



ROBERT H. SMITH  
SCHOOL OF BUSINESS

# DYNAMISM AND THE FINE PRINT

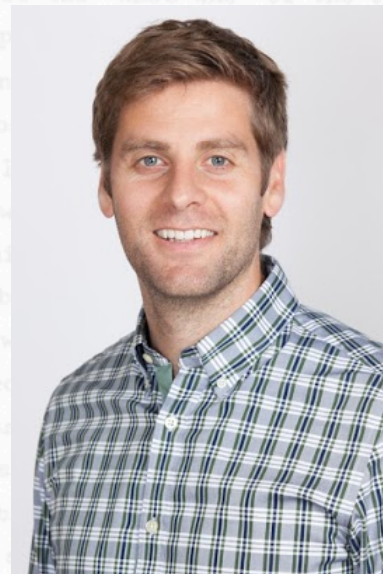
Sep 11, 2020

**Evan Starr**

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**Technology and Declining  
Economic Dynamism Conference**

**Boston University**





# How does the rise of post-employment restrictive covenants relate to declining economic dynamism?

## Dynamism Facts

1. Stagnant Wages
2. Declining Job Mobility
3. Declining Start-up Rate
4. Harder to Find New Ideas



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2. Non-solicitation of clients agreement
3. Non-recruitment of co-workers agreement
4. Noncompete agreement



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**Answer: For the most part, we don't know**





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### *Noncompete Clauses Increasingly Pop Up in Array of Jobs*



A noncompete clause he signed prevented the stylist Daniel McKinnon from working near his previous employer for a year. Katherine Taylor for The New York Times

By Steven Greenhouse

June 8, 2014





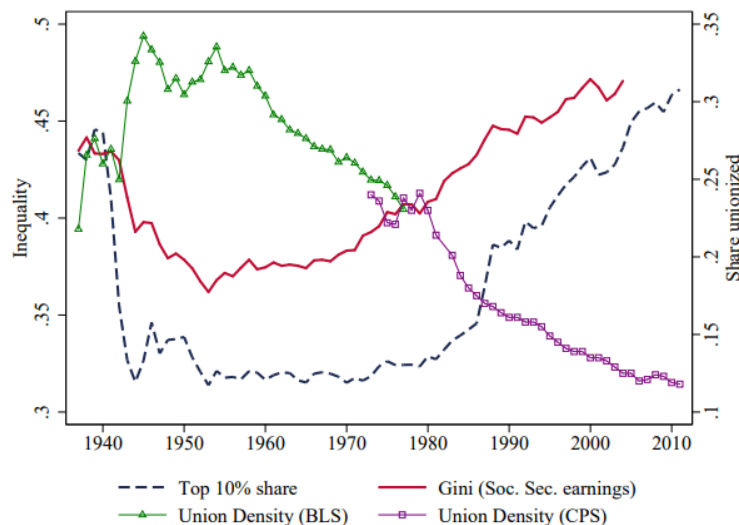
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—Damon Silvers, AFL-CIO

Figure 1: Union density and inequality measures, 1917-2011



Source: Farber et al. (2018)





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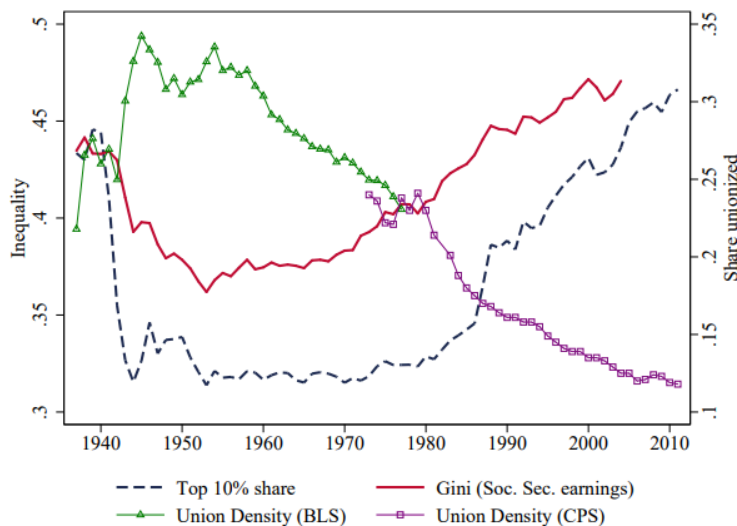
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## Likely that use of other provisions increased over time

Figure 1: Union density and inequality measures, 1917-2011



Source: Farber et al. (2018)



## Two questions

1. What do we know about the use of these provisions?
2. How do they—or the policies that regulate them— influence wages, mobility, entrepreneurship, innovation?



