A Primer on the Economics of Non-Competes:
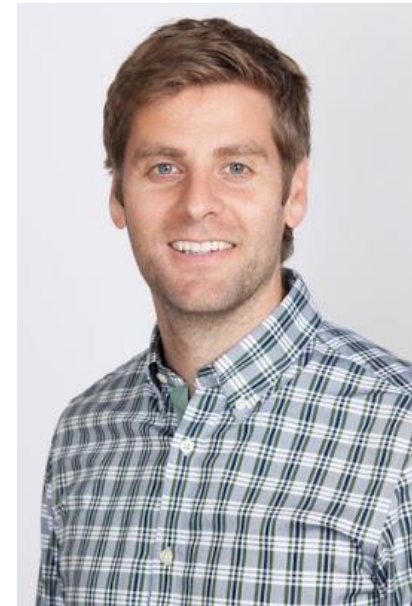
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October 18, 2023

What are "Noncompetes"?

"Post-employment" restriction that:

- prohibits departing workers from joining or starting a competing firm

- typically within a limited time frame and geographic area.

Different from (though often found alongside)

- Nondisclosure agreement: Won't share certain information

- Nonsolitication of clients/coworkers: Won't solicit former clients/coworkers
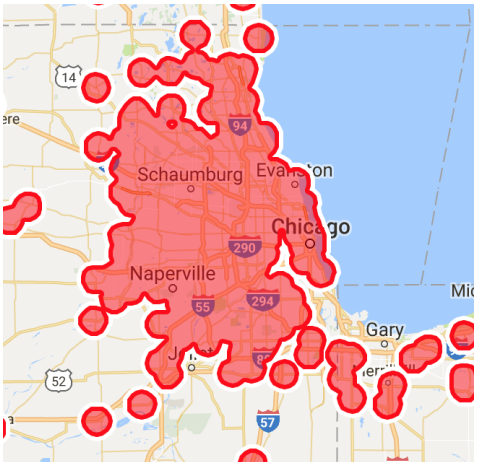
3. **Non-Competition Covenant.** Employee covenants and agrees that, during his or her employment with Employer and for a period of two (2) years after either the effective date of termination of his or her employment for any reason, whether voluntary or involuntary and whether by Employer or Employee, or the date on which Employee begins to comply with this paragraph, whichever is later, he or she will not have any direct or indirect interest in or perform services for (whether as an owner, partner, investor, director, officer, representative, manager, employee, principal, agent, advisor, or consultant) any business which derives more than ten percent (10%) of its revenue from selling submarine, hero-type, deli-style, pita and/or wrapped or rolled sandwiches and which is located within three (3) miles of either (1) 9641 N Milwaukee Ave , Niles IL 60714 [Insert address of employment], or (2) any such other JIMMY JOHN'S® Sandwich Shop operated by JJF, one of its authorized franchisees, or any of JJF's affiliates.

