No. SJC-13917

COMMONWEALTH OF MASSACHUSETTS SUPREME JUDICIAL COURT

ANAPLAN PARENT, LP, ANAPLAN INC.,

Plaintiffs-Appellants,

v.

TIMOTHY BRENNAN,

Defendant-Appellee.

On appeal from an Order of the Suffolk County Superior Court, Business Litigation Session, No. 2584cv02350-BLS2

BRIEF FOR AMICI CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES AND ASSOCIATED INDUSTRIES OF MASSACHUSETTS IN SUPPORT OF NEITHER PARTY

SAMUEL LARSON (BBO# 711329)
STEPHANIE SWANSON (BBO# 685404)
ASSOCIATED INDUSTRIES OF MASSACHUSETTS
30 Federal Street, 5th Floor
Boston, MA 02110
(617) 488-1180
slarson@aimnet.org
sswanson@aimnet.org

MARK C. FLEMING (BBO # 639358)
ADAM ELLIS HARPER (BBO # 717499)
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com
Adam.Harper@wilmerhale.com

Attorneys for Amici Curiae

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CORPORATE DISCLOSURE STATEMENT

Pursuant to S.J.C. Rule 1:21, the Chamber of Commerce of the United States of America states that it is a nonprofit, tax-exempt organization incorporated under the laws of the District of Columbia. It has no parent corporation, and no publicly held corporation has ten percent or greater ownership in the Chamber. The Chamber does not issue stock.

Associated Industries of Massachusetts (AIM) states that it is a 26 U.S.C. § 501(c)(6) nonprofit association incorporated in Massachusetts and headquartered in Boston. AIM is governed by a Board of Directors, the members of which serve solely in their personal capacities. AIM does not issue stock or any other form of securities and does not have any parent corporation.

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America ("the Chamber") and Associated Industries of Massachusetts ("AIM") (together, "amici") respectfully submit this brief pursuant to the Court's solicitation of amicus briefs on March 19, 2026.

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Founded more than one hundred years ago, AIM is a nonprofit association located in Boston. With over 3,400 employer members doing business in

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[1] Pursuant to Mass. R. App. P. 17(c)(5), the Chamber and AIM declare that no party or counsel for a party authored this brief in whole or in part and that no person other than amici, their members, or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Amici and their counsel further declare that, although amici have filed amicus briefs on similar issues in other cases, they have not represented one of the parties to the present appeal in any proceeding involving similar issues, nor have they been a party or represented a party in a proceeding or transaction that is at issue in the present appeal.

Massachusetts, it is the largest business association in the Commonwealth. AIM's mission is to promote the well-being of its members and their employees and the prosperity of the Commonwealth by improving the economic climate of Massachusetts, proactively advocating for fair and equitable public policy, and providing relevant and reliable information and excellent services. A key function of AIM is to represent the interests of its members in all forums, including both state and federal courts. AIM regularly files amicus curiae briefs in cases, like this one, that raise issues of critical concern to the Commonwealth's economic competitiveness.

Amici's members include employers throughout the Commonwealth that administer equity-compensation plans and enter into associated restrictive covenants. Since the Massachusetts Noncompetition Agreement Act took effect in 2018, Massachusetts employers have structured their agreements by compensating employees with equity issued by a corporate parent or holding company, while placing the noncompetition covenants accompanying that equity in the same parent-level instrument, in reliance on the understanding that covenants so structured are enforceable. Amici submit this brief to address the reliance interests at stake if the Court construes the Act to require the operating subsidiary's signature. Those interests support applying such a holding prospectively only, so that agreements formed before the Court's decision are not invalidated after the fact.

SUMMARY OF THE ARGUMENT

A business cannot know in advance how a court will read a statute that has not yet been construed. That uncertainty is the necessary price of a system in which courts, not the regulated parties, say what the law is. When this Court supplies a construction, it ordinarily declares what the statute has meant since its enactment, and those who ordered their affairs on a different understanding must conform. Amici do not dispute that general rule. But where applying a new construction retroactively would unsettle arrangements that parties built on a contrary understanding, this Court has reserved the authority to limit its decision to purely prospective effect.

