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Article

How firms competitively became non-competitive: The diffusion of CEO noncompete agreements, 1996-2015

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How firms competitively became non-competitive: the diffusion of CEO noncompete agreements, 1996–2015

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Abstract

Purpose – This study aims to explore the diverse factors influencing the adoption of post-employment noncompete agreements (NCAs) between firms and their CEOs. Drawing on the organizational literature regarding the diffusion of contested organizational practices as well as research on law and organizations, this study seeks to understand how internal power dynamics, legal environments, as well as external economic shocks collectively shape organizational NCA adoptions among leading US corporations.

Design/methodology/approach – Using NCAs between Standard and Poor’s 500 firms and their CEOs in 1996–2015, this study uses discrete-time event history analysis to examine the impact of CEO duality, state legal environments regarding NCA enforcement and the Great Recession on the hazard ratios of organizational NCA adoption.

Findings – Organizations are less likely to enforce NCAs with duality CEOs, reflecting internal power dynamics and CEO influence within the organization. The study also finds that firms are more likely to have NCAs with CEOs in states where NCAs are easier to enforce and where partial NCA enforcement is permitted. Finally, the findings underscore how exogenous shocks, particularly the recent Great Recession, prompt firms to adopt NCAs to avoid additional disruptions from CEO turnover.

Originality/value – This study contributes to management research on the diffusion of contested organizational practices by uncovering various factors at multiple levels that drive the adoption of NCAs. Specifically, this study offers fresh insights into the intricacies of state NCA laws and how organizations respond to their legal environments. Moreover, it sheds light on how unexpected economic events, such as the Great Recession, influence organizations to embrace contested practices, expanding the study of organizational practices beyond conventional investigations of sociopolitical and institutional factors.

Keywords Noncompete agreements, Contested practices, Diffusion, Legal environments, Financial crisis

Paper type Research paper

Introduction

The question of why organizations adopt certain practices – particularly those whose efficiency or legitimacy is debated – has long intrigued organizational scholars. Prior



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research suggests that social motivations often drive these adoptions when the practices in question may not be economically justifiable (Ansari, Fiss, & Zajac, 2010; Meyer & Rowan, 1977). When researching social motivations behind adopting a certain practice over others, existing studies typically assume that such a practice is already legitimate or in the process of legitimization (Tolbert & Zucker, 1983). However, more recent work has begun to examine practices that spread widely despite lacking legitimacy (Chuang, Church, & Ophir, 2011; Fiss, Kennedy, & Davis, 2012; Fiss & Zajac, 2004; Ingram & Rao, 2004; Sanders & Tuschke, 2007). The growing adoption of such controversial practices raises critical concerns, as it may lead to contention both inside and outside the adopting organization.

This paper investigates noncompete agreements (NCAs) as a prime example of contested practices to uncover the drivers of organizational adoptions. To protect confidential information, including intellectual property and trade secrets, organizations have been increasingly asking employees to sign NCAs (U.S. Department of Treasury, 2016). These agreements typically restrict employees from joining competitors or starting new ventures in related fields for a specified duration after leaving the company (Malsberger, Carr, Pedowitz, & Tate, 2013). Consequently, NCAs inherently pit business interests in protecting valuable information against employees' rights to career mobility and economic freedom.

This paper explores various drivers of such a contested practice as NCA adoption. It begins with internal power dynamics between the firm and the CEO (Jung, 2016; Westphal & Zajac, 1995), underscoring the sociopolitical divide within firms over contentious practices such as NCAs. It then examines the role of varying institutional environments across US states, noting a wide spectrum of legal stances on NCAs. Specifically, it delves into the nuances of state laws regarding partial NCA enforcement to highlight the complexities of state legal environments and their influence on organizational decisions concerning NCAs. Finally, this paper investigates the impact of exogenous economic shocks, an area not sufficiently explored in organization research. It discusses how economic uncertainty, such as the 2007–2009 financial crisis, pushes organizations toward practices such as NCAs to mitigate risks associated with potential leadership voids.

By identifying the diverse drivers of NCA adoption at organizational, subpopulation and population levels, this paper contributes to the organizational literature on the diffusion of contested practices. It also extends sociological research on legal environments by moving beyond a simple legal/illegal binary categorization and emphasizes important distinctions across states, thus offering deeper insights into how legal nuances influence organizational behavior. Moreover, this paper contributes to management research on economic crises. While prior research often focuses on legal or institutional changes as primary macro-level drivers of organizational changes, the effect of significant economic upheavals, such as the Great Recession in 2007–2009, has been less examined. This paper highlights how such universal external shocks may prompt organizations to adopt controversial practices.

Theories and hypotheses

Noncompete agreements as an instance of contested practices

Some practices spreading among organizations can be divisive, garnering support from certain stakeholders while facing opposition from others, ultimately failing to achieve consensus on their legitimacy. NCAs, which typically restrict employees from joining competitors or starting new ventures in related fields for a specified duration after leaving the company (Malsberger et al., 2013), serve as a textbook example, as they inherently involve conflict between business interests and employees' rights.

