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

Office of the Chairman

Statement of Chairman Andrew N. Ferguson
Joined by Commissioner Melissa Holyoak
In the Matter of Gateway Pet Memorial Services
Matter Number 2210170

September 4, 2025

The Commission today acts to protect nearly 1,800 workers against unlawful noncompete agreements. It does so by issuing an administrative complaint and accepting for public comment a proposed consent agreement with Gateway Services, Inc. and its wholly owned subsidiary, Gateway US Holdings Inc. (collectively, "Gateway").[1] I write for two reasons. First, to highlight the Trump-Vance FTC's commitment to enforcing the law vigorously against those who demand their employees enter into noncompete agreements so pernicious and so onerous as to make them anticompetitive. Second, to address in the context of this matter the fact-specific approach and considerations that govern the Commission's evaluation of noncompete agreements.

I

I have long said that the antitrust laws serve to protect workers, and that the Commission should devote resources to protecting competition in labor markets.[2] Indeed, the launch of the Commission's Joint Labor Task Force earlier this year, at my direction, reflects that the agency feels workers' pain.[3] "A healthy labor market is critical to the country's success" but, unfortunately, "anticompetitive employer labor practices are widespread."[4] That reality is why the Task Force is prioritizing rooting out and prosecuting deceptive, unfair, and anticompetitive labor-market practices that harm American workers.[5] These practices include noncompete agreements,[6] which generally are contracts in which an employee agrees not to work for his or her employer's competitor after his or her employment.

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[1] Complaint, *In re Gateway Pet Memorial Servs.*, Matter No. 2210170 (Sept. 4, 2025) ("Complaint"); Decision and Order, *In re Gateway Pet Memorial Servs.*, Matter No. 2210170 (Sept. 4, 2025) ("Order").
[2] See, e.g., Statement of Comm'r Andrew N. Ferguson Concurring in Part and Dissenting in Part, *United States v. Lyft, Inc.*, Matter No. 2223028, at 14 (Oct. 25, 2024); Dissenting Statement of Comm'r Andrew N. Ferguson, *In re Guardian Serv. Indus.*, Matter No. 2410082, at 1 (Dec. 4, 2024) ("Ferguson Guardian Statement"); Concurring Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In re Planned Building Servs.*, Matter No. 2410029, at 1 & n.9 (Jan. 6, 2025) ("Ferguson Planned Statement").
[3] Press Release, FTC, FTC Launches Joint Labor Task Force to Protect American Workers (Feb. 26, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-launches-joint-labor-task-force-protect-american-workers ("FTC Labor Task Force Press Release").
[4] Memorandum from Chairman Andrew N. Ferguson, Directive Regarding Labor Markets Task Force, FTC (Feb. 26, 2025).
[5] See FTC Labor Task Force Press Release.
[6] *Id*.

The Commission's history with noncompete agreements is complicated. Before 2023, the Commission had never enforced the antitrust laws against a noncompete agreement between an employer and employee.[7] Then, in January of 2023, the Biden Commission settled three enforcement actions involving noncompete agreements for security guards and glass manufacturing workers.[8] Those settlements were basically the beginning and the end of the Biden Commission's law-enforcement efforts against noncompete agreements. The very next day, the Commission launched a gargantuan seventeen-month rulemaking that culminated in a final rule purporting to ban almost every noncompete agreement in the country.[9] After opening the rulemaking, the Commission brought only one more enforcement action against noncompete agreements.[10]

The Democrat Commissioners' choice to throw thousands of manhours into the rule was indefensible. The rule was obviously unlawful. Commissioner Holyoak and I explained at great length the many ways in which the rule violated the Federal Trade Commission Act ("FTC Act"), the Administrative Procedure Act, and the Constitution.[11] The courts unsurprisingly agreed, and the rule was vacated before it went into effect.[12] The rule therefore has not protected a single worker.

That means that for all the Democrat Commissioners' rhetoric about the dangers of noncompete agreements, the Biden Commission produced only four settled enforcement actions and a failed rule in four years. The immense resources expended on the rule's promulgation and defense could have instead been expended on investigating and litigating specific cases that could have protected thousands of workers. Instead, the Commission spent it all on a rule that protected none.

The rule's vacatur does not prevent the Commission from doing what it should have been doing all along—addressing noncompete agreements through enforcement actions against companies that misuse them in violation of the law. The Commission's enforcement actions, including consent agreements, have a much wider effect than just on the direct subjects of those actions. They set forth, one reasoned decision at a time, the Commission's view of what

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[7] Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In the Matter of the Non-Compete Clause Rule*, Matter No. P201200, at 5–6 (June 28, 2024) ("Ferguson Noncompete Rule Dissent").

