



COALITION FOR A **DEMOCRATIC WORKPLACE**

Eliminating the Ambush Elections Rule

In 2014, the Obama-era NLRB issued the radical “ambush elections” rule that undermined the mission of the Board to promote efficient, fair, and accurate union representation elections. It attacked both employer free speech rights and employee free choice. The NLRB under President Trump undid many of the damages caused by this rule and issued two Final Rules to restore balance. Under the new administration, however, we are once again threatened with the rule’s damaging consequences, and Democrats in Congress are pursuing legislation that would codify many of the most damaging provisions into law. Congress should immediately pass legislation that will prevent implementation of the rule.

THE AMBUSH ELECTIONS RULE:

Democrats in Congress are trying to codify the National Labor Relations Board’s (NLRB) 2014 [“ambush elections” rule](#) into law. On March 9, 2021, Democrats in the House of Representatives passed the Protecting the Right to Organize (PRO) Act ([H.R. 842](#), [S. 420](#), 117th Congress), which would make the ambush elections rule the law of the land, infringing on worker and employer rights.

In December 2014, the Obama-era rule made dramatic changes to the Board’s long-standing union representation election procedures through which employees vote on unionization. The rule, which went into effect in April 2015, was designed to speed up elections in order to increase union density and dues revenue streams. This was done at the expense of employees, however, who, due to the rule’s rushed time frames, are denied the opportunity to hear from both sides of the debate prior to voting. The rule also severely undermined employers’ free speech and due process rights as well as their ability to present facts and views on the union at issue and unionization generally. The rule:

- Requires employers provide union organizers with all eligible employees’ names, addresses, phone numbers, email addresses, work locations, shifts and job classifications without the employee having a say in which information is provided, exposing employees to potential harassment and intimidation;
- Requires pre-election hearings be held within seven days of the filing of the petition, giving employers little time to find appropriate counsel and understand the complexities of the laws governing union representation elections;
- Requires employers draft a “statement of position” to be presented at the pre-election hearing and setting forth their positions on all relevant legal issues, while issues they fail to raise would be deemed waived, risking their right to due process;
- Limits the issues that may be litigated before an election, including employee eligibility to vote, and dispense with post-hearing briefs absent “special permission” from the hearing officer, risking confusion about the validity of the outcomes of the election;
- Eliminates pre-election Board review of a Regional Director’s decision; and
- Permits electronic filing of election petitions and showing of interest, creating a risk of fraud.



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The rule shortened the time between a union filing a petition for election and the NLRB holding that election from the previous median time of 38 days to the current 23 days. If fully implemented, the rule could impose elections in as short as 14 days, effectively limiting employers' ability to communicate with employees and encouraging "back door" organizing.

TRUMP ADMIN UNDOING THE DAMAGE:

In order to undo the damages caused by this rulemaking, the Trump-era NLRB issued two Final Rules restoring balance to the election process. In December 2019, the Board issued its [Representation Case Procedures Final Rule](#). The Final Rule includes "clarifications to procedures prior to an election that better ensure the opportunity for litigation and resolution of unit scope and voter eligibility issues" and "permit[s] parties additional time to comply with the various pre-election requirements instituted in 2014." CDW supports the changes made by the Final Rule and submitted [comments](#) on the Board's [initial Request for Information](#) seeking public input on the impact of the ambush elections rule on employer and employee rights. While five provisions of the Final Rule were [blocked by the US District Court](#) in May 2020, the court did not vacate the rule in its entirety, allowing the Board to move forward with implementing the majority of the rule's changes. A list of those changes, which went into effect on May 31, 2021, is provided by the NLRB in its [press release](#) announcing implementation.

Additionally, in March 2020, the Board issued its [Election Protection Final Rule](#), which made three critical changes to the Board's procedures. The Rule eliminated the current blocking-charge policy, which paused union decertification elections if an Unfair Labor Practice charge was filed against the employer until the charge was settled; the Board will now allow decertification elections to be held but will either impound or count the votes, depending on the nature of the charge. The Final Rule also created a 45-day window for employees to file for a decertification election if their employer voluntarily recognizes a union, ensuring workers have a voice in their representation. Finally, the Final Rule requires a union in the construction industry to prove they have majority support from workers before a collective bargaining agreement or voluntary recognition can be established. CDW submitted [comments](#) in support of the Board's [rulemaking proposal](#) in January 2020. Unfortunately, the Biden NLRB is attempting to reverse these changes with a new notice of proposed rulemaking.

REPUBLICANS WORK TO STOP THE AMBUSH ELECTIONS RULE:

While Democrats in Congress are trying to force through the PRO Act, Republicans are working to prevent future administrations from implementing the rule. In the 115th Congress, they introduced the Workforce Democracy and Fairness Act ([H.R. 2776, S. 1350](#)) and the Employee Privacy Protection Act ([H.R. 2775](#)), all of which CDW supported. We strongly encourage Congress to quickly reintroduce and pass these or similar bills into law while halting any efforts to impose the PRO Act on workers, employers, and the American economy.