Amici take no position on whether a corporate parent's signature on a noncompetition agreement with an employee of an operating subsidiary satisfies the Massachusetts Noncompetition Agreement Act, G. L. c. 149, § 24L. Amici address only the question that follows in the event that this Court answers that question in the negative: whether such a holding should reach noncompetition agreements executed before the Court's decision. It should not.

For the seven years since the Act took effect, Massachusetts employers have compensated key employees with equity issued at the parent or holding-company level—the entity that maintains the equity plan—and have placed the accompanying noncompetition covenants in the same instruments. Employers commonly structure equity compensation this way; equity plans regularly provide for grants of parent-company stock to employees, and employers write the noncompetition covenants into the same award agreements. Those employers relied in good faith on the understanding that covenants so structured satisfied the Act, and no Massachusetts court held otherwise until the Superior Court's decision in this case. If the Court adopts the rule applied below, retroactive application would void that body of agreements as a class, undoing bargains that employers formed in reliance on the law as they reasonably understood it when the agreements were executed.

Retroactive application would also defeat the Act's purpose. The Act conditions a noncompetition restraint on the employee's receipt of fair consideration. G. L. c. 149, § 24L(b)(ii), (vii). If applied retroactively, a holding that the Act requires the operating subsidiary's signature would leave that consideration in the employee's hands while discarding the restraint it supported, and the employer could restore the restraint only by paying a second time for a promise it already purchased. See *id.* A statute enacted to ensure that employees are fairly compensated for the restraints they accept would, applied to the past, compel employers to pay for them twice.

The argument proceeds in three parts. First, parent-level equity compensation is a common and important practice among Massachusetts employers. Second, this Court has discretion to apply a new interpretation of a statute prospectively only, *Commonwealth* v. *Dagley*, 442 Mass. 713, 721 n.10 (2004), and each factor that guides that discretion favors prospective-only application if the Court adopts the ruling below: (1) prior law did not foreshadow the asserted rule; (2) retroactive application would defeat rather than serve the Act's purpose; and (3) it would inflict the severe and incurable disruption that has led this Court to limit retroactivity in other cases. Third, the Court should apply any such holding only to covenants executed after the date of its decision, sparing the agreements that employers formed in reliance on the prior understanding, including the one at issue here.

ARGUMENT

I. EQUITY COMPENSATION GRANTED THROUGH THE CORPORATE PARENT IS A COMMON AND IMPORTANT TOOL FOR MASSACHUSETTS EMPLOYERS

The agreements at issue reflect a common compensation practice in corporate families: a parent grants equity to employees and includes the accompanying noncompetition covenant in the award agreement.[2] The practice

[2] See HR Pol'y Ass'n, *Non-Competes & Restrictive Covenants: Survey Results* (Jan. 2023), https://www.chro.org/documents/d/guest/Non-Competes_Survey_Results_2023-pdf; Bindra, *Non-Compete Roundup: 2026 Edition*, ABA Sec. of Lab. & Emp. L., Lab. & Emp. L. News (Spring 2026);

serves important compensation and retention purposes, particularly in Massachusetts's highly skilled economy. The prevalence of these arrangements bears directly on the reliance interests at stake if the Court holds that the Act requires the operating subsidiary to sign the employee's agreement.

Equity compensation gives employees a stake in the enterprise they help build. It can help employers attract and retain employees in key roles, including senior executives and others with access to confidential information or responsibility for customer relationships and goodwill. Because employees who leave may forfeit substantial unvested equity, vesting provisions encourage them to remain with the company, preserving continuity and protecting companies' investment in employees' experience and firm-specific knowledge.[3]

In corporate families, equity is often issued at the parent level because the parent maintains the equity plan and its shares provide the economic value of the grant.[4] Employers may then place the accompanying noncompetition covenant in

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Baker McKenzie, *Restrictive Covenants and Equity Awards: Match Made in Heaven or Headed for Divorce?*, The Compensation Connection (Oct. 5, 2016).