[8] See Complaint, *In re Prudential Security, Inc. et al.*, Matter No. 2210026 (Jan. 4, 2023); Complaint, *In re O-I Glass, Inc.*, Matter No. 2110182 (Jan. 4, 2023); Complaint, *In re Ardagh Group S.A. et al.*, Matter No. 2110182 (Jan. 4, 2023).

[9] Final Rule, Non-Compete Clause Rule, 89 Fed. Reg. 38342 (May 7, 2024).

[10] See Complaint, *In re Anchor Glass Container Corp. et al.*, Matter No. 2110182 (Mar. 15, 2023).

[11] Ferguson Noncompete Rule Dissent at 5 ("There is no tradition of federal regulation of noncompete agreements."); *id.* at 9–20 (explaining that the FTC Act did not provide authority for the Rule); *id.* at 21–34 (explaining that, even if the statute provided authority for the Rule, Congress could not have delegated its authority to legislate through the statute); *id.* at 34–45 (explaining that, in any event, the Rule violated the Administrative Procedure Act); Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In the Matter of the Non-Compete Clause Rule*, Matter No. P201200, at 3–9 (June 28, 2024) (explaining that the text and structure of the FTC Act does not authorize competition rulemakings); *id.* at 9–14 (confirming by looking to the Commission's historical interpretation that the FTC Act does not authorize competition rulemakings); *id.* at 16–18 (showing that empirical evidence fails to support the Rule).

[12] *Ryan, LLC v. FTC*, 746 F. Supp. 3d 369 (N.D. Tex. 2024) (vacating the Commission's Non-Compete Clause Rule).

circumstances make a particular practice lawful or unlawful under Section 5 of the FTC Act.[13] A steady stream of enforcement actions against an unlawful practice provides the markets with transparency about what the agency believes the law requires—transparency that is very important in the application of generally worded statutes like Section 1 of the Sherman Act and Section 5 of the FTC Act. In response, market participants will often shift their behavior to comply with the agency's articulated understanding of the law.

All this to say that addressing noncompete agreements through continued enforcement actions will secure real, enduring relief for American workers. Today's Commission action rightfully does just that.

II

A

Noncompete agreements have been around, and subject to scrutiny, for more than half a millennium. Medieval English law generally proscribed them precisely because they interfered with an individual's right to ply his or her trade.[14] So pernicious was "the mischief which may arise … to the party, by the loss of his livelihood, and the subsistence of his family," and "to the publick, by depriving it of an useful member."[15] The dangers of noncompete agreements are obvious: they limit worker mobility, and as a result can impede workers' ability to negotiate better employment terms, among other anticompetitive effects. As a result, all fifty States regulate them extensively.[16]

But not all noncompete agreements are unlawful. As I have said before, "sometimes noncompete agreements have anticompetitive effects, and other times they have procompetitive effects."[17] For example, noncompete agreements can promote investment in employees by mitigating the risk that a rival will lure employees away.[18] And noncompete agreements can allow business owners to sell their enterprise profitably because no one would buy a business if the seller could immediately compete again in the same field.[19] The common law recognized this fact and abandoned the categorical proscription in the early eighteenth century in favor of a case-specific

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[13] See Ferguson Planned Statement at 4; Remarks of Deborah L. Feinstein, The Significance of Consent Orders in the Federal Trade Commission's Competition Enforcement Efforts, at 4 (Sept. 17, 2013) ("[C]onsents can provide significant guidance as to how the Commission views the competitive issues raised by a particular transaction or conduct."); see also Daniel J. Solove & Woodrow Hartzog, The FTC and the New Common Law of Privacy, 114 Colum. L. Rev. 583, 585 (2014) ("[C]ompanies look to these [consent] agreements to guide their decisions regarding privacy practices.").

[14] *Darcy v. Allein*, 77 Eng. Rep. 1260, 1263 (K.B. 1603) ("[E]very man's trade maintains his life, and therefore he ought not to be deprived or dispossessed of it, no more than of his life."); *Corfield v. Coryell*, 6 F. Cas. 546, 551–52 (C.C.E.D. Pa. 1823) (including the practice of one's chosen trade among the privileges and immunities of "citizens of all free governments"); *Golden Glow Tanning Salon, Inc. v. City of Columbus*, 52 F.4th 974, 982–84 (5th Cir. 2022) (Ho, J., concurring) (expounding the history of Anglo-American protections of the right to "pursue one's occupation against arbitrary government restraint").

