



FTC Forum Examining Proposed Rule to Ban Noncompete Clauses – February 16, 2023

Lina Khan:

Hello everybody. Welcome. My name is Lina Khan and I'm chair of the Federal Trade Commission. Thank you so much for joining today's public forum. As you all know, last month, the Federal Trade Commission proposed a new rule that would ban employers from imposing non-compete clauses on their workers. Today, we'll be holding a public forum to hear directly from workers, business owners, investors, and others to learn more about their experiences with these contractual terms. Non-competes were long assumed to apply mainly to high level executives with access to sensitive corporate information, but their use has significantly expanded in the past few decades, now binding about one in five American workers across income and job levels. By design, non-competes close off a worker's most natural alternative employment options, which are jobs in the same professional field or geographic area. Non-competes can hinder worker's ability to pursue better opportunities, even harming those who are not personally bound by one.

Notably, the FTC has estimated that the proposed rule could increase workers' earnings by \$250 billion to \$296 billion per year. Non-competes also keep people locked into jobs that might not be the best job for them. Research shows that our whole economy is more productive when workers can match better with jobs and companies that can match better with workers in turn. A recent poll suggests that non-competes can prevent this from happening. According to the poll, two in five Americans would be more likely to search for a new job if employers were prohibited from using non-competes. In the aggregate, we see evidence that non-competes are stifling innovation, entrepreneurship and new business formation. Locking workers into jobs can prevent employers from hiring qualified workers, enabling dominant firms to close off the market to new rivals and undermining healthy competition. The commission's proposal preliminarily finds that non-competes are an unfair method of competition and violates section five of the FTC Act.

Because employers often try to use non-competes even when they're unenforceable, the rule would require companies to proactively notify workers that are currently subject to non-competes and let them know that those restrictions are now void. This proposal draws on deep expertise that the FTC has been building through pursuing enforcement actions, studying empirical evidence and reviewing comments from the public. Today's forum and the public comment period are critical to our efforts. The proposed rule that we've put out is just a proposal and before we can finalize the rule, we need to closely review the public input and comments that we received to make sure any final proposal reflects what we've received in the record. What we hear from you all, both today as well as through any written comments in the public docket, really matters. Our proposal lays out some specific questions that we're especially eager to receive feedback on as well as some alternative proposals that we're considering.

I'm thrilled that we've already received an outpouring of public comments and encourage those who haven't yet submitted one to consider doing so. Today, we're going to continue building on this public record by convening a panel of market participants. We will also hear from my colleagues, Commissioner Slaughter and Commissioner Bedoya, whose expertise and leadership on this issue have been instrumental in developing this proposal. The forum will also include remarks from members of the public who have signed up to provide comments. I understand we really received a lot of interest for people to come speak and we couldn't accommodate everybody, but as I mentioned, our public docket remains open, so anybody who couldn't join us virtually, please do consider submitting a written comment.

I'm so grateful to the FTC staff for their thorough work on this, and I'm also appreciative of the scholars, advocates and journalists whose work really shed light on the prevalence in use of non-competes across the economy and really helped drive forward this proposal. I'll now turn it over to Marie Choy from the FTC's Office of General Counsel to provide a brief overview of the rulemaking process before we start with today's panel. Marie, over to you.

Marie Choy:

Thank you, Chair Khan. Good afternoon, everyone. I'll be speaking briefly about public comments. I'll first explain how the public comment process works by giving you some context about how it fits into the greater rulemaking process. Then I'll explain how public comments inform the agency's deliberations. First, let's talk about the rulemaking process. For the potential rule to ban non-compete clauses, there are three main steps. The first step is to issue a notice of proposed rulemaking or NPRM. That has already been done. The NPRM was first published in the Federal Register on January 19th, 2023. The second step is the public comment, which is where we are now. The easiest way to file comments is online at [regulations.gov](https://www.regulations.gov), and you can also read comments submitted by other people there.

The comment period will close on March 20th and all comments must be received on or before that date. The FTC will read and consider all comments submitted during the comment period before deciding what to do next. If the FTC decides to move forward with the rule, the third and last step will be to publish a final rule notice in the Federal Register. The FTC's decision will be based on the rulemaking record, which consists not only of comments, but also studies and other information collected by the agency as it developed the rule. Now I'm going to explain how comments inform the agency's deliberations. Public comments are an important part of the rulemaking process. They give all people an opportunity to have a say in the FTC's proposed rule. This is a great way for the FTC to hear directly from you and anyone else who would be affected by the proposed rule.

Everyone is welcome to comment. Individuals, workers, employers, small businesses, large businesses, trade associations, researchers, academics and so on. Having many comments from a diverse group of people and businesses will help the agency make a more informed decision. Over 5,000 people have already commented on the NPRM and more comments are coming in every day. Your comments may provide a viewpoint that the FTC wasn't aware of or give additional insight on the impact of the proposed rule or any of the alternatives that were proposed. Your comments will help the FTC decide whether it will proceed with the proposed ban on non-competes as written, whether it will make any changes, whether it will proceed with one of the alternatives proposed in the NPRM, or whether it'll even proceed with issuing a rule at all.

FTC is seeking comment on many different aspects of the NPRM, from the factual background to the evidence about the effects of non-compete clauses on competition to the FTC's preliminary determination that non-compete clauses are an unfair method of competition. The FTC is also seeking

comment on the text of the proposed rule, the different alternatives that are presented and the FTC's analysis of cost and benefits. Now I have a slideshow that'll show you how to submit a comment on regulations.gov. If you go to regulations.gov, you will see a search bar and if you enter a non-compete clause rule NPRM or FTC-2023-0007 into the search bar, the non-compete rule should be on the top of the search results.

To submit a comment, you can click directly on comment from the search results or you can click on the link, which will take you to the proposed rule page, and from there, you can submit a comment. This is what the comment page looks like and as you can see here, if you scroll down, the comment page allows you to attach files and it's particularly helpful when comments include supporting material such as empirical data, findings or analysis of published reports or studies. We encourage you to attach these materials to your comments if you have them. Finally, I want to note that today's session is being recorded and transcribed and the transcript will become part of the rulemaking record. Next, I want to introduce the head of the FTC's Office of Policy Planning, Elizabeth Wilkins. She's going to provide some further details about the commission's proposed rule, and after that, she's going to kick off today's panel discussion.

Elizabeth Wilkins:

Thanks so much, Marie. That was a great overview of the rulemaking process and I just want to reiterate one more time, we are ready and eager and interested to understand the public's comments on our proposed rules, so thanks so much, Marie, for breaking it down for folks and making it clear how people can participate in our rulemaking process. Today, we've got a panel of folks who have personal experience with non-competes and we'll hear a little bit about what that experience is and have a discussion before opening up for public comment, but before we get into that, I'd like to take a moment to explain hopefully in relatively plain terms exactly what the text of the proposed rule is and how it would function before we get into a discussion. First, I'll talk about the proposed rule itself, including how non-competes are defined in the rule and who qualifies as a worker, and then I'll talk about some of the exceptions and also finally, what employers would have to do to comply if the rule was finalized as it's been proposed.

As Chair Khan explained, the proposed rule would prohibit non-compete clauses between employers and workers. What that means is under the proposed rule, employers would not be able to enter into a non-compete clause with a worker, enforce a non-compete clause, continue to require workers to sign existing or template employment contracts that contain such clauses or tell a worker that that worker is bound by a non-compete. Under the proposed rule, worker is defined relatively broadly as any person who works. That includes employees, but it also includes independent contractors, externs, interns, volunteers, apprentices, and business owners who provide a service to a client or customer.

In addition, under the proposed rule, a non-compete clause is defined broadly as well to include any agreement that prevents the worker from working somewhere else or starting another business after the term of their employment ends. It's important to note that this is a functional definition. It means that any agreement that functionally keeps a worker from looking for or from accepting another job or operating another business after they leave their current job. This may include, for example, a different kind of agreement, like a non-disclosure agreement or a training repayment agreement, that is so broad that it functionally blocks a worker from working anywhere else in their field.

That said, the proposed rule does not cover other types of agreements that don't prevent a worker from taking another job, like a run-of-the-mill non-disclosure agreement. In terms of exceptions, as we said, this is a proposal for a broad prohibition, but an important exception is that the rule does not cover non-competes that are used in the sale of a business or non-competes that are between franchisors and

their franchisees. Finally, in terms of compliance, the proposed rule says that employers could comply with it by removing non-competes from their employment agreements and providing affirmative notice to their workers, and it includes a sample notice.

That is a quick overview of exactly what the proposed rule would and wouldn't do, and that's the proposal that we'll be discussing today as Chair Khan introduced. We've asked a number of questions about the scope of the rule, about our background and our justifications for the proposed rule, and today, we'll hear from people who have direct experience with these types of clauses to understand a little bit better how they function, what their effects are, what they're used for and so on. Without further introduction, we'll jump right in to our first speaker. Our first speaker is Steve Cox. He is president of Steam Logistics in Chattanooga, Tennessee. Steve, take it away.

Steve Cox:

Thank you very much. As she said, my name's Steve Cox, president of Steam Logistics. Steam Logistics is a third-party logistics company based in Chattanooga, Tennessee. Non-compete agreements are pretty rampant in the logistics industry. Many are from the largest companies in the industry and they have them as a means to bully young people who are financially unable to defend themselves and they bully people into sitting out of our industry for a period of time after their employment ends with that company, and that ending can be for any reason; quitting, being fired, even a company layoff. Imagine not being able to work in your industry because your company laid you off and no fault of your own, you can't make a living. Many of these agreements are signed by young people who are fresh out of college, signed as a part of their employee setup packet at the time they start with the company and most have no idea what they're really signing and what it means for them.

I remember signing my employee packet when I was 22 years old. I certainly didn't read it. Oftentimes, they're not allowed to even take the document home and read it, and even if they did, few would be able to afford an attorney to review and explain the non-compete to them. One of the most peculiar things about non-competes in logistics is the fact that I haven't come across a single company who has a non-compete who's proud of having the non-compete. They tend to operate in the shadows. It's something that they would rather avoid talking about publicly. I think they just want to use it to bully the young people into not working for another logistics company and stop them from looking for a better opportunity, frankly, that pays more and is a better fit for their talents.

It says so much about the practice in my opinion, that nobody in the freight industry really likes them. 18 months ago, we started a campaign to end non-competes. We went on LinkedIn and stated that we would post any non-compete enforcement case that any other logistics company brought against us, and that was 18 months ago. Not a single company has sued us over the non-compete agreements that we are currently violating. We are violating around a 100 non-compete agreements at this moment. We've found out that shining a white-hot spotlight on you enforcing a very unpopular practice isn't something that anyone has wanted. Honestly, my point in saying that is the court of public opinion has really spoken and it has spoken very loudly. In logistics, we have had 132 companies join us at endnoncompetes.com.

It's a site that we spun up about a year and a half ago, and this just shows how much support there is out there in this cause in the business community. When a company or lobbyist tells you that they need a non-competition agreement to protect their company, that's absolutely false. They can protect their interests with non-disclosures, non-solicitation agreements. That covers their intellectual property, their customers, and recruiting their employees, so non-compete agreements just simply restrict the movement of people in the industry and it's very unnecessary. We think the practice results in a lot of waste in our industry. The industry suffers because experienced talent must sit out once their

employment ends. That means these talented individuals end up having to start over in another industry and they're replaced in our industry by new, inexperienced college graduates who are expensive to train. That cycle just continues to repeat itself, and it's super inefficient.

Wages suffer when valuable talent has to leave the industry because of a non-compete. They end up going to another industry where their experience is less valuable and that certainly compresses wages for them. Also, companies are not really forced to improve the experience for their workers. If there's no non-compete, companies would be under a lot more pressure to improve the experience for their workers. Workers would be free to move to companies who have a better experience and offer a better quality of life. In the end, for us, we just believe the only thing that a non-compete agreement does is restrict the movement of the workforce unnecessarily and obviously, we're very against them. We've come out publicly doing that. Thank you very much for the opportunity to speak.

Elizabeth Wilkins:

Thanks so much, Steve. Really appreciate it. Next, we'll hear from Johnna Torsone. She served as chief HR officer and also a member of the senior management team for close to 30 years at Pitney Bowes before her recent retirement. Johnna?

Johnna Torsone:

Thank you. Good afternoon and thanks to the FTC for the opportunity to address the commission. As you noted, I had many years as a CHRO and also previous to that, I was an employment lawyer for 15 years. In both of these experiences, I had an extensive experience with the administration of non-compete agreements and was subject to one myself, but my participation today is on behalf of the Human Resources Policy Association, a membership organization representing the chief human resources officers of more than 400 of the largest corporations doing business in the United States and globally. The association and I believe that non-competes, when used responsibly and are reasonable in scope and duration, can help companies protect vital investments in their employees while ensuring the security of research and development, trade secrets, critical strategic plans and institutional knowledge. As such, we oppose this blanket restriction on the use of non-competes.

According to a recent survey by the HR Policy Association, large companies typically subject executives and equity recipients to non-compete for up to one year after departing from a company. In addition, it was found that non-compete negotiations and violations are infrequent. This mirrors my experience as well. I strongly urge the FTC to consider issuing a final rule that recognizes the distinction of the use of non-competes at the senior level. A blanket one size fits all regulation prohibiting such agreements across the board, including senior officers and employees with access to trade secrets and intellectual property, would have a detrimental effect on the ability of companies to implement leadership structures, invest in new technologies and retain key executives. Thank you again for the opportunity to speak before the commission.

Elizabeth Wilkins:

Thank you so much, Johnna. Next we'll have Dr. Sameer Baig. He's a hematologist and an oncologist in Palm Coast, Florida.

Dr. Sameer Baig:

Good afternoon. Thank you. Thank you for having me.

Elizabeth Wilkins:

Oh, Mr. Baig I think... There we go. Got your video.

Dr. Sameer Baig:

All right, sorry about that. It's difficult to discuss the various problems of our medical system in isolation as each exacerbates and potentiates the effects of the others. However, of all these problems, the greatest is a non-compete clause. The physician shortage is largely a manufactured crisis. It's a byproduct of non-compete agreements, which are now ubiquitous in medicine. Every doctor today has to sign a non-compete. Non-competes, particularly in medicine, are an instrument that solely serves the interest of corporations while harming Americans. Non-compete agreements allow healthcare corporations to create oligopolies by carving out territories. Not much different than drug cartels. The motive is purely to ensure egregious profiteering by stifling competition and controlling access to healthcare. For the first time in our history, most American doctors are now employed almost 75%. The safety net of independent physicians is gone. The majority of doctors now work for staffing firms that are owned and operated by Wall Street private equity firms.

Consequently, the magnitude of the effect of non-competes has never been greater than it is today. Non-competes completely suppress competition, decrease access to physicians and have led to worse patient outcomes. That means more avoidable suffering, more avoidable death, and exponentially higher healthcare costs. Non-competes allow corporations to create toxic and exploitative work conditions for doctors and even more importantly, interfere with our medical decision making. This in turn, increases physician burnout, which is now reported by more than 60% of American doctors. A direct consequence of this is that physicians have to leave their jobs and many are leaving the medical practice entirely. When doctors have to leave their jobs, non-compete block them from serving in their own communities. This creates what are known as medical deserts, a term used to describe regions in this country where there are few or no doctors at all. What happens to these patients when doctors are being eliminated from the community?

The remaining doctors have to absorb these populations. It's no wonder that it takes months to see any physician at all today. Non-competes silence physicians from whistleblowing. When corporations can threaten physicians and their families with economic warfare, all whistleblower protections mean absolutely nothing. How do we expect doctors to speak out about corporate practices that are fraudulent or endanger human lives all in the name of profit? We must decide if we want Wall Street muzzling our doctors via course of non-compete agreements. The results of non-compete in healthcare are being born out right in front of our eyes. How do we have a shortage of physicians and less access to medical care but the highest healthcare expenditure of any country, only to get the worst patient outcomes of any advanced nation. Yet somehow, these corporations are making record profits year after year. How does this add up?

