



Texas Court Pulls the Plug on FTC's Non-Compete Ban: Rule Set Aside Nationwide

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On August 20, 2024, a Texas federal court set aside the Federal Trade Commission's (FTC) Final Rule ("Rule") that would have banned most non-compete agreements. Because the Court's decision has a nationwide effect, the Rule will not go into effect as scheduled on September 4, 2024.

In *Ryan LLC et al. v. FTC*, the U.S. District Court for the Northern District of Texas ("Court") determined the FTC exceeded its statutory authority in promulgating the Rule and that the Rule is arbitrary and capricious.

Background and Texas Court's Prior Decision

On April 23, 2024, the FTC [issued the Rule](#). It would have prohibited employers subject to the FTC's jurisdiction from entering into non-compete agreements with any workers, regardless of title or income level, unless the agreement was part of a bona fide sale of a business. The Rule also would have made all preexisting non-compete agreements unenforceable, except for those with "senior executives," as defined by the Rule.

The day the Rule was announced, Ryan LLC filed a lawsuit against the FTC pursuant to the Administrative Procedure Act (APA), which permits a court to hold unlawful and set aside certain agency actions. Other plaintiffs, including the U.S. Chamber of Commerce, joined the lawsuit. The plaintiffs argued the FTC's actions promulgating the Rule were unlawful because: (1) the FTC acted without statutory authority; (2) the FTC's action was the product of an unconstitutional exercise of power; and (3) its acts, findings, and conclusions were arbitrary and capricious.

On July 3, 2024, the Court [entered a preliminary injunction](#), staying the effective date of the Rule as to the plaintiffs. Shortly thereafter, the plaintiffs filed motions for summary judgment, asking the Court

to find the Rule unlawful under the APA. The FTC moved for summary judgment, arguing, among other things, that the Rule was a lawful exercise of its power under the FTC Act to prevent unfair methods of competition. The FTC also claimed that the Rule was not arbitrary and capricious but the result of an extensive study by the FTC that provided economic justification for the Rule.

Texas Court's Decision to Set Aside the Rule Nationwide

On August 20, the Court ruled against the FTC, finding it exceeded its statutory authority in implementing the Rule and that the Rule is arbitrary and capricious. The Court found that while Section 6 of the FTC Act granted the FTC "some authority to promulgate rules to preclude unfair methods of competition," that Section was "a housekeeping statute" authorizing only "rules of agency organization, procedure or practice, as opposed to substantive rules." The Court noted that the lack of a statutory penalty for violating rules made under Section 6 further demonstrated the lack of authority to create substantive rules having the force of law. The Court explained, "The role of an administrative agency is to do as told by Congress, not to do what the agency thinks it should do." Here, according to the Court, the text, structure, and history of the FTC Act revealed that Congress did not grant any substantive rulemaking authority to the FTC.

The Court also held that the Rule is arbitrary and capricious, as defined by the APA. The Court found that the Rule is "unreasonably overbroad without a reasonable explanation" because it imposed a "one-size-fits-all approach with no end date" and failed to establish a rational connection between the facts and the choice made. In promulgating the Rule, the FTC relied on a handful of studies that examined the economic impact of various state policies towards non-competes. But no state had enacted a non-compete rule as broad as the FTC's Rule. The FTC also failed to explain why it enacted such a sweeping ban instead of targeting specific, harmful non-competes.

The Court ultimately reasoned that the FTC's promulgation of the Rule was an unlawful agency action. Pursuant to the APA's directive, the Court set aside the Rule—**on a nationwide basis**—writing, "The Rule shall not be enforced or otherwise take effect on September 4, 2024, or thereafter."

What Happens Next?

The FTC will likely appeal the Texas Court's decision to the Fifth Circuit Court of Appeals. And an appeal to the U.S. Supreme Court could follow, given the [by a Pennsylvania federal court](#) just a few weeks ago finding the Rule likely is lawful. However, the Rule should remain set aside pursuant to the Texas Court's order while the appellate process plays out. In the meantime, employers should still review their restrictive covenant agreements to ensure they comply with, and are enforceable, under existing law.

Notably, the Texas Court's decision follows a Florida court's decision last week that found the Rule likely unlawful and enjoined the Rule for the plaintiffs in that case. In *Properties of the Villages, Inc. v. FTC*, the U.S. District Court for the Middle District of Florida determined the Rule violated the major questions doctrine, which prohibits agency action on issues of vast economic and political significance without clear statutory authorization. That decision provides yet another, independent legal basis for striking down the Rule—in addition to the reasons found by the Texas Court.

We will continue to monitor and advise on the Rule through the appellate process. If you have any questions about this ruling or any other restrictive covenant issue, please contact the authors or any member of Frost Brown Todd's [Labor and Employment Practice Group](#).

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