In the case of *Ryan LLC v. Chamber of Commerce of the United States of America, et al.*, Judge Ada Brown of the U.S. District Court for the Northern District of Texas issued an order with "nationwide effect" on August 20, 2024, vacating the Federal Trade Commission's (FTC) rule banning most noncompete agreements.

In doing so, the court held that the FTC rule violated the federal Administrative Procedures Act (APA). Practically speaking, this order invalidates the FTC's ban on noncompete agreements and relieves employers from complying with the rule, including the upcoming September 4 deadline for sending notices to employees with such agreements advising them of the ban, at least for now.

The *Ryan* matter arose from the highly publicized FTC rulemaking process that began in January 2023. After issuing its proposal to ban noncompetes, and considering a volume of public comments, the FTC finalized the rule on April 23, 2024. While the proposal broadly sought to ban most noncompetes regardless of an employee's

position with an employer, the final rule included an exemption allowing enforcement of noncompete agreements against senior executives with policy-making authority who entered into existing noncompete agreements before the planned September 4, 2024, effective date. In addition to the broad ban, the final rule required employers to send out notices to covered employees no later than September 4, 2024, advising them that their existing noncompetes were invalid and that the employer would not seek to enforce the agreement if the employee departed. The recent ruling suspended this obligation.

The FTC's final rule triggered several lawsuits in addition to *Ryan*, each filed by national and state business trade groups. The complaint alleged that the FTC's actions in passing the ban violated the APA because the actions exceeded the statutory authority granted to the FTC by Congress in the FTC Act. Specifically, *Ryan* argued the ban constituted impermissible substantive rulemaking and that the noncompete rule itself, exceeded the FTC's authority. In addition, the suit alleged that the FTC's actions violated Section 706 of the APA because they were arbitrary and capricious. The plaintiffs initially sought injunctive relief prohibiting the FTC from enforcing the rule. On July 3, 2024, Judge Brown granted injunctive relief, but limited the scope of the injunction to the parties of the lawsuit. It was only after further briefing via cross motions for summary judgment that Judge Brown found against the FTC on all counts.

As to the FTC's substantive rulemaking authority, Judge Brown determined that the rulemaking grant in Section 6(g) of the FTC Act did not encompass the ability to make rules beyond those related to "housekeeping" or procedural matters. Among other bases, Judge Brown determined that the lack of a sanction for violations of Section 6(g) and the FTC's scant history of substantive rulemaking related to unfair methods of competition indicated that the agency did not have broad authority in this regard. Finding substantive rulemaking authority lacking, Judge Brown summarily determined that the noncompete rule itself exceeded the FTC's statutory authority. Judge Brown further took issue with the rule by finding that the FTC's actions were arbitrary and capricious in violation of the APA. Judge Brown determined that the rule's almost complete ban of noncompete agreements was not supported by the evidence set forth in support of the rule. Further, Judge Brown determined that the FTC acted arbitrarily and capriciously by not fully considering various alternatives.

After finding the rule invalid, Judge Brown considered the scope of relief and stated that "setting aside agency action under Section 706 of the APA has "nationwide effect,' is 'not party-restricted,' and 'affects persons in all judicial districts equally." The decision, however, does not detail further legal bases for the "nationwide effect" nor includes specific language enjoining the FTC from enforcing the ban on a nationwide or universal basis. Nonetheless, the language should be interpreted as placing a hold on the FTC's actions.

Although a federal district court in Philadelphia previously issued a contrary ruling upholding the FTC's actions, the Northern District of Texas' decision in *Ryan* has thwarted the ban. Employers, however, should not completely dial back their compliance efforts as the FTC will likely seek further relief through an appeal to the U.S. Court of Appeals for the Fifth Circuit. Even if the appellate court is not receptive to the government's argument that the rule is valid, there is some chance that the Fifth Circuit will dial back the nationwide scope of the August 20 order. This would create a patchwork of compliance obligations if other courts uphold the rule. As such, employers should remain attuned to developments in the courts.

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