# What do we know about the use of these provisions?

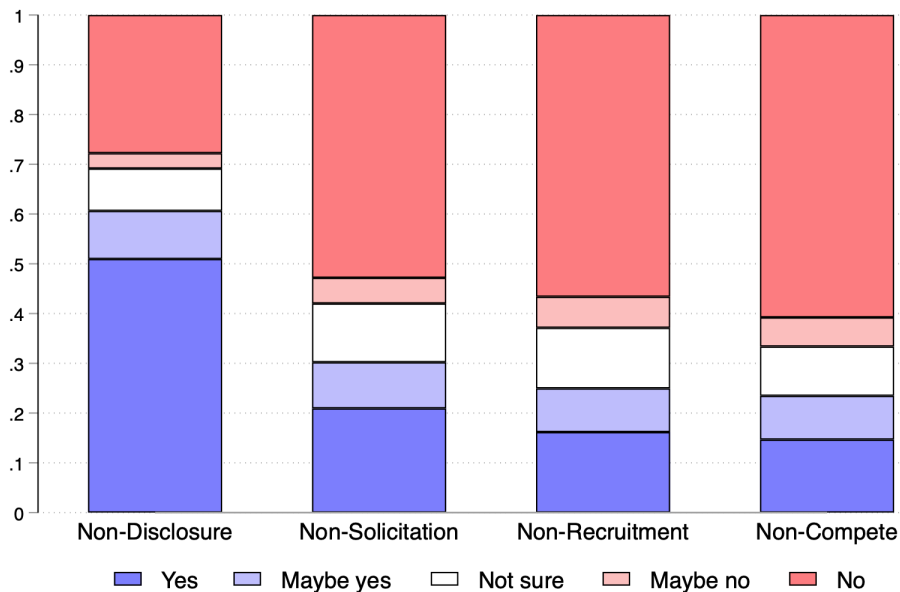
- Prior work focuses on noncompetes (Marx 2011, Garmaise 2011, Colvin and Shierholz 2019, Starr et al. 2020, Lavetti et al. 2020, Johnson and Lipsitz 2020)
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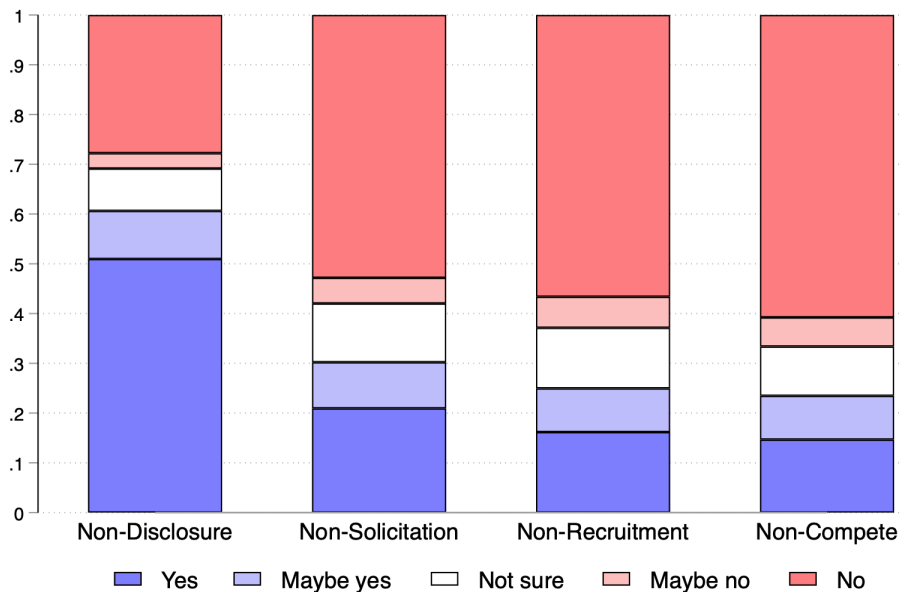
Individual-Level Data (N=35k)



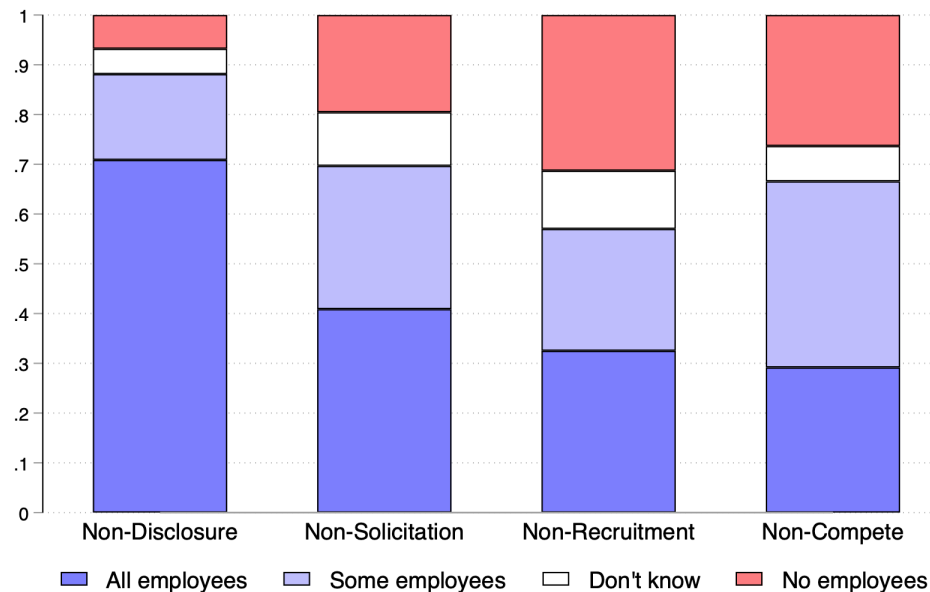
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Individual-Level Data (N=35k)



Firm-Level Data (N=1.5k)



Source: Balasubramanian, Starr, Yamaguchi 2020 "The Co-Adoption of Restrictive Covenants"



# Post-Employment Restrictive Covenants Come as a Bundle

**Table 1. Distribution of Contract Bundles**

**Individual-Level Data**

(1)

Combination of  
contracts:  
(NDA, NS, NP, NC)

