

Noel Canning Delays Review Of “Ambush” Election Rules

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Citing [Noel Canning](#), the D.C. Circuit issued an order this week holding in abeyance an NLRB appeal regarding its “ambush” election rules. The D.C. federal district court [found last year](#) that the ambush election rules were invalid because Board member Brian Hayes did not participate in the decision. The NLRB appealed to the D.C. Circuit and oral argument had been scheduled for April. The employer’s representatives now have argued that even if Hayes had participated in the decision, the rules would still be invalid because Member Craig Becker, who voted in favor of the rules, was appointed to the Board by a recess appointment that would be considered invalid under the D.C. Circuit’s *Noel Canning* decision. The order to hold this case in abeyance is notable considering that the D.C. Circuit did not specifically invalidate Becker’s appointment, which was made in March 2010. Instead, the *Noel Canning* decision only addressed the recess appointments made by President Obama in January 2012. However, this order indicates that the Court is willing to apply its reasoning beyond the specifics of the *Noel Canning* case and extends *Noel Canning*’s potential effects significantly. For the time being, nothing is likely to change regarding the ambush election rules. In response to the lower court’s ruling last May, [the NLRB had delayed implementation](#) of the rules pending review by the D.C. Circuit. Now it appears the beleaguered Board will have to continue to wait for a final answer until the U.S. Supreme Court has its say on the recess appointments issue. Our prior coverage of the ambush election rules is [available here](#) and our prior coverage of the *Noel Canning* decision is [available here](#).

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