



**WRITTEN STATEMENT FOR THE RECORD BEFORE THE U.S. SENATE COMMITTEE
ON BANKING, HOUSING, AND URBAN AFFAIRS SUBCOMMITTEE ON ECONOMIC
POLICY**

**"BANNING NONCOMPETE AGREEMENTS: BENEFITS FOR WORKERS,
BUSINESSES, AND THE ECONOMY"**

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Dear Chair Warren, Ranking Member Kennedy and members of the Senate Subcommittee on Economic Policy:

As a leading representative of America's more than 33 million small businesses, Small Business Majority is pleased to provide written testimony to the Senate Subcommittee on Economic Policy in response to the recent hearing on the importance of banning non-compete agreements for workers, small businesses, and the economy.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. From our nine offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enables us to educate stakeholders about key issues impacting America's entrepreneurs, with a special focus on the smallest businesses and those facing systemic inequities.

Small Business Majority is proud to firmly stand in favor of the Federal Trade Commission's (FTC) move to ban non-compete agreements for millions of Americans. Our support is backed by the sentiments of small business owners across the nation who see non-compete agreements as an impediment to hiring talented workers and entrepreneurship rates overall. Over the last few years, we have remained actively engaged in building the business case for banning non-compete agreements. In our network alone, our research shows that 35% of small business owners were prevented from hiring an employee due to a non-compete agreement, and 46% said that they have been subject to a non-compete agreement that prevented them from starting or growing a business of their own.¹ These findings are backed by real stories and anecdotes from our membership which underscore the need for non-compete bans to empower entrepreneurs to start, grow, and expand their business, which we amplify throughout our written testimony.

Non-compete agreements create impediments to small business development and growth

A thriving and equitable economy relies on our ability to foster an economic environment which promotes continued innovation and growth among our nation's small business ecosystem. While small businesses and entrepreneurs are the driving force behind new ideas, products, and jobs, non-compete agreements have been proven to limit innovation through the restrictions they impose on small business development and growth.

Non-compete agreements impede the ability of employees to maximize their skills and technical expertise to either pursue new job opportunities or start their own businesses. The FTC estimates that more than 8,500

¹ "Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements", Small Business Majority, April 2023, <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

new businesses are prevented from forming annually due to non-competes.² In many cases, would-be entrepreneurs must wait months to years to be able to go out on their own. These anti-competitive agreements not only create barriers to entry for prospective entrepreneurs, but also prevent existing small businesses from hiring the most diverse, qualified talent. A Small Business Majority national poll found that nearly half of small businesses (46%) reported being subject to a non-compete agreement that prevented them from starting or expanding their business and more than 1 in 3 (35%) business owners have been prevented from hiring someone due to a non-compete agreement.³ When workers are held under non-compete agreements, they are forced to make decisions between leaving their chosen profession entirely or continuing to work for their same employer. Without access to a skilled workforce, small businesses oftentimes do not have the capacity to pursue new business opportunities and may be forced to spend more time and resources on workforce training which can have grave impacts on a business's productivity and bottom line.

Small business owners nationwide support efforts to ban non-compete agreements to promote competition and innovation in our economy

Small businesses support banning non-compete agreements because they are antithetical to the free, fair and open competition that is essential to a thriving and equitable economy. Our research shows that nearly 6 in 10 (59%) of small business owners supported the FTC's 2023 proposed rule to ban non-compete agreements. Notably, those who used non-competes in their business at the time of the survey were even more supportive of the ban (67%) compared to those who did not (51%). Furthermore, more than 400 small businesses and business organizations signed a 2023 letter urging the FTC to enact its proposed rule to ban non-compete agreements.⁴

While many argue that non-compete agreements are necessary for protecting a business's proprietary information, such as trade secrets or product designs, business owners have access to alternative, less restrictive methods for protecting their sensitive information. 42% of small business owners report using non-disclosure agreements to protect their confidential information or trade agreements and 69% believe that non-disclosure agreements can protect their confidential information or trade secrets as effectively as a non-compete agreement.⁵ It's also important to note that states like California, Oklahoma and North Dakota already prohibit the enforcement of non-compete agreements with no loss of business success and entrepreneurial spirit in any of these states.

