

Non-Competes: Do They Favor or Hinder Fair Competition? -- You Decide

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Non-compete agreements tend to evoke strong reactions when brought up in conversation. Many people have strong opinions about whether they are favor or hinder fair competition. Opinions often vary depending upon whether you ask an employee or management. Recently, some have argued that non-competes hinder fair competition because they drive employees to relocate from states that enforce them to states that do not. This argument has been most forcefully advanced by a trio of authors who ask "Why has Silicon Valley become the most entrepreneurial and technologically successful region in the world today?" The authors believe it may be because California, with very few limited exceptions, prohibits non-compete agreements. In their paper entitled "Regional Disadvantage? Non-Compete Agreements and Brain Drain," the authors contend that the "state sanction of non-competes contributes to a 'brain drain' of knowledge workers...from regions that enforce non-compete to those that do not."

Recently, the Texas Supreme Court offered a different view. In Marsh USA, Inc. v. Rex Cook, the Texas Supreme Court commented that allowing employers to enforce appropriately limited non-competes actually fosters competition. The Court stated that valid non-competes "may increase efficiency in industry by encouraging employers to entrust confidential information and important client relationships to key employees." They also "ensure that the costs incurred to develop human capital are protected against competitors who, having not made such expenditures, might appropriate the employer's investment."

So, what do you have to say about this? Do narrowly tailored non-competes favor or hinder fair competition? Please use the **poll buttons** to the right to register your opinion.

If you would like to offer your reasoning, please feel free to comment in the comment field below.