STATE OF SOUTH CAROLINA **IN THE COURT OF COMMON PLEAS**

COUNTY OF RICHLAND **FIFTH JUDICIAL CIRCUIT**

S.B., S.S., T.S., and B.B.,

Plaintiffs,

v.

HENRY DARGAN MCMASTER, in his official capacity as Governor of the State of South Carolina, and G. DANIEL ELLZEY, in his official capacity as the Director of the South Carolina Department of Employment and Workforce,

Defendants.

Civil Action No. 2021-CP-40-03774

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER FOR LEAVE TO APPEAR AS *AMICI CURIAE*

The Chamber of Commerce of the United States of America and the National Federation of Independent Business Small Business Legal Center hereby seek leave to appear as *amici curia*e and file a brief in support of Defendants. After consultation, Plaintiffs oppose this motion, and Defendants consent to this motion. A copy of the proposed brief is attached to this motion.

"[T]he filing of an amicus curiae brief in a court of common pleas is a matter wholly within the discretion of the court, and is usually granted in cases involving the public interest." 16 S.C. Jur. Brief of Amicus Curiae § 3; *see also Cook v. S.C. Dep't of Highways & Pub. Transp.,* 309 S.C. 179, 184, 420 S.E.2d 847, 850 (1992) (finding no abuse of discretion by the trial court judge in allowing the South Carolina Budget and Control Board to appear as amicus curiae before the trial court). *Amici* represent large and small businesses in virtually every economic sector across the United States, including in South Carolina. *Amici* support Governor McMaster's decision to end South Carolina's participation in temporary federally funded pandemic unemployment insurance programs. *Amici* believe that paying South Carolinians not to work is dampening what should be a stronger jobs market. Indeed, unfilled positions pose a very real threat to South Carolina's economic recovery from the COVID-19 pandemic. Based on *amici*'s analysis, unemployment insurance benefits from the Coronavirus Aid, Relief, and Economic Security Act result in approximately one in four recipients taking home *more* in unemployment than they could earn working.

Amici's brief will assist the Court by explaining that the Governor's decision was lawful and serves the public interest, and will demonstrate why a preliminary injunction would hurt small and large businesses by worsening the labor shortage in South Carolina and impeding the State's economic recovery. *Amici*'s brief will also explain that Governor McMaster's decision serves the public interest by encouraging South Carolinians to return to work, which will ease the labor shortage and stimulate South Carolina's economic recovery. For these reasons, this motion should be granted, and *Amici*'s attached brief should be filed.

Dated: August 9, 2021

Respectfully submitted,

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BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER

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INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, and from every geographic region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Federation of Independent Business ("NFIB") is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. The National Federation of Independent Business Small Business Legal Center ("NFIB Legal Center") is a nonprofit, public interest law firm, established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. To fulfill its role as the voice for small business, the NFIB Legal Center frequently files amicus briefs in cases that will impact small businesses.

Amici support Governor McMaster's decision to end South Carolina's participation in temporary federally funded pandemic unemployment insurance programs. *Amici* believe that paying South Carolinians not to work is dampening what should be a stronger jobs market. Indeed, unfilled positions pose a real threat to South Carolina's economic recovery from the COVID-19 pandemic. Based on *amici*'s analysis, unemployment insurance benefits from the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") result in approximately one in four recipients taking home *more* in unemployment than they could earn working. A preliminary injunction requiring the State to continue these benefits would hurt small and large businesses by worsening the labor shortage in South Carolina and impeding the State's economic recovery. *Amici* seek leave to file this brief to explain that the Governor's decision was lawful and serves the public interest by encouraging South Carolinians to return to work.

SUMMARY OF ARGUMENT

Federal and state policymakers face a delicate task of facilitating a recovery from the greatest economic crisis since the Great Depression. During the COVID-19 pandemic, policymakers adopted temporary emergency relief measures to help individuals and businesses weather the economic recession. These include pandemic unemployment insurance benefits made available through the CARES ACT, which *amici* supported at the outset of the pandemic in 2020. Although these and other measures avoided an economic catastrophe, some measures have now become drags on the very economic forces they were designed to save.