[15] *Mitchel v. Reynolds*, 24 Eng. Rep. 347 (Q.B. 1711).

[16] Ferguson Noncompete Rule Dissent at 3–5.

[17] *Id*. at 35.

[18] *Id*. at 41–42.

[19] *Id*. at 2–3.

reasonableness test.[20] Indeed, the first application of what we today call the "rule of reason" was in a case testing the validity of a noncompete agreement.[21]

The Commission continues to apply a case-specific approach to assessing the lawfulness of noncompete agreements. Here, evidence obtained during the Commission's investigation gives me reason to believe that Gateway's particular use of noncompete agreements violates Section 5 of the FTC Act.[22]

Gateway is the largest pet cremation services company in the United States. It serves veterinarian practices and pet owners directly.[23] Gateway operates over 100 cremation facilities from which the company's nearly 2,000 U.S.-based employees serve 17,000 veterinary clinics across North America.[24] In 2019, Gateway began requiring noncompete agreements for all new employees, regardless of their responsibilities.[25] The Complaint alleges that these agreements are neither reasonable in scope nor justified to protect a legitimate business interest.

The noncompete agreements prohibit Gateway's employees—with the exception of those in California, where such agreements are banned—from working in the pet cremation industry anywhere in the United States for one year after their separation from Gateway.[26] So although limited in duration, the vast geographic scope is overbroad as it effectively requires workers to exit the pet cremation industry within the United States entirely for a year.[27]

Gateway's noncompete agreements also apply indiscriminately to highly compensated executives and hourly workers in relatively low-skill positions alike.[28] For example, Gateway's noncompete agreements apply to drivers who pick up deceased pets, as well as crematory workers who process ashes and prepare paw print mementos.[29] These workers are critical to providing cremation services, and they make up the vast majority of Gateway's employees,[30] but their job duties do not require extensive training that might justify some noncompete restrictions.[31]

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[20] *Id*. at 35 & Section I.B.
[21] *Nat'l Soc'y of Pro. Eng'rs v. United States*, 435 U.S. 679, 688–89 (1978).
[22] 15 U.S.C. § 45(b); *FTC v. Standard Oil of Cal.*, 449 U.S. 232, 241 (1980); see also *AMREP Corp. v. FTC*, 768 F.2d 1171, 1177 (10th Cir. 1985); *Boise Cascade Corp. v. FTC*, 498 F. Supp. 772, 778–79 (D. Del. 1980).
[23] Complaint ¶¶ 6–7.
[24] *Id*. at ¶ 7.
[25] *Id*. at ¶ 8.
[26] *Id*. at ¶¶ 8–9.
[27] Courts have found geographically overbroad noncompete agreements unenforceable. See, e.g., *NanoMech, Inc. v. Suresh*, 777 F.3d 1020, 1024–25 (8th Cir. 2015) (finding a global noncompete clause facially overbroad and thus unreasonable and unenforceable); *Cottman Transmission Sys., LLC v. Gano*, No. 12–cv–05223, 2013 WL 842709, at *8 (E.D. Pa. Mar. 7, 2021) (holding a three-mile restriction around every location of the employer worldwide overbroad and unreasonable and limiting the restriction to a three-mile radius around locations in the Greater Pittsburgh Area); *GPS Indus., LLC v. Lewis*, 691 F. Supp. 2d 1327, 1336 (M.D. Fla. 2010) (finding a global noncompete agreement overbroad).
[28] Complaint ¶¶ 8–10.
[29] *Id*. at ¶ 10.
[30] *Ibid*.
[31] See Ferguson Noncompete Rule Dissent at 41–42. Cf. Ferguson Guardian Statement at n.17 ("Potential procompetitive justifications, i.e., legitimate objectives, in these circumstances could include [a company] seeking to

Additionally, Gateway demanded noncompete agreements from workers they terminated only weeks later, or in areas where Gateway exited operations when it closed dozens of facilities from 2020 through 2023.[32] Gateway also sought to secure noncompete agreements from employees it might acquire as part of a transaction.[33] And Gateway knowingly wielded noncompete agreements to erect barriers in circumstances where it faced what it perceived to be tougher competition.[34] All of these facts combine to curtail worker mobility and workers' ability to negotiate better employment terms, and present an entry barrier in the pet cremation industry.[35]