1(Adopt)=Yes or  
Maybe Yes

(0,0,0,0) 41.31

(1,0,0,0) 24.47

(1,1,0,1) 2.25

(1,1,1,0) 6.28

(1,1,1,1) 17.19

**Other combinations 8.50**





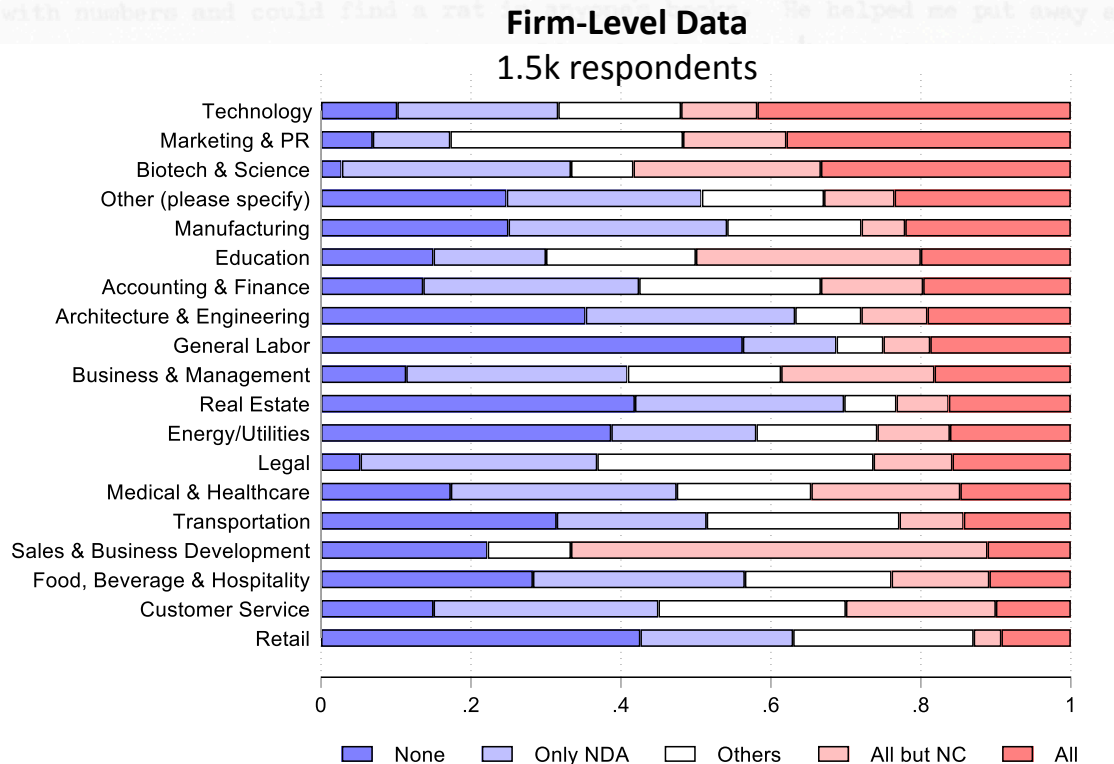
# Post-Employment Restrictive Covenants Come as a Bundle

**Table 1. Distribution of Contract Bundles**

Combination of contracts: (NDA, NS, NP, NC)	<u>Individual-Level Data</u>	<u>Firm-Level Data</u>	
	(1) 1(Adopt)=Yes or Maybe Yes	(2) 1(Adopt)=All employees	(3) 1(Adopt)=All or some employees
(0,0,0,0)	41.31	22.00	5.20
(1,0,0,0)	24.47	25.90	11.00
(1,1,0,1)	2.25	5.20	10.10
(1,1,1,0)	6.28	11.60	7.90
(1,1,1,1)	17.19	22.90	55.20
Other combinations	8.50	12.40	10.60



# More Common in High-Tech Industries

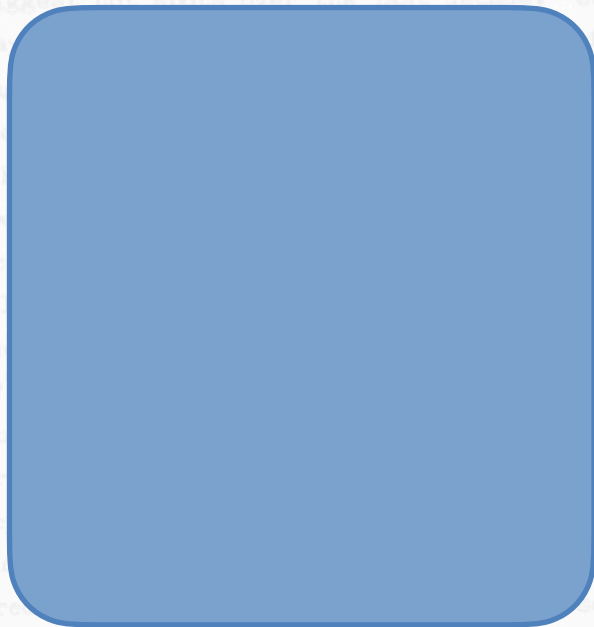


Source: Balasubramanian, Starr, Yamaguchi 2020 "The Co-Adoption of Restrictive Covenants"

