



From Regulation to Litigation

The FTC's Pivot to Targeted Non-Compete Enforcement

The Theodore Roosevelt American Inn of Court

Federal Trade Commission

- What is it?
 - The FTC is an independent federal agency that protects competition and consumers.
 - Bureau of Consumer Protection: telemarketing fraud, false advertisement, etc.
 - Bureau of Competition: Antitrust matters, and non-competes.
- Authority
 - Enforces Sec 5 of the FTC Act
 - Prohibits “*unfair methods of competition*”
- Connection to Employee Restrictions
 - FTC views non-compete clauses as restraints on labor market competition.
 - Limits worker mobility and suppresses wages

FTC & Non-Competes

- Non-compete clauses can:
 - Restrict worker mobility
 - Suppress wages
 - Limit labor market competition
- FTC frames non-competes as competition restraints, not just contract terms
- Marks a shift from traditional state-only regulation of employment contracts.

Brief History of the FTC and Non-Competes

- Founded in 1914 – mostly to regulate monopolies
- For most of its history:
 - FTC did not regulate non-compete agreements
 - Non-competes governed by state contract law



Biden Administration & the FTC

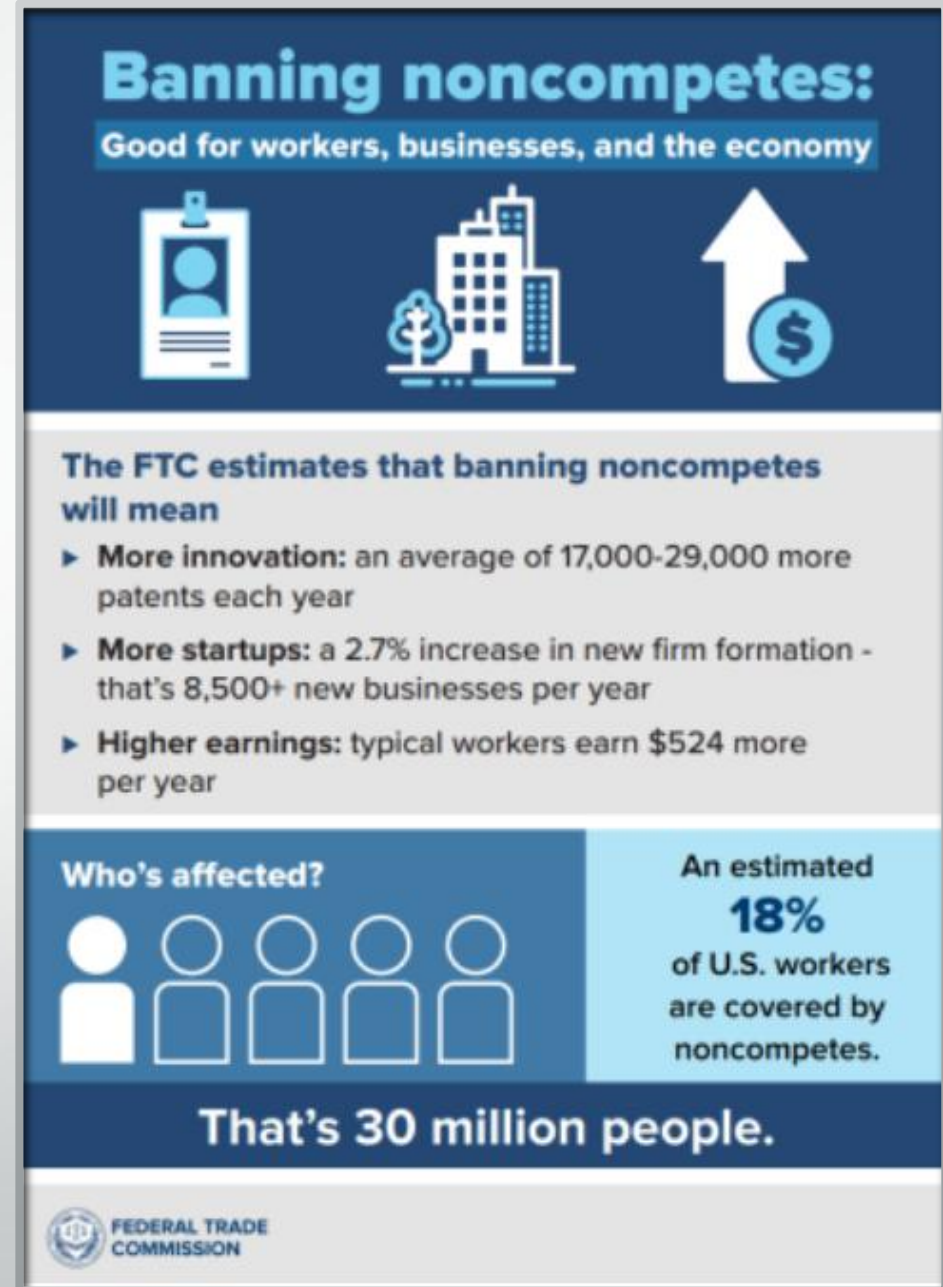
- Biden Administration catalyzed action after more than a century of inaction.
- During Biden's Administration, Executive Order 14036 was issued in 2021 and it:
 - Promoted competition across the U.S. economy,
 - Encouraged FTC to address non-compete agreements
 - Provided political and institutional backing for FTC action
 - Led to increased enforcement and rulemaking activity

