

Noncompetes and Their Potential Impact on Trade Secret Cases

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An estimated 30 million—about one in five working Americans—are subject to noncompetes, legal agreements that restrict employees from engaging in activities that increase competition for their employers. ¹ On April 23, 2024, the Federal Trade Commission (FTC) voted in favor of a nationwide ban on the use of noncompete agreements. ²

After just over a year of deliberation since its initial proposal for the ban on January 5, 2023, the FTC's final ruling comes in the wake of research and speculations regarding the intended and unintended consequences resulting from such a measure. ³ Some have postulated that a ban on noncompetes will lead to an increased number of trade secret disputes because, as proponents of noncompetes argue, such agreements are used to safeguard a company's sensitive information, including trade secrets. ⁴ Trade secrets are intellectual property rights for confidential information, including manufacturing processes and designs, distribution methods, and proprietary formulas and corporate recipes. ⁵

Whether the ban on noncompetes will have a quantifiable impact on the volume of trade secret cases is ultimately an empirical question. In theory, the ban could result in companies looking to protect their confidential information through trade secret lawsuits. At the same time, even states that have already fully banned noncompetes—as California, Minnesota, North Dakota, and Oklahoma have done—typically already make exceptions for trade secrets.

Further, in the absence of noncompetes, there are alternatives, including nondisclosure agreements and nonsolicitation agreements, that can be used to safeguard trade secrets. Additionally, firms may

choose to protect their inventions through patents instead of relying on trade secrets. All else being equal, it is possible that even with a ban on noncompetes, there may not be a substantial change in the volume of trade secret disputes.

To our knowledge, prior research has not quantitatively assessed the potential impact of regulatory changes to noncompetes on the volume of trade secret disputes. In this article, we identify and examine state-level variations in noncompete regulations over time alongside annual federal trade secret caseloads to empirically explore any potential relationship between these two factors. Over the last two decades, states have varied in their approach to whether and how noncompetes are enforced. Using a variety of publicly available sources, for each year of available data, we assign states to one of three categories: (1) states that have already banned noncompetes, (2) states that have introduced various forms of restrictions on the enforcement of noncompetes, and (3) states that enforce noncompetes without restrictions.

When analyzing the average annual trade secret caseloads across the three categories, we observe that states with a ban on noncompetes experience the highest levels of trade secret cases. States that have introduced restrictions on the enforcement of noncompetes have the second-highest levels of trade secret cases, followed by states with unrestricted enforcement of noncompetes. These findings are consistent with the hypothesis that a nationwide ban on noncompetes could lead to more trade secret disputes.

However, subsequent analyses indicate that once we factor in state populations, the results no longer support the previously implied relationship between noncompetes and trade secrets. Said differently, observed differences in the volume of trade secret cases across the three categories of states are influenced by state characteristics such as population size rather than solely by their enforcement of noncompetes.

Our state-level analysis for the subset of states that introduced their restrictions on the enforcement of noncompetes in the last two decades also leads to mixed findings. For some states, including Illinois, Louisiana, and Washington, it appears that implementing some form of restriction on the enforcement of noncompetes was followed by a decline in trade secret cases in those states. This would imply that doing away with noncompetes may not lead to more trade secret cases. On the other hand, in states like Nevada, Oregon, Utah, and Virginia, it appears that implementing some form of restriction on the enforcement of noncompetes was followed by an increase in trade secret cases in those states. The experience in these states would imply that doing away with noncompetes may lead to more trade secret cases.

When the aggregate analysis of the different categories of states and the before and after experiences of select individual states are taken together, our findings lead us to conclude that the ban on noncompetes is unlikely to lead to any immediate surge in trade secret cases. At the same time, however, we recognize that any impact of the ban on the volume of trade secret cases need not be immediate. Moreover, we do not claim our estimated effects or lack thereof to be causal. We interpret our findings as preliminary and motivation for state-level analyses that control for additional confounding factors that may impact both the enforcement of noncompetes and the volume of trade secret cases.

Regulatory Landscape for Trade Secrets and Noncompetes in the U.S.

