IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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 Director of the South Carolina Department of Employment and Workforce,

Defendants.

Civil Action No. 2021-CP-4003774

MOTION OF SOUTH CAROLINA CHAMBER OF COMMERCE AND SOUTH CAROLINA RESTAURANT AND LODGING ASSOCIATION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS

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South Carolina Chamber of Commerce and South Carolina Restaurant and Lodging Association ("*Amici*") seek the Court's leave to file an *amicus* brief in support of the defendants in this case. A copy of the proposed brief is attached to this motion. After consultation, the defendants have consented to this motion, and the plaintiffs have not yet taken a position. The Chamber is the state's largest business trade and commerce organization and regularly provides the perspective of businesses as an *amicus* in South Carolina courts. And the SCRLA is a statewide trade organization of over 1,300 members whose mission is to promote, protect, and educate the foodservice and lodging industries of the State and to ensure positive business growth for its members. Each has a significant interest in this action.

"[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* SCRCP 7(b)(1). The plaintiffs' lawsuit raises public policy questions of great importance to *amici*, their members, and the State as a whole. The action seeks judicial intervention in an important matter of economic policy that directly affects *amici* and thousands of their members. Therefore, because of their concern about the chilling impact the plaintiffs' action could have on the preservation and development of business and industry in South Carolina, *amici* respectfully request permission to file the attached brief.

The proposed brief provides a unique perspective on the issues before the Court, as *amici* provide both statistical data and on-the-ground insights relevant to the plaintiffs' claims. *Amici* also present several important legal arguments. And this brief will not prejudice the plaintiffs, who have ample opportunities to respond to the brief's arguments given the case's early stage.

For these reasons, this motion should be granted and the attached *amicus* brief filed.

Respectfully submitted,

/s Christopher Mills

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August 9, 2021

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INTRODUCTION

South Carolina businesses face an unprecedented crisis. An ongoing pandemic squelched consumer demand, disrupted supply chains, and interrupted work arrangements for much of the past 18 months. Now, as consumers return to the marketplace in droves, businesses have confronted drastic labor shortages. In large part, these shortages can be traced to expanded federal payments that make it more lucrative for many workers to remain unemployed than to return to the workforce. These federal payments, originally intended to provide short-term help to the vulnerable, now threaten the economic well-being of all South Carolinians. Consumers are hurt when businesses cannot timely supply critical goods and services, from building materials to food. Workers are hurt by the loss of skills, training, and initiative that attends extended periods out of the workforce. Businesses up and down the supply chain are hurt by labor shortages and the concomitant disruption to operations. Many businesses have been forced to close. All suffer—businesses, consumers, workers, and communities.

Recognizing these imminent dangers to the State's economy, Governor McMaster took appropriate action by terminating the State's participation in the expanded federal benefit programs. Already, the State and its citizens have seen the fruits of this action. The unemployment rate in South Carolina and other states that stopped participating in the federal programs has quickly fallen, along with jobless claims. Labor market participation, on the other hand, has risen. Though labor shortages remain an issue, ending disincentives to work has already played a positive role in the State's economic recovery.

The plaintiffs seek to undo all this positive momentum in stabilizing the State's labor market. The plaintiffs' remedy would entail a massive disruption to the State's economy just as it emerges from the depths of the pandemic. Based on public data and *amici*'s members' on-the-

ground experience, businesses, consumers, and workers would all be harmed if injunctive relief is granted.

Not only are the plaintiffs' claims contrary to the public interest, they lack any legal merit. *First*, the only statute that the plaintiffs invoke does not provide a private right of action. It is the very definition of a statutory provision that protects the general public and not any specific individuals, as it gives discretion to the executive branch to determine the best way to help "this State and its citizens." S.C. Code Ann. § 41-29-230(1). Unsurprisingly, the plaintiffs do not identify—and *amici* could not find—any other lawsuit based on South Carolina's statute. The provision does not give individuals any right to sue.

Second, even if the statute provided a private right, it confers complete discretion on the executive branch to determine what "advantages" particular programs provide the State's citizens, *id.*, and this Court does not have any judicially manageable standard to second-guess that determination. Put another way, this lawsuit presents a classic political question, appropriately left to resolution by the elected branches, not the courts.