Scholars have examined NCAs mostly from two distinct theoretical viewpoints: the human capital perspective and the venture capital perspective, both of which contribute to

the ongoing debate about their enforceability and implications (Thomas & Bishara, 2015). The human capital perspective emphasizes employee mobility and innovation, arguing that NCAs may stifle creativity and restrict an individual's ability to leverage their skills freely across companies. Scholars in this tradition contend that such restrictions can hinder innovation and entrepreneurial activity, as employees may be deterred from founding new ventures or joining innovative firms because of the risk of violating NCAs (Marx, Strumsky, & Fleming, 2009; Samila & Sorenson, 2011). This view also aligns with broader concerns over employee rights and the anti-competitive impact of NCAs, especially when applied to knowledge workers in dynamic industries (Stone, 2002).

In contrast, the venture capital perspective views NCAs as valuable tools for protecting intellectual property and safeguarding investments in talent. This perspective supports NCAs as a means to secure proprietary knowledge and maintain a competitive advantage, especially for firms investing heavily in research and development. From this standpoint, NCAs can help firms mitigate the risk of intellectual property leaks to competitors in companies where protecting unique innovations is essential for sustained growth and competitive positioning (Conti, 2014).

Beyond the direct stakeholders of NCAs, namely, employers and employees, the media and policymakers have also recognized NCAs' ramifications. Recent reports reveal instances where workers were unable to accept new job offers or remained unemployed because of fears of retaliatory lawsuits from former employers, sparking public backlash against the broad application of NCAs to employees (The Economist, 2018; The New York Times, 2017; Wall Street Journal, 2013). Notably, companies such as Jimmy John's faced criticism for their broad application of NCAs to low-wage workers. This issue reached a critical point when the state attorneys general of New York and Illinois launched investigations into Jimmy John's use of anti-competitive NCAs, leading the sandwich chain to eventually abandon its mandatory NCA policy under public pressure (Bishara & Starr, 2016).

Even high-ranking executives have been subjected to disputes over NCAs (Garrison & Wendt, 2008). For example, Kai-Fu Lee, who served as Vice President of Microsoft's Natural Interactive Services Division and founded Microsoft Research Asia, was recruited by Google to lead its China R&D center. Microsoft subsequently filed lawsuits against Google and Lee, alleging breach of confidentiality and violation of his NCA. The court issued a limited injunction, restricting some of Lee's activities at Google but not entirely preventing him from working there altogether. Interestingly, both companies claimed victory in the lawsuit.

Internal contestation and CEO power

Employees, including CEOs, would resist the consequences of reduced career mobility upon signing NCAs. CEOs are uniquely positioned to mobilize resistance against NCAs because of their substantial influence over organizational decision-making. Organizational attempts to impose NCAs upon their CEOs will reveal internal political dynamics, where powerful CEOs who have a vested interest in maintaining their career mobility and bargaining power are likely to push back against policies detrimental to their interests (Fiss & Zajac, 2004).

While traditional research often equates organizational decisions with management actions, viewing them in opposition to external stakeholders or rank-and-file employees (e.g. Edelman, Uggan, & Erlanger, 1999; Sutton & Dobbin, 1996), recent management studies highlight that management's interests may also diverge from those of shareholders or the board. Conflicts over compensation, succession planning and board composition exemplify the differing priorities between managers and shareholders (Joseph, Ocasio, & McDonnell, 2014; Ocasio, 1994; Sanders & Tuschke, 2007; Zajac & Westphal, 1995).

CEOs would use their power to shield themselves from policies they perceive as unfavorable. The enforcement of NCAs, which restrict career mobility, can adversely affect CEOs by increasing the risk of longer tenure with reduced pay (Garmaise, 2011). Because alternative job offers provide CEOs with valuable leverage to negotiate higher salaries, NCAs can undermine this leverage by restricting their ability to pursue new opportunities. Research indicates that executives often use external job offers as a bargaining chip, and the departure of one executive can lead to pay increases for those who remain as part of a retention strategy (Brown, Gao, Lee, & Stathopoulos, 2012; Gao, Luo, & Tang, 2015). Consequently, powerful CEOs – those who hold significant sway within the organization through board control – are more likely to resist signing NCAs to protect their own interests:

H1. Organizations are less likely to adopt an NCA with more powerful CEOs.

Varying institutional environments regarding noncompete agreement enforcement

Debates on NCAs may also reflect broader institutional differences, including varying state laws and norms that shape organizational decisions. In the USA, the legal enforceability of NCAs differs significantly across states (Malsberger et al., 2013). On one end of the spectrum, states such as California, ND, and Oklahoma impose stringent restrictions on NCAs, rendering them unenforceable except in rare circumstances. At the other extreme, states such as Florida and Texas adopt more employer-friendly positions, granting businesses considerable leeway to restrict employee mobility in defense of their interests. Between these poles, others such as New York and Massachusetts attempt to strike a balance, permitting NCAs only to the extent necessary to protect legitimate business interests, although interpretations of what constitutes “legitimate business interests” vary widely by jurisdiction.

