ECONOMIC INNOVATION GROUP

To:	New York Senate Standing Committee on Labor; Senate Standing Committee on Commerce, Economic Development, and Small Business
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Subject:	Written Testimony on Senate Bill S3100
Date:	May 22, 2023

Introduction

Chairs Ramos and Ryan, Ranking Members Martins and Murray, and members of the Standing Committees on Labor and Commerce, Economic Development, and Small Business, thank you for the opportunity to submit written testimony in support of S3100, concerning non-compete agreements.

Non-compete agreements harm New York's economy by limiting the mobility of its workers and reducing the dynamism of its business sector. Fortunately, there is growing political and economic consensus nationwide regarding the need to restrict the use of non-compete agreements. Earlier this year, members of the U.S. Senate and House of Representatives reintroduced the *Workforce Mobility Act*, which would essentially ban the use of non-competes in most circumstances. According to our research, at the state level, 34 state governments have introduced or passed legislation reforming the use of non-compete agreements in 2023 so far.

How Non-competes Hurt Workers and Contribute to a Less Dynamic Economy

In short, non-competes hurt workers and the broader economy primarily through reduced wages and diminished entrepreneurship. Today, roughly 20 percent of U.S. workers are bound by a non-compete agreement, and nearly twice as many have signed one at some point in the past.[1] Although their use among senior executives is ubiquitous, a sizable portion of the lower-wage workforce is covered by non-competes as well. Healthy labor markets depend on vigorous competition for talent between firms and the ability of workers to freely market their skills to interested employers. Yet, non-competes often restrict workers' ability to switch jobs in their area of expertise. Here is an overview of non-compete agreement's effects on workers:[2]

- **Non-compete enforcement hurts worker wages:** Across industries and states, a growing abundance of empirical evidence finds negative effects of non-competes on wages.
- **These negative wage effects are worse for historically marginalized workers:** Research has found that stricter non-compete enforceability lowers earnings for female and nonwhite workers by twice as much as for white male workers. Other studies have shown that workers with less education experience larger negative wage impacts from non-competes.
- **Non-competes deter workers from finding better opportunities:** Workers bound by a non-compete stay in their jobs 11 percent longer. Since job mobility is key for

[1] John Lettieri, "A better bargain: How non-compete reform can benefit workers and boost economic dynamism." American Enterprise Institute (2020).
[2] Evan Starr "The Use, Abuse, and Enforceability of Non-Compete and No-Poach Agreements." Economic Innovation Group (2019).

boosting earnings, these longer tenures reinforce the negative earnings effects of non-competes.

More generally, non-competes pose threats to the broader economy. A dynamic economy depends upon knowledge spillovers—not the spilling of trade secrets that can be protected through other means, of course, but the productivity-boosting exchanges that happen when individuals collaborate, start new enterprises, or take the body of their lifetime experiences and apply them in new contexts. Non-compete agreements contribute directly to the pile of forces undermining many such processes integral to our continued prosperity (see below).[3]

- **Non-competes reduce entrepreneurship:** Greater enforceability of non-competes reduces new firm entry. The firms that do start tend to have fewer employees at launch and are more likely to die in their first three years. The ones that survive still tend to remain smaller for their first five years.
- **Like wages, these negative effects on new business growth are worse for underrepresented entrepreneurs:** The threat of non-compete enforcement appears to particularly dampen entrepreneurship among women.
- **Non-competes likely slow the pace of innovation:** Non-competes obstruct the flow of knowledge by restricting the churn of workers among firms. They make venture capital less effective in spurring new patents and job growth.

Our own research has found that states enjoy a sizeable and immediate pro-entrepreneurship boost by curtailing the use of non-compete agreements among higher-earning workers. After Hawaii banned the use of non-competes for the tech workforce, the state saw a 10 percent bump in new businesses in the sector.[4]

Why a Full Ban is Best

The approach advanced in this bill—namely, a nearly complete ban on the use of non-compete agreements—is the right policy choice for New York. It would free workers up and down the income ladder to regain control over their careers. It would ensure that would-be entrepreneurs can start and grow enterprises in New York State. And it would free New York's innovation workforce to fuel the firms—large and small, new and old—that power the state's knowledge economy.

When Washington state prohibited non-competes for workers earning less than $100,000 in 2019, employers simply let their non-competes lapse for workers just below the threshold, instead of giving them a raise to keep their non-compete in place. This behavior reveals that employers of knowledge workers in the state did not truly value their non-competes.[5] Why not? Presumably because, in reality, the vast majority of non-competes have nothing to do with protecting vital trade secrets or proprietary interests—and when they do, employers have many other legal tools to protect their legitimate interests that carry none of the personal and

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[3] Ibid.
[4] Ben Glasner, "The Effect of Noncompete Reforms on Business Formation: Evidence from Hawaii and Oregon." Economic Innovation Group, 2023.
[5] Takuya Hiraiwa, et al., "Do Firms Value Court Enforceability of Noncompete Agreements? A Revealed Preference Approach," 2023.

economic harm of non-competes. While Washington's reforms were a significant step in the right direction, the state missed an important opportunity to enact a more far-reaching ban and reap the rewards for workers across healthcare, engineering, technology, and any other field where earnings and productivity are high. New York has the opportunity to learn from this and other recent state experiences.

A complete ban on non-competes is both pro-worker and pro-dynamism and a clear win-win for the state and its workers. EIG is proud to support the *Workforce Mobility Act*, a piece of legislation of similar scope at the federal level, and we are proud to support Senate Bill S3100 in New York, as well.