[3] See Gong, et al., *Retention Effects of Employee Stock Options: Evidence from Bunching at Vesting Dates*, 74 Econ. Dev. & Cultural Change 777 (2026) (finding significant retention effects around vesting dates).

[4] Federal law presumes this framework. Federal tax law defines an "incentive stock option" as one "granted by the employer corporation or its parent or subsidiary corporation," 26 U.S.C. § 422(b), and federal securities law extends the registration exemption for compensatory equity to plans "established by the issuer,

the same award agreement, linking the restraint to the consideration that supports it.[5] Through that structure, a corporate parent grants equity to an operating subsidiary's key staff, while the accompanying covenant protects the confidential information, customer relationships, and goodwill those employees develop on the subsidiary's behalf.

These arrangements are especially significant in Massachusetts, where the economy depends heavily on highly skilled, information-intensive industries. The Commonwealth's workforce is the most educated of any State, and its technology-and-science economy has ranked first in the Milken Institute's index of the fifty States in every edition since 2002.[6] Massachusetts employs roughly 117,000 people in the biopharmaceutical industry, accounts for nearly a quarter of the Nation's biopharmaceutical research workforce, and attracted 22.5 percent of all

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its parents … for the participation of their employees." 17 C.F.R. § 230.701(c); *accord* SEC Form S-8, General Instruction A.1(a).

[5] See, e.g., *Cynosure, LLC* v. *Reveal Lasers LLC*, No. 22-cv-11176-PBS, slip op. at 14-15 (D. Mass. Nov. 9, 2022); *North Am. Fire Ultimate Holdings, LP* v. *Doorly*, No. 142, 2025, 2026 WL 274647 (Del. Feb. 3, 2026) (addressing restrictive covenants contained in an incentive-unit grant agreement); Willis Grp. Holdings Pub. Ltd. Co., Agreement of Restrictive Covenants and Other Obligations for Employees in the United States, Ex. 10.36 to Annual Report (Form 10-K) (Feb. 28, 2013).

[6] U.S. Census Bureau, American Community Survey, 2024 One-Year Estimates, tbl. S1501 (48.3 percent of Massachusetts adults aged twenty-five and over hold a bachelor's degree or higher, the highest share of any State); Milken Institute, *State Technology and Science Index 2022* (2022) ("Massachusetts remains in first place for 2022, as it has done in every Index since 2002.").

United States biotechnology venture capital in the first half of 2025—second only to California.[7] For many businesses in these industries, trade secrets, confidential information, and goodwill are important sources of value, and they are the interests the Act recognizes as legitimate grounds for a restraint on competition. G. L. c. 149, § 24L(b)(iii). Noncompetition covenants, moreover, "are more likely to be found in high-skill, high-paying jobs." Starr, et al., *Noncompete Agreements in the US Labor Force*, 64 J.L. & Econ. 53, 53 (2021).

Whether the Act nevertheless requires the operating subsidiary's signature is the merits question, on which the amici take no position. But if the Court adopts that construction, the prevalence of parent-level award agreements indicates that it risks disrupting a broad range of existing arrangements.

II. Should The Court Hold That A Corporate Parent's Signature Does Not Satisfy The Act, The Court Should Exercise Its Discretion To Apply That Ruling Prospectively Only

This Court can confine a new construction of the Act to future application. A statutory construction ordinarily applies retroactively, because it declares what the statute has meant since its enactment. *Eaton* v. *Federal Nat'l*

[7] MassBio, *2025 Industry Snapshot* (Aug. 2025) (reporting 117,108 biopharmaceutical industry jobs in Massachusetts in 2024, approximately 23 percent of the Nation's biopharmaceutical research-and-development workforce, and 22.5 percent of all United States biotechnology venture capital in the first half of 2025, "second only to California"), https://www.massbio.org/wp-content/uploads/2025/08/FINAL-2025_IndustrySnapshot.pdf.

