



**Testimony of Sandeep Vaheesan, Open Markets Institute  
Applauding SB 906 – An Act Concerning Non-Compete Agreements  
March 3, 2021**

Dear Senator Kushner, Representative Porter, Senator Sampson, Representative Arora, and members of the Labor & Public Employees Committee,

My name is Sandeep Vaheesan. I am the Legal Director at the Open Markets Institute, an anti-monopoly research and advocacy group based in Washington, D.C. As part of a labor and public interest coalition, the Open Markets Institute petitioned the Federal Trade Commission in 2019 to categorically ban worker non-compete clauses through rulemaking.<sup>1</sup> My colleagues and I have also written extensively on the evils of these contracts.<sup>2</sup>

While we believe the Connecticut legislature should enact a full ban on non-compete clauses, SB 906 is an important step in the right direction. It prohibits non-compete clauses for employees earning up to three times the state minimum wage (\$90,000 per year for a full-time employee once Connecticut's minimum wage increase is fully phased in by June 2023) and restricts the use of non-compete clauses for workers making more than this threshold amount. Importantly, as opposed to only preventing employers from enforcing these contracts in court, SB 906 outlaws non-competes for employees making up to the threshold amount and establishes public and private enforcement of this prohibition. Making non-competes illegal (and backing this rule with effective legal sanctions) is essential for deterring employers from using these contracts and protecting workers' freedom to switch jobs or to start their own businesses.

Non-competes reduce labor market mobility and generally depress wages, wage growth, and small business formation.<sup>3</sup> Research has found that non-competes discourage workers from leaving, even when employers cannot legally enforce them in court.<sup>4</sup> In states where non-competes are unenforceable, nearly 40% of workers reported turning down a job offer due to a

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<sup>1</sup> Open Markets Institute, et al., *Petition for Rulemaking to Prohibit Worker Non-Compete Clauses*, <https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5eaa04862ff52116d1dd04c1/1588200595775/Petition-for-Rulemaking-to-Prohibit-Worker-Non-Compete-Clauses.pdf>. See also Josh Eidelson, *Labor Groups Petition U.S. FTC to Ban Non-Compete Clauses*, BLOOMBERG, Mar. 20, 2019, <https://www.bloomberg.com/news/articles/2019-03-20/labor-groups-petition-u-s-ftc-to-prohibit-non-compete-clauses>.

<sup>2</sup> See, e.g., Sandeep Vaheesan, *Doctors, Nurses and Patients Could Suffer If Congress Doesn't Outlaw These Contracts*, CNN, July 6, 2020, <https://www.cnn.com/2020/07/06/perspectives/non-compete-clauses-health-care/index.html>; Amanda Jaret & Sandeep Vaheesan, *Non-Compete Clauses Are Suffocating American Workers*, TIME, Dec. 19, 2019, <https://time.com/5753078/non-compete-clauses-american-workers/>; Sally Hubbard & Sandeep Vaheesan, *Noncompete Clauses Trap #MeToo Victims in Abusive Workplaces. The FTC Should Ban Them.*, USA TODAY, May 14, 2019, <https://www.usatoday.com/story/opinion/2019/05/14/sexually-harassed-women-trapped-noncompetes-abusive-workplaces-column/1184622001/>.

<sup>3</sup> See, e.g., U.S. Dep't of Treasury, *Non-Compete Contracts: Economic Effects and Policy Implications 20* (2016), [https://home.treasury.gov/system/files/226/Non\\_Compete\\_Contracts\\_Economic\\_Effects\\_and\\_Policy\\_Implications\\_MAR2016.pdf](https://home.treasury.gov/system/files/226/Non_Compete_Contracts_Economic_Effects_and_Policy_Implications_MAR2016.pdf); Evan Starr, *Consider This: Training, Wages, and the Enforceability of Covenants Not to Compete 17* (2018); Toby E. Stuart & Olav Sorenson, *Liquidity Events and the Geographic Distribution of Entrepreneurial Activity*, 48 ADMIN. SCI. Q. 175, 197 (2003).

<sup>4</sup> Evan Starr, J.J. Prescott & Norman Bishara, *Noncompetes and Employee Mobility 3* (2019).

non-compete clause.<sup>5</sup> The existence of non-competes—regardless of whether employers can, or seek to, enforce them—is enough to harm workers. Employers recognize this fact and use non-competes even when they cannot enforce them through litigation. For example, in California, although state law has prohibited judicial enforcement of non-competes since the 1870s (without making these contracts illegal),<sup>6</sup> approximately 45% of workplaces impose non-compete clauses on at least some of their employees and nearly 30% require *all* workers to assent to these restraints.<sup>7</sup>

The conventional employer justification for non-compete clauses ignores the availability of more effective, less restrictive alternatives. According to this theory, non-competes prevent rivals from recruiting workers and thereby obtaining customer lists, trade secrets, and other proprietary information that employers have devoted time and money to develop. To protect such information, employers have many tools at their disposal, apart from non-compete clauses. They can use copyright and trade secret law to protect valuable knowledge—two bodies of law that provide powerful legal remedies against copyright infringement and unauthorized disclosure of confidential information. They can also use targeted non-solicitation agreements to protect their investments in developing customer lists and relationships. Employers concerned about employee departure also have many methods of retaining workers, including providing regular raises, promotions, and bonuses that encourage and reward long tenure.

Non-competes are a deeply flawed tool for protecting employer information. They restrain workers' labor market mobility in the name of protecting company know-how, no matter how discrete or trivial, and do not guard against overt or covert disclosure of information to rivals.<sup>8</sup>

Given their documented harms to workers and unpersuasive justification, non-competes should be prohibited for all workers. While SB 906 does not enact a blanket ban, it protects a substantial fraction of the Connecticut labor force from non-compete clauses and is an important step in the right direction. We urge you and your committee to work toward a ban that protects all workers from these coercive contracts.

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<sup>5</sup> *Id.* at 42.

<sup>6</sup> See *Edwards v. Arthur Andersen LLP*, 44 Cal.4th 937, 945 (2008) (citations omitted) (“[I]n 1872 California settled public policy in favor of open competition, and rejected the common law ‘rule of reasonableness,’ when the Legislature enacted the Civil Code. Today in California, covenants not to compete are void[.]”).

<sup>7</sup> Alexander J.S. Colvin & Heidi Shierholz, *Noncompete Agreements* 5-6 (2019), <https://files.epi.org/pdf/179414.pdf>.

<sup>8</sup> Viva R. Moffat, *The Wrong Tool for the Job: The IP Problem with Noncompetition Agreements*, 52 WM. & MARY L. REV. 873 (2010).