In the United States, trade secrets are protected by a combination of state and federal laws. States and U.S. territories permit trade secret owners to seek damages or injunctive relief for misappropriated trade secrets. ⁶ In all states and U.S. territories (with two exceptions, New York and North Carolina), trade secret claims are modeled after the Uniform Trade Secrets Act (UTSA) of 1979. ⁷ UTSA claims are typically adjudicated in state courts; however, for cases where parties are residents of different states and alleged damages are greater than \$75,000, claims may also be brought to federal district courts. ⁸

With the Defend Trade Secrets Act (DTSA) of 2016, Congress provided added protection for trade secrets through federal law. While the DTSA does not replace state laws, it does provide plaintiffs easier access to federal courts for trade secret claims pertaining to products or services utilized across states or internationally. ⁹ The increased access to federal district courts is evidenced by the rise in trade secret cases in these courts after 2016, as discussed below.

Unlike trade secrets, there is no federal legislation to date governing noncompetes in the U.S. However, this is not to say that there haven't been any attempts. The FTC's April 2024 ban is the most recent in a series of federal legislative attempts to restrict noncompetes since 2015. ¹⁰ These prior efforts include White House reports informing on the "overuse and misuse" of noncompetes and bills ranging from attempts to prohibit the use of noncompetes for "low-wage employees" to those proposing a federal ban on the use of noncompetes altogether. ¹¹

At the state level, there is considerable variation in how noncompetes are governed. Though for purposes of our study we divide states into the three categories, all 50 states and the District of Columbia have their own variations in regulating noncompetes. ¹² In addition to variations across states, regulations regarding noncompetes have also evolved over time within individual states. Since 2015, as many as 30 states have made changes to their laws relating to noncompetes.

13 Several of these changes fall into the category of introducing limitations to the use of noncompetes, including time limits on the use of noncompetes and restrictions on the use of noncompetes for certain professions or for employees below a certain income threshold.

Volume of Trade Secret Cases and Variation in State-Level Noncompete Legislation

What impact will the federal ban on noncompetes have on the volume of trade secret disputes? Given that the rule was just implemented, there is not enough empirical data to adequately test this question at this time. However, by analyzing differences in and changes to state-level noncompete regulations, we explore the potential impact of the FTC's ban by proxy. Specifically, we try to answer the following questions: (1) Do states with bans or restrictions on enforcement of noncompetes differ in their trade secret caseload relative to states that enforce noncompetes without restrictions? (2) Do states that transition from unrestricted enforcement of noncompetes to either a ban or restrictions on noncompetes experience an increase or decrease in the number of trade secret cases thereafter?

Volume of Trade Secret Cases

To help answer our two questions, we look to state-level data on the volume of trade secret cases and information on state regulations pertaining to the enforcement of noncompetes. For the former, we use data from Lex Machina's database of U.S. federal district court cases. We limit the volume of cases to those filed in district courts and those identified by Lex Machina as trade secret cases. 14 Lex Machina's case records identify the district court in which a case was filed along with the date of filing, enabling us to determine the number of trade secret cases filed each year in each state. Our analysis encompasses a total of 19,073 trade secret cases filed between January 1, 2000, and December 31, 2023. 15

Between 2000 and 2023, the time period for which we have data, trade secret caseloads in the U.S. federal district courts appear to have experienced at least three distinct shifts in trend. Total trade secret caseloads increased dramatically in the latter half of the 2000s. Between 2000 and 2006, 16 on average, there were 30 trade secret cases filed in U.S. district courts annually. The trade secret caseload rose from 105 to 1,123 between 2006 and 2009. This increase was followed by a period of relatively stable numbers, with an average of 1,095 annual filings observed each year from 2010 until 2016, followed by another notable rise peaking in 2017. After this peak, the total trade secret cases in district courts seemed to decline until 2023—from 1,395 in 2017 to 1,121 in 2022, before rebounding to 1,230 in 2023. 17

Existing studies and industry reports have identified the changing trends in total trade secret caseloads and have also posited reasons for said changes. A research article from 2012 attributes the growth in the volume of trade secret and related litigation, in part, to the availability of new technology—particularly digital information—which has made it easier to misappropriate trade secrets. (18) As noted in the same study, in parallel to the increase in trade secret cases during the decade, the number of computers connected to the internet also rose dramatically. While in 2000 there were relatively few computers connected to the internet, by 2010, the number of connected computers had risen to more than 10 billion.

The increase in trade secret cases in 2016 is generally attributed to the DTSA, which was enacted that year. (19) The same industry report by Lex Machina also identifies the decrease in trade secret cases post-2017 through 2022, noting that the decline is a net effect of the decreasing number of trade secret cases without DTSA claims (those limited to state or common law claims) and relatively steady number of trade secret cases involving DTSA claims. While limited to a single data point, the number of trade secret cases in 2023 suggests that trade secret cases may once again be on the rise.

