

Federal Court in Florida Enjoins FTC From Enforcing New Non-Compete Rule Against Only the Plaintiff in the Litigation

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A federal court in Florida ruled that a Florida real estate company was likely to succeed on its claim that the FTC's newly adopted rule banning virtually all non-compete clauses with workers is unenforceable under the major questions doctrine. The court, however, granted only a limited injunction precluding the FTC from enforcing the non-compete rule against the plaintiff real estate company itself.

Earlier this year, the FTC adopted a sweeping rule banning virtually all future non-compete clauses with workers and invalidating existing non-compete clauses with all workers other than "senior executives." The rule is slated to become effective on September 4, 2024. Our summary of the FTC's non-compete rule can be found [here](#).

The FTC rule has spawned several legal challenges. In *Ryan v. FTC*, a federal court in Texas held that the plaintiffs, including the U.S. Chamber of Commerce, were likely to succeed on the merits of their claims that the rule was unconstitutional and exceeded the FTC's power. The *Ryan* court found that there likely were numerous grounds on which the rule was improper. Despite this, the *Ryan* court declined to issue a nationwide injunction. The court also declined to issue an injunction that applied to the members of the Chamber of Commerce and the other business organizations that are plaintiffs in the litigation because that issue had not been directly addressed in the preliminary injunction briefing. Instead, the *Ryan* court issued a narrow injunction precluding the FTC from enforcing the rule only against the named plaintiffs in that case. Our summary of the *Ryan* decision can be found [here](#).

In *ATS Tree Services, LLC v. Federal Trade Commission*, a federal court in Pennsylvania reached the opposite conclusion. The *ATS* court held that the plaintiff had not demonstrated that it was likely to succeed on the merits of its claims that the FTC lacked authority to issue the rule or that Congress' delegation of that authority to the FTC was unconstitutional. The *ATS* court did not specifically address the *Ryan* decision, but it rejected many of the same arguments that the *Ryan* court endorsed. Our summary of the *ATS* decision can be found [here](#).

The new decision from the federal court in Florida in *Properties of the Villages, Inc. v. Federal Trade Commission* falls somewhere between the *Ryan* and *ATS* decisions. The Florida court rejected many of the constitutional arguments that the *Ryan* court endorsed, concluding that the FTC had rulemaking authority to adopt rules aimed at stopping what the FTC deemed unfair methods of competition. The Florida court found that the plaintiff was likely to succeed only on its claim that the FTC rule violated the major questions doctrine which requires an agency to show clear congressional authorization when it issues rules of extraordinary economic and political significance. Like the *Ryan* court, however, the court in the Florida case limited the injunction it issued to only the plaintiff in that particular case.

Absent further developments, these decisions would lead to the unusual situation of the FTC rule barring non-competes going into effect on September 4 for all business within the FTC's jurisdiction except for the named plaintiffs in the *Ryan* and *Properties of the Villages* cases. The decisions addressing the FTC rule to date resolve motions for preliminary injunctions, so they are not final and binding rulings. The *Ryan* court intends to issue 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). A decision on the merits finding that the FTC did not have authority to issue the rule likely would prevent the FTC from

implementing the rule while any appeals are decided, although it is possible that the *Ryan* court could issue a narrow ruling that applies only to the plaintiffs or only to the plaintiffs and the members of the plaintiff business organizations (since that issue has now been briefed). The ultimate decisions in all these cases are likely to be appealed, and any circuit split increases the likelihood that the Supreme Court would resolve the dispute.

These conflicting decisions add uncertainty as the effective date of the rule draws closer, making it difficult for businesses to plan and to prepare for the potential implementation of the rule. We are continuing to monitor developments in these litigations and are available to help our clients address the uncertain situation caused by the FTC rule and conflicting court decisions.

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