May 24, 2024

The Honorable Lina Khan Chair Federal Trade Commission Washington, DC 20580

The Honorable Rebecca Kelly Slaughter Commissioner Federal Trade Commission Washington, DC 20580

The Honorable Alvaro Bedoya Commissioner Federal Trade Commission Washington, DC 20580 The Honorable Melissa Holyoak Commissioner Federal Trade Commission Washington, DC 20580

The Honorable Andrew N. Ferguson Commissioner Federal Trade Commission Washington, DC 20580

Re: Request to Stay and Delay Implementation of the Noncompete Rule

Dear Commissioners:

On behalf of the undersigned organizations, we request that the Commission stay the effective date of the Non-Compete Clause Final Rule (89 Fed. Reg. 38,342-38,506, "Noncompete Rule") to allow for judicial review.

Under Section 705 of the Administrative Procedure Act, agencies "may postpone the effective date of action taken by it, pending judicial review" when "justice so requires." We strongly encourage you to exercise this power on the Noncompete Rule as FTC and other agencies recently have on other rulemakings. The Commission already elected to stay its CARS Rule pending litigation.¹ Similarly, the Securities and Exchange Commission acted to stay its Climate Disclosure Rule,² and the National Labor Relations Board delayed the effective date of the Joint Employer Rule.³

A stay would be a prudent step. The impending effective date of the Noncompete Rule and lack of Commission guidance on key pieces of it – such as what it means to be in a policymaking position or how the Commission will apply its "functional" test – has creating substantial uncertainty for businesses and employees around the country. In delaying the CARS Rule, the Commission cited "misunderstandings of the Rule" and the "uncertainty" that resulted as a

¹ Order Postponing Effective Date of Final Rule Pending Judicial Review, Federal Trade Commission, January 18, 2024, <u>https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf</u>.

² Order Issuing Stay, Securities and Exchange Commission, April 4, 2024, <u>https://www.sec.gov/files/rules/other/2024/33-11280.pdf</u>.

³ Board Extends Effective Date of Joint-Employer Rule to February 26, 2024, National Labor Relations Board, November 16, 2023, <u>https://www.nlrb.gov/news-outreach/news-story/board-extends-effective-date-of-joint-employer-rule-to-february-26-2024</u>.

reason for delay.⁴ A brief, voluntary delay would provide invaluable certainty as to the Rule's potential effective date and conserve significant resources.

Although the Noncompete Rule's legal fate remains in question, it is already imposing significant costs and uncertainty on the U.S. economy. Businesses are identifying existing noncompetes and notifying employees and former employees that their noncompetes may no longer be enforceable. Companies are incurring substantial legal costs as they explore other tools to attempt to protect their investments, and workers are losing training opportunities and bargaining power to negotiate compensation.

Noncompete agreements have been enforceable since before the country's founding. A short implementation delay of a few months should impose no meaningful costs, and certainly no unexpected costs, on anyone. If the Commission ultimately succeeds in court, only a small number of noncompetes for policy-making senior employees entered into between September 4, 2024 and the final effective date would be impacted given the rule's retroactivity requirements.

Finally, a brief delay would comport with the Commission's mission of enforcing federal law in a cost-effective manner. As set forth in the Commission's current <u>strategic plan</u>, the Commission "strives to efficiently address the competitive concerns raised by a merger or business practice and works toward a solution that maintains competition in the marketplace without unduly burdening legitimate business activity." In keeping with this goal, a brief delay would provide invaluable certainty to the business community and, if the Rule ultimately is enjoined, potentially conserve significant resources around the country.

We thank you for your consideration of this request.

Sincerely,

<u>National</u>

ACA International Advanced Medical Technology Association Alternative Investment Management Association American Bankers Association American Coatings Association American Council of Engineering Companies American Foundry Society American Hospital Association American Hotel & Lodging Association American Property Casualty Insurance Association American Staffing Association American Trucking Association Associated Builders and Contractors

⁴ Order Postponing Effective Date of Final Rule Pending Judicial Review, Federal Trade Commission, January 18, 2024, <u>https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf</u>.