Third, even if the Court were to somehow adjudicate whether the expanded payments here "advantage" the State, it would have to defer to Governor McMaster's reasonable (and correct) explanation that the payments cause the State significant economic problems—problems that far outweigh the temporary promise of federal dollars. Nothing in the law requires the State to pursue supposed short-term gain that would lead to long-term ruin.

The plaintiffs' motion for an injunction should be denied and their action dismissed.

INTEREST OF *AMICI CURIAE*

The South Carolina Chamber of Commerce is the State's largest business trade and commerce organization. It represents businesses, industries, professions, and associations of all

sizes and types with a unified voice, and promotes the development and expansion of new and existing businesses and industries in the State. Its efforts, in turn, benefit the public, raising the standard of living for South Carolina's citizens. The Chamber aims to protect the interests of South Carolina's business community by identifying and addressing issues that may impair economic development. It routinely participates in state litigation as an *amicus*. *See, e.g.*, *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 89 (2015); *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 318 n.3 (2010).

Formed in 2012, the South Carolina Restaurant and Lodging Association is a statewide, non-partisan trade organization whose mission is to promote, protect, and educate the foodservice and lodging industries of the State and to ensure positive business growth for its members. The SCRLA represents over 1,300 restaurant and lodging companies and industry-related services providers. It strives to advance the best interests of its members on small business issues, on hospitality and tourism concerns, and towards the protection of South Carolina's quality of life.

ARGUMENT

I. The plaintiffs cannot succeed on the merits.

A. The statute does not confer a private right of action.

The plaintiffs' action falters from the starting block, for they do not have a right to sue. Their complaint alleges a violation of only one statutory provision, Compl. ¶¶ 73–89, but that provision does not give private litigants a right of action. Revealingly, it appears that South Carolina's provision has never been relied on to provide a cause of action.

The statute provides:

> In the administration of Chapters 27 through 41 of this title, the department 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, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

S.C. Code Ann. § 41-29-230(1).

"In determining whether a statute creates a private cause of action, the main factor is legislative intent." *Georgetown Cnty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 353 (2011) (cleaned up). "Legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute." *Id.*

Here, the statute includes no express right of action. Instead, it merely says that "the department must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters," "as necessary to secure to this State and its citizens all advantages available under" various provisions of the federal Social Security Act. S.C. Code Ann. § 41-29-230(1). The statute does not explicitly provide for any private party to bring suit.

Where a private right of action is "not expressly provided," it may still "be created by implication"—but only "if the legislation was enacted for the special benefit of the private party." *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 121 (2009); *see also Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 418 (2004). "If the overall purpose of the statute is to aid society and the public in general, the statute is not enacted for the special benefit of a private party." *Dema*, 383 S.C. at 121.

The statute here is the definition of a statute "to aid society and the public in general." *Id.* It speaks in the broadest of generalities, directing a state department to act "as necessary to secure to this State and its citizens all advantages." S.C. Code Ann. § 41-29-230(1). It is intended to benefit the State and citizens generally, not any particular person, and thus it does not give rise to

a private cause of action. Similar cases have refused to find private rights of action. *See, e.g.*, *Dema*, 383 S.C. at 122 (no private right where the statute's language "clearly indicates" an intent "to advance the quality of healthcare provided in this State for all people receiving the care, not for a particular individual"); *Adkins*, 360 S.C. at 418 ("Given that the overall purpose of the prevailing wage statute is to prevent unfair competition, and to aid society and the public in general, we cannot conclude that the statutes in question were enacted for the special benefit of Inmates.").

The plaintiffs' request for a declaratory judgment (Compl. ¶ 73) cannot rescue their complaint. "The Uniform Declaratory Judgments Act is not an independent grant of jurisdiction." *Tourism Expenditure Rev. Comm'n v. City of Myrtle Beach*, 403 S.C. 76, 81 (2013) (cleaned up). "The Act creates a new remedy, not a new source of legal rights and obligations." 23 S.C. Jur. Declaratory Judgments § 3. Thus, because the plaintiffs have no legal right under the statute, they are not entitled to a declaratory judgment: "Where adjudication of a question would settle no legal rights of the parties, it would be only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment." *Tourism Expenditure*, 403 S.C. at 81 (cleaned up); *see also Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 170 n.4 (2016) (refusing declaratory judgment where "none of Respondents' legal rights are being or will be abridged"). If the Court "were to recognize a general right to seek a declaratory judgment that the [statute] has been violated, [it] would be creating something the General Assembly did not create and might not create if it considered the issue"—and the Court is "not at liberty to add to the statutory law or subtract from it." *Ballard v. Newberry Cnty.*, 432 S.C. 526, 532 (Ct. App. 2021).