State-Level Variation in Noncompete Regulations

To empirically assess the potential impact of changes in noncompete regulations on the volume of trade secret disputes, we categorized states according to their noncompete laws. To determine this categorization, we drew on multiple data sources. As a starting point, we considered available surveys on noncompetes conducted by Bloomberg, Epstein Becker Green, and Beck Reed Riden, which allowed us to identify the noncompete statutes and restrictions currently in place for each state. (20) We supplemented these surveys with publicly available articles on changes in noncompete regulations over time, (21) as well as a review of the relevant statutes for individual states.

Based on our review of state regulations, we delineate states in each year of available data into one of three categories defined below.

Category 1: states with bans on noncompetes. These states prohibit noncompetes except under narrowly defined circumstances, such as in the dissolution of a partnership or LLC or the sale of a business. Between 2000 and 2023, this category includes four states. (22) Most recently, Minnesota joined this category in 2023.

Category 2: states with restrictions on noncompetes. These states have enacted specific restrictions on the enforcement of noncompetes, including minimum income thresholds, duration limits, restrictions surrounding the parties against whom noncompetes can be enforced, and

parameters defining a valid noncompete agreement (e.g., states may prohibit contracts or agreements that restrain trade or commerce). Currently, there are 25 states with varying restrictions against noncompete agreements, (23) an increase from eight in 2000.

Between 2000 and 2023, nine states that transitioned to Category 2 had a regulatory change that we identified to be associated with wage thresholds. (24) The majority of these changes were in response to the Obama administration's 2016 "Call to Action," which urged states to contemplate amending their noncompete laws or banning noncompetes for "workers under a certain wage threshold." The determination of the specific threshold was left to the discretion of each state. (25) For instance, Illinois imposed a minimum wage threshold of \$75,000, which became effective January 1, 2017. This amount was set to increase every five years. In 2019, Maine prohibited noncompetes where the employee's wages were at or below 400% of the federal poverty level. In the same year, Maryland banned noncompetes for employees earning \$15 an hour or less, or \$31,200 per year. (26)

Other states placed limitations on who noncompetes could or could not be enforced against. For instance, a 2011 Georgia statute made noncompetes enforceable only against employees who regularly solicit customers, engage in sales, perform the duties of a key employee, or have the duty of managing a department and regularly direct the work of employees with the authority to hire or fire them. (27) A 2019 Louisiana statute stated that noncompetition agreements are void if they are entered into by officers or directors of a corporation, partners of a partnership, or the members of a limited liability company who lack the authority to commit the entity to the agreement. (28)

In certain states, restrictions were introduced on the duration of noncompetes. Utah and Oregon, for example, capped noncompetes at one and two years, respectively, with Utah implementing this limit in 2016 and Oregon in 2008. (29)

Category 3: states that allow noncompetes. These states permit the enforcement of noncompetes without any imposed restrictions. Currently, there are 22 states in this category, (30) a decrease from 39 in 2000. In general, these states do not have any restrictions regarding the enforcement of noncompetes, i.e., there are no statutes pertaining to noncompetes in these states.

Changes in state regulations: 2000–2023. Overall, since 2000, 19 states have adjusted their regulations related to noncompetes, resulting in changes to their categorization within our study. Specifically, 17 of these states moved from Category 3, which allows noncompetes, to Category 2, where noncompetes are subject to certain restrictions.

Less commonly, some states transitioned in the opposite direction (Category 1 to 2) or transitioned directly from permitting to banning noncompetes (Category 3 to 1). For instance, in Colorado, noncompete agreements were initially not enforceable until a change was introduced on August 10, 2022. Under the new regulation, highly compensated employees became subject to noncompetes, ³¹ shifting Colorado from Category 1 to Category 2. Meanwhile, Minnesota, which previously permitted noncompetes, implemented a ban effective July 1, 2023. This ban applies except in cases involving the sale of a business or the dissolution of a partnership or LLC, ³² and Minnesota transitioned from Category 3 to Category 1.

Impact of Noncompete Regulations on Trade Secret Caseloads

To understand the potential role of noncompetes in the observed changes in the volume of trade secret cases, we first analyze the volume of trade secret cases across our three defined categories of states based on their noncompete regulations. We account for the fact that each category has a different number of states by comparing the average number of annual trade secret cases across the three categories.

