

February 28, 2023

To the Members of the United States Congress:

On behalf of the undersigned organizations and our members across the country, we write to unequivocally oppose the Federal Trade Commission's (FTC) proposed rule to impose a nationwide ban on almost all noncompete clauses. The FTC lacks the constitutional or statutory authority to issue such a rule and, in attempting to do so, the agency is improperly usurping the role of Congress.

Moreover, this sweeping rule would invalidate millions of contracts around the country that courts, scholars, and economists have found entirely reasonable and beneficial for both businesses and employees. Accordingly, we ask you to exercise your oversight and appropriations authority to closely examine the FTC's proposed rulemaking.

Congress never granted the FTC the statutory authority to issue rules regulating competition, such as the contractual relationship between employers and employees, which even advocates for action in this area, like Sen. Chris Murphy (D-CT), recognize.¹ Rather, Congress granted targeted statutory authority to FTC to issue rules to protect consumers, such as to prevent fraud and false advertising. The FTC's authority with respect to competition issues is limited to adjudicating individual cases where competition issues are involved where the FTC must consider the factual context and reasonableness of conduct in each such matter.

The FTC has not attempted to promulgate a competition rule for decades, across administrations of both parties. In the past, Congress curbed FTC's excesses with appropriations riders, and we encourage Congress to revisit such tools today.

The Supreme Court recently recognized the important Constitutional limitations on the ability of executive agencies to issue major rules such as that proposed here without clear guidance from Congress. Two years ago in *AMG Capital Management v. FTC*, for example, the Supreme Court unanimously rejected the FTC's claims that it could interpret its own statutes to claim broad authority. In cases involving other agencies, courts have invoked the major questions and non-delegation doctrines to strike down agency excesses and to preserve the role of elected officials in addressing important issues. We urge Congress to reassert its Constitutional role to resolve issues of national importance and limit attempts to usurp this authority through unauthorized regulatory overreach.

Finally, the FTC's blanket ban on noncompete clauses is vastly overbroad and likely will harm both employees and employers. Courts, scholars, and economists all have found that noncompete clauses, when properly used, encourage investment in employees and help to protect intellectual property. Forty-seven states permit noncompete clauses, which have traditionally been an issue of state law.

To be sure, courts do not and should not enforce unreasonably restrictive noncompete clauses, but therein lies the wisdom of our current system: reasonable, procompetitive noncompetes stand, whereas unreasonable, anticompetitive ones fall.

We thank you for your attention to this issue and we ask you to exercise your oversight and appropriations authority to rein in FTC's unauthorized rulemaking banning noncompete agreements.

Sincerely,

National

ACA International

ACT | The App Association

Advanced Medical Technology Association

Aerospace Industries Association

Alternative Investment Management Association

American Bakers Association

American Beverage

American Coatings Association

American Financial Services Association

American Hotel & Lodging Association

American Property Casualty Insurance Association

American Staffing Association

American Trucking Associations

ANA - Association of National Advertisers

Associated Builders and Contractors

Associated Equipment Distributors

Computer and Communications Industry Association

Consumer Brands Association

Consumer Technology Association

Council of Insurance Agents and Brokers

Direct Selling Association

Electronic Transactions Association

Energy Marketers of America

Federation of American Hospitals

FIA Principal Traders Group

FMI - The Food Industry Association

Foodservice Equipment Distributors Association

Heating, Air-Conditioning, & Refrigerant Distributors International

HR Policy Association

Independent Electrical Contractors

Independent Insurance Agents & Brokers of America

Independent Lubricant Manufacturers Association

International Franchise Association

International Sign Association

ISSA, The Worldwide Cleaning Industry Association

Little Mendelson Workplace Policy Institute

Medical Alley Association

Metals Service Center Institute

Mortgage Bankers Association

National Association of Benefits and Insurance Professionals

National Association of Broadcasters

National Association of Convenience Stores

National Association of Electrical Distributors

National Association of Insurance and Financial Advisors

National Association of Mutual Insurance Companies

National Association of Professional Employer Organizations

National Association of Security Companies

National Association of Wholesaler-Distributors

National Council of Chain Restaurants

National Federation of Independent Business

National Independent Automobile Dealers Association (NIADA)

National Mining Association

National Newspaper Association
National Pest Management Association
(NPMA)
National Propane Gas Association
National Restaurant Association
National Retail Federation
National Truck Equipment Association
National Waste & Recycling Association
Reinsurance Association of America
Retail Industry Leaders Association (RILA)
Securities Industry and Financial Markets
Association
SIFMA Asset Management Group
U.S. Chamber of Commerce
Wholesale & Specialty Insurance
Association (WSIA)