Because "[n]othing in the statute[] indicates a legislative intent to create civil liability for a violation," it does "not give rise to a private right of action." *Adkins*, 360 S.C. at 419. The

plaintiffs' suit cannot succeed, injunctive relief should be denied, and their suit should be dismissed.

This conclusion is bolstered by the public duty rule, "a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action for a statute's breach." *Edwards v. Lexington Cnty. Sheriff's Dep't*, 386 S.C. 285, 292 (2010) (cleaned up). This rule "presumes statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public." *Arthurs ex rel. Est. of Munn v. Aiken Cnty.*, 346 S.C. 97, 104 (2001) (quoting *Summers v. Harrison Const.*, 298 S.C. 451, 455 (Ct. App. 1989)). Such statutes do not create obligations "towards individual members of the general public." *Id.* (cleaned up).

Again, this is a classic public-duty statute, instructing a state agency to act in general ways to help the State and its citizens. The statute does not give rise to a private right of action, and the plaintiffs' action should be dismissed.

B. The statute does not involve a justiciable question.

Even if the statute created a private cause of action, the plaintiffs' suit faces another justiciability hurdle: The statute creates no judicially administrable standard. Put another way, the statute involves a political question, the nonjusticiability of which "is primarily a function of the separation of powers." *Segars-Andrews v. Jud. Merit Selection Comm'n*, 387 S.C. 109, 121 (2010) (cleaned up). No judicially manageable standard exists to adjudicate the plaintiffs' claims, so the political question doctrine bars review.

"The fundamental characteristic of a nonjusticiable political question is that its adjudication would place a court in conflict with a coequal branch of government." *Id.* at 121–22 (cleaned up). "[C]ourts will not rule on questions that are exclusively or predominantly political in nature rather

than judicial." *Id.* at 122. The questions in such cases are whether "the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." *Id.* (cleaned up). "[T]he appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." *Id.*

These considerations doom the plaintiffs' claims. First, no satisfactory criteria exists for judicial resolution of their lawsuit. This Court has no way to determine as a legal matter whether paying individuals not to work provides "advantages" to the "State and its citizens," much less to determine what state executive actions are "necessary to secure" any such advantages. S.C. Code Ann. § 41-29-230(1). These questions "revolve around policy choices and value determinations," which are "constitutionally committed for resolution to the halls of state legislatures or to the confines of the executive branch"—not the courts. *Segars-Andrews*, 387 S.C. at 123 (cleaned up).

Second, adjudicating the case inevitably places this Court in the position of passing on the wisdom of particular actions by the elected branches of government. Not only would this suit require the Court to consider policy rather than legal questions, it would bring the Court into certain conflict with co-equal branches of government. "There is no way for this Court to grant the plaintiffs the relief they seek without disagreeing with the [Executive] on this political question." *Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 276 (2020). And adjudicating this suit would lock the elected branches into court-ordered policy decisions, when the separation of powers requires that they be free to adjust policies and procedures as economic and public health conditions change. The courts "may not under some thinly veiled guise of law assert judicial power to an action taken by another branch that lies within its exclusive constitutional authority." *Segars-Andrews*, 387 S.C. at 130.

Similar actions are routinely dismissed as involving political questions beyond the ken of the courts. *See, e.g.*, *Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 376–77 (2011) ("Petitioners' argument that the funds appropriated for conducting a 2012 Presidential Preference Primary are insufficient presents a nonjusticiable political question."); *cf. Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210 (1992) (holding that the appropriation of public funds is a legislative function); *Clarke v. S.C. Pub. Serv. Auth.*, 177 S.C. 427 (1935) (noting that the General Assembly has full authority to make appropriations as it deems wise in absence of any specific prohibition against the appropriation).

Because the plaintiffs' claims have no "legal foundation," *Segars-Andrews*, 387 S.C. at 130, but instead present forbidden questions of policy, they are not justiciable and should be dismissed. Once again, the fact that South Carolina's statute has apparently never been enforced in court confirms that this lawsuit would involve an unprecedented, improper expansion of judicial power over co-equal branches of government.