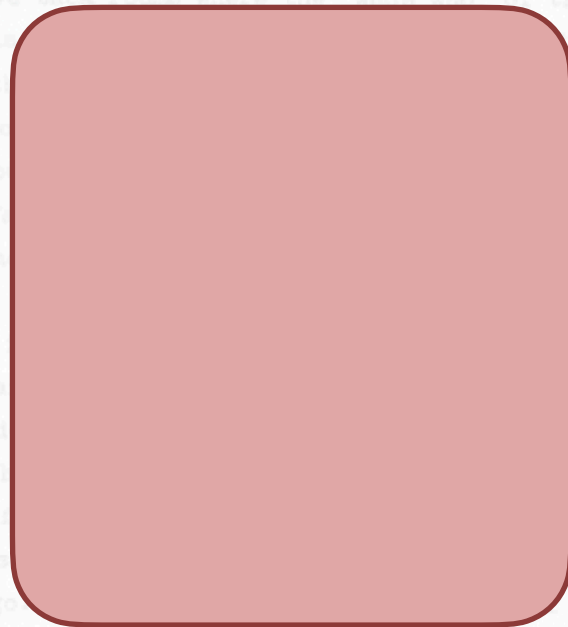


# Ex ante unclear whether these provisions—or the policies that regulate them—are good or bad for dynamism?

Bad for dynamism



Good for dynamism



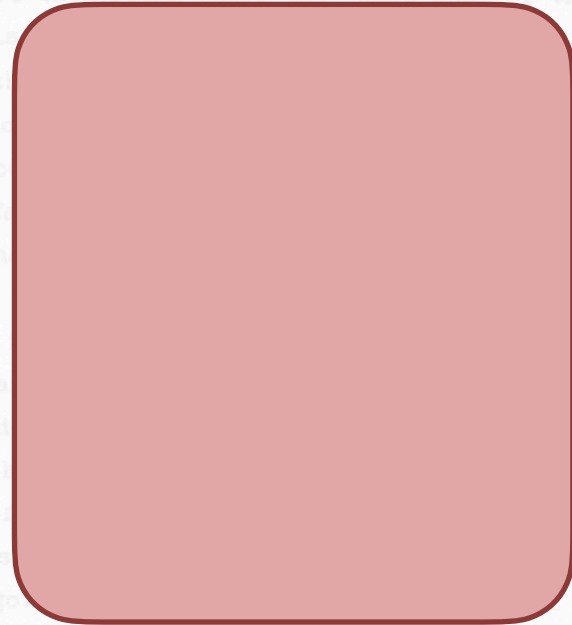


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## Two Notes

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**Enforceability:** What happens when a state changes its policies?

**Use:** What happens if a worker signs a provision?

**DIFFERENT, though related, parameters**

- Harder to estimate *causal effect of use*



# Challenges to Freedom of Contract

## Details of the noncompete contracting process (Starr et al. 2020 JLE):

- < 10% Negotiate
- 83% read & sign when asked
- 86% promised nothing in exchange
- 30% sign after accepting job, without change in responsibilities.
- CNC associated with **lower earnings** where more enforceable





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## Mixed results on earnings re: noncompete use

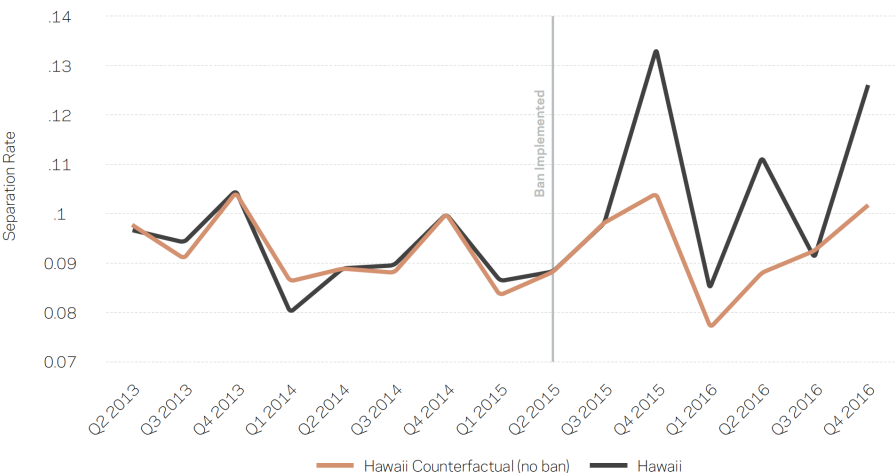
- **Physicians** (Lavetti et al. 2019)
- **Executives** (Kini et al. 2019, Garmaise 2011)

## Selection concerns unresolved.



# Hawaii's 2015 noncompete/nonsolicit ban for tech workers raised mobility and earnings

Quarterly Separation Rate

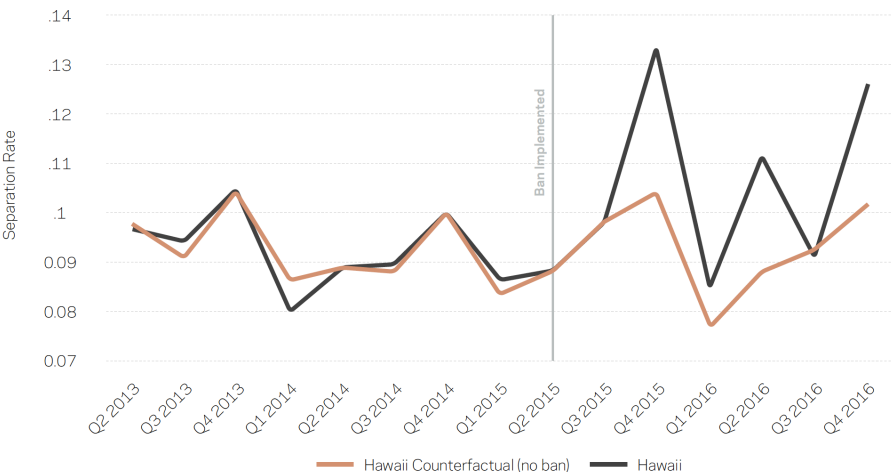


Source: Balasubramanian, Chang, Sakakibara, Sivadasan, and Starr, 2020 JHR “Locked In? Noncompete Enforceability and the Careers of Tech Workers.” See also Lipsitz and Starr (2020), Starr (2019), Johnson et al. (2020)

