

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GIA CUCCARO, *et al.*,
Plaintiffs,

v.

RON DESANTIS, *et al.*,
Defendants.

Case No. 2021 CA 001413

**MOTION OF CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, FLORIDA CHAMBER OF COMMERCE, AND 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, the Florida Chamber of Commerce, and the National Federation of Independent Business Small Business Legal Center, hereby seek leave to appear as *amici curiae* in support of Defendants. Plaintiffs oppose this Motion, while Defendants do not.

Amici represent large and small businesses in virtually every economic sector across the United States, including in Florida. *Amici* support the State's decision to end its participation in temporary federally funded pandemic unemployment insurance programs. *Amici* believe that paying Floridians not to work is dampening what should be a stronger jobs market. Indeed, unfilled positions pose a very real threat to Florida'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 State's decision was lawful and serves the public interest. A temporary injunction would hurt small and large businesses by worsening the labor shortage in Florida and impeding the State's economic recovery. *Amici's* brief will explain that the State's decision serves the public interest by encouraging Floridians to return to work, which will ease the labor shortage and stimulate Florida's economic recovery.

Florida courts have often acknowledged the helpfulness of briefs from *amici curiae*. *E.g.*, *City of Miami v. Aronovitz*, 114 So. 2d 784, 788 (Fla. 1959); *Johnson v. R. H. Donnelly Co.*, 402 So. 2d 518, 519 (Fla. 1st DCA 1981). Accordingly, *Amici* respectfully request the Court grant them leave to appear and file an *amicus* brief.

Dated: August 23, 2021

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned certifies that on August 23, 2021, the undersigned conferred with counsel for Plaintiffs and counsel for Defendants to discuss the filing of this Motion. Plaintiffs oppose this Motion, and Defendants do not oppose this Motion.

/s/ Tom K. Schulte _____

Tom K. Schulte

*Counsel for Amici Curiae
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 23, 2021, a copy of the foregoing was electronically filed using the Court's electronic filing system, which will send notification of such filing to all parties as described below.

/s/ Tom K. Schulte
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America, Florida Chamber of Commerce, and
National Federation of Independent Business
Small Business Legal Center*

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**BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, FLORIDA CHAMBER OF COMMERCE, AND NATIONAL
FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER,
IN SUPPORT OF DEFENDANTS**

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INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America (“the U.S. 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 U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation’s business community.

The Florida Chamber of Commerce (“the Florida Chamber”) is the largest broad-based business organization in the State of Florida. The Florida Chamber represents Florida businesses on a range of statewide issues, with a focus on developing a more robust and secure economy. In that role, the Florida Chamber routinely advocates for Florida businesses in the Florida Legislature, Florida Cabinet, and the courts. Its advocacy often includes filing amicus briefs in cases that affect Florida businesses.

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 the decision by the Florida Department of Economic Opportunity (“DEO”) to end Florida’s participation in temporary federally funded pandemic unemployment insurance programs. *Amici* believe that paying Floridians not to work is dampening what should be a stronger jobs market. Indeed, unfilled positions pose a real threat to Florida’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 temporary injunction requiring the State to continue these benefits would hurt small and large businesses by worsening the labor shortage in Florida and impeding the State’s economic recovery. *Amici* seek leave to file this brief to explain that DEO’s decision was lawful and serves the public interest by encouraging Floridians 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 were implemented to avoid 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 and May 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>; Amara Omeokwe, *Hiring Picked Up in May But Lagged Behind Broader Recovery*, Wall St. J. (June 4, 2021, 6:16 PM), <https://tinyurl.com/5yj7c6tw>. 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, Florida, like twenty-five other states from Alaska to Louisiana, decided to target the biggest hurdle: federally funded pandemic unemployment insurance programs. To that end, DEO announced in May 2021 that Florida would end its participation in some of these federal programs. DEO also noted that there are “more than 460,000 online job postings available throughout the state,” and that “Florida businesses and employers . . . need unemployed Floridians to return to the workforce.” *See* Press Release, Fla. Dep’t of Econ. Opportunity, *Florida Department of Economic Opportunity Announces Florida’s Withdrawal from Federal Pandemic Unemployment Compensation Program* (May 24, 2021), <https://tinyurl.com/ta4rn57m>. Dane Eagle, Executive Director of the DEO, further explained that “[t]ransitioning away from [the CARES Acts benefits] will help meet the demands of small and large businesses who are ready to hire and expand their workforce.” *Id.*

Nearly eight weeks have passed since this announcement, yet Plaintiffs only recently sought an emergency order to block the DEO’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 Florida law imposes a duty on the State—let alone a specific, mandatory duty—to seek and obtain pandemic unemployment insurance benefits under the CARES Act. On the contrary, the Florida Statutes are silent on the CARES Act programs, leaving it to the DEO's discretion to administer. The DEO properly exercised this discretion by terminating 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 DEO's public-policy judgment, that is no basis to second guess and overturn the decision.