C. Even if the case were justiciable, the Court should defer to the political branches' understanding of "advantages" to the State's citizens.

The plaintiffs' claims also fail on the merits. As the defendants correctly explain, the plain text of the statute does not apply to CARES Act funds or to the Governor's actions. Memorandum in Support of Motion to Dismiss, at 8–15. But if the Court ventures down the path of deciding what policy choices "advantage" the State and its citizens, the Court should defer to the Governor's reasonable explanation.

Before the government can be enjoined "in the performance of actions or duties provided by statute," a plaintiff must "show[] that the public department . . . has exercised its power in an arbitrary, oppressive or capricious manner." *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310 (2018) (cleaned up). When an executive official "is charged with the execution of a

statute" and makes an informed "policy determination[]," "the role of a court reviewing such decisions is very limited." *Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 371 (2010). The official's decision is "presumptively correct." *S.C. Energy Users Comm'n v. S.C. Elec. & Gas*, 410 S.C. 348, 354 (2014); *see also Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 33 (2014) ("The construction given to a statute by those charged with the duty of exercising it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons." (cleaned up)).

The State's decision here as to which federal benefits are actually "advantages" was, at a minimum, reasonable. As the Governor explained, "What was intended to be short-term financial assistance for the vulnerable and displaced during the height of the pandemic has turned into a dangerous federal entitlement, incentivizing and paying workers to stay at home rather than encouraging them to return to the workplace." Compl. Ex. E. This entitlement created "an unprecedented labor shortage" that "pose[s] a clear and present danger to the health of our State's businesses and to our economy." *Id.*

As shown next, the Governor's explanation was spot-on. But no matter if the Court agrees, it should defer to the executive's reasonable understanding about which benefit programs help the State and its citizens. The State balanced various factors in coming to this understanding, recognizing that "involuntary unemployment" "is a serious menace to health, morals and welfare of the people of this State," S.C. Code Ann. § 41-27-20, and that "the reemployment of unemployed workers throughout the State" must be encouraged in every "way that is feasible," *id.* § 41-29-120(A)(1)(d). Deference to the Governor and the Department of Employment and Workforce's decision is required, "both because they have been entrusted with administering" this law and "because they have unique skill and expertise in administering" it. *Kiawah Dev. Partners,*

II, 411 S.C. at 34. And because they provided a reasoned explanation of their decision, the Court's task is at an end. Again, the plaintiffs' claims cannot succeed, and no relief is appropriate.

II. Governor McMaster's action serves the public interest.

The evidence shows that Governor McMaster's decision to withdraw South Carolina from the expanded benefits programs will help the State and its citizens by encouraging workforce participation. This evidence is relevant in multiple respects to the issues before the Court. First, as a statutory matter, the evidence makes it clear that the Governor's determination about whether the extra federal benefits would "advantage" the State was both reasonable and correct. *See supra* Part I.C. Second, because injunctions—especially mandatory injunctions that alter the status quo—are "drastic" remedies granted in equity, 12 S.C. Jur. Equity § 19, the Court exercises its discretion in evaluating the plaintiffs' demand for immediate relief. *See Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 368 S.C. 254, 261 (Ct. App. 2006) (mandatory injunctions subject to "a balancing of the equities"); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 274 (1987). Here, the public interest weighs against injunctive relief. Third, to the extent the plaintiffs seek a writ of mandamus, the public interest is relevant. *See McDowell v. Burnett*, 90 S.C. 400 (1912).

Before Governor McMaster took the challenged action, businesses faced severe labor shortages. These labor shortages had cascading effects, often preventing businesses from staying open and thereby worsening unemployment—and depriving consumers of crucial goods and services. Industries important in South Carolina—hospitality, healthcare, agribusiness, and manufacturing—were hit especially hard.