Alabama

Mobile Area Chamber of Commerce
Prattville Area Chamber of Commerce
Selma and Dallas County Chamber of
Commerce and Tourism Information

Alaska

Alaska Chamber of Commerce

Arizona

Apache Junction Area Chamber of
Commerce
Arizona Chamber of Commerce & Industry
Arizona Manufacturers Council
Buckeye Valley Chamber of Commerce
Chandler Chamber of Commerce
Gilbert Chamber of Commerce
Glendale Chamber of Commerce
Greater Flagstaff Chamber of Commerce
Greater Phoenix Chamber
Green Valley Sahuarita Chamber of
Commerce & Visitor Center
Lake Havasu Area Chamber of Commerce
Mesa Chamber of Commerce
Nogales-Santa Cruz County Chamber of
Commerce
Queen Creek Chamber of Commerce
Southwest Valley Chamber of Commerce

Springerville-Eagar Regional Chamber of
Commerce
Surprise Regional Chamber of Commerce
Tucson Metro Chamber
West Valley Chamber of Commerce
Alliance
Wickenburg Chamber of Commerce

Arkansas

AR State Chamber/AIA
Little Rock Regional Chamber of
Commerce
Rogers Lowell Chamber of Commerce

California

Brea Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of California Chambers Orange
County
Dana Point Chamber of Commerce
El Dorado County Chamber
Greater Conejo Valley Chamber of
Commerce
Joint Chambers Commission
Laguna Niguel Chamber of Commerce
Lincoln Area Chamber of Commerce
Lompoc Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
Palm Desert Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
Santa Barbara South Coast Chamber of
Commerce
Simi Valley Chamber of Commerce
U.S. Minority Chamber of Commerce
West Ventura County Business Alliance

Colorado

Colorado BioScience Association
Colorado Chamber of Commerce
Greater Woodland Park Chamber of
Commerce

Connecticut

Connecticut Business & Industry
Association (CBIA)

Florida

Coral Gables Chamber of Commerce
Florida Chamber of Commerce

Georgia

Barrow County Chamber of Commerce
Georgia Chamber of Commerce
Perimeter Chamber

Hawaii

Chamber of Commerce Hawaii
Maui Chamber of Commerce

Idaho

Boise Metro Chamber
Cascade Chamber of Commerce
Pocatello-Chubbuck Chamber of Commerce

Illinois

Chamber630
Chicagoland Chamber of Commerce
Cook County Black Chamber of Commerce
Edwardsville/Glen Carbon Chamber of
Commerce
Garfield Park Chamber of Commerce
GLMV Chamber of Commerce
Greater Springfield Chamber of Commerce
Illinois Black Chamber of Commerce
Illinois Chamber of Commerce
Lombard Area Chamber of Commerce
Naperville Area Chamber of Commerce
Pekin Area Chamber of Commerce
Sauk Valley Area Chamber of Commerce
West Suburban Chamber of Commerce &
Industry

Indiana

Cedar Lake Chamber of Commerce
Indiana Chamber of Commerce
Indiana Health Industry Forum
South Bend Regional Chamber
Valpo Chamber
Wayne County Area Chamber of Commerce

Iowa

Council Bluffs Area Chamber of Commerce
Dubuque Area Chamber of Commerce
Mason City Chamber of Commerce
Spencer Chamber of Commerce Foundation

Kentucky

Commerce Lexington
Greater Louisville Inc. - The Metro
Chamber of Commerce
Kentucky Chamber of Commerce
Northern Kentucky Chamber of Commerce

Louisiana

Baton Rouge Area Chamber
Louisiana Association of Business and
Industry

Maryland

Maryland Chamber of Commerce

Massachusetts

Greater Boston Chamber of Commerce
Metro South Chamber of Commerce

Michigan

Detroit Regional Chamber
Grand Rapids Chamber
Holly Area Chamber of Commerce
Lansing Regional Chamber of Commerce
Michigan Biosciences Industry Association
(MichBio)
Michigan Chamber

Minnesota

Austin Area Chamber of Commerce
Eden Prairie Chamber of Commerce
Forest Lake Area Chamber of Commerce
Glencoe Area Chamber of Commerce
Lonsdale Area Chamber of Commerce
Marshall Area Chamber of Commerce
Minnesota Chamber of Commerce
Waconia Chamber of Commerce

