **ruled** that **proxy advisory firms such as ISS and Glass Lewis do not “solicit” proxies within the meaning of Section 14(a) of the Securities Exchange Act of 1934 (Exchange Act) and thus are not subject to regulation by the SEC under the federal proxy rules.**

The ruling affirms the February 2024 **judgment** of the U.S. District Court for the District of Columbia, which concluded that the SEC exceeded its statutory authority and acted contrary to law when it interpreted the proxy rules’ definition of “solicit” and “solicitation” to expressly include the furnishing of proxy voting advice for a fee. The terms were left undefined by Congress in the statute.

“The ordinary meaning of those terms when Congress enacted the Exchange Act in 1934 did not encompass voting advice delivered by a person or firm with no interest in the outcome of the vote,” the district court judge wrote. “[A] proxy advisory firm offers advice on *how* to vote, but it does not seek to obtain a proxy.” The lower court emphasized that proxy advisors’ advice is tailored to the client’s interests, not their own, and they have no financial or governance interest in the outcome of a vote.

Background

Beginning in 2019, the SEC began regulating proxy advisory firms through an interpretation of Section 14(a) that treated their recommendations as “solicitations” of the proxy votes of institutional investors (see the SEC’s [2019 guidance](#), *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, and our [client alert](#) discussing the SEC’s 2020 rules codifying that interpretation and establishing tighter regulation of proxy advisory firms). ISS sued, arguing the SEC had unlawfully expanded “solicit” to encompass proxy voting advice and that ISS does not “solicit” proxies because it does not ask shareholders to vote a certain way to achieve a particular outcome but rather is indifferent to the ultimate outcome of the vote. The lower court agreed and entered summary judgment for ISS. The National Association of Manufacturers (NAM)—the nation’s largest manufacturing industrial trade group that counts many public companies as members and an intervenor in the case on behalf of the SEC’s position (the SEC withdrew from the case in 2024)—appealed the decision to the D.C. Circuit. NAM argued the district court’s definition of “solicit” was overly narrow and that proxy advisors “solicit” proxies in the broader sense that advisors move shareholders to vote and endeavor to obtain votes consistent with their advice.

Decision

Key excerpts from the 17-page [opinion](#), wherein **the appeals court drew a distinction between “solicitation” and “influence,”** follow (citations omitted; bold emphasis added; italics original):

Between a proxy adviser and its client, it might be reasonable to say that the client “solicits” the adviser’s recommendation but that interpretation does not suggest that, in providing that recommendation, the adviser has “solicited” the client’s vote. The adviser, although it holds itself out to attract clients, does not initiate the exchange; it provides advice only in response to the client’s request.... Based on that understanding, we conclude that **the ordinary meaning of “solicit” does not include entities that provide proxy voting recommendations requested by others, even if those recommendations influence the requestors’ eventual votes.**

Our conclusion is reinforced by the structure of the statute.... Nothing in section 14 indicates that it was intended to reach those entities that merely advise others how to vote, without themselves seeking votes or acting on behalf of those who do.

...

The role of a proxy in the context of shareholder voting is also informative. A proxy is a formal authorization given by a shareholder to another person to vote on his behalf. The concept entails agency: a person solicits a proxy when he seeks to be, or to place someone else in the position of being, an agent empowered to cast votes. **Communications that provide analysis or guidance upon request, by contrast, do not involve such a relationship. They may affect *how* the principal votes but they do not seek to supplant his authority to vote.**

It is thus no answer to say, as the SEC did in its rulemaking and NAM repeatedly emphasizes, that proxy advisers “influence” shareholder votes or that they “affect” voting outcomes. That argument has surface appeal, particularly when considering the modern proxy voting system. But it fails as a matter of statutory interpretation. The question is not whether proxy advisers are influential—that point is undisputed—but whether the Congress chose to regulate *influence* or *solicitation*. Influence, even substantial influence, is distinct from solicitation.

The court noted that the SEC is separately empowered to regulate the provision of proxy voting advice through the Investment Advisers Act of 1940, which imposes fiduciary duties on most proxy advisory firms.

NAM—a strong advocate of increased regulatory oversight of proxy advisory firms—has not indicated if it will petition the full D.C. Circuit to rehear the case or appeal the decision to the U.S. Supreme Court.

Legal Disclaimer: Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (“Gunderson”) has provided these materials for general informational purposes only and not as legal advice. Our provision and your use of these materials do not create an attorney-client relationship between Gunderson and you. These materials may not reflect the most current legal developments and knowledge, and accordingly, you should seek legal counsel before using or relying on these materials or the information contained herein. Gunderson assumes no responsibility for any consequences of your use or reliance on these materials.

Featured Insights

EVENTS

Gunderson Dettmer and Alpha Edison Launch PitchLive.LA to Spotlight Pre-Seed and Seed Founders During LA Tech Week

EVENTS

PLI's Noncompetes and Restrictive Covenants 2025: An In-Depth Look into What Every Lawyer, Human Resources Professional, and Key Strategic Decisionmaker Needs to Know

INSIGHTS

Gunderson Dettmer Releases 2025 Mid-Year Venture Capital Report

INSIGHTS

The Power of Focus: Founding partner Tom Villeneuve reflects on the last 30 years

PUBLIC VENTURES

'A New Day at the SEC': New SEC Rulemaking Agenda Outlines Chair Atkins's (De)Regulatory Priorities Through April 2026

INSIGHTS

The American Lawyer Features Jeff Higgins in "While Venture Capital Activity Slows, Gunderson Has No Intention of Moving Away From the 'Innovation Economy'"

PUBLIC VENTURES

California Climate Disclosure Laws: CARB Releases Clarifying Guidance for Inaugural Climate Risk Reports Due January 1, 2026

CLIENT NEWS

Gunderson Dettmer represented Stetis in its \$1.1B acquisition by OpenAI

Gunderson Dettmer represented Statsig in its \$1.1B acquisition by OpenAI

CLIENT NEWS

Prosus Leads Intella \$12.5M Series A with Participation from HearstLab

EVENTS

Gunderson Dettmer Partner Maggie White Co-Leads a Roundtable To Discuss “Secondaries, Liquidity & the Pressure Cook”

CLIENT NEWS

Commonwealth Fusion Systems Announces \$863M Series B2

CLIENT NEWS

Mexico-Based Auto Insurer Momento Seguros Raises \$10M Series A