

FTC's Noncompete Ban Survives Preliminary Challenge in Pennsylvania Federal Court

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

4 MIN READ

July 25, 2024, 8:09 AM

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On July 23, 2024, the District Court for the Eastern District of Pennsylvania denied a request for a preliminary injunction to stay the FTC's Non-Compete Clause Rule (the "Rule"). Set to take effect on September 4, 2024, the Rule declares most noncompete clauses in employment contracts to be an unfair method of competition, making them unenforceable nationwide. It also prohibits future noncompete agreements, with some narrow exceptions. A detailed overview of the Rule is available [here](#).

In *ATS Tree Servs. LLC v. FTC*, No. 2:24-cv-01743 (E.D. Pa.), Judge Kelley Brisbon Hodge dismissed the motion filed by ATS Tree Service LLC (ATS), a small tree care company with twelve employees. ATS sought to delay the rule's effective date and prevent its enforcement, arguing that without noncompete clauses, it would lose the return on its investment in specialized employee training. However, Judge Hodge found the alleged harm to ATS to be too speculative and noted that ATS was unlikely to succeed on the merits. Crucially, the court found that the FTC has the authority under Section 6(g) of the FTC Act to promulgate rules to prevent unfair methods of competition.

This decision contrasts with an earlier ruling by the District Court for the Northern District of Texas. On July 3, 2024, Judge Ada Brown issued a preliminary injunction delaying the Rule's implementation against named plaintiffs, including the U.S. Chamber of Commerce. In *Ryan LLC v. FTC*, No. 3:24-CV-00986-E (N.D. Tex.), the court concluded that the FTC lacks

substantive rulemaking authority with respect to unfair methods of competition under Section 6(g). Additionally, the court ruled that the Rule was arbitrary and capricious under the Administrative Procedure Act, citing a lack of evidence or reasoned basis for the sweeping prohibition. A fuller overview of the *Ryan* decision is available [here](#).

A third case is ongoing in the Middle District of Florida, where Properties of the Villages Inc., a real estate and residential housing company, is challenging the Rule in *Properties of the Villages, Inc. v. FTC*, No. 24-cv-316 (M.D. Fla.). A motion for preliminary injunction in this case is pending.

Key points from the Pennsylvania federal court analysis:

- 1. Statutory Authority:** The court found that the FTC has the authority under Sections 5 and 6 of the FTC Act to promulgate substantive rules to prevent unfair methods of competition and that the language of the Act does not limit the FTC's rulemaking power to procedural rules only. "When taken in the context of the goal of the [FTC] Act and the FTC's purpose, the court finds it clear that the FTC is empowered to make both procedural and substantive rules as is necessary to prevent unfair methods of competition" the judge concluded.
- 2. Historical Context:** The court noted that Congress has repeatedly acknowledged and preserved the FTC's rulemaking authority through amendments to the Act, particularly in the 1975 and 1980 Amendments, which provide procedural requirements for certain types of rulemaking but do not limit the FTC's substantive rulemaking authority under Section 6(g).
- 3. Interpretation of the word "Prevent":** Section 5 of the Act "empowered and directed" the FTC to "**prevent** persons, partnerships, or corporations, ... from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2). The court emphasized that the term "prevent" in the FTC's mandate implies a forward-looking, proactive approach to stopping unfair methods of competition, supporting the FTC's authority to issue rules like the Non-Compete Clause Rule.
- 4. Irreparable Harm and Likelihood of Success:** The court found that ATS failed to establish irreparable harm, noting that compliance costs and speculative risks of losing employees did not meet the high bar required for injunctive relief.

The court rejected the plaintiff's alternative arguments:

- **Rule of Reason:** The court rejected ATS's argument that the FTC should apply a rule-of-reason analysis to non-compete agreements, affirming the FTC's broad authority to define unfair methods of competition.
- **State Regulation:** The court found that the existence of state regulations on non-compete clauses does not preclude the FTC from issuing its own rules to prevent unfair methods of competition.
- **Major Questions Doctrine:** The court held that the Major Questions Doctrine did not apply because the FTC's rule falls within its core mandate and is consistent with its historical use of rulemaking authority. This doctrine mandates that agencies must have "clear

congressional authorization” to assert new powers that carry “economic and political significance.”

- **Nondelegation Doctrine:** The court concluded that Congress's delegation of rulemaking authority to the FTC under the Act is constitutional, as it provides an intelligible principle to guide the agency's actions.

Practical implications:

A final decision in the Texas federal case is expected by August 30, 2024. Regardless of the final outcome, appeals from both the *Ryan* and the *ATS* cases are likely. The contradictory rulings on preliminary injunctions suggest that the legal battle over the legality of the FTC's Rule may be protracted. For now, employers should assume that the Non-Compete Clause Rule will be effective as of September 4, 2024, and take steps to prepare for compliance.



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