The formula is straightforward. Monopolize and control the labor market with tools like non-compete clauses, cut corners, raise prices, medical care suffers, but the quarterly profit is up and any other scenario simply does not compute. Non-competes, particularly in medicine, are immoral, unnecessary, and a clear and present danger to the country. Medicine cannot be treated just like any other business. It's different. It's special and access to it must be protected by banning non-compete agreements entirely. To all those who are listening, I will conclude by saying this, you will all someday be on the receiving end of the healthcare system, take heed to what you create. Thank you for your time.

Elizabeth Wilkins:

Thank you, Dr. Baig. Now we'll hear from Ross Baird, who is the founder and CEO of Blueprint Local.

Ross Baird:

Thanks everybody. Thanks to Chair Khan and the entire group for having me around. I'm coming from a position of an investor lens. How do we get capital into companies to grow, create jobs, grow our economy? Through different companies we've involved in, we've invested over 200 million in over a hundred companies and real estate projects, and we've really focused on places, projects, entrepreneurs that are typically overlooked by mainstream capital and being able to start a new thing coming out of a big successful thing is absolutely critical to the dynamism of our country. A couple of facts. Nearly 100% of net new jobs come from new businesses according to the Kauffman Foundation. If you look at census data, we're in a startup or new business slump. There have been an uptick over the last couple years, but business formation is around a 50-year low and a large part of that is businesses are not able to access capital or the talent to grow.

Historically, the demise of large companies and the creation of smaller companies has been a natural part of our economic growth. Half the S&P turns over every 20 years, but we're seeing two different stories in the country. In our successful vibrant startup ecosystems, we're seeing people leave successful companies and start the next generation of competitors. The entire economic engine that Silicon Valley was founded on, original companies like Fairchild Semiconductor and HP having children and grandchildren. Here, I live in the Northern Virginia area where you've got several generations coming out of America Online, which was, in the nineties, the most valuable company in the country. Steve Case, AOL's founder, who's now a successful startup investor, says successful companies like AOL or HP have children and grandchildren, but you need to have the people working for these companies be able to compete in the next generation.

If you look at where startup activity is, highest, states like California, Colorado, Washington, Massachusetts, I think it's no coincidence that non-competes are lax, or in the case of California for example, not enforced at all. I heard Steve Cox talk about Chattanooga. Chattanooga is an emerging logistics hub. People call it freight alley, and a lot of people leaving large, billion dollar logistics companies starting the next generation has been a driver of that. Whether it's freight in Chattanooga or healthcare in Nashville, Minneapolis, or energy in Houston, our city's economies require you being ex-Google or ex-HP or ex-AOL.

In a lot of places, we are not seeing that. Investors looking at new companies look for logos, look for track record, look for experience, and when there isn't the ability to start these next generation of companies, new jobs, access to capital is extremely limited. I just finally say there are ecosystems like in California and Washington where non-competes have effectively not been enforced for decades and it's created the next generation of dynamic companies. I think extending that right to anybody in America who wants to start and grow a company will cause more capital to flow, more jobs to be created and ultimately be a huge net benefit for our society.

Elizabeth Wilkins:

Thank you so much, Ross. Our next speaker is going to be Emily Glendinning. She's the Vice President and Associate General Counsel for Employment and the Chief Privacy Officer for BAE Systems. Emily?

Emily Glendinning:

Thank you so much for inviting me. I'm Emily Glendinning, an employment lawyer for BAE Systems. We're a defense company here in Washington, DC. I previously worked for the law firm's Hogan Lovells and Wiley Rein, representing company's unemployment matters, including drafting and enforcing non-competes. My remarks represent my views, not necessarily those of BAE Systems. Non-competes protect company's confidential information and investment in certain employees. Under current state

laws, non-competes are only enforceable if they protect a legitimate interest for a reasonable period in a reasonable geographic area. Employers cannot lawfully use non-competes to prevent someone from quitting working in their field or simply working for a competitor in any capacity. The question before us is about reasonable enforceable non-competes. Should the FTC implement a nationwide ban on reasonable non-competes that are enforceable today in almost every state? The answer is no. Non-competes provide vital and unique protections for companies, and the evidence does not support this sweeping rule.

The FTC suggests companies don't need non-competes because non-disclosure agreements and trade secret laws provide the same protection, but non-competes develop because they provide a different kind of protection. If you've shared your most confidential information with your employee, how do you protect it when she's working for your competitor. You could have her sign a non-disclosure agreement or threaten trade secret litigation, but because you can't monitor her conduct anymore, you can't know what she's disclosing. Even if she wants to comply, she cannot excise your confidential information from her brain. She knows what avenues your competitor should follow and what blind alleys it should avoid. Non-compete solve that problem. 47 states have recognized the crucial protections they provide that non-disclosure agreements and trade secret laws don't. Courts have said that if you as an employer can show a legitimate, protectable interest, your employee cannot do competitive work for a competitor for a reasonable period. Case law is full of examples where the employer has not met that test. This is and should be

Emily Glendenning:

A highly fact-specific inquiry. A non-compete may be enforceable for higher level employees but not lower level employees. Or it may be enforceable for six months, but not for a year. There are too many variables for a blanket ban to make sense. I do think we should address abuses. Every employment lawyer I know agrees with President Biden that fast food workers should not have non-competes. But this rule would prohibit a CEO from negotiating a non-compete. It would prohibit Jeff Bezos from having a non-compete because he owns less than 25% of Amazon. If the FTC is going to go down this path, it should tailor the rule to address real harms. It should consider common sense reforms like prohibiting non-competes for lower wage or non-exempt workers. I think it's reasonable too, to require employers to give notice of a non-compete, at the time a job offer is made. Not after the employee has started work.

States are taking the lead on these very issues. No state has banned non-compete since 1890, but in the past decade alone, 27 states have changed their non-compete laws. Some require companies to give applicants notice of a non-compete and many have prohibited them for lower wage workers. Congress, however, has considered and declined to take action on a nationwide non-compete rule. The academic evidence on non-competes is limited and mixed. And experts disagree on their effect on competition in the market, but they do agree on the need for more research. In the FTC's own 2020 workshop expert after experts said more empirical evidence is necessary. They discussed common sense reforms, but even the most zealous advocate of curtailing non-competes did not argue for a nationwide ban with retroactive effect.

Whether the FTC has the authority to make this rule is a different discussion. Today's discussion is about whether it should make this rule. And the answer is no. Non-compete serve an important purpose that the states recognize. The evidence is not clear or convincing enough to support upending this developing body of law and invalidating private contracts. As the FTC continues the rulemaking process, it should focus on the common sense reforms we already see in the state.

Elizabeth Wilkins:

Thank you so much Emily. Finally, we'll hear from Kevin Borowski. He is a residential caretaker in Minneapolis, Minnesota.

Kevin Borowski:

Thank you, Elizabeth. Commissioners, my name is Kevin Borowski. For most of the last decade, my wife and I have been caretakers in a condo in downtown Minneapolis working for First Service Residential. My wife and I live in the building and do work to make sure everything is running okay and clean and comfortable for the residents. As caretakers, we respond to resident emergencies around the clock, maintain the building pool, clean the hallways and other common areas. You may have seen my story in the news about my public push to form a union. Two years ago, I led a class action lawsuit against my employer for wage theft and we won a \$225,000 settlement for 100 workers. Since then, I have been a vocal supporter of the ongoing union organizing effort. I believe that First Service fired me and my wife because my organizing work. The firing is especially striking because First Service never previously disciplined me or my wife.

In addition to firing me and my wife, First Service has forced us to leave our home. We are fighting this apparent retaliation, but I am here today to talk about the salt in the wound that came with this already frustrating and scary event. Caretakers and desk attendants at my company had been forced to sign non-compete agreements, before we were hired. This agreement prohibits us from doing similar work in Minnesota for a year after leaving the company. The company reminded us of this firing and forcing us from our home of many years. In their emails to us, they wrote, "At the start of your employment, you may have signed a confidentially non-compete document. The provisions of this agreement survive your employment ending date, so please be aware of the items, processes, and contact information that you should continue to hold confidential." In other words, First Service fired us, forced us from our home, and told us that we cannot earn a living in our field for the next year in Minnesota.

First Service Residential is the largest property management company in North America. They have operations in 24 states. It also has subsidiaries or affiliates such as Planned Companies, Paul Davis Painting, CertaPro Painters. The company employs hundreds in Minnesota and thousands nationwide. The fact that so many workers sign these non-compete agreements would be laughable if it wasn't so common. It forces workers to stay at companies instead of taking better offers and holds down people's chances to make a living when they leave. It means, if you are like myself and my wife, and have done something for a decade and you leave your company for whatever reason, you can't do the work you're most skilled at. It's another way corporations are rigging the system to make sure workers can't seek out better pay and conditions.

I'm happy to say that after my story was in multiple media outlets, my company reached out to let me know they were revoking the non-compete agreement for me. But it shouldn't take a situation like mine and considerable media attention to address this issue. We know that First Services affiliate company Planned Companies, which provides building services in New York and New Jersey, still includes no hire agreements with its clients, which denies workers their right to seek the best possible job. Planned Companies anti-competitive contracts are the subject of an FTC complaint filed by our sister local Union, SEIU, local 32 BJ. I am thankful you are taking on the issues at the national level. Finalize and implement the rule now so employees can move freely in the labor market. Do it now so employees don't have to hire attorneys just to change jobs. Thank you for being a leader and standing up for workers and their families.

Elizabeth Wilkins:

Thank you so much Kevin, and thank you to all our panelists for coming to talk today about your experiences about the effects of these clauses. We have a few minutes for a couple questions for me and conversation. And I'd like to start with this one. This is a question that I think is primarily for Dr. Baig and for Kevin, but I really welcome anyone else who would like to jump in. Our proposal, as the chair noted at the top, preliminarily finds significant impacts for workers' wages for non-competes, that they may depress wages by \$250 to \$300 billion per year. We also talk about, and Kevin you just mentioned, they may really have an impact on working conditions as well.

I wonder, you both touched on this a little bit, but I wonder if each of you could speak from your personal experience or your understanding of what this looks like from the worker's perspective. What kinds of impacts can non-competes have on working conditions? If you can comment on that. Maybe I'll go to, let's see, let's go to Dr. Baig first to give Kevin a break. We'll go to Kevin, and anybody else who wants to jump in, feel free.

Dr Sameer Baig:

Sure. So I mean the non-competes completely...

Elizabeth Wilkins:

Dr. Baig, can we get... Somehow your video went off again. There we go. Thank you.

Dr Sameer Baig:

Sorry. So the non-competes, they create a very perverse power dynamic. I personally know in every hospital that I've worked in, colleague's, friends, physicians that are managing way too many patients, hospitals are not wanting to hire additional personnel. And we saw that in the pandemic. And especially in the pandemic, people were seeing too many patients under very poor conditions and they had little to no recourse because protesting would probably get them fired or remediation of some kind. And where are you going to go?

I mean, these non-competes don't just ban you from that hospital or the city. Sometimes the entire region or the state, depending on your specialty. And so it really creates a safety concern, not only for obviously the patients but also the well-being of doctors. I personally know a physician who committed suicide. And this was not at some smaller hospital. This was at a prestigious institution and it shook everyone that knew her. And I have no doubt that it was the working conditions that she was under. So I think it has a real impact on safety for workers and by nature of what we do, safety for patients.

Elizabeth Wilkins:

First of all, thank you for those comments. Dr. Baig. Kevin, would you like to add anything? Oh, you're muted.

Kevin Borowski:

Yes. Thank you, Elizabeth. So I'm just going to speak for my own personal experience, but it's certainly relevant here. So my wife and I have worked for First Service for nearly a decade. So we got hired at a certain rate. I would say maybe the going rate for our type of work. Well year after year, as we're performing our job and doing a good job. The company would give us, and fortunately, I mean I appreciate them giving us raises each year, but they were rather insignificant. And as we now know, especially the last few years, inflation has gone up a lot. Well, our wages didn't match inflation, so year after year we were falling behind and we weren't free to go and seek other employment in the same

field. So for us, last year, we had to suffer through while new caretakers that were hired last year all started at a higher hourly rate than my wife and I were getting after nearly a decade. That's my story.

Elizabeth Wilkins:

Thank you. I appreciate that as well. I really appreciate that. Well, first of all, before I go on, does anybody else want to jump in on that before I go to the next question? Sort of switching gears a little bit, and I'll say maybe this question is a little bit more for Johanna, Ross and Emily, but again, everybody is welcome to jump in. In our proposal, the commission talks about some of the reasons for using non-competes, which folks have noted, including confidential information. It also talks about some of the ways in which it's actually really important, in particular for knowledge workers to be able to change jobs because that's one of the ways that we spur innovation. And so I wonder whether any of the three of you have more to say about whether banning non-competes even at the kind of higher income scale would in fact be positive for sort of reasonable knowledge exchange and innovation and what alternatives employers could or couldn't use that would be consistent with allowing that kind of beneficial knowledge transfer.

Emily Glendenning:

Well, I can take a first stab at this. I think, as I said in my remarks, non-competes really need to protect the intellectual property asset that the company has. And I think it's important to think about that confidential knowledge as a really important asset that the company has invested in. They've invested in training for the employees, they've invested in giving the employee the confidential information, and that is something that a company needs to protect, just like it needs to protect its physical assets. And so thinking about things like non-disclosure agreements or trade secret litigation is part of the portfolio about how a company wants to protect those assets. But I don't think it covers the waterfront, because of those situations where an employee can't help but use or rely on that confidential information in that next job with the competitor. So you wouldn't expect your chief scientist if they went to a competitor, to rerun all of the failed experiments they did with you just so weren't using your confidential information. And I think it's those narrow situations that non-competes are really most useful.

Johanna Torsone:

Yeah. And if I could just add, I mean we're really talking about that exception at the senior level. With senior executives and employees with this kind of institutional critical strategic and product-related insights, they shouldn't be carried over immediately to a competitor, for the reasons that I completely agree with what Emily just said. Non-competes provide a cooling off period, a reasonable cooling off period to protect these investments, to allow the executive's information about the company's sharing strategy and customers to diminish, to expire. Without these protections the constant churn of talent will negatively impact a company's ability to serve its customers, its employees, and prevent competitive information from being used against it.

And, I understand the broad discussion that's been had here, but from our perspective at HRP, we're really focused on that group of people that... Who by the way are very sophisticated, have resources available to them, are perfectly capable of negotiating. You're not looking at that imbalance in power. And to request them to have a reasonable limit on going immediately and using knowledge that is difficult to fence off, as Emily said, seems to me to be an unreasonable approach.

Ross Baird:

I think when it comes to innovation, and I certainly respect and appreciate the arguments being made. I think when it comes to innovation, this is really a policy choice of, are we trying to optimize for companies protecting their existing positions? Or are we trying to optimize for the mobility and success of the average worker? Because they're sometimes at odds. And I think non-competes in highly skilled areas... Pro sports teams pay silly amounts of money so that you don't leave and go compete against them in a division rival. Wall Street banks have things called gardening leave where they'll essentially pay you to do nothing for 12 months after you leave so you don't take your contacts while they're fresh and go to... Workers are compensated for the skills and knowledge that they have.

But things like restaurants saying you can't work at the chain restaurant across the street or Nike saying you can't work for Adidas if creative labor shortages... Is a massive problem. And there's a think tank, right to start led by a guy named Victor Quang that did a survey and 80% of Americans disagree with non-competes. And I think the average American feels, and I think we've heard some great stories here. Feels that you should be prioritized over protecting the position of your employer. And it's a difficult policy choice. And I certainly understand arguments across the table, but I think that this proposed rule does put the interests of the worker and the next generation ahead, which is the right balance in my opinion.

