

Biased Barker Must Recuse From Latest Judge-Shopped US Chamber Case Against Noncompetes After Investing In Tech Giants Notorious For Practice

Summary: On April 23, 2024, the U.S. Federal Trade Commission (FTC) [issued](#) final rulemaking banning companies from using "noncompete agreements" nationwide. The move is [estimated](#) to lead to the formation of over 8,500 new businesses a year, increase average worker wages by \$524 annually, and even lower healthcare costs by \$194 billion over the next decade. Noncompete agreements have been [increasingly](#) used by corporations to suppress wages, with nearly 30% of noncompetes covering employees making below \$13 per hour.

The first challenge against the rule came from tax services company Ryan, LLC which [contended](#) that the FTC lacked the authority to issue the rule and was itself "unconstitutionally structured." That same day, U.S. Chamber of Commerce President and CEO Suzanne P. Clark [slammed](#) the FTC, calling the rule "[unlawful](#)" and "[a blatant power grab](#)," vowing the Chamber would file a lawsuit to block the rule.

The very next day, the U.S. Chamber [filed](#) its suit in the Eastern District of Texas, which falls under the [jurisdiction](#) of the Fifth Circuit Court of Appeals. The case was ultimately assigned to [Trump-appointed](#) Judge J. Campbell Barker, who [recently sided](#) with the Chamber in another challenge against rulemaking from the National Labor Relations Board.

A review by Accountable.US shows that Judge Barker holds ample financial conflicts, most notably holding hundreds of thousands of dollars in stock in three of the biggest tech companies in the world: Amazon, Apple, and International Business Machines (IBM), all of which use noncompete agreements to coerce employees from leaving for competitors:

- Judge Barker [owns](#) up to **\$65,000 in Amazon stock across two brokerage accounts**. Amazon has been scrutinized for its use of noncompetes and other anti-competitive behavior, having [filed](#) a wrongful suit against a former employee in February 2021 and [lobbying](#) Washington state lawmakers to lower the cap under which noncompete agreements can be enforced. In September 2023, the FTC and 17 state attorneys general also [sued](#) the tech giant over its "[anticompetitive and unfair strategies to illegally maintain its monopoly power](#)" and blocking competitors from lowering prices for consumers. Amazon is also a member of the U.S. Chamber of Commerce having [spent](#) over \$10,000 in payments to the organization in 2023.
- Judge Barker [owns](#) a **staggering \$250,001 to \$500,000 in Apple stock**. Apple is another company that has wrongfully gone after former employees alleging breaking noncompetes, including going after chip-maker Rivos, alleging the company had "[poached](#)" engineers in an effort to steal trade secrets on chip designs. Apple even [pressured](#) comedian Jon Stewart against interviewing FTC chair Lina Khan while employed by the company from 2021 to 2023.
- Barker also [owns](#) **between \$50,001 and \$100,000 in International Business Machines (IBM) stock**. IBM—[a U.S. Chamber board member](#)—had a February 2011 lawsuit [thrown out](#) by a judge over its "'overbroad'" use of noncompetes seen as an effort to pressure employees from leaving the company. IBM also [sued](#) a former executive after she joined rival Accenture, claiming she had to return \$470,000 in equity compensation.

On April 23, 2024, The U.S. Federal Trade Commission (FTC) Announced Rulemaking That Bans Company "Noncompete Agreements" Nationwide, A Move Seen As A Win For Workers That Is Estimated To Lead To New Businesses Formation, Increase Workers' Wages By \$524 Per Year, And Lower Health Care Costs By \$194 Billion Over The Next Decade.

On April 23, 2024, The U.S. Federal Trade Commission (FTC) Announced It Would Ban "Noncompete Agreements" Nationwide, With FTC Chair Lina Khan Saying Noncompetes "Keep Wages Low" And "Suppress New Ideas," With The Agency Estimating The Rule Would Lead To Over 8,500 Additional Businesses Created Each Year And Increase Wages For The Average Worker By \$524 Per Year, Among Other Wins For Workers Rights.

April 23, 2024: The U.S. Federal Trade Commission (FTC) Issued Rulemaking Banning Noncompete Agreements Nationwide In A Move Protecting Workers' Rights To Change Jobs. "Today, the Federal Trade Commission issued a final rule to promote competition by banning noncompetes nationwide, protecting the fundamental freedom of workers to change jobs, increasing innovation, and fostering new business formation." [Federal Trade Commission, [04/23/24](#)]

- **According To FTC Chair Lina Khan, "Noncompete Clauses Keep Wages Low, Suppress New Ideas, And Rob The American Economy Of Dynamism," Adding "The FTC's Final Rule To Ban Noncompetes Will Ensure Americans Have The Freedom To Pursue A New Job, Start A New Business, Or Bring A New Idea To Market."** "Noncompete clauses keep wages low, suppress new ideas, and rob the American economy of dynamism, including from the more than 8,500 new startups that would be created a year once noncompetes are banned," said FTC Chair Lina M. Khan. "The FTC's final rule to ban noncompetes will ensure Americans have the freedom to pursue a new job, start a new business, or bring a new idea to market." [Federal Trade Commission, [04/23/24](#)]