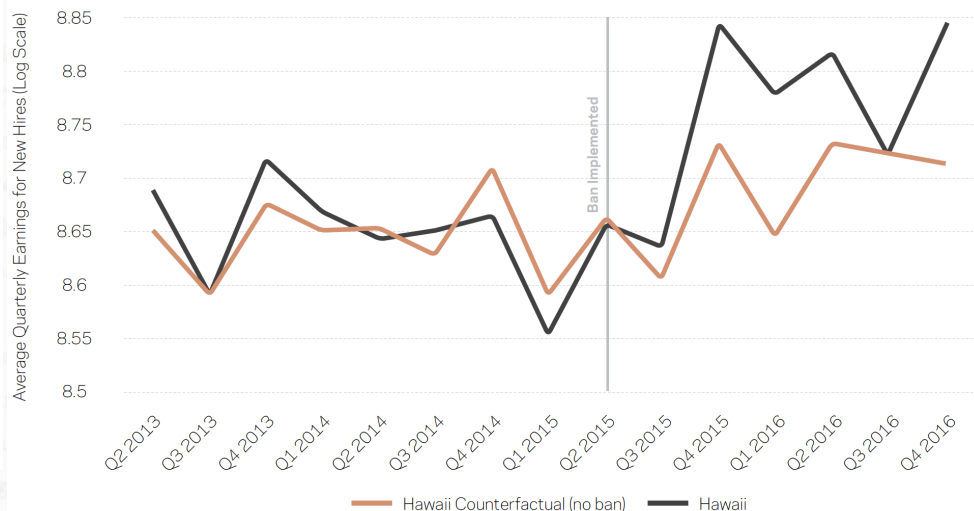


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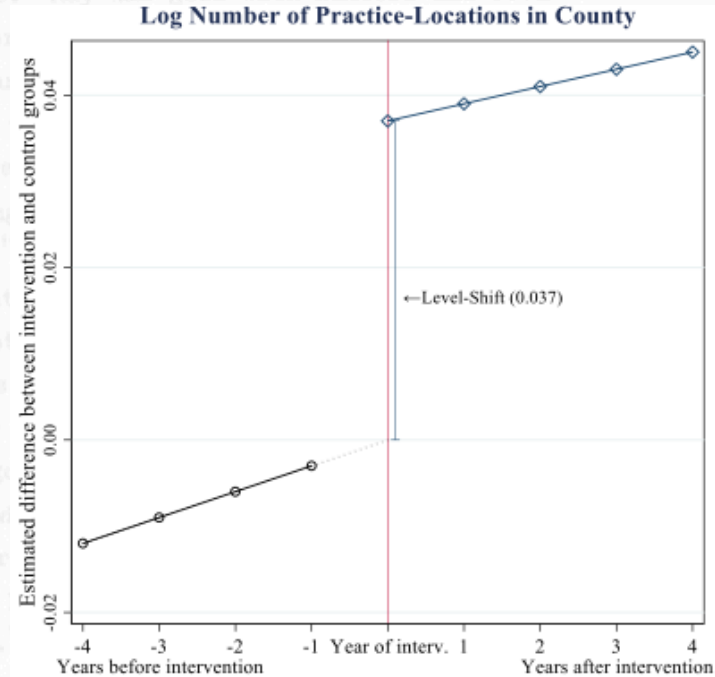


## Ln(New-Hire Quarterly Earnings)

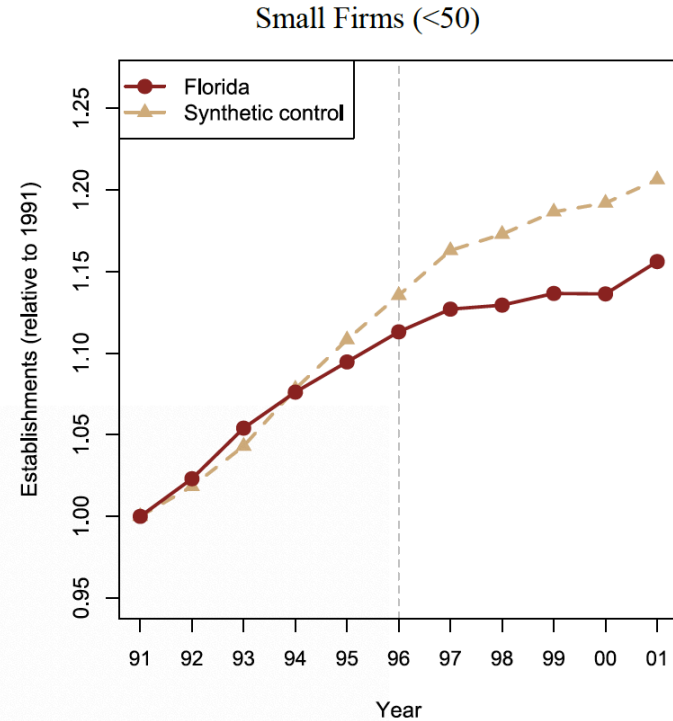


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# Banning Noncompetes Raises New Firm Entry



