November 30, 2023

The Honorable Kathy Hochul
Governor of New York
NYS Capitol Building
Albany, NY 12224

Dear Governor Hochul:

We write to respectfully urge you to sign S.3100A into law, which would help unleash the full potential of New York's economy and workforce by banning the use of noncompete agreements. This legislation is among the most important pieces of pro-worker, pro-growth legislation in New York's history and comes at a time when the state's economy is in urgent need of a boost.

A large and growing body of research points to widespread and harmful economic effects from the use of noncompete agreements. They exert a chilling effect on wages, including even for workers who are not directly bound by such an agreement.[1] They deprive firms of the talent they need, and they are especially harmful to startups, which are less likely to start, survive, or grow in states where noncompetes are strictly enforced.[2] Noncompetes have also been shown to reduce job creation and slow innovation.[3] Crucially, noncompetes covering higher-earning workers place the greatest drag on economic growth.

Allowing workers to freely pursue the best employment opportunities unlocks greater job mobility, faster wage growth, and higher levels of entrepreneurship.[4] That is why, as competition for in-demand workers grows ever tighter, states across the nation are moving decisively to restrict or eliminate noncompetes. Hawaii, for example, saw a 10 percent increase in high-tech startups after it prohibited noncompete agreements for workers in the sector.[5] Oregon saw both mobility and wages shoot upwards for its low-wage workforce after it passed a limited ban.[6] These are but two of at least 20 states to enact meaningful restrictions or outright bans on the use of noncompetes in recent years.

Not only are noncompetes harmful to workers, employers, and a well-functioning economy, they are unnecessary for their stated purpose. Employers have access to many legitimate tools to

[1] Johnson, Lavetti, and Lipsitz, 2020; Starr, 2019.
[2] Starr, Balasubramanian, and Sakakibara, 2017.
[3] Samila and Sorenson, 2011; Carlino, 2021; Fikri and Lettieri, 2022; Johnson, Lipsitz, and Pei, forthcoming;
[4] Balasubramanian, Chang, Sakakibara, Sivadasan, and Starr, 2020. Lipsitz and Starr, 2021; Glasner, 2023.
[5] Glasner, 2023.
[6] Lipsitz and Starr, 2021

protect their proprietary information without imposing the kinds of harmful effects caused by noncompetes, from trade secrets protection law to nondisclosure and non-solicitation agreements. This helps explain why economists find little evidence that firms actually value noncompetes—even among high-earning knowledge workers.[7] The latest research shows that noncompetes are not even economically justifiable for executives, with any marginal benefit outweighed by significant harms on competition and to the public.[8]

By banning the use of noncompetes statewide, S.3100A would allow New York to reap enormous economic benefits—especially in attracting and retaining the kind of workers that are essential to building an innovation-driven economy. It is clear the state is in need of such a boost. Due to depressed levels of entrepreneurship, more firms now close than open each year in every one of the state's metropolitan areas,[9] contributing to the Empire State's lowest levels of economic dynamism on record.[10] New York is also losing key workers at an alarming rate. The state's prime working age population fell by five percent from 2012 to 2022, a shrinking of the productive workforce that touched nearly every county.[11] The state also saw a massive outmigration of highly compensated workers during the pandemic, accounting from a net loss in $25 billion in taxable income to other states in 2021—the second largest decline in the nation.[12] Noncompete agreements contribute directly to such brain drain by forcing workers to find opportunity out of state.[13]

Banning noncompetes for all workers—and especially for knowledge and technology workers—would also help New York make the most of generational opportunities for economic growth and revitalization. With two coveted Tech Hubs designations just awarded from the U.S. Department of Commerce and tens of billions of dollars pouring into semiconductors and other advanced technologies in the state, New York has a singular chance to jumpstart its innovation ecosystem. That ecosystem rests fundamentally on the free mobility of skilled workers and their human capital. Indeed, the semiconductor industry developed in California in part *because* the state did not enforce noncompete agreements, allowing innovation and dynamism to flourish.[14]

You have previously expressed support for a more limited ban of noncompetes targeted to lower-wage workers, but the ever-growing body of evidence is clear: a full ban is the best way to advance all workers' rights and unlock the state's economic potential. We strongly urge you to sign the bill the New York State Legislature has placed on your desk without any revisions that

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[7] Hiraiwa, Lipsitz, and Starr, 2023.
[8] Shi, 2023.
[9] Analysis of U.S. Census Bureau's Business Dynamics Statistics data for 2019.
[10] Economic Innovation Group, 2023.
[11] Analysis of U.S. Census Bureau's Population Estimates data for 2022.
[12] Analysis of IRS Statistics of Income data.
[13] Marx, Singh, and Fleming, 2015.
[14] Saxenian, 1994.

would limit its application to particular classes of workers. We would, however, support a technical change that makes an exception allowing noncompetes only in the event of the sale of a business or the dissolution of a partnership, which is in line with best practice nationwide.

Sincerely,

Center for American Entrepreneurship
Economic Innovation Group
Economic Policy Institute
Engine
Dr. Matt Marx, SC Johnson College of Business, Cornell University
Niskanen Center
Open Markets Institute
Orly Lobel, Warren Distinguished Professor of Law and Director, Center for Employment & Labor Policy, University of San Diego
Right to Start
R Street Institute
Steam Logistics
Veeva Systems Inc.
Zachary Graves, Executive Director, Foundation for American Innovation

Cc:
Jill Archambault, General Counsel and Deputy Commissioner, New York State Department of Labor
David Perino, Senior Counsel to the Governor