Outline

1. Historical debate

2. Evidence tilting the debate

3. Directions for policy and research

4. Teaser on some new work

Historical Debate

Against Noncompetes

For Noncompetes

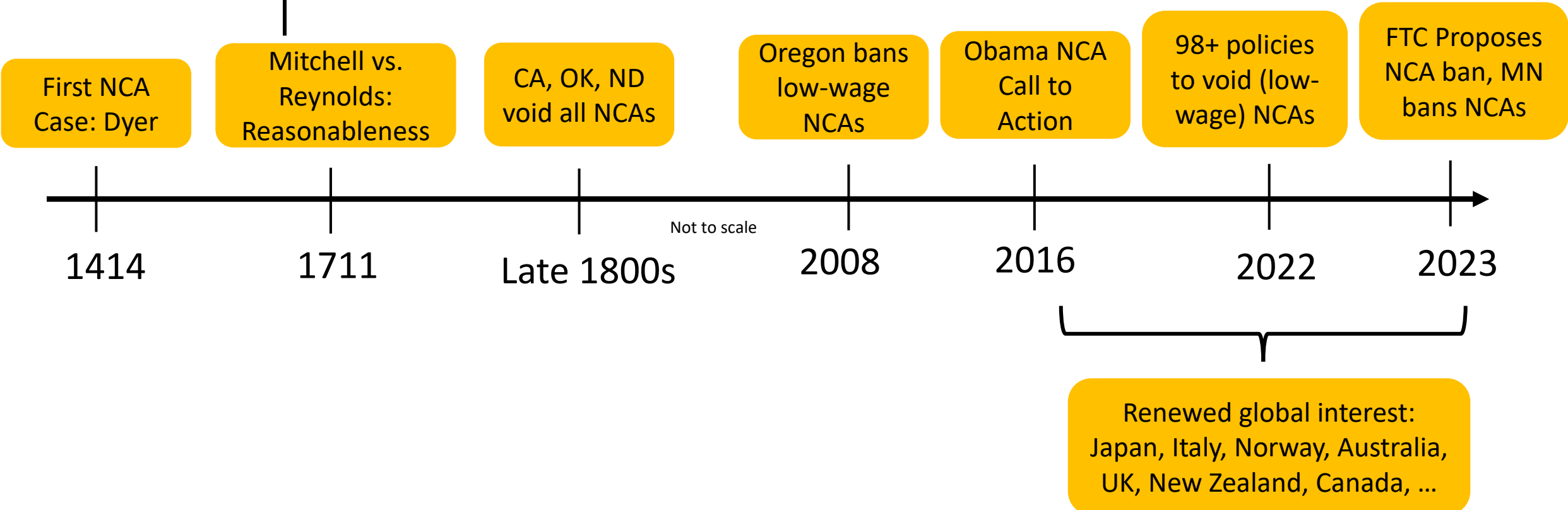Noncompetes reduce competition, mobility, entrepreneurship, wages, innovation.

Workers and firms only benefit from noncompetes by incentivizing investments.

A Timeline

Historic Status Quo: Case-by-Case Reasonableness Test
- Balance need for protection by firm with harm done to worker/society

1414	1711	Late 1800s	2008	2016	2022	2023
First NCA Case: Dyer	Mitchell vs. Reynolds: Reasonableness	CA, OK, ND void all NCAs	Oregon bans low-wage NCAs	Obama NCA Call to Action	98+ policies to void (low-wage) NCAs	FTC Proposes NCA ban, MN bans NCAs

Not to scale

Renewed global interest: Japan, Italy, Norway, Australia, UK, New Zealand, Canada, …

What happened in the last decade?

- Broader recognition that labor markets are not competitive (e.g., monopsony)

- Eye-catching cases of abuse

- Specific evidence tilting towards the anti-noncompete view

    - **Use**: Indiscriminate (even where unenforceable), little negotiation, delayed

    - **Harm**: Workers, firms, innovation, consumers

    - **Necessity:** Firm's don't value enforceability; have other tools to protect interests

Evidence Tilting the Debate

Indiscriminate Use of Noncompetes

Use: 50% of firms; 30% of firms use them for all workers (Colvin and Shierholz 2019, Balasubramanian et al. 2022)

- 18-28% of US LF (Starr et al. 2019, Colvin and Shierholz 2019)

- Used in similar measure where per-se unenforceable

- Both low and high-wage workers

Timing: 30-50% delayed until after accepting job, without a change in responsibilities (Marx 2011, Starr et al. 2021)