These legal variations in NCA enforcement have far-reaching implications for regional economic outcomes, as illustrated by comparisons between Silicon Valley’s dynamic growth – fostered in part by California’s prohibition on NCAs – and the decline of Massachusetts’ Route 128 (Gilson, 1999; Saxenian, 1996). Inspired by California’s economic success, researchers have explored how these legal environments impact innovation and economic development (Garmaise, 2011; Marx et al., 2009; Samila & Sorenson, 2011; Stuart & Sorenson, 2003), emphasizing that differences in state legal environments exert a profound influence on organizational practices.

According to studies of law and organizations, state legal environments play a significant role in shaping organizational practices because they exert coercive pressure, leading organizations to adopt practices aligned with prevailing laws, such as environmental or employment law (DiMaggio & Powell, 1983; Edelman, 1992; Edelman et al., 1999; Scott, 2013). Empirical studies along these lines have demonstrated how differences in legal environments drive varied organizational responses. For instance, the adoption of health benefits for same-sex partners advanced more rapidly in states where such practices were legally supported (Chuang et al., 2011). Similarly, the presence or absence of laws regulating chain stores created diverse business environments across states in the early 20th century, revealing how differences in legal landscapes can foster or hinder the spread of certain organizational practices (Ingram & Rao, 2004). Additionally, multinational corporations’ (MNCs) exposure to diverse legal environments can prompt the adoption of practices that are controversial in an MNC’s origin country but legally permissible in other overseas markets (Sanders & Tuschke, 2007).

The legal diversity regarding NCA enforcement could also exemplify how organizations adapt their practices in response to varying state regulations. In states where NCAs are easily enforceable, organizations may not suffer severe delegitimization threats when they decide to adopt NCAs as a standard practice. In contrast, in states where NCAs are prohibited or

enforceable only under restrictive conditions, organizations may forgo NCAs to avoid legal risks, reputational damage and potential delegitimization:

- H2. Organizations in states where NCAs are easily enforceable are more likely to adopt NCAs with CEOs.

Navigating legal nuances: organizational response to institutional complexity

Although organizations are subject to institutional pressures from their legal environments, they may also engage in strategic responses to such pressures, challenging the conventional institutionalist notion of law's outright dominance over organizations (Oliver, 1991). Organizations may do so by navigating the boundaries of legal environments, especially when laws contain significant ambiguities or loopholes (Edelman et al., 1999). Research on law and organizations has revealed that organizations actively interpret ambiguous laws in ways that favor their interests (Edelman, 1992; Edelman, Krieger, Eliason, Albiston, & Mellema, 2011).

State NCA laws mandate that NCAs be reasonably tailored, yet this guidance leaves considerable ambiguity. The criteria for an NCA's reasonableness hinge on the employer's protectable interests and the extent to which the agreement impacts an employee's career opportunities (Malsberger et al., 2013; Piveteau, 2007). Given such uncertainty over what constitutes a reasonable and thus enforceable restriction, organizations typically err on the side of caution when drafting NCAs. Moreover, the comparison of these two conflicting interests and resulting interpretation of what is deemed "reasonable" may vary widely across states, reflecting the complex state legal landscapes in which these organizations operate.

Apart from ambiguity regarding the reasonableness of enforceable NCAs, state laws are often complex, combining multiple principles that create substantial variation. Previous research has frequently categorized legal environments based on a simple legality-or-illegality framework, but this approach may inaccurately characterize complex legal landscapes across states, as is the case with NCAs. For instance, a key legal doctrine known as the "blue pencil" introduces further variation within states that enforce NCAs. This doctrine determines whether courts will nullify the entire contract or merely remove the problematic phrases or clauses, significantly impacting the strategic use of NCAs by organizations (Garner, 2009; Piveteau, 2007).

In states where courts view NCAs as indivisible, even minor overbreadth can invalidate the whole agreement, prompting organizations to craft NCAs with only the most essential and minimal restrictions to ensure enforceability. Conversely, organizations in states applying the blue pencil doctrine might exploit the ambiguity surrounding what constitutes reasonable restrictions, pushing the boundaries of NCAs. In these jurisdictions, courts typically remove only the non-compliant sections of an NCA, leaving the rest intact. This approach effectively eliminates the risk of unenforceability from overly restrictive NCAs, creating a potentially perverse incentive for organizations to impose broader limitations. Consequently, some legal scholars criticize the blue pencil doctrine's application to NCAs as it may encourage employers to impose overly aggressive restrictions on employees (Hyde, 2012; Piveteau, 2007).

The adoption of the blue pencil doctrine may reflect that a state is particularly favorable to business interests, further facilitating organizational NCA use. This nuanced understanding of state legal environments highlights how specific legal doctrines can shape organizations' strategies regarding NCAs, either encouraging caution or enabling more extensive restrictions:

H3. Organizations in states that take modification approaches to NCA enforcement are more likely to adopt NCAs with CEOs.

Exogenous shocks as population-level disruptors

Exogenous shocks, such as global economic downturns, act as powerful disruptors, affecting organizations universally, beyond the confines of specific legal or institutional environments. Unlike localized institutional changes, these broader disruptions create a climate of uncertainty and potential loss that spans across different states. This perspective aligns with insights from behavioral economics and social psychology, which indicate that individuals and, by extension, organizations, are inclined to adopt measures to mitigate further losses after experiencing adverse events (Hoffmann, Post, & Pennings, 2013; Kahneman & Tversky, 1972; Sirola & Pitesa, 2017). Facing economic uncertainty, organizations, driven by the risk-averse decisions of shareholders or directors, may become more open to adopting controversial practices as a defensive or compensatory strategy, despite potential risks and challenges.