The FTC Estimates Its Rule To Ban Noncompete Agreements "Will Lead To New Business Formation Growing By 2.7% Per Year, Resulting In More Than 8,500 Additional New Businesses Created Each Year," While Increasing Wages For The Average Worker By \$524 Per Year And Lowering Health Care Costs By Up To \$194 Billion Over The Next Decade. "The FTC estimates that the final rule banning noncompetes will lead to new business formation growing by 2.7% per year, resulting in more than 8,500 additional new businesses created each year. The final rule is expected to result in higher earnings for workers, with estimated earnings increasing for the average worker by an additional \$524 per year, and it is expected to lower health care costs by up to \$194 billion over the next decade. In addition, the final rule is expected to help drive innovation, leading to an estimated average increase of 17,000 to 29,000 more patents each year for the next 10 years under the final rule." [Federal Trade Commission, [04/23/24](#)]

Noncompete Agreements Have Become Increasingly Used To Suppress Wages Within Underpaid Industries While Disproportionally Harming Women And People Of Color, As Well As The Employers And The General Economy By "Reduc[ing] The Number Of Available Workers, Making It Harder For Businesses To Grow."

Noncompete Agreements Have Become Increasingly Used In Underpaid Industries Where Workers “Do Not Have The Time, Money, Or Access To Counsel To Challenge Them,” With Nearly 30% Of Noncompetes Covering Employees Making Below \$13 Per Hour.

Noncompete Agreements Have Become “Increasingly More Common In Underpaid Industries,” With Nearly 30% Of Noncompetes Covering Employees Making Below \$13 Per Hour. “While they remain prevalent for well-paid and highly educated workers, these agreements are increasingly more common in underpaid industries, irrespective of job duties or access to confidential information. Currently, almost 30 percent of non-competes cover workers who make below \$13 per hour.” [National Employment Law Project, [May 2022](#)]

Noncompete Agreements Are “Almost Impossible For Workers To Challenge Unless They Are Clearly Unconscionable” While “Many Underpaid Workers Do Not Have The Time, Money, Or Access To Counsel To Challenge Them.” “Legally, they are almost impossible for workers to challenge unless they are clearly unconscionable. Even where they are clearly unconscionable or inappropriate, however, many underpaid workers do not have the time, money, or access to counsel to challenge them.” [National Employment Law Project, [May 2022](#)]

Noncompetes Originated During The Reconstruction Era To “Maintain The Master-Slave Relationship” And Continue To Disproportionally Impact Women And People Of Color By “Decreas[ing] Entrepreneurship; Reduc[ing] Outside Work Due To Limited Ability And Willingness To Commute; Produc[ing] Fewer Wage Gains; And Provid[ing] Firms More Power To Discriminate.” Ultimately Leading To “Earnings Of Women And Workers Of Color [Being] Reduced By Twice As Much As White Male Workers When There Is Stricter Noncompete Enforcement.”

Noncompete Agreements—Which Were Originally Used By Former Slave Owners During The Reconstruction Era To “Keep Freed Black Workers Working For Them And Maintain The Master-Slave Relationship”—Disproportionally Impact Women And People Of Color, Contributing To The Racial And Gender Wage Gaps. “Banning non-competes would help alleviate racial and gender wage gaps because the underpaid workers who are most affected are disproportionality women and people of color. In fact, the use of non-competes can be traced back to the Reconstruction Era, when former owners of enslaved people used non-competes to keep freed Black workers working for them and maintain the master-slave relationship.” [National Employment Law Project, [May 2022](#)]

Noncompete Agreements Impact Women And People Of Color By “Decreas[ing] Entrepreneurship; Reduc[ing] Outside Work Due To Limited Ability And Willingness To Commute; Produc[ing] Fewer Wage Gains; And Provid[ing] Firms More Power To Discriminate.” “Some reasons why non-competes can have a stronger impact on women and people of color are because they decrease entrepreneurship; reduce outside work due to limited ability and willingness to commute; produce fewer wage gains; and provide firms more power to discriminate.” [National Employment Law Project, [May 2022](#)]

Women And People Of Color Are “Less Likely To Negotiate Than Their White Counterparts,” Potentially Resulting In “More Restrictive Agreements For Them,” With The “Earnings Of Women And Workers Of Color [...] Reduced By Twice As Much As White Male Workers When There Is Stricter Noncompete Enforcement.” “Women and workers of color also are less likely to negotiate than their white counterparts, which may result in more restrictive agreements for them. Further, the earnings of women and workers of color

are reduced by twice as much as white male workers when there is stricter non-compete enforcement.”
[National Employment Law Project, [May 2022](#)]

Noncompete Agreements Are Even Harmful To Employers And The Economy By “Reduc[ing] The Number Of Available Workers, Making It Harder For Businesses To Grow” While Also “Contribut[ing] To Negative Trends In The Economy By Reducing Economic Dynamism And Impeding Labor Market Competition, Thus Contributing To Wage Stagnation.”