Mortgage Ass'n, 462 Mass. 569, 587 (2012). But where a decision announces "a new interpretation of a State statute," no constitutional command requires retroactive effect, and this Court is "free to determine whether it should be applied only prospectively." *Commonwealth* v. *Dagley*, 442 Mass. 713, 721 n.10 (2004), *cert. denied*, 544 U.S. 930 (2005).

The Court has exercised that discretion where a new reading of an undefined or ambiguous term threatened completed arrangements formed in reasonable reliance on a contrary understanding. In *Eaton*, the Court confined a new construction of "mortgagee" to future foreclosure sales, because lawyers and title examiners had relied in good faith on a different reading. 462 Mass. at 587-589. In *Pinti* v. *Emigrant Mortgage Co.*, the Court applied a new condition on the validity of foreclosure sales prospectively only "because of the possible impact … on the validity of titles." 472 Mass. 226, 243 (2015). And in *Powers* v. *Wilkinson*, the Court confined a new construction of the word "issue" to instruments executed after the date of the opinion. 399 Mass. 650, 663 (1987).

In *McIntyre* v. *Associates Financial Services Co*., 367 Mass. 708, 712 (1975), the Court adopted from *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 106-107 (1971), three considerations that guide whether a new statutory interpretation should apply retroactively: (1) whether the decision establishes a new principle whose result was not clearly foreshadowed; (2) whether retroactive application would further or undermine the rule's operation; and (3) whether retroactive application would work substantial inequity. Each consideration favors prospective-only application here, if the Court construes the Act to require the operating subsidiary's signature.

A. Prior Law Did Not Foreshadow A Ruling That "Employer" Excluded A Corporate Parent

A holding that "employer" under the Act excludes a corporate parent would establish a new legal rule that prior law did not foreshadow. *McIntyre*, 367 Mass. at 712; *Chevron Oil*, 404 U.S. at 106. The Court's prospectivity cases first ask whether prior law gave affected parties fair notice of the rule later announced. In *Eaton*, the statutory term at issue, "mortgagee," was "not free of ambiguity"; prior decisions supported only "the general proposition" that a mortgage depends on the underlying debt; and "none of [the Court's] cases ha[d] considered directly the question" the Court was deciding. 462 Mass. at 587-588. Lawyers nevertheless "ha[d] followed in good faith a different interpretation" of the relevant statutes. *Id.* The Court therefore concluded that the new rule had not been clearly foreshadowed. *Id.* at 588. As *Eaton* explains, where "prior law is of questionable prognosticative value," the result is not fairly foreshadowed. *Id.* (citing *Blood* v. *Edgar's, Inc.*, 36 Mass. App. Ct. 402, 407 (1994)).

This case shares the features that mattered in *Eaton*. The Act's text did not supply notice that "employer" excludes a corporate parent. The Act requires a noncompetition agreement to be "signed by both the employer and employee," G. L. c. 149, § 24L(b)(i)-(ii), but it does not define "employer." The Superior Court supplied a dictionary meaning precisely because the statute left the term undefined. RA384.

Nor did any Massachusetts appellate decision foreshadow the lower court's ruling regarding the Act. The only decision of this Court applying the Act, *Miele* v. *Foundation Medicine, Inc.*, 496 Mass. 171 (2025), held that non-solicitation agreements fall outside the statute's definition of "noncompetition agreement" and that the law must be "read as a whole to produce an internal consistency." *Id.* at 175, 177-178 (citation omitted). There, this Court decided which types of noncompetition restraints the Act covers, not which entity must sign a covenant to comply with the Act. Even if that holding supports "the general proposition" that the Act must be enforced as written, *Eaton*, 462 Mass. at 587, it did not address, much less resolve, the precise question presented here. See *Miele*, 496 Mass. at 175-178.

