Proponent Testimony to SB 11

Peter Friedmann, Employment Law Chair

Ohio Association for Justice

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Chair Manning, Vice Chair Reynolds, and Ranking Member Hicks-Hudson, thank you for the opportunity to testify in support of Senate Bill 11.

My name is Pete Friedmann. I am an employment lawyer based here in Columbus, and I represent employees throughout the State of Ohio. I have my own practice, and we have offices in Cleveland, Columbus, Cincinnati, and Toledo. My firm has represented tens of thousands of employees throughout the State over the past twelve years. I am the Employment Law Chair, and the Immediate Past President of the Central Ohio Association for Justice. I am also the Employment Law Chair for the Ohio Association for Justice. I am testifying today on behalf of OAJ, its members, and the clients we serve.

I feel that I bring a unique perspective to this dialogue because although I represent employees, I come from a family of business owners. And I myself, am a business owner. I can appreciate the challenges that businesses face when trying to protect investments in research, training, intellectual property, and other proprietary information. Theoretically, noncompete agreements are alleged to protect a company's business interests. But the reality is that the extent of harm resulting from noncompete agreements does not justify the means.

Competition is necessary for a healthy economy. Competition fosters creativity, growth, and innovation. Noncompete agreements impeded healthy competition. The ultimate winners of a noncompete agreement are usually not the companies enforcing them. It's the lawyers getting paid. And I say that with full appreciation that this bill technically would have a negative impact on my business. But I support this bill because it is more important for Ohio employees to have the unfettered ability to work in their respective career or industry, rather than worrying about the legal ramifications of a non-compete. The most common situation I see involving non-competes is an employee who is actively trying to build a reputation in a particular career, but with zero bargaining power to negotiate the noncompete. This puts the

employee at a significant disadvantage, and limits their ability to grow professionally. About ninety percent of the time someone needs help with a noncompete, they contact my firm (1) after they have signed the noncompete, (2) after they have found a new job, and (3) after they have received a cease-and-desist letter from their former employer. At that point, the harm is done, and most people cannot afford the potential risks of litigation, let alone the attorneys' fees to fight it. This puts the employee in a situation where they may not be able to get a job to pay their bills. But that's often the better option, rather than facing an imminent risk of liability for damages, and incurring debt for legal fees and costs.

Other states have implemented limitations on non-compete agreements to minimize the economic harm to employees. One example would be requiring a minimum threshold salary before a non-compete agreement can be enforceable, such as $200,000. If a minimum salary is determined to be the best option, the salary should be at the high end. That puts the restriction at a level where the employee is likely more educated or experienced to understand the implications of the non-compete agreement. Someone at a higher income level may have a greater ability to negotiate or absorb the financial impact than someone at a lower income level. Another alternative option if the non-compete agreement is deemed necessary, can be that the company must pay the employee for the entire duration that the employee is restricted from working. That forces both parties to have skin in the game, and it doesn't place the employee in sudden financial distress. But the reality remains that a noncompete restrains healthy competition, limits other companies from accessing qualified people in the labor market, and disrupts the employee's career trajectory.

The other significant consideration against the noncompete is that the employer holds all the bargaining power, from beginning to end. The non-compete is rarely negotiable, and rarely accounts for the circumstances surrounding the employee's departure. Given that Ohio is an at-will state, any company can terminate its employees at any time, for any reason or no reason at all. This emphasizes the severity of harm that a noncompete creates for employees. For instance, an employee can sign a one-year non-compete and be fired for no reason just 1 month later. That puts the employee in a position without a job, without income, and it impedes their ability to advance in their career. But most importantly, if the employee has a family, a mortgage, bills to pay, or any normal financial obligations, they probably don't have the option to just stop working. So, they will get another job out of sheer desperation, knowing that it puts them at immediate risk of exposure to liability.

Now, I recognize that a company should have the ability to protect its main assets, its employees, and its customers. It should be able to protect its client lists, research, trade secrets, and other proprietary information. But even absent a non-compete agreement,

companies still have ways to protect their legitimate business interests. These options include non-solicitation agreements for both employees and clients, trade secrets protections law, and other restrictive covenants such as confidentiality and nondisclosure agreements. Employers even have the ability to prohibit current employees from simultaneously working for any other competitor. However, a company should not be able to restrict a person's ability to earn a living. If the company's business interests are so valuable to warrant restricting a person's livelihood, then the company should be required to compensate that person for the restricted time period.

As a result of noncompete agreements, I've had clients face immediate financial distress, lose out on great job opportunities, dissolve their business, be forced to move out of the state, and even be forced to change industries or careers. The breadth of harm caused by noncompete agreements is simply too great to justify their continued enforceability.

Lastly, I would like to briefly address section of 4119.03 of the bill, making it unlawful to require an employee in Ohio to adjudicate a legal claim outside of the Ohio jurisdiction. This section is also absolutely essential to protect Ohio employees' rights. I have a young client, new to the workforce, who unknowingly agreed to adjudicate any legal claims in the state of Texas, despite the fact that she resides here in Ohio. The agreement was simply part of her onboarding paperwork. We didn't know she signed the agreement and we filed a lawsuit here in Ohio. The company immediately removed the case to Texas, pursuant to the agreement she signed. We had to help our client find legal counsel in Texas, and she now has to litigate her wrongful termination case across the country. In the growing age of remote work, I can think of no valid reason why we should allow out-of-state companies to force Ohio employees to litigate in other state jurisdictions.

Again, thank you for the opportunity to support SB 11. I am happy to address any questions.