The undersigned organizations, who together represent businesses that provide goods and services to virtually every American in every corner of the country, submit these comments regarding the proposed Noncompete Rule. We strongly oppose the proposal because noncompetes serve vital business and employee interests and because the FTC lacks legal authority to issue the proposed rule.

Most importantly, noncompetes serve pro-competitive interests. Courts, scholars, and economists all have found that noncompetes encourage investment in employees and help to protect intellectual property. In every sector of the economy, employers rely on noncompetes to protect investments in their workforce, to protect trade secrets and other confidential information, and to structure their compensation programs. As the FTC’s own economist John McAdams recently explained, noncompetes “allow firms to reduce recruitment and training costs by lowering turnover,” encourage firms to offer higher wages to compensate new employees, and “increase the returns to research and development,” thereby promoting innovation.1 Unfortunately, the Commission ignored or downplayed this evidence, thereby undermining “confidence in the integrity of the rulemaking process or the ultimate outcome.”2

Moreover, noncompetes promote pro-competitive interests far more effectively than alternatives such as trade-secret laws or nondisclosure agreements. By relying on noncompetes over nondisclosure agreements or trade-secret law, “employers avoid the difficulties of proving an actual or threatened misappropriation of trade secrets to secure an injunction,” a costly and time-consuming process.3 Scholars have found that noncompetes “may represent a more efficient mechanism to prevent proprietary knowledge transfers in certain circumstances, particularly when monitoring and the enforcement of trade secrets law is costly.”4

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Noncompetes are also often used as part of contractual arrangements between the employer and the employee that result in additional compensation to the employee, in the form of added pay, retention bonuses, stock awards, deferred compensation or as part of a severance package. Noncompetes are also essential to the sale of a business. Businesses often have multiple owners with ownership levels beneath the 25 percent threshold recognized by the proposed rule, yet noncompetes would be banned in these instances as well. Employers often make significant investments in providing upskilling for their employees. These investments often require the employee to agree to stay with the employer for a period of time. The proposed rule fails to appropriately recognize any of these applications, all of which fail to demonstrate a clear harm to competition or harm to the employee.

In addition to the damage the proposal would inflict on businesses and employees, the FTC lacks the statutory authority under the FTC Act to issue the rule. Section 5 of the FTC Act empowers the Commission to pursue individual enforcement actions against “unfair methods of competition,” and Section 6(g) provides narrow authority to develop internal procedural rules. Neither provision, nor any other, authorizes the FTC to adopt generally applicable substantive rules defining unfair methods of competition. In contrast, Congress has repeatedly granted the FTC the authority to promulgate substantive rules on “unfair or deceptive acts and practices” and other discrete topics, but has declined to authorize regulations addressing unfair methods of competition.

Without express authorization from Congress, the FTC also lacks the constitutional authority to promulgate the proposed rule. As the Supreme Court recently explained, the major-questions doctrine requires that Congress speak clearly if it wishes to assign decisions of “vast economic and political significance” to an agency. The doctrine recognizes that “extraordinary grants of regulatory authority are rarely accomplished through modest words, vague terms, or subtle devices,” even when there is a “colorable textual basis” for the agency’s position. Nothing in the FTC Act shows a hint of a decision by Congress to allow the Commission to invalidate contracts affecting tens of millions of workers, particularly given that Congress itself has recently considered legislation that would regulate noncompetes.

Similarly, the proposed rule also runs afoul of the nondelegation doctrine. A statutory delegation is constitutional only so “long as Congress lays down by legislative act an intelligible principle” to cabin the agency’s discretion. If the term “unfair methods of competition” is divorced from history and precedent, and if the Commission can condemn any business practice as unfair based on nothing more than “nefarious-sounding adjectives,” then there is effectively no limit to what the Commission could condemn under Section 5.

Finally, the proposed rule also violates bedrock principles of federalism. For centuries, noncompetes have been a matter of state law, and today, forty-seven States enforce reasonable noncompete clauses. If Congress “intends to alter the usual constitutional balance between the

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7 Gundy v. United States, 139 S. Ct. 2116, 2123 (2019).
8 See Wilson, dissenting, at note 2.
States and the Federal government,” it must be “unmistakably clear,” particularly when an agency’s regulation would disrupt areas of “traditional state regulation.”

While there are many ways for this proposal to be narrowed, because the FTC lacks the authority to issue any regulation on this issue, it should withdraw its proposed rule, and revert to the authority granted to it by Congress to address questions of unfair methods of competition through its adjudicative function.