This comparison indicates that—beginning around 2006—the average number of trade secret cases is highest among states with a ban on noncompetes (on average, 41 annual caseloads between 2006 and 2023). It is followed by states that have imposed some form of restriction on noncompete enforcement (on average, 24 annual caseloads), and finally, states that enforce noncompetes without any restrictions (on average, 17 annual caseloads). ³³

The ordering of the three categories is consistent with the hypothesis that a ban on noncompetes could result in more trade secret cases. In fact, the trends imply a potential “dose effect,” i.e., even the introduction of restrictions on noncompete enforcement, rather than implementing a complete ban, may still contribute to an increase in the volume of trade secret cases. The suggested impact of a ban on noncompetes on the volume of trade secret cases is even higher.

The suggested link between noncompetes and trade secret cases is far from conclusive. The observed differences in the volume of trade secret cases across the three categories of states may be influenced by factors beyond differences in noncompete regulations. For instance, the category of states with a ban on noncompetes may have a higher number of trade secret cases not due to state-specific bans, but because this category includes states with larger populations. Therefore, the observed higher volume of trade secret cases may simply be a product of having more people and, consequently, more businesses and opportunities for misappropriating trade secrets.

If we plot the volume of trade secret cases per 1 million residents, the resulting trends across the three categories differ substantially. ³⁴ Specifically, we do not observe the same ordering of the categories. In fact, the ordering of the categories appears to vary at different points in time, indicating no evidence of a relationship between noncompetes and trade secret cases.

Overall, our aggregate analyses suggest that there is no compelling empirical evidence demonstrating a direct impact of changes in noncompete regulations on the volume of trade secret cases. Next, we examine the experiences of individual states to ascertain whether they corroborate these aggregate findings. Specifically, for states that changed their noncompete regulations within any of our three defined categories between 2000 and 2023, we analyze the subsequent impact, if any, on their volume of trade secret cases.

We begin with states that implemented some form of restrictions on noncompete enforcement. The findings are once again inconclusive. In states like Illinois, Louisiana, and Washington, it appears that implementing some form of restriction on the enforcement of noncompetes was followed by a decline in trade secret cases in those states. ³⁵ This would imply that doing away with noncompetes may not lead to more trade secret cases.

On the other hand, in states like Nevada, Oregon, Utah, and Virginia, it appears that implementing some form of restriction on the enforcement of noncompetes was followed by an increase in trade secret cases. ³⁶ The experience in these states would imply that doing away with noncompetes may lead to more trade secret cases. Georgia, Maryland, and Massachusetts displayed no clear trend in trade secret cases following the change. ³⁷

Between 2000 and 2023, a handful of additional states implemented changes to their noncompete regulations but in the opposite direction. Specifically, these states went either from a ban on noncompetes to allowing noncompetes with some restrictions, or from restricted enforcement of noncompetes to unrestricted enforcement of noncompetes. The District of Columbia, for example, implemented a near ban on all noncompetes in 2021 but—following backlash—reverted to allowing noncompetes with some restrictions in 2022. ³⁸ Colorado is another example where noncompetes were initially not enforceable but, as of August 10, 2022, the regulation changed to allow noncompetes for highly compensated individuals.

If banning or restricting noncompetes leads to an increase in trade secret cases, then removing these bans or restrictions should correspondingly decrease the number of trade secret cases. However, this has not been the experience in the District of Columbia or Colorado. Following the reversal to restricted enforcement of noncompetes, the volume of trade secret cases in the District

of Columbia has continued to increase. In Colorado, following the reversal of the ban in 2022, the volume of trade secret cases has generally increased. (39)

Findings, Limitations, and Future Research

Our findings suggest that the observed variation in trade secret case volumes across states, which differ in their enforcement of noncompetes, is primarily due to state population sizes. States with larger populations tend to have more trade secret cases, regardless of their stance on enforcing noncompetes. Our analysis of states that altered their regulations on noncompetes shows mixed results. Some states experienced an increase in trade secret cases after implementing restrictions on noncompetes, while others saw a decline or displayed no clear trend in case numbers.

We recognize at least two important limitations of our current analyses. First, it is possible that any impact of the ban on the volume of trade secret cases may not be immediate. Therefore, when generalizing from the experience of states that have undergone changes in their noncompete regulations, it is possible that the full effects on trade secret cases might only become apparent after a considerable delay. Second, our analyses do not control for additional confounding factors that may impact both the enforcement of noncompetes and the volume of trade secret cases. For example, we recognize that employers have alternatives to noncompetes in the form of disclosure agreements and nonsolicitation agreements that could be used to safeguard trade secrets. Similarly, where possible, employers may choose to protect their intellectual property by switching from trade secrets to patents. Estimating a causal effect of the ban on noncompetes may require controlling for these potentially confounding factors.

