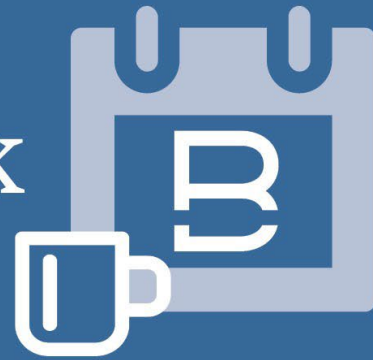


The Work Week

Bassford Remele Employment Practice Group



August 26, 2024

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

[Bassford Remele Employment Practice Group](#)

FTC Noncompete Ban Invalidated

[Marshall T. Hall](#)

Last week, the United States District Court for the Northern District of Texas invalidated the Federal Trade Commission's ("FTC") ban of noncompete agreements, which was issued on April 23, 2024. The decision in *Ryan LLC v. Federal Trade Commission* follows an earlier preliminary injunction granted on July 3, 2024, which stayed the rule's implementation from going into effect on September 4, 2024, and enjoined the FTC from enforcing and implementing the Rule on Plaintiff and its intervenors.

The Texas court based its decision on two conclusions: (1) that the FTC exceeded its statutory authority in implementing the ban under the Federal Trade Commission Act ("FTCA"); and (2) that the ban is arbitrary and capricious. With respect to the FTC's rulemaking authority, the court observed that, while "the FTC has some authority to promulgate rules to preclude unfair methods of competition ... the FTC lacks the authority to create substantive rules." The court characterized the FTCA as a "housekeeping statute," which only permits the FTC to make "'rules of agency organization procedure or practice' as opposed to 'substantive rules.'" Because the FTCA does not vest the FTC with substantive rulemaking authority, the court concluded that the FTC exceeded its authority in issuing its ban of noncompete agreements.

Additionally, the court also concluded that the ban was "arbitrary and capricious," reasoning that that "it is unreasonably overbroad without a reasonable explanation." The court criticized the ban as "impos[ing] a one-size-fits-all approach with no end date, which fails to establish a 'rational connection between the facts found and the choice made.'" The court further observed that "no state has enacted a non-compete rule as broad as the FTC's Rule," and "[t]he Commission's lack of evidence as to why they chose to impose

such a sweeping prohibition—that prohibits entering or enforcing virtually all non-competes—instead of targeting specific, harmful non-competes, renders the Rule arbitrary and capricious.” Finally, the court also determined that the FTC’s noncompete ban is “based on inconsistent and flawed empirical evidence, fails to consider the positive benefits of non-compete agreements, and disregards the substantial body of evidence supporting these arguments.”

The *Ryan* decision is part of a circuit split that may eventually reach the United States Supreme Court. Another similar case is currently pending in the Eastern District of Pennsylvania. In *ATS Tree Services, LLC v. Federal Trade Commission*, the Eastern District of Pennsylvania upheld the FTC’s authority to issue the noncompete ban under the FTCA. The Pennsylvania court agreed with the FTC that it was within its right to regulate noncompete agreements as a part of its mandate to prevent unfair methods of competition under the FTCA. Conversely, in *Properties of the Villages, Inc. v. Federal Trade Commission*, the Middle District of Florida echoed similar concerns to those raised in *Ryan* and reinforced the critique that the FTC’s rule was overly broad and inadequately supported.

The Third and Fifth Circuits are now expected to hear appeals on similar timelines, setting the stage for the Supreme Court to ultimately rule on the issue. While litigation unfolds in federal courts across the country, the FTC’s noncompete ban will no longer take effect on September 4, 2024, as initially projected. Importantly, noncompete agreements are still prohibited by several states, [including Minnesota](#).

At [Bassford Remele](#), our employment group regularly advises and counsels individuals and employers on restrictive covenants and unfair-competition matters. We will continue to monitor litigation surrounding the FTC’s ban, but for now, it’s business as usual for employees and employers.

LEARN MORE ABOUT OUR EMPLOYMENT PRACTICE » »