Negotiation: 10% Negotiate over Noncompete

- 83% read & sign

- 86% promised nothing in exchange

- **Similar findings globally** (Torgnes 2023, Young 2021, Boeri et al. 2022, CMA 2022, Andrews and Jarvis 2023)
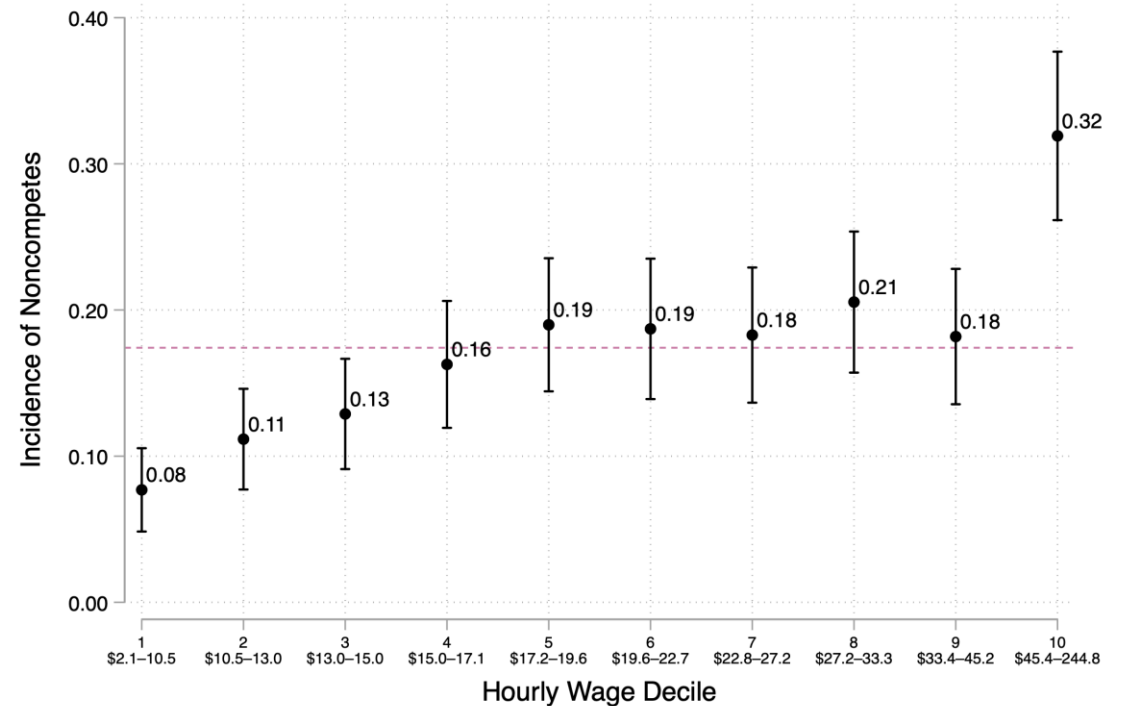
Source: Rothstein and Starr (2021) NLSY97: Workers aged 32-38

Harm to workers from noncompetes

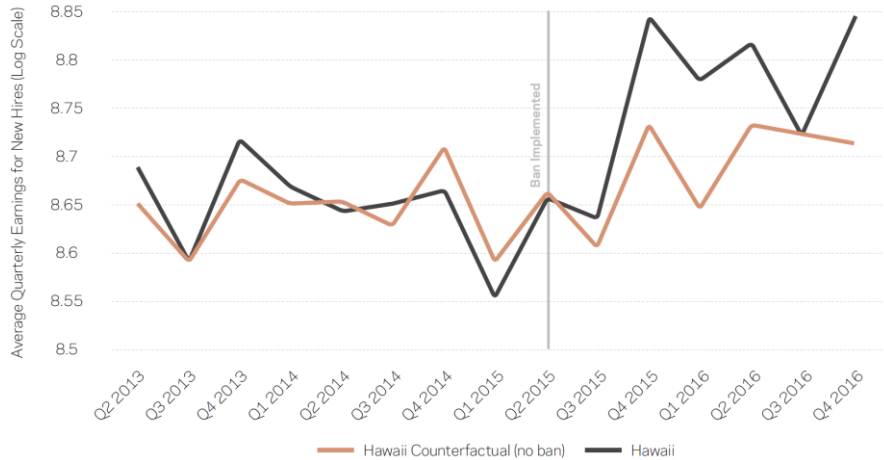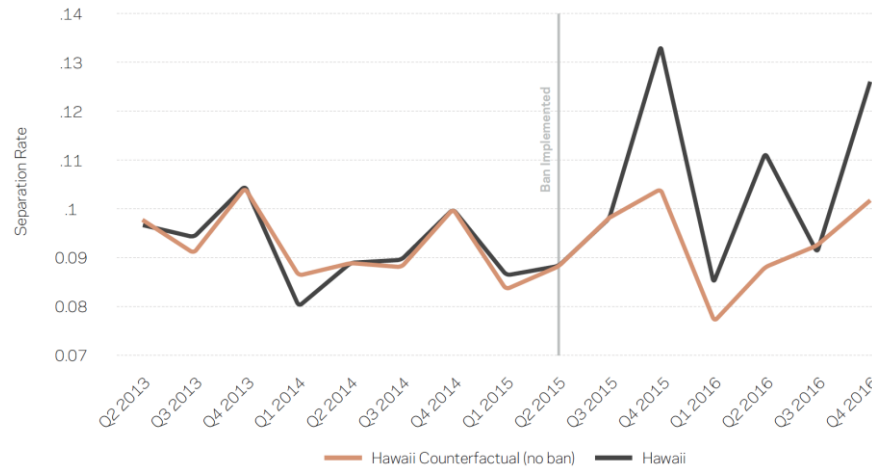Figure 6. New Hire Wages In Hawaii Before and After Non-Competes Ban