Considering the above limitations, our findings should be considered preliminary. Collectively, the outcomes for our aggregate and individual state-level analyses indicate that the ban on noncompetes is unlikely to lead to any immediate surge in trade secret cases. Equally important, our findings underscore the complexity of the relationship between noncompete regulations and trade secret disputes and emphasize the need for further research to fully understand the implications of noncompete policies.

Endnotes

1. Press Release, Fed. Trade Comm'n, FTC Announces Rule Banning Noncompetes (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.
2. *Id.*; see also Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>. Since the time of writing this article, significant regulatory

developments have directly impacted the FTC's attempt to implement a federal ban on noncompetes. In June 2024, the U.S. Supreme Court, in a landmark decision, overturned *Chevron* deference, which previously required courts to defer to federal agencies' interpretations of ambiguous statutes. The Supreme Court has now mandated that courts independently interpret statutes without defaulting to the agency's view. This shift of power from federal agencies to the judiciary limits the FTC's ability to implement a sweeping federal ban on noncompetes based on its interpretation of its statutory mandate to protect competition. Consistent with these recent developments, on August 20, 2024, a Texas federal judge permanently blocked the FTC's ban on noncompetes.

3. For example, existing studies on noncompetes have focused on their impact on wages and employee mobility, highlighting differences in enforcement and outcomes in various states or industries. Studies have also explored the broader economic impacts of noncompetes, examining their influence on firm behavior, such as investments in training or research and development, as well as their overall effects on market competition and consumers. Gabriella Monahova & Kate Foreman, *A Review of the Economic Evidence on Noncompete Agreements*, COMPETITION POL'Y INT'L (May 31, 2023), <https://www.pymnts.com/cpi-posts/a-review-of-the-economic-evidence-on-noncompete-agreements/>; see also Evan Starr, *Noncompete Clauses: A Policymaker's Guide through the Key Questions and Evidence*, ECON. INNOVATION GRP. (Oct. 31, 2023), <https://eig.org/noncompetes-research-brief/>.
4. Rosemary Scott, *FTC's Non-Compete Law Could Propel Rise in Trade Secrets Lawsuits*, BIOSPACE (Feb. 8, 2023), <https://www.biospace.com/article/ftc-s-non-compete-law-could-propel-rise-in-trade-secrets-lawsuits-/>; see also Steve Carey et al., *FTC's Noncompete Ban Leaves Room to Prevent Trade Secret Theft*, BLOOMBERG L. (Jan. 24, 2023), <https://news.bloomberglaw.com/us-law-week/ftcs-noncompete-ban-leaves-room-to-prevent-trade-secret-theft>.
5. Typically, to qualify as a trade secret, the relevant information must be commercially valuable because of its secrecy, known only to a select group, and safeguarded by reasonable measures. *Trade Secrets*, WORLD INTELL. PROP. ORG., <https://www.wipo.int/tradesecrets/en> (last visited Aug. 21, 2024).
6. CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., IF12315, AN INTRODUCTION TO TRADE SECRETS LAW IN THE UNITED STATES (2023).
7. North Carolina has implemented its own statute similar to the UTSA, and in New York, trade secret claims are governed by common law. See *id.*
8. *Id.*
9. *Id.*
10. *The Changing Landscape of Trade Secrets Laws and Noncompete Laws around the Country*, FAIR COMPETITION L. (Aug. 21, 2024), <https://faircompetitionlaw.com/changing-trade-secrets-noncompete-laws/>.
11. *Id.*
12. *Id.*