Noncompete Agreements Harm Employers And The Economy By “Reduc[ing] The Number Of Available Workers, Making It Harder For Businesses To Grow” While Also “Contribut[ing] To Negative Trends In The Economy By Reducing Economic Dynamism And Impeding Labor Market Competition, Thus Contributing To Wage Stagnation.” “Non-competes also harm employers and the economy. These clauses reduce the number of available workers, making it harder for businesses to grow. Job mobility helps to stimulate the economy because it encourages innovation when information is shared; entrepreneurship when workers leave their job to start new businesses; and regional industry development because companies can share workers with experience in the field. Non-competes contribute to negative trends in the economy by reducing economic dynamism and impeding labor market competition, thus contributing to wage stagnation. Companies are raising prices while simultaneously lowering their wages with non-competes, costing the average U.S. household \$5,000 per year.” [National Employment Law Project, [May 2022](#)]

The Day After The FTC Was Sued By Tax Services Provider Ryan Over Its Noncompete Ban, The U.S. Chamber Filed Its Own Lawsuit Alongside Numerous Business Trade Groups In The Eastern District Court Of Texas, With Chamber President And CEO Suzanne P. Clark Calling The Rule "Unlawful" And "A Blatant Power Grab" By The Agency.

On The Same Day The FTC Announced Its Rule To Ban Noncompete Agreements, Dallas-Based Tax Services Provider, Ryan, Filed A Lawsuit In The U.S. District Court For The Northern District Of Texas Alleging The Rule "Would Upend IP Protections" And Talent Retention, Arguing The FTC Lacks The Authority To Prohibit Noncompetes And Was “Unconstitutionally Structured.”

On April 23, 2024, Dallas-Based Tax Services Provider Ryan Announced It Filed A Lawsuit In The U.S. District Court For The Northern District Of Texas Challenging The FTC's Rule To Ban Noncompete Agreements, Claiming The Rule "'Would Upend Companies' IP Protections And Talent Development And Retention By Invalidating Millions Of Employment Contracts And Nullifying The Laws Of Dozens Of States.'" "Dallas-based global tax services and software provider Ryan has filed a lawsuit in federal court challenging the Federal Trade Commission's new non-compete rule. It's the first challenge filed against the rule, which 'would upend companies' IP protections and talent development and retention by invalidating millions of employment contracts and nullifying the laws of dozens of states, according to the FTC's own public estimation,' Ryan said. Filed in the U.S. District Court for the Northern District of Texas, the lawsuit says the new rule 'imposes an extraordinary burden on businesses seeking to protect their intellectual property and retain top talent within the professional services industries.' Ryan is seeking to prevent 'the immense, undue burdens the FTC's rule would impose on service-driven companies of every size nationwide.'" [Dallas Innovates, [04/23/24](#)]

In Its Release, Ryan Argued The "FTC Lack[ed] Authority To Prohibit Noncompete Agreements" And Claim[ed] "The FTC Itself Is Unconstitutionally Structured." The FTC's rule would upend companies' IP protections and talent development and retention by invalidating millions of employment contracts and nullifying the laws of dozens of states, according to the FTC's own public estimation. [...] The Firm's complaint, filed in the United States District Court for the Northern District of Texas, contends that the FTC lacks the authority to prohibit non-compete agreements. It also argues that the FTC itself is unconstitutionally structured. [Ryan, [04/23/24](#)]

On April 23, 2024, U.S. Chamber President And CEO Suzanne P. Clark Denounced The FTC's Rule Banning Noncompete Agreements Claiming It Was "Unlawful" And "A Blatant Power Grab," Vowing The Chamber Would Sue To Block Its Implementation.

