

## Federal Court in Texas Strikes Down FTC Rule Barring Non-Competes

August 20, 2024

A federal court in Texas struck down the FTC's newly adopted rule banning virtually all non-compete clauses with workers. The rule had been slated to become effective on September 4, 2024. Our summary of the FTC's non-compete rule can be found [here](#).

The federal court in Texas in *Ryan v. FTC* issued a decision on August 20, 2024 holding that the FTC exceeded its statutory authority in implementing the rule and that the rule is arbitrary and capricious. Accordingly, the court granted summary judgment to the plaintiffs, including the Chamber of Commerce, and concluded that the FTC's non-compete rule is unlawful and must be set aside.

The *Ryan* court had previously found that the plaintiffs were likely to succeed on the merits of their claims and issued an injunction precluding the FTC from enforcing the rule against the named plaintiffs in the litigation. Our summary of the *Ryan* court's earlier decision on the injunction motion can be found [here](#). In its prior injunction order, the court expressly declined to issue a nationwide injunction. In its August 20, 2024 decision, however, the *Ryan* court confirmed that its new summary judgment ruling has nationwide effect and applies not just to the named plaintiffs in the litigation, but to all persons in all judicial districts. Accordingly, the court specifically held that the non-compete rule is "set aside and shall not be enforced or otherwise take effect on September 4, 2024, or thereafter." The FTC is expected to appeal this ruling.

*Ryan* is just one of several legal challenges to the FTC's non-compete rule. In *ATS Tree Services, LLC v. Federal Trade Commission*, a federal court in Pennsylvania issued a preliminary injunction decision holding 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's preliminary injunction decision rejected many of the same arguments that the *Ryan* court endorsed. Our summary of the *ATS* decision can be found [here](#).

A federal court in Florida in *Properties of the Villages, Inc. v. Federal Trade Commission* issued a preliminary injunction decision rejecting many of the constitutional arguments that the *Ryan* court endorsed, but nonetheless concluded that the plaintiff was likely to succeed 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. The court in *Properties of the Villages* limited the injunction it issued to only the plaintiff in that particular case. Our summary of the *Properties of the Villages* decision can be found [here](#).

Absent further developments, in light of the *Ryan* court ruling, the FTC's non-compete rule will not go into effect on September 4, 2024. Decisions on the merits are expected in *ATS* and *Properties of the Villages* in the coming weeks and months. Those decisions could lead to splits among the courts about the constitutionality of the FTC's non-compete rules. The decisions in each of these cases are likely to be appealed, and any circuit split increases the likelihood that the Supreme Court would need to resolve the dispute. For now, however, employers can put plans to comply with the FTC rule barring non-competes on hold.

We are continuing to monitor developments in these litigations and are available to help our clients understand the impact of the recent court rulings and potential next steps in the ongoing legal challenges to the FTC rule.

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