

July 5, 2024

Federal Court Preliminarily Enjoins FTC's Non-Compete Rule, but Declines to Grant Nationwide Preliminary Relief

Court Holds that Plaintiffs Are Likely to Succeed on the Merits of Their Claims that the FTC Lacks Statutory Authority to Promulgate the Non-Compete Rule and that the Rule Is Arbitrary and Capricious

On July 3, 2024, Judge Ada Brown of the U.S. District Court for the Northern District of Texas issued the first ruling in the three pending legal challenges to the Federal Trade Commission's Non-Compete Rule.¹ In the 33-page decision, Judge Brown preliminarily enjoined the FTC from enforcing the Non-Compete Rule and stayed the Rule's effective date, but only as to the specific plaintiffs in the action. In doing so, the Court determined that plaintiffs were likely to succeed on the merits of their claims that the FTC lacks statutory authority to promulgate the Non-Compete Rule and that the FTC's decision to ban non-compete agreements nationwide was arbitrary and capricious. Judge Brown stated that she expects to issue a final ruling on the merits on or before August 30, 2024, prior to the Rule's effective date of September 4.

The Non-Compete Rule—addressed in detail in [an earlier memo](#)—would ban most employers from entering into new, or enforcing existing, non-compete agreements with workers, with certain limited exceptions. Shortly after its issuance, three separate lawsuits were filed seeking to block the Rule, and those lawsuits are currently pending in federal courts in Texas and Pennsylvania. Each of these suits challenged the FTC's statutory authority to issue the Rule and asked the courts to grant preliminary relief either staying the Rule's effective date or enjoining its enforcement.²

Judge Brown's July 3, 2024 order enjoined the FTC from enforcing the Non-Compete Rule against the plaintiffs in the case and stayed the Rule's effective date as to those specific parties.³ In finding that plaintiffs were likely to succeed on the merits, the Court held that the Non-Compete Rule violated the law for two separate reasons (and found it unnecessary to reach other grounds at this stage):

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- **The FTC lacks substantive rulemaking authority with respect to unfair methods of competition under Section 6(g) of the FTC Act.** Section 6(g) empowers the FTC to “classify corporations and . . . to make rules and regulations for the purpose of carrying out the provisions of this subchapter.”⁴ The FTC argued that this provision vested it with the power to issue regulations to carry out its mandate under Section 5 of the FTC Act to “prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce.”⁵ The Court disagreed, holding that the text, structure, and history of the FTC Act all show that “the FTC lacks the authority to create substantive rules through this method.”⁶ The Court also noted that the FTC itself disclaimed substantive rulemaking authority under Section 6(g) until 1962, and that the Non-Compete Rule was the first substantive rule the FTC had issued under Section 6(g) since 1978.⁷
- **The Non-Compete Rule is arbitrary and capricious because (a) the Rule is unreasonably overbroad and unsupported by any reasonable explanation, and (b) the FTC failed to consider narrower alternatives.** The Court first found that the FTC failed to provide evidence supporting its decision to issue “a sweeping prohibition—that prohibits entering or enforcing virtually all non-competes—instead of targeting specific, harmful non-competes.”⁸ The Court noted that the FTC’s support for the Rule rested on studies examining various states’ policies towards non-competes, but no state had ever enacted a categorical ban as broad as the FTC’s Rule.⁹ The Court also found that the FTC disregarded evidence showing the benefits of non-competes and failed to sufficiently consider less-disruptive alternatives.¹⁰

The Court further determined that plaintiffs would suffer irreparable harm absent injunctive relief because they would incur non-recoverable costs to comply with the Non-Compete Rule, including time and resources spent on updating existing employment agreements and complying with the Rule’s notice provisions, which require employers to notify employees that existing non-competes are not enforceable.¹¹ The Court also found that the public interest favored preliminary relief.¹² In issuing its injunction, however, the Court limited the preliminary relief to only the named parties in the case, which include a tax firm (Ryan, LLC) and various trade associations that challenged the Rule on behalf of their members.¹³

The full text of Judge Brown’s decision is available [here](#). A hearing on plaintiffs’ motion for a preliminary injunction in the legal action pending in the U.S. District Court for the Eastern District of Pennsylvania (*ATS Tree Services*) is scheduled for July 10, 2024, and the judge presiding over that case has indicated that a decision on plaintiffs’ motion will issue by July 23, 2024.¹⁴

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ENDNOTES

- 1 Non-Compete Clause Rule, 89 Fed. Reg. 38342 (May 7, 2024) (to be codified at 16 C.F.R. pt. 910).
- 2 Plaintiffs' Motion for Stay of Effective Date and Preliminary Injunction, *Chamber of Commerce of the United States v. FTC*, No. 6:24-cv-148 (E.D. Tex. Apr. 24, 2024); Ryan, LLC's Motion for Stay of Effective Date and Preliminary Injunction, *Ryan, LLC v. FTC*, No. 3:24-cv-986 (N.D. Tex. May 1, 2024); Motion for Stay of Effective Date and Preliminary Injunction, *ATS Tree Servs., LLC v. FTC*, No. 2:24-cv-1743-KBH (E.D. Pa. May 14, 2024). On May 3, 2024, Judge J. Campbell Barker of the U.S. District Court for the Eastern District of Texas stayed the lawsuit brought by the U.S. Chamber of Commerce and other business groups in favor of the earlier-filed *Ryan* action. After those plaintiffs intervened in the *Ryan* action, Judge Barker issued an order dismissing the Chamber's case without prejudice. See Order, *Chamber of Commerce of the United States v. FTC*, No. 6:24-cv-148 (E.D. Tex. May 30, 2024). Sullivan & Cromwell represents the U.S. Chamber of Commerce, Business Roundtable, the Texas Association of Business, and the Longview Chamber of Commerce in connection with these litigations.
- 3 Memorandum Opinion and Order, *Ryan, LLC v. FTC*, No. 3:24-cv-986 (N.D. Tex. July 3, 2024) ("*Ryan Order*").
- 4 15 U.S.C. § 46(g).
- 5 15 U.S.C. § 45(a)(2).
- 6 *Ryan Order*, at 15.
- 7 *Id.* at 17.
- 8 *Id.* at 21–22.
- 9 *Id.* at 21.
- 10 *Id.* at 22.
- 11 *Id.* at 24–26.
- 12 *Id.* at 28.
- 13 *Id.* at 30–32.
- 14 Order, *ATS Tree Servs., LLC v. FTC*, No. 2:24-cv-1743-KBH (E.D. Pa. May 21, 2024).

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