April 23, 2024: U.S. Chamber President And CEO Suzanne P. Clark Released A Statement Claiming The FTC's Noncompete Rule Was "Unlawful" And A "Blatant Power Grab." "U.S. Chamber of Commerce President and CEO Suzanne P. Clark issued the following statement today regarding the Federal Trade Commission's (FTC) final vote to ban employer noncompete agreements. 'The Federal Trade Commission's decision to ban employer noncompete agreements across the economy is not only unlawful but also a blatant power grab that will undermine American businesses' ability to remain competitive.'" [U.S. Chamber of Commerce, [04/23/24](#)]

Clark Added That "The FTC Has Never Been Granted The Constitutional And Statutory Authority To Write Its Own Competition Rules" And That Noncompetes Were Already Regulated By State Laws. "Since its inception over 100 years ago, the FTC has never been granted the constitutional and statutory authority to write its own competition rules. Noncompete agreements are either upheld or dismissed under well-established state laws governing their use. Yet, today, three unelected commissioners have unilaterally decided they have the authority to declare what's a legitimate business decision and what's not by moving to ban noncompete agreements in all sectors of the economy." [U.S. Chamber of Commerce, [04/23/24](#)]

Finally, Clark Said The Rule "Sets A Dangerous Precedent For Government Micromanagement" Vowing The Chamber Would Sue To Block The FTC's Rulemaking. "This decision sets a dangerous precedent for government micromanagement of business and can harm employers, workers, and our economy. 'The Chamber will sue the FTC to block this unnecessary and unlawful rule and put other agencies on notice that such overreach will not go unchecked.'" [U.S. Chamber of Commerce, [04/23/24](#)]

The Very Next Day, The U.S. Chamber, Business Roundtable, Texas Association Of Business, And Longview Chamber Of Commerce Filed A Lawsuit In The U.S. District Court Of Eastern Texas To Block The FTC's Ban On Employer Noncompete Agreements.

April 24, 2024: The U.S. Chamber And A Coalition Of Trade Groups Filed A Lawsuit In An Effort To Block The FTC's Ban Of Employer Noncompete Agreements:

U.S. Chamber files coalition lawsuit challenging the Federal Trade Commission's Noncompete Rule, which bans noncompete agreements nationwide

April 24, 2024

The Chamber filed a coalition [lawsuit](#) against the Federal Trade Commission (FTC) after the agency voted to ban employer noncompete agreements. The FTC's action sets a dangerous precedent for government micromanagement and will harm employees, employers, and the economy.

[U.S. Chamber Litigation Tracker, accessed [04/24/24](#)]

The Lawsuit Was Filed In The U.S. District Court Of Eastern Texas Tyler Division By The U.S. Chamber, Business Roundtable, Texas Association Of Business, And Longview Chamber Of Commerce:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Case No. 6:24-cv-00148

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 as Chair
of the Federal Trade Commission,

Defendants.

PLAINTIFFS' MOTION FOR STAY OF
EFFECTIVE DATE AND PRELIMINARY INJUNCTION

[U.S. Chamber of Commerce, [04/24/24](#)]

Ryan Founder, Chairman, And CEO G. Brint Ryan Served As The Chairman Of The Texas Association Of Business (TAB) When The Organization Partnered with The U.S. Chamber In September 2022 To Sue The CFPB Over Its Updated Examination Manual Enforcing Oversight Of Unfair, Deceptive, Or Abusive Acts Or Practices (UDAAP)—The Eastern District Of Texas Ultimately Sided With Industry, Ruling In September 2023 That The CFPB Overstepped Its Supervision Authority In Updating Its Examination Manual, Adding That The CFPB's Funding Structure Was Unconstitutional.

Ryan Founder, Chairman, And CEO G. Brint Ryan Served As The Chairman Of The Texas Association Of Business (TAB) From 2021 Until The End Of 2022, After Previously Serving As Treasurer From 2018 To 2020 And As An Executive Committee Member From 2007 To 2018.

Ryan Founder, Chairman, And CEO G. Brint Ryan Served As The Chairman Of The Texas Association Of Business From 2021 To 2023 After Previously Serving As Treasurer From 2018 To 2020 And As An Executive Committee Member From 2007 To 2018:

- Texas Association of Business
 - Chairman (2021-2023)
 - Treasurer (2018-2020)
 - Executive Committee (2007-2018)

[Ryan, accessed [04/24/24](#)]

- Per A December 8, 2022 LinkedIn Post From The Texas Association Of Business, It Appears Ryan Stepped Down As Chairman At The End Of 2022, With Current Chair Massey Villarreal Succeeding Him In January 2023. [LinkedIn, accessed [04/24/24](#)]

In September 2022, The U.S. Chamber, Alongside The Texas Association of Business And Other Trade Groups, Sued The CFPB Over Its Updated Examination Manual Enforcing Oversight Of Unfair, Deceptive, Or Abusive Acts Or Practices (UDAAP) Arguing Other Federal Regulators Are Granted These Powers By Congress And That The CFPB Had "Exceed[ed] Its Statutory Authority."