The 2007–2009 financial crisis, also known as the Great Recession, was triggered by the widespread delinquency and foreclosure of subprime mortgages and serves as a prime example of a systemic exogenous shock with profound impacts. Lehman Brothers' closure of its subprime lender and subsequent collapse marked the escalation of the mortgage crisis into a global financial meltdown, prompting investors to adopt a highly cautious stance (Demyanyk & Van Hemert, 2011; Spiegel, 2011). In such climates of uncertainty and anticipated losses, organizations and their stakeholders often gravitate toward protective measures to mitigate further financial harm. NCAs emerge as one such strategy, offering a means to secure confidential business information against employee turnover.

The loss of a talented CEO can critically harm an organization, a situation exacerbated if they join a competitor. Research on risk perception shows that economic difficulties often lead people to view success competitively, where another's gain is seen as their loss (Sirola & Pitesa, 2017). This competitive mindset, particularly prevalent during financial crises, underscores the heightened importance of retaining key executives. Thus, to mitigate risks and prevent the damage of losing a CEO to a rival, organizations are more inclined to use NCAs with their CEOs, aligning with a broader strategy of loss aversion in tumultuous economic times:

H4. After the recent financial crisis, organizations are more likely to adopt an NCA with CEOs.

Methods

Data

The sample for this study consists of Standard & Poor's (S&P) 500 firms and their CEOs appointed between 1996 and 2015 to perform event history analysis. Event history analysis is a statistical method used to examine the occurrence and timing of events over a specific period, allowing researchers to model the likelihood of an event happening at a particular point in time (Allison, 2014). In event history analysis, if a subject is left-censored, meaning that there is incomplete information on the beginning of the observation period for some subjects in the study, we cannot guarantee that an observed event is truly the first (Allison, 2014). To address this left-censoring issue prevalent in event history analysis, CEOs who were appointed before 1996 were excluded. Out of the S&P 500, 493 firms experienced CEO turnover during this period, totaling 1,097 CEO appointments. These executives were

deemed at risk for entering into an NCA upon their appointment, and once an NCA was signed, they were excluded from further analysis.

Previous studies (Bishara, Martin, & Thomas, 2015; Kini, Williams, & Yin, 2021) reviewed employment contracts to find noncompete clauses contained in them, and they looked for annual reports to find employment contracts. However, as these authors admitted, many firms did not have a formal employment contract with chief executives or merely failed to attach one to their annual report (Gillan, Hartzell, & Parrino, 2009). As a result, these studies had to omit a substantial portion of CEOs and limited their sample only to CEOs who had explicit employment contracts. By contrast, to address the selection bias that prior studies might have suffered from and more thoroughly find information about NCAs that CEOs agreed to, I searched proxy statements as well as annual reports. Proxy statements may attach many other contracts that could affect executive compensation and thus require shareholder approval during annual shareholder meetings. The review of multiple proxy statements confirmed that even when CEOs do not sign an employment contract, they often sign other types of contracts that are highly likely to include a noncompete clause.

Thousands of proxy statements and annual reports issued by the S&P 500 firms were downloaded from the Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval. Then, both types of documents were thoroughly searched to find various contracts that CEOs agreed to and the instances of NCAs written in those contracts. After the initial automated procedure, human coders verified the information and hand-collected the type of contract that contained an NCA clause and the specific terms of the NCA, if possible.

After careful review, 416 CEOs' first NCAs were finally included in this paper's data set. The composition of contracts that include noncompete clauses supports the inclusion of proxy statements during the data collection process: of the 416 contracts that contained noncompete clauses, less than half ($n = 182$) of them were employment contracts, whereas 38% ($n = 156$) came from retirement-related compensation contracts (change-in-control agreements, severance agreements, supplemental executive retirement plans), and 19% ($n = 78$) were found in equity compensation contracts such as long-term incentive plans. Had this study relied solely on employment contracts, more than half of the CEOs who signed an NCA might have been falsely classified as not having one. The average failure time, which measures how long it takes for a CEO to sign an NCA, is 2.59 years.

