

NON-COMPETE CLAUSES IN THE WORKPLACE

Examining Antitrust and Consumer Protection Issues



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Jane Flanagan is a Visiting Scholar at the Illinois Institute of Technology Chicago-Kent College of Law and a Leadership in Government Fellow with the Open Society Foundations. Her fellowship project is focused on employers' use of employment contracts to modify or limit the rights of low-wage workers. Flanagan is the former chief of the Workplace Rights Bureau within the Office of the Illinois Attorney General. Under her leadership, the Bureau brought national attention to the use of noncompete agreements for low-wage workers and negotiated settlements to release thousands of such workers nationwide from those agreements. Previously, Flanagan was an assistant attorney general and counsel to Maryland's Commissioner of Labor and Industry.

Jacob Hamburger is a Research Attorney in the FTC's Office of Policy Planning, currently on detail to the Mergers IV Division, Bureau of Competition. Previously, he completed a one-year fellowship at the Global Antitrust Institute and worked in the competition practice group of a large law firm in Brussels.

Sally Katzen is a Professor of Practice and Distinguished Scholar in Residence at New York University School of Law. During the Clinton administration, she served as Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), then as Deputy Assistant to the President for Economic Policy and Deputy Director of the National Economic Council in the White House, and then as the Deputy Director for Management at OMB. She is a Fellow in the National Academy of Public Administration, a Senior Fellow on the Administrative Conference of the United States, and is on the board of several non-profit organizations.

William E. Kovacic is a Professor at George Washington University Law School, where he is also Director of the Competition Law Center. He is a Non-executive Director of the UK's Competition and Markets Authority. He was an FTC Commissioner from 2006 to 2011 and served as Chairman from 2008 until 2009. Previously, Kovacic was the FTC's General Counsel from 2001 through 2004.

Kurt J. Lavetti is an Associate Professor in the Department of Economics at Ohio State University and Research Fellow at the IZA Institute of Labor Economics. His recent work in health and labor economics studies the design and value of health insurance plans, the estimation of compensating wage differentials, the determinants of job mobility, impacts of non-competition contracts, and physician labor markets and organizations. Prior to joining Ohio State in 2013, he was a Robert Wood Johnson Foundation Scholar in Health Policy at UC Berkeley. Lavetti received funding for his work relating to non-compete agreements from the Robert Wood Johnson Foundation, Agency for Healthcare Research and Quality, the California Endowment, Russell Sage Foundation, and the W.K. Kellogg Foundation.

Kristen C. Limarzi is a Partner at Gibson, Dunn & Crutcher, where she is a member of the Antitrust and Competition Practice Group and the Appellate Practice Group. Limarzi previously served as Chief of the Appellate Section of the U.S. Department of Justice Antitrust Division, where she led a team of more than a dozen professionals litigating appeals in the Division's civil and criminal enforcement actions and participating as amicus curiae in private antitrust actions. She also oversaw the representation of the United States' interests in regulatory appeals from the Federal Communications Commission, the Federal Energy Regulatory Commission, and the Surface Transportation Board.

Orly Lobel is the Warren Distinguished Professor of Law and Director of the Program on Employment and Labor Law at the University of San Diego School of Law. A graduate of Harvard Law School and Tel-Aviv University, Lobel's interdisciplinary research is published widely in top journals in law, economics, and psychology and she was recently named among the most cited public law scholars in the nation. She has received numerous fellowships, grants and awards for her research and books, including *You Don't Own Me: How Mattel v. MGA Entertainment Exposed Barbie's Dark Side* (Norton 2018) and *Talent Wants to Be Free: Why We Should Learn to Love Leaks, Raids and Free Riding* (Yale University Press 2013).

Sarah Mackey is the Acting Deputy Director of the FTC's Office of Policy Planning. Since joining the FTC in 2002, she has worked in numerous positions including Chief of Staff under Chairman William E. Kovacic, Attorney Advisor, and within the Office of General Counsel. Before joining the FTC she was an associate at Jones Day and worked as a judicial law clerk for the Honorable Richard S. Arnold.

John McAdams is a Staff Economist in the FTC's Bureau of Economics, where he has investigated mergers in a number of industries including hospitals, consumer products, grocery retailing, pharmaceuticals, and daily fantasy sports.

Derek W. Moore is an Attorney Advisor in the FTC's Office of Policy Planning. He has served as an attorney advisor to FTC Commissioner Joshua D. Wright and as a law clerk to Judge Douglas H. Ginsburg of the U.S. Court of Appeals for the D.C. Circuit and Judge Claude M. Hilton of the U.S. District Court for the Eastern District of Virginia. Prior to joining the FTC, he practiced antitrust law in Washington, DC.

Aaron L. Nielson is a Professor at Brigham Young University Law School where he focuses on administrative law, civil procedure, federal courts, and antitrust. He is a public member of the Administrative Conference of the United States and co-chairs the Rulemaking Committee of the American Bar Association's Section of Administrative Law & Regulatory Practice. Previously he chaired the Section's Antitrust & Trade Regulation Committee. Before joining Brigham Young, Nielson was a law partner at Kirkland & Ellis LLP, where he remains of counsel.

Ryan Nunn is a Fellow in Economics Studies at the Brookings Institution and Policy Director for the Hamilton Project. He was previously an economist in the Office of Economic Policy at the U.S. Department of the Treasury. At the Hamilton Project, he has conducted work on a variety of topics ranging from occupational licensing and non-compete contracts to labor market trends and geographic disparities. Nunn's research interests include labor economics and public finance, with a particular focus on labor market institutions. Nunn is a member of the panel of experts for an occupational licensing initiative of the National Conference of State Legislatures, National Governor's Association, and Council of State Governments.