Legend: Hawaii Counterfactual (no ban) — Hawaii

Figure 5. Job Separation in Hawaii Before and After Non-Competes Ban

Legend: Hawaii Counterfactual (no ban) — Hawaii

Hawaii:

Banned noncompetes tech workers in 2015

(Balasubramanian et al. 2020)

***In terrorem* effects**

Blake 1960: "the mobility of untold numbers of employees is restricted by the intimidation of restrictions whose severity no court would sanction."

Table 5: Turning Down Job Offers

Sample	(1) All	(2) States That Do Not Enforce Noncompetes	(3) States That Enforce Noncompetes
Panel A: Was your noncompete a factor in your choice to turn down your offer from a competitor?			
Yes	41.4%	37.5%	42.3%

Starr et al. (2020) "Behavioral Effects of (Unenforceable) Contracts" JLEO

Negative Spillovers to workers, firms, consumers

Misallocation of labor justifies a ban, even for executives

Enforceability causes higher prices for Medical Care
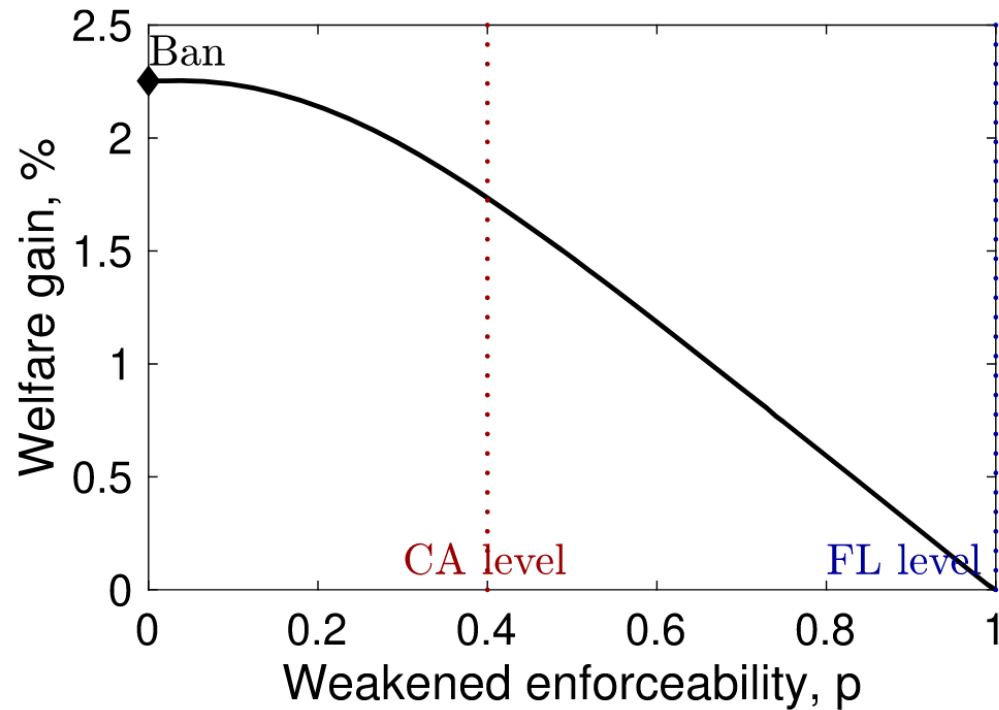
Shi (2023) "Optimal Regulation of Noncompete Contracts" *Econometrica*