Nor would a temporary injunction serve the public interest. On the contrary, a temporary injunction would impair the DEO's ability to address a government-created labor shortage that is hurting Florida businesses and hindering the State's economic recovery. In Florida, combined pandemic-era unemployment benefits amount to 73% of the average weekly private sector pay. In the leisure and hospitality industries, that number rises to 103%—or, in other words, the benefits exceed average weekly earnings by 3%. When, through unemployment benefits, jobless Floridians make most of (or more than) what they earn by working, it is no surprise that they stay home instead of filling one of the over 450,000 job openings in the State. As a result, small and large Florida businesses, hoping to bounce back after the pandemic, continue to experience a worker shortage crisis.

DEO's decision to end the State's reliance on federal pandemic unemployment insurance benefits thus serves the public interest of getting Floridians back to work. This decision is

bolstered by evidence of low unemployment rates in states such as Missouri (4.2%) and Montana (3.7%) that have already ended federal unemployment benefits. Equipped with information about the number of job openings in Florida and the successes of those other states, DEO is best positioned to make such policy decisions in the public interest of the State.

ARGUMENT

This Court should deny Plaintiffs' request to temporarily enjoin the State's decision to end participation in federally funded pandemic unemployment insurance programs. Plaintiffs cannot demonstrate a likelihood of success on the merits because DEO acted within its lawful authority under the CARES Act and Florida law by making a discretionary policy choice that advances the interests of the State. And a temporary injunction would disserve the public interest by discouraging unemployed Floridians from filling over 460,000 available jobs, exacerbating a labor shortage that harms Florida businesses, and frustrating the State's economic recovery.

I. The State Lawfully Ended Its 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 DEO, the agency charged with promoting economic development within the State. 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 DEO "shall cooperate with the United States Department of Labor to the fullest extent consistent with this chapter and shall take those actions, through the adoption of appropriate rules, administrative methods, and standards, necessary to secure for this state all advantages available under the provisions of federal law relating to reemployment assistance." § 443.171(9)(a)(1), Fla. Stat. 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. Much less does it impose a duty to apply for benefits that DEO has determined are incentivizing unemployment and frustrating Florida's economic recovery. There is thus no basis to conclude that DEO violated this provision. And because Plaintiffs cannot identify any other potential source of duty, Plaintiffs are not entitled to a temporary 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 "this chapter" supply the specific actions that the State must take to "cooperate" with the federal government. Where, as here, DEO has not violated a specific, mandatory duty in Chapter 443, DEO has not violated its duty to "cooperate with the United States department of labor to the fullest extent consistent with this chapter." *Id.*

Nor has DEO failed to adopt "appropriate rules, administrative methods, and standards" that are "necessary to secure for this state all advantages available under the provisions of federal law relating to reemployment assistance." *Id.* This general mandate contrasts with other provisions that impose specific duties on DEO. *Compare, e.g., id.* § 443.171(2) (requiring DEO to distribute the text of Chapter 443 and the rules for administering Chapter 443 to the public via the Internet or similar electronic means). If § 443.171(9)(a)(1) required DEO to adopt specific rules, then this general mandate would render superfluous the specific mandates listed throughout Chapter 443. *See Koile v. State*, 934 So. 2d 1226, 1231 (Fla. 2006) ("[P]rovisions in a statute are not to be construed as superfluous if a reasonable construction exists that gives effect to all words and provisions.").

The propriety of the State's decision is reinforced by the terms of the CARES Act itself. 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). The State complied with the terms of the CARES Act and the Agreement when it notified the Secretary on May 24 that it would no longer participate in certain federal pandemic unemployment insurance programs effective June 26. The State therefore lawfully exercised its authority to terminate the Agreement consistent with federal law.

At bottom, Plaintiffs’ real fight is with how DEO exercised its lawful discretion under State law and the public-policy judgment this decision reflects. This reality is demonstrated by Plaintiffs’ allegations in their Complaint. *See* Compl. ¶ 13 (alleging that Defendants’ withdrawal from the extended federal unemployment program was “for purely partisan and political reasons”). But absent a specific duty to act otherwise under Florida law, neither Plaintiffs nor this Court have the authority to second guess DEO’s decision and its judgment that ending federal pandemic aid will spur stable employment by ceasing to incentivize unemployment. This Court should not substitute its judgment for DEO’s on this quintessential policy question.

II. The State’s Decision to End Its Participation in Federal Pandemic Unemployment Insurance Programs Serves the Public Interest.

