

July 5, 2024

U.S. District Court Enjoins Implementation and Enforcement of FTC Rule Banning Non-compete Agreements

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On July 3, 2024, U.S. District Judge Ada Brown of the Northern District of Texas entered a preliminary injunction staying the effective date of the Federal Trade Commission’s Non-compete Rule banning most non-compete agreements as “unfair methods of competition.” The Court found that Congress never granted the FTC statutory authority to create substantive rules regarding unfair methods of competition. Instead, the Court found that the text, structure, and legislative history of the FTC Act shows that Congress only granted the FTC the authority to promulgate “rules of agency organization procedure or practice” (*i.e.*, rules of procedure concerning its investigative and adjudicatory authority).

Additionally, the Court found that Ryan LLC and the Chamber of Commerce were likely to succeed on their claim that the Non-compete Rule is arbitrary and capricious, and therefore invalid. Specifically, the Court found that the Non-compete Rule is unreasonably overbroad and was enacted by the FTC without a “reasonable explanation.” As to overbreadth, the Court found that that Non-compete Rule was an improper “categorical ban” on all non-compete agreements (a “one-size-fits-all approach with no end date”), as opposed to a more nuanced approach targeting “specific, harmful” non-compete agreements. The Court also faulted the FTC for relying on only a “handful of studies that examined the economic effects of various state policies” toward non-compete agreements, which did not justify the nationwide ban.

Most importantly, however, the Court explicitly declined to issue a nationwide injunction against enforcement of the Rule and limited the preliminary injunction to Ryan LLC, the U.S. Chamber of Commerce, the Business Roundtable, the Texas Association of Business, and the Longview Chamber of Commerce – meaning that it does not apply to other businesses presently. Nevertheless, the Court explained that it will enter a final judgment on the merits of the litigation (*i.e.*, whether the Non-compete Rule is invalid) on or before August 30, 2024, five days before the effective date of the Non-compete Rule. The Court’s final judgment concerning the validity of the Non-compete Rule will likely apply nationwide to the extent the Court finds that the Rule is, in fact, invalid.

We will send further alerts regarding any appeal of the preliminary injunction, and the final judgment if and when entered. In the interim, please contact RSHC and the authors if you would like to discuss the Non-compete Rule and your own non-compete agreements and other restrictive covenants.

Client **Alert**

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