IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

MICHELLA STEWART, RICHARD FORD, KATHY ESTES, KAREN HODGES, LINDA WADE, KATHY LOVE, TONY WINSTON, DARLA A. DENZER, MARIE ALLEN, JOSHUA LaGRANGE,

Petitioners,

v.

KEVIN STITT, Governor of the State of Oklahoma and OKLAHOMA EMPLOYMENT SECURITY COMMISSION,

Respondents.

No. MA-119710

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL 30 2021

JOHN D. HADDEN
CLERK

MOTION OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, STATE CHAMBER OF OKLAHOMA, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rules 1.12(a)(2) and 1.191(h), the Chamber of Commerce of the United States of America, State Chamber of Oklahoma, and National Federation of Independent Business Small Business Legal Center hereby seek leave to file an *amici curiae* brief in support of Respondents. Respondents consent to this motion. Plaintiffs object to the motion.

BACKGROUND

Federal and state policymakers face the 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 Coronavirus Aid, Relief, and Economic Security Act ("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 are lifted, businesses across the country are 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 Stitt, 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 Stitt announced in May 2021 that Oklahoma would end its participation in these federal programs. The Governor noted that "the biggest challenge facing Oklahoma businesses today is not reopening, it's finding employees." Press Release, Kevin Stitt, Governor of Oklahoma, *OESC Executive Director Zumwalt Announce Return to Work Incentive* (May 17, 2021), https://tinyurl.com/k84b5hc. With the goal of "prioritz[ing] Oklahomans rejoining the workforce," the Governor further explained that, "[w]ith employers in all sectors now hiring, assistance to families, job seekers, and employers must be prioritized as we continue to build a more prosperous Oklahoma." Okla. Exec. Order No. 2021-15 (May 17, 2021), https://www.sos.ok.gov/documents/executive/2003.pdf.

More than two months have passed since this announcement, yet Petitioners only recently asked this Court to block the Governor's decision.

ARGUMENT

The Court should grant leave to file an *amici curiae* brief.

1. *Amici* represent large and small businesses in virtually every economic sector across the United States, including in Oklahoma. *Amici* support Governor Stitt's decision to end Oklahoma's participation in temporary federally funded pandemic unemployment insurance programs. *Amici* believe that paying Oklahomans not to work is dampening what should be a stronger jobs market. Indeed, unfilled positions pose a very real threat to Oklahoma's economic recovery from the COVID-19 pandemic. Based on *amici*'s analysis, the unemployment insurance benefits from the CARES Act result in approximately one in four recipients taking home more in unemployment than they earned working. Requiring the State to continue these benefits would hurt small and large businesses by worsening the labor shortage in Oklahoma and impeding the State's economic recovery.

2. *Amici*'s brief will assist the Court by explaining that Governor Stitt's decision (a) is consistent with the CARES Act and (b) advances the State's public policy of reducing unemployment by encouraging Oklahomans to return to work. These legal questions are relevant to the disposition of this case, and *amici* are able to provide the Court with unique perspectives that the litigants are unable to present.

a. *Amici*'s brief will explain that the Governor's decision is consistent with the terms of the CARES Act. 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 Governor complied with the terms of the CARES Act when he announced on May 17 that the State would no longer participate in federal pandemic unemployment insurance programs effective June 27. The Governor therefore lawfully exercised his authority to end the State's participation in these federal programs.

b. *Amici*'s brief will also explain, by reference to significant evidence, that the Governor's decision advances the State's public policy of reducing unemployment. Okla. Stat. tit. 40 § 1-103. Petitioners contend that Governor Stitt's decision contravenes the "intent" of Oklahoma law because he "believes, without evidence, that providing unemployed persons with enhanced benefits keeps persons out of the workplace market and therefore (he assumes) injures the economy of the State." Br. 9. *Amici*'s brief will rebut Petitioners' claim with evidence demonstrating that the Governor's decision advances the State's public policy by encouraging Oklahomans to return to work, which will ease the labor shortage and stimulate Oklahoma's economic recovery.