See also Starr et al. (2019) "Mobility Constraint Externalities"
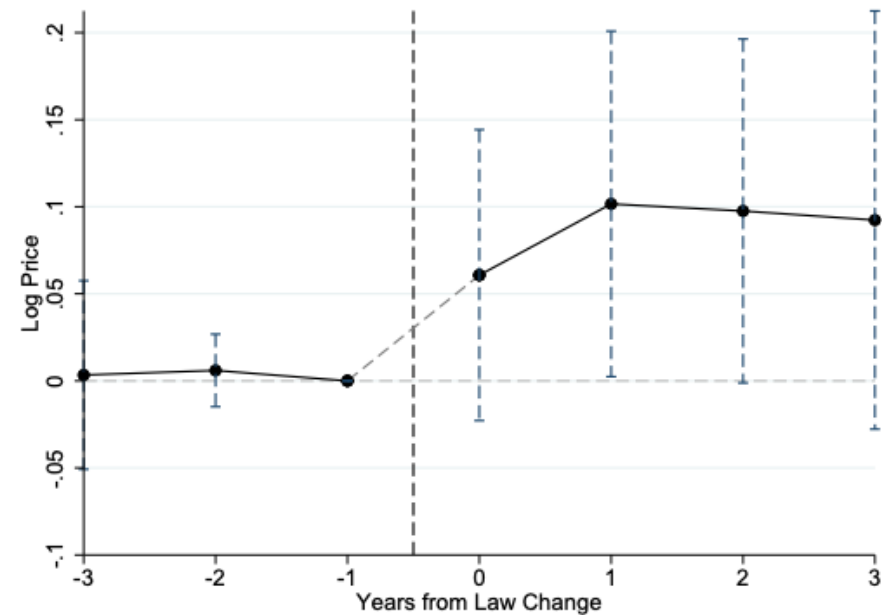
Lavetti and Hausman 2019 "Physician Practice Organization and Negotiated Prices: Evidence from State Law Changes"

See also Lipsitz and Tremblay (2022) "Noncompete Agreements and the Welfare of Consumers"

Hiraiwa et al. (2022): Firms do not value ability to enforce noncompetes for workers earnings $100k

