UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RYAN, LLC, Plaintiff, v. FEDERAL TRADE COMMISSION, Defendant.	Civil Action No. 3:24-cv-0986-E

<u>Other Authorities</u>

SUMMARY OF ARGUMENT

Economic liberty is the foundation of a free society and the bedrock of American democracy. The promise that hard work, competitive vigor, and individual effort will be rewarded with prosperity is one that has flourished in America from the very beginning. This proposition has not been untested. In 1890, our forebearers in Congress adopted the Sherman Act in the face of widespread public recognition that uncontrolled economic individualism had led to private restraints that tolerated neither individualism nor freedom. And after the Supreme Court in 1911 watered down the Sherman prohibition against restraints of trade, Congress adopted the Federal Trade Commission Act in 1914 with the intent of limiting judicial activism and creating a more efficient system of enforcement to protect American consumers, workers, and entrepreneurs. The FTC Act created a commission composed of five members appointed by the President, subject to the advice and consent of the Senate, and unambiguously vested them with rulemaking authority.

The creation of the Federal Trade Commission was a lawful exercise of Congress’ Article I legislative power. For over a century, Congress’ express delegation of substantive rulemaking authority to the appointed members has enhanced the fairness of the American economy for workers, consumers, and small businesses. The Federal Trade Commission’s certain noncompete clauses has nevertheless revived a debate over the exercise of the Commission’s

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doing so, Congress expressly rejected a House version of the bill that would have FXUWDLOHG WKH)7&¶V DXWKRULW\ WR SURPXOJDWH UXOHV RQ XQIDLU PHWKRGV RI FRPSHWLWLRQ[15] ,QVWHDG LQ OLJKW RI WKH 'LVWULFW &RXUW¶V ILQGLQJ LQ National Petroleum, Congress expressly re-affirmed WKDW WKH 'LVWULFW &RXUW¶V QRW affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or DIIHFWLQJ FRPPHUFH[16] The United States Court of Appeals for the Seventh Circuit FRQFXUUHG [i]n enacting Section 202 [of the Magnuson-Moss Act], &RQJUHVV LQWHQGHG WR SUHVHUYH WKH &RPPLVVLRQ¶V H[LVWLQJ UXOHPDNLQJ authority while providing additional procedural safeguards for such rulemaking in the IXWXUH RQO\[17]

Five years after Magnuson-0RVV &RQJUHVV UHDIILUPHG WKH)7&¶V UXOHPDNLQJ XQUHDIILUPHG

LQFOXGH &RQJUHVV¶V legislative and appropriations authority, contempt proceedings, and its Article II authority to advise and consent regarding the nomination and appointment RIMXGJHV DQG ³SULQFLSDO RIILFHUV´ including members of the Federal Trade Commission. Each of these powers militate against potential abuses of the authority delegated to administrative agencies by Congress.[20]

&RQJUHVV¶V oversight powers ± including its regular oversight of administrative agencies ± provide other potent mechanisms for influencing administrative action. Derived from the legislative powers vested in Congress by Article I of the Constitution, ³the power of Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.´ Watkins v. United States, 354 U.S. 178, 187 (1957). &RQJUHVV¶V SRZHU WR RYHUVHH DGPLQLVWUDWLYH DJHQFLHV LV UHLQIRUFHG by statute, and Congress has, over time, strengthened its oversight of the administrative rulemaking process. The Congressional Review has, Q q 0 0 .4t 14 0 0 14 112.05 3734x14 p71 Tf 96

2017.[23] An additional joint resolution of disapproval has passed both chambers of Congress and is awaiting action by the President,[24] and an additional six joint resolutions of disapproval have passed on 4add695.47 Tm [(C)6 (ongr)-5-56es-39 3a7 (s)1e7 (ona)15 percent.[26]) D U U R D P Q D E G L F &D W L Q J R U H V R I ¶ V O D W L Y H G X W L H V L Q

oversight of administrative agency rulemaking reduces the recidivism of agencies

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check on presidential administration.

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7KH)HGHUDO 7UDGH &RPPLVVLRQ¶V ILQDO UXOH LV WKH SURGXFW RI and careful consideration of tens of thousands of public comments. While comprehensive in its approach to protecting most workers from the harms of noncompete agreements, it is also WDLORUHG WR WKH HYLGHQFH WKDW PRQVWUDWHV VFLRUQH¶V IXO consideration of the evidence. For instance, the final rule would not invalidate existing noncompete agreements for certain senior executives, which makes sense. These noncompete agreements are more likely the result of tailored negotiations and less likely to be exploitative or coercive.[30] The final rule also makes exception for noncompete agreements entered into in the context of a bona fide sale of a business, based on comments that noncompetes between the seller and the buyer of a business might be necessary violation of a noncompete clause after they were fired for declining the Covid vaccine.[32] Other commenters were prevented from seeking alternate employment after enduring sexual assault, harassment, and emotional abuse in the workplace.[33] Numerous workers report being forced to file for unemployment compensation after being terminated from employment because noncompete clauses remained enforceable—sometimes for years.[34] Dozens of workers report having filed for bankruptcy after being barred from alternate employment, or after facing prolonged litigation for unwitting violation of a noncompete clause.[35] Hundreds of comments were submitted anonymously, likely out of fear that their employers would retaliate against them if their names became public.

These stories speak to a broader problem. Just as our forebearers toward the end of the 19th Century began to recognize that uncontrolled economic individualism had led to private restraints that tolerated neither individualism nor freedom

IV. CONCLUSION

For the foregoing reasons, *Amicus* Member of Congress Representative Matt Gaetz respectfully requests WKDW WKH &RXUW JLYH FUHGHQFH WR &RQJUHVV'V repeated grant of rulemaking authority to the Federal Trade Commission and uphold the &RPP

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