But even if the Court were authorized to second-guess DEO’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 Florida and hindered the State’s economic recovery. DEO appropriately determined—based on data from Florida and other states—that scaling back those benefits would best stimulate the economic recovery in Florida 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 June, there were 10.1 million job openings nationwide. See U.S. Bureau of Lab. Stats., *Job Openings and Labor Turnover – June 2021* (Aug. 9, 2021), <https://www.bls.gov/news.release/pdf/jolts.pdf>. In Florida, there are now about 500,000 open jobs. See Miami Herald, *Florida Has 500,000 Job Openings, as 503,000 Remain Out of Work*, Tampa Bay Times (June 19, 2021), <https://www.tampabay.com/news/business/2021/06/19/florida-has-500000-job-openings-as-503000-remain-out-of-work/>. This means that there are nearly as many jobs as there are unemployed Floridians—523,500 as of June. U.S. Bureau of Lab. Stats., *Economy at a Glance: Florida* (Aug. 20, 2021), <https://www.bls.gov/eag/eag.fl.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* (July 2021), <https://tinyurl.com/yt3xuu3n>. 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 U.S. 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. “Strong demand, coupled with this staffing shortage, has left many businesses forced to limit operating days and hours” Press Release, *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 U.S. 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 DeSantis explained, benefits available under the CARES Act are causing employers to struggle to fill the “surplus of jobs” available in Florida. The News Serv. of Fla., *Florida Gov. DeSantis to Unemployed: Start Looking for a Job*, Fox 35 Orlando (May 6, 2021), <https://www.fox35orlando.com/news/florida-gov-desantis-to-unemployed-start-looking-for-a-job>.

The data support the State’s decision. 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 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* U.S. 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, 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:

<u>State</u>	<u>Average Weekly Private Service Earnings</u>	<u>Average UI Benefit Service Positions W/ \$300 Federal</u>	<u>UI Benefits as % of Average Service Wage</u>	<u>Average Weekly Earnings Leisure and Hospitality</u>	<u>Average UI Benefit Leisure and Hospitality Positions W/ \$300 Federal</u>	<u>UI Benefits as % of Average Leisure and Hospitality Wage</u>
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%.

Florida’s situation is similar to the national experience. The State offered an average of \$670 in combined (state and federal) weekly unemployment benefits, which is 73% of the average weekly private sector pay (\$859). *See* Illustration 1. In the leisure and hospitality industries, unemployment benefits exceeded average weekly earnings by 3%. *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. Indeed, Florida job openings increased from 461,900 in April 2021 to 545,200 in July 2021—an 18% increase. See Winter Haven Chamber of Com., *Labor Crisis – Your Voice was Heard* (May 12, 2021), <https://tinyurl.com/2javkcw9> (“As of today there are 461,900 open jobs in Florida.”); Press Release, Fla. Chamber of Com., *Florida Chamber Foundation’s New Miami Metro Skills Report Identifies and Evaluates Workforce Skills Gaps in the Miami Metro Market, where 433,313 Net New Jobs Need to be Created by 2030* (Aug. 18, 2021), <https://tinyurl.com/2p8856fk> (“In Florida, we have 545,200 open jobs looking for people . . .”).

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 the State’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, the State’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>.

Unsurprisingly, ending unemployment benefits is broadly popular. A national poll conducted in May 2021 confirmed that more than half of Americans—54%—believe that states like Oklahoma did the right thing by ending federal unemployment benefits. Tim Malloy & Doug Schwartz, *85% of Republicans Want Candidates to Agree with Trump*, Quinnipiac University

National Poll Finds; Americans Support Early Cut to Federal Jobless Benefit, Quinnipiac Univ. Poll (May 26, 2021), <https://poll.qu.edu/poll-release?releaseid=3810>.

Significantly, the data proves that the State’s decision to withdraw from federal pandemic unemployment benefits was the right call. The newly released estimated employment figures show an additional 68,100 jobs were filled in the month of July, following a very strong June, with 71,300 jobs filled. *See* Mark Vitner et al., *Florida’s Economy Booms Amid the Resurgence in COVID*, Wells Fargo (Aug. 20, 2021), <https://tinyurl.com/38k9n6r9>. Employment figures from these past two months demonstrate that the State’s decision had the intended result: Citizens are reentering the workforce. Indeed, Florida’s recent unemployment figures suggest more and more Floridians are reentering the workforce and starting to look for employment again. *See id.* (noting that the “labor force has increased by 308,500 since March”).

* * *

This Court should reject Plaintiffs’ invitation to substitute its judgment for the DEO’s on this important question of how to advance the State’s public policy. In the wake of an unprecedented global pandemic and economic recession, the provision of unemployment benefits raises delicate questions of public policy—among others, *how* to allocate limited resources, *how much* to offer jobless benefit recipients, and *when* to encourage citizens to return to work. The DEO is best positioned to answer these questions because it is equipped with the information and resources to make decisions in the public interest for the entire State.

CONCLUSION

This Court should deny Plaintiffs’ request for a temporary injunction.

Dated: August 23, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 23, 2021, a copy of the foregoing was electronically filed using the Court's electronic filing system, which will send notification of such filing to all parties as described below.

/s/ Tom K. Schulte _____

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