Sincerely,

[Names and organizations]

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Independent Lubricant Manufacturers Association (ILMA)
Industrial Fasteners Institute
International Franchise Association
ISSA, The Worldwide Cleaning Industry Association
Managed Funds Association (MFA)
Medical Alley
MEMA, The Vehicle Suppliers Association
Metals Service Center Institute
Mortgage Bankers Association
National Association of Benefits and Insurance Professionals
National Association of Convenience Stores
National Association of Electrical Distributors
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Security Companies (NASCO)
National Association of Wholesaler-Distributors (NAW)
National Automobile Dealers Association
National Convenience Distributors
National Federation of Independent Business
National Funeral Directors Association
National Independent Automobile Dealers Association (NIADA)
National Lumber & Building Material Dealers Association
National Mining Association
National Newspaper Association
National Pest Management Association
National Propane Gas Association
National Retail Federation
National Roofing Contractors Association
National Truck Equipment Association
National Waste & Recycling Association
NCTA – The Internet & Television Association
NetChoice
North American Association of Food Equipment Manufacturers (NAFEM)
Reinsurance Association of America
Retail Industry Leaders Association
Securities Industry and Financial Markets Association
SIFMA Asset Management Group
U.S. Chamber of Commerce
USTelecom - The Broadband Association
Western States Trucking Association
Wholesale & Specialty Insurance Association (WSIA)
Window Covering Manufacturers Association
Window Covering Safety Council
World Millwork Alliance

**Alabama**
Selma and Dallas County Chamber of Commerce and Tourism Information

**Alaska**
Alaska Chamber of Commerce

**Arizona**
Apache Junction Area Chamber of Commerce
Arizona Chamber of Commerce and Industry
Buckeye Valley Chamber of Commerce
Chandler Chamber of Commerce
Gilbert Chamber of Commerce
Glendale Chamber of Commerce
Greater Flagstaff Chamber of Commerce
Greater Phoenix Chamber of Commerce
Green Valley Sahuarita Chamber of Commerce & Visitor Center
Kingman Area Chamber of Commerce
Lake Havasu Area Chamber of Commerce
Nogales Santa Cruz County Chamber of Commerce
Peoria Chamber of Commerce
Queen Creek Chamber of Commerce
Southwest Valley Chamber of Commerce
Surprise Regional Chamber of Commerce
Tucson Metro Chamber of Commerce
West Valley Chamber of Commerce Alliance
Wickenburg Chamber of Commerce
Yuma County Chamber of Commerce

Arkansas
Arkansas State Chamber of Commerce / Associated Industries of Arkansas
Little Rock Regional Chamber of Commerce

California
Brea Chamber of Commerce
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce

Coalition of California Chambers - Orange County
El Dorado County Chamber of Commerce
Gateway Chambers Alliance
Greater Conejo Valley Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
La Mesa Chamber of Commerce
Laguna Niguel Chamber of Commerce
Modesto Chamber of Commerce
Norwalk Chamber of Commerce
Palm Desert Area Chamber of Commerce
Port Hueneme Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Sherman Oaks Chamber of Commerce
Simi Valley Chamber of Commerce
Tulare Chamber of Commerce
West Ventura County Business Alliance

Colorado
Colorado BioScience Association
Colorado Chamber of Commerce
Greater Woodland Park Chamber of Commerce

Connecticut
Connecticut Business and Industry Association
Florida
Coral Gables Chamber of Commerce
Greater Boca Raton Chamber of Commerce
Stuart/Martin County Chamber of Commerce

Georgia
Barrow County Chamber of Commerce

Hawaii
Chamber of Commerce Hawaii

Idaho
Boise Metro Chamber of Commerce
Cascade Chamber of Commerce
Meridian Chamber of Commerce
Pocatello-Chubbuck Chamber of Commerce

Illinois
Chicagoland Chamber of Commerce
Cook County Black Chamber of Commerce
Edwardsville/Glen Carbon Chamber of Commerce
Effingham County Chamber of Commerce
Garfield Park Chamber of Commerce
GLMV Chamber of Commerce
Greater Springfield Chamber of Commerce
Illinois Association of Mutual Insurance Companies
Illinois Chamber of Commerce
Illinois Manufacturers' Association
Joliet Region Chamber of Commerce & Industry
Lombard Area Chamber of Commerce
Naperville Area Chamber of Commerce
Pekin Area Chamber of Commerce
Sauk Valley Area Chamber of Commerce
West Suburban Chamber of Commerce & Industry
Winnetka-Northfield-Glencoe Chamber of Commerce

Indiana
Decatur Chamber of Commerce
Indiana Chamber of Commerce
South Bend Regional Chamber of Commerce
Wayne County Area Chamber of Commerce

Iowa
Council Bluffs Area Chamber of Commerce

Kansas
Wichita Regional Chamber of Commerce

Kentucky
Commerce Lexington
Greater Louisville Inc. - The Metro Chamber of Commerce
Kentucky Chamber of Commerce
Northern Kentucky Chamber of Commerce
Union County Chamber of Commerce

Louisiana
Bossier Chamber of Commerce
Central Louisiana Regional Chamber of Commerce
Greenwood Chamber of Commerce
Maryland
Maryland Chamber of Commerce