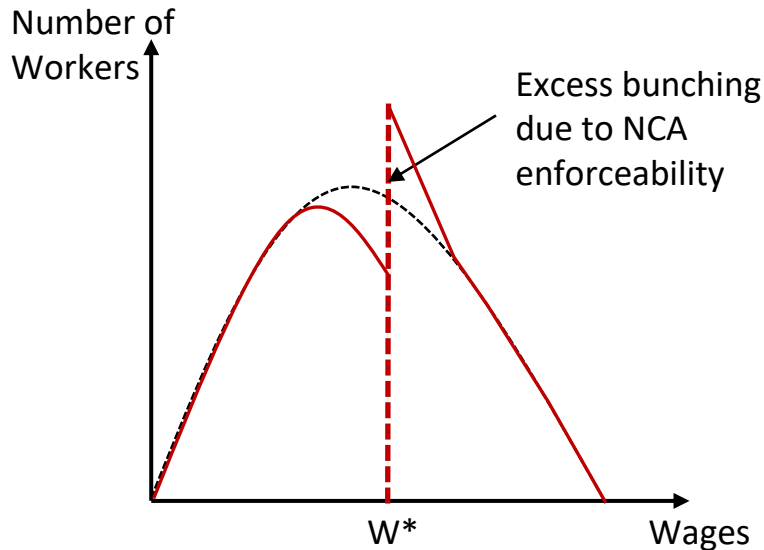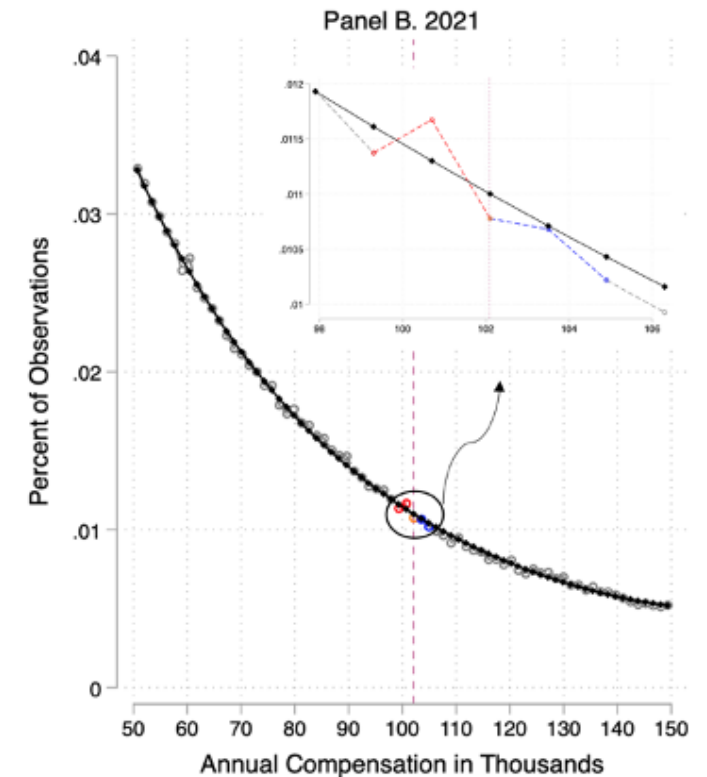Threshold-Bans reveal whether firms value enforceability based on bunching at threshold.

WA Attorney Survey
- Don't need to go to court to enforce

- Have other tools to protect investments

Figure 4. Observed versus Parametrically Fitted Earnings Distribution

Panel B. 2021

Counterfactual Distribution   Actual Distribution

Source: Administrative Washington Data. In 2020, the threshold was $100,000, and it increased to $101,390 in 2021.

Johnson et al. (2023): Noncompete enforceability reduces innovation, despite increases in investment

DiD Coefficient: -2.56
Standard Error: 0.74
Impact of Mean Score Change: -18.7%
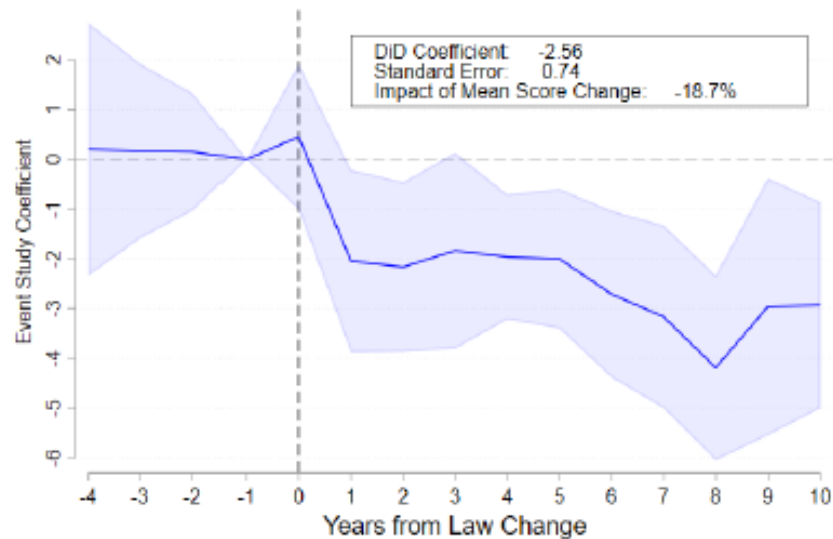
(a) Normalized Forward-Citation-Weighted Patent Counts - State CPC Year