Elizabeth Wilkins:

I want to, Steve, you're the one person I haven't called on yet, and I'll bring you in to this conversation because you also talked about alternatives. We've been talking about trade secrets' law, non-disclosure agreements. One of the things that you talked about in your remarks was, the other things that employers can do to induce their workers to stay. You don't use non-competes. Can you talk a little bit about how you think about... And it sounds like some of your competitors do, are there things that you think about that are alternatives to non-competes for your workers that you to retain them when you want to?

Steve Cox:

Well, certainly for us it's compensation, and I think Ross mentioned that about pro sports teams. And we're obviously not a pro sports team, but if we're compensating our people correctly and we have the culture for them to want to stay here. And I think we carefully cultivate that because we refuse to have a non-compete. So that's something we really pay close attention to. And do everything we can to have an environment where people are excited and want to stay here for a lot of reasons. And we have a non-solicitation agreement and we sometimes have to enforce that. But yeah, it's all about creating an environment for our people to be excited to stay here. I know that's fairly broad, but...

Elizabeth Wilkins:

I appreciate that. I'll check in to see if anybody else wants to jump in with anything else on this topic.

Emily Glendenning:

Well, if I could just follow up on one thing that Steve said. I appreciate, Steve, when you talk about compensation and you want to make the workplace a good place for your employees. I think this rule goes too far in prohibiting private parties, employers and employees, from bargaining over a non-compete, which may be in both of their interests. You may have a worker who is delighted to accept the equity grant or the additional consideration, or to take the job in the first place fully agreeing to a non-compete with eyes wide open. And as I said before, I think we should absolutely address abuse cases.

But I don't think we should cut off that avenue where an employer and employee can come to a mutually bargained for good solution for them.

Elizabeth Wilkins:

Thank you all for that.

Johnna Torsone:

And the other thing I would add to that. At the senior-level, very often you have a transition and you'll have a severance and transition agreement. And if there's a non-compete, very often and... Not very often, but in few experiences where this became an issue at the senior-level, if they would come and say, have a discussion and say, "Well, what do you consider this to be within this ban?" And unless we'd be concerned that you were going to really harm the company, you work these things out at the senior-level. So I understand, I agree in terms of... I understand that nobody thinks that we should have these... We shouldn't protect against abuses, but that's not what we're talking about at HRP. We're asking for this exception, which I think is again, a reasonable one.

Elizabeth Wilkins:

Oh, Kevin, go ahead.

Kevin Borowski:

Yes, I'd just like to add, I just kind of bringing it back in, I think this non-compete for... I mean, I understand at higher levels, I'm just not going to respond to that. But there's literally millions of people that have these non-competes that are just not necessary and they're just holding us back like my example. If my employer wanted to keep me and retain me, he should have paid me rather than holding up the piece of paper saying, "Guess what? You can't go unless you want to leave your business." In fact, for me, our building is shared with a hotel. The hotel offered me their chief engineering job last December. I couldn't take it because of the non-compete. Just wanted to share that.

Elizabeth Wilkins:

Thank you. Thank you, Kevin. Oh, Dr. Baig.

Dr Sameer Baig:

You know, I think Kevin makes a good point. You know, want to keep your people, pay them. Create an environment that is nice to be around. Don't create toxic environments. I wholeheartedly disagree with non-competes on any level. I think even at an executive level, if somebody wants to leave, who are you to tell them that, "You're too smart? You can't go to this company for a period of two years and use your brain." Find a way to keep them. I mean, the people at the top are making plenty of money. These companies have plenty of resources. They have non-solicitation agreements, they have non-disclosure agreements, they have patents and they have an army of lawyers. So I'm sure just someone else mentioned that you can come to some sort of arrangement if you're leaving. Yeah, you can do that without the non-compete too. You can just make an agreement to that, "Hey, we're going to set some terms that when you leave the company, we're going to decide all these terms at the end or conclusion of your work here." You don't necessarily need the non-compete there.

Elizabeth Wilkins:

I think Dr. Baig, you went a little bit to what may be the final question that I'll put to the panel. We'll see. I think we've been talking, well the proposal sort of recognizes that there are different categories of workers and so we may want to think about the dynamics differently. We, in the proposal concluded that a ban was appropriate, even though some of these dynamics are different at different levels of the workforce. We've been talking about low-wage workers a lot. We've been talking about senior executives and the dynamics there. There is a category of high wage workers who might think they might be better able to read their employment contracts and understand what's going on, but they're not the senior executives that kind of have a lawyer bargaining on their behalf. And I'm looking at you, dr. Baig, you're a doctor. You talked a little bit about to what degree folks know what they're getting into.

This is, I guess, and I don't want to mischaracterize anybody's comments here, so feel free to push back if I've misrepresented it, but I'd be interested in hearing quotes from Dr. Baig and from you, Emily, a little bit on this category of not necessarily senior executives. But they could be knowledge workers, they could be higher wage workers where there are some tensions around kind of maybe they have trade secrets or confidential information. But maybe they still don't have a lawyer to bargain for them, or they may not fully understand what they're getting into. How should we think about the dynamics there about this proposed ban and alternatives?

Dr Sameer Baig:

I think aside from being part of the 1%, nobody can afford prolonged protracted litigation in the United States. I am triple specialized, internal medicine, hematology and oncology. I still cannot understand my employment contract without an attorney. And I think even at higher education levels to say, "Well, you're smart enough, you can understand this legalese." That's not fair. That's kind of where I stand on with that. What was the second part of your question?

Elizabeth Wilkins:

That was sort of to hear from both of you or anybody else on the panel about the balance of these concerns that if some workers who we are most worried about their confidential information but also still don't have kind of the ability to hire a lawyer, how should we think about the trade-offs there? So I don't know but I think you fully answered it potentially.

Emily Glendenning:

I think from my perspective, it's incumbent on companies to really stay focused on the protectable interest. And that protectable interest in the form of confidential information, trade secrets, can exist at different levels in the company. It's most likely concentrated in the higher wage workers, but we may have people who we call executives who don't really have that kind of information that we're concerned about when they leave. We may have mid-level workers with access to highly sensitive technical information and a non-compete would be appropriate for them. So I think it does make sense to think about the kind of wage scale of the workers, but not with a bright line rule for executives.

I think staying laser focused on, can you articulate a protectable interest, is really where we need to be. And frankly, where the states are and have been for quite some time. I think too, we trust people to enter into all kinds of contracts all the time. And a mortgage agreement may be confusing for someone, but that doesn't mean we've banned mortgage agreements. So I think we can focus on providing information, providing education. But I think to say no one can have a non-compete because there may be some workers who are confused by them, to me is just too Draconian a response.

Elizabeth Wilkins:

Does anybody else want to jump in here on this point?

Ross Baird:

Yeah, I might just say, and I would be interested in the FTCs findings of, for example, Washington has a blanket ban on non-competes under a salary level and different wages above a certain salary level. And I'd be interested in looking at pros and cons of that. I mean, I think the stories of home health aids and restaurant workers being sued by their employers is absolutely ridiculous. And I think most Americans agree with that. I think when you get into sensitive and confidential information, I would think that non-disclosure agreements, non-solicitation agreements, cooling off periods are ways that are probably more pro-worker, more pro-employee. And I would say if you look at industries like banking and life sciences, typically employees who have better access to lawyers or are more sophisticated with contracts, tend to not themselves have non-competes. And I might let that speak for itself. I certainly understand and respect the very, very sensitive concerns around trade secrets and confidential information. I just might look to the non-compete as a last resort versus the first one, because of the chilling effect it has on the rest of the economy.

Elizabeth Wilkins:

Any other folks that want to jump in on this before we close? Well, if not, I have to say I just want to thank our panelists again for coming on to chat. All of you have, as we've said before, first-hand experience. We've heard some pretty personal stories, which I just want to say thank you for sharing. We've heard some really interesting and well-thought-out perspectives on the importance, the effects, the uses, the alternatives to non-competes. And this is the kind of information that the FTC really wants and needs to consider seriously how to think about a final rule as we go forward. So thank you all very much for taking some time out of your busy days to participate in this and talk with us. I'm now going to turn things over to Commissioner Slaughter to give us a little bit of a reaction.

Rebecca Slaughter:

Thank you so much... Oh, sorry. There's my camera. Thank you so much Elizabeth. And let me start by thanking the Chair for organizing

Rebecca Slaughter:

... this panel, and to Marie for the great presentation up top, and to all the staff who put this forum together. To all of our panelists and to the members of the public from whom we will hear next, I really thank you for being here today. Your participation in the FTC's rulemaking process is welcome and valued as we consider this rule about the rampant use of non-compete restrictions that limit the job mobility of workers. The effects of non-competes on your professional and personal lives, about which we have just heard, have been profound and deeply felt.

For the individuals who are bound by a non-compete to an employer, it's a matter of their livelihood. For Mr. Borowski. Being subject to a non-compete meant not only not being able to get a job in his field, it also affected his ability to find a new home. Non-competes may force workers to stay in exploitative and dangerous working conditions. And as we heard from Dr. Bate, this can endanger both healthcare workers and patients.

Employers and business owners also have strong views on non-competes. On the one hand, Ms. Torson and Ms. Glendenning shared their views about how firms use non-competes, particularly at the most senior levels, out of deep concern over trade secrets, critical strategy or confidential plans. On the other

hand, Mr. Cox spoke about how he thinks free movement of employees within his industry is good for his business and that it incentivizes employers to provide great work environments.

Mr. Barrett spoke about how new business formation and spin-outs from larger firms are prevented by non-competes. non-competes can prevent startups from hiring the workers they need, which in turn limits business dynamism and investment. I really appreciate the breadth of perspectives we heard on this panel and as Elizabeth noted, that information is really important in our record and making sure that any rule, if we end up promulgating a final rule, really reflects the best empirical evidence, market realities and information from the public.

Since the issuance of the NPRM, the FTC has received thousands of comments and more and more stories have come to light about how there are non-competes in nearly every industry you can imagine. A sampling from the record thus far of occupations with non-competes includes veterinarians, pharmacists, programmers, hairstylists, music teachers, call center tech support providers, senior caregivers, journalists, STEM professionals, house cleaners, many different retail and service industry workers, and numerous types of healthcare workers, from nurse practitioners to pediatricians to primary care physicians, to oncologists and radiologists.

I look forward to learning the full catalog of occupations affected by non-competes when the record is complete. And as we examine the complete record, I look forward to seeing any additional submissions we get containing economic evidence. The NPRM contains extensive discussion of many economic studies, but to the extent that there's more we should consider, I welcome those submissions.

One of the great privileges of working at the Federal Trade Commission is the opportunity and responsibility we have to help real people in their everyday lives. We offer that help not only when we challenge massive mergers, but also when we tackle the myriad of smaller ways in which people are denied agency and autonomy. When we fight fraud, manipulative business opportunities, anti-competitive schemes and bogus fees, we help restore meaningful choice and dignity to consumers and workers.

These principles are the bedrock of a democratic society, but too often they're denied to Americans who are not rich and powerful. A careful examination of the rampant use of non-competes that restrict the job mobility of workers advances our mission by ensuring that workers have the chance to compete to earn a fair wage and family supporting benefits. I'm now going to turn the mic over to Peter Kaplan to facilitate the public speakers portion of the meeting. Peter?

Peter Kaplan:

Thank you Commissioner Slaughter. Before we begin, I want to remind our next speakers that the FTC is recording this event which may be maintained, used and disclosed to the extent authorized or required by applicable law regulation or order, and it may be made available in part in the public record in accordance with the commission's rules.

Now, each speaker will have two minutes to address Chair Khan and her fellow commissioners. I also want to note that we have had a very large number of people sign up to speak today, and we're going to do our best to get to as many folks as possible within the time that we have, so let's get started right away. Our first speaker today is Erin Witte. Erin?

Erin Witte:

Thank you. My name's Erin Witte. I'm the director of Consumer Protection at Consumer Federation of America. We're a national advocacy organization that fights for a fairer marketplace for consumers.

Thank you to Chair Khan, the commissioners, Ms. Wilkins, and the entire Federal Trade Commission for starting this conversation by publishing the rule proposal and facilitating this discussion here today.

We strongly support the efforts of the FTC to level the playing field for workers. Like so many other contracts of adhesion, these non-compete provisions are often not the result of a negotiated agreement. They're often designed to be difficult to understand, they're hidden in complex contracts, and they have expanded far beyond their original purpose. At their core, they fly in the face of the very laws which are critical to promote economic growth in this country.

The FTC's rulemaking should not be viewed as a radical departure from its authority. It is in fact the next logical step to meaningfully address these problematic provisions. States are increasingly passing legislation to scale non-competes back. Research and evidence continue to show that these provisions stifle economic growth and there's no question that the federal agency which is tasked with prohibiting unfair methods of competition can and should pass a final rule prohibiting non-competes. Thank you.

Peter Kaplan:

Thanks, Erin. Our next speaker is Blal Sayyed. Blal?

Blal Sayyed:

Thank you. The commission's proposal to ban most labor non-compete agreements faces many legal hurdles and raises complex federal state issues. I note that if the agency has the power of claims, it should put the force of rule behind its multi-decade campaign to unnecessary occupational licensing. The commission's attempt to couch the current proposal as a response to anti-competitive effects of non-compete agreements fails. The NPRM does not identify an anti-competitive effect of such agreements sufficient to support a near total ban on their adoption or enforcement.

The thousands of comments received to date identify the complexity of the issue, even as they themselves did not provide a basis for the proposed rule. What they do suggest often is opportunistic behavior. Employers may obtain employee agreement to a non-compete covenant after an employee has made some hard-to-reverse commitment to his perspective or actual new employer, and also employees may wish to be excused from a non-compete agreement after recognizing its potential effect on their future job prospects, perhaps even if the covenant was entered into willingly.

Such opportunistic behavior can be ameliorated through a Mag-Moss-enacted rule requiring disclosure of post-employment constraints in conjunction with an offer of employment, including a statement of the relevant state law governing enforceability of such contracts in reference to FTC-generated frequently asked questions on enforceability of such agreements, alternatives to a non-compete, and some general principles an employee should consider prior to agreeing to such contracts.

Perhaps to a rule identifying as an unfair practice, the enforcement of such an agreement when an employee is terminated for reasons other than cause, and also identifying as unfair attempts to enforce agreements of the type found on enforceable by the highest state court. Finally, given the complexity of this issue, the commission should extend the comment period an additional 90 to 120 days. Thank you.

Peter Kaplan:

Thank you, Blal. Our next speaker is Sean Heather. Sean? Sean, are you there?

Sean Heather:

Is that mute unmuted now? Thank you. The US Chamber of Commerce is strongly opposed to this rulemaking and I want to make three points. First, this rule is blatantly unlawful because the FTC lacks

the authority to write a UMC rule. The discussion that kicked off today's session avoided this fundamental question. Nobody was invited to discuss whether the agency has congressional authority to write any UMC rule, let alone this rule. And the chamber is far alone from this opinion.

In fact, Senator Chris Murphy, a Democrat, recently introduced legislation in Congress to address non-competes. He said, I quote, "We'd like to give them the clear statutory authority." Also worth noting, his legislation grants authority in the UDAP context, not UMC. Second, on the policy question of non-competes, let us be clear, the chamber supports enforcement against abusive uses of non-competes. However, the debate is not about burger flippers or sandwich artists.

The question is about whether a blanket ban makes any sense, and blanket bans rarely do. Businesses use non-competes in many different ways to protect intellectual property as part of compensation packages and to support investment and skilled training for their workforce. In these instances, the employee is rewarded with additional compensation and training in exchange for not leaving the business for a defined period of time. A blanket ban would take money out of the pockets of these workers. It would cause their wages to fall, not rise.