To the contrary, the closest decision applying the Act treated a materially similar parent-level arrangement as enforceable. In *Cynosure, LLC* v. *Reveal Lasers LLC*, key staff of operating subsidiary Cynosure received stock options from its corporate parent Lotus Parent, Inc., under a "Lotus Parent, Inc. Employee Option Agreement" that also contained restrictive covenants. No. 22-cv-11176-

PBS, slip op. at 13-15 (D. Mass. Nov. 9, 2022), Dkt. 171; see also *id*., Dkt. 7-3 at 31, 41-44. The agreement itself was "between Lotus Parent, Inc." and the employee, confirmed Lotus Parent's grant of options, and required the employee, "[i]n consideration of the receipt of the Options," to comply with the restrictive covenants. Dkt. 7-3 at 31, 41-44. The federal district court described that agreement, noted that ten employees had signed it, and explained that "[a]s consideration for signing the Equity Agreement, employees are entitled to stock options." Slip op. at 13-14. The federal court then concluded, at the preliminary-injunction stage, that the equity agreement satisfied the Act's requirements as to the Massachusetts employee before the court, including because it was "supported by consideration distinct from continued employment" and provided "'mutually-agreed upon consideration', that is, the stock options, in lieu of a 'garden clause.'" *Id.* at 20-21.

Although *Cynosure* did not construe the term "employer," it reinforces that no prior law or settled understanding foreshadowed the Superior Court's ruling in this case. The federal court treated a parent-level agreement granting equity to key staff of an operating subsidiary as satisfying the Act's consideration requirements. Nothing in *Cynosure*, *Miele*, or any Massachusetts appellate decision would have warned employers that the same arrangement might fail because the parent, rather than the operating subsidiary, signed the covenant. A contrary holding here therefore was not clearly foreshadowed. See *Eaton*, 462 Mass. at 587-588.

B. Retroactive Application Would Defeat Rather Than Serve The Act's Purpose

Retroactive application would set the Act against its own design. *McIntyre*, 367 Mass. at 712; *Chevron Oil*, 404 U.S. at 106-107. The Act does not prohibit noncompetition agreements; it channels them. Enacted as part of "An Act Relative to Economic Development in the Commonwealth," St. 2018, c. 228, § 21, the Act serves a dual purpose: affording employees "stronger substantive and procedural protections" while preserving for employers "clarity and certainty in drafting valid and enforceable noncompetition agreements." Cohen, *Employee Noncompetition Laws and Practices*: *A Massachusetts Paradigm Shift Goes National*, 103 Mass. L. Rev. 31, 31 (2022); see *Miele*, 496 Mass. at 174. The Act permits a noncompetition restraint when it protects legitimate business interests—trade secrets, confidential information, or goodwill—and when the employee receives fair consideration in return. See G. L. c. 149, § 24L(b)(ii)-(iii), (vii).

The Act's reformation provision confirms that invalidation is not the only response to noncompliance. It authorizes a court to "reform or otherwise revise" an agreement to render it enforceable to the extent necessary to protect legitimate business interests. G. L. c. 149, § 24L(d). That authority reflects a legislative preference, where appropriate, for preserving the bargain while bringing the agreement into compliance. Retroactively invalidating an entire category of agreements formed in a good-faith effort to comply with the Act would point in the opposite direction.

The agreements in this case illustrate the point. Anaplan Parent, LP granted Mr. Brennan equity incentive units on three occasions, and each grant agreement contained a noncompetition covenant with Massachusetts-specific modifications addressing the Act's consideration, notice, and right-to-counsel requirements. RA32-123. Those provisions show that the agreements were drafted with the Act's requirements in view. Yet retroactive application would invalidate the covenants while leaving the consideration in place.

