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February 7, 2023

The Honorable Jen McEwen  
Chair, Senate Labor Committee  
Minnesota Senate Office Building  
St. Paul, MN 55155

**Re: Senate File 405**

Dear Madam Chair and Members:

I write in support of Senate File 405. Non-compete clauses in employment contracts suppress wages, limit freedom, and stifle innovation. My Office actively opposes the illegal use of non-compete agreements in Minnesota. I've led a group of states that urged the Federal Trade Commission to make rules outlawing non-compete clauses for low-wage workers. For all of these reasons, I support this bill. Stopping non-compete agreements from restricting lower-income Minnesotans' opportunities is a good first step toward eradicating their use entirely in Minnesota. Requiring companies that insist on using non-competes to subsidize affected worker's wages is another.

Non-compete clauses don't just hurt workers. They also hurt the businesses that would benefit from hiring away a talented worker whose current employer isn't able to promote them or isn't doing enough to retain them. A dominant firm can even use them to lock up the talent pool and starve its competitors of high-quality employees. It's clear from non-compete clauses' prevalence that employers aren't just using them to protect confidential information and their investments in workers. Employers require non-compete clauses to make it impossible for workers to leave, all so they don't have to compete to retain their workers. Noncompete clauses are anti-competitive, anti-innovation, anti-worker, and anti-free market.

Non-compete clauses do a lot of harm and very little good. They prevent employees from leaving one job for a better one, or from leaving a business to start their own. Using non-competes clause, employers have bound a wide range of workers—from baristas to journalists to auto mechanics to sandwich makers—and deprived them of the freedom to work where they choose. Research suggests that non-competes currently shackle as many as one in five American workers.

What's worse, non-compete agreements are almost entirely unnecessary. If employers want to protect their investment in workers, they should incentivize them to stay—not punish them if they

leave. Employers can offer term contracts with job security for their workers. They can offer raises, promotions, and better working conditions to retain staff. They can protect their interests using appropriately tailored non-disclosure agreements and other less-restrictive covenants, and by using trade secret laws that already exist.

This bill is good common sense. It protects workers who aren't high earners by freeing them from unduly restrictive non-competes. It also protects people who earn more than the median income for a family of four by requiring employers to pay "garden leave" for invoking a non-compete. In other words, an employer would have to compensate an employee who can't work because of a non-compete clause with at least 50% of her annual wages. It ensures that an employer doesn't use a non-compete to inappropriately stifle innovation and competition in the marketplace to the detriment of competitors and workers.

Thank you for allowing me to provide my recommendations with respect to this bill. If you have any questions or would like additional information, my team and I would be happy to help in any way that we can.

Sincerely,

A handwritten signature in blue ink that reads "Keith Ellison". The signature is written in a cursive style with a prominent "K" and "E".

KEITH ELLISON  
Attorney General