

# Congress of the United States

Washington, DC 20515

April 23, 2024

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C., 20580

Dear Chair Khan,

We write to urge you to finalize the FTC’s proposed Non-compete Clause Rule, which would ban non-compete agreements, as soon as possible so that workers bound by these harmful agreements can experience the economic liberty they deserve. As you know, non-compete agreements have long allowed corporations to suppress wages and prevent worker mobility. Finalizing the FTC’s proposed rule will be a huge win for workers, will inject much-needed competition into the labor market, and will let employees and employers follow the market for jobs.

The negative effects of non-compete agreements are widespread and pervasive across all sectors of the economy. While some special interests would have one believe non-compete agreements are essential tools for protecting sensitive business information and only affect a small handful of well-placed boardroom executives, the evidence paints a different picture. A staggering 30 million workers in the United States are bound by non-competes – a figure that represents roughly 20 percent of the American workforce. In many instances, non-competes are applied to low-wage workers even though, according to a GAO report, businesses admit these workers do not have access to confidential business information.<sup>1</sup> Studies have shown that among workplaces that pay their employees an average of \$13, nearly 30% of them apply non-compete agreements to their workers. For employers who are worried about their sensitive business information, other options exist. Non-disclosure agreements, for example, could be used to prevent employees from disclosing business information to their new employer.

To make matters worse, workers from historically marginalized communities are often the most impacted by non-compete agreements.<sup>2</sup> Research suggests that non-compete clauses lower earnings for female and nonwhite workers and that workers with less education experience greater wage loss from non-competes.

Non-compete agreements have also been shown to slow innovation and hamper economic dynamism. In the last 40 years, startup growth in the United States has slowed. Research has shown that non-compete agreements reduce firm entry and spinout rates, and that firms founded in states where these agreements are in effect, are more likely to fail than those in states where non-competes are banned.<sup>3</sup>

If the FTC does finalize this rule, certain stakeholders have already vowed to try and block the rule on day one – regardless of what the rule says. As members of Congress, we believe unequivocally that the FTC has the statutory authority to ban non-compete agreements under Section 5 of the Federal Trade Commission Act of 1914 (FTC Act), which states that “unfair methods of competition in or affecting commerce” are “hereby declared unlawful.”<sup>4</sup> The next clause of the FTC Act states that, “The Commission is hereby empowered and

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<sup>1</sup> U.S. Government Accountability Office, *Noncompete Agreements: Use is Widespread to Protect Business’ Stated Interests, Restricts Job Mobility, and May Affect Wages*, GAO-23-103785

<sup>2</sup> Starr, Evan, Consider This: Training, Wages, and the Enforceability of Covenants Not to Compete (May 24, 2018).

<sup>3</sup> <https://eig.org/non-compete-brief/>

<sup>4</sup> 15 U.S.C. §45(a)(1).

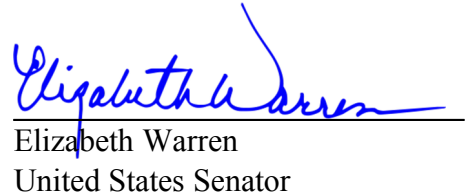
directed to prevent” businesses “from using unfair methods of competition.”<sup>5</sup> In proposing a rule to ban non-compete agreements, the FTC is acting within its statutory authority to ban practices where the evidence demonstrates clearly unfair methods of competition.

We are pleased that the FTC is taking this much-needed step to protect workers across the country. The proposed Non-competes Clause Rule will help ensure American workers enjoy the freedom to change jobs when they want and remain free from the interference and intimidation that often comes with a non-compete agreement. In addition, the proposed rule would give employers the freedom to compete for talent, which is an essential component of a vibrant and robust job marketplace. Our economy and our country do best when wages increase, and workers can compete for better jobs and better wages. The FTC’s rule on non-compete agreements will bring a welcome change for workers across the country, and we encourage you to finalize it as soon as possible.

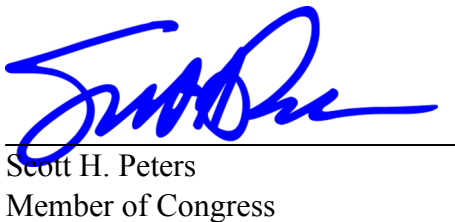
Sincerely,



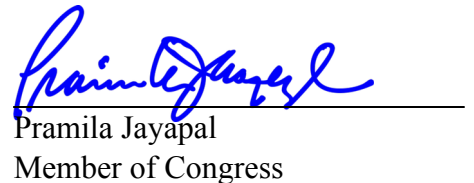
Christopher S. Murphy  
United States Senator



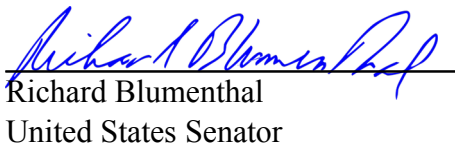
Elizabeth Warren  
United States Senator



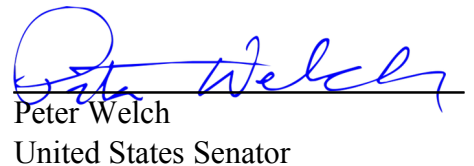
Scott H. Peters  
Member of Congress



Pramila Jayapal  
Member of Congress



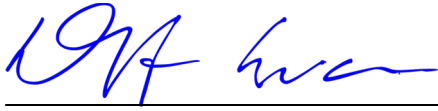
Richard Blumenthal  
United States Senator



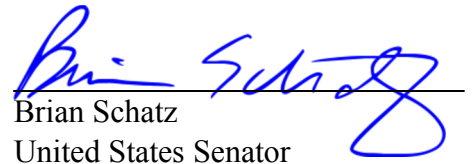
Peter Welch  
United States Senator

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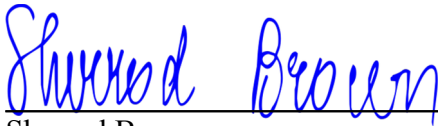
<sup>5</sup> 15 U.S.C. §45(a)(2).



Dwight Evans  
Member of Congress



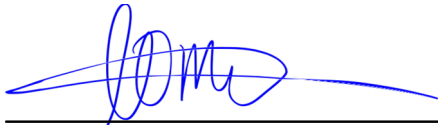
Brian Schatz  
United States Senator



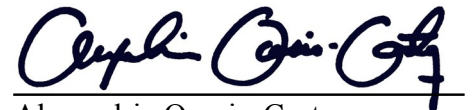
Sherrod Brown  
United States Senator



Bernard Sanders  
United States Senator



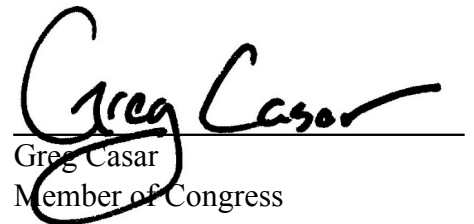
Ilhan Omar  
Member of Congress



Alexandria Ocasio-Cortez  
Member of Congress



Eleanor Holmes Norton  
Member of Congress



Greg Casar  
Member of Congress



Lizzie Fletcher  
Member of Congress



Bonnie Watson Coleman  
Member of Congress

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Jamaal Bowman, Ed.D.  
Member of Congress

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Jerrold Nadler  
Member of Congress