UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, TEXAS ASSOCIATION OF BUSINESS, and LONGVIEW CHAMBER OF COMMERCE,

Plaintiffs,

v.

FEDERAL TRADE COMMISSION and LINA KHAN, in her official capacity,

Defendants.

CASE NO. 6:24-cv-00148

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs the Chamber of Commerce of the United States of America, Business Roundtable, Texas Association of Business, and Longview Chamber of Commerce, by and through undersigned counsel, bring this complaint for declaratory and injunctive relief against Defendants Federal Trade Commission and Chair Lina Khan, alleging as follows:

INTRODUCTION

1. The true strength of a company lies in its people. Recognizing this, many businesses invest considerable sums in training and developing their employees to maximize their potential and to hone their skills. And particularly for companies in highly competitive and innovative industries, those same employees serve as the guardians of businesses' second most valuable asset, which is the highly sensitive and proprietary information that allows them to succeed.

2. Having invested in their people and entrusted them with valuable company secrets, businesses have strong interests in preventing others from free-riding on those investments or gaining improper access to competitive, confidential information. For centuries, businesses throughout the United States have relied on reasonable noncompete agreements to protect those critical interests.

3. Many businesses continue to rely on targeted noncompete agreements for these same reasons today. Those agreements typically require that an employee agree, as a condition of employment or in exchange for compensation, that if he decides to leave the company, he will not work for the employer's competitors for a limited period of time thereafter. These agreements benefit employers and workers alike—the employer protects its workforce investments and sensitive information, and the worker benefits from

increased training, access to more information, and an opportunity to bargain for higher pay.

4. Policymakers and courts have long recognized the benefits of noncompete agreements. At the same time, they have also recognized that noncompetes may pose an unreasonable burden for some types of workers and may be inappropriately restrictive—for instance, by preventing a worker from accepting employment with a business hundreds of miles away or many years after leaving a job. To address those concerns, each State has developed its own body of law to determine when noncompete agreements are enforceable, and when they go too far. And States are also actively experimenting in this area. In recent years, a number of States have enacted laws that either restrict or expand the enforceability of noncompetes.

5. Noncompetes have never been regulated at the federal level. Although some Members of Congress have recently taken an interest in the issue and proposed legislation that would establish national rules for noncompete agreements, those proposals have never received a Committee vote, let alone a vote from either House of Congress. Without such authorizing legislation, federal agencies have not previously sought to play a role in regulating noncompete agreements on a nationwide basis.

6. That all changed in January 2023, when the Federal Trade Commission proposed a rule that would enact a total nationwide *ban* on worker noncompete agreements. *See* Fed. Trade Comm'n, *Non-Compete Clause Rule*, 88 Fed. Reg. 3482 (Jan. 19, 2023). As authority for that rule, the Commission relied on an obscure and rarely invoked provision of the Federal Trade Commission Act, claiming that it authorized the agency to issue rules

outlawing "unfair methods of competition." On April 23, 2024, the Commission voted to finalize that rule. *See* Fed. Trade Comm'n, *Non-Compete Clause Rule*, RIN2084-AB74 (Apr. 23, 2024) (Final Rule).

7. The Commission's Noncompete Rule is striking in its breadth: it prohibits any contractual provision that "penalizes a worker for, or functions to prevent a worker from," "seeking or accepting work" or "operating a business" in the United States, Final Rule, at 561-562, a definition that sweeps in many bargained-for contracts that pose no threat to competition—such as a senior executive's agreement to receive millions in compensation in exchange for not working for her former employer's competitors, *id*. at 73. The rule defines "worker" to include both employees and independent contractors, and, going forward, allows no distinction based on the seniority of the worker covered, the nature of the information protected, or the bargaining power of the parties involved. *Id*. at 563-564.

8. The rule goes even further than that. Beyond making virtually all noncompetes illegal going forward, the Noncompete Rule also purports to *retroactively invalidate* roughly tens of millions of existing agreements. *See* Final Rule, at 344-345. As a result, businesses that bargained for noncompetes will lose the protections of those agreements—even if they already held up their end of the bargain.

9. By invalidating existing noncompete agreements and prohibiting businesses and their workers from ever entering into such agreements going forward, the rule will force businesses all over the country—including in this District—to turn to inadequate and expensive alternatives to protect their confidential information, such as nondisclosure

agreements and trade-secret lawsuits. And many workers, including highly-skilled experts and executives, will be unable to bargain for increased compensation in return for a noncompete agreement.

10. The Commission's astounding assertion of power breaks with centuries of state and federal law and rests on novel claims of authority by the Commission. From the Founding forward, States have always regulated noncompete agreements. And prior to January 2023, the Commission had never taken the position that individual noncompete agreements were "unfair methods of competition" under the FTC Act, 15 U.S.C. § 45(a)(1). In 2021, however, President Biden issued an Executive Order calling on the Commission to "exercise the FTC's statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility." Exec. Order No. 14,036, 86 Fed. Reg. 36,987, 36,992 (July 9, 2021). Shortly after that Order, the Commission began soliciting comments and holding public workshops to carry out the President's political directive.

11. Then in November 2022, the Commission issued a radical new Policy Statement regarding its authority under Section 5 of the FTC Act—one that would ultimately clear the path for its nationwide regulation of noncompete agreements. *See* Fed. Trade Comm'n, *Policy Statement Regarding the Scope of Unfair Methods of Competition* 6, 8-9 (Nov. 10, 2022) (Section 5 Policy Statement). In Section 5, Congress "declared unlawful" "[u]nfair methods of competition." 15 U.S.C. § 45(a)(1). Decades of bipartisan enforcement policy had interpreted Section 5 to prohibit only practices that cause actual harm to competition and are not outweighed by procompetitive justifications. That

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