

Court Issues Limited Injunction Preventing FTC From Enforcing New Non-Compete Rule Against the Plaintiffs, But Not Others

July 03, 2024

The federal court presiding over challenges to the FTC's newly adopted rule banning virtually all non-compete clauses with workers has issued an injunction preventing the rule from taking effect while the court considers the plaintiffs' challenge to the rule, but the court limited the scope of the injunction to only the named plaintiffs in the litigation. Absent further developments, the FTC may still choose to have its non-compete rule go into effect for all other entities within the FTC's jurisdiction on September 4, 2024. (Our summary of the FTC's non-compete rule can be found [here](#).)

Ryan LLC, a global tax services firm based in Texas, and several business groups, including the U.S. Chamber of Commerce, commenced separate litigations against the FTC shortly after the FTC adopted the non-compete rule. The cases were consolidated before Judge Ada Brown in the Northern District of Texas. On July 3, 2024, Judge Brown issued an order granting the plaintiffs' request for a preliminary injunction enjoining the FTC from implementing the new rule. The court's decision states that the FTC "exceeded its statutory authority in promulgating the Non-Compete Rule, and thus Plaintiffs are likely to succeed on the merits" of their claims challenging the rule. The court also concluded that the plaintiffs were likely to succeed on the merits of their challenge to the FTC's non-compete rule because "there is a substantial likelihood the Rule is arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation."

Despite this, the court declined to issue a nationwide injunction, holding that the plaintiffs had not demonstrated that this was one of the limited "appropriate circumstances" that would merit nationwide relief. Thus, the court's injunction applies to and protects only the named plaintiffs in the *Ryan* litigation. The court also declined to include the members of the Chamber of Commerce and other business organization plaintiffs within the scope of the injunction, stating that those organizations had "not briefed associational standing" in the litigation on behalf of all of their members, so the court could not include their members in the injunction. (The court did not say whether it would permit such briefing now or later.) This results in the odd situation of a court concluding that the FTC non-compete rule is almost certainly unconstitutional, but nonetheless refusing to enjoin the FTC from enforcing the rule against anyone other than the handful of named plaintiffs in the case.

The court, however, also indicated that it plans to reach a final decision on the merits on or before August 30, 2024 (just a few days before the September 4, 2024 effective date of the non-compete rule). If the court's final decision reaffirms its initial conclusion that the rule is unconstitutional, that likely would prevent the FTC from implementing or enforcing the non-compete rule entirely. It is also possible that the parties in the litigation could ask the Court of Appeals for the Fifth Circuit to address the injunction decision prior to the issuance of Judge Brown's decision on the merits. Further, interested stakeholders may lobby the FTC to delay implementation of the rule in light of Judge Brown's order.

We will continue to monitor developments in this litigation and are available to address specific issues.

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