On September 28, 2022, The U.S. Chamber, Alongside The Texas Association of Business And Other Trade Groups, Filed A Lawsuit In The Eastern District Of Texas Challenging The CFPB's Changes To Its Examination Manual In A Move Industry Said "Exceed[ed] Its Statutory Authority." "The U.S. Chamber of Commerce today filed a lawsuit in the Eastern District of Texas with co-plaintiffs American Bankers Association, Consumer Bankers Association, Independent Bankers Association of Texas, Longview Chamber of Commerce, Texas Association of Business, and Texas Bankers Association against the Consumer Financial Protection Bureau (CFPB) for exceeding its statutory authority when amending its examination manual." [U.S. Chamber of Commerce, [09/28/22](#)]

- The Chamber And Accompanying Trade Groups Alleged The CFPB Exceeded Its Statutory Authority When It Updated Its Examination Manual Over Regulating "Unfair, Deceptive, Or Abusive Acts Or Practices (UDAAP)," Claiming Other Federal Regulators Are Instead Granted These Powers. "The U.S. Chamber and co-plaintiffs are challenging the CFPB's recent update to the Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) section of its examination manual to include discrimination and in particular disparate impact. Congress has not given the CFPB the power to do so,

as allegations of discrimination are handled by other agencies through statutes such as the Equal Credit Opportunity Act, the Fair Housing Act, and the Home Mortgage Disclosure Act. The failure by Congress to grant such authority raises a 'major questions' issue as recently decided by the Supreme Court." [U.S. Chamber of Commerce, [09/28/22](#)]

The Eastern District Of Texas Ultimately Sided With Industry, Ruling In September 2023 That The CFPB Overstepped Its Supervision Authority In Updating Its Examination Manual, Adding That The CFPB's Funding Structure Was Unconstitutional.

September 2023: The Eastern District Court Of Texas Ruled The CFPB "Acted Outside Its Authority Granted By Congress," Vacating The Manual Update On The Grounds That The CFPB's Funding Structure Was Unconstitutional. "The Eastern District of Texas ruled that the CFPB acted outside its authority granted by Congress when it updated its Supervision and Examination manual for financial institutions. The district court also ruled that the CFPB's funding mechanism was unconstitutional. The court vacated the manual update and prohibited the CFPB from pursuing any action against any Chamber members based on that update. Had it been allowed to stand, the CFPB's update would have created confusion in the banking sector, limiting its ability to provide needed services to businesses and consumers." [U.S. Chamber Litigation Tracker, accessed [04/08/24](#)]

The U.S. Chamber's Lawsuit Was Assigned To Federal Judge J. Campbell Barker, A Trump-Appointed Judge Who Recently Ruled In Favor Of The U.S. Chamber's Challenge Against Rulemaking Made By The National Labor Relations Board.

The Case Against The FTC's Noncompete Rule Was Assigned To Trump-Appointed Judge J. Campbell Barker Who Recently Struck Down A Rule Issued By The National Labor Relations Board (NLRB) In Another Challenge From The U.S. Chamber Against Federal Regulators.

The Suit Filed By The U.S. Chamber Challenging The FTC's Noncompete Ban Was Assigned To Federal Judge J. Campbell Barker, Who Recently Struck Down A Rule From The National Labor Relations Board In Another Case Brought By The Chamber. "As expected, on April 24, 2024, the US Chamber of Commerce and other business groups filed a lawsuit seeking to block the implementation of the rule. The case was filed against the FTC and FTC Chair Lina Khan in the United States District Court for the Eastern District of Texas, arguing that the rule is unlawful. The case has been assigned to Judge J. Campbell Barker, who recently struck down a rule promulgated by the National Labor Relations Board (see Chamber of Commerce v. NLRB, 2024 WL 1203056 (E.D. Tex. March 18, 2024))." [O'Melveny & Myers LLP, [04/25/24](#)]

Judge Barker Was Appointed To The U.S. District Court for the Eastern District of Texas By President Trump In 2019. [Federal Judicial Center, accessed [05/02/24](#)]

According To A 2022 Financial Disclosure, Judge Barker Owns Up To \$65,000 In Amazon Stock, A Company That Uses Noncompetes And Which Has Been Found To Have Wrongfully Sued Former Employees For Alleged Violations, With The Company Being Sued By The FTC And 17 State Attorneys General In September 2023 Over Anticompetitive Practices.

According To A 2022 Financial Disclosure, Judge Barker Owns As Much As \$65,000 In Amazon Stock Across Two Brokerage Accounts.

According To Judge Barker's 2022 Annual Financial Disclosure, He Held Amazon Stock Valued At \$15,000 Or Less And Stock Valued From \$15,001 To \$50,000 Across Two Brokerage Accounts:

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period	
	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)

[...]

35. - Amazon.com, Inc. stock

None

J

T

[...]

