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U.S. District Court Invalidates FTC Non-Compete Rule

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On August 20, 2024, U.S. District Judge Ada Brown of the Northern District of Texas entered an order granting summary judgment in *Ryan LLC, et al. v. Federal Trade Commission* ruling that the FTC Non-Compete Rule is unlawful and must be set aside.

The FTC Non-Compete Rule attempted to ban most noncompete agreements as “unfair methods of competition,” and was scheduled to take effect on September 4, 2024. As described in our July 5, 2024, [client alert](#), Judge Brown previously entered a preliminary injunction staying the effective date of the Rule, but that initial ruling only applied as to the plaintiff and intervenors in *Ryan*. But Judge Brown’s new and final Order stays the effective date of the FTC Non-Compete Rule entirely and directs that it “shall not be enforced or otherwise take effect” as to any persons or entities nationwide.

Judge Brown ruled that the FTC Non-Compete Rule cannot take effect because “the FTC exceeded its statutory authority in implementing” the Rule and the Rule is “arbitrary and capricious.” Specifically, Judge Brown found that (1) Congress did not grant authority in the FTC Act for the FTC to implement substantive rules like the Non-Compete Rule, (2) the Non-Compete Rule is arbitrary and capricious because it “imposes a one-size-fits-all approach with no end date,” (3) the Non-Compete Rule is based on “inconsistent and flawed” empirical evidence that failed to consider evidence of the benefits supporting non-compete agreements, and (4) the FTC failed to address less disruptive alternatives or exceptions to a categorical ban of non-compete agreements. Accordingly, Judge Brown found that the FTC’s promulgation of the Non-Compete Rule was an unlawful agency action.

The FTC signaled that it intends to appeal Judge Brown’s Order to the Fifth Circuit Court of Appeals. In the meantime, an FTC spokesperson stated that the FTC will still seek to protect workers who are subject to non-compete agreements via case-by-case enforcement actions.

There are now three federal court decisions reaching different conclusions on the propriety of the FTC Non-Compete Rule. On July 23, 2024, U.S. District Judge Kelley Hodge of the Eastern District of Pennsylvania denied a plaintiff’s request for a preliminary injunction that would have stayed the effective date of the FTC Non-Compete Rule in *ATS Tree Services, LLC v. Federal Trade Commission, et al.* Unlike Judge Brown in *Ryan*, Judge Hodge concluded in *ATS* that the FTC has authority to prevent unfair methods of competition by issuing substantive rules like the Non-Compete Rule. In contrast, on August 15, 2024, U.S. District Judge Timothy J. Corrigan of the Middle District of Florida granted a company’s request for a preliminary injunction staying the enforcement of the FTC Non-Compete Rule in *Properties of the Villages, Inc. v. Federal Trade Commission*, but only as to the plaintiff and on different grounds than Judge Brown. Judge Corrigan found the FTC *does* have authority to make substantive rules, but he concluded that the FTC Non-Compete Rule violates the major questions doctrine

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because it “extends beyond the Commission’s legitimate reach” to affect a significant portion of the United States, thereby constituting a “hugely consequential expansion of regulatory authority” without historical precedent.

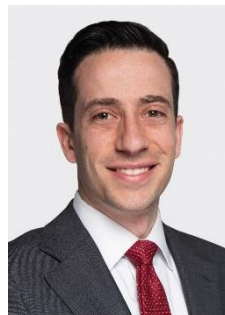
Because the *ATS* and *Properties of the Villages* cases have not reached a final determination, the Fifth Circuit likely will be the first appellate court to weigh in on these issues. But as those cases work their way up to Third and Eleventh Circuits, the Supreme Court ultimately may have to resolve any circuit split over the FTC Non-Compete Rule’s legality. In the interim, absent a stay of Judge Brown’s Order, the FTC Non-Compete Rule is set aside and will not take effect on September 4, 2024.

We will continue to send further alerts on these lawsuits as they progress. If you have questions about the FTC Non-Compete Rule or your company’s restrictive covenants, please contact RSHC and the authors of this alert.

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