

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.<sup>1</sup> 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

Littler 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

### **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

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<sup>i</sup> Sen. Murphy [noted](#) when introducing legislation related to noncompete agreements in the 117<sup>th</sup> 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).