As public-health conditions have improved and restrictions have lifted, businesses across the country have begun reopening to meet a resurgence in consumer demand. There are a record number of job openings, but not enough workers to fill them. Generous pandemic-related unemployment benefits have suppressed the labor supply by making unemployment nearly as profitable—and in some cases more profitable—than work. This helps explain why employers hired fewer workers than expected in April 2021 even as businesses could not find enough workers to fill open positions. *See* Olivia Rockeman, *U.S. Job Growth Disappoints in Challenge to Economic Recovery*, Bloomberg (May 7, 2021, 10:37 AM), https://tinyurl.com/ztuyzfhc. But without the ability to staff these open positions, businesses cannot meet existing demand—let alone grow and return the economy to pre-pandemic levels.

To address this labor shortage, Governor McMaster, like governors in twenty-five other states from Alaska to Louisiana, decided to target the biggest hurdle: federally funded pandemic unemployment insurance programs. To that end, Governor McMaster announced in May 2021 that South Carolina would end its participation in some of these federal programs. The Governor noted that South Carolina's businesses "face an unprecedented labor shortage," and further, that this labor shortage is "being created in large part by the supplemental unemployment payments that the federal government provides claimants on top of their state unemployment benefits." *See* Letter from Henry McMaster, Governor of South Carolina, to Daniel Ellzey, Director, Dep't of Emp. & Workforce (May 6, 2021). "What was intended to be short-term financial assistance," the Governor explained, "has turned into a dangerous federal entitlement." *Id.*

More than three months have passed since this announcement, yet Plaintiffs only recently sought an emergency order to block the Governor's decision. The Court should deny this request. Plaintiffs have not demonstrated a likelihood of success on the merits or that the public interest weighs in favor of continuing the State's participation in the federal pandemic unemployment insurance programs.

On the merits, no provision of the South Carolina Code of Laws imposes a duty on the State—let alone a specific, mandatory duty—to seek and obtain pandemic unemployment insurance benefits under the CARES Act. To the contrary, South Carolina law leaves administration of the CARES Act programs to the Governor's discretion. The Governor properly exercised his discretion to terminate the State's participation in these federal programs, which the CARES Act and implementing agreement with the federal government expressly contemplated. While Plaintiffs might disagree with the Governor's public-policy judgment, that is no basis for this Court to second guess and overturn the Governor's decision.

Nor would a preliminary injunction serve the public interest. On the contrary, a preliminary injunction would impair the Governor's ability to address a government-created labor shortage that is hurting South Carolina businesses and hindering the State's economic recovery. In South Carolina, combined pandemic-era unemployment benefits amount to 79% of the average weekly private sector pay. In the leisure and hospitality industries, that number rises to 123%—or, in other words, the benefits exceed average weekly earnings by more than 23%. When jobless South Carolinians make through unemployment benefits most of (or more than) what they earn by working, it is no surprise that they stay home instead of filling one of the more than 80,000 job openings in the State that existed as of May 2020. As a result, small and large South Carolina businesses, hoping to bounce back after the pandemic, continue to experience a worker shortage crisis.

Governor McMaster's decision to end the State's reliance on federal pandemic unemployment insurance benefits thus serves the public interest of getting South Carolinians back to work. His decision is bolstered by evidence of low unemployment rates in states such as Missouri (4.2%) and Montana (3.7%) that also ended federal unemployment benefits. Equipped with information about the number of job openings in

South Carolina and the successes of those other states, the Governor continues to be the best positioned to make such policy decisions in the public interest of the State.

ARGUMENT

This Court should deny Plaintiffs' request to preliminarily enjoin the Governor's decision to end participation in federally funded pandemic unemployment insurance programs. Plaintiffs cannot demonstrate a likelihood of success on the merits because the Governor acted within his lawful authority under the CARES Act and South Carolina law by making a discretionary policy choice that advances the interests of the State. And a preliminary injunction would disserve the public interest by discouraging unemployed South Carolinians from filling over 80,000 available jobs, exacerbating a labor shortage that harms South Carolina businesses, and frustrating the State's economic recovery.

I. Governor McMaster Lawfully Ended the State's Participation in Federal Pandemic Unemployment Insurance Programs.

Plaintiffs' case depends on the premise that State law requires the State to accept all CARES Act funding, leaving no discretion over the matter to the Governor. Yet the sole provision cited for this supposed duty says nothing of the sort.

