Testimony of Economists Matthew Johnson and Evan Starr for Proposed Bill to Restrict Noncompetes in Connecticut
February 25, 2021

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

Thank you for the opportunity to provide testimony on the bill being proposed to restrict the use of noncompete agreements in the state of Connecticut (CT). We are both economists[1] who have conducted research to understand how common noncompetes are, how they influence workers and firms, and what sort of effects their legal enforceability has on economic activity. In this testimony we would like to summarize the central economic concerns about noncompetes and share some of the broad conclusions of academic research (including our own). The evidence from this research leads us to strongly support the bill being considered in CT.[2]

A noncompete agreement is an employment provision that prohibits a departing worker from joining or starting a competing firm. While employers may have a justified economic rationale for using noncompetes in certain settings, in all settings the costs to workers can be severe, even if the noncompete would never hold up in court. Because noncompetes limit workers' ability to move to other jobs in their chosen industry, they may prevent workers from working where they want and earning what they could in the labor market. These restrictions can sometimes be draconian. As an example, we have reprinted the text of a noncompete signed in 2015 by a temporarily-employed Amazon packer making $12 an hour:

> *During employment and for 18 months after the Separation Date, Employee will not, … engage in or support the development, manufacture, marketing, or sale of any product or service that competes or is intended to compete with any product or service sold, offered, or otherwise provided by Amazon … that Employee worked on or supported, or about which Employee obtained or received Confidential Information*.[3]

With this backdrop, we'd like to share six findings from the academic literature on noncompetes.

First, noncompetes are everywhere. Doggy daycare workers, unpaid interns, volunteer coaches, hair stylists, and janitors are just some of the jobs in which noncompetes have been found. Nationally they cover between 15% and 28% of US workers, and are frequently used in low-wage jobs: Nearly 1 in 3 hair salons had their workers—including independent contractors—sign noncompetes, and hourly-paid workers actually make up the majority of the noncompete-bound.

Second, just 10% of noncompete-bound workers report negotiating over the terms of the contract or for additional benefits in exchange for signing. Employers regularly compel workers to sign noncompetes when the worker has limited bargaining power, such as on the first day of the job.

---

[1] Evan Starr, is an Assistant Professor at the University of Maryland's Robert H. Smith School of Business Matthew Johnson, is an Assistant Professor at Duke University's Sanford School of Public Policy.
[2] For brevity, we omit the many citations in this literature. Please see Starr, Evan, "The Use, Abuse and Enforceability of Non-Compete and Non-Poach Agreements" for an overview.
[3] See https://www.theverge.com/2015/3/26/8280309/amazon-warehouse-jobs-exclusive-noncompete-contracts.

Third, despite reasonable arguments that noncompetes could potentially benefit workers and firms, most research suggests that the use and enforceability of noncompetes reduces wages, entrepreneurship, and job-to-job mobility, making it harder for firms to hire:

- After Oregon banned noncompetes for low-wage workers in 2008, hourly-worker wages rose up to 6% five years after the ban, while job-to-job mobility rose 17%.
- Similarly, after Hawaii banned noncompetes in 2015 for *only* high-tech workers, quarterly earnings for new hires increased by 4% and job mobility rose by 11%.
- A broad, nationally representative study estimated that if all states banned noncompetes, the average worker's earnings would increase by 8.5%
- This research also tends to find that the enforcement of noncompetes has particularly deleterious effects on the earnings of women and racial minorities.
- Other studies also find that where it is *easier* to enforce noncompetes, entrepreneurship rates are lower—especially for women—and businesses struggle to hire.

Taken together, these studies provide evidence that noncompetes—and laws that make them more easily enforceable—prevent low-wage, high-tech, and indeed all workers from working where they want and realizing their full earnings potential.

Fourth, in states where noncompetes are per se unenforceable, they still cover 19-23% of the workforce. Moreover, these unenforceable noncompetes also appear to chill employee mobility, in part because workers perceive them as enforceable or are scared about a lawsuit. As a result, it is important that the bill imposes some sort of cost on firms for using unlawful noncompetes (or some benefit for not using them) as a means to deter the use of unlawful noncompetes.

Fifth, the negative effects of noncompetes are borne not only by those who sign them, but also have negative "spillover" effects on the wages of other workers in the labor market. That is, the use of noncompetes, or policies that make it easier to enforce them, reduce the wages of all workers, not just the workers who have signed one. This "spillover" is very likely because noncompetes reduce labor market churn and make it more difficult for companies to hire.

Sixth, other tools can do similar jobs for the firm without constraining worker options so severely. For example, nondisclosure agreements and trade secret laws can protect trade secrets, while nonsolicitation agreements can protect clients. Yet neither these of provisions limit job options for departing workers. The efficacy of noncompetes should be judged based on their marginal value relative to these less restrictive alternatives.

Finally, we would like to note that this is not a classic firm vs. worker issue because firms are on both sides of the equation: Firms may not want to lose workers to competitors, but they would like to hire from competitors. Furthermore, firms benefit more broadly from being integrated in a dynamic environment, and the evidence overwhelmingly shows that noncompetes reduce dynamism by chilling mobility and entrepreneurship.