

Texas Court Blocks FTC Non-Compete Rule: What It Means for Businesses

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On July 3, 2024, a federal district court in Texas took a significant step, temporarily blocking the Federal Trade Commission's (FTC) proposed rule banning non-competes. U.S. District Judge Ada Brown for the Northern District of Texas granted the motion for preliminary injunction filed by plaintiffs Ryan LLC and plaintiff-intervenors U.S. Chamber of Commerce, Business Roundtable, Texas Association of Business, and Longview Chamber of Commerce, effectively putting the FTC's rule on hold for the named plaintiffs.

Although the stay is temporary pending the court's final decision on the merits of the case and applies only to the movants, it signals that a permanent and nationwide injunction is likely.

Background on the FTC's Non-Compete Rule

As a quick refresher, in April 2024, the FTC narrowly passed a rule along party lines intended to ban future non-compete agreements and nullify most existing ones. The FTC asserted its authority to enact this rule under Section 6(g) of the FTC Act, claiming it grants the power to establish substantive rules against unfair competition. Set to take effect on September 4, 2024, the rule would prohibit all new employment-related non-competes and invalidate nearly all existing ones. Ryan LLC and others immediately challenged the rule in court on various grounds.

Judge Ada Brown's Ruling on the FTC Rule

Judge Ada Brown, a former President Trump appointee, ruled in favor of the plaintiffs, determining that they successfully demonstrated all the necessary criteria for a preliminary injunction: (i) a strong likelihood of winning the case; (ii) a significant risk of irreparable harm if the injunction wasn't granted; and (iii) a favorable balance of the potential harms and benefits to both parties.

Judge Brown's opinion focused on two key points:

1. **The Scope of the FTC's Authority:**

The court's determination that the FTC lacked statutory authority to enact the rule is significant, particularly considering its alignment with the "major questions" doctrine. Historically, the FTC has disclaimed such power, but Congress has not expressly granted it. The court's reasoning aligns with the recent trend of limiting agencies' authority, echoing concerns in the "major questions" doctrine.

2. **Whether the Rule is Arbitrary and Capricious:**

Judge Brown ruled that the rule was arbitrary and capricious under the Administrative Procedure Act (APA) due to its overbroad nature and lack of supporting evidence. The opinion noted that no state has enacted a ban as broad as the one proposed by the FTC, and the FTC failed to justify its sweeping approach or consider less disruptive alternatives.

Additionally, the court agreed that the rule would cause irreparable harm to the plaintiffs' businesses and that the balance of equities favored maintaining the status quo.

Current Status and Potential Developments of the FTC Rule

While the injunction only applies to Ryan LLC and the U.S. Chamber of Commerce (and not its members), no entities will be subject to enforcement before the rule's intended effective date of September 4, 2024. Additionally, Judge Brown indicated that she intends to issue a final ruling by August 30, 2024, which could invalidate or permanently enjoin the rule.

In the interim, the parties will further brief the merits issues and the narrow scope of the court's order, including whether the injunction should be expanded nationwide. A separate challenge brought by ATS Tree Services LLC is pending in Pennsylvania, with a hearing scheduled for July 10, 2024, potentially resulting in a nationwide injunction ¹. This underscores the potential nationwide impact of the ongoing legal proceedings.

Impact on FTC's Rulemaking Authority

This ruling is a significant setback to the FTC's agenda to expand its rulemaking authority and regulate labor markets. It reflects a broader trend of constraining administrative agencies following the Supreme Court's recent decision (issued June 28, 2024) in *Loper Bright Enterprises*.

In *Loper Bright*, the court overruled Chevron's deference. It concluded that courts must interpret statutes de novo, and agency interpretations are not entitled to deference. The court found that even where a statute is "ambiguous," there is a single "best reading" of the statute that courts, not agencies, are responsible for determining. Previously, courts often deferred to agencies under the Chevron doctrine if their interpretation of an ambiguous law was reasonable. However, *Loper* mandates that courts independently assess whether an agency acted within its authority, regardless of statutory ambiguity.

This means the Ryan court's final decision will heavily depend on its own interpretation of the FTC's statutory power. Given this new precedent, it is plausible to expect the FTC's rule may be overturned, at least in part.

The business community, which has strongly opposed the rule, likely sees this as a positive sign. However, state-level efforts to limit non-competes continue, and the National Labor Relations Board (NLRB) has taken the view that the proffer, maintenance, and enforcement of non-competes generally violate the National Labor Relations Act ².

Proactive Review of Non-Competes: Alternative Strategies

Businesses are advised to proactively review their use of non-competes across their organization and explore alternative strategies to safeguard their interests. These alternatives include:

- Non-Disclosure Agreements (NDAs)
- Intellectual Property Protection
- Non-solicitation agreements
- Training Reimbursement Programs
- Garden Leave Clauses
- Non-Competes Linked to Business Sales

The FTC has indicated that, when properly structured, these alternatives should not violate its proposed rule.

¹ *ATS Tree Services, LLC v. FTC*, No. 2:24-cv-1743 (E.D. Pa. 2024).

² On June 13, 2024, an administrative law judge for the NLRB held that certain non-compete and non-solicit covenants violated an employee's labor rights under the NLRA. See *J.O. Mory, Inc.*, 25-CA-309577, 25-CA-336995, JD-36-24 (2024).