Associated Equipment Distributors Associated General Contractors of America **Business Roundtable** Consumer Technology Association **Direct Selling Association** Federation of American Hospitals FIA Principal Traders Group FMI - The Food Industry Association Foodservice Equipment Distributors Association Futures Industry Association HR Policy Association Independent Electrical Contractors Independent Insurance Agents & Brokers of America Independent Lubricant Manufacturers Association International Agribusiness Council International Franchise Association Investment Adviser Association Meat Institute MEMA, The Vehicle Suppliers Association Metals Service Center Institute MFA, Managed Funds Association National Association of Business and Insurance Professionals National Association of Convenience Stores National Association of Manufacturers National Association of Mutual Insurance Companies National Association of Wholesaler-Distributors National Automobile Dealers Association National Federation of Independent Business National Lumber & Building Material Dealers Association National Mining Association National Newspaper Association National Pest Management Association National Propane Gas Association National Restaurant Association National Tooling and Machining Association National Waste & Recycling Association NCTA - The Internet & Television Association Precision Machined Products Association Precision Metalforming Association Reinsurance Association of America **Retail Industry Leaders Association** Securities Industry and Financial Markets Association The Council of Insurance Agents and Brokers U.S. Chamber of Commerce U.S. Council for International Business USTelecom - The Broadband Association

Wholesale & Specialty Insurance Association

<u>Alabama</u>

Prattville Area Chamber of Commerce Selma and Dallas County Chamber of Commerce

<u>Alaska</u>

Alaska Chamber

<u>Arizona</u>

Arizona Chamber of Commerce and Industry Buckeye Valley Chamber of Commerce Carefree Cave Creek Chamber of Commerce Chandler Chamber of Commerce Greater Flagstaff Chamber of Commerce Greater Phoenix Chamber Green Valley Sahuarita Chamber of Commerce Lake Havasu Area Chamber of Commerce Mesa Chamber of Commerce Nogales Santa Cruz County Chamber of Commerce & Visitor Center Northwest Valley Chamber of Commerce Peoria Chamber of Commerce Prescott Valley Chamber of Commerce Queen Creek Chamber of Commerce Southwest Valley Chamber Tucson Metro Chamber West Valley Chamber of Commerce Alliance Wickenburg Chamber of Commerce

<u>Arkansas</u>

AR State Chamber/AIA Rogers-Lowell Chamber of Commerce

California

Brea Chamber of Commerce Carlsbad Chamber of Commerce Chino Valley Chamber of Commerce Colusa County Chamber of Commerce Dana Point Chamber of Commerce Greater Coachella Valley Chamber of Commerce Greater Grass Valley Chamber of Commerce Greater San Fernando Valley Chamber of Commerce Laguna Niguel Chamber of Commerce Lincoln Area Chamber of Commerce Long Beach Area Chamber of Commerce Modesto Chamber of Commerce Murrieta/Wildomar Chamber of Commerce Newport Beach Chamber of Commerce North San Diego Business Chamber Palos Verdes Peninsula Chamber of Commerce San Juan Capistrano Chamber of Commerce Santa Barbara South Coast Chamber of Commerce Santee Chamber of Commerce Simi Valley Chamber of Commerce Tracy Chamber of Commerce West Ventura County Business Alliance Western States Trucking Association Yorba Linda Chamber of Commerce

<u>Colorado</u>

Greater Woodland Park Chamber of Commerce Vail Valley Partnership

<u>Florida</u>

Florida Chamber Litigation & Regulatory Reform Center Lakeland Chamber of Commerce Venice Area Chamber of Commerce

Georgia

Barrow County Chamber of Commerce Fayette Chamber of Commerce Jackson County Area Chamber of Commerce Newton Chamber of Commerce

<u>Idaho</u>

Boise Metro Chamber of Commerce Greater Idaho Falls Chamber of Commerce Pocatello-Chubbuck Chamber of Commerce, Inc. Twin Falls Area Chamber of Commerce

<u>Illinois</u>

Chicagoland Chamber of Commerce GLMV Chamber of Commerce Grundy County Chamber of Commerce & Industry Illinois Chamber of Commerce Joliet Region Chamber of Commerce & Industry Quad Cities Chamber of Commerce The Greater Springfield Chamber of Commerce Western DuPage Chamber of Commerce