Noah Joshua Phillips was sworn in as a Commissioner on the Federal Trade Commission on May 2, 2018, following his nomination by President Donald J. Trump and unanimous confirmation by the United States Senate. Before coming to the FTC, Phillips served as Chief Counsel to U.S. Sen. John Cornyn, of Texas, on the Senate Judiciary Committee. From 2011 to 2018, he advised Senator Cornyn on legal and policy matters including antitrust, constitutional law, consumer privacy, fraud, and intellectual property. Prior to his Senate service, Phillips worked as a litigator at Cravath, Swaine & Moore LLP, in New York City, and Steptoe & Johnson LLP, in Washington, D.C. Phillips began his career at Wasserstein Perella & Co., an investment bank in New York City.

Richard J. Pierce, Jr. is the Lyle T. Alverson Professor of Law at George Washington University Law School. He has written over 20 books and 130 articles on administrative law, government regulation and the effects of various forms of government intervention on the performance of markets. His books and articles have been cited in many court opinions, including over a dozen opinions of the U.S. Supreme Court.

Eric A. Posner is the Kirkland & Ellis Distinguished Service Professor of Law at the University of Chicago Law School. His recent work has focused on the role of antitrust law in labor markets. He has written a dozen books and more than one hundred academic articles on law and legal theory. His most recent books are *How Antitrust Failed Workers* (Oxford, under contract, expected 2021), *Radical Markets* (Princeton) (with Glen Weyl), and *Last Resort: The Financial Crisis and the Future of Bailouts* (Chicago). He is of counsel at MoloLamken LLP, a fellow of the American Academy of Arts and Sciences, and a member of the American Law Institute.

Bilal Sayyed is the Director of the FTC's Office of Policy Planning.

Howard Shelanski is a Professor at the Georgetown University Law Center and a Partner at Davis Polk & Wardwell LLP. Previously, Shelanski served as Administrator of the Office of Information and Regulatory Affairs (2013-2017), Director (2012-2013) and Deputy Director (2009-2011) of the Bureau of Economics at the FTC, Chief Economist of the Federal Communications Commission (1999-2000) and a Senior Economist for the President's Council of Economic Advisers (1998-1999).

Damon A. Silvers is the Director of Policy and Special Counsel for the AFL-CIO. He is a member of the U.S. Securities and Exchange Commission's Investor Advisory Committee, and a former member of the Treasury Department's Financial Research Advisory Committee and the Public Company Accounting Oversight Board's Standing Advisory Group and Investor Advisory Group. Previously, he served as the deputy chair of the Congressional Oversight Panel for the Troubled Asset Relief Program (2008-2011), as well as the chair of the Competition Subcommittee of the U.S. Treasury Department Advisory Committee on the Auditing Profession and member of the Treasury Department Investor's Practice Committee of the President's Working Group on Financial Markets (2006-2008).

Rebecca Kelly Slaughter was sworn in as a Federal Trade Commissioner on May 2, 2018. Prior to joining the Commission, she served as Chief Counsel to Senator Charles Schumer of New York, the Democratic Leader. A native New Yorker, she advised Leader Schumer on legal, competition, telecom, privacy, consumer protection, and intellectual property matters, among other issues. Prior to joining Senator Schumer's office, Ms. Slaughter was an associate in the D.C. office of Sidley Austin LLP.

Evan Starr is an Assistant Professor of Management & Organization at the Robert H. Smith School of Business, University of Maryland. His research examines issues at the intersection of human capital, entrepreneurship, and technology, with a focus on employer-employee contracting practices. He is particularly interested in the impacts of postemployment restrictive covenants on workers and firms. His research has been covered in major news outlets including *The New York Times*, *The Wall Street Journal*, *The Economist*, *NPR*, *Financial Times*, and *The Washington Post*, in addition to appearing in leading journals in management and economics. Starr received funding for the research he is presenting today from the University of Michigan and from the Ewing Marion Kauffman Foundation.

Randy M. Stutz is Vice President of Legal Advocacy at the American Antitrust Institute. Stutz joined AAI in 2009 after practicing antitrust law at Skadden Arps, where he consulted on merger and cartel investigations and multidistrict class actions. Stutz oversees AAI's judicial education and amicus programs and has authored or consulted on numerous briefs filed in the U.S. Supreme Court and the federal circuit courts. He has published an array of journal articles and commentaries and is associate editor of the *International Handbook on Private Enforcement of Competition Law* (Edward Elgar, 2010) and co-editor of *Private Enforcement of Antitrust Law in the United States* (Edward Elgar, 2012).

Ryan Williams is a Finance Professor at the University of Arizona, as well as the Editor of the *InfraGard Journal* and a member of the FBI's Cyber Finance working group. He also serves as a Director for OneAZ Credit Union, and is a visiting professor at Université Lille and Université Paris-Dauphine in France. Williams is an expert in corporate finance, with a particular emphasis in executive compensation, risk management, and banking/financial institutions. His research has won multiple awards from both industry and academic organizations. Previously, he was an auditor at PricewaterhouseCoopers and the Reznick Group, as well as a computer programmer at Khafra Engineering.

Kenny Wright is Legal Counsel in the FTC's Office of the General Counsel. Since joining the FTC in 2010, he has advised the Commission and its staff on a range of issues including administrative law and rulemaking. Prior to joining the FTC, he was an associate at the law firm of WilmerHale in Washington, DC.