Finally, the FTC for two years has been planning to attempt to make a UMC rulemaking and nobody is surprised that the FTC has decided to try to do it on the issue of non-competes. The only surprise is that has taken you this long to move ahead. So my question is, why rush now? The chamber is part of a hundred different trade associations collectively representing millions of businesses, wrote a letter more than two weeks ago asking for an extension on the comment deadline. The FTC routinely extends comment periods for proposed rules that are far less consequential than this. My request is the FTC not only extend the comment period, but make that clear to the public before the end of the month. Thank you.

Peter Kaplan:

Thank you, Sean. Our next speaker is LeAnn Goheen.

LeAnn Goheen:

Hi, everyone. My name's LeeAnn Goheen and I'm the senior director of Government Affairs for NATSO, that's the national association representing travel centers and truck stops, and SIGMA, the national association representing independent fuel marketers. Our associations will submit comments on the proposal, but due to the meaningful impact of the proposal and the information required from our members to respond sufficiently, we urge the commission to delay the comment deadline for 60 days.

This blanket ban for non-compete clauses is too broad. Therefore, our associations oppose the proposal as it is drafted. There are certain circumstances where non-compete clauses are necessary in an employment agreement. Generally, those are for more higher-level executives that are privy to very sensitive business information. We are especially concerned that businesses who employ workers that oversee mergers and acquisitions or other departments with trade secrets or certain intellectual property be able to implement a non-compete clause.

We do believe there is a way for the commission to amend its proposal to both protect the workers about which it is primarily concerned, while also safeguarding the confidential business information that executives and workers with certain duties maintain in their position. Our industry would support limiting non-compete clauses to executives or employees in certain sensitive functions, similar to the duties test that the Department of Labor utilizes for overtime regulations.

We are also concerned about the retroactive nature of the proposal. Employment agreements that include a non-compete clause are signed in exchange for higher compensation. The proposal would

effectively delete certain provisions of employment contracts, while leaving intact others that were negotiated in exchange. All of these contracts would need to be reopened and reexamined, it would be a total mess and it's not necessary. We urge the FTC to make this rule-making prospective rather than retroactive. Appreciate your time today, and we look forward to working with the commission on this proposal.

Peter Kaplan:

Thank you, LeeAnn. Our next speaker is Berin Szoka. Berin?

Berin Szoka:

This proceeding presumes that section 6G of the FTC Act authorizes rules defining unfair methods of competition. The DC Circuit said so in 1973, and the Supreme Court has said so of seemingly similar statutes. Like 6G, the Communications Act says the FCC may make rules and regulations for the purpose of carrying out the provisions of the act. But there's a key difference, that act also authorized heavy sanctions for violations of FCC rules. The original FTC act authorized no sanctions whatsoever, only injunctive relief.

In the progressive era as scholars Tom Merrill and Kathryn Watts note, if a statute prescribed a sanction and the authority to make rules and regulations, included the authority to adopt legislative rules having the force of law, if the statute did not include a sanction, such authority encompassed only interpretive or procedural rules. The Supreme Court's 1911 Grimaud decision said just that. The FTC Act can only be understood in this context.

If 6G had authorized substantive rule-makings, the act would've marked the constitutional revolution. It would've handed unprecedented legislative power to assess fairness to an unprecedented lead, insulated independent executive officers without safeguards for rulemaking or procedures for drew judicial supervision, Congress would've created an unaccountable mini legislature without anyone noticing for decades. But Congress, as the Supreme Court reminds us, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.

It does not hide elephants in mouse holes. 6G is a mouse hole, just one half of a one-sentence subsection on additional powers. The FTC reads 6G as a mighty elephant, the power to legislate fairness across most of the economy, but the Supreme Court has said agencies cannot decide major questions of vast economic and political significance without clear congressional authorization. 6G provides no such clear statement, even if it did, the FTC's reading would violate the non delegation doctrine as understood in 1914, and as the Supreme Court understands it today. Simply put, national petroleum refiners, case on which this entire rulemaking rests, is a pile of sand. The commission should end this rulemaking and leave the major question of non-competes to Congress.

Peter Kaplan:

Thank you, Berin. Our next speaker, is Littler Mendelson.

Jim Parette:

Good afternoon. My name is Jim Parette. I'm a shareholder in the law firm Littler Mendelson, and a member of the firm's Workplace Policy Institute. In the very short time I have, I'd like to make a number of points. First, the premise that there's widespread use and abuse of non-compete agreements with low-wage workers is faulty. We counsel a huge number of America's largest employers, and I can attest this is simply not the case.

Second, we ask that the commission promptly act on the pending request for an extension of the comment period. An extension that comes at the 11th hour is just not very helpful. Third, we firmly believe that as a matter of law, the commission lacks the authority to issue any substantive regulation concerning unfair methods of competition.

Fourth, the commission's proposal makes no distinction between the cashier in the burger place that President Biden said he sought to protect in his State of the Union address, and highly-paid executives whose non-compete has been negotiated and bargained for, often with the consideration, say, stock option, sign-in bonus, already transferred to the employee. Stripping away the benefit of what an employer has bargained for and paid for is unconstitutional.

Fifth, the proposed rule does not take into fact the consideration that restrictive covenants help small startup businesses from large, predatory competitors who can afford to pay over market simply to buy away their key talent. Sixth, despite purporting to propound a bright-line rule, the proposal's treatment of non-disclosure and non-solicitation agreements via a functional test is vague, unclear, and offers no useful guidance to employers.

Seventh, the proposed rule's 25% ownership requirements for the sale of business exception, far too high, and will impede commercial transactions if buyers cannot protect their purchases. Eighth, trade secret law does not sufficiently protect an employer because it's an after-the-fact remedy, it can often only be proven after the harm caused by disclosure of a trade secret is already done and, even then, at an extraordinarily high cost.

Finally, there's just no evidence that state legislatures and state courts are not appropriately safeguarding workers rights, enforcing reasonable non-competition agreements and balancing the rights of workers and the rights of employers to bargain and enter agreements freely. We firmly believe the commission should abandon this effort and leave it to the regulation of the states, as it has for hundreds of issues. Thank you.

Peter Kaplan:

Thank you, Mr. Paretti. Thank you very much. Our next speaker is Leanna Wade.

Leanna Wade:

Good afternoon. My name is Leanna Wade and I am representing ACT, the App Association, the leading trade association for small business technology developers. App Association members are innovators across consumer and enterprise brackets. Today, the ecosystem we represent, which we call the app economy, is responsible for over five million American jobs and serves as a key driver of the Internet of Things revolution.

Our community relies on legal and regulatory consistency to continue to provide high-value services and products to Americans from all walks. Therefore, we appreciate the opportunity to share our perspective with the Federal Trade Commission on its proposed non-compete rule. non-compete clauses are routinely utilized within our community to preserve key interests like trade secrets and other intellectual property, strategies, and information used to expand our members' businesses. More broadly, non-compete clauses have become a commonplace strategy for businesses of all types and sizes, and the FTC's proposal is estimated to impact 99% of the American workforce, making it of vast economic and political significance.

We urge the FTC to be mindful of the scope of its authority for issuing such rules. For example, it is not clear that Congress has granted the FTC authority to issue competition regulation rules addressing contractual relationships between employers, employees and contractors alike. We believe it is critical

that such questions be publicly vetted and answered before the FTC moves forward. Already roughly 20% of startups fail in the first year. We urge the FTC to consider the potential impact of this rule, and if it does move forward, we ask the FTC to do all it can to support the small business technology developer community.

We value the opportunity to speak today because our community and staff's moving and competitive, and our members have limited resources to alter widely-accepted business practices, such as the use of reasonable non-compete clauses. Again, the App Association appreciates the opportunity to share our perspective on this matter and we look forward to working with FTC to promote a competitive pro-innovation marketplace that enables small businesses.

Peter Kaplan:

Thanks, Leanna. Our next speaker is Edwin Egee. Edwin?

Edwin Egee:

Thank you so much. On behalf of the National Retail Federation, I want to thank you for the opportunity to testify today. My name is Edwin Egee. I am vice President for workforce development and government relations at National Retail Federation. As NRF will explain in our forthcoming comments, the FTC's action to ban employers from utilizing non-compete agreements is beyond the scope of its authority. Even if the FTC did have the authority to impose such a broad prohibition, the decision to do so would harm employers, employees, and the broader American economy.

FTC's authority to regulate in this space is questionable at best, as you well know. Commissioner Wilson articulated this well in her dissent. Moreover, the major questions' doctrine articulated by the Supreme Court in *West Virginia versus EPA* is applicable to this rule. The FTC lacks clear congressional authorization to undertake such a rulemaking. To paraphrase, Justice Scalia, the FTC majority promulgating this rule locates the proverbial elephant in the mouse hole.

On the merits of this rule, NRF opposes the ban on the inclusion of non-compete agreements in employment contracts with employees. Federal and state laws have long recognized that non-compete agreements serve a legitimate purpose in our economy. These agreements allow retailers and other employers to protect trade secrets, customer relationships, and confidential information. They're particularly necessary and appropriate when NRF members enter into employment contracts with higher-level executives.

The rule makes no distinction, of course, between high-level, highly compensated employees and other workers. For well over a century, non-compete clauses have been properly regulated by the states. The FTC, however, explicitly states that the new federal regulations would supersede any contrary state law. It would, as Commissioner Wilson noted, prohibit conduct that 40 state legislators have already chosen to allow.

Although legislators in several states have proposed banning virtually all non-compete agreements, every state that has considered such a ban has ended up doing nothing or enacting compromise or middle-ground legislation. The retroactive nature of this rule requiring rescission of any agreements currently in existence is problematic as well. This aspect of the rule is concerning for my members. Many of our members have reached extensive agreements with former executives that include non-complete agreements-

Peter Kaplan:

Thank you, Ed. Can you wrap up? You're at two minutes.

Edwin Egee:

The FTC's attempt to force retailers and other employers to go back and rescind these contracts is unacceptable. Allow me to reiterate the request of NRF and basically the entire business community, we ask for an extension of the comment period, certainly given the complexity of this rule and the legal questions around it, that warrants a longer time for the regulated community to provide qualitative input. Thank you.

Peter Kaplan:

Thank you, Ed. Our next speaker is Brynne O'Neal. Brynne?

Brynne O'Neal:

Thank you. I'm here for National Nurses United, the largest union of registered nurses in the country. We strongly support the FTC's proposal to ban non-compete clauses. In the proposed rule, the FTC recognizes the training repayment agreement provisions, or TRAPs, can function as de-facto non-compete clauses in some circumstances. We urge the FTC to go further and ban TRAPs completely in the final rule. The current proposal puts an unreasonable burden on workers to show that their particular TRAP functions as a non-compete clause, and it leaves ample room for employers to use TRAPs to skirt the non-compete ban.

TRAPs lock nurses into unsafe jobs. Under TRAPs, nurses are required to work for their employer for a number of years, or else pay a substantial penalty for the costs of employer-required training, typically, thousands of dollars. These programs do not provide nurses with any new qualifications, rather, employees are simply passing on to nurses the costs of basic on-the-job training required for any RN position at any hospital.

Under TRAPs, nurses can't leave their jobs without a devastating financial penalty, and the debt hanging over them means that nurses have a harder time advocating for safe conditions for themselves and their patients. The FTC should not put the burden on workers to demonstrate that a particular TRAP is invalid. For classic non-compete clauses, the FTC appropriately recognizes that most employees have no choice but to rely on what their employer says about their legal obligations.

Litigation is expensive and daunting, therefore, the proposed rule prevents employers from putting non-compete clauses in contracts and requires them to inform employees that existing non-compete clauses are invalid, so employees know their rights and it's clear to everyone what the rules are. The FTC should take the same approach to TRAPs, instead of requiring employees to have to prove that a given TRAP is too costly. Thank you.

Peter Kaplan:

You Brynne. Our next speaker is Ben Nussdorf. Ben?

Benjamin Nussdorf:

Thank you Mr. Kaplan. My name is Ben Nussdorf. I'm the general council of the National Propane Gas Association. Thank you for the opportunity to comment. I wanted to echo and support the comments of the National Retail Federation, the US Chamber of Commerce, Littler Mendelson, and others, and opposing this rule and seeking an extension of the comment period.

This rule represents an overreach on behalf of the FTC, which is questionably at legal, and questionably under its scope of authority. There are legitimate reasons for non-competes. Many of them exist within our industry, and the protection of that intellectual property and trade secrets is incredibly important to

the employers that we represent. We wanted to thank the FTC for giving this opportunity to comment, but believe that meaningful opportunity to comment on such a complex, wide-ranging and overreaching rule would require an extension of the comment period. Thank you again.

Peter Kaplan:

Thank you, Ben. Our next speaker is Beth Milito.

Beth Milito:

Thank you. My name is Beth Milito, and I thank you for allowing me to speak today on behalf of the National Federation of Independent Business. NFIB is a nonprofit association representing about 300,000 small and independent businesses across the country. We believe there are appropriate situations for employers and workers to enter contracts that include non-compete clauses. The NFIB members who use non-competes do so in limited situations and not in the broad manner as claimed by many on today's call.

In those limited situations, non-compete clauses protect intellectual property or other confidential information that could cause economic and sometimes reputational harm to businesses. Furthermore, non-compete agreements help encourage businesses to invest in their employees through specialized training that if put to work for a competitor business could disadvantage the company that provided the training. As summarized by an NFIB member recently, "You can't build a business, teach people your secrets to success and then have them used against you next week."

NFIB is also frustrated with the FTC's intrusion into an area of policy that should be left to the states, and we believe this proposal seeks to unilaterally and illegally reinterpret the section of the Federal Trade Commission Act on unfair methods of competition. In her dissenting statement in response to the proposal, Commissioner Wilson pointed out the weaknesses in the FTC's proposal noting, in short, "Today's proposed rule will lead to protracted litigation in which the commission is unlikely to prevail."

NFIB agrees with Commissioner Wilson's prediction. We will be filing public comments providing the commission with more on the small business perspective detailing why this proposal is so harmful to small employers, employee retention, compensation, and investment. Relatedly, we hope that the commission will grant our request to extend the comment time. NFIB continues to hear from members and wants to ensure the commission hears from as many small business owners as possible. Thank you for the opportunity to speak today.

Peter Kaplan:

Thank you, Beth. Our next speaker is John Bates. John? John? I'm not sure, do we have John there? Is he muted? Okay, let's move on, our next speaker, maybe we can come back and get to John later. Our next speaker is Wes Bissett. Wes?

Wes Bissett:

Thank you very much. My name's Wes Bissett. I'm senior council of the Independent Insurance Agents and Brokers of America. We're the largest and oldest association of insurance producers in the country. The value of insurance agencies is rooted in the goodwill they develop in their communities and the relationships and confidential knowledge about their customers that they build over many years, and our members fear that the commission's proposal will erode that value.

As an initial matter, we believe this is a subject matter and significant change in policy that should best be

Wies Bissett:

To elected policy makers. We're especially concerned by the expedited manner in which this is being considered and strongly urge the FTC to extend the comment period by 60 days. I'm going to briefly touch on four additional issues in case you do elect to move forward.

First, our members are very concerned by the narrow scope of a limited exemption that would permit the use of non-compete agreements in the context of business sales. That exception is limited to cases where the seller has at least a 25% ownership stake in the business. In our view, this exemption is unnecessary, it's unduly restrictive, and should be removed. We note that the three states that generally prohibit non-compete agreements do not ban their use in business sales like that, nor do they include ownership interest thresholds like this one.

