



Office of Commissioner
Rebecca Kelly Slaughter

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

Dissenting Statement of Commissioner Rebecca Kelly Slaughter
Regarding the Dismissal of Appeals in Noncompete Rule Litigations

Commission File No. P201200
September 5, 2025

Despite claiming to support American workers, President Trump has, at every turn, thrown workers under the bus to ingratiate himself with corporations and their billionaire CEOs. Another example comes today as the Trump-Vance FTC decides to throw in the towel on years of work by the agency to protect workers from draconian noncompete agreements that lower wages, trap workers in abusive jobs, and even inhibit new business formation. The FTC received 26,000 comments on the rulemaking to ban noncompetes proposed under Chair Khan; 25,000 of those comments supported a categorical ban.¹ Corporations sued to overturn the rule, and different courts came to different conclusions, but the FTC was still fighting to protect workers.

Today, sadly, the FTC's Republican majority decided to throw in the towel. In place of a rule to protect nearly all American workers from abusive noncompetes, the majority offers a one-off settlement and a request for information (as though the record of tens of thousands of comments does not exist). Perhaps the agency is hoping that, by dismissing the Commission's appeals and refusing to continue defending the rule in court, no one will notice that the FTC is choosing the side of controlling bosses over American workers. But every worker trapped by a noncompete who would be liberated by this rule—and that is millions of workers in America—knows the truth.

I dissent, and strongly object, to the dismissal of the appeals and acceding to the decision of the Northern District of Texas. The most important problem here is the substance—the duly promulgated rule, and the millions of American workers and businesses it protects, deserve vigorous defense in court. I've written at length about the importance of the noncompete rule, so I will not rehash those arguments here.² Suffice it to say that the record in the FTC's own rulemaking proceeding made clear that noncompetes not only present barriers to worker mobility

¹ Press Release, Fed. Trade Comm'n, FTC Announces Rule Banning Noncompetes (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

² See Remarks of Comm'r Rebecca Kelly Slaughter Supporting the Final Rule Banning Noncompete Agreements (Apr. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/noncompetes-oral-statement-slaughter.pdf; Statement of Comm'rs Rebecca Kelly Slaughter & Alvaro M. Bedoya on the Notice of Proposed Rulemaking on Non-Compete Clauses (Jan. 5, 2023) https://www.ftc.gov/system/files/ftc_gov/pdf/statement-of-commissioners-slaughter-and-bedoya-on-proposed-rulemaking-noncompete.pdf.



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but also suppress wages,³ prevent new business formation,⁴ and slow innovation.⁵ They even deprive consumers of the better products and better prices we expect from competitive markets.⁶ And if the workers in your field have noncompetes—even if you don’t—the evidence shows your wages get suppressed too, even for workers who are *not* subject to a noncompete themselves.⁷

But process is also a problem: If the agency insists on unwinding this key worker protection, it must follow the legal process of notice and comment set forth by the Administrative Procedure Act. The law does not permit the agency to void this popular rule under cover of darkness by simply withdrawing from litigations.⁸ The law requires that we hear from the American people. In absence of that legally required process, the action the Commission takes today should not hamper the agency in the future.

³ Non-Compete Clause Final Rule, Part IV.B.3.a.ii., 89 Fed. Reg. 38342, 38382–87 (May 7, 2024); Non-Compete Clause Notice of Proposed Rulemaking, 88 Fed. Reg. 3482, 3486–88 (Jan. 19, 2023).

⁴ Final Rule Part IV.B.3.b.i, 89 Fed. Reg at 38389–94.

⁵ Final Rule Part IV.B.3.b.ii, 89 Fed. Reg at 38394–98.

⁶ Final Rule Parts IV.B.3.b.iii and iv, 89 Fed. Reg at 38398–402.

⁷ Final Rule Part IV.B.3.a.ii., 89 Fed. Reg at 38382–876; 88 Fed. Reg. at 3486–88.

⁸ Courts have been clear that, “in rescinding a prior action, an agency cannot simply brand it illegal and move on.” *Louisiana v. DOE*, 90 F.4th 461, 475 (5th Cir. 2024). In fact, forgoing notice-and-comment procedures when agency leaders believe a rule is unlawful “ignore[s] the fact that the question whether the regulations are indeed defective is one worthy of notice and an opportunity to comment.” *NTEU v. Cornelius*, 617 F. Supp. 365 (D.D.C. 1985). The Supreme Court reaffirmed as recently as 2022 that agencies must have a specific reason to forgo notice and comment. *Biden v. Missouri*, 595 U.S. 87, 96 (2022).