

# Union Challenge Halts New NLRB Election Rules

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On Saturday, May 30, 2020, Judge Ketanji Brown Jackson granted summary judgment in favor of the AFL-CIO based on its challenge that the National Labor Relations Board (“NLRB” or the “Board”) was not permitted to revise rules regarding the scheduling of elections without notice-and-comment procedures under the Administrative Procedure Act (“APA”).

Judge Jackson found that the rules (summarized [here](#)) set to take effect on May 31, 2020, were not procedural. Thus, they were required to follow the notice-and-comment rulemaking procedures outlined in the APA. In reaching the decision, Judge Jackson accepted the AFL-CIO’s argument that the changes to the election schedule affect workers’ substantive right to form unions and bargain over job conditions. The NLRB had argued that the changes were procedural and affected only internal processes, which exempted the changes from the notice-and-comment period required by the APA.

Judge Jackson found that the APA exception for procedural changes applied only to a limited scope of changes that relate to the “board’s own internal procedure” as opposed to anything procedural, as she interpreted the Board’s argument regarding the exception.

Judge Jackson stated that she would issue a more detailed opinion soon. An appeal is expected.

**For more information on this subject, contact a member of Benesch’s [Labor & Employment Practice Group](#).**

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