

FTC Fails 1st Test Of Rulemaking Push In Noncompetes Loss

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Michael Schmidt was quoted in a Law360 article discussing U.S. District Judge Ada E. Brown's ruling against the Federal Trade Commission's (FTC) ban on employment noncompete agreements. This decision prevents the rule from taking effect on September 4 and represents a victory for the U.S. Chamber of Commerce, which argues that the FTC's expansion into regulating noncompete agreements oversteps its statutory authority. Mike added, "This is a pushback of other potential future policies and initiatives that the FTC may think about including in a future rule."

Judge Brown's ruling restricts the FTC's power to create substantive regulations on unfair competition and deems the ban too broad, violating the Administrative Procedure Act. The FTC is contemplating an appeal, but the ruling could impact its ability to implement similar regulations in the future. With three separate cases addressing the FTC's authority and regulatory reach, this issue could ultimately reach the Supreme Court. Mike noted, "The Fifth Circuit is not likely to be kind to the FTC's position." If the FTC does not appeal, they could instead pursue case-by-case enforcement of noncompetes. However, this defeat could encourage states to develop their own noncompete regulations or prompt further congressional discussions.

To read more, [click here](#). (subscription required)

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