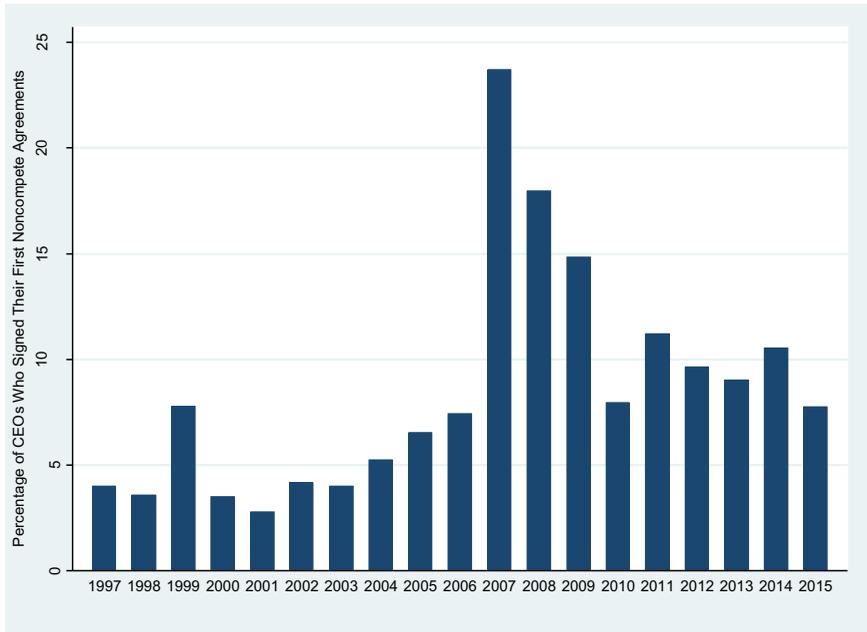
Figure 1 offers a snapshot of NCA trends, showcasing the annual percentages of CEOs signing their first agreements. Prior to 2007, the annual percentage of CEOs signing their first NCAs never surpassed ten percent. However, coinciding with the onset of the financial crisis in 2007, approximately one quarter of the remaining CEOs signed their first NCAs, marking a significant increase. This elevated level of NCA adoption with CEOs persisted through 2015 to some degree, remaining higher in comparison to pre-crisis years.

Additionally, Tables 1 and 2 present the distribution of industries and states where CEOs and their NCAs are represented.

This study also collected individual-level characteristics of CEOs, such as age (mean: 55 years), gender (mean: 0.97, indicating 97% male) and compensation (mean: \$6.7m), sourced from the BoardEx and Execucomp databases. Additionally, organizational financial data was gathered from Compustat. Integrating these varied sources of information, a comprehensive data set comprising 4,358 firm-year observations was constructed.

Measures

Dependent variable. The dependent variable is the timing of a CEO signing their first NCA, viewed as the "failure event." CEOs were tracked from their appointment until their first



Note(s): *CEOs who signed in the previous year are dropped in subsequent years
Source(s): Author's own work

Figure 1. Percentage of CEOs who signed their first noncompete agreements among S&P 500 CEOs

Table 1. CEO noncompete agreements by industry between 1996 and 2015 ($n = 416$)

| State | NCA Count |
|------------------------|-----------|
| Mining | 20 |
| Utilities | 34 |
| Construction | 4 |
| Manufacturing | 157 |
| Wholesale | 7 |
| Rental trade | 25 |
| Transportation | 9 |
| IT | 37 |
| Finance | 55 |
| Real estate | 27 |
| Science and technology | 11 |
| Management | 8 |
| Health care | 8 |
| Accommodation and food | 5 |
| Other | 9 |

Source(s): Author's own work

Table 2. CEO noncompete agreements by state between 1996 and 2015 ($n = 416$)

| State | NCA Count |
|-----------------|-----------|
| Alabama | 1 |
| Arkansas | 6 |
| Arizona | 7 |
| California | 31 |
| Colorado | 8 |
| Connecticut | 18 |
| Washington, DC | 2 |
| Delaware | 1 |
| Florida | 11 |
| Georgia | 9 |
| Iowa | 2 |
| Idaho | 1 |
| Illinois | 25 |
| Indiana | 8 |
| Kentucky | 3 |
| Louisiana | 2 |
| Massachusetts | 23 |
| Maryland | 5 |
| Michigan | 12 |
| Minnesota | 12 |
| Missouri | 9 |
| North Carolina | 16 |
| New Jersey | 23 |
| New York | 49 |
| Ohio | 18 |
| Oklahoma | 3 |
| Oregon | 1 |
| Pennsylvania | 20 |
| Rhode Island | 4 |
| Tennessee | 11 |
| Texas | 31 |
| Virginia | 16 |
| Washington | 4 |
| Wisconsin | 7 |
| Outside the USA | 17 |

Source(s): Author's own work

NCA signing. Once a CEO signed an NCA, they were considered to have experienced the event of interest and were subsequently removed from the data set. This approach ensures a focused analysis of the period leading up to this pivotal decision.

Predictor variables. The study's predictor variables include CEO power, variations in state legal environments and the impact of the financial crisis. First, CEO power is measured by CEO *duality*, a binary variable indicating whether a CEO also serves as the board chairperson (coded as 1 for dual roles, 0 otherwise). Next, state legal environment variations are captured through two variables: *Enforceability*, which measures the ease of NCA enforcement in a given state. [Garmaise \(2011\)](#) first developed an index of integer scores that indicates the ease with which employers can use NCAs in each state (for critiques of this measure, see [Barnett & Sichelman, 2020](#); [Bishara, 2011](#)). He relied on a legal treatise titled "Covenants Not to Compete: State-by-state Survey" ([Malsberger et al., 2013](#)) to grade each

state on the likelihood of enforcing NCAs in an attempt to quantify state laws governing NCA enforceability across the USA.