Balasubramanian, Sakakibara, Starr, Ramanathan (2020)



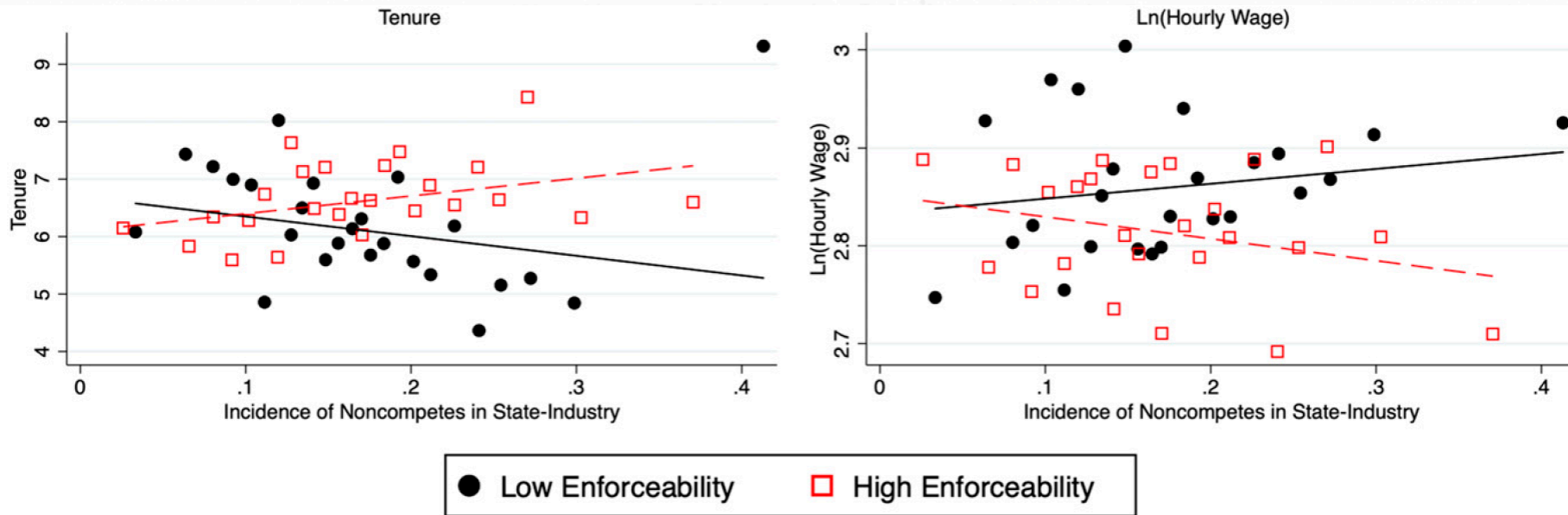
Kang and Fleming (2020).

See also Starr et al. (2017), Jeffers (2019), Stuart and Sorenson (2003), and Marx (2018).



# **Negative Spillovers: Where Noncompete Use/Enforceability is High, Mobility/Wages are lower even for those who are bound**

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Starr, Frake, and Agarwal (2019) OrgSci: “Mobility Constraint Externalities” .

See also, Johnson, Lavetti, and Lipsitz (2019): Negative wage effects of enforceability spill across state borders.





# Mixed Evidence on Investment and Innovation

## Noncompete enforceability hurts innovation

- Silicon Valley (Hyde 2003, Gilson 1999)
- Samila & Sorenson (2011), Garmaise (2009)



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Table 10: Investment Rate by Ex-Ante Industry Competition

The dependent variable is net investment scaled by one year-lagged assets (I/A). The sample is divided into three groups: industries in High, Medium, and Low product market competition. "Knowledge Firm" (KF) is an indicator for firms that employ an above-median fraction of knowledge workers. In Panel A, the regressions use the full sample of matched firms. In Panel B the sample of firms is limited to firms with at least 40% of employees in the main state. Standard errors in parentheses are clustered at the state level. Industry is 4-digit NAICS.