The provision Plaintiffs' stake their case on states, in relevant part, that the Department of Employment and Workforce "must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters" and "act, through the promulgation of appropriate rules, regulations, administrative methods and standards, as necessary to secure to this State and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation" as well as other statutes listed. S.C. Code Ann. § 41-29-230(1). But nowhere does this language impose any duty on the State to seek and obtain unemployment insurance benefits under the CARES Act, let alone a specific, mandatory duty that would be judicially enforceable. There is thus no basis to conclude that the Governor violated this provision. And because Plaintiffs cannot identify any other potential source of duty, Plaintiffs are not entitled to a preliminary injunction.

The statute's "fullest extent" language does not alter this analysis. That language does not direct the State to take any specific actions to "cooperate" with the federal government. Rather, other provisions of "these chapters" supply the specific actions that the State must take to "cooperate" with the federal government. Where, as here, the Governor has not violated a specific, mandatory duty in Section 41-29-230 the Governor has not violated his duty to "must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters." *Id.*

Nor has the Governor failed to adopt "appropriate rules, regulations, [and] administrative methods and standards" that are "necessary to secure to this State and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation" and the other statutes listed. *Id*. This general mandate contrasts with other provisions that impose specific duties on the State. *Compare, e.g.*, *id.* § 41-29-230(2)(b) (requiring the State to "secure to this State the full reimbursement of the federal share of extended benefits paid pursuant to this title that are reimbursable"). The fact that the South Carolina legislature did not impose a duty on the State to adopt *specific* rules, but rather provided the State discretion to adopt rules it deems "appropriate," highlights the broad discretion the Governor has when administering unemployment insurance programs.

The propriety of the Governor's decision is reinforced by the terms of the CARES Act itself, including the Agreement between the State of South Carolina and the Secretary of Labor implementing it. The CARES Act expressly authorizes a state to "terminate" an agreement with the federal government for pandemic unemployment benefits "upon providing 30 days' written notice to the Secretary." 15 U.S.C. § 9023(a); *see also id.* §§ 9024(a), 9025(a). Consistent with this provision, the Agreement between South Carolina and the Secretary authorizes the State to terminate the Agreement on thirty day's written notice. The Governor complied with the terms of the CARES Act and the Agreement when he notified the Secretary on May 6 that the State would no longer participate in certain federal pandemic unemployment insurance programs effective June 30. The Governor therefore lawfully exercised his authority to terminate the Agreement consistent with federal law.

At bottom, Plaintiffs' real fight is with how the Governor exercised his lawful discretion under State law and the public-policy judgment his decision reflects. But absent a specific duty to act otherwise under South Carolina law, neither Plaintiffs nor this Court have the authority to second guess the Governor's decision and his judgment that ending federal pandemic aid will spur stable employment by ceasing to incentivize unemployment. While Plaintiffs might disagree with the Governor's policy judgment, it is for the politically accountable branches to make those calls. This Court should not substitute its judgment for the Governor's on this quintessential policy question.

II. Governor McMaster's Decision to End the State's Participation in Federal Pandemic Unemployment Insurance Programs Serves the Public Interest.

But even if the Court were authorized to second-guess the Governor's public-policy judgment, there is no basis to do so here. Overwhelming evidence confirms that CARES Act benefits have generated labor shortages by subsidizing unemployment, which in turn has hurt small and large businesses throughout South Carolina and hindered the State's economic recovery. The Governor appropriately determined—based on data from South Carolina and other states—that scaling back those benefits would best stimulate the economic recovery in South Carolina and thereby advance the public interest.

A. Labor Shortages Are Hurting Businesses and Hindering the State's Economic Recovery.

As the United States emerges from a pandemic-induced recession, labor shortages are now the most serious problem frustrating the country's economic recovery. At the end of May, there were 9.2 million job openings nationwide. *See* U.S. Bureau of Lab. Stats., *Job Openings and Labor Turnover – May 2021* (July 7, 2021), https://www.bls.gov/news.release/pdf/jolts.pdf. In South Carolina, there are at least 81,684 open jobs as of May. *See South Carolina to Return to Pre-Pandemic Unemployment Program to Address Workforce Shortage*, South Carolina Office of the Governor Henry McMaster (May 6, 2021), https://tinyurl.com/4md9tjaa. This means that there are nearly as many jobs as there are unemployed South Carolinians—110,437 as of May. U.S. Bureau of Lab. Stats., *South Carolina* (last visited Aug. 9, 2021), https://www.bls.gov/regions/southeast/south_carolina.htm.