Worse, the employer could not cure the defect by re-executing the agreement. A replacement covenant with a current employee is one "entered into after commencement of employment," which the Act requires to rest on "fair and reasonable consideration independent from the continuation of employment." G. L. c. 149, § 24L(b)(ii). The equity already granted cannot satisfy that requirement, because consideration already conferred cannot support a new promise. *Moore* v. *Elmer*, 180 Mass. 15, 16 (1901) (Holmes, C.J.) (executed consideration "would not support a promise made at a later time"); see *Restatement (Second) of Contracts* § 71(1)-(2) (1981). The employer would have to pay a second time for a restraint it had already purchased. That would be the reverse of the Act's consideration requirement: The employee would retain the benefit of the original bargain, and the employer would have to pay for the same promise twice. That would defeat the Act's purpose rather than serve it.

C. Retroactive Application Would Inflict Severe And Commonwealth-Wide Inequity Of The Kind This Court Has Treated As Grounds For Prospective Effect

1. The inequity of retroactive application would be severe and could not be cured

As for the third *McIntyre* consideration, retroactive invalidation of noncompetition restraints would impose irreparable harm. 367 Mass. at 712; *Chevron Oil*, 404 U.S. at 107. In *McIntyre*, the hardship was "the automatic destruction of attachments … regardless of the merits of their claims," a "substantial hardship on creditors who reasonably relied upon lawful Massachusetts procedures." 367 Mass. at 713 (quoting *Higley Hill, Inc.* v. *Knight*, 360 F. Supp. 203, 206 (D. Mass. 1973)). Two features of that hardship that have recurred in this Court's prospectivity decisions would both be present here if the Court were to adopt the rule applied below: the loss to the affected party would be severe and incurable, and it would fall across a common category of private arrangements throughout the Commonwealth.

As to severity: for employees who already have departed, the loss to the employer would be total. The employee received equity in exchange for a covenant; the equity vested; and the covenant, if voided, would no longer restrain the departed employee.[8] The employer would be left with neither the restraint nor any way to recover what it gave for it.

That loss, moreover, is not merely financial. A noncompetition agreement secures the interests the Act itself identifies as legitimate grounds for a restraint—the employer's trade secrets, confidential information, and goodwill. G. L. c. 149, § 24L(b)(iii). The Act protects those interests precisely because, once lost, they ordinarily cannot be restored or adequately valued in damages. Confidential information, once disclosed or put to work for a competitor, cannot be recalled, and customer goodwill, once diverted, is difficult to reliably measure or recover. See, e.g., *Warner-Lambert Co.* v. *Execuquest Corp.*, 427 Mass. 46, 49 (1998). Retroactive invalidation of noncompetition agreements would release departed employees from covenants formed to guard against exactly those harms, exposing employers to the very loss the restraints were designed to prevent, with no means of undoing it. That injury is distinct from, and compounds, the employer's inability to recover the equity it already conferred.

For the far larger group still employed, the employer could not cure the defect without paying a second time, because, as explained in Part II.B, *supra*, the

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[8] Although a Delaware decision does not govern the Act, it illustrates the ordinary contract-law premise that even unvested equity can itself supply consideration when granted. See *North Am. Fire*, 2026 WL 274647, at *1-2.

Act requires any replacement covenant to rest on new consideration, and equity already conferred cannot serve. See G. L. c. 149, § 24L(b)(ii). Retroactive invalidation would also generate disputes for which neither the Act nor existing case law provides a ready answer, including whether an employer may claw back vested equity conferred as consideration for a covenant the Court would declare void, and how to value and offset benefits already received. The hardship is the combination of these consequences and the absence of any governing framework to resolve them.

2. The reliance is settled, reasonable, and Commonwealth-wide

The hardship would not be confined to isolated agreements. As Part I shows, Massachusetts employers commonly have granted equity at the parent level and included the accompanying covenants in the same award agreements. If applied retroactively, a rule requiring the operating subsidiary's signature would invalidate those agreements as a class.

Similar disruption warranted prospective effect in *Eaton* and *Pinti*. In *Eaton*, the Court limited its construction of "mortgagee" to the future because a retroactive reading would call into question "the validity of any title that has a foreclosure sale in the title chain" and would create "significant difficulties" in ascertaining title across the Commonwealth. 462 Mass. at 586-588. *Pinti* confined its rule for the same reason: "the possible impact that [the] decision may have on the validity of titles." 472 Mass. at 243. Together, *Eaton* and *Pinti* show that widespread disruption of completed private arrangements weighs strongly in favor of prospectivity. The same concern is present here.