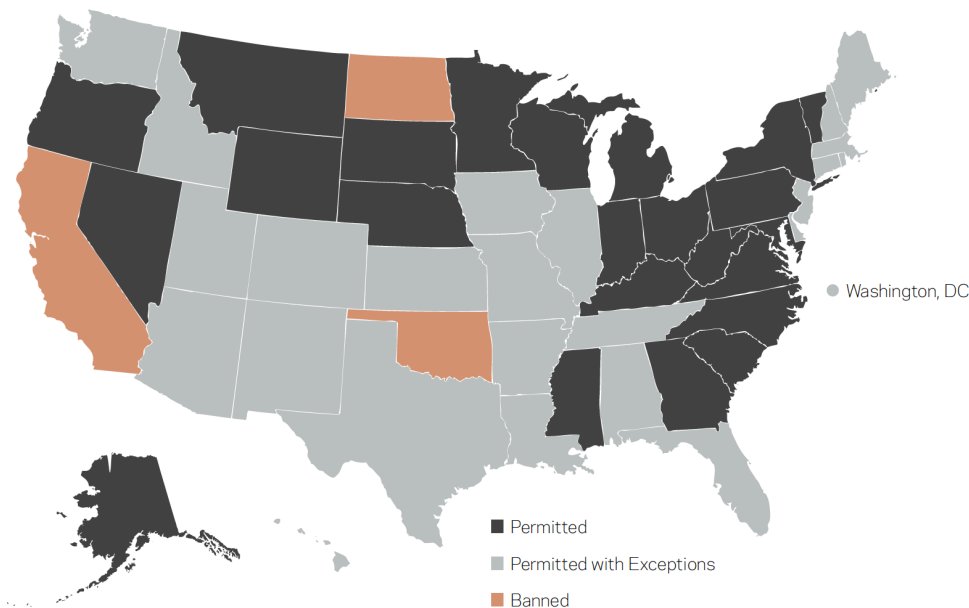
Panel A: All firms

	(1) I/A High Competition	(2) I/A Medium Competition	(3) I/A Low Competition
Treated*Post	0.0179*** (0.00614)	0.00222 (0.00775)	-0.00352 (0.00493)
Treated*Post*Knowledge Firm	-0.00150 (0.0132)	0.00739 (0.00981)	0.0176** (0.00705)
KF-Industry-Year FE	Y	Y	Y
Company FE	Y	Y	Y
Observations	264	1,324	3,190
R-squared	0.858	0.843	0.717

**Positive investment effects only in highly competitive markets**

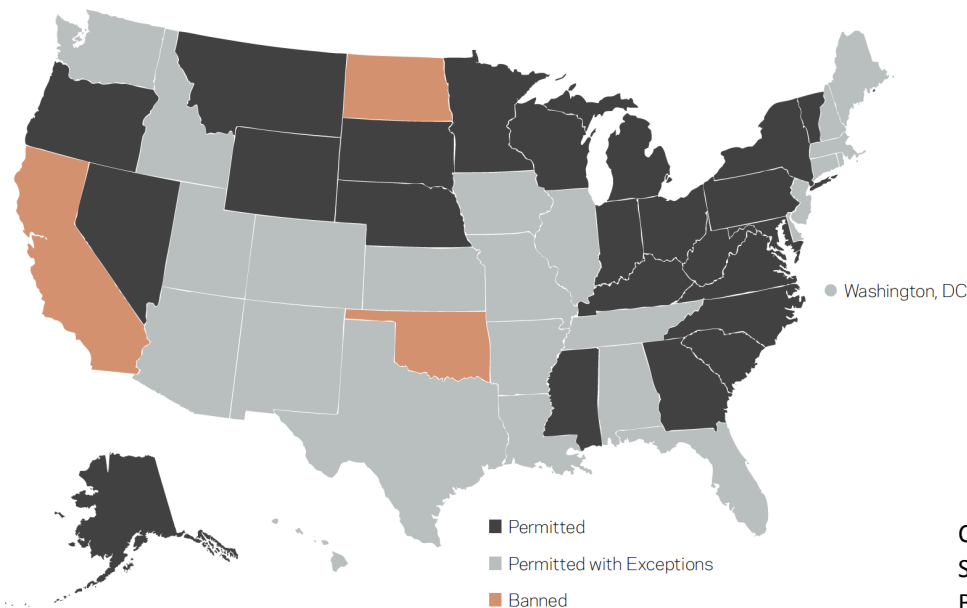
Jeffers 2019 "The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship"

# Unenforceable Noncompetes are Common



Source: Beck Reed Riden 50 State Non-compete Chart

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Source: Beck Reed Riden 50 State Non-compete Chart

STATE (IN ORDER OF POPULATION SIZE)	SHARE OF WORKPLACES WHERE EMPLOYEES ARE SUBJECT TO NONCOMPETES	
	All employees	Any employees
ALL	31.8%	49.4%
CALIFORNIA	28.6%	45.1%
TEXAS	50.0%	60.7%
FLORIDA	39.3%	46.4%
NEW YORK	21.7%	44.2%
ILLINOIS	14.3%*	50.0%
PENNSYLVANIA	31.1%	42.2%
OHIO	41.4%	66.7%*
GEORGIA	33.3%	51.4%
NORTH CAROLINA	29.0%	51.6%
MICHIGAN	37.9%	55.2%
NEW JERSEY	25.6%	48.8%
VIRGINIA	44.8%	64.3%

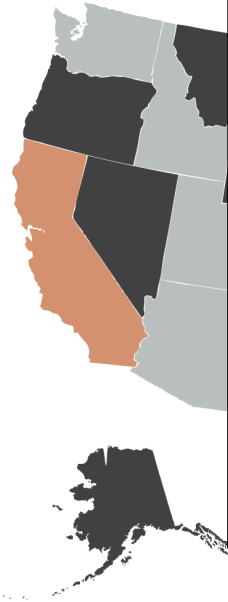
Colvin and Shierholz (2019)

See also Starr et al. (2020) JLE "Noncompete Agreements in the US Labor Force"

Balasubramanian, Starr, Yamaguchi (2020)



# Unenforceable Noncompetes are Common



## Girls on the Run of Silicon Valley

### NON-COMPETE AGREEMENT:

As a coach and volunteer for Girls on the Run of Silicon Valley, I agree to the following:

- 1.) I will not deliver the Girls on the Run program or any similar program unless I am working as an employee or volunteer of Girls on the Run.
- 2.) I may not create or help develop a program that has similar goals and structure to that of Girls on the Run International within a two-year period of my involvement with Girls on the Run.