Despite the high number of open positions, however, jobs are not being filled. One survey estimates that 49% of business owners had job openings that they could not fill, a record high. Nat'l Fed'n of Indep. Bus., *Small Business Labor Shortage Hits New Record in July* (Aug. 2, 2021), https://tinyurl.com/dvnms59a. Another survey found that 61% of small employers were experiencing a staffing shortage. *See* Nat'l Fed'n of Indep. Bus., *Covid-19 Small Business Survey (18): Federal Small Business Programs, the Vaccine, Labor Shortage, and Supply Chain Disruptions* 4, 10 (June 2021), https://assets.nfib.com/nfibcom/Covid-19-18-

Questionnaire.pdf (question 20). And the Chamber found that "the number of workers quitting their jobs reached an all-time high of 2.7%, while layoffs and discharges reached an all-time low of 1%, another indication of the tightness of the labor market." U.S. Chamber of Com., *Number of Open Jobs Jumps by 1 Million—America's Worker Shortage Crisis is Worsening, Urgent Need for National Workforce Solutions* (June 8, 2021, 4:15 PM), https://tinyurl.com/r44ztved.

Such a tight labor market has consequences. As the Governor observed, the labor shortage "pose[s] a clear and present danger to the health of our State's businesses and to our economy." McMaster Letter, *supra*. Indeed, more than 90% of state and local chambers of commerce report that worker shortages are hindering local economic recoveries. *See* U.S. Chamber of Com., *The America Works Report: Quantifying the Nation's Workforce Crisis* (June. 1, 2021, 8:30 AM), https://tinyurl.com/5cp2w79c. As explained by the Chamber's Executive Vice President and Chief Policy Officer, Neil Bradley, "[w]e are seeing an increasing number of businesses turning down work and only partially reopening because they can't find enough workers." Chamber, *Number of Open Jobs*, *supra*. The inability of businesses to meet demand is a massive drag on economic growth and threatens the State's ability to recover from the pandemic.

B. Federal Pandemic Unemployment Insurance Benefits Are Contributing To Labor Shortages.

The biggest reason for this phenomenon is no mystery. Federal unemployment benefits are suppressing the labor supply by allowing many Americans to make more money by not working. As Governor McMaster explained, benefits available under the CARES Act are "incentivizing and paying workers to stay at home rather than encouraging them to return to the workplace." McMaster Letter, *supra*.

The data supports the Governor's conclusion. By most accounts, only a small percentage of unemployed Americans is actively looking for work. According to a recent poll, nearly half (49%) of Americans who became unemployed during the pandemic are not actively looking for work. *See* U.S. Chamber of Com., *Poll: The COVID-19 Unemployed* (June 3, 2021, 3:15 PM), https://tinyurl.com/w7h443ew. A separate survey found that approximately 30% of unemployed job applicants was passively looking for work while another 30% was not looking at all. Nick Bunker, *Indeed Job Search Seeker Survey June 2021: COVID Concerns and Financial Cushions Make Job Search Less Urgent*, Indeed Hiring Lab (June 29, 2021), https://tinyurl.com/xjymasck.

The availability of unemployment insurance benefits is a significant factor behind these statistics. *See id.* Sixteen percent of those who are not actively seeking employment admit that the amount of money they are receiving through government programs makes it "not worth looking" for work. *See* Chamber, *Poll*, *supra*. And 28% believe "[t]here are a lot of people who are not looking for work because they can do almost or just as well collecting unemployment benefits." *Id.* Another recent survey found that 1.8 million unemployed Americans have refused to return to work because of generous unemployment insurance benefits. *See* Sam Ro, *Poll: 1.8 million Americans have turned down jobs due to unemployment benefits*, Axios (July 14, 2021), https://tinyurl.com/8bdj6ute. The data thus confirm that many Americans believe they can make more money by not working—because of the availability of federal pandemic unemployment insurance benefits.