Table 2: The Effects of NCA Enforceability on Firm-level Investment and Patenting

	(1) Intangible Investment	(2) Capital Investment	(3) Patent Counts	(4) Citation Weighted Patents	(5) Patents' KPSS Value
NCA Score	.190**	-.0227	-4.13***	-4.88**	-4.15**
	(.088)	(.052)	(1.03)	(2.22)	(2.08)
Mean DV	0.190	0.060	20.3	18.4	314.6
Effect of Mean Change	8.1%	-3.1%	-28.4%	-32.6%	-28.6%
N	45,747	41,337	53,987	52,798	49,637

Standard errors in parentheses
Standard error clustered at state level
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

See also Rockall and Reinmuth (2023), Mueller (2022), He (2021), Baslandze (2022)

Directions for policy and research

Future Research

- Causal effects of noncompetes *themselves*

- Will other protections suffice?

- Collect actual contracts
  - Analyze language, response to laws
  - What other types of restrictions do workers agree to?

- Do firms substitute to trade secret litigation?

- Do these results generalize *globally*?

- Do we need a new default model of employee contracting?

Policy Directions

- Continued push to limit use of noncompetes
  - Bans for "higher" wage workers
  - Transparency requirements
  - Penalties for unenforceable noncompetes

- Concerns about other restrictions acting as *de facto* noncompetes

Teaser on some new work

Cowgill, Frieberg, and Starr (2023): A Large Field Experiment

Goal: Identify how noncompetes affect

- Selection into jobs/Compensating differential
- Mobility/Wages
- Information Sharing

Stage 1: Hire for Firm A

Invite 14k HR professionals to work for Firm A

Stage 2: Hire for Firm B

Reach out to ~2k hired HR professionals from Firm A,

Randomizations:
- Wage {$25, $60}
- Noncompete
  - {Salient, Normal}

Randomizations:
- Wage {$27, $62}

Preliminary conclusions

- $3 for "normal" NCA; $7 for salient
  - Few read: 76% with "normal" NCA spent ≤10 sec. reading it
- Reminders by Firm A key
- $47 to hire workers with "normal" NCA; $28 for salient NCA.
- No evidence that NCAs reduce sharing of confidential information.

Banning Noncompetes does not increase trade secret litigation

DV=Ln(Number of Noncompete Enforcement Filings)