Massachusetts
North Shore Chamber of Commerce

Michigan
Associated Builders & Contractors of Michigan
Detroit Regional Chamber of Commerce
Grand Rapids Area Chamber of Commerce
Holly Area Chamber of Commerce
Lansing Regional Chamber of Commerce
Michigan Biosciences Industry Association (MichBio)
Michigan Chamber of Commerce

Minnesota
Austin Area Chamber of Commerce
Greater Stillwater Chamber of Commerce
Lonsdale Area Chamber of Commerce
Marshall Area Chamber of Commerce
Minnesota Chamber of Commerce
Shakopee Chamber and Visitors Bureau

Missouri
Missouri Chamber of Commerce and Industry

Montana
Billings Chamber of Commerce
Helena Area Chamber of Commerce
Kalispell Chamber of Commerce
Montana Chamber of Commerce

Nebraska
Broken Bow Chamber of Commerce
Columbus Area Chamber of Commerce
Kearney Area Chamber of Commerce
Lincoln Chamber of Commerce
Nebraska Chamber of Commerce & Industry

Nevada
Carson City Chamber of Commerce
Henderson Chamber of Commerce
Reno + Sparks Chamber of Commerce
Vegas Chamber of Commerce

New Jersey
Chamber of Commerce Southern New Jersey
Greater Westfield Area Chamber of Commerce (GWACC)
HealthCare Institute of New Jersey (HINJ)
New Jersey Civil Justice Institute

New Mexico
Greater Las Cruces Chamber of Commerce
New Mexico Business Coalition

New York
Business Council of New York State
Capital Region Chamber of Commerce
North Country Chamber of Commerce
North Carolina
NC Chamber

North Dakota
Chamber Grand Forks / East Grand Forks

Ohio
Chillicothe Ross Chamber of Commerce
Cincinnati USA Regional Chamber
Dayton Area Chamber of Commerce
Ohio Chamber of Commerce
Toledo Regional Chamber of Commerce
Union County Chamber of Commerce

Oklahoma
Greater Oklahoma City Chamber
State Chamber of Oklahoma

Oregon
Grants Pass & Josephine County Chamber of Commerce
Oregon Business & Industry
Oregon State Chamber of Commerce
Springfield Area Chamber of Commerce

Pennsylvania
Alle Kiski Strong Chamber of Commerce
Cambria Regional Chamber of Commerce
Carlisle Area Chamber of Commerce
Chester County Chamber of Business and Industry
Greater Latrobe Laurel Valley Chamber of Commerce
Hanover Area Chamber of Commerce
Harrisburg Regional Chamber of Commerce
Indian Valley Chamber of Commerce
Lancaster Chamber of Commerce
Mechanicsburg Chamber of Commerce
Pennsylvania Chamber of Business and Industry
Pennsylvania Food Merchants Association
Peters Township Chamber of Commerce
Pittsburgh Airport Area Chamber of Commerce
Schuylkill Chamber of Commerce
Somerset County Chamber of Commerce
South West Regional Chamber of Commerce
Westmoreland County Chamber of Commerce

Rhode Island
Greater Newport Chamber of Commerce

South Carolina
Anderson Area Chamber of Commerce
Berkeley County Chamber of Commerce
Charleston Metro Chamber of Commerce
South Carolina Chamber of Commerce

Tennessee
Kingsport Chamber of Commerce

Texas
Del Rio Chamber Of Commerce
Fort Worth Chamber of Commerce
Greater Irving-Las Colinas Chamber of Commerce
Greater Waco Chamber of Commerce
League City Regional Chamber of Commerce
Longview Chamber of Commerce
North Texas Commission
Rowlett Area Chamber & Visitors Center
Sherman Chamber of Commerce
Texas Association of Business

Utah
Cache Valley Chamber of Commerce
ChamberWest
Payson Santaquin Area Chamber of Commerce
South Valley Chamber of Commerce
St. George Area Chamber of Commerce

Virginia
Blackstone Chamber of Commerce
Central Fairfax Chamber of Commerce
Roanoke Regional Chamber of Commerce
Virginia Chamber of Commerce

Washington
Association of Washington Business
Auburn Area Chamber of Commerce
Greater Grays Harbor, Inc.
Greater Yakima Chamber of Commerce
Mercer Island Chamber of Commerce
Moses Lake Chamber of Commerce
Puyallup Sumner Chamber of Commerce
Shelton-Mason County Chamber of Commerce
South Kitsap Chamber of Commerce
Washington Retail Association
West Plains Chamber of Commerce

West Virginia
West Virginia Chamber of Commerce
West Virginia Manufacturers Association

Wisconsin
Metropolitan Milwaukee Association of Commerce
Wisconsin Manufacturers and Commerce

Wyoming
Greater Cheyenne Chamber of Commerce
Jackson Hole Chamber of Commerce