This belief is well-founded. Key voices have been warning that pandemic-related unemployment insurance benefits would often exceed earnings in many places. For example, when Congress was considering whether to extend the $600-per-week benefit amount in June 2020, the Congressional Budget Office ("CBO") estimated that "[r]oughly five of every six recipients would receive benefits that exceeded the weekly amounts they could expect to earn from work during those six months." Letter from Cong. Budget Off. to Senator Charles Grassley, Chairman of the Senate Comm. on Fin. (June 4, 2020), https://tinyurl.com/ezznz96w. The CBO predicted that, "[i]n calendar year 2021, both output and employment would be lower than they would be if the increase in unemployment benefits was not extended." *Id.* A researcher affiliated with the Bipartisan Policy Center likewise recognized that many people "may be disincentivized from returning if the additional $600 in weekly benefits remains in place." G. William Hoagland et al., *It Doesn't Have to Be All or Nothing: How Unemployment Insurance Could Support Work and Continue to Provide Financial Relief*, Bipartisan Pol'y Ctr. (July 8, 2020), https://tinyurl.com/wparnsyj. Others described the benefits program as a "trap" and a "hindrance to getting people back to work with businesses now competing with unemployment benefits." Joe Horvath & Jonathan Ingram, *Refusing to Work: Handling Employee Work Rejections in Light of Expanded Unemployment Benefits*, FGA (June 24, 2020), https://tinyurl.com/d5w8p8vt.

The data in the chart below validate these predictions:

State	Average Weekly Private Service Earnings	Average UI Benefit Service Positions W/ $300 Federal	UI Benefits as % of Average Service Wage	Average Weekly Earnings Leisure and Hospitality	Average UI Benefit Leisure and Hospitality Positions W/ $300 Federal	UI Benefits as % of Average Leisure and Hospitality Wage
Alabama	$885	$696	79%	$360	$461	128%
Alaska	$1,003	$620	62%	$509	$462	91%
Arizona	$944	$647	69%	$480	$477	99%
Arkansas	$804	$617	77%	$378	$449	119%
California	$1,203	$787	65%	$576	$533	93%
Colorado	$988	$760	77%	$512	$539	105%
Connecticut	$1,101	$737	67%	$478	$490	102%
Delaware	$927	$663	72%	$417	$464	111%
Florida	$914	$670	73%	$481	$495	103%
Georgia	$905	$702	78%	$392	$474	121%
Hawaii	$1,002	$921	92%	$598	$671	112%
Idaho	$862	$728	85%	$352	$475	135%
Illinois	$1,019	$692	68%	$453	$474	105%
Indiana	$888	$613	69%	$375	$432	115%
Iowa	$864	$751	87%	$350	$483	138%
Kansas	$872	$720	82%	$346	$466	135%
Kentucky	$808	$654	81%	$372	$463	124%
Louisiana	$864	$586	68%	$369	$422	114%
Maine	$909	$729	80%	$477	$525	110%
Maryland	$1,127	$845	75%	$470	$528	112%
Massachusetts	$1,201	$826	69%	$539	$536	99%
Michigan	$904	$706	78%	$385	$473	123%
Minnesota	$1,071	$830	78%	$381	$489	128%
Mississippi	$714	$567	79%	$369	$438	119%
Missouri	$876	$651	74%	$412	$465	113%
Montana	$811	$701	86%	$367	$481	131%
Nebraska	$885	$712	80%	$361	$468	130%
Nevada	$836	$752	90%	$553	$599	108%
New Hampshire	$1,000	$721	72%	$467	$497	106%
New Jersey	$1,102	$877	80%	$494	$558	113%
New Mexico	$796	$720	90%	$388	$505	130%
New York	$1,137	$775	68%	$560	$534	95%
North Carolina	$928	$651	70%	$396	$450	114%
North Dakota	$869	$766	88%	$358	$492	137%
Ohio	$859	$699	81%	$360	$467	130%
Oklahoma	$812	$725	89%	$374	$495	133%
Oregon	$932	$751	81%	$454	$520	115%
Pennsylvania	$907	$757	83%	$372	$487	131%
Rhode Island	$948	$700	74%	$453	$491	108%
South Carolina	$860	$679	79%	$381	$468	123%
South Dakota	$818	$706	86%	$347	$472	136%
Tennessee	$885	$635	72%	$426	$462	108%
Texas	$957	$787	82%	$434	$521	120%
Utah	$947	$743	78%	$394	$485	123%
Vermont	$913	$835	91%	$469	$575	123%
Virginia	$1,028	$718	70%	$410	$467	114%
Washington	$1,133	$864	76%	$537	$567	106%
West Virginia	$835	$627	75%	$345	$435	126%
Wisconsin	$850	$654	77%	$350	$446	127%
Wyoming	$803	$701	87%	$408	$504	123%
District of Columbia	$1,844	$1,098	60%	$651	$582	89%
Average	$948	$727	77%	$430	$494	117%
Max	$1,844	$1,098	92%	$651	$671	138%
Min	$714	$567	60%	$345	$422	89%