To be sure, *Eaton* and *Pinti* arose in the real estate context, where this Court has been especially willing to protect settled reliance interests. But the authority to apply a new statutory construction prospectively is not confined to real estate. *Dagley* recognizes that authority for *any* "new interpretation of a State statute." 442 Mass. at 721 n.10. And the considerations that drove *Eaton* and *Pinti*—completed arrangements, reasonable reliance, and an unforeshadowed construction—would be equally present here.

The cost of declining to limit a new rule is not hypothetical. In *U.S. Bank National Association* v. *Ibanez*, 458 Mass. 637 (2011), the Court declined to give its foreclosure ruling prospective effect because it had announced nothing new: "[t]he legal principles and requirements we set forth are well established in our case law and our statutes." *Id.* at 654-655. The decision nonetheless unsettled titles across the Commonwealth, and the Legislature ultimately responded with "An Act Clearing Titles to Foreclosed Properties." St. 2015, c. 141. The next year, in *Eaton*, the Court confined its genuinely new construction to the future in light of the "significant difficulties" a retroactive reading would create. 462 Mass. at 587-588. The two dispositions state one principle: Where the rule is settled, retroactivity follows as a matter of course, but where the rule is new and the reliance real, the Court spares completed arrangements. A holding that no appellate decision foreshadowed belongs on the *Eaton* side of the line.

Eaton confined its holding to "the exceptional circumstances presented here." 462 Mass. at 588. If this Court adopts the ruling below, the same circumstances would be present in this case. The reliance is settled, reasonable, and Commonwealth-wide. The loss would fall on a whole category of completed agreements at once, and it would not be curable without a second payment.

As Part I explains, Massachusetts has built its economy on highly skilled, information-intensive industries for which trade secrets, confidential information, and goodwill are principal assets, and for which stable, enforceable contractual protections are a condition of investment. A decision retroactively voiding a whole class of agreements entered into in good faith would make Massachusetts an outlier and signal to employers that even completed contracts, formed in reliance on a reasonable understanding of the law, may be unwound retroactively. Prospective-only application of a rule prohibiting parent-company signatures would confirm that Massachusetts honors the bargains parties struck in good faith, while leaving the Court entirely free to announce, for the future, whatever clarification the Act might require.

D. Purely Prospective Application Comports With Contract-Law Principles

If the Court holds that a corporate parent's signature does not satisfy the Act, it should apply that holding only to covenants executed after the date of its decision. This Court has taken that approach before. In *Powers*, it confined a new rule of construction to instruments "executed after the date of th[e] opinion" and directed that the instrument before it be construed "under the law applicable when the [trust instrument] was executed." 399 Mass. at 663. In *Sullivan* v. *Burkin*, 390 Mass. 864 (1984), it announced a new rule governing a surviving spouse's share but decided the case before it under the prior law. The date of the contract's execution provides a principled cutoff because reliance attaches when the covenant is signed and the consideration is conferred. At that point, the employer commits to the arrangement on the strength of the law as it then stands. That cutoff is administrable because the execution date appears on the face of every agreement, knowable to every party and every court that later applies it.

Ordinary contract principles support this course. A contract is read to give effect to the parties' intent as objectively expressed when they made it. See *McCarthy* v. *Tobin*, 429 Mass. 84, 87 (1999). An unsettled term, moreover, is construed to give the agreement a "reasonable, lawful, and effective" meaning rather than one that renders it a nullity. See *Restatement (Second) of Contracts*

§ 203(a) & cmt. c. In short, parties dealing at arm's length intend a binding bargain, not a void one.

