

Protect or Prevent? Empirical Evidence and Policy Implications of the Effect of Non-Compete Agreements on Innovation

Kate Reinmuth

Stanford University; Stanford Law School

Emma Rockall (Stanford University) (co-author)

Existing evidence suggests that non-compete agreements hurt workers by lowering their wages and limiting their ability to seek better employment. Proponents argue that these harms are justified by incentives for companies to invest in innovation (or, more concretely, research and development). But non-compete agreements may also affect innovation in other ways—e.g., by introducing barriers to new firm entry or hampering the diffusion of ideas and knowledge across firms and workers—such that their overall effect on innovation is a priori ambiguous. This Article leverages exogenous variation in state-level non-compete agreement enforceability to empirically assess the net effect of non-compete agreements on inventive activity. It finds that, contrary to typical justifications, non-compete agreements hurt innovation in the United States. As a result, many states could improve not only worker welfare but also their innovative output by decreasing the enforceability of non-compete agreements within their borders. These results have direct implications for federal issues like the optimality of the Federal Trade Commission's recent nationwide ban on non-compete agreements. This Article finds that the effects of such a ban are likely to be large and positive, but that these significant effects may also implicate the Major Questions Doctrine in current and future judicial challenges such that the ban seems unlikely to survive. Therefore, this Article also identifies alternative policy changes that federal, state, and local policymakers could consider in order to achieve incremental progress while avoiding the judicial pitfalls of the complete ban.