The prerogative writ sought by Petitioners would impair the Governor's ability to address a government-created labor shortage that is hurting Oklahoma businesses and hindering the State's economic recovery. In Oklahoma, combined pandemic-era unemployment benefits amount to 89% of the average weekly private sector pay. In the leisure and hospitality industries, that number rises to 133%—or, in other words, the benefits exceed average weekly earnings by 33%. When jobless Oklahomans 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 nearly 60,000 job openings in the State. As a result, small and large Oklahoma businesses, hoping to bounce back after the pandemic, continue to experience a worker shortage crisis. Governor Stitt's decision to end the State's reliance on federal pandemic unemployment insurance benefits thus serves the law's purpose of getting Oklahomans back to work.

CONCLUSION

The Court should grant the motion for leave to file an *amici curiae* brief.

Dated: July 30, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2021, the foregoing was served via first-class U.S. mail on the counsel below.

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Exhibit A

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

MICHELLA STEWART, RICHARD FORD, KATHY ESTES, KAREN HODGES, LINDA WADE, KATHY LOVE, TONY WINSTON, DARLA A. DENZER, MARIE ALLEN, JOSHUA LaGRANGE, Petitioners, v. KEVIN STITT, Governor of the State of Oklahoma and OKLAHOMA EMPLOYMENT SECURITY COMMISSION, Respondents.	No. MA-119710

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, STATE CHAMBER OF OKLAHOMA, AND 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 State Chamber of Oklahoma ("The State Chamber") is the leading statewide advocate for business and free enterprise in Oklahoma. After repeatedly hearing the same story from the business leaders who make up its approximately 4,300 members—that federal unemployment policy was actively discouraging people from going to work, creating a workforce shortage in Oklahoma—The State Chamber urged Governor Stitt to adopt the policy being challenged in this litigation. The State Chamber did so out of a conviction that no government program can replace the transformative impact of a job on individual flourishing. Accordingly, while The State Chamber is proud to represent the members of the Oklahoma business community that provide the jobs, income, healthcare, retirement, opportunity, and economic advancement for the people and communities of this State, the ultimate beneficiaries of the Governor's policy are individual Oklahomans, including the more than 270,000 affiliated with State Chamber member-companies. If Petitioners' claims are successful and the policy is reversed, The State Chamber's members will be directly harmed by the tightening of an already thin labor force and individual Oklahomans will suffer from a state economy held back from its potential. For these reasons, The State Chamber is interested in this litigation.

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 Stitt's decision to end Oklahoma's participation in temporary federally funded pandemic unemployment insurance programs. *Amici* believe that paying Oklahomans not to work is dampening what should be a stronger jobs market. Indeed, unfilled positions pose a real threat to Oklahoma'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. Requiring the State to continue these benefits would hurt small and large businesses by worsening the labor shortage in Oklahoma and impeding the State's economic recovery. *Amici* seek leave to file this brief to explain that the Governor's decision was lawful and advances the State's public policy by encouraging Oklahomans to return to work.

SUMMARY OF ARGUMENT

Federal and state policymakers face the 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 are lifted, businesses across the country are 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 Stitt, 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 Stitt announced in May 2021 that Oklahoma would end its participation in these federal programs. The Governor noted that "the biggest challenge facing Oklahoma businesses today is not reopening, it's finding employees." Press Release, Kevin Stitt, Governor of Oklahoma, *OESC Executive Director Zumwalt Announce Return to Work Incentive* (May 17, 2021), https://tinyurl.com/k84b5hc. With the goal of "prioritz[ing] Oklahomans rejoining the workforce," the Governor further explained that, "[w]ith employers in all sectors now hiring, assistance to families, job seekers, and employers must be prioritized as we continue to build a more prosperous Oklahoma." Okla. Exec. Order No. 2021-15 (May 17, 2021), https://www.sos.ok.gov/documents/executive/2003.pdf.

More than two months have passed since this announcement, yet Petitioners only recently sought an order from this Court to block the Governor's decision. The Court should deny this request. Petitioners have not demonstrated that they are entitled to a prerogative writ or that continuing the State's participation in the federal pandemic unemployment insurance programs would advance the State's public policy of reducing unemployment.

On the merits, no provision of the Oklahoma Code 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 Oklahoma Code is silent on the CARES Act programs, leaving it to the Governor's discretion to administer. The Governor properly exercised this discretion by terminating the State's participation in these federal programs, which the CARES Act expressly contemplated. While Petitioners might disagree with the Governor's judgment, that is no basis to second guess and overturn his decision.