DV=Ln(Number of Trade Secret Filings)
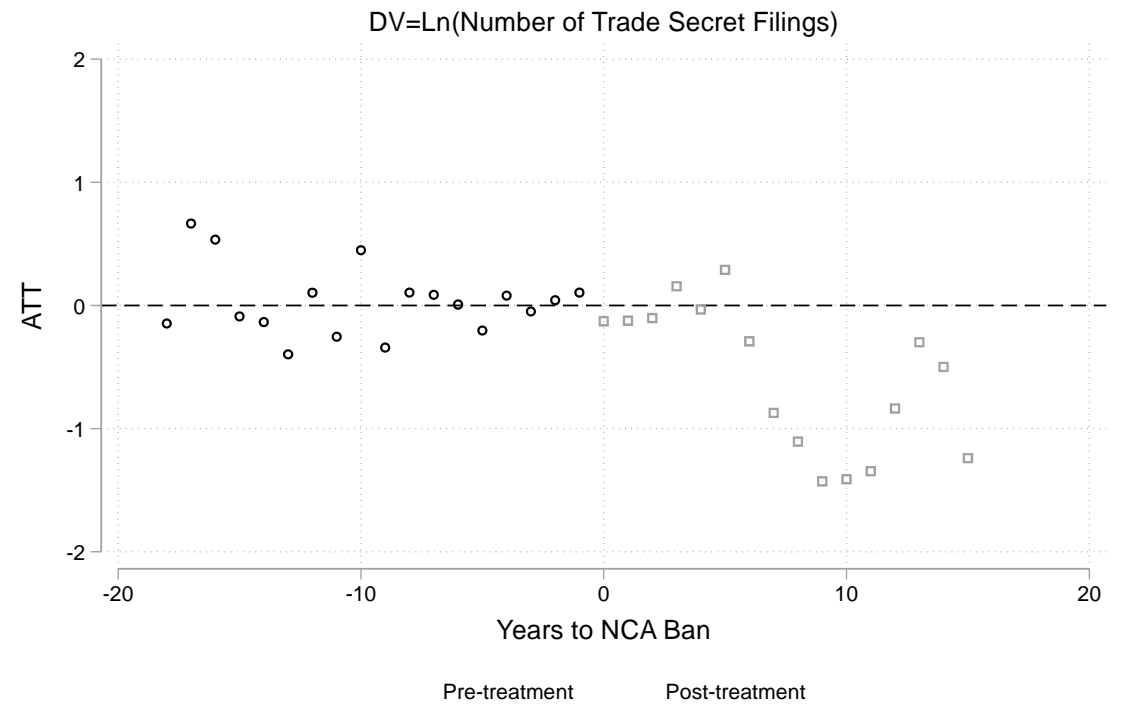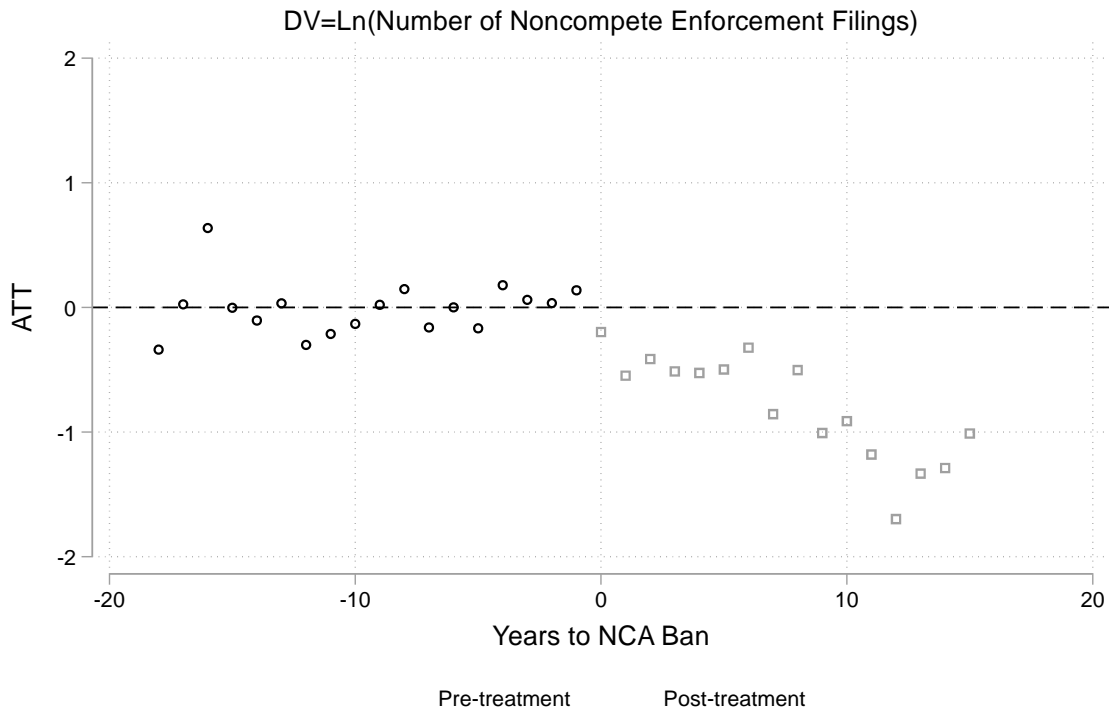
Greenwood, Kobayashi, and Starr (2023)

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