95. - Amazon.com Inc, AMZN (X)

A

Dividend

K

T

1 Income Gain Codes: (See Columns B1 and D4)	A =\$1,000 or less F =\$50,001 - \$100,000	B =\$1,001 - \$2,500 G =\$100,001 - \$1,000,000	C =\$2,501 - \$5,000 H1 =\$1,000,001 - \$5,000,000	D =\$5,001 - \$15,000 H2 =More than \$5,000,000	E =\$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	J =\$15,000 or less N =\$250,001 - \$500,000 P3 =\$25,000,001 - \$50,000,000	K =\$15,001 - \$50,000 O =\$500,001 - \$1,000,000	L =\$50,001 - \$100,000 P1 =\$1,000,001 - \$5,000,000 P4 =More than \$50,000,000	M =\$100,001 - \$250,000 P2 =\$5,000,001 - \$25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

[2022 Financial Disclosure Report, [09/20/23](#)]

After The FTC Released Its Rule Barring Noncompete Agreements, Amazon—Which Has A Long History Of Using Noncompetes And Going After Former Employees Who Violate Them—Failed To Comment Despite A History Of Lobbying Lawmakers To Lower The Enforcement Caps For Noncompetes In Washington State, Arguing They "Protect Its Trade Secrets."

April 2024: Amazon, Which Has "Filed Numerous Noncompete Lawsuits Against Departing Employees Over The Years," Declined To Comment After The Federal Trade Commission Issued Its Rule Banning Noncompetes. "Amazon has filed numerous non-compete lawsuits against departing employees over the years, although it appears to have become less litigious on this issue more recently. The company in 2015 removed non-compete clauses from warehouse worker employment contracts. Amazon declined to comment on the FTC's new rule." [GeekWire, [04/24/24](#)]

February 2021: A Court Found Amazon Had Wrongfully Sued Former Employee And Real Estate Manager Carl Nelson In Virginia Over Allegations He Violated His Noncompete Agreement. "A court ruling Friday adds yet another entry to the long-running legal battle over how Amazon enforces its noncompete agreements, a potent contractual cudgel that the Seattle-based technology giant has used to corral talent. Amazon erred when it sued Seattle-based former real estate manager Carl Nelson in Virginia last year for violating his noncompete agreement, King County Superior Court Judge Michael Scott ruled. The company should have tried its suit in King County, as mandated by Nelson's employment contract, Scott said." [The Seattle Times, [02/26/21](#)]

Nelson's Lawyer Had Argued "Amazon Had Violated A Year-Old Washington Law Requiring Employers To Enforce Noncompete Clauses For Washington Employees Within The State." "Nelson's attorney, Shawn Larsen-Bright, also argued that Amazon had violated a year-old Washington law requiring employers to enforce noncompete clauses for Washington employees within the state." [The Seattle Times, [02/26/21](#)]

In 2019, Amazon "Lobbied Washington Lawmakers To Lower The Salary Cap Under Which The State Ruled Noncompete Agreements Are Unenforceable From \$180,000 To \$100,000" Which "Allowed Amazon To Continue Enforcing Noncompete Agreements For Most Workers At Its Seattle-Area Offices, Who Typically Earn In Excess Of \$100,000." "Amazon also in 2019 lobbied Washington lawmakers to lower the salary cap under which the state ruled noncompete agreements are unenforceable from \$180,000 to \$100,000. The amendment allowed Amazon to continue enforcing noncompete agreements for most workers at its Seattle-area offices, who typically earn in excess of \$100,000." [The Seattle Times, [02/26/21](#)]

Amazon Has Maintained The Position That Noncompetes "Protect Its Trade Secrets," Including "Confidential Plans, Pricing, Developments, And Strategies." "In court filings, Amazon has said noncompete restrictions protect its trade secrets, including its customer and business relationships as well as its 'confidential plans, pricing, developments, and strategies.' Amazon's attorney did not respond to questions." [The Seattle Times, [02/26/21](#)]

The FTC And 17 State Attorneys General Also Sued Amazon In September 2023 Over Its Anticompetitive And Unfair Business Practices That Stifle Innovation And Stop Competitors From Being Able To Lower Prices For Consumers.

September 2023: The FTC And 17 State Attorneys General Filed An Antitrust Lawsuit Against Amazon Alleging The Tech Giant "Uses A Set Of Interlocking Anticompetitive And Unfair Strategies To Illegally Maintain Its Monopoly Power " Which Stops Rivals From Lowering Prices For Consumers And Stifles Innovation. "The Federal Trade Commission and 17 state attorneys general today sued Amazon.com, Inc. alleging that the online retail and technology company is a monopolist that uses a set of interlocking

anticompetitive and unfair strategies to illegally maintain its monopoly power. The FTC and its state partners say Amazon's actions allow it to stop rivals and sellers from lowering prices, degrade quality for shoppers, overcharge sellers, stifle innovation, and prevent rivals from fairly competing against Amazon." [Federal Trade Commission, [09/26/23](#)]

According To A 2022 Financial Disclosure, Judge Barker Owns A Staggering \$250,001 To \$500,000 In Apple Stock, A Company That Has Faced Suits For "Intimidat[ing]" Employees Into Signing Broad Noncompete Agreements And Went As Far As To "Discourag[e]" Comedian Jon Stewart From Speaking With FTC Chair Lina Khan While Employed By The Company.