Nor would continuing the State's participation in the federal pandemic unemployment insurance programs advance the State's public policy of reducing unemployment. On the contrary, the relief Petitioners seek would impair the Governor's ability to address a government-created labor shortage that is hurting Oklahoma businesses and hindering the State's economic recovery. In Oklahoma, combined pandemic-era unemployment benefits amount to 89% of the average weekly private sector pay. In the leisure and hospitality industries, that number rises to 133%—or, in other words, the benefits exceed average weekly earnings by 33%. When jobless Oklahomans 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 60,000 job openings in the State. As a result, small and large Oklahoma businesses, hoping to bounce back after the pandemic, continue to experience a worker shortage crisis.

Governor Stitt's decision to end the State's reliance on federal pandemic unemployment insurance benefits thus advances the State's public policy by getting Oklahomans 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 have already ended federal unemployment benefits. Equipped with information about the number of job openings in Oklahoma and the successes of those other states, the Governor is best positioned to decide how to advance the State's public policy.

ARGUMENT

This Court should deny Petitioners' request for a prerogative writ blocking the Governor's decision to end participation in federally funded pandemic unemployment insurance programs. Petitioners cannot demonstrate that they are entitled to relief on the merits because the Governor acted within his lawful authority under the CARES Act and Oklahoma law. And the relief requested by Petitioners would disserve the State's public policy by discouraging unemployed Oklahomans from filling over 60,000 available jobs, exacerbating a labor shortage that harms Oklahoma businesses, and frustrating the State's economic recovery.

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

Petitioners' case depends on the premise that Oklahoma 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 Petitioners' stake their case on states, in relevant part, that the State "shall cooperate to the fullest extent consistent with the provisions of this act, with the Social Security Act, as amended," and that the State is "authorized and directed to take such action . . . as may be necessary to secure to this state and its citizens all advantages available under the provisions of [the Social Security Act]" and a list of other statutes. Okla. Stat. tit. 40 § 4-313. 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 the Governor has determined are incentivizing unemployment and frustrating Oklahoma's economic recovery. There is thus no basis to conclude that the Governor violated this provision. And because Petitioners cannot identify any other potential source of duty, they are not entitled to a prerogative writ.

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 act" 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, the Governor has not violated his duty to "cooperate to the fullest extent consistent with the provisions of this act." *Id.*

Nor has the Governor failed to take specific "action" that is "necessary to secure to this state and its citizens all advantages available under the provisions of [the Social Security Act]" and the other statutes listed. *Id.* This general mandate contrasts with other provisions that impose specific duties on the State. *Compare, e.g., id.* § 4-317 (requiring the State to "establish an on-the-job employee performance recognition program"). If § 4-313 required the State to take specific actions, then this general mandate would render superfluous the specific mandates listed throughout Title 40. *See Webb v. Maynard*, 1995 OK 125, ¶ 15, 907 P.2d 1055, 1060 (explaining that the Court's "duty in statutory construction is to interpret a statute so as to render every part operative and to avoid rendering it superfluous or useless").

The propriety of the Governor'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 Governor complied with the terms of the CARES Act when he announced on May 17 that the State would no longer participate in certain federal pandemic unemployment insurance programs effective June 27. The Governor therefore lawfully exercised his authority to end the State's participation in these programs consistent with federal law.

At bottom, Petitioners' 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 Oklahoma law, neither Petitioners nor this Court have the authority to second guess the Governor's decision and his judgment that ending federal pandemic aid will spur employment by ceasing to incentivize unemployment. While Petitioners might disagree with the Governor's 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 executive decision.

II. Governor Stitt's Decision to End the State's Participation in Federal Pandemic Unemployment Insurance Programs Advances The State's Public Policy.

But even if the Court were authorized to second-guess the Governor's public-policy judgment, there is no basis to do so here. Petitioners contend that Governor Stitt's decision contravenes the "intent" of Oklahoma law because he "believes, without evidence, that providing unemployed persons with enhanced benefits keeps persons out of the workplace market and therefore (he assumes) injures the economy of the State." Br. 9. Yet overwhelming evidence confirms that CARES Act benefits have generated labor shortages by subsidizing unemployment, which in turn has hurt small and large businesses throughout Oklahoma and hindered the State's economic recovery. The Governor appropriately determined—based on data from Oklahoma and other states—that scaling back those benefits would best stimulate the economic recovery in Oklahoma and thereby advance the State's public policy of reducing unemployment. Okla. Stat. tit. 40 § 1-103.

