

Non-Compete Lawsuits and BBQ: Better in Your Own Backyard?



What you get depends on who you're asking. Know that injunction you want against an ex-employee who's breaking his non-compete agreement? A judge makes the call. You guessed it—your result may depend on the judge you ask.

Think carefully about what your non-compete says on venue and choice of law. That's obviously important if you have employees spread across the USA. Even if you don't, an employee can leave you and go work for a direct competitor across state lines.

You've got a couple options. Let's say your company is headquartered in Texas. You might pick Texas law and a judge in your headquarters' backyard. If you can make Texas venue and law stick, you've got an edge. Your ex-employee and his new employer must travel to defend themselves. Shoot, you might even use that leverage to broker a settlement deal.

In *The Art of War*, Sun Tzu put it this way:

Those skilled in war bring the enemy to the field of battle and are not brought there by him....

He who occupies the field of battle first and awaits his enemy is at ease; he who comes later to the scene and rushes to the fight is weary.



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[Texas Non-Compete and Non-Solicit Agreements](#)

[Non-compete Agreement](#)

[Non-solicit Agreement](#)

Another option is to pick the courts and laws where your employees work. The judge doesn't have to think twice about law or venue, so your enforcement action may move faster.

Just don't pick a state that's not connected to the deal. A Dallas-based energy company picked New York law for its non-compete signed by a Houston VP. New York law made the non-compete enforceable; Texas law killed it. Nothing else connected New York to the VP's employment. No good, said the Houston appellate court and applied Texas law. On Valentine's day, the court [ruled against](#) the company. Talk about a shot through the heart...