According To A 2022 Financial Disclosure, Judge Barker Owns Up To \$500,000 In Apple Stock.

According To Judge Barker's 2022 Annual Financial Disclosure, He Held Apple Stock Valued Between \$250,001 And \$500,000:

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period	
	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)

[..]

97. - Apple Inc, AAPL (X)	B	Dividend	N	T
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1 Income Gain Codes: (See Columns B1 and D4)	A =\$1,000 or less F =\$50,001 - \$100,000	B =\$1,001 - \$2,500 G =\$100,001 - \$1,000,000	C =\$2,501 - \$5,000 H1 =\$1,000,001 - \$5,000,000	D =\$5,001 - \$15,000 H2 =More than \$5,000,000	E =\$15,001 - \$50,000
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[2022 Financial Disclosure Report, [09/20/23](#)]

In September 2023, Chipmaker Rivos Filed A Countersuit Alleging Apple Had Wrongfully Sued The Company Over Allegations It "Stole" Engineers To Gain Trade Secrets On Chip Designs, With Rivos Arguing That Apple "Intimidate[s]" Employees By Requiring Them To Sign Overly Broad Non-Compete Agreements That Cover Anything Regardless Of Whether Or Not It's Actually A Trade Secret.

September 2023: Chipmaker Rivos Filed A Countersuit Against Apple "Claiming That The Tech Giant Forces Employees Into Restrictive Contracts Designed To Prevent Them From Seeking Employment Elsewhere," After Apple Sued Rivos Claiming It Stole Engineers To Gain Trade Secrets On Chip Designs. "Chipmaking startup Rivos is now countersuing Apple, claiming that the tech giant forces employees into restrictive contracts designed to prevent them from seeking employment elsewhere. In May 2022, Apple launched a lawsuit against 'stealth' startup Rivos, claiming it poached engineers to try and steal confidential documents and trade secrets about its chip designs." [AppleInsider, [09/25/23](#)]

In Its Countersuit, Rivos Alleged Apple Forces Employees To Sign Overly Broad Noncompete Agreements That "Are Designed to Intimidate Employees Who Might Want To Leave Apple To Work Elsewhere." Now, Rivos is countersuing, alleging that Apple forces employees to sign "overbroad" non-compete agreements that would prevent them from working elsewhere. The countersuit, spotted by Bloomberg, says that Apple's restrictive agreements are designed to intimidate employees who might want to leave Apple to work elsewhere." [AppleInsider, [09/25/23](#)]

Rivos Also Contended "Apple's Non-Disclosure And Non-Solicit Agreements Are Far Too Broad And Cover "Anything 'Learned' During The Course Of Employment, Regardless Whether It Is A Trade Secret." "Rivos says that Apple's non-disclosure and non-solicit agreements are far too broad and cover 'anything 'learned' during the course of employment, regardless whether it is a trade secret.'" [AppleInsider, [09/25/23](#)]

In April 2024, Daily Show Host Jon Stewart Told FTC Chair Lina Khan That Apple "Discouraged Him" From Interviewing Her While He Was Employed By The Company, With Stewart Saying "I [Don't] Think They Cared For You."

April 2024: The Daily Show Host Jon Stewart Told FTC Chair Lina Khan During An Interview That Apple "Discouraged Him" From Hosting Her While Employed By The Company. "Daily Show" host Jon Stewart said Apple discouraged him from interviewing Federal Trade Commission Chair Lina Khan while he was employed by the tech giant. In a new interview with Khan that aired late Monday on Comedy Central, Stewart claimed Apple leaned on him to avoid talking to Khan, who took over as head of the FTC in 2021." [NBC News, [04/02/24](#)]

Stewart Added Apple Said, "Please Don't Talk To her," While Suggesting The Company Didn't "Car[e] For [Lina Khan]." "I wanted to have you on a podcast, and Apple asked us not to do it,' Stewart said. He continued: "They literally said, 'Please don't talk to her,' having nothing to do with what you do for a living. I think they just ... I didn't think they cared for you, is what happened.' Stewart had a brief stint on Apple TV from 2021 to 2023 with a show called 'The Problem With Jon Stewart,' which had an accompanying podcast. The partnership ended over creative differences last fall. Stewart returned to Comedy Central as a part-time 'Daily Show' host in February." [NBC News, [04/02/24](#)]

Judge Barker Also Disclosed Owning Between \$50,001 And \$100,000 In International Business Machines (IBM) Stock On His 2022 Financial Disclosure, A Company Represented On The U.S. Chamber Board Of Directors Which Has Also Abused Noncompete Agreements, Which A Federal Judge Found To Have Been "Overbroad" And A Way To Pressure Employees From Leaving For Competitors.