For instance, the workforce shortage has been especially pronounced in the food and beverage sector, with restaurants across the State facing staffing problems. Even as demand for dining soared, restaurants struggled to find enough employees to stay open. Not only did restaurants face employee shortages, their suppliers faced similar shortages, exacerbating the

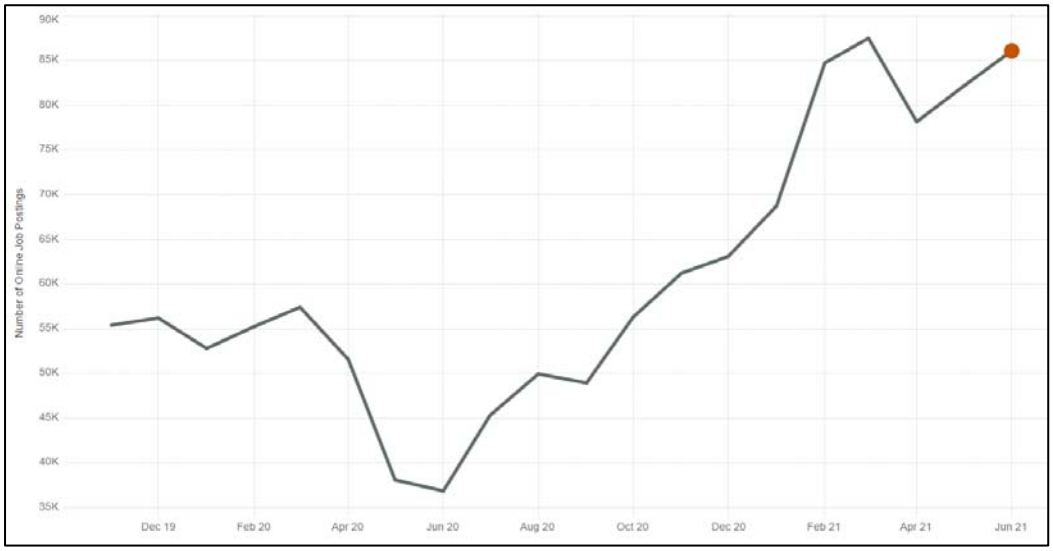
struggles of these businesses to stay open and serve the public. *See, e.g.*, Hanna Raskin, *Food-and-Beverage Staff Shortage Extends Past Restaurants, Snarling Pickups and Deliveries*, Post and Courier (Apr. 26, 2021), https://bit.ly/3yBTnZS; *see also* Emily Williams, *With Tourism Back, Charleston Hotels and Restaurants Face New Crisis: A Worker Shortage*, Post and Courier (Apr. 18, 2021), https://bit.ly/3lF81f9.

As the pandemic moved past its summer 2020 peak, it became clear that expanded federal unemployment benefits were exacerbating the crisis in the labor market, effectively paying people not to work. A University of Chicago study found that at least "42% of those on benefits receive more than they did [at] their prior jobs." *See* Eric Morath, *Millions Are Unemployed. Why Can't Companies Find Workers?*, Wall St. J. (last updated May 6, 2021), https://on.wsj.com/2U27kBn (discussing the study).

South Carolina's hospitality industry epitomizes this problem. As a University of South Carolina economist explained, "If you're an employer in the service sector you are in a sense competing with those unemployment benefits." Katherine Phillips, *Economist: Stopping Extra $300 Jobless Benefits Will Partially Solve S.C. Worker Shortage*, WMBF News (last updated June 7, 2021), https://bit.ly/3fIRPWr. And in April 2021, the average of total unemployment benefits for South Carolina hospitality workers was 125% of those workers' average salary. In other words, the average S.C. hospitality employee would have lost money by taking a job.

Many industries faced similar labor issues, with a majority of the S.C. Chamber's members identifying labor shortages as the most pressing issue facing their businesses at the start of summer 2021. In the week before South Carolina ceased participation in the expanded federal programs, the Department of Employment and Workforce received 87,000 unemployment claims, despite the 86,000 jobs that were posted in the State at that time. *See* Compl. ¶ 21. The shortages exacerbated

by the federal payments could easily be observed at many local businesses, as reflected by this chart of South Carolina job postings:



Number of Online Job Postings in South Carolina[1]

Recognizing all these problems, the State ended its participation in the expanded federal payment programs at the end of June. Even since then, the labor market situation has improved dramatically. Following the Governor's announcement in early May that the extra unemployment benefits would end on June 30, 2021, South Carolina's unemployment rate dropped from 5% in April to 4.6% in May to 4.5% in June, even as the nationwide unemployment rate increased from May to June. *See* Patrick Gleason, *Vindication for Governors Who Ended Enhanced Unemployment Payments*, Forbes (July 28, 2021), https://bit.ly/3fKmnHk. In May 2021, South Carolina's hospitality industry added 9,000 jobs. *See* Katherine Phillips, *Despite Drop in Unemployment Levels, Some Grand Strand Restaurants Still Feel Staffing Shortages*, WMBF News (June 24, 2021), https://bit.ly/3xvlZ5Q.