Second, we appreciate that the proposal is not intended to apply to other types of employment agreements like non-solicitation and no-business agreements. We worry, however, that those legitimate types of agreements will be in jeopardy of being considered defacto non-competes, and employers and the members that we represent want certainty that they can utilize these other forms of agreements to protect their legitimate interests.

Third, we urge the commission to include an exemption based on worker earnings along the lines of alternatives two and four, and as discussed earlier in the forum today, a broad universe of states have started to do similar things in their state laws.

And then finally, any final rule should apply prospectively and not affect any non-competes currently in place. Altering terms after the fact distorts contracts and the equilibrium that was achieved at the time they were entered into. Thanks very much.

Peter Kaplan:

Thank you, Wes. Our next speaker is Alex Harmon. Alex?

Alex Harmon:

My name is Alex Harmon. I'm the Director of Government Affairs, Antimonopoly and Competition Policy at Economic Security Project, where we advocate for ideas that build economic power for all Americans. We believe that every American should have the freedom and stability required to thrive, and we strongly support the pending proposal banning non-compete clauses which will unleash the US labor market and put money back in the pockets of workers. Today, we want to highlight three strengths of the proposed rule. In addition, we urge the commission to strengthen the rule and want to share three critical concerns.

First, we strongly support a total ban that does not make false or arbitrary distinction between industries or income level. Non-competes are an abuse of power that are designed to trap workers, drive down wages, and prevent competition. In fact, banning non-competes could increase worker pay up to 300 billion a year and would reduce racial and gender wage gaps by 3.6 to 9.1%. We are heartened by the inclusion in the rule of the ban on training repayment agreements or TRAPs where companies require employees to pay for training they receive if they leave a job before a certain time period. We also strongly support making the rule retroactive. The absence of this feature would result in the 30 million US workers subject to non-competes receiving no relief.

We believe that the rule could still be strengthened in several key ways. The final rule should ban contracts that are functionally equivalent to non-compete clauses. While the rule does include TRAPs, this should not be limited to reasonable repayments. Because for some low-income workers, even relatively small amounts of money could have the effect of locking them into jobs they need to leave,

and determining what is a reasonable TRAP is not easy. Secondly, we believe that the rules should prohibit vertical no-poach agreements. Workers may be aware when they are subject to a non-compete agreement, but vertical no-poach agreements are often invisible, and yet prevent them from moving to [inaudible 01:33:35] location that could offer more opportunity for better job. Finally, we encourage the commission not to extend the comment period. For over four years, the commission has heard from numerous groups and individuals on the issue of non-competes. There has been multiple time. And the evidentiary record is now clear, non-competes should be banned, not make workers wait any longer for this important rule. Thank you.

Peter Kaplan:

Thank you Alex. Our next speaker is Jennifer Han. Jennifer?

Jennifer Han:

Hi, good afternoon. I am Jennifer Hahn, Chief Council and Head of Global Regulatory Affairs at Managed Funds Association. MFA, we represent the global alternative asset management industry, this includes hedge funds, crossover funds, and credit funds. Our members collectively manage nearly 2 trillion dollars. The beneficiaries of these funds are pensions, foundations, and endowments, and the investment returns help secure retirements, fund medical research, and provide college scholarships among other things.

We're very concerned with this overly broad ban on non-competes. Any restrictions on the use of non-competes should be carefully tailored to consider promoting research, investment, and US competitiveness. Non-compete in the alternative asset management space are essential to protecting intellectual property and investor assets, rather than stifle innovation, investment, and competition. They are a critical component in helping our members prevent the divulgement of proprietary trading strategies and investment positions, protecting proprietary algorithms developed and used by asset managers to conduct business and trades, and they protect relationship assets as well. In our industry, the use of non-compete agreements typically entails garden leave where employers compensate workers during the post-employment period until the expiration of their non-compete agreement. This approach allows firms to protect their proprietary information while giving employees financial civility as they transition to new employment.

We encourage the FTC to tailor the proposed rule to allow for exceptions from a non-compete prohibition where there's significant intellectual property at stake, the business and investors would be harmed, the non-compete agreement is limited in time, and the employee will be paid out. We've seen the economic impact on a small scale as firms that engage in certain investment strategies refrain from conducting business in jurisdictions where non-compete agreements are outlawed. So, if the final rule does not enable alternative asset managers to protect sensitive-

Peter Kaplan:

Thanks Jennifer. Can you wrap up? We're at two minutes.

Jennifer Han:

Intellectual property, it's going to hurt competitiveness of our sector, the US financial sector broadly, and also harm institutional investors. Thank you. And we would support extending the comment for deadline.

Peter Kaplan:

Thanks Jennifer. Our next speaker is Evan Armstrong. Evan?

Evan Armstrong:

Hi. Thank you for allowing us to speak today. My name is Evan Armstrong. I'm Vice President of Workforce Policy for the Retail Industry Leaders Association. We represent the largest, most innovative retailers in the country. We will be submitting substantive comments to the FTC that will detail the industry's perspective on the important issue here. And on that front, we encourage the FTC, like many others, to extend the comment deadline by 60 days so that we have more time to provide those fulsome, detailed comments to you all. However, I'm happy to share some high level thoughts today. Again, thank you for the opportunity.

The retail industry by its nature is highly competitive. Our members believe that open and free markets allow for fair competition that benefits customers, employees, and shareholders alike, while driving creativity and innovation. With that in mind, we agree that abusive or coercive non-competes should not be applied broadly across the economy to all workers, including and especially to retail associates. However, we do support the ability to selectively use narrowly tailored non-compete clauses to protect trade secrets and other confidential business information. As I mentioned, RILA is in the process of collecting quantitative data from our members to provide in our comments, but anecdotally, leading retailers narrowly use non-competes for high level executives or in situations where there is a business necessity. Using tailored non-competes in these instances is a win-win for all. Impacted employees benefit from receiving long-term investments in compensation while companies can protect trade secrets and other confidential information.

While RILA believes a discussion about the scope of non-competes is a worthy one, we believe that the proposed rule is fatally flawed because the FTC lacks the constitutional and statutory authority to issue such a rule. And in attempting to do so, the agency is improperly usurping the rule of Congress. Congress expressly gave the FTC authority to issue rules to protect consumers such as to prevent fraud and false advertising. In contrast, Congress never granted the FTC the authority to issue wide-ranging rules regulating competition such as contractual relationships between employers and employees.

Peter Kaplan:

Thanks Evan. Can you wrap up please? Thank you. Okay. Our next speaker is Courtney Van Cott. Courtney?

Courtney Van Cott:

Hi. At 25 years old, I started getting demand letters requesting I pay hundreds of thousands of dollars in penalties because I allegedly violated a non-compete. I reluctantly signed this non-compete when it was presented to me with the condition that I'd be terminated if I didn't sign it. That was extremely distressing. While most employers use these clauses exclusively for their deterrent value with no intent to litigate, I was sued in 2019 and have been in litigation for almost four years because my previous employer has decided to test the validity of this contract. The plaintiff and his attorney are adamant that this is not a non-compete so they can get away with a more oppressive, broad, and overreaching contract. This clause has no geographical scope, attempts to protect potential, not actual business, an exorbitant penalty, and an unreasonable time limit. As someone who was only a couple of years into starting their career, I was and have been unable to afford full-time legal representation leaving me to work as a legal assistant in addition to my full-time job while still trying to be present for my family and daughter.

The reason employers use these non-competes is to trap workers, not to actually protect themselves. They know that employees will be more willing to stay in a hostile work environment, accept lower wages, and will be hesitant to find a new job due to the fear of having to navigate the court system. While it's considered unethical for attorneys as a profession to be bound by non-competes, they're more than happy to bill hours to write them for their client's businesses or attempt to enforce them. These contracts are often non-negotiable, and some employees are unaware they're even signing them. The FTC's proposed rule banning non-competes is so crucial because the situation I'm in would never happen again. Thank you.

Peter Kaplan:

Thanks Courtney, thanks for sharing that. Our next speaker is Daniel Kalish. Daniel?

Daniel Kalish:

Hi. My name is Dan Kalish, and I am the owner and founder of a law firm called HKM Employment Attorneys. We represent individuals against non-compete. We operate in about 30 states making us one of the largest, if not the largest, law firm that represents employees. Several employees, countless employees will contact us and they will ask, number one, "If I go to this new company, will it violate my non-compete?" And then number two, "Is the non-compete enforceable?" We advise them on that. But at the end of the day, we also tell them that it really often doesn't matter if the non-compete is enforceable or not, because really what they need to avoid is getting sued.

And the reason why is that if an employee gets sued, they're often going against a very large company. And these are even high wage earners. They have to go through discovery, a temporary restraining order. After that occurs, they have to go through additional discovery, and on top of that they have to go through a preliminary injunction, and often all the way through a trial. And what we end up telling the employees that if they get sued, they will likely, even if they win, have to pay roughly \$100,000 to \$150,000 in attorney fees.

As a result for many of our clients, even if they win in court by showing that they did not actually or were not going to competitor, or showing that the non-compete is unenforceable, it will bankrupt them. Let me repeat that because I think that's important. Even for our employees who win a lawsuit against an invalid non-compete, it will bankrupt them.

As a result, most of our employees that we advise make the correct decision in this case, which is not to go to the new company that they want to, it's not to challenge the non-compete. They either decide to stay at the company even though they don't want to or they decide to leave the field altogether.

Peter Kaplan:

Dan, can you wrap up? I'm sorry. You're two minutes.

Daniel Kalish:

Yes. As a result of that, we believe it's incredibly important for the FTC to pass this proposal. On behalf of employees nationwide, we support the FTC's proposal. Thank you.

Peter Kaplan:

Thank you Daniel. Our next speaker is Paul Diaz. Paul?

Paul Diaz:

Hi, good afternoon. My name is Paul Diaz. I'm a US Marine Corps veteran and the leading advocate for ending the non-compete in the veterinary industry. I'm speaking to you today on behalf of more than 6,000 people who have signed my petition on behalf of veterinarians who have been, will be, or currently are negatively impacted by non-compete, and on behalf of pet owners whose access to care is limited by the predatory use of non-competes in this industry.

The veterinary industry is one where a majority of the revenue is generated by single job classification. By establishing control over the veterinarian with a non-compete, employers establish control over a portion of the industry's revenue. A non-compete agreement enables employers to control how and where a veterinarian uses their medical license, it restricts their ability to earn, it prevents them from obtaining new, higher paying, career advancing opportunities. And the most egregious impact is when a veterinarian had to choose between uprooting their family and leaving their community or not practicing at all because relocation is not an option. And let's not forget the mental health damage inflicted upon a veterinarian who's stuck in a toxic work environment.

By requiring a non-compete, employers are saying they would rather see a veterinarian not work than to see them generating revenue for someone else. Veterinarians have been conditioned to believe a non-compete as a standard part of becoming a veterinarian for decades. The American Medical Association took a stand against non-compete for human healthcare doctors in 2016, the American Bar Association did the same for lawyers in 2017. As of today, the American Veterinary Medical Association, the organization that is supposed to advocate for veterinarians, has remained silent on this topic. Their silence is why veterinarians need our help, and it's one of the reasons I decided to take up this fight.

I applaud the FTC for this proposed rule. Employers have trademarks, NDAs, copyrights, patents, confidentiality agreements, non-solicits, and various other legal tools to protect their intellectual property and investments. A non-compete is about control, not protection. While you work to get this rule passed, I will continue to educate and empower veterinarians to take back control over their careers by refusing-

Peter Kaplan:

Paul, can you wrap up? You're over two minutes. Thank you.

Paul Diaz:

Thank you.

Peter Kaplan:

All right. Thanks Paul. Our next speaker is Jennifer Massengale. Jennifer?

Jennifer Massengale:

Hello. Thank you for hearing my comments. I am just a regular breast radiologist, a physician. I have experienced issues with extreme non-competes multiple times in my career. I finished my training in 2008. And in 2013, I was under a restricted non-compete covenant. I had to move my family out of state just to practice medicine. Again, in 2019, my company, my radiology group of 20 physicians, I was an employed physician, wanted to sell to a company named Mednax. They wanted me to sign a 36-page restricted contract. They couldn't even tell me which facilities or affiliates I was going to be restricted from. They covered 40 states and even South America. These non-competes do not apply to physicians like me. I do not have trade secrets to pass on, I wasn't trained for that. And this has really significantly impacted my livelihood of practicing medicine and required me to uproot my family, three children and

husband, two times, to move out of state in order to support my family and to gain employment. So, I am fully supportive of banning non-competes in these types of situations. Thank you.

Peter Kaplan:

Thanks, Jennifer. Our next speaker is Jonathan Jones. Jonathan?

Jonathan Jones:

Hi. Thank you. I'm speaking in favor of this proposal to ban non-competes. I'm an emergency physician in Jackson, Mississippi, and I'm President of the American Academy of Emergency Medicine. We represent over 8,000 emergency physicians. Following up the talk from our radiologist, non-competes serve to intimidate physicians, specifically to intimidate physicians not to speak up about potentially dangerous practices to patients. Likewise, they serve to limit access to patient care, which, as was mentioned by Dr. Begg earlier, is a major problem in this country. And I don't think we need to do anything to further impact patient care.

Specific reason that non-competes are not indicated in hospital-based physician contracts such as emergency medicine, radiology, anesthesiology, and pathology, is that we do not have our own patients. We do not have patient lists and we do not have trade secrets. As a matter of fact, all of the training we receive is actually funded by the federal government in the form of residency training. We have no other secrets other than what was provided to us during medical school and residency. Signing on with a hospital that has a non-compete only limits the doctor's ability to provide the best patient care and to speak up about unsafe practices. So again, on behalf of the American Academy of Emergency Medicine, we fully support this proposal. Thank you.

Peter Kaplan:

Thanks, Jonathan. Our next speaker is Eden Danielle Sullivan. Ms. Sullivan? Are you muted? Eden? Okay, well, maybe we can come back to her. Let's move on. Our next speaker is Fred Brown. Fred? Okay. I guess maybe we don't have Fred either. Fred, are you there? Okay, let's move on. Our next speaker is Kathleen Tenover. Kathleen, are you there?

Kathleen Tenover:

I am here. Thank you.

Peter Kaplan:

Great.

Kathleen Tenover:

And thank you for hosting today's forum. I represent the Federation of American Hospitals. We represent 1000 tax paying hospitals and health systems across 46 states, DC, and Puerto Rico.

First, we reiterate what others have said already, that we don't believe the commission has the authority to issue the proposed rule. Also, given that the rule is finalized [inaudible 01:50:32] in decades of settled law and common practice, we urge the commission to extend the comment period by 60 days and announce the extension by the end of next week.

Regarding specific provisions of the proposed rule, the commission by its own admission does not have the authority to apply the rule to, quote, entities not organized to carry on business for their own profit. Taken on its face, that language would mean that the non-compete ban would apply to some 20% of

hospitals across the country that is tax paying hospitals. But the ban would not apply to 80% of hospitals in this country that are tax-exempt. This uneven playing field between tax paying and tax-exempt hospitals is illogical. And it also would create significant unintended distortions in the competitive playing field. It would also create fundamentally different rules of the game for different entities in the same industry based solely on tax status.

For hospitals, this will come at a time of increasing competition for a shrinking pool of skilled professionals. As hospitals across the board are coping with workforce challenges, tax-exempt systems would be free under this proposed rule, if finalized, to recruit physicians, nurses, technicians, and student executives under tax paying competitors without restriction, while the tax paying systems will be unable to compete in kind. This uneven playing field would also create an incentive for hospitals not covered by the non-compete ban to engage more aggressively in non-competes at all levels of service since their competitors, tax paying hospitals, are not able to do so, which is exactly what the proposed rule intent to prevent.

While we will provide extensive comments on this issue and many others when we submit comments in the proposed rule, and we appreciate the commission's time and consideration of these comments. Thanks again for offering this opportunity today.

