

# FTC Rule Banning Noncompetes Postponed by District Court for a Limited Number of Plaintiffs and Plaintiff-Intervenors

July 8, 2024

Last Wednesday, the U.S. District Court for the Northern District of Texas (the “*District Court*”) postponed the effective date and enjoined enforcement of the U.S. Federal Trade Commission’s (“*FTC’s*”) final rule (the “*Rule*”) banning most noncompetes in the United States.<sup>1</sup> Our May 2024 alert memo summarizing the Rule is available [here](#). In a departure from widespread expectations, the District Court declined to grant nationwide injunctive relief as requested and limited the preliminary injunction to the plaintiffs before the court, Ryan, LLC and Plaintiff-Intervenors, the U.S. Chamber of Commerce, Business Roundtable, Texas Association of Business and Longview Chamber of Commerce (collectively, the “*Plaintiffs*”).

The District Court’s order comes on the heels of the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*<sup>2</sup> overruling the long-standing *Chevron*<sup>3</sup> doctrine and now requiring courts to exercise independent judgment in reviewing agency actions to determine whether an agency has acted within its statutory authority. The District Court cited *Loper* in reaching its conclusion that Plaintiffs were likely to succeed on the merits of their claim that the FTC had exceeded its statutory authority to promulgate the Rule under the FTC Act.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

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<sup>1</sup> FTC Non-Compete Clause Final Rule (16 C.F.R. Part 910), available [here](#).

<sup>2</sup> No. 22-1219, 2024 WL 3208360 (U.S. June 28, 2024).

<sup>3</sup> See *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

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For the time being, noncompetes remain enforceable and in the hands of states, many of which have trended toward increasingly stringent restrictions on noncompetes and other forms of restrictive covenants. Though it remains uncertain how the FTC will respond, the preliminary injunction will remain in effect until the District Court issues a final decision on the merits of the pending challenge to the Rule on or before August 30, 2024, in advance of the Rule's planned effective date of September 4, 2024. Given the limited scope of the preliminary injunction, the FTC remains free to enforce the Rule against all employers other than the Plaintiffs on the previously established September 4, 2024 effective date.

The U.S. District Court for the Eastern District of Pennsylvania is also expected to hear oral argument this week on whether a similar motion for preliminary injunction and stay should be issued in a parallel challenge to the Rule brought by Ats Tree Services, LLC. We will continue to monitor the proceedings in both cases and provide updates as they progress. Please contact any of the authors or your regular Cleary Gottlieb contacts for further discussion if you have questions.

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