

CLIENT ALERTS

Butzel Long Joins Leading Non-Compete and Trade Secret Attorneys Across the Country in Written Testimony to the Federal Trade Commission Regarding Non-Competes

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As the Butzel Long Non-Compete/Trade Secret group has informed you in the past ([here](#) and [here](#)), there has been a renewed attempt at the State and Federal level to consider whether changes or even outright prohibitions against non-competes should be considered. The Federal Trade Commission (“FTC”), recently held an “FTC Workshop on Non-Competes” on January 9, 2020. It was reported at the time that the FTC was considering rules related to the use of non-compete agreements for certain workers.

This past week, a group of twenty-three (23) renowned, respected, and recognized Non-Compete/Trade Secret attorneys from across the United States signed onto a letter to the FTC. Among those law firms that signed the letter was Butzel Long. The letter is titled “Written Testimony of Practicing Attorneys for the Federal Trade Commission Workshop on ‘Non-Compete Clauses in the Workplace: Examining Antitrust and Consumer Protection Issues.’” Butzel Long’s Non-Compete/Trade Secret Practice Group, along with all of the other signatories to the letter, agreed to appear and testify live before the FTC, should the commission so desire.

A copy of that letter can be found [here](#).

The letter attempted to answer several questions that had been previously posed by the FTC in reviewing non-competes. The letter gave a historic as well as statistical perspective regarding the use of non-competes, as well as a practitioner’s perspective from those attorneys who routinely practice in this area. Some of the questions answered by the letter include:

- What are the business justifications for non-compete clauses?

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Phillip C. Korovesis
Of Counsel

Ivonne M. Soler
Senior Attorney

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- Is state law insufficient to address harms associated with non-compete clauses?
- Do employers enforce non-compete agreements contained in standard employment contracts? How routine is such enforcement?
- Should the FTC consider rules or other tools to address non-competes?
- What additional economic research should be undertaken to evaluate the net effect of non-compete agreements?

The letter—which was spearheaded by Russell Beck of Beck, Reed, & Riden LLP—is very thorough and detailed. Perhaps the greatest takeaway, however, was the following sentence: “The FTC should not use its rulemaking authority to address non-compete clauses, as the states should be left to evaluate and regulate their own economies as they see fit—as they have done for over 200 years, and as they are continuing to do.”

We invite you to read the letter in its entirety.

Paul M. Mersino

313.225.7015

mersino@butzel.com

Bernie J. Fuhs

313.225.7044

fuhs@butzel.com

Phil C. Korovesis

313.983.7458

korovesis@butzel.com