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Texas Federal Court Enjoins FTC's Enforcement of Non-Compete Ban

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In a highly anticipated July 3, 2024 decision, the U.S. District Court for the Northern District of Texas has preliminarily enjoined enforcement of a controversial FTC non-compete rule that would have banned most non-competes throughout the United States effective September 4, 2024. But while the Court in *Ryan LLC v. Federal Trade Commission* sided with Ryan and its intervenor allies, it declined, at least for now, to enter a nationwide bar on the ban's enforcement as to all non-competes that violate the rule, instead limiting its injunctive relief to Ryan and the four entity intervenors that joined its lawsuit, the Chamber of Commerce of the United States of America, Business Roundtable, Texas Association of Business and Longview Chamber of Commerce (the "Intervenors"). The *Ryan* Court stated its intent to issue a merits-based ruling on whether to permanently enjoin the FTC from enforcing its ban rule by August 30—just five days before the ban's effective date.

The *Ryan* Court's rationale for invalidating the FTC's non-compete ban was multi-faceted. Noting that "States have historically regulated non-competes through caselaw and statute," it rejected the FTC's contention that through the FTC Act, Congress authorized the Commission to promulgate substantive force-of-law regulations identifying and prohibiting methods of unfair competition. The Court pointedly noted that "for the first forty-eight years of its existence, the Commission explicitly disclaimed substantive rulemaking authority," and that "the role of an administrative agency is to do as told by Congress, not to do what the agency thinks it should do."

Thus, the Court concluded that "the Commission has exceeded its statutory authority in promulgating the Non-Compete Rule," making Ryan "likely to succeed on the merits." The Court further found that there is a substantial likelihood the ban rule is unlawfully "arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation" and "imposes a one-size-fits-all approach with no end date." The Court added that "the FTC insufficiently addressed alternatives to issuing the Rule." The *Ryan* Court likewise concluded that Ryan had satisfied its burden of demonstrating, for preliminary injunction purposes, that in the absence of a preliminary injunction it would suffer irreparable harm and that both the balancing of harms to be anticipated from enforcement or non-enforcement and the public interest favored issuance of a preliminary injunction.

The *Ryan* Court opted for a measured and step-wise approach, however, deferring nationwide relief or associational relief to the constituent members of the Intervenors because Ryan and the Intervenors had "offered virtually no briefing (or basis) that would support 'universal' or 'nationwide' injunctive relief," the Intervenors had "not briefed associational standing" and "[w]ithout such developed briefing, the Court declines to extend injunctive relief to members of Plaintiff-Intervenors."

Employers are now faced with an unhelpfully brief five-day interval between the *Ryan* Court's anticipated final ruling on the FTC's non-compete ban, including whether its enforcement will be enjoined nationally, and the ban rule's effective date. Whether to plan for compliance with the ban discredited in the *Ryan* Court's preliminary injunction decision or count on that decision being extended is a complex and employer-specific calculus to be solved with skilled and thoughtful counsel.

If you have any questions regarding the topics discussed in this article, please contact Nicholas Anaclerio at nanaclerio@vedderprice.com, Ellen M. Hemminger at ehemminger@vedderprice.com or the Vedder Price Restrictive Covenants & Trade Secrets team.