UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chairman

Statement of Chairman Andrew N. Ferguson
Joined by Commissioner Melissa Holyoak
Ryan, LLC v. FTC

September 5, 2025

Today, the Federal Trade Commission withdrew its notice of appeal in *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir. 2025).[1] In doing so, it acceded to the vacatur of the Commission's Non-Compete Clause Rule.[2] That Rule purported to ban almost all contracts in which an employee agreed not to work for his or her employer's competitor after his or her employment. It did so prospectively and retrospectively, extinguishing thirty million existing private contracts.[3] It preempted the laws of all fifty States, and actively displaced hundreds of existing laws across forty-six States.[4] It redistributed nearly a half trillion dollars of wealth within the general economy.[5] And it purported to render categorically unlawful a species of contract that has been lawful since the eighteenth century[6] by reimagining a single clause tucked away in an ancillary provision of a century-old statute.

Little more need be said about the legal viability of the Rule. The Rule's illegality was patently obvious. Commissioner Holyoak and I warned our Democrat colleagues at great length that the Rule was unlawful six ways from Sunday; that the Rule would never survive judicial review; and that the resources sunk into the Rule's promulgation and defense would be wasted.[7]

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[1] It did the same in a separate matter before the United States Court of Appeals for the Eleventh Circuit. *Properties of the Villages, Inc. v. FTC*, No 24-13102 (11th Cir. 2025).
[2] 16 C.F.R. pt. 910.
[3] See Final Rule, Non-Compete Clause Rule, 89 Fed. Reg. 38342, 38346 (May 7, 2024) ("The Commission estimates that approximately one in five American workers—or approximately 30 million workers—is subject to a non-compete[.]").
[4] Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In the Matter of the Non-Compete Clause Rule*, Matter No. P201200, at 4 (June 28, 2024) ("Ferguson Noncompete Rule Dissent").
[5] *Id.* at 1, 18.
[6] *Id.* at 2–3.
[7] *Id.* at 5–6 ("There is no tradition of federal regulation of noncompete agreements."); *id.* at 9–20 (explaining that the FTC Act did not provide authority for the Rule); *id.* at 21–34 (explaining that, even if the statute provided authority for the Rule, Congress could not have delegated its authority to legislate through the statute); *id.* at 34–45 (explaining that, in any event, the Rule violated the Administrative Procedure Act); Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In the Matter of the Non-Compete Clause Rule*, Matter No. P201200, at 3–9 (June 28, 2024) ("Holyoak Noncompete Rule Dissent") (explaining that the text and structure of the FTC Act does not authorize competition rulemakings); *id.* at 9–14 (confirming by looking to the Commission's historical interpretation that the FTC Act does not authorize competition rulemakings); *id.* at 16–18 (showing that empirical evidence fails to support the Rule).

We were ignored. The allure of press junkets and the praise of congressional Democrats was irresistible. And, as predicted, the courts swiftly invalidated the Rule.[8]

Let us be clear: plaudits from the liberal media and other Democrat partisans are all this Rule generated. Perhaps that was the point. The Rule did not protect a single American worker, nor did it bring any relief to a single worker who is stuck in a job because of a noncompete agreement. And that is a shame. As I have said, noncompete agreements can be pernicious.[9] They can be, and sometimes are, abused to the effect of severely inhibiting workers' ability to make a living.[10] That is why English law categorically prohibited them until the eighteenth century.[11] That is why all fifty States regulate them extensively, and why some outright ban them.[12] And that is why Congress, through the FTC Act and the Sherman Act,[13] gave us the authority to step in when they are onerous enough to become unlawful.[14] The Commission should have been doing everything it could to find unlawful noncompete agreements and eliminate them.

The Biden Commission could have deployed the thousands of taxpayer-funded manhours spent on the Rule's promulgation and defense on law enforcement. It could have brought cases that would have protected American workers from the effects of their unlawful noncompete agreements. That is what the Trump-Vance Commission is doing.[15] But like so many of the previous administration's other failed ventures,[16] the Democrats were satisfied with hollow rhetoric in press releases. In four years, the Biden Commission brought just four noncompete cases.[17] It settled three *the day before* issuing the proposed noncompete rule, and used those settlements as evidence that it had the power to promulgate the Rule.[18] For all of the Biden Administration's bluster about noncompete agreements, that is all they had to show for it—four

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[8] *Ryan, LLC v. FTC*, 746 F. Supp. 3d 369, 390 (N.D. Tex. 2024) (vacating the Rule); *Properties of the Villages, Inc. v. FTC*, No. 5:24-cv-316, 2024 WL 3870380, at *10–11 (M.D. Fla. Aug. 15, 2024) (enjoining enforcement of the Rule).