Mississippi

Mississippi Economic Council

Montana

Great Falls Area Chamber of Commerce
Kalispell Chamber of Commerce
Montana Chamber of Commerce

Nebraska

Auburn Chamber of Commerce
Beatrice Area Chamber of Commerce &
Gage County Tourism
Broken Bow Chamber of Commerce
Columbus Area Chamber of Commerce
Fremont Area Chamber of Commerce
Kearney Area Chamber of Commerce
Nebraska Chamber of Commerce &
Industry
West Point Chamber of Commerce

Nevada

Henderson Chamber of Commerce
Vegas Chamber

New Hampshire

Business & Industry Association of New
Hamshire

New Jersey

Greater Westfield Area Chamber of
Commerce
HealthCare Institute of New Jersey (HINJ)
New Jersey Civil Justice Institute
New Jersey State Chamber of Commerce

New Mexico

New Mexico Biotechnology & Biomedical
Association (NMBio)

New York

Capital Region Chamber
North Country Chamber of Commerce

North Carolina

NC Chamber

North Dakota

Chamber Grand Forks / East Grand Forks
Greater North Dakota Chamber

Ohio

Cedarville Area Chamber of Commerce
Chillicothe Ross Chamber of Commerce
Cincinnati USA Regional Chamber
Dayton Area Chamber of Commerce
Fostoria Area Chamber of Commerce
Ohio Chamber of Commerce
Shawnee Hills Area Chamber of Commerce
Toledo Regional Chamber of Commerce

Oklahoma

Greater Oklahoma City Chamber
State Chamber of Oklahoma

Oregon

Cottage Grove Area Chamber of Commerce
Lincoln City Chamber of Commerce
Oregon Business & Industry
Oregon State Chamber
Salem Area Chamber of Commerce

Pennsylvania

Chester County Chamber of Business and
Industry
Greater Latrobe Laurel Valley Regional
Chamber of Commerce
Hanover Area Chamber of Commerce
Indian Valley Chamber of Commerce
Mechanicsburg Chamber of Commerce
Pennsylvania Chamber of Business and
Industry
Pennsylvania Food Merchants Association
Pittsburgh Airport Area Chamber of
Commerce
Schuylkill Chamber of Commerce
Somerset County Chamber of Commerce
South West Regional Chamber of
Commerce
Westmoreland County Chamber of
Commerce

Rhode Island

Northern Rhode Island Chamber of
Commerce

South Carolina

Hilton Head Island-Bluffton Chamber of
Commerce
South Carolina Chamber of Commerce

Tennessee

Blount County Chamber of Commerce
Kingsport Chamber

Texas

Abilene Chamber of Commerce
Central Fort Bend Chamber
Greater Waco Chamber of Commerce
Houston West Chamber of Commerce
Longview TX Chamber of Commerce
North Texas Commission
Texas Association of Business

Utah

BioUtah
Cache Valley Chamber of Commerce
ChamberWest Chamber of Commerce
Payson Santaquin Area Chamber of
Commerce
South Valley Chamber
St. George Area Chamber of Commerce

Virginia

Blackstone Chamber of Commerce
Central Fairfax Chamber of Commerce
Loudoun County Chamber of Commerce
Lynchburg Regional Business Alliance
Virginia Chamber of Commerce
Virginia Peninsula Chamber

Washington

Association of Washington Business
Greater Lake Stevens Chamber of
Commerce
Greater Spokane Valley Chamber of
Commerce
Greater Yakima Chamber of Commerce
Kittitas County Chamber of Commerce
Mercer Island Chamber of Commerce
Moses Lake Chamber of Commerce
Shelton-Mason County Chamber of
Commerce
South Kitsap Chamber of Commerce
Washington Retail Association
West Plains Chamber of Commerce

West Virginia

West Virginia Chamber of Commerce

Wisconsin

Wisconsin Manufacturers and Commerce

Wyoming

Greater Cheyenne Chamber of Commerce

ⁱ Sen. Murphy [noted](#) when introducing legislation related to noncompete agreements in the 117th Congress: “All four of us are very excited about the FTC’s decision to move forward, but we’d like to give them clear statutory authority,” said Murphy, whose proposed [Workforce Mobility Act](#) in the 117th Congress was co-sponsored by Sens. [Todd Young](#) (R-IN), [Tim Kaine](#) (D-VA), and [Kevin Cramer](#) (R-ND).