The other legal environment measure is the *blue pencil*, identifying states that allow courts to modify rather than void partially enforceable NCAs (coded 1 for states applying this doctrine). Finally, the *financial crisis* refers to the global financial crisis triggered by the collapse of Lehman Brothers in 2007, followed by a prolonged period of negative or sluggish GDP growth. This predictor is coded as 1 during 2007–2010 and 0 otherwise, reflecting its far-reaching influence on organizational practices.

Control variables. This paper incorporates individual-level controls such as *sex*, the logarithm values of the CEO's *age* and *total compensation*. To account for the perfect collinearity between age variation and calendar years in the event history analysis, the age of the CEO at the time of their appointment is used. In addition, to control for organizational-level confounding factors, the following variables are included. *Total assets* measures the size of each firm. *Sales* and annual *average share prices* measure the multi-dimensional nature of firm performance (Bolton, Butler, & Martin, 2024). The number of *common shares outstanding* controls for the influence of available shares on other financial information. *Invested capital* reflects the degree of firms' spending on new projects and measures the practical need to adopt an NCA. Organizational-level controls are logarithmically transformed to normalize distributions and reduce the influence of outliers.

In event history analysis, the infectiousness of existing adopters can be a substantial factor contributing to the diffusion (Strang & Macy, 2001). Thus, the number of *prior adopters* in the same state is controlled for. Additionally, the same industry peers might differently affect non-adopting firms. *Industry indicators* control for possible industry-level effects on the adoption of NCAs. Industries are grouped by the first two digits of the North America Industry Classification System (NAICS).

Statistical estimation

The hypotheses are tested through discrete-time event history analysis, a method suited for examining the occurrence and timing of events over a specified period (Allison, 2014; Rabe-Hesketh & Skrondal, 2012). This approach is particularly appropriate given the annual cycle of reports and proxy statements, which prevent pinpointing the exact dates CEOs sign NCAs. The data set is constructed around calendar years as the primary time unit, with year indicators incorporated to account for temporal variations with no assumption about its pattern. Discrete-time analysis over continuous-time models is further justified by the coarse temporal units over the 20-year span, which results in a high incidence of ties or simultaneous NCA adoptions among organizations.

Results

Table 3 reports the summary statistics and correlations among the variables of this paper.

Table 4 evaluates the influence of predictor variables on the likelihood of firms adopting NCAs with their CEOs. The baseline model (Model 1) includes only control variables, with gender and age showing significant effects: male CEOs are more likely to sign NCAs, while older CEOs show a lower propensity for such agreements. Among other controls, only the number of common shares outstanding is significant in earlier models.

Subsequent models introduce predictor variables to test specific hypotheses. Model 2 assesses the impact of *duality* on NCA adoption, revealing that firms are 44% less likely to impose NCAs on CEOs who also hold the chairperson position ($e^{-0.581} = 0.56$), thus supporting *H1* ($p < 0.01$). This duality variable remains highly significant across the models

Table 3. Summary statistics and correlations ($n = 4,358$)

| Variables | Mean | SD | Min | Max | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
|-------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------|-------|------|------|------|
| 1. NCA | 0.09 | 0.29 | 0.00 | 1.00 | 1 | | | | | | | | | | | | |
| 2. Duality | 0.63 | 0.48 | 0.00 | 1.00 | -0.12 | 1 | | | | | | | | | | | |
| 3. NCA enforceability | 3.7 | 2.04 | 0.00 | 9.00 | 0.07 | 0.05 | 1 | | | | | | | | | | |
| 4. Blue pencil | 1.98 | 1.39 | 0.00 | 3.00 | 0.05 | 0.03 | 0.39 | 1 | | | | | | | | | |
| 5. Financial crisis | 0.142 | 0.35 | 0.00 | 1.00 | 0.15 | -0.02 | 0 | -0.01 | 1 | | | | | | | | |
| 6. Sex | 0.97 | 0.17 | 0.00 | 2.00 | 0.03 | 0.01 | 0.07 | 0 | 0.01 | 1 | | | | | | | |
| 7. Age | 3.99 | 0.13 | 3.26 | 4.44 | 0.02 | 0.14 | 0.09 | 0.1 | 0.01 | 0.05 | 1 | | | | | | |
| 8. Total compensation | 8.81 | 1.11 | 0.00 | 13.31 | 0.03 | 0.03 | -0.02 | 0.01 | 0.02 | -0.05 | 0.14 | 1 | | | | | |
| 9. Assets | 9.37 | 1.51 | 4.42 | 14.76 | 0.04 | 0.07 | -0.02 | 0.09 | 0.05 | -0.04 | 0.2 | 0.38 | 1 | | | | |
| 10. Average stock price | 0.067 | 0.11 | -0.01 | 3.32 | -0.01 | 0 | -0.06 | -0.02 | -0.07 | 0 | -0.08 | -0.05 | 0.06 | 1 | | | |
| 11. Sales | 8.80 | 1.34 | 1.61 | 13.09 | 0.04 | 0.06 | 0.02 | 0.1 | 0.06 | -0.04 | 0.18 | 0.38 | 0.78 | 0.07 | 1 | | |
| 12. Outstanding shares | 5.61 | 1.12 | 2.48 | 10.28 | 0.02 | -0.02 | -0.12 | 0.05 | 0.07 | -0.09 | 0.09 | 0.35 | 0.74 | -0.12 | 0.72 | 1 | |
| 13. Invested capital | 8.78 | 1.34 | 2.92 | 13.28 | 0.04 | 0.04 | -0.03 | 0.07 | 0.06 | -0.05 | 0.18 | 0.38 | 0.95 | 0.08 | 0.78 | 0.77 | 1 |
| 14. Prior adopters | 10.04 | 10.42 | 0.00 | 44.00 | 0.05 | -0.1 | -0.22 | 0.17 | 0.12 | -0.05 | 0.13 | 0.19 | 0.27 | 0.13 | 0.19 | 0.21 | 0.28 |