Peter Kaplan:

Thanks Kathleen. Our next speaker is Alex Hendrie. Alex?

Alex Hendrie:

Thank you. I'm here representing the National Association of Wholesale Distributors. We are an industry that has 6 million employees across the country and over 7 trillion in annual sales volume. Over 80% of our members, based on our survey, use non-competes, and they use them in a very narrow way. They use it primarily for highly paid senior management with knowledge of company strategy, and they also use it for the sales staff which have pledge of the customer base and the sales staff and the know-how. Our employees are highly compensated, the average non-supervisory wage is \$29 an hour. And we use them very narrowly, for one or two years, limited to specific geographies, and limited to specific products. We have concerns with the proposal. In many states where non-competes are banned, our members have problems with recruitment and retention, and they have problems with proprietary information. I would conclude briefly with echoing the concerns of the retroactivity of the proposal and also associate myself with the comments made about extending the comment period. Thank you.

Peter Kaplan:

Thanks Alex. Our next speaker is Michael Layman. Michael?

Haider Murtaza:

Thanks, Peter. This is actually Haider Murtaza on behalf of IFA. Thanks for the opportunity to speak today. IFA is an organization that represents franchisors, franchisees, and also franchise suppliers. Our membership is also brands ranging from quick service restaurants all the way to personal services to home healthcare systems, with over 200 business formats.

The FTC's proposed non-compete rule would apply to workers and the commission specifically defined that term to exclude the franchisor-franchisee relationship. And we agree. The commission noted that a franchisor-franchisee relationship may be more analogous to the relationship between two businesses than the relationship between an employer and a worker. The commission also noted that there is no evidence to suggest a benefit from applying the proposed rule to the franchisor-franchisee relationship.

And we agree with the commission, that there is no need or support for extending this proposed rule to the franchisor-franchisee relationship.

I also believe that non-competition clauses in the franchisor-franchisee relationship protect the franchisor as well as the franchisees that invest in the brand by building and operating a unit in the system. And it's not just what we say, courts reached the same conclusion at the Massachusetts Supreme Judicial Court examined non-competes in the franchisor-franchisee relationship and those in a traditional employment relationship. In a 2004 case, *Bolinger v. Duncan*, the court upheld enforcement of non-competes. That court emphatically found that the non-compete clause challenged by the plaintiff had actually protected the same franchisee and others when they operate under the system. The court concluded that Duncan's non-compete was reasonable in time and space, needed to protect legitimate business interests, and consistent with public interest. Other courts reach similar results.

So, who benefits? Reasonable non-compete clauses are important to protect franchisor's goodwill, confidential information, and investment in training and development of franchisees. Non-compete clauses also protect franchisees in the same way, and against having former franchisees unfairly compete with by operating knockoff concepts as well as trading on the goodwill and knowledge that they developed under their franchise relationships. In a business to business arrangement, parties should be free to enter into contracts on fully disclosed and mutually agreeable terms. That is franchising and non-complete clauses fall in that category. A non-compete in a franchise agreement supports the franchisor and the franchisees in the system against unfair competition and does not-

Peter Kaplan:

Thanks. Can you wrap up because you're over two minutes? Thank you.

Haider Murtaza:

Of course. Thank you. Lastly, I would just mention that we agree with everyone else that the commenting deadline should be extended so that we could provide more detail insight on the impact of this rule. Thank you.

Peter Kaplan:

Thanks a lot. Our next speaker is Megan Stockhausen. Megan?

Megan Stockhausen:

Hey Peter. I'm passing to my colleague Melissa Cropper.

Melissa Cropper:

Thank you. This is Melissa Cropper. I'm President of the Ohio Federation of Teachers and the Vice President for the American Federation of Teachers, and I'm honored to be here today to share my support for the FTC's proposal for banning non-competes. We represent charter school teachers and staff in Ohio. Many of our charter school members are subject to non-compete clauses or components of non-compete clauses.

Shockingly, teachers can be fined up to \$4,000 for resigning and working at another school. Often charter schools garnish the last paycheck or the last few paychecks of an employee who has resigned. Salaries at charter schools are typically low, so it's important to note that these fees are applied to teachers who earn salaries as low as \$32,000 annually.

Educator contracts with charter schools often include a range of other provisions that would be considered part of a non-compete clause, such as banning teachers who leave their job from teaching at another school outside of their current charter network in certain county, city, or model radius, being sued in court, having their teacher license contested within the state, or having to pledge to not use any of the teaching materials, lesson plans, or other resources that they develop by teaching at the charter school. These non-compete provisions are pervasive and hard to remove or contest.

In terms of specific feedback to the proposed rule, I appreciate that the rule isn't limited to provisions or agreements specifically designated non-compete clauses. The contractual provisions teachers struggle with, whether it is a fine for resigning, a ban on teaching, or the threat of being sued, or losing their teaching license, all work as non-compete clauses.

One language arts teacher I work with submitted a letter of resignation in May, letting the charter school she's working for know she would not be returning the following year. She lost her last two paychecks, which put her family under financial pressure, all because the former employer had a non-compete clause. Leaving one teaching job for another, better teaching position should not cause economic pain for a teacher's family. When she wrote to me describing the ordeal, she said, "It is disgusting that charter schools can basically hold us hostage, force us to sign an intent to return before other schools and public districts have even posted open positions, and then take money that we rightfully earn throughout the school year." It is theft, plain and simple. The practice-

Peter Kaplan:

Melissa, can you wrap up? Sorry, you're over two minutes.

Melissa Cropper:

Yes. I'll wrap up by saying, by impeding the mobility of teachers and healthcare workers to move from one job to the next, non-compete agreements undermine worker bargaining power and contribute to conditions that do not serve students or patients. Thank you.

Peter Kaplan:

Thanks, Melissa. Our next speaker is Chenai Kirkpatrick.

Chenai Kirkpatrick:

Thank you. Good afternoon. My name's Chenai Kirkpatrick. I serve as the Director for Global Policy and Regulatory Affairs at SHRM, the Society for Human Resource Management. Thank you for hosting this public forum to examine the proposed ban on non-compete clauses. On behalf of SHRM and our 318 plus thousand members, we appreciate the opportunity to gauge with the FTC on this important proposal. More than 95% of Fortune 500 companies rely on SHRM to be their go-to resource for all things work and their business partner in creating next generation workplaces.

SHRM believes that the rule as drafted is overly broad and could potentially harm businesses that depend on non-compete agreements to thrive, including emerging technology companies that must safeguard highly specialized capabilities.

Chenai Kirkpatrick:

With an economy that is more knowledge-based than ever. There are more and more circumstances where employers need to protect information. We also believe the broadly drafted regulation would jeopardize the ability of HR professionals to require the repayment of education or training benefits, and

it would also endanger the use of non-disclosure and non-solicitation clauses. A consequence of the proposed rule could be businesses of all sizes not investing in up-skilling and re-skilling their workforce. SHRM believes the FTC should differentiate between agreements designed to limit labor market mobility and those designed to protect confidential trade secrets or strategic planning. SHRM supports a well-functioning labor market and the ability of workers to secure good paying jobs, and we believe that this proposed rule will limit the ability of employers to create workplaces where everyone thrives. SHRM looks forward to commenting in detail on the FTC's proposed rule and hopes that the FTC will consider the alternative solutions and broad exceptions in the rule that SHRM will outline in its comment. Thank you for this opportunity and we look forward to working with the FTC.

Peter Kaplan:

Thanks, Chenai. Our next speaker is Scott Shewcraft. Scott?

Scott Shewcraft:

Good afternoon. My name is Scott Shewcraft. I'm the vice president of policy at the Economic Innovation Group. We are a public policy organization focused on American dynamism and people and places, giving them access to the broader prosperity of our national economy. We are supportive of the FTC's approach of banning all non-compete clauses, and that's in large part because we believe that the anti-competitive effects, the stymieing of entrepreneurship, and the suppression of wages is true irrespective of where you set the dial on income and what kind of worker you're talking about. That said, we'll be submitting a comment letter more fully discussing all of those points and I want to take a minute to talk about some of what we've been hearing today and some of the exceptions that might exist. We want to urge caution on the income threshold for a test because it seems in all instances to have been arbitrary and not really well targeted, particularly when you take into account huge differences geographically on incomes and where that might be set based on the nature of the work.

And in many cases it's those knowledge workers at a firm that are most likely to be the entrepreneurs of tomorrow and the innovators that bring dynamism to their local economy and new jobs. In particular, there's some forthcoming research on the prohibition in Washington State, which is a fairly high income threshold in the low \$100,000, and it showed no change in employer behavior. Nobody raised somebody's wages to move that worker into the range where a non-compete would be allowed, so that means that it's not that valuable to the employer for that worker and it wasn't previously priced into their compensation. When we talk about-

Peter Kaplan:

Scott, you're at two minutes. Can you wrap up please?

Scott Shewcraft:

Oh, yeah. So, we support the complete ban and discourage any sort of income testing for an exception.

Peter Kaplan:

Thank you, Scott. Our next speaker is, sorry, Rebekah Goshorn Jurata. Rebekah?

Rebekah Goshorn Jurata:

Yes. Thank you. Hello, my name is Rebekah Goshorn Jurata from the American Investment Council. AIC members provide access to capital, create jobs, strengthen retirement security, drive innovation, and

increase economic growth through responsible long-term investment. Our members support competition by investing in local communities and creating wealth for millions of American public sector workers who are saving for retirement. AIC appreciates the FTC's efforts to please anti-competitive conduct impacting labor markets. However, we are concerned that the broad drafting of the proposed rule will harm competition by reducing incentives for long-term investment in developing businesses. This will hamper job creation and discourage innovation. Many of the non-compete or de facto non-compete clauses it would bar are critical parts of carefully negotiated agreements between sophisticated actors, including business owners and those working to ensure that American workers and retirees can protect and grow their savings in ways that they demand undoing.

Undoing these contractual terms would create negative consequences that would also include violating their existing obligations, and many of which were not included in the [inaudible 02:05:14] rulemaking or even contemplated. The contracts that we are concerned about are drastically different from those examples of worker exploitation discussed in the proposed rulemaking or highlighted in the recent commission enforcement actions. We believe the FTC can write a rule that fulfills its goals of protecting workers while allowing our members to abide by their existing obligations and serve their investors. We look forward to working with you, and we'll submit a comment letter in the coming months. So, to that end, we respectfully request the commission consider the request for an extension of the comment period. Thank you, and thank you for your time.

Peter Kaplan:

Thanks, Rebekah. Our next speaker is Jason Todd. Jason?

Jason Todd:

Thank you for the opportunity to participate in today's forum. My name's Jason Todd. I'm vice president of government affairs for the Independent Electrical Contractors. Established in 1957, IEC is a trade association representing over 3700 members, with more than 50 chapters and training centers nationwide. IEC is the nation's premier trade association representing America's independent electrical and systems contractors. IEC believes that FTC is taking an overly simplified approach to non-compete agreements with this blanket restriction and should abandon the rulemaking process altogether. Instead, IEC urges the commission to take more time to study the issue by convening round tables with interested stakeholders to get a better idea of how they are used and their impact on different industries. Specifically, some IEC members may use reasonable non-compete agreements for their high level executives.

They may also use the training repayment agreement provision that's been referenced today for their apprentices since they will often pay for most if not all their tuition in our registered apprenticeship program, which after four years they will graduate into a good paying profession as a journeyworker electrician with little to no debt. Should the FTC continue with the rulemaking process, IEC believes, as others have stated, that the comment period for such an impactful rulemaking should be extended immediately for an additional 60 days. This 60 day comment period is not nearly enough time for the business community to assess its impact and comment appropriately, and IEC would stress that, given the vast majority of its members are small businesses, they're limited in their resources and staff time to devote to surveys and emails to express in further detail just how this rule would impact their operations. Thank you for your time today.

Peter Kaplan:

Thanks, Jason. Our next speaker is Najah Farley. Najah?

Najah Farley:

Hi. Thank you, members of the FTC and staff and commissioners for allowing me to speak. My name is Najah Farley. I'm a senior staff attorney at the National Employment Law Project. NELP is a nonprofit, nonpartisan research and advocacy organization specializing in employment policy. I'm speaking today in favor of the proposed rule which will significantly limit the use of non-competes for workers nationally. Employers have taken advantage of the lack of laws and regulations in this area to push these agreements onto unsuspecting workers across all income levels and job titles. I first came to this issue when I was an assistant attorney general at the New York State Office of the Attorney General working on the infamous Jimmy John's case, and afterwards we received many complaints across industries throughout the state including phlebotomists, IT professionals, house cleaners, security guards, bike messengers, school cafeteria workers and others.

Since joining NELP, I have continued advocating against the proliferation of these agreements, having seen firsthand their deleterious effect on workers. Workers are often faced with unenforceable non-competes in the workplace. Even in California, employers often gave unenforceable non-competes to workers. That's why California passed their recent law barring companies from attempting to enforce other state non-compete laws against California workers. Employers often use soft methods such as cease and desist letters and letters to their new employers to chill workers and keep them from moving on to other employment. In this way, potentially unenforceable agreements are enforced through intimidation.

That is why banning non-competes is the only solution. There are a number of other protections available for companies, as discussed by others in this forum, the Defense Against Trade Secrets Act and the non-disclosure agreements. NELP also supports the proposed rule because it will ensure that non-competes will no longer degrade wages and working conditions by eliminating the most effective means workers have to improve their job quality, changing jobs to raise their pay or moving to better conditions. Banning non-competes for all workers will reduce labor monopsony and increase worker power. This means that the FTC's proposed ban will lift up workers throughout the country. For these reasons, we therefore urge the FTC to finalize the rule as it is currently written and eliminate unlawful non-competes. Thank you.

Peter Kaplan:

Thank you. Our next speaker is Kevin Johnson. Kevin?

Kevin Johnson:

I'm Kevin Johnson from Massachusetts. I'd like to ask the corporate executives who are members of the boards of organizations opposed to a blanket non-compete ban whether they really want to oppose a ban on non-competes that could increase executive earnings by more than 10% regardless of whether or not they've signed a non-compete, according to studies cited in the FTC's NPRM. Do these executives intend to sacrifice their own income even though their companies don't benefit financially from non-competes? According to Mark Garmaise's Ties That Truly Bind study, quote, "Non-competition agreement enforcement has no significant effect on firm value or profitability," unquote. If these organizations are anything like a similar organization of businesses that initially opposed non-compete reform in Massachusetts, then its opposition may well be driven by an outspoken minority who insist that non-competes are necessary, while most board members don't have a strong conviction and so refrain from the debate. The most outspoken opponents of Massachusetts' non-compete reform were certain lawyers, including general counsel and companies that were on the board of the business organization.

These lawyers, of course, like all lawyers, are exempt from non-competes themselves under an ABA rule named Restrictions on Rights to Practice. US Chamber of Commerce Boards and 89 voting members include 18 with law degrees, as well as quite a few others who aren't likely to personally sign a non-compete. I encourage board members whose earnings are reduced by non-competes not to sacrifice their interests for the vocal minority. Why let those whose freedom and earnings aren't limited by non-competes constrain your income and your freedom to choose where you work? Finally, I encourage the FTC to require that job postings include the terms and conditions of employment as an extension of your online advertising disclosure Guidelines. Such a rule seems likely to survive court challenges because the prior administration's NLRB ruled that employee handbooks can't be considered confidential information. Thank you.

Peter Kaplan:

Thanks, Kevin. Our next speaker is Keith Miller. Keith?