The following quotes from small business owners in our network underscore the importance of banning non-compete agreements to foster a free, fair and competitive economy for small businesses and workers alike:

- **Leo Carr – Elite Group, Michigan** “Non-compete agreements tend to only benefit the previous employer. Employees working under the mandates of a non-compete agreement are restricted from seeking new employment, preventing them from opportunities to earn more in wages, upward mobility with another company, etc. It prevents the employee from capitalizing on their own skills and knowledge. This is particularly unfair to people who have worked diligently towards self-improvement and have acquired and developed new skills but are restricted to using them for one employer only. This causes undue stress and psychological burden on employees under the guise of non-compete agreements when they contemplate or actually try to move on from their employer or company. They might need to seek legal employment law assistance and thus incur some costs.”
- **Jacob Hanson – PR with Panache, Minnesota** “I see how companies use non-competes as a weapon and harass people. They inhibit their ability to provide for their families. I think that there needs to be more education for employees. From what I've witnessed, I think non-competes are used

² “FTC Announces Rule Banning Noncompetes,” Federal Trade Commission, April 2023, <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

^{3, 5} “Opinion Poll: Small Business Owners Support Banning Non-Compete Agreements”, Small Business Majority, April 2023, <https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements>

⁴ “Small Business Community Urges FTC to Ban Non-Compete Agreements”, Small Business Majority, April 2023, <https://smallbusinessmajority.org/policy/small-business-community-urges-ftc-ban-non-compete-agreements>

to penalize employees and people are manipulated. Companies are really smart about how they use them.”

- **Shirley Modlin – 3D Design and Manufacturing, LLC, Virginia** “I have never believed that any employer has the right to restrict opportunities of workers.... As workers gain skills and experience throughout their careers, they must be allowed to use that knowledge to further their livelihoods in ways that are in their best interest.”
- **Jean Underwood – Design Mavens Architecture, Illinois** “I think it’s (non-compete agreements) a hindrance to people that want to start a small business. I think it’s ridiculous. I didn’t have a choice but to sign it. I was looking at a promotion and was told, “What’s the big deal? You’re not going anywhere, just sign it.” I had to wait one year before being able to start the business with my partners.”
- **Clifton Broumand – Man & Machine, Maryland** “I stopped doing non-compete agreements 5-6 years ago with my salespeople because it cost too much money. If I really wanted to enforce a non-compete, I would have to hire and pay a lawyer.”

While the FTC’s recent ruling to ban non-compete agreements is a victory for small businesses and entrepreneurship, Congress and the courts must act to further codify the ban to support small businesses

The FTC’s decision to move forward with the implementation of its final rule to ban non-compete agreements is a win for entrepreneurs and small businesses nationwide.⁵ Small Business Majority is thrilled to see the FTC take action to put an end to one of the most directly anti-competitive practices used in today’s economy. The FTC estimates that the final rule will increase new business formation rates by 2.7% annually and lead to an increase in the number of patents filed each year, fueling new economic innovation.

While the FTC’s final rule is an important step in fostering a competitive and level playing field for the small business ecosystem, the ruling’s future is still in question as it faces numerous challenges in federal court. To ensure that the uncertainty of the FTC’s final rule does not impact an individual’s ability to pursue entrepreneurship or a small businesses ability to hire a qualified workforce, we encourage Congress to pass legislation to reinforce the FTC’s final rule by limiting the use of non-compete agreements and charging the FTC and Department of Labor with the enforcement of those limitations. In the courts, we continue to advocate that the FTC’s rulemaking is upheld. Small Business Majority has submitted various legal briefs, alongside allies in the small business ecosystem, to underscore our findings for the need to see this rulemaking through.⁶ Together, comprehensive regulation and legislation will provide a strong foundation for the successful implementation and enforcement of a nationwide ban on non-compete agreements.

We appreciate the subcommittee for holding this important hearing and shedding light on the negative impact non-compete agreements can impose on entrepreneurship, small businesses, and the economy. For any questions or additional information, please contact Government Affairs Director Alexis D’Amato at adamato@smallbusinessmajority.org.

Sincerely,



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⁵ “FTC Announces Rule Banning Noncompetes,” Federal Trade Commission, April 2023, <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

⁶ Small Business Majority Legal Briefs, <https://smallbusinessmajority.org/our-policy-statements?issue=98>