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Testimony of Gregory Bialecki
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Delivered by Jennifer Lawrence
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To the Judiciary Committee
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Dear Chairman O’Flaherty, Chairwoman Clark and honorable members of the committee,

Thank you for the opportunity to appear before you today. I am here to express the strong support of the Patrick Administration for the adoption of the Uniform Trade Secrets Act (“UTSA”). 48 other states and the District of Columbia have adopted the UTSA and we believe adopting it in Massachusetts makes our economy more competitive by protecting a company’s right to its own proprietary information. We believe the UTSA will allow for the substantial and necessary reform of the current rules on the enforceability of non-competition agreements in Massachusetts. Together, these reforms will focus on the protection of information as opposed to limiting an employee’s ability to earn a living.

I suggested two years ago that if we could not achieve any meaningful consensus among the stakeholders on changes to our current system, then the best course for Massachusetts would be the outright elimination of enforceability of non-competition agreements. I am here today to affirm that the Patrick Administration now supports such outright elimination, combined with adoption of the Uniform Trade Secrets Act, which has been demonstrated in other states to protect the loss or disclosure of proprietary information by departing employees.

A key element of the Patrick Administration’s economic development strategy has been to build on the strength of our world-class innovation economy. A key measure of success for our economic development and job creation policies and programs considers whether our policies and programs effectively support the innovation and entrepreneurship that has given us our critical competitive advantage for so many years. If our policies and programs do *not* provide this support then we should simply re-consider them. Our law on non-compete agreements needs reform because Massachusetts should do everything it can to (1) retain talented entrepreneurs; (2) support individual career growth and flexibility; and (3) encourage new innovative businesses

that are the engines of economic growth. Massachusetts employers currently have tools to protect the stability of their businesses.

Under the UTSA, the limitations on a former employee's ability to solicit customers or other employees from his or her former employer would continue to be enforceable. As long as reasonable efforts are taken to protect proprietary information and keep it confidential, the employer has the exclusive right to the information; an employee may not bring it with him or her to any new employer, whether the employer is a competitor or not.

Retention is Key: We do an excellent job of educating talented people here in the Commonwealth. However, if they work here and sign a non-compete agreement, we are essentially asking those same talented people to leave and to become entrepreneurs elsewhere. Massachusetts must create an environment that gives entrepreneurial talent a chance to thrive, and grow to scale. In fact, we have heard examples of entrepreneurs at MIT who were advised to start their businesses outside of Massachusetts as a result of non-compete agreements laws. Non-competes stifle movement and inhibit competition and we do not want that. The evidence is clear—we are not seeing the kind of spin-offs and starts up at the same rate that previously made Massachusetts an enviable model.

Individual career growth is good for the Commonwealth: We encourage our talent to be creative, to be innovative, and to network with other talented people. Furthermore, we encourage employers to recruit talented people. However, we send a mixed message: providing the talent needed to support the kind of explosive growth we want in the innovation economy is considerably more difficult if employees are legally unable to move between jobs in the innovation economy. The current law makes it considerably harder for employees to leave their current employers, whether due to the actual enforcement of a non-competition agreement, or more frequently, just due to the threat of enforcement. The individual has no effective recourse. The only thing to do is to suspend relevant work until the term of the non-compete agreement expires. Most individuals are not in a financial position to afford not working for the term of the non-compete. Being out of the market for the term is a major liability to the individual's career and future development. An individual who has 10 or 20 or 30 years of experience and expertise is forced to avoid using their expertise during the term of their non-compete agreement. We do not want this mixed message to continue.

We want innovative businesses. A priority of this Administration has been to support and enhance the innovation economy. Massachusetts has long had a vibrant and leading edge in research and the innovative community. Many of the fundamental technological advances like the internet economy and digital media had beginnings in Massachusetts in the past couple of decades. However, we could do more. We need more start-ups, especially in the technology and bio-tech sectors. Adoption of the Uniform Trade Secrets Act protects and encourages innovation.

Current employers should not feel threatened: While we understand employers concerns that protecting their proprietary information is critical, non-compete agreements are neither the best option nor the only available vehicle to protect companies. By adopting the Uniform Trade Secrets Act, and limiting or abolishing non-compete agreements, we will have an opportunity to both grow our economy and protect a company's proprietary information.

The Uniform Trade Secrets Act has been adopted in 48 other states and the District of Columbia. The UTSA and other tools protect an employer's trade secrets and proprietary information, which is fundamentally important. Patents, confidentiality agreements, and trade secrets are more than sufficient to protect legitimate company interests against former employees. Even without non-compete agreements, companies still have a disproportionate ability to litigate against the individual.

You will certainly hear today from businesses and business groups who would prefer to keep the current legal arrangements regarding non-competes intact. While holding onto their current employees may be convenient for employers, it is not at all clear that it is necessary to their business success. Our businesses could recruit the very talent they need without a non-compete agreement impeding the opportunity.

For these reasons, we support the adoption of the Uniform Trade Secrets Act and the elimination of non-compete agreements.