[9] Statement of Chairman Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, *In re Gateway Pet Memorial Servs.*, Matter No. 2210170, at 1 (Sept. 4, 2025) ("Ferguson Gateway Statement").

[10] See, e.g., Press Release, FTC, FTC Takes Action to Protect Workers from Noncompete Agreements (Sept. 4, 2025) ("Gateway Press Release"), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-takes-action-protect-workers-noncompete-agreements; see also Holyoak Noncompete Rule Dissent at 16–18 (discussing the potential for abusive noncompete agreements to "depress wages or even lead to extended periods of unemployment").

[11] Ferguson Noncompete Rule Dissent at 2–3.

[12] See *id.* at 4 (discussing the States' approach to regulating noncompete agreements).

[13] 15 U.S.C. §§ 1–38.

[14] Ferguson Noncompete Rule Dissent at 5 n.39 & 18 n.142.

[15] Gateway Press Release, *supra* note 10; Request for Information Regarding Employee Noncompete Agreements, FTC (Sept. 4, 2025) ("Noncompete RFI"), https://www.ftc.gov/system/files/ftc_gov/pdf/2025-Noncompete-RFI.pdf.

[16] See *Custom Commc'ns, Inc. v. FTC*, 142 F.4th 1060, 1074–75 (8th Cir. 2025) (vacating the prior administration's Negative Option Rule); Statement of Chairman Andrew N. Ferguson, *In re Non-Alcoholic Beverages Price Discrimination Investigation*, Matter No. 2210158 (May 22, 2025) (discussing the weaknesses of the prior administration's case and announcing the case's dismissal); *Nat'l Automobile Dealers Ass'n v. FTC*, 127 F.4th 549, 561 (5th Cir. 2025) (vacating the prior administration's CARS Rule).

[17] See Complaint, *In re Prudential Security, Inc. et al.*, Matter No. 2210026 (Jan. 4, 2023); Complaint, *In re O-I Glass, Inc.*, Matter No. 2110182 (Jan. 4, 2023); Complaint, *In re Ardagh Group S.A. et al.*, Matter No. 2110182 (Jan. 4, 2023); Complaint, *In re Anchor Glass Container Corp. et al.*, Matter No. 2110182 (Mar. 15, 2023).

[18] See Analysis of Agreement Containing Consent Order to Aid Public Comment, *In re Prudential Security, Inc. et al.*, Matter No. 2210026, at 5–6 (Jan. 4, 2023); Analysis of Agreements Containing Consent Order to Aid Public Comment, *In re O-I Glass, Inc. and In re Ardagh Group S.A. et al.*, Matter No. 2110182 , at 5 (Jan. 4, 2023); see also Final Rule, Non-Compete Clause Rule, 89 Fed. Reg. at 38422 & n.741.

settlements over a three month period, and a failed rule. One cannot help but conclude that the purpose of the Biden Commission's policy was not to help American workers, but rather affirm the former Chairwoman's faculty-lounge musings that impress no one but left-wing academics and cable-news pundits.[19] The tendency to engage in such wasteful exercises is just one of many reasons why the last administration was resoundingly voted out of office.

The Trump-Vance Commission is therefore confronted with a choice. We can continue tilting at windmills by defending the Biden Administration's indefensible rule, or we can get down to the hard business of promoting labor competition and protecting American workers. We choose to protect American workers by doing what Congress told us to do—patrolling our markets for specific anticompetitive conduct that hurts American consumers and workers, and taking bad actors to court.

Indeed, the Trump-Vance Commission has already moved aggressively against unlawful noncompete agreements. Just yesterday, the Commission blocked a large national business from entering into, maintaining, or enforcing noncompete agreements, with limited exceptions.[20] The complaint alleges that Gateway Pet Memorial Services "knowingly wielded noncompete agreements to erect barriers in circumstances where it faced what it perceived to be tougher competition" in an effort to "curtail worker mobility and workers' ability to negotiate better employment terms."[21] The FTC has invited the public to provide the Commission with information that helps us to better understand the scope, prevalence, and effects of noncompete agreements, and will help the Commission prioritize resources for investigations and enforcement actions.[22] And in the coming days, firms in industries plagued by thickets of noncompete agreements will receive warning letters from me, urging them to consider abandoning those agreements as the Commission prepares investigations and enforcement actions.

As the above indicates, we will continue to enforce the antitrust laws aggressively against noncompete agreements. But we will leave the legislating to the people's representatives in Congress and in the States.

[19] See Rohit Chopra & Lina M. Khan, The Case for "Unfair Methods of Competition" Rulemaking, 87 U. Chi. L. Rev. 357 (2020).
[20] Gateway Press Release, *supra* note 10.
[21] Ferguson Gateway Statement at 5.
[22] Noncompete RFI, *supra* note 15.