Keith Miller:

Good afternoon. My name is Keith Miller, Franchisee Advocacy Consulting, and representing the American Association of Franchisees & Dealers. Thank you, commissioners and staff for this important forum. Today I want to discuss the need for the rule to expand the franchisees. Franchisors used non-compete agreements to, in a sense, own the franchisee for the long term. I'm guessing few franchisees noticed or paid attention to that small clause when they signed that long agreement. They definitely did not understand the long-term implications of how the non-compete would be used to solidify the power and balance in their relationship. Franchise agreements are most often five to 20 year terms. When the term is up, if you wish to renew, you must sign a then current franchise agreement. This is when the non-compete becomes the gun to the head. New agreements often have new onerous terms included. The franchisee now has a choice to sign this new onerous agreement or walk away from their business and not be able to continue their profession.

Franchisors know this and take advantage of it. They know the gun is fully loaded at this point. My own brand, Subway, has a new agreement that bears little resemblance to my original agreement. In fact, the new agreement would prohibit me post-term from leasing, licensing or otherwise granting access to or the right to use any property I have an ownership in to anyone in a competing business. They even want control of my non-Subway assets after I'm out. Another prime example is BrightStar Home Care. A new agreement now requires on renewal a cull option that is contained in it. The franchisor can unilaterally decide it wants to buy your franchise back, yet they still want to enforce the non-compete, effectively restricting those franchisees from any ability to make a living in their profession. I hope you'll consider including the franchisee protections in your final rule. Thank you.

Peter Kaplan:

Thanks, Keith. Our next speaker is Robert Purvin. Robert? Robert?

Robert Purvin:

Am I muted? Yeah. Thank you for the opportunity. I'm Robert Purvin. I'm the chairman and CEO and one of the founders of the American Association of Franchisees & Dealers. I'm here to echo the comments of our public affairs director, Mr. Miller, who just spoke to you. I do want to thank the FTC for this forum and for engaging this discussion. I know I've learned a lot from the various comments, and I do think that there is an important concern for folks that need to protect intellectual property assets. However, in the franchising context, I've been involved with this debate for many, many years. I actually published

a book 30 years ago where I exposed the fact that franchising falsely represents that there's business ownership, when in fact most franchisees are middle managers and the only distinction between what they do or an employed manager of a restaurant or a business is the fact that the franchisee has actually paid for its training, where in most employment contexts training is included.

The reason for non-competes being not enforced in most instances has been the fact of the freedom to work, the right to work, should supersede the concerns that people would want to protect. But in the franchising context, franchisees are not deemed to be employees but they have all the same duties and in fact, most franchise agreements are more restrictive than most employment agreements. So, the AFD really wants the FTC to include in its definition of any rule that it promulgates should extend to franchisees. We completely disagree with the position of the International Franchise Association. And I would like to finally observe that the difference between the AFD's position and the NFIB'S position, both organizations supporting small businesses. The AFD's small businesses unanimously support the idea of prohibiting non-competes in franchise agreements.

Peter Kaplan:

Thanks, Robert.

Robert Purvin:

Thank you.

Peter Kaplan:

Thanks a lot. Our next speaker is Abby Lawlor. Abby?

Abby Lawlor:

Good afternoon. My name is Abby Lawlor and I'm a legal fellow at Public Rights Project voicing our strong support for the FTC's rule. Public Rights Project is a national nonprofit dedicated to closing the gap between the promise of our laws and the lived reality of marginalized communities. We partner with local, state and tribal governments across the country to equitably enforce laws that protect workers and consumers from corporate abuse. Public Rights Project works directly with workplace enforcement agencies, city and county attorneys and other local officials charged with protecting the rights of workers to bring cases under minimum wage, paid sick leave and other labor standards.

These enforcement efforts are particularly important for low wage workers, including Black, Latinx and immigrant workers. The proposed rule responds to the effects of non-compete agreements to suppress wages and benefits and the exploitative and coercive nature of non-competes at the time of a worker's departure from an employer. These aspects of non-competes burden the work of local labor standards enforcers in two ways. First, by reducing wages and benefits, non-competes inflate the number of workers who rely on minimum labor standards to set their terms of employment. Second, by making it more difficult for workers to leave a job and by raising the stakes of potential retaliatory firings, as we heard earlier today, non-competes stop workers from speaking up about violations of those same minimum standards. This allows violations to go unreported and unaddressed.

We strongly support the proposed rule because it will eliminate non-competes as a barrier which prevents workers from improving their wages and working conditions. I'll briefly highlight three aspects of the rule we believe are particularly helpful. First, the rule requires employers to rescind any existing non-compete agreements, and will therefore limit the maintenance of unenforceable non-competes, which may nonetheless keep workers from making complaints. The rule also covers independent contractors and removes misclassification as a potential tool for employers to evade their legal

obligations. And lastly, the rule sets a regulatory floor and does not prevent localities from adopting regulations which are even more protective of workers. We appreciate the opportunity to participate in this forum and look forward to submitting our written comments to the commission. Thank you.

Peter Kaplan:

Thanks, Abby. Our next speaker is Sheri Overstreet. Sheri? Do we have Sheri on? Sheri, I think you might be muted.

Sheri Overstreet:

There we go.

Peter Kaplan:

Okay, great.

Sheri Overstreet:

Okay. Hi. I'm a certified public accountant business valuation expert, investment banker and business owner with almost 40 years of business experience. One half of my career has been spent in serving in various finance and accounting and operational roles in companies, and the other half as a service provider. I'm also currently subject to a non-compete. As part of my current business valuation, I often work with the country's top executives valuing non-compete agreements in the context of an acquisition which is required for various accounting and tax purposes.

Having worked extensively with executives valuing non-compete agreements, I cannot express the importance of having these agreements appropriately in place, particularly when the sale of a business, I.E. change of control is involved, as often a deal is conditioned upon having them in place. As part of the non-compete valuation process when estimating the value of a non-compete agreement, business valuers spend time with each executive understanding and documenting the background and history, determining where they might compete, how they might damage their company, and how that estimated damage might be quantified. The executives are asked to qualitatively describe the damage they can inflict on a company if they did not have the non-compete agreement in place and competed. I have hundreds if not thousands of these responses.

The responses provide a roadmap as to how they would damage, likely, and often circumvent trade secrets and non-disclosures. This type of competition would result in the unfair reallocation of assets from the buyer to the executive and their future companies. As a result, I believe an appropriate applied non-compete agreement provides a needed time-out so that there is little to no possibility of them having the opportunity to harm the business in the near term. I will now comment on the limited exception for non-compete agreements associated with a sale or transfer in a business. That proposes there is an ownership threshold of 25%. I would recommend that no ownership percentage threshold be applied because it will not appropriately address the wide variety of situations where non-competes will be needed to protect a buyer. In a startup business, and specifically referencing-

Peter Kaplan:

Sheri, you're over two minutes. Can you just wrap up?

Sheri Overstreet:

Yeah. Yes. I'll go ahead and wrap it up. Finally, I've submitted comments. Some of my other colleagues have submitted comments. In regards to the threshold in the M&A arena, we are suggesting there are laws and rules and guidelines that are codified in our internal revenue code, such as those used to define highly compensated employees, and other guidelines that can be used to decide when a non-compete should or should not be applied, and we are suggesting leveraging that work that has been in place for decades, as opposed to having a 25% rule. In closing-

Peter Kaplan:

Thanks, Sheri.

Sheri Overstreet:

Okay. Thank you.

Peter Kaplan:

Thanks a lot. All right. Our next speaker is Winifred Carson-Smith. Winifred?

Winifred Carson-Smith:

Good afternoon. My name is Winifred Carson-Smith and I am attorney who has worked with and for nurses on the regulation and practice of advanced practice nurses. I am speaking today on behalf of my company, W.Y. Carson Company, and our associated social media platform, Let's Talk Nursing Now, LTNN. As nurses' scopes of practice and statutory recognition through licensure has expanded, so has the use of various business agreements and regulatory mechanisms been altered and expanded to control the amount of autonomy nurses have to practice or obtain reimbursement. Non-competes typically are not used to protect the economic welfare of the employer, but instead to compel nurses to state and employment arrangements. They thwart competition when such are needed in this arena. They are one of many measures used to limit growth of alternative health providers. There's a shortage of primary care providers throughout the country, so we don't understand why these types of agreements or contracts are used in relationships with advanced practice nurses.

The rulemaking is a great first step toward addressing the underlying unfairness in business relationships between the two, but there's a need to reach further. In some states, the terms of the business relationships are embedded in either state statute or regulation and through those regulatory mechanisms, the terms of non-competes can be legally structured. Two states that are examples here are Missouri and Tennessee. For instance, Tennessee has a 10-mile limit for their restriction, or two years on their non-competes. Similarly, Missouri courts have found reasonable a non-compete between a nurse practitioner and a hospital, which prevented the NP from engaging in the practice of nursing within a 50-mile radius.

Peter Kaplan:

Sorry, Winifred, you're at two minutes. Can you just find a way to wrap up?

Winifred Carson-Smith:

Okay. Well, in short, what I would say is that first we are going to submit expanded comments on these particular instances. What is reasonable when there's a shortage of providers is our concern, and we think that this non-compete prohibition is a first step in addressing that issue in the healthcare arena. Thank you for the opportunity to submit comments.

Peter Kaplan:

Thank you, Winifred. Our next speaker is Mike Pierce. Mike?

Mike Pierce:

Thank you very much, and thank you Chair Khan and commissioners. My name is Mike Pierce. I'm the executive director of the Student Borrower Protection Center, a nonprofit organization focused on alleviating the burden of student debt for millions of Americans. We're here today to talk about a type of what we call shadow student debt, shouldered by working people across the country who participate in training programs offered by employers. Over the last two years, we've investigated how firms, ranging from hospitals to roofing contractors, harness training debt to stifle competition and trap working people in low-paying and sub-standard employment conditions. These training debts are imposed via so-called Training Repayment Agreement Provisions, or TRAPs.

We applaud the work that you and your staff have undertaken on this proposed rule. We support a strong rule that would prohibit the use of all non-compete clauses and functionally similar contracts like TRAPs. TRAPs require workers who receive on-the-job training to pay back the so-called cost of this training to their employer if they leave their job before a fixed amount of time. These terms are often imposed as a mandatory precondition of employment. Through our research, we now estimate that major employers rely upon TRAPs in segments of the US labor market that collectively employ more than one in three private sector workers. The cost of these agreements can be exorbitant in relation to the earnings of workers, making departure impossible. Consider the following stories we've heard from workers. A former trucker took advantage of, quote, "free training", and was forced to endure poor working conditions and sexual harassment, because any attempt to leave her job triggers \$8,000 of debt with double-digit interest rates.

A former pet groomer was pressured to enroll in the company's firm-specific grooming training, and found themselves locked in a grueling and dangerous position that barely paid above the minimum wage. If they dared to leave, the company threatened to sue for more than \$5,000 along with interest and penalties. The growing use of TRAPs and other stay-or-pay employment terms to block workers from moving for better jobs is a flagrantly unfair method of competition, an effort by employers to hold back workers from pursuing higher wages or better working conditions. As the FTC moves forward with this rulemaking, it's important that a final rule covers functional non-competes like TRAPs and other forms of employer-driven debt for all workers. Thank you for your time today.

Peter Kaplan:

Thanks Mike. Our next speaker is Art Cormier. Art?

Art Cormier:

Good afternoon. I'm speaking to you on behalf of the Independent Association of Home Instead Franchisees, whose membership contains the majority of the network's franchisees in the United States. We ask that if the FTC decides to protect employees from non-competes in the employment context, that it likewise protects franchisees from non-competes in the franchising context. Although non-competes are in theory there to protect the interest of the franchisor in things like trade secrets and confidential information, in reality they are often used to oppress franchisees by imposing an enormous economic penalty should the franchisee desire to leave the system or should the franchisor terminate the franchise relationship. The mere threat of that ruinous economic penalty has a chilling effect, and will likely have a chilling effect on the FTC's ability to get full information from franchisees in this process.

But it also has an anti-competitive effect. Like the employee who may be blocked from pursuing other opportunities because of a non-compete, the franchisee is effectively blocked from pursuing other opportunities, including breaking out on his or her own and experimenting with their own innovative ideas. This suppresses overall innovation and competition in the American economy. With respect to the interest of the franchisor in protecting things like trade secrets and confidential information, we believe these concerns are generally inflated or created to justify the imposition of a non-compete and thereby obtain the enormous leverage that comes with that. But to the extent such interests do legitimately exist, they are adequately protected by a damages remedy. Moreover, if the non-compete prohibition takes effect without including franchisees, it will put franchisees in an even worse position than they currently are in. Their employees, who often have access to the same information from the franchisor as the franchisee does, will

Art Cormier:

Be able to go out and innovate and compete, but the franchisees themselves will remain effectively blocked from doing so. Franchisees should be permitted to innovate and compete as well. Thank you.

Peter Kaplan:

Thanks. Our next speaker is Eric Poggemiller. I'm sorry if I messed up your name. Poggemiller.

Eric Poggemiller:

You got it right. Thank you.

Peter Kaplan:

Eric?

Eric Poggemiller:

Yeah, I'm here.

Peter Kaplan:

Your turn.

Eric Poggemiller:

Okay. Yeah. I'm an attorney who represents small to medium sized businesses, and I definitely believe that there should be carved outs for senior executives and for employees with access to sensitive technological information, for several of the reasons previously mentioned.

I believe to do otherwise is going to stifle innovation. Businesses already take a big risk by investing a significant amount of money into projects that may not pan out, and to take the further risk that those employees can immediately take that know-how to a competitor may lead to businesses just opting not to take that risk and not want to throw the money at it, and as Emily eloquently mentioned earlier, NDAs cannot make an employee forget what he's learned or allow an employer to monitor what's being disclosed. So those are not an adequate tool for the employer.

Now, large businesses might be able to absorb that risk, but smaller ones will not. This will lead to fewer job opportunities for workers in the tech field, not more, as smaller businesses will exit the marketplace leading fewer employers in the industry.

To further comment on the retroactive rescission, this creates a large burden on businesses who will have to dig up any contract, including contracts with independent contractors that had signed in the past, trying to dig up contact information, follow up to make sure that their notice was received. As the FTC is already aware, these agreements are already limited in time, in any event, in order to be enforceable, so they would eventually expire before too long, in any event.

There's also kind of been this presumption here today that these are all non negotiated, and that is not always the case, as many of these have been signed as part of a negotiated severance payment, which the employee is not otherwise entitled to. Sometimes they're granted as part of a stock grant. If these contracts are rescinded, rescission typically restores the parties to the position that the occupied prior to the contract. So would the employer then be entitled to sue the employee to require a repayment of any consideration that's granted.

I would further ask that these limitations on non-competes be left to the laboratories of democracy and known as in states, because they've vaguely demonstrated the ability to do this in the past, and it's clear from the FTC's request for comments that it currently lacks the necessary information to know how wide or narrow to make this rule. So that's as good as an argument as any for caution in this area.

So in conclusion, I would just ask that this rule, if it is to go forward, to have a carved out for executives and for employees possessing sensitive information, I would further ask that these not be applied retroactively. Thank you.

Peter Kaplan:

Thanks, Eric. Our next speaker is Hillard Taylor. Hillard?

Hillard Taylor:

Yes, how are you doing? My name is Hillard Taylor, and I am a US Army veteran, and I worked for a company for a year, and I had no knowledge of anything that the company does, or any trade secrets or anything of that sort. The company came in one day and they let go of 500 and something odd employees. Nine months after that, I received an email from my former employer stating that I had helped a friend of mine start his own business, and was therefore in violation of the non-compete agreement. I had no idea that I was even under a non-compete agreement, and so when I went back to read the non-compete agreement, I learned that I had indeed signed a non-compete agreement for 10 years. So they had a non-compete agreement against me that was enforceable for the next 10 years, meaning that if I wanted to compete, go work for another company that essentially did the same thing they did, that I would be unable to.