<u>Indiana</u>

Fulton County Chamber of Commerce

Greater Lawrence Chamber of Commerce Greater Valparaiso Chamber of Commerce Indiana Chamber of Commerce Shelby County Chamber of Commerce South Bend Regional Chamber of Commerce Tipton County Chamber of Commerce

<u>Iowa</u>

Iowa Association of Business and Industry

<u>Kansas</u> Greater Topeka Chamber

Kentucky

Commerce Lexington Greater Louisville, Inc. Kentucky Chamber Northern Kentucky Chamber of Commerce Union County Chamber of Commerce

<u>Louisiana</u>

One Acadiana

<u>Maine</u> Maine State Chamber of Commerce

<u>Maryland</u> Maryland Chamber of Commerce

Massachusetts

Greater Boston Chamber of Commerce South Shore Chamber of Commerce

Michigan

Battle Creek Area Chamber of Commerce Cadillac Area Chamber of Commerce Detroit Regional Chamber Grand Rapids Chamber Hartland Area Chamber of Commerce Michigan Chamber of Commerce Midland Business Alliance

Minnesota

Albert Lea-Freeborn County Chamber of Commerce Greater Mankato Growth I-94 West Chamber of Commerce Lonsdale Area Chamber of Commerce Minnesota Chamber of Commerce SouthWest Metro Chamber of Commerce

<u>Mississippi</u> Mississippi Economic Council

<u>Missouri</u> Missouri Chamber of Commerce and Industry

<u>Montana</u> Kalispell Chamber of Commerce Montana Chamber of Commerce

<u>Nebraska</u>

Grand Island Area Chamber of Commerce Kearney Area Chamber of Commerce Nebraska Chamber of Commerce Seward County Chamber & Development Partnership Washington County Chamber of Commerce

<u>Nevada</u>

Carson City Chamber of Commerce Henderson Chamber of Commerce Vegas Chamber White Pine Chamber of Commerce

New Hampshire

Business and Industry Association New Hampshire

New Jersey

New Jersey State Chamber of Commerce

<u>New York</u>

Capital Region Chamber of Commerce The Business Council of New York State

North Carolina

Cabarrus Regional Chamber of Commerce Highlands Chamber of Commerce/Visit Highlands NC

<u>Ohio</u>

Brookville Area Chamber of Commerce Dayton Area Chamber of Commerce Huber Heights Chamber of Commerce Lima Allen County Chamber of Commerce Ohio Chamber of Commerce Shawnee Hills Area Chamber of Commerce

<u>Oklahoma</u>

State Chamber of Oklahoma

Oregon

Bend Chamber of Commerce Canby Area Chamber of Commerce Oregon Business & Industry Salem Area Chamber of Commerce

Pennsylvania

Chamber of Business and Industry of Centre County Hanover Area Chamber of Commerce Harrisburg Regional Chamber Lancaster Chamber of Commerce and Industry Mechanicsburg Chamber of Commerce Pennsylvania Chamber of Business and Industry Pennsylvania Food Merchants Association Schuylkill Chamber of Commerce Somerset County Chamber of Commerce Southern Chester County Chamber of Commerce TriCounty Area Chamber of Commerce Venango Area Chamber of Commerce

South Carolina

Anderson Area Chamber of Commerce South Carolina Chamber of Commerce

<u>Texas</u>

Fort Worth Chamber of Commerce Longview Chamber of Commerce Nacogdoches County Chamber of Commerce

<u>Utah</u>

ChamberWest Chamber of Commerce Salt Lake Chamber St. George Area Chamber of Commerce Utah Pacific Islander Chamber of Commerce

<u>Virginia</u>

Central Fairfax Chamber of Commerce ChamberRVA

Loudoun County Chamber of Commerce Lynchburg Regional Business Alliance Roanoke Regional Chamber of Commerce Virginia Chamber of Commerce

Washington

Association of Washington Business Greater Spokane Valley Chamber of Commerce Shelton-Mason County Chamber of Commerce Washington Retail Association

Wisconsin

Beaver Dam Area Chamber of Commerce Metropolitan Milwaukee Association of Commerce Mosinee Area Chamber of Commerce Oshkosh Chamber of Commerce Rice Lake Area Chamber of Commerce Wisconsin Manufacturers & Commerce

Wyoming

Campbell County Chamber of Commerce Greater Cheyenne Chamber of Commerce Jackson Hole Chamber of Commerce