Those principles apply directly to noncompetition agreements entered into previously, when no decision of this Court or the Appeals Court has decided the question presented here. Employees took equity in exchange for the restraints, and employers conferred it in exchange. Read as the parties reasonably understood them when they signed, those covenants satisfied the Act. Governing pre-decision covenants by that understanding, rather than unsettling them, is what ordinary contract law requires.[9]

CONCLUSION

Should this Court hold that a corporate parent's signature does not satisfy the Massachusetts Noncompetition Agreement Act, the Court should apply such a holding only to covenants executed after the date of its decision.

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[9] This Court has at times applied a prospectively announced rule to the parties before it. See *Eaton*, 462 Mass. at 589; *Pinti*, 472 Mass. at 243-244; *Bouchard* v. *DeGagne*, 368 Mass. 45, 48-49 (1975). Amici submit that that practice is inapposite here. In the mortgage cases, applying the rule to the parties rewarded the litigant who brought the issue to the Court while prospectivity protected non-parties who could not have anticipated the change. Here, by contrast, the ground for prospectivity is reliance at execution—a ground that applies identically to the covenant in this case, as well as to every other pre-decision covenant. Singling out this covenant would contradict the principle that justifies sparing the rest. That approach decides the case; it does not render the new rule dictum. See *Great Northern Ry. Co.* v. *Sunburst Oil & Refining Co*., 287 U.S. 358, 364 (1932) (Cardozo, J.).

Respectfully submitted,

/s/ Mark C. Fleming

MARK C. FLEMING (BBO # 639358)
ADAM ELLIS HARPER (BBO # 717499)
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com
Adam.Harper@wilmerhale.com

Attorneys for Amici Curiae

SAMUEL LARSON (BBO# 711329)
STEPHANIE SWANSON (BBO# 685404)
ASSOCIATED INDUSTRIES OF
MASSACHUSETTS
30 Federal Street, 5th Floor
Boston, MA 02110
(617) 488-1180
Slarson@aimnet.org
sswanson@aimnet.org

August 19, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge, this brief complies with the Massachusetts Rules of Appellate Procedure pertaining to the filing of briefs, including Rule 16(a)(13) (addendum), Rule 16(e) (references to the record), Rule 20, and Rule 21.

1. Exclusive of the exempted portions of the brief, as provided in Mass. R. A. P. 20(a)(2)(D), the brief contains 4,879 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365, version 1808, build 10730.20205, in 14 point Times New Roman font. The undersigned has relied on the word count feature of this word processing system in preparing this certificate.

/s/ Mark C. Fleming
MARK C. FLEMING (BBO # 639358)
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com

August 19, 2026

CERTIFICATE OF SERVICE

I, Mark C. Fleming, hereby certify, under the penalties of perjury, that on August 19, 2026, I caused a true and accurate copy of the foregoing to be filed and served via the Massachusetts Odyssey File & Serve site, and I served two copies on the following counsel either by first-class mail, pursuant to Mass. R. A. P. 13(c) and 19(d)(1), or by electronic mail with consent of the counsel being served, pursuant to Mass. R. A. P. 13(c):

LEIGH ANN BUZIAK
THOMAS REITH
MICHAEL A. DEIULIS
THERESA TOPPING
BLANK ROME LLP
125 High Street, 3rd Floor
Boston, MA 02110
(617) 415-1200
leighann.buziak@blankrome.com
thomas.reith@blankrome.com
michael.deiulis@blankrome.com
theresa.topping@blankrome.com

PATRICK J. HANNON
HAMPTON M. WATSON
HARTLEY MICHON ROBB HANNON LLP
101 Federal St., Suite 1810
Boston, MA 02110
(617)-723-8000
phannon@hmrhlaw.com
hwatson@hmrhlaw.com

RUSSELL BECK
BECK REED RIDEN LLP
155 Federal Street, Suite 1302
Boston, MA 02110
(617) 500-8660
rbeck@beckreed.com

/s/ Mark C. Fleming
Mark C. Fleming (BBO # 639358)
Wilmer Cutler Pickering
Hale and Dorr llp
60 State Street
Boston, MA 02109
(617) 526-6000
Mark.Fleming@wilmerhale.com