

# United States Senate

WASHINGTON, DC 20510

January 8, 2020

The Honorable Joseph Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The Honorable Rebecca Kelly Slaughter  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The Honorable Noah Joshua Phillips  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The Honorable Christine Wilson  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The Honorable Rohit Chopra  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Non-Compete Clauses Used in Employment Contracts

Dear Commissioners:

Thank you for the opportunity to comment on the Federal Trade Commission's (FTC) role in restricting the use of non-compete clauses in conjunction with the FTC's forthcoming workshop, *Non-Competes in the Workplace: Examining Antitrust and Consumer Protection Issues*. We write in support of FTC action that restricts the use of non-compete clauses in employment contracts.

The American workforce has experienced significantly reduced job mobility, tepid wage growth, and declining rates of entrepreneurship in recent decades. At the same time, non-compete clauses have become more prevalent.

At their core, non-competes inherently manipulate competitive labor market forces by narrowing the available employment options for workers. This manipulation is bad for both employees and employers. For employers, non-competes limit the available supply of qualified workers to fill their workforce needs. This is especially true at a time of low unemployment. For employees, the harmful effects of non-competes are more acute, as their use clearly leads to suppressed wages, lower initial wages, and reduced upward economic mobility.

Non-compete clauses also hinder entrepreneurship, as research shows that the use of non-competes leads to fewer startups, and firms that start in states that enforce non-compete clauses are more likely to fail.

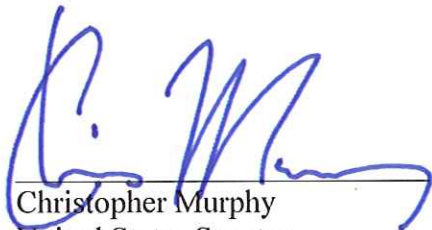
We therefore believe that the FTC should act to limit the use of non-compete clauses. Reducing the use of non-competes would allow workers to get better jobs, boost wages, increase entrepreneurship, and spur innovation.

Any action that you take to limit the use of non-compete clauses should do several things to ensure all these potential benefits are realized. First, the permissible use of non-compete clauses should be severely limited to only the most necessary circumstances, like the sale of a business or the dissolution of a partnership, and only to the most senior executives. You should also act to increase the transparency of the use of non-compete clauses by employers. Two separate studies have found that 30-40% of workers who are asked to sign non-compete clauses are presented with the clause after they have already accepted the job. Employers should therefore be required to disclose to prospective employees that they will be bound to a non-compete should they accept the job, and that non-compete agreements entered into after the employee starts work should be unenforceable and illegal.

The desire to limit the use of non-compete clauses is bipartisan in the United States Senate, with Senators expressing skepticism of non-compete agreements through public statements, in Committee hearings and through legislation.

The FTC has a duty to reduce or eliminate anti-competitive and deceptive acts. We believe that the broad use of non-compete clauses in the American economy is anti-competitive and workers are often bound to these clauses through deceptive practices. We appreciate that the Commission is seriously looking at non-compete clauses, and ask you ultimately act to limit their use.

Sincerely,



Christopher Murphy  
United States Senator



Todd Young  
United States Senator



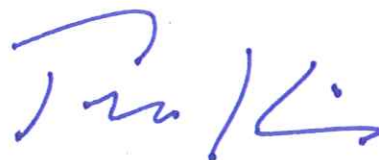
Sherrod Brown  
United States Senator



Tina Smith  
United States Senator



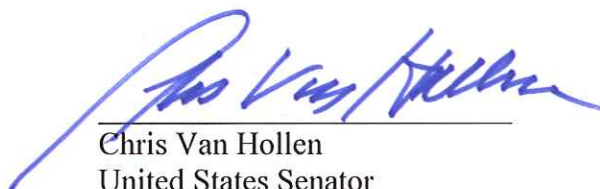
Richard Blumenthal  
United States Senator



Tim Kaine  
United States Senator



Ron Wyden  
United States Senator



Chris Van Hollen  
United States Senator



Benjamin L. Cardin  
United States Senator