FTC Enforcement Against Non-Competes

- FTC begins testing its authority through litigation.
- In 2023, enforcement actions were brought against:
 - Prudential Security, Inc.;
 - O-I Glass, Inc.;
 - Ardagh Group S.A.
- Passive oversight to active intervention.

Nationwide Ban

- April 23, 2024: FTC issued a final rule
- Banned most employer-employee non-compete agreements nationwide
- FTC's justification:
 - Non-competes are categorically an unfair method of competition
- Adopted a one-size-fits-all regulatory approach.



Ryan LLC v. FTC

- Plaintiff: Ryan LLC is a global tax service and consulting firm out of Texas.
- The company employs thousands of professionals and use non-compete agreements for certain employees.
- The final rule banning most non-competes triggered the lawsuit.
- The company argued that compliance with the ban would impose immediate and irreversible contractual and operational burdens.

The “Death” of the Nationwide Ban

- August 2024: *Ryan LLC v. Federal Trade Commission* in the Northern District of Texas struck down the ban.
- Issue:
 - (1) Whether the FTC Act granted the Commission the power to create substantive rules regarding unfair methods of competition or is its power limited to procedural rules.
 - (2) Whether the FTC could justify such a broad, sweeping, one-size-fits-all ban.
- Holding:
 - Court held that Section 6(g) of the FTC Act only allows the Commission to make rules about its own internal procedure but not authority to write substantive laws that invalidate millions of private contracts.
 - Courts found that the ban was unreasonably overbroad.

Trump FTC Abandons Non-Compete Clause

- The Trump administration appointed FTC Commissioner Andrew Ferguson as Chairman of the Commission.
- One of two commissioners that voted against the non-compete rule April of 2024.
- FTC voted 3-1 to dismiss its appeals in the *Ryan* case and acceded to the vacatur of the Non-Compete Clause Rule.

Shift From Regulation to Litigation

- FTC pivots to case-by-case enforcement under Section 5.
- In 2025, the FTC ordered Gateway Services Inc, the nation's largest pet cremation company, to cease non-competes.
- Gateway imposed non-competes on nearly 1,800 workers, from executives to hourly laborers.
- Non-compete prohibits employees from working in the pet cremation industry anywhere in the U.S. for a year after leaving the company.
- September 2025: settlement between the FTC and Gateway to stop its enforcement of non-compete agreements.



Best Practices & Key Takeaways

- Not the end of an era:
 - FTC is looking for unreasonable or exploitative agreements to use as examples in court.
- Low-wage Red Flag:
 - Non-competes applied to an hourly or low-wage worker is now a high-risk target for federal enforcement.
- Alternatives Firsts:
 - Move toward tailored Non-Disclosure Agreements (NDAs) and Non-Solicitation clauses – viewed as less restrictive ways to protect business interests.



Thank you!