I am currently being sued by my former employer, and we have a litigation or a mediation scheduled for next month, and they're suing me in the tune of \$250,000. I have not worked since I worked for them, but they're still trying to sue me for \$250,000, and not that I worked for another company, just on the strength that they think I gave someone else some information to start another company. I think I'm not really abreast on the ban. I think it should be either adjusted or done away with altogether, and so I just want to bring in my support today on banning those non-competes, and especially ones that hold you hostage for a period of 10 years. I think that is very excessive.

Peter Kaplan:

Thanks, Hillard. Our next speaker is Amy Shulman. Amy?

Amy Shulman:

Good afternoon. Thank you Commissioner Kahn and the FTC for allowing us to speak today. I am a partner in the Executives and Professionals Group and the Medical Professionals Employment Group at Outten & Golden, a national law firm representing individual employees, including many physicians, technology workers and other workers and industries covered here today. We fully support the FTC's ban for the reasons that have been shared by many here today.

I would like to focus my comments on the healthcare industry. As the physicians who spoke earlier aptly described the deleterious effects of non-competes on physician's abilities to practice, I would like to call attention to the fact that healthcare is one of the most regulated industries in the country, and that is because of the recognized need to protect the public.

The problem is that non-competes completely take away patient choice from seeing the physician of their choosing. Doctors are frequently subjected to non-competes that prohibit them from practicing in a geographic area that is within reach of the patients they have served for many years, and because of the high level of merger and acquisition activity in the healthcare space, they frequently, even if there is a somewhat narrowly tailored geographic restriction, have limited options to no options to go outside that geographic area to practice.

We further fully support the ban of non-competes at all income levels and at all positions within companies. The notion that someone should be forced to...

Peter Kaplan:

Thanks, Amy. You're over your two minutes. Can you wrap up?

Amy Shulman:

Sure. The notion that someone at any income level should be forced to sit out from their career for a period of time simply because they want to change jobs is an unjustifiable, Draconian punishment.

Peter Kaplan:

Thanks Amy. Our next speaker is Lynn Bernabei. Have I got that right? Lynn?

Lynn Bernabei:

Thank you. I am from the law firm of Bernabei and Cabot, and I'm testifying on behalf of the National Employment Lawyers Association, which is the largest group of lawyers representing workers in labor and employment disputes.

I'd like to address specifically the harm to low wage workers from non-competes. Specifically, these are the people who were called essential workers during the pandemic, and I think banning non-competes would be the best way you could thank them for their service.

There are three specific problems I want to identify. First, non-competes keep low wage workers locked into bad jobs because they, because of the geographical restrictions, cannot search for jobs, except for very far away from where they work or where they live. These are the people that already are taxed by not being able to live near their workplace because of the high cost of housing in urban areas.

Second, these low wage workers do not have the funds to legally challenge non-competes, even those that are over broader or legal. In fact, as we've heard today, even executives and professionals do not have those funds.

Third, non-competes can force low wage workers to put up and not report on the job discrimination and dangerous working conditions, because if they do so, their employers will fire them, and then they'll be

subject to non-competes. So in this way, non-competes actually impair the effective enforcement of the anti-discrimination and whistleblower statutes. So just say that the last two issues I raised affect employees of every strat, not just low wage workers. They affect professionals and professionals and even executives, and Neil would strongly support and will submit written comments supporting the total ban.

Peter Kaplan:

Thanks, Lynn. Our next speaker is David Wert. David?

David Wert:

Hi, my name is David Wert. I've owned a senior home care franchise for 16 years. I'm directly hurt by the non-compete. All franchisees live under the threat that their franchise contract will change for the worse and they can't get out. I'm embarrassed to come to you asking for help when I know you have so many initiatives on your plates, but my ask is simple enough.

Franchisees are simply looking to be included in the total banning of non-compete agreements, if that passes for everyone else. We have nowhere else to turn. We're treated like sitting ducks all across the country. It's far too easy for the franchisor to take excessively from the franchisee, and the non-compete is the tool that allows them to get away with it.

The franchise rule was a big step in forcing clarity and franchise agreements, but the protections only helped us get a fair picture for what we were buying. After the sale, franchisors run rampant every year making their franchise contract renewals a worse deal, and they threaten to terminate owners that don't do exactly what they want.

My original contract was fine, but in my renewal I will have to agree to things no worker in their right mind would agree to. They do more damage than just restricting movement. My franchisor knows I will lose everything, so I can't walk away, and the non-compete enables this poor behavior.

For tens of thousands of franchisees, eliminating the non-compete will force franchisors to write a slightly more fair contract, and it will help competition thrive and keep prices down.

In conclusion, the consequences are enormous for tens of thousands of operators that are not adequately protected against the abusive practices of franchisors. If we don't include franchisees now with everyone else, who knows when this needed fix will be on the table again? You can take the bold step and fix it. I respectfully ask you to include me in the non-compete ban. My wages are affected too, and franchisees receive no stock options or anything else for their non-competes.

Peter Kaplan:

Thanks David. Thanks, Brian.

David Wert:

The ability to walk is the foundation block of any negotiation. Thank you.

Peter Kaplan:

Thanks, David. Our next speaker is Brian Walsh. Brian?

Brian Walsh:

Hi Peter. Thank you. Hello, my name is Brian Walsh, and I'm the director of Labor and Employment Policy at the National Association of Manufacturers. The NAM is the largest manufacturing association in the United States, representing over 14,000 manufacturers, which are in every industrial sector in all 50 states.

I'd like to begin by thanking the staff at the FTC for hosting its forum on its proposed rule to ban non-compete clauses. Manufacturing competitiveness and innovation relies on an employer's ability to protect its patents, trade secrets, industrial processes, research and development and other proprietary information. Non-compete agreements are instrumental to safeguarding this competitive edge. Despite the agency's articulated concern over non-compete agreements, manufacturers apply these agreements in a narrow and deliberate way, viewing them as critical tools to protect innovation and human capital.

Typically, a non-compete is used for individuals who have access to the highest and most sophisticated knowledge of a company's processes and strategies. Employers have identified these employees as a key to their success, and invested not only time, but significant compensation and training to support and advance these employees' expertise. Without access to non-compete agreements, it'll become harder for manufacturers to protect company assets, leading to dramatic changes to business operations and strategy.

This one size fits all proposal is unworkable, and has the power to allow for trade secrets and other types of closely held company information to be more freely given away to competitors and foreign adversaries by departing employees.

Another risk of the ban is that employers will develop more internal controls that change the nature of the workplace. These strategies could result in less training across divisions and potential isolation of employees to fulsomely protect a company's IP and sensitive information. These new safeguards will only increase costs and discourage innovation.

In addition to the stated reasons I have offered an opposition to the rule making, the authority of the FTC to issue a blanket ban on non-compete agreements in question, this novel rulemaking poses policy questions of vast economic and political significance beyond the scope of the FTC. The regulation of non-compete agreements has been handled successfully at the state level and manufacturers [inaudible 02:44:27].

Peter Kaplan:

Thanks, Brian, can you wrap up? You had your two minutes.

Brian Walsh:

Absolutely. Basically, we want you to consider a more tailored approach and rethink this rule and withdraw it, and actually, please extend the comment period by another 60 days. Thank you.

Peter Kaplan:

Thanks, Brian. Our next speaker is Boyd Sumner. Boyd?

Boyd Sumner:

Yes, I'm a former executive for a global corporation where I'm under a five year non-compete, but it's also geographically global. So wherever I move, I can't work in the industry. When I'm fully supporting the FTC ban on non-competes and supporting the Workforce Mobility Act where it has, for executives, the maximum of a one year non-compete ban, but ultimately, when you work for a company for 25

years and you have a carve out in your non-compete to do something, I was then served with a lawsuit against my former company, where I had to pay their legal fees as well.

So I had to settle and resign from my new position because they forced me into having hundreds of thousands of dollars in legal bills, and I don't believe it should be at the state level, because large corporations would allow their legislation or their contracts to be written out of states that favor them. So right now, my contract, even though I live in California, is written out of Missouri, where they favor non-competes for employers, so I'm limited in my scope of future employment, so I fully support the FTC's ban on non-competes at all levels. Thank you.

Peter Kaplan:

Thanks, Boyd. Our next speaker is Shari Goodstein. Shari?

Shari Goodstein:

Yes, thank you commissioners and staff for the opportunity to speak before the commission. I'm a partner at the Goodstein Law Firm and Employment Law Firm, and I'm speaking today on behalf of the National Employment Lawyers Association, the New York chapter, and I'm going to focus on employees in the finance sector, and I'm going to share some examples of the limitations imposed on those employees' mobility and suppression of wages.

Our new attorneys see in our practice how employees at all income levels and at all age levels are adversely affected by non-competition agreements. In particular, it really affects young people in their twenties and thirties, but it affects all employees, limited by these very over broad non-competes that actually are not geographically restricted and are not limited to protect the legitimate business interests of the employer. So let me just give you a few examples, because I think that that speaks a lot.

I represented a employee in her twenties at a hedge fund industry. She wanted to leave for a much better position. She had a 12 month non-compete that said that she couldn't compete with any entity that directly or indirectly competed with a firm, and the indirect language is very, very common in non-competes in general, but certainly in the financial sectors industry. The firm took the position that indirect meant any company in the finance industry, even those companies that had nothing to do with the kinds of responsibilities and services that she was involved in, and the general counsel of the hedge fund was not able to provide any legitimate business reason for the restriction, and insisted that certain kinds of information that the employee had access to was highly proprietary, highly confidential, but in fact, on inquiry, we saw that that information was widely publicized on websites.

Peter Kaplan:

Thanks, Shari. I'm sorry. You ran your two minutes. Thanks a lot, though, for your comment. Our next speaker...

Shari Goodstein:

[inaudible 02:48:16] be submitting written comments, and we appreciate that.

Peter Kaplan:

That's great. Absolutely. Our next speaker is Sam Westgate. Sam?

Sam Westgate:

Yes. Thank you.

I'm here on behalf of the Amusement and Music Operators Association. Our 75 year old association represents operators, distributors, manufacturers and suppliers of coin-operated amusement products. AMOA membership is made of multi-generational small business owners who operate across the United States.

We are deeply concerned that if non-compete agreements are not allowed for key employees, the revolving door for those employees could eventually force smaller companies out of business, as they're constantly training new competition, and sensitive internal information is readily available to competitors. It's been our experience that it's very difficult to prove a violation of a non-disclosure agreement. When the NDA is tied to a non-compete violation, the NDA of sharing if trade secrets is less likely to occur. It was stated that eliminating non-compete agreements will drive employees wages higher. We respectfully disagree. Ross used the term average worker. We only ask highly compensated key employees to have a non-compete clause as part of the employment agreement. They're thus compensated for non-compete non-disclosure clauses.

The employment agreements will guarantee them jobs, wages, wage increases, benefits and opportunities. The employees truly have access to sensitive information that would be detrimental to our businesses if easily obtained by our competitors. The bulk of our workforce is not asked to sign non-compete agreement.

[inaudible 02:49:51] business is geographically restricted in most cases, our non-compete agreements only apply to our current business operating areas. Our industry is also currently experiencing quite a few mergers and acquisitions. Without non-competes, a larger company could force a smaller company out of business by simply poaching their key employees. We strongly believe that not being able to go negotiate employment agreements to non-compete clauses will lower the value of businesses to the buyers and the sellers. We appreciate the ability of comment. Thank you.

Peter Kaplan:

Great. Thanks, Sam, and we have run out of time, so that's going to conclude our comments for members of the public. As I mentioned earlier, we had a large number of people sign up to speak, and because of that, we weren't able to get quite to everybody, but if you did not get a chance to speak, we very much encourage you to submit comments in writing using the link on ftc.gov, and now I will turn things over to Commissioner Bedoya for some final thoughts. Commissioner Bedoya?

Commissioner Bedoya:

Thank you, Peter. I want to thank every single person who signed up to speak today. Even if you weren't heard, I want to urge you to please comment in the open proceeding. I want to thank Elizabeth Wilkins and the extraordinary work that she and her staff are doing at the Office of Policy Planning, and of course, my colleagues at the commission for this session, and yourself, and Doug and everyone at the Office of Public Affairs.

I want to note three takeaways for me from this session that I think respond to some of the misconceptions that have grown up around non-competes, and that a lot of people who aren't familiar with them and how they operate might think at first blush.

The first one is this idea that non-competes are just a problem for blue collar workers, for, say, entry level workers at a fast food restaurants. We heard today from an oncologist and a radiologist, Dr. Beg and Dr. Mosingali. Yes, these are sophisticated professionals, I suspect are high wage earners, but what they shared was that this was not... Non-competes for them were not something that they negotiated. This was something that was imposed on them, and this is something that impacted their ability to provide healthcare and impacts that ability to this day, and that impacts their families. I believe Dr.

Mosingali talked about having to "move her family out of state" just to practice her profession, her licensed profession, I might add. I think she talked about having to move her three children twice as a result of the non-competes she was subject to.

So I think we need to ask ourselves, in the current environment, just two years, three years after COVID, if this kind of impact on competition in the healthcare market is something that our country needs, and something that is good.

The second is this misconception, I think, that the NPRM somehow portrays senior executives as weak market actors who need protection. I want to be really clear, the NPRM was very carefully drafted, and it offers not one, but two separate, closely related, but separate grounds for the proposed ban.

The first is coercive and exploitative conduct, and the second is harm to competitive conditions, and I might add, these grounds are grounded in case law before the Supreme Court and the circuit courts that FTC staff reviewed closely and included in the proposed NPRM, and that I myself reviewed, and my colleagues.

I want to point out that the NPRM does not assert, I repeat, does not assert that senior executives are somehow subject to coercion and exploitation. Rather, it relies on evidence in line with what Ross Baird shared, which is that non-competes for senior executives do harm competitive conditions. The NPRM cites evidence that non-competes for the senior executives may impede the creation of new competitors, new businesses, businesses that are the lifeblood of this economy, and we cite evidence that non-competes for senior executives impede the creation of new jobs and fundamentally change the competitive conditions in this country for new businesses for the worst. So I want to clarify that and that is something that jumped out at me from today's session.

Thirdly, I want to speak to this idea that non-competes may be harmful in some instances, but people will have their day in court. I think one of the most compelling aspects, for me, of this NPRM is its clarity. Is that it doesn't turn on this apparent benefit of the day in court, and I was really struck by the remarks of Mr. Kalish, and the remarks of Courtney Van Kott, who explained that when a regular person is faced with potential enforcement of a non-compete, it isn't a simple matter of, "Well, go to court, tell your story, and maybe you'll win." I believe Mr. Kalish said "they will go bankrupt", and that certainly, unfortunately sounds like what Courtney Van Kott and folks like her have experienced. Ms. Van Kott shared that she's faced four years of protracted litigation, four years that have required her to get a second job as a legal assistant separate from her main job just to pay for this litigation to pay for her right to work.

So these are three things that jumped out at me, and that I'll take with me. However, I should add that we are eager to read the full docket of comments once it is submitted. This is a complicated area and complex area, and one in which we benefit greatly from more feedback, input and comments.

I want to add that I listened very closely to the remarks of the franchisees who spoke today and shared their experiences, and I'm particularly keen to understand how non-competes affect franchisees and their ability to compete, and their ability to succeed as businesses, and their shot at a level playing field, and what, in their view, may be coercive or exploitative conditions in which they were imposed, and so that's something I'm particularly looking forward to reading comments about.

With that, I believe today's session is closed, and Peter, I'm not sure if I turn it back to you, I should know this, or if I should declare the session closed. I'll let you jump in for a second, and in that case, I will close today's session and open comments, in this context, for then non-compete rulemaking, and look forward to reading the full docket once it is complete. Thank you very much, and have a great day.