The attuned reader may notice some similarity between my analysis here and the common-law reasonableness inquiry applied by many state courts when assessing the lawfulness of noncompete agreements, which asks whether the restriction is no greater than necessary to protect the employer's legitimate interests, and balances those interests against the hardship inflicted on the employee and any potential injury to the public.[36] That similarity is not a coincidence. The first time a court ever deployed the rule of reason to assess the lawfulness of an agreement in restraint of trade was in *Mitchel v. Reynolds*, an English case involving a noncompete agreement.[37] Even today, the Supreme Court treats the rule announced in *Mitchel* as "a standard for testing the enforceability of covenants in restraint of trade which are ancillary to a legitimate transaction, such as an employment contract."[38] This rule of reason for noncompete agreements was well established in the common law when Congress adopted both the Sherman Act and the FTC Act.[39] The Supreme Court has since interpreted the FTC Act to incorporate the Sherman Act's prohibition on unreasonable restraints of trade, and the Sherman Act incorporates the rule of reason for assessing whether an agreement is an unlawful restraint of trade.[40] The Sherman Act "invokes the common

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recoup any costs for the training of and investment in its workers …"); *Giordano v. Saks Inc.*, 654 F. Supp. 3d 174, 201 (E.D.N.Y. 2023) (challenged no-poach agreement involving collaborative business arrangement not unlawful under rule of reason where luxury brands agreed not to poach Saks employees who were trained to sell brand products unless current managers consented or the employee had left Saks at least six months prior).

[32] Complaint ¶ 11.

[33] *Id*. at ¶¶ 11–12.

[34] *Id*. at ¶¶ 12–14.

[35] *Id*. at ¶¶ 15–16.

[36] See Ferguson Noncompete Rule Dissent at 3.

[37] See *id*. at 2–3 (discussing *Mitchel v. Reynolds*, 24 Eng. Rep. 347 (Q.B. 1711)).

[38] *Nat'l Soc'y of Pro. Eng'rs*, 435 U.S. at 689.

[39] John N. Pomeroy, Jr., A Treatise on Equitable Remedies: Supplementary to Pomeroy's Equity Jurisprudence § 294 (1905) ("Where an employee stipulates that he will not engage in similar business within a certain territory for a certain period after the termination of his employment, an injunction will issue to restrain a breach. But where the restraint is unreasonable and extends beyond anything apparently necessary for the protection of the employer, an injunction will be refused."); Frederick Pollock, Principles of Contract: A Treatise on General Principles Concerning the Validity of Agreements in the Law of England 331–32 (3d ed. 1881) ("The contracts in partial restraint of trade which occur in modern books are chiefly of the following kinds …. Agreements by a servant or agent not to compete with his master or employer after his time of service or employment is over…. It seems, therefore, that the only rule which can be laid down in general terms is that the restriction must in the particular case be reasonable. Whether it be so is a question not of fact, but of law.").

[40] See *FTC v. Motion Picture Advert. Serv. Co.*, 344 U.S. 392, 394–95 ("[T]he Federal Trade Commission Act was designed to supplement and bolster the Sherman Act and the Clayton Act—to stop in their incipiency acts and practices which, when full blown, would violate those Acts, as well as to condemn as 'unfair method of competition' existing violations of them.") (internal citations omitted); *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 60 (1911)

law itself,"[41] and the common law forms the backdrop against which Congress enacted the Sherman Act.[42] Although Congress did not fix the antitrust laws' prohibitions to match whatever the common law said in 1890,[43] the common law is at least relevant to determining whether a particular restraint violates the antitrust laws.[44] It is thus perfectly appropriate to look to the common law's traditional application of the rule of reason to a restraint that under modern doctrine is subject to the rule of reason. The common-law balancing test originating in *Mitchel* can be considered a particular application of the rule of reason, which is itself a balancing of anticompetitive effects against procompetitive justifications.[45]

B

The proposed Order protects workers by forbidding Gateway and all other businesses that Gateway controls now or at any point during the ten-year term of the proposed Order from entering into, maintaining, or enforcing noncompete agreements, with limited exceptions.[46] Specifically, first, the proposed Order permits Gateway to enter into noncompete agreements as part of "the sale of a business, provided that individuals subject to such an agreement have a pre-existing equity interest in the business being sold."[47] This exception is consistent with the longstanding common-law rule that noncompete agreements are a valid adjunct to the sale of a business.[48] Second, the proposed Order also excludes certain individual employees from its prohibition.[49] Gateway justified the exclusion of each of these individuals in negotiations with Commission staff. Generally, these individuals represent equity holders, their families, very senior managers, those with outside business relationships with Gateway, or those who otherwise have more unique access

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(announcing the rule of reason as the default standard under the Sherman Act); see also *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018) ("Restraints that are not unreasonable *per se* are judged under the 'rule of reason.'").