■ Permitted with Exceptions

■ Banned

See also Starr et al. (2020) JLE "Noncompete Agreements in the US Labor Force"  
Balasubramanian, Starr, Yamaguchi (2020)

### PLACES WHERE EMPLOYEES AND NONCOMPETES

Any employees

49.4%

45.1%

60.7%

46.4%

44.2%

50.0%

42.2%

66.7%\*

51.4%

51.6%

55.2%

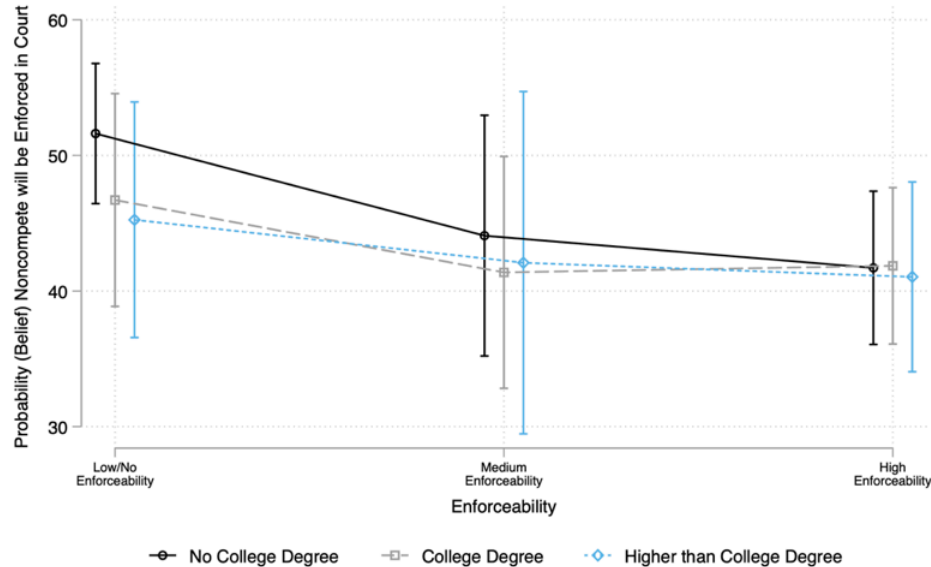
48.8%

64.3%





# Workers Unaware of Law— Assume Enforceable

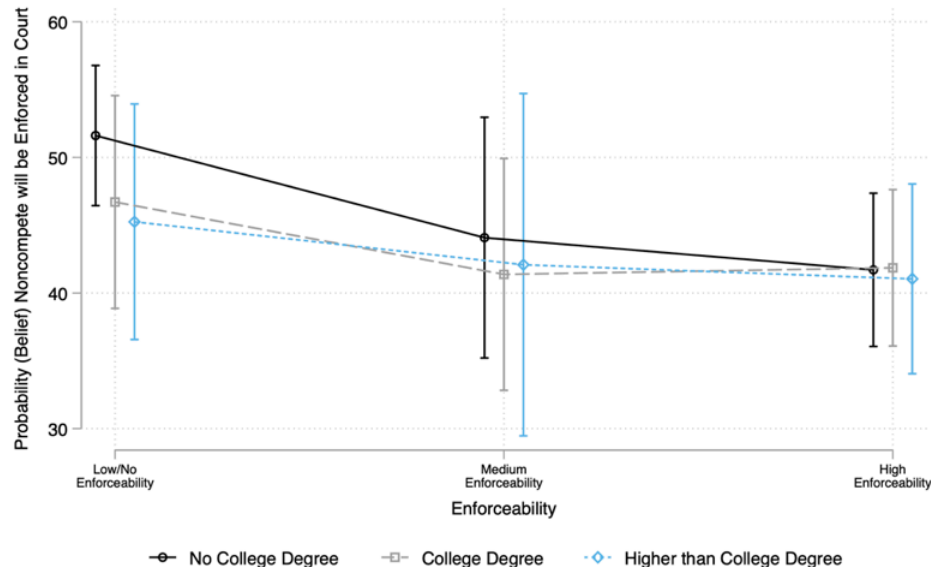


Sample limited to those affirmatively bound by a noncompete.

Prescott and Starr (2020): "Subjective Beliefs about Contract Enforceability"



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## (Unenforceable) Noncompetes Exert Chilling Effect on Mobility

Table 5: Turning Down Job Offers

Sample	(1) All	(2) States That Do Not Enforce Noncompetes	(3) States That Enforce Noncompetes
<b>Panel A: Was your noncompete a factor in your choice to turn down your offer from a competitor?</b>			
Yes	41.4%	37.5%	42.3%
<b>Panel B: If you received an offer from a competitor, would your noncompete be a factor in your choice to accept it?</b>			
Yes	47.6%	46.6%	47.8%
<b>Panel C: How important is your noncompete in determining if you leave for a competitor?</b>			
Not at all Important	9.0%	6.2%	9.5%
Very Unimportant	6.0%	7.4%	5.8%
Somewhat Unimportant	6.5%	5.3%	6.6%
Neither Important nor Unimportant	23.3%	26.4%	22.8%
Somewhat Important	21.3%	19.1%	21.6%
Very Important	17.5%	17.2%	17.5%
Extremely Important	16.5%	18.4%	16.3%
Somewhat or Very or Extremely Important	55.3%	54.7%	55.3%

Starr, Prescott, and Bishara (2020) JLEO: "The Behavioral Effects of  
(Unenforceable) Contracts"



# Concluding Remarks

- Growing evidence that post-employment restrictive covenants likely contributed to declining economic dynamism
- Some policies have proven effective in combatting declining dynamism
  - Not clear what to do re: unenforceable contracts and chilling effects
- Many opportunities for future work
  - Gather historical data: link adoption patterns to dynamism directly
  - Resolve selection vs. treatment concerns
  - Address innovation/investment discrepancies
  - Broaden beyond noncompetes
  - Many more ...