According To A 2022 Financial Disclosure, Judge Barker Owns Between \$50,001 And \$100,000 In International Business Machines (IBM) Stock.

According To Judge Barker's 2022 Financial Disclosure, He Owns Anywhere From \$50,001 To \$100,000 In International Business Machines (IBM) Stock:

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period	
	(1) Amount Code 1 (A-H)	(2) Type (e g , div , rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)

[...]

109. - International Business Machines Corp, IBM (X)	B	Dividend	L	T
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1 Income Gain Codes: (See Columns B1 and D4)	A =\$1,000 or less F =\$50,001 - \$100,000	B =\$1,001 - \$2,500 G =\$100,001 - \$1,000,000	C =\$2,501 - \$5,000 H1 =\$1,000,001 - \$5,000,000	D =\$5,001 - \$15,000 H2 =More than \$5,000,000	E =\$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	J =\$15,000 or less N =\$250,001 - \$500,000 P3 =\$25,000,001 - \$50,000,000	K =\$15,001 - \$50,000 O =\$500,001 - \$1,000,000	L =\$50,001 - \$100,000 P1 =\$1,000,001 - \$5,000,000 P4 =More than \$50,000,000	M =\$100,001 - \$250,000 P2 =\$5,000,001 - \$25,000,000	
3 Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

[2022 Financial Disclosure Report, [09/20/23](#)]

In February 2011, A Federal Judge Threw Out A Lawsuit Filed Against A Former IBM Employee Alleging He Broke A Noncompetition Agreement After Going To Hewlett Packard, With The Judge Ruling The Noncompete Was "'Overbroad,'" Viewing It As "'Retention Devices'" Used To Pressure Employees To Not Leave IBM.

February 2011: A Federal Judge Threw Out A Suit Filed By IBM To Prevent A Former Employee From Joining HP. "A federal judge rejected IBM's request for a restraining order to prevent a former employee from working for HP for a year. U.S. District Judge Loretta Preska found that IBM's non-competition agreements are

overbroad and designed as 'retention devices' to prevent workers from leaving, rather than protecting trade secrets." [Courthouse News Service, [02/23/11](#)]

A Former IBM Executive Notified IBM He Would Join Hewlett Packard On January 19, 2011, With IBM Suing Him The Following Day Claiming He Violated His Noncompete Agreement. "Former IBM executive Giovanni Visentin notified IBM on Jan. 19 that he was resigning to work for Hewlett Packard. IBM sued the next day, to enforce a non-competition agreement restraining Visentin for working for its competitor for one year." [Courthouse News Service, [02/23/11](#)]

The Judge Ruled IBM's Noncompete Was "Overbroad," As An IBM Employee Testified They Are "Retention Devices" Used To Pressure IBM Employees To Stay At The Company. "Calling the non-competition agreement 'overbroad,' Preska found that it prevents Visentin 'from working for a competitor in a business in which IBM does not even participate - for example, retail laptop and printer sales.' The judge noted that an IBM employee testified that the non-competition agreements are 'retention devices' designed to pressure IBM workers from leaving their jobs." [Courthouse News Service, [02/23/11](#)]

In February 2023, IBM Also Sued A Former Employee After She Joined Competitor Accenture, Alleging She Broke A Noncompete Agreement Stating She Was Supposed To "Safeguar[d]" Trade Secrets In Exchange For \$470,000 In Equity Compensation.

February 2023: IBM Filed A Lawsuit Against A Former Employee At Its Thailand Subsidiary After She Joined Rival Accenture. "Multinational IT company IBM filed a breach-of-contract lawsuit against Patama Chantaruck, a former employee of the company's Thailand subsidiary, in the New York Southern District Court after she joined the company's rival Accenture." [Business Today, [02/14/23](#)]

IBM Demanded The Former Employee Return \$470,000 In Equity Awards She Received. "As per the details of the suit, which was filed on Monday, IBM demands that Chantaruck return the company's equity rewards because she joined their competition Accenture. The amount is a little over \$470,000 as per the court documents." [Business Today, [02/14/23](#)]

IBM Alleged The Employee Was Obligated To "Safeguar[d] Confidential Company Information And Not Engag[e] In Competitive Conduct" In Exchange For Monetary Compensation. "The court filing says that Chantaruck worked at IBM from 2018 to 2022, and when she left the company, they awarded her monetary compensation in exchange of safeguarding confidential company information and not engaging in competitive conduct." [Business Today, [02/14/23](#)]

IBM Is Also A U.S. Chamber Board Member As Of May 2024.

As Of May 2024, IBM Is Also Represented On The U.S. Chamber Board By Legal And Regulatory Affairs And General Counsel Michelle H. Browdy:

Michelle H. Browdy

Senior Vice President,

Legal and Regulatory Affairs and General Counsel

International Business Machines

Armonk, NY

[U.S. Chamber of Commerce, accessed [05/02/24](#)]