[41] *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 732 (1988).

[42] *Standard Oil Co. of N.J.*, 221 U.S. at 50–51 (1911) ("There can be no doubt that the sole subject with which the 1st section deals is restraint of trade as therein contemplated, and that the attempt to monopolize and monopolization is the subject with which the 2d section is concerned. It is certain that those terms, at least in their rudimentary meaning, took their origin in the common law, and were also familiar in the law of this country prior to and at the time of the adoption of the act in question.").

[43] *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899 (2007) ("Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act's prohibition on 'restraint[s] of trade' evolve to meet the dynamics of present economic conditions. The case-by-case adjudication contemplated by the rule of reason has implemented this common-law approach.").

[44] *Standard Oil Co. of N.J.*, 221 U.S. at 60 ("… it was intended that the standard of reason which had been applied at the common law and in this country in dealing with the subjects of the character embraced by the [Sherman Act] was intended to be the measure used for the purpose of determining whether, in a given case, a particular act had or had not brought about the wrong against which the statute provided."); see also *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 775 n.24 (1984) ("Moreover, it is far from clear that intracorporate conspiracies were recognized at common law in 1890.").

[45] See, e.g., *Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49 & n.15 (1977) (citing *Chi. Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918)); *Nat'l Soc'y of Pro. Eng'rs*, 435 U.S. at 689; *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990); *Am. Express Co.*, 585 U.S. at 541–42.

[46] Order at Section II.A. The proposed Order also prohibits Gateway from directly or indirectly, communicating to employees covered by the Order or any prospective or current employer of those covered employees that they are subject to a noncompete agreement. *Id*. at Section II.B.

[47] *Id.* at Section I.G (definition of "Covered Non-Compete Agreement").

[48] See *Bus. Elecs. Corp.*, 485 U.S. at 729 n.3; 15 Corbin on Contracts § 80.7 (2024).

[49] Order at Section I.F ("Covered Employee does not include the individuals listed in Nonpublic Appendix A.").

to competitively sensitive information. Again, this exception is consistent with the general common-law rule that noncompete agreements are justified when they go no further than necessary to protect specific, identifiable, and valid interests of the employer that could not be protected without the noncompete agreement.[50]

The proposed Order additionally limits the scope of Gateway's non-solicitation agreements. Specifically, the proposed Order restricts non-solicitation agreements to customers with whom the employee "had direct contact or personally provided service" in the previous twelve months of their service at Gateway.[51] These additional restrictions are necessary to ensure Gateway cannot circumvent the prohibition on noncompete agreements by enforcing onerous non-solicitation terms that would effectively prohibit employees from starting a competing business. After all, a broad non-solicitation clause that bars employees from working directly with any current or potential Gateway customer would severely inhibit the employee's ability to work in the industry during the term of the non-solicitation agreement, even in the absence of a noncompete agreement.

The proposed Order also contains a requirement that Gateway provide current, former, and new employees with clear and conspicuous notice that they are not subject to noncompete agreements and about the now-narrower scope of their non-solicitation agreement.[52] Other standard provisions include compliance reporting on a standard schedule or additional reporting as the Commission or staff may require, notice to the FTC of material changes to Gateway's business, and access for the FTC to documents and personnel.[53]

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The failure of the Biden Commission's rule does not mean that employers are free to impose noncompete agreements willy-nilly. The antitrust laws protect labor-market competition, and therefore prohibit unreasonable noncompete agreements that limit that competition. Today's proposed Order makes clear that the Trump-Vance Commission will act as a cop on the beat, enforcing the antitrust laws against unlawful noncompete agreements to protect American workers, rather than trying to legislate them away.

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[50] See *Horner v. Graves*, 131 Eng. Rep. 284, 287 (C.P. 1831) (English courts upheld noncompete agreements if "the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is given, and not so large as to interfere with the interests of the public."); 15 Corbin on Contracts § 80.6 (2024) (describing multifactor reasonableness test); Restatement (2d) of Contracts § 188 (1981) (same).

[51] Order at Section II.C.

[52] *Id*. at Section III.B.

[53] *Id*. at Section IV.