



Office of Commissioner
Alvaro M. Bedoya

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Oral Statement of Commissioner Alvaro M. Bedoya
on the FTC's Issuance of the Non-Compete Clause Rule**

April 23, 2024

When staff first presented me with this proposal, I saw right away the need to do this for low-income workers and middle income workers. Banning people from working is coercive. It's exploitative. It is all the things that the caselaw says we have the authority to stop.

But honestly, I had doubts about how appropriate this was for high-income earners. I had questions about our ability to enact this ban through a rule, rather than through individual enforcement actions. And I had questions about our ability to override weaker standards in the states.

So I started reading the caselaw. And I saw that there is binding caselaw from the second-highest court in the land saying that we have the authority to issue rules like this.¹ Saying that it was arguably *better* to make these changes through an open-door rulemaking process open to the public – rather than through one-off, closed-door adjudications.² And then I saw that there were numerous instances in which the Commission had stepped in to enact protections through rules when state law was not enough.

Then I started reading the record and comments of physicians who had their lives upended by non-competes. Doctors who had to move their families or leave the state just so they could practice medicine. A pandemic killed a million people in this country. And there are doctors who cannot work because of a non-compete.

And then I started reading the extensive economic evidence in the record which shows how, for the highest income earners – for the senior executives, the folks you really can't say have been coerced – *those are precisely the people who are most likely to open new businesses and create new jobs for other people*. And so a non-compete doesn't just stop *them* from competing. It eliminates competition for everyone.

¹ “[Section 6g of the FTC Act] is as clear as it is unlimited: ‘The Commission shall also have power to make rules and regulations for the purpose of carrying out the provisions of [Section 5].’ Ambiguous legislative history cannot change the express legislative intent. The Commission is using rule-making to carry out what the Congress agreed was among its central purposes: *expedited administrative enforcement of the national policy against monopolies and unfair business practices*.” Nat'l Petroleum Refiners Ass'n v. F.T.C., 482 F.2d 672, 693 (D.C. Cir. 1973) (emphasis added).

² *Id.* at 690 (“There is little disagreement that the Commission will be able to proceed more expeditiously, give greater certainty to businesses subject to the Act, and deploy its internal resources more efficiently with a mixed system of rule-making and adjudication than with adjudication alone.”).

This is how I went from being a skeptic to a strong supporter of this rule. I am proud to vote for it.