

Judiciary and Public Safety Committee
75 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The logo for the American Economic Liberties Project, featuring a dark blue square with the text "AMERICAN ECONOMIC LIBERTIES PROJECT" in white, all-caps font. The square is set against a background of light blue wavy lines.

AMERICAN
ECONOMIC
LIBERTIES
PROJECT

March 15, 2023

Dear Chair Latz, Vice Chair Oumou Verbeten, and Members of the Committee,

On behalf of the American Economic Liberties Project, I write in support of SF 405, a bill providing that covenants not to compete are void and unenforceable. The American Economic Liberties Project is a research and advocacy organization focused on reducing the power corporations have over the American economy and democracy. Eliminating noncompete agreements is a key step in ensuring that workers are able to access good, high-paying jobs, and that corporations are not able to use their power to unfairly lower wages or working conditions for Minnesota employees.

In Minnesota alone, estimates find that more than half a million workers are bound by noncompete agreements, which limit or eliminate their ability to accept a job within their chosen field, usually within some geographic distance or for a set period of time.¹ Across the U.S., the number of workers subject to these agreements is one in five.

While noncompete agreements used to be largely limited to highly-paid executives, they have expanded far beyond that, into industries such as fast-food, health care, and media, and are often imposed without workers realizing what they're signing. These contracts can make it very difficult, if not functionally impossible, for workers to find a new job or to leverage job offers they receive into better pay or working conditions at their current employer. There are many

¹ Stumo-Langer, Nick, "Non-compete agreements could prevent workers from finding new jobs during and after the pandemic," Minnesota Reformer, May 15, 2020 <https://www.minnpost.com/community-voices/2020/05/non-compete-agreements-could-prevent-workers-from-finding-new-jobs-during-and-after-the-pandemic/>

factors that can bind workers to a place, including family and child-care obligations, meaning they often can't get outside the range of a non-compete to take a new position.

Combined with increasing labor market concentration, this gives employers a powerful ability to restrict wage growth, degrade conditions, and prevent workers from starting their own, potentially competing firms, while workers have no recourse, other than completely uprooting their lives, changing fields, or going without work for an extended period of time. To that end, extensive research has shown that noncompete agreements stifle wage growth, innovation, and job creation, and raise prices for consumers.²

As one Minnesota employee who works at a printing company said of his noncompete, "As a printer I have never heard of such a thing. It was never explained to me and was part of a string of paper work. I foolishly signed it. ... I have been there 8 years now only amassing an extra 3 dollars per hour in pay since my hire. The non compete to me feels like I am trapped."³

The Federal Trade Commission, as part of the Biden Administration's focus on competition policy across the government, has proposed largely eliminating non-compete agreements. State governments have a key role in complementing the work the commission is doing to ensure that workers in all industries can fairly sell their labor and receive just compensation for their efforts. In fact, state policymakers need to act in order to cover areas over which the commission has no jurisdiction.

For example, even with FTC action, noncompete clauses will likely remain ubiquitous in the health care industry, since the FTC lacks jurisdiction over non-profit entities, including hospitals. In the health care field, noncompete agreements have had several deleterious effects, including raising prices for patients. As Dr. Brian Johns, a Minnesota physician, said in a comment

² "FACT SHEET: FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition," https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete_nprm_fact_sheet.pdf

³ Comment submitted by Stuart Raymond, posted by the Federal Trade Commission on Jan. 10, 2023: <https://www.regulations.gov/comment/FTC-2023-0007-0034>

submitted to the FTC, “In Minnesota, after one health care system incorporated a non-compete clause into their contract, they have all now incorporated them, making it nearly impossible for physicians and other health care professionals to change employers. ... when all of the contracts you sign contain a non-compete clause, this is by no means voluntary, but compulsory, which subsequently transforms any willful employment into indentured servitude.”⁴

Opponents have cited the need to protect trade secrets or other proprietary information as a reason to continue to allow the use of noncompete agreements. But this is a false choice. Other contracts, including nondisclosure agreements, can be used to protect that information without resorting to the blunt instrument of a noncompete. In fact, the FTC has said that it is “not aware of any evidence non-compete clauses reduce trade secret misappropriation or the loss of other types of confidential information.”⁵

Polling by our sister organization, Fight Corporate Monopolies, shows that Minnesota voters rightly believe that corporations have too much power and want policymakers to take steps to address it.⁶ Ensuring that workers have the freedom to seek out a better job is a crucial step toward that end.

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⁴ Comment from Johns, Brian, posted by the Federal Trade Commission on Jan. 13, 2023: <https://www.regulations.gov/comment/FTC-2023-0007-1000>

⁵ Federal Trade Commission, 16 CFR Part 910, RIN 3084-AB74, Non-Compete Clause Rule https://www.ftc.gov/system/files/ftc_gov/pdf/p201000noncompetenprm.pdf

⁶ Public Policy Polling, Feb. 9, 2023: <https://fightcorporatemonopolies.org/press/fight-corporate-monopolies-releases-new-polling-in-minnesota-showing-widespread-support-for-antitrust-legislation/>