



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning

May 8, 2023

MEMORANDUM

FROM: Shannon Lane

TO: April Tabor

SUBJECT: Summary of Elizabeth Wilkins's Appearance at the Anti-Monopoly Summit

EXECUTIVE SUMMARY:

On May 4, 2023, Elizabeth Wilkins, Director of the Office of Policy Planning and Chief of Staff to the Chair, participated in a panel at the Anti-Monopoly Summit¹ hosted by the American Economic Liberties Project. Among other topics, the panel discussed the Federal Trade Commission's ("FTC") proposed Non-Complete Clause Rule, 88 Fed. Reg. 3482 (Jan. 19, 2023) ("Proposed Rule"). The panel, entitled Reviving America's Competitive Spirit, was introduced by John Arensmeyer, the founder and CEO of Small Business Majority. It was moderated by Victor Hwang, founder of Right to Start. The other panelists were Patrick Spence, CEO of Sonos, and Shirley Modlin, Owner of 3D Design and Manufacturing, LLC. This memorandum is to be placed on the public record pursuant to 16 C.F.R. § 1.26(b)(5) and the Notice of Proposed Rulemaking, under which summaries or transcripts of oral communications respecting the merits of the proposed rulemaking from any outside party to any Commissioner or Commissioner advisor are to be placed in the public record. This executive summary does not summarize the entire panel, but rather focuses on information concerning the Proposed Rule that is not already included in the rulemaking record.

In his introduction, Mr. Arensmeyer stated that non-compete clauses are antithetical to free and open competition that is essential to the economy. He said that according to recent survey data by Small Business Majority, almost half of small business have been subject to non-competes that prevented them from starting or expanding their businesses, and more than one third had been prevented from hiring an employee because of non-competes. He further stated that the data showed the majority of small businesses supported the Proposed Rule. He personally ran his small business in California, which bans non-competes, and had never noticed any problems in CA entrepreneurship because of the lack of non-competes.

During the panel, Mr. Hwang noted that the FTC found that one in five American workers has been subject to a non-compete at some point in their lives. He stated that a Right to Start poll found that 80% of voters supported policies to reduce restrictions on competing with an old employer, and said that the public was interested in this subject. He asked Ms. Wilkins to talk about non-competes and how ending them could be important for unleashing the entrepreneurial spirit in this country.

Ms. Wilkins responded that non-competes have the restriction the FTC is worried about right in the name. She started that workers are losing \$250-300 billion in wages due to lack of competition on the merits for workers. Non-competes also affect workers who are not bound but who cannot participate in a dynamic labor market, as well as workers in states where non-competes are unenforceable but workers still feel bound by unenforceable

¹ While a recording or transcript solely of this panel is not available, the full summit with closed captions can be viewed at https://www.youtube.com/watch?v=_MUdBWApI9k. This panel starts at approximately 2 hours and 38 minutes.

clauses. The Proposed Rule also found significant effects on product and service markets, such as with business formation, innovation, and business dynamism. One way innovation happens is that people with knowledge talk to each other, but non-competes prevent ideas from being transferred and generated. Workers are also prevented from starting competing businesses. She noted that some of the most successful entrepreneurs are those from that industry who understand the business, and there is research on the children and grandchildren of original firms where workers in that industry spawned new firms, such as Intel. Innovation also comes from workers striking out on their own and saying they can do things better or differently, and non-competes lock up that potential in a way that is detrimental across the economy.

Mr. Hwang discussed the history of Silicon Valley and noted that at the beginning of HP's history, it was fine with letting workers leave and appreciated the ecosystem, and were a good corporate citizen in that sense. He asked Mr. Spence how we could get companies to do that again. Mr. Spence argued that non-competes were a crutch for bad leaders and bad cultures. He said he had to earn the trust and employment of his employees, and that's what businesses should compete on. Over the last 25 years of his career, he had seen companies go from being more idealistic and recognizing that as a form of competition, to using the same tactics that monopolists use. Non-competes, he said, are part of the system where power is concentrated in a way we've seen before, and that is why rules need to be put in place and enforcers need to be properly funded to get to a level playing field.