Defining Limits: FTC Overreach and the Future of Non-Compete Agreements

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In a striking ruling on August 20, 2024, the US District Court for the Northern District of Texas invalidated the Federal Trade Commission's (FTC) Non-Compete Rule, as set forth in 16 C.F.R. §§ 910.1-6. The court's decision in *Ryan LLC v. FTC*, which follows a preliminary injunction issued on July 3, 2024, marks a decisive moment in the FTC's effort to regulate non-compete agreements nationwide. The ruling's impact is compounded by the recent erosion of Chevron deference, which traditionally allowed federal agencies broad latitude in interpreting regulations. As a result, the federal court ruling in *Ryan*, coupled with the broader judicial trend of curtailing federal agency authority, highlights a rising skepticism toward federal regulatory overreach in the world of employment law.

This shift is particularly evident in the *Ryan* court's critique of the FTC's authority Judge Ada Brown granted summary judgment to the plaintiffs, concluding that the FTC exceeded its statutory authority and criticizing the rule as arbitrary and capricious. By invalidating the FTC's Non-Compete Rule, the court not only cast aside federal attempts to overhaul employment agreements but also persevered the patchwork of related state regulations, leaving the future of non-compete agreements uncertain.

The court's analysis centered on two key issues: the FTC's authority under the Federal Trade Commission Act (FTC Act) and the Rule's compliance with the Administrative Procedure Act (APA). Significantly, the court determined that the FTC lacked the statutory authority to promulgate the Rule under Section 6(g) of the FTC Act. The Rule, which sought to ban nearly all employee non-compete agreements by categorizing them as “unfair methods of competition,” was deemed beyond the FTC's delegated powers. This interpretation if adopted by other courts will significantly constrain the FTC's ability to enact substantive regulations. Importantly, the court also found that the rule failed to satisfy the APA's “arbitrary and capricious” standard to evaluate the Rule. It found that the Rule was unreasonably broad and lacked a rational connection between the evidence presented and its provisions. The FTC's failure to adequately justify the sweeping prohibition on non-compete agreements, coupled with flawed empirical evidence and disregard for the benefits of such agreements, led the court to conclude that the Rule was fundamentally flawed. Based upon these findings, the court found the rule unlawful and enjoined the rule from being enforced or otherwise taking effect.

The *Ryan* court's decision, while far-reaching in its impact, was not entirely unexpected. The FTC's broad attempt to ban non-compete agreements had faced considerable opposition from groups such as the US Chamber of Commerce and the National Federation of Independent Business (NFIB), industry trade associations, including the American Bankers Association and the Securities Industry Association, also criticized the FTC for promulgating a rule that exceeded the FTC's consumer protection mandate.

This ruling has profound implications for the regulation of non-compete agreements across the United States. By invalidating the FTC's sweeping Rule, the court has halted its nationwide enforcement and preserved the diverse regulatory landscape of state-level regulations. In states like California, North Dakota and Oklahoma, where non-compete agreements are broadly banned, the *Ryan* decision ensures that these strict prohibitions remain intact. Non-compete agreements, however, remain legally valid and enforceable consistent with the law of those states that allow these agreements.

The *Ryan LLC v. FTC* decision also signals broader implications for federal regulatory authority. The decision

underscores a judicial shift towards limiting the power of federal agencies, particularly in the absence of clear statutory mandates, and it may serve as a roadmap for future legal challenges against vague federal regulations. If this trend continues, federal agencies may be compelled to reassess their approach to achieving their regulatory goals. For example, the FTC may look to existing state frameworks as a model for more targeted and productive regulation, balancing worker mobility while addressing business interests rather than imposing a complete ban on non-competes nationwide.

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