[1] *Employment Dashboard, Number of Online Job Postings*, accelerateSC, https://accelerate.sc.gov/ (last visited Aug. 8, 2021).

As the unemployment rate has improved following Governor McMaster's decision to opt out of the extra benefits, so too has the number of people working in South Carolina. Between April 2021 and June 2021, the number of people working in the State has improved about 2.3%, nearly restoring South Carolina's workforce to pre-pandemic levels. *See Employment Dashboard, Number of Individuals Working*, accelerateSC, https://accelerate.sc.gov (last visited Aug. 6, 2021). Just a few days ago, South Carolina reported the lowest number of first-time unemployment claims since the pandemic began—the fourth consecutive drop in weekly claims. *See* Patrick Phillips, *SC Reports Lowest Number of First-Time Unemployment Claims Since Pandemic Began*, Live 5 News (Aug. 5, 2021), https://bit.ly/3fKoWZY.

Data from other States that have ended the extra unemployment benefits show that these States' economies have likewise benefitted. When States began announcing that they were opting out of the extra benefits, those states saw four consecutive weeks of decreases in initial unemployment claims. *See FGA Statement on the U.S. Department of Labor Unemployment Insurance Trends*, Found. for Gov't Accountability (July 8, 2021), https://bit.ly/3fJFcul. Initial claims dropped ten percent in the states that had ended the extra unemployment benefits. *Id.* In the first week of July 2021 alone, while States with "continuing unemployment bonuses experienced" a "4.9 percent increase in claims," States that had "ended unemployment bonuses saw a 3.2 percent decrease in initial unemployment claims." *Id.*

Between June 5 and July 17, the unemployment level rose 16% in the States that kept the extra unemployment benefits. Jonathan Ingram et al., *Three Key Signs Opting Out of the Unemployment Bonus is Working* 5 (July 22, 2021), https://thefga.org/wp-content/uploads/2021/07/opting-out-unemployment-bonus-is-working.pdf. By contrast, between May 8 and July 17, unemployment levels in States that opted out of the extra benefits decreased

30%, reaching these States' lowest levels since the pandemic began. *Id.* at 6. As Winthrop economist Louis Pantuosco explained, "Those states have recovered really fast because the workers in that case they really don't have the incentives to stay home." *York County Business Leaders See Change in Worker Shortage After S.C. Federal Unemployment Benefits End*, CN2 News, https://bit.ly/37sEJrS (last visited Aug. 8, 2021).

Internet searches for job openings increased 68% in May and June 2021 in States that opted out of the extra benefits than in the States that maintained the extra benefits. Ingram et al., *supra*, at 5. In Florida, for example, companies have reported a surge in job applications since the State opted out of the expanded federal payments. Kurt Alexander, CFO for Omni Hotels & Resorts, reported that the company received an immediate 500% increase in job applications for its Florida hotels, and explained that the extra unemployment benefits were "absolutely a factor" in curtailing the labor market. Odd Lots, *The Labor Episode: How the Omni Hotel Chain is Dealing with Hiring Right Now*, Bloomberg, at 28:55 (July 12, 2021), https://bloom.bg/3lQnSYq.

The plaintiffs' action threatens all this progress. The extra federal payments were supposed to provide temporary assistance at the height of the pandemic, not a disincentive to remain unemployed. And the continued operation of these benefits in the State would discourage work and hurt both businesses and consumers. The Governor's decision to opt out of the extra benefits serves the public interest by promoting economic policies that foster full workforce participation. This will help ensure that South Carolina does not fall behind the growing number of States with similar hospitality industries whose economies have started to roar back after they opted out of the extra federal payments. The Governor's action will help the Palmetto State—and all its citizens—to return to and surpass pre-pandemic levels of economic prosperity.

CONCLUSION

For these reasons, the plaintiffs' motion for a preliminary injunction should be denied, and the defendants' motion to dismiss should be granted.

Respectfully submitted,

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