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NLRB's "Ambush Election Rules" Get Stamp Of Approval From Fifth Circuit

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On June 10, the Fifth Circuit Court of Appeals upheld the National Labor Relations Board's (NLRB) controversial "ambush election rules" that went into effect in April 2015. As we have extensively [covered in past posts](#), the new election rules have resulted in much shorter time periods between the filing of union election petitions and the elections themselves.

The Fifth Circuit's decision was on appeal from a federal district court in Texas that had dismissed a lawsuit on June 1, 2015, brought by a coalition of Texas business groups challenging the NLRB's modified rules. Those same businesses were dealt another blow by the Fifth Circuit on June 10 when it held that the NLRB rule, on its face, did not violate either the National Labor Relations Act (NLRA) or the Administrative Procedure Act (APA). The businesses challenged three aspects of the rule:

- The decision improperly allows NLRB regional directors to preclude employers from contesting voter eligibility issues in pre-election hearings;
- The expanded disclosure requirements both before and after the pre-election hearing violate federal privacy law; and
- The shortened election period violates the "free speech" provision of the act.

The Fifth Circuit shot down all three challenges, holding that the language neither “precludes” nor “prevents” the presentation of voter eligibility evidence at the pre-election hearing, that the expanded disclosure requirements do not violate any privacy law and instead further the objectives of the act and that the NLRB was within its power and discretion to make rules that alter the time frame of the election period. Accordingly, the ambush election rules have survived their first challenge in court.