Source(s): Author's own work

Table 4. Discrete-time survival analysis of organizational adoption of noncompete agreements

| Variables | (1) baseline | (2) H1 | (3) H2 | (4) H3 | (5) H4 |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| <i>Predictors</i> | | | | | |
| Duality | | -0.581** (0.180) | -0.563** (0.183) | -0.597*** (0.181) | -0.760*** (0.168) |
| NCA enforceability | | | 0.276*** (0.069) | 0.193** (0.074) | 0.281*** (0.069) |
| Blue pencil | | | | 0.242* (0.107) | 0.106 (0.099) |
| Financial crisis | | | | | 1.346*** (0.136) |
| <i>Controls</i> | | | | | |
| Sex (male = 1) | 1.250* (0.486) | 1.071* (0.480) | 0.999* (0.478) | 1.034* (0.481) | 0.728 (0.471) |
| Age | -1.715*** (0.359) | -1.591*** (0.352) | -1.874*** (0.360) | -1.907*** (0.361) | -2.196*** (0.325) |
| Total compensation | 0.085 (0.081) | 0.082 (0.080) | 0.074 (0.080) | 0.082 (0.081) | 0.105 (0.078) |
| Assets | -0.026 (0.341) | 0.116 (0.338) | 0.100 (0.337) | 0.080 (0.337) | 0.090 (0.326) |
| Sales | 0.122 (0.188) | 0.112 (0.185) | 0.100 (0.184) | 0.096 (0.184) | 0.144 (0.176) |
| Average share prices | -2.465 (1.505) | -2.254 (1.484) | -1.870 (1.479) | -1.971 (1.491) | -0.937 (1.344) |
| Common shares outstanding | -0.409* (0.181) | -0.396* (0.178) | -0.300+ (0.178) | -0.327+ (0.179) | -0.289+ (0.168) |
| Invested capital | 0.229 (0.324) | 0.096 (0.319) | 0.094 (0.318) | 0.113 (0.317) | 0.164 (0.308) |
| Prior adopters | -0.006 (0.013) | -0.005 (0.013) | 0.007 (0.014) | -0.002 (0.014) | 0.057*** (0.011) |
| <i>Industry indicators (finance as reference)</i> | | | | | |
| Mining | -0.981 (0.769) | -0.730 (0.754) | -0.322 (0.755) | -0.485 (0.758) | 0.048 (0.720) |
| Utilities | 0.493 (0.682) | 0.636 (0.664) | 0.727 (0.655) | 0.765 (0.655) | 0.930 (0.627) |
| Construction | -0.412 (1.310) | -0.419 (1.281) | -0.332 (1.261) | -0.332 (1.255) | -0.068 (1.194) |
| Manufacturing | 0.019 (0.577) | 0.205 (0.569) | 0.346 (0.569) | 0.310 (0.569) | 0.541 (0.544) |
| Wholesale | -0.129 (1.150) | -0.015 (1.118) | -0.005 (1.109) | -0.086 (1.112) | 0.083 (1.065) |
| Rental trade | 0.360 (0.806) | 0.495 (0.789) | 0.399 (0.787) | 0.372 (0.786) | 0.574 (0.751) |
| Transportation | 0.191 (0.944) | 0.382 (0.922) | 0.307 (0.911) | 0.381 (0.915) | 0.866 (0.868) |
| IT | 0.648 (0.676) | 0.633 (0.660) | 0.753 (0.657) | 0.847 (0.658) | 0.765 (0.631) |
| Real estate | 0.530 (0.779) | 0.735 (0.758) | 1.095 (0.754) | 1.147 (0.754) | 1.341+ (0.717) |
| Science and technology | 1.333 (1.022) | 1.265 (0.992) | 1.386 (1.013) | 1.201 (1.013) | 1.322 (0.967) |
| Management | 1.141 (1.036) | 1.166 (1.013) | 1.415 (1.008) | 1.355 (1.011) | 1.410 (0.956) |
| Health care | 0.914 (1.201) | 1.060 (1.174) | 1.052 (1.157) | 1.002 (1.155) | 1.222 (1.099) |
| Accommodation and food | -1.521 (1.232) | -1.311 (1.209) | -1.276 (1.188) | -1.163 (1.187) | -0.681 (1.143) |
| Others | 0.277 (2.683) | 0.568 (2.585) | -0.142 (2.540) | -0.149 (2.534) | -0.402 (2.413) |

Note(s): Standard errors, clustered by firm, are in parentheses. Fixed effects for time are included in the model, but not shown here; *** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$

Source(s): Author's own work

in Table 4. Next, Model 3 evaluates the impact of *NCA enforceability*, demonstrating that firms in a more lenient state legal environment regarding NCA enforcement are significantly more likely to adopt NCAs with CEOs ($p < 0.001$), confirming H2; a one-point increase in the enforceability index increases the likelihood of NCA adoption by 32% ($e^{0.276} = 1.32$). This NCA enforceability index also remains significant in subsequent models.

