

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RYAN, LLC,

Plaintiff,

CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA, et al.,

Plaintiff-Intervenors,

v.

FEDERAL TRADE COMMISSION,

Defendant.

No. 3:24-cv-00986-E

**UNOPPOSED MOTION OF PUBLIC CITIZEN AND
NATIONAL EMPLOYMENT LAW PROJECT
FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF AND PLAINTIFF-INTERVENORS'
MOTIONS FOR SUMMARY JUDGMENT**

Public Citizen and National Employment Law Project (NELP) respectfully move for leave to file the accompanying brief as amici curiae in support of defendant Federal Trade Commission's (FTC) motion for summary judgment and in opposition to the motions for summary judgment filed by Plaintiff Ryan LLC and Plaintiff-Intervenors Chamber of Commerce of the United States of America, Business Roundtable, Texas Association of Business, and Longview Chamber of Commerce

(collectively, Plaintiffs). This Court earlier granted Movants leave to file an amicus brief in opposition to Plaintiffs' motion for a preliminary injunction. All parties have consented to the filing of the amicus brief.

1. The Non-Compete Clause Rule determines that noncompete clauses in employment contracts are unfair methods of competition and restricts most uses of noncompetes after the Rule's effective date, September 4, 2024. Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024). Challenging the Rule on several grounds, Plaintiffs have moved for summary judgment on all of their claims. *See* ECF Nos. 166, 168.

Movants Public Citizen and NELP have relevant expertise and a strong interest in the Rule. Public Citizen is a nonprofit consumer advocacy organization with members in all 50 states. Among other things, Public Citizen works for enactment and enforcement of laws to protect workers, consumers, and the public, including federal agency efforts to administer and enforce worker protections. Public Citizen frequently appears as amicus curiae to address issues of statutory interpretation and administrative law. In response to the FTC's notice of proposed rulemaking and request for comment, Public Citizen submitted a comment in support of the proposed rule.

NELP is a nonprofit organization with over 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. In

collaboration with community partners, including grassroots groups, national organizations, worker centers and unions, and local, state, and federal agencies, NELP seeks to ensure that all employees—especially the most vulnerable—can take advantage of the basic workplace protections guaranteed in our nation’s labor and employment laws. In response to the FTC’s notice of proposed rulemaking and request for comment, NELP submitted a comment in support of the proposed rule.

2. Granting leave to file an amicus brief “is solely within the broad discretion of the district court.” *Edwards v. Oliver*, 2021 WL 11717751, at *1 (N.D. Tex. Mar. 4, 2021); see *United States ex rel. Long v. GSD & M Idea City LLC*, 2014 WL 11321670, at *4 (N.D. Tex. Aug. 8, 2014) (“[T]he Court has discretion to consider ‘amicus’ briefing where ‘the proffered information is timely and useful or otherwise necessary to the administration of justice.’” (citation omitted)). Here, the proposed amicus brief is being timely filed, just several days after the filing of the FTC’s brief. And Movants respectfully submit that the proposed amicus brief will be useful to this Court in resolving the pending cross-motions for summary judgment.

The proposed brief addresses three issues. First, the brief explains that the Rule has a strong basis in the record. As the proposed brief explains, the Rule’s prohibition of noncompete provisions will significantly benefit workers, as numerous studies in the rulemaking record evidence that noncompete clauses lower wages and reduce job mobility. The proposed brief also explains that, as the record

shows, these provisions are often imposed by employers on workers without meaningful consent. For low-wage workers, who often lack bargaining power and access to legal resources, the consequences of a noncompete provision can impose particular hardship. Second, the proposed brief explains that the FTC had statutory authority to promulgate the Rule. Third, the proposed brief explains that Plaintiffs' contention that the Rule is impermissibly retroactive is incorrect.

The proposed amicus brief is attached to this motion. A proposed order is also attached.

CONCLUSION

The motion for leave to file an amicus curiae brief should be granted.

August 5, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that pursuant to the Court's Procedures and Standing Order, this Motion contains 672 words, excluding the case caption, signature block, and certificates, but including any footnotes, as calculated by my word processing software (Microsoft Word for Office 365).

/s/ Wendy Liu
Wendy Liu

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2024, I electronically filed this document using the ECF System, which will send notification to the ECF counsel of record.

/s/ Wendy Liu
Wendy Liu