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 Oklahoma, there are now at least 60,403 open jobs. *See Find Jobs*, Indeed, https://www.indeed.com/l-Oklahoma-jobs.html (last visited July 23, 2021). This means that there are nearly as many jobs as there are unemployed Oklahomans—73,000 as of May. U.S. Bureau of Lab. Stats., *Economy at a Glance: Oklahoma* (July 16, 2021), https://www.bls.gov/eag/eag.ok.htm.

Despite the near parity between open positions and the number of unemployed (at least in Oklahoma), jobs are not being filled. One survey estimates that 42% of business owners had job openings that they could not fill, a record high. Nat'l Fed'n of Indep. Bus., *Small Business Job Openings Hit Record Level in March* (Apr. 1, 2021), https://tinyurl.com/y9ap4c9c. 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 biggest challenge facing Oklahoma businesses today is . . . finding employees." Press Release, Stitt, *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*. The president and CEO of the Oklahoma State Chamber, Chad Warmington, confirmed that "[e]very employer [he] speak[s] with . . . is struggling to recruit workers." Press Release, Stitt, *supra* (statement of Mr. Warmington). 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 Mr. Warmington explained, the benefits available under the

CARES Act "have now incentivized workers to remain on unemployment after [the State] . . . safely reopened [its] economy." *Id.*

The data supports this 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 are passively looking for work while another 30% are not looking at all. Nick Bunker, *Indeed Job 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, 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. Indeed, across the country, the 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%

Oklahoma's situation is similar to the national experience. The State offered an average of $725 in combined (state and federal) weekly unemployment benefits, which is 89% of the average weekly private sector pay ($812). *See* Illustration 1. In the leisure and hospitality industries, unemployment benefits actually exceeded average weekly earnings by 33%. *Id.*

These perverse incentives and labor shortages persist despite rapidly growing wages and employer-driven incentive programs. "Employers are offering competitive wages with generous benefits packages and workers are still refusing to return to work." Press Release, Stitt, *supra* (statement of Mr. Warmington). 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). Employers have also adopted aggressive new strategies for attracting much-needed employees. One large employer offered job applicants $50 just to show up for interviews. *See* Kate Taylor, *A Florida McDonald's is Paying People $50 Just to Show Up For a Job Interview, and It's Still Struggling to Find Applicants*, Bus. Insider (Apr. 16, 2021, 2:25 PM), https://tinyurl.com/yvsajkze. Others began offering signing bonuses to those who accepted positions at the company. *See* Heather Haddon, *Restaurants Serve Up Signing Bonuses, Higher Pay to Win Back Workers*, Wall St. J. (Apr. 25, 2021, 2:16 PM), https://tinyurl.com/hakmhuap.

Despite these efforts, however, employers are still struggling to fill positions. 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, Stimulate Economic Recovery, and Reduce Unemployment.

If federal pandemic unemployment benefits are suppressing the labor supply, then Governor Stitt'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 and reduce unemployment.

Governor Stitt'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. As explained by Montana's Governor, "[b]y ending the pandemic-related federal unemployment bonus that discourages work and by launching a return-to-work bonus, more Montanans will reenter the workforce, and Montana's economy will continue to rebound." *Id.*

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.

In asking this Court to question the Governor's decision, Br. 9, Petitioners assume that the Governor "disagrees with the policy of the enhanced unemployment benefits programs." *Id.* But that claim ignores that the State participated in the CARES Act benefits programs until Governor Stitt (and 25 other governors) realized that those generous benefits are incentivizing unemployment, deterring applicants from filling thousands of open jobs, and thereby suppressing economic recovery. The State's public policy of reducing unemployment is plainly served when a key cause of enduring unemployment is removed, the unemployed take jobs, and unemployment benefits are replaced with paychecks.

*   *   *

This Court should reject Petitioners' invitation to substitute its judgment for the Governor'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 Governor is best positioned to answer these questions because he is equipped with the information and resources to make decisions in the public interest for the entire State. And, the Governor was democratically elected to make this important choice affecting all Oklahomans.

CONCLUSION

This Court should deny Petitioners' request for a prerogative writ.

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2021, the foregoing was served via first-class U.S. mail on the counsel below.

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