13. *Id.*
14. In the Lex Machina database, we identify trade secret cases by filtering to "Trade Secrets" on the "Case Types" field. While trade secret cases are also filed in state courts, we understand that the completeness of data varies across states. As such, we limit our analysis to district court cases. Lex Machina tags cases that have "one or more claims for trade secret misappropriation under state law or the federal Defend Trade Secrets Act" as "Trade Secrets" in the "Case Types" field.
15. This total includes the 50 states and the District of Columbia.
16. All average values are inclusive of the beginning and end year.
17. Data obtained from Lex Machina district court cases database, examining the total number of cases filed in the 50 states and the District of Columbia between January 1, 2000, and December 31, 2023. Trade secret cases are identified by the "Trade Secrets" tag in the "Case Types" field.
18. David S. Almeling, *Seven Reasons Why Trade Secrets Are Increasingly Important*, 27 BERKELEY TECH. L.J. 1091 (2012).
19. LEX MACHINA, TRADE SECRET LITIGATION REPORT 2023 (2023).
20. BLOOMBERG L., NONCOMPETITION AGREEMENTS: A STATE-BY-STATE SURVEY (Jan. 2023), <https://pro.bloomberglaw.com/insights/contracts/non-compete-law-state-survey/>; EPSTEIN BECKER GREEN, 50-STATE NONCOMPETE SURVEY (July 28, 2023), <https://20754472.fs1.hubspotusercontent-na1.net/hubfs/20754472/50-STATE-NON-COMPETE-SURVEY.pdf>.
21. *The Changing Landscape of Trade Secrets Laws and Noncompete Laws around the Country*, *supra* note 10; *see also A Brief History of Noncompete Regulation*, FAIR COMPETITION L. (Oct. 11, 2021), <https://faircompetitionlaw.com/2021/10/11/a-brief-history-of-noncompete-regulation/>.
22. Exceptions are 2021 and 2022, in which there were five and three states, respectively. Category 1 states include California, Minnesota, North Dakota, and Oklahoma.
23. Category 2 states include Colorado, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oregon, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, and Wisconsin.
24. Specifically, these are Oregon (in 2008), Illinois (in 2017), Massachusetts (in 2018), Maine (in 2019), Maryland (in 2019), New Hampshire (in 2019), Rhode Island (in 2020), Virginia, (in 2020), and Washington (in 2020). Note that the year of change refers to the year the changes took effect. *New Noncompete, Nonsolicit, No-Recruit Wage Thresholds for 2024*, FAIR COMPETITION L. (Dec. 2, 2023), <https://faircompetitionlaw.com/2023/12/03/new-noncompete-wage-thresholds-for-2024/>.
25. *"Low-Wage" Employees Are Now Exempt from 10 Noncompete Laws. Who Are These Employees and Where Are They Exempt?*, FAIR COMPETITION L. (June 19, 2021), <https://faircompetitionlaw.com/2021/06/19/low-wage-employees-are-now-exempt-from-10-noncompete-laws-who-are-these-employees-and-where-are-they-exempt/>.

26. *Id.*
27. GA. CODE ANN. §§ 13-8-50 *et seq.*
28. LA. STAT. ANN. § 23:921.
29. UTAH CODE ANN. § 34-51-201; OR. REV. STAT. § 653.295.
30. Category 3 states include Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Indiana, Iowa, Kansas, Kentucky, Mississippi, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, West Virginia, and Wyoming.
31. COLO. REV. STAT. § 8-2-113.
32. MINN. STAT. § 181.988.
33. Data obtained from Lex Machina district court cases database. For each year, the total number of cases filed across states in each of the three categories was divided by the number of states in those categories. In the year of transition, each state was assigned to its post-change category.
34. Data obtained from Lex Machina district court cases database. For each year, the total number of cases filed across states in each of the three categories was divided by the total population across those states. In the year of transition, each state was assigned to its post-change category. Population data for the 50 states and the District of Columbia were sourced from *Release Tables: Resident Population by State, Annual*, FRED (2000–2023), <https://fred.stlouisfed.org/release/tables?eid=259194&rid=118>.
35. Data obtained from Lex Machina district court cases database. Each of the states transitioned from Category 3 to Category 2, with Illinois shifting in 2017, Louisiana in 2019, and Washington in 2020.
36. Data obtained from Lex Machina district court cases database. Each of the states transitioned from Category 3 to Category 2, with Nevada shifting in 2017, Oregon in 2008, Utah in 2016, and Virginia in 2020.
37. Data obtained from Lex Machina district court cases database. Each of the states transitioned from Category 3 to Category 2, with Georgia shifting in 2011, Maryland in 2019, and Massachusetts in 2018.
38. Laura D. Windsor & Amanda M. Weaver, *D.C.'s Amended Non-Compete Statute Bans (Most) Non-Competes in the District*, WILLIAMS MULLEN (Oct. 27, 2022), <https://www.williamsmullen.com/news/dcs-amended-non-compete-statute-bans-most-non-competes-district>.
39. Data obtained from Lex Machina district court cases database. Colorado transitioned from Category 1 to Category 2 in 2022. The District of Columbia transitioned from Category 2 to Category 1 in 2021, and back to Category 2 in 2022.

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