Source: Ronald Bird, Senior Economist, U.S. Chamber of Com. (April 2021) (data from Dep't of Lab. Off. of Unemployment Ins., *UI Replacement Rates Report*, https://oui.doleta.gov/unemploy/ui_replacement_rates.asp, and U.S. Bureau of Lab. Stats., *Quarterly Census of Employment and Wages*, https://data.bls.gov/PDQWeb/en) ("Illustration 1"). The data in Illustration 1 demonstrate that unemployment benefits cover a substantial portion of—and, at times, more than—workers' wages. Combined state and federal unemployment benefits are 77% of the average weekly earnings for service positions. And for leisure and hospitality jobs, that number rises to 117%.

South Carolina's situation is similar to the national experience. The State offered an average of $679 in combined (state and federal) weekly unemployment benefits, which is 79% of the average weekly private sector pay ($860). *See* Illustration 1. In the leisure and hospitality industries, unemployment benefits exceeded average weekly earnings by 23%. *Id.*

These perverse incentives and labor shortages persist despite rapidly growing wages and employer-driven incentive programs. From March to April 2021, wages across the economy grew 0.7%—a surprising increase for just one month. *See* Sam Ro, *Employers are paying up to address labor shortages*, Axios (July 6, 2021), https://tinyurl.com/5et2bhm6. In some sectors, wages for entry-level jobs have risen by as much as 25% since the beginning of 2020. *See* Eric Morath, *New Jobless Claims Hold Near Pandemic Low, as Number on Benefits Falls*, Wall St. J. (July 8, 2021, 11:17 AM), https://tinyurl.com/5z77cvvj; *see also* Eric Morath, *Lower-Wage Workers See Biggest Gains From Easing of Covid-19 Pandemic*, Wall St. J. (July 4, 2021, 5:30 AM), https://tinyurl.com/2zv5ky57 (documenting wage increases across various sectors). The upshot is clear: as the State subsidizes joblessness, employees can delay job-seeking, and employers will struggle to fill open positions—all of which is contributing to the number of unfilled jobs in the State.

C. Ending the State's Reliance on Federal Pandemic Unemployment Benefits Will Address the Labor Shortage and Stimulate Economic Recovery.

If federal pandemic unemployment benefits are suppressing the labor supply, then Governor McMaster's decision to end those benefits will reverse this trend by incentivizing people to return to work, which will in turn spur the State's post-pandemic economic recovery. Indeed, Governor McMaster's decision is supported by the low unemployment rates in other states that ended federal unemployment benefits. For example, the unemployment rate in Missouri, among the first to end federally-funded unemployment payments, was 4.2% in May—well below the 5.8% national average. *See* Eric Morath & Joe Barrett, *Americans Are Leaving Unemployment Rolls More Quickly in States Cutting Off Benefits*, Wall St. J. (June 27, 2021, 5:30 AM), https://tinyurl.com/9bwb8xb5. Another state, Montana, has an even lower unemployment rate—just 3.7% as of April. Governor's Off., *Montana's Unemployment Rate Continues Decline in April*, State of Mont. Newsroom (May 21, 2021), https://tinyurl.com/3tc6mems.

CONCLUSION

This Court should deny Plaintiffs' request for a preliminary injunction.

Dated: August 9, 2021

Respectfully submitted,

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