In Model 4, the *blue pencil* variable is used to assess its influence on NCA adoption to test H3. Results indicate that organizations in states adopting the blue pencil doctrine are 27% more likely to implement NCAs ($e^{0.242} = 1.273$, $p < 0.05$), supporting the hypothesis. Finally, Model 5 examines the role of the *financial crisis* as a significant exogenous shock, revealing an approximately four-fold increase in the likelihood of NCA adoption post-crisis ($e^{1.346} = 3.84$, $p < 0.001$). This stark rise during the peak of the crisis underscores how organizations are more likely to adopt a defensive posture by securing NCAs with CEOs in response to economic turmoil.

Discussion

The results of this study provide important insights into the factors influencing the adoption of NCAs with CEOs: the role of CEO power, legal environments and exogenous economic shocks. Across all models, most organizational covariates and industry indicators lack statistical significance, underscoring that social processes are pivotal in understanding the adoption of contested practices such as NCAs. Additionally, firms may view older CEOs as closer to retirement and, therefore, less likely to join a competitor, explaining the negative relationship between CEO age and NCAs.

The analysis first reveals that CEO power, measured through CEO-chairperson duality, significantly impacts NCA adoption. Specifically, firms are 44% less likely to adopt NCAs with CEOs who also hold the chairperson role. This supports *H1* and demonstrates how CEO power can serve as a buffer against policies perceived as detrimental to their interests. Earlier organizational research often equated organizational decisions with management actions in opposition to lower-level employees or broader societal interests (e.g. [Edelman et al., 1999](#); [Sutton & Dobbin, 1996](#)). However, more recent studies recognize the internal conflicts between the organization and its management, illustrating how disagreements influence the adoption of practices that could affect executives' personal interests ([Joseph et al., 2014](#); [Jung, 2016](#); [Sanders & Tuschke, 2007](#)). This paper advances this sociopolitical perspective on organizational dynamics by examining organizational adoption of NCAs as a manifestation of the potential conflict between a CEO's interests and those of the organization.

Next, the legal environment, particularly the enforceability of NCAs within a state, plays a critical role in NCA adoption. The findings in support of *H2* align with broader organizational research, which emphasizes the role of legal environments in legitimizing and diffusing contested practices. Relatedly, findings also support *H3* that the blue pencil doctrine further influences organizational strategies around NCA adoption. The positive impact of the blue pencil doctrine reflects how additional variations in state legal environments can shape organizational behavior, allowing firms to pursue broader restrictions with reduced risk of invalidation. This doctrine, which allows courts to modify excessively restrictive NCAs rather than invalidating them entirely, enables what might be deemed as "strategic contracting" or "winning legally" ([Bagley, 2013](#); [DiMatteo, 2010](#)). The positive impact of the blue pencil suggests that organizations not only react to legal requirements but also engage with the law more dynamically, exploring the boundaries of what constitutes an enforceable NCA ([Edelman et al., 1999, 2011](#)).

Finally, the findings reveal a substantial rise in NCA adoption following the 2007–2009 financial crisis, supporting *H4*. This sharp increase – marked by an approximately four-fold rise in the hazard ratio – indicates that economic crises can prompt swift organizational adaptations aimed at mitigating risks associated with leadership turnover during periods of uncertainty. By examining the impact of the financial crisis, this study sheds light on how major economic shocks drive organizations to adopt controversial practices, offering a new perspective on organizational responses to systemic disruptions. While prior management research has primarily focused on institutional change as the key macro-level driver of organizational practices, this study demonstrates how organizations respond strategically to unanticipated external shocks. Moreover, although the effects of uncertainty on individual decision-making are well-documented ([Kahneman & Tversky, 1972](#); [Sirola & Pitesa, 2017](#); [Tversky & Kahneman, 1992](#)), the organizational literature has largely overlooked how significant economic disruptions, such as the Great Recession, influence firm-level decisions.

While this study provides valuable insights, it also has certain limitations that future research can address to further broaden our understanding. First, this study focuses on

publicly listed US firms, which may not capture how NCAs function in private firms or other institutional contexts outside the USA. Expanding future research to include private firms or cross-national comparisons could yield richer insights into how such differences influence NCA adoption. Additionally, ordinary employees often have less leverage in negotiating employment terms, suggesting that organizational factors may predominantly drive their adoption. Finally, this study does not examine the consequences of NCAs on employees directly. While existing studies have often relied on indirect measures to assess the impact of NCAs on employees, direct observations and analyses of NCAs and their specific outcomes could provide deeper insights into the effects these agreements have on the workforce.

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