

RECEIVED

Aug 25 2021

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-000883

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

Appellants,

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,

Respondents.

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF
APPELLANTS-PLAINTIFFS**

Pursuant to Rule 213 of the South Carolina Appellate Court Rules, the South Carolina Small Business Chamber of Commerce, American Sustainable Business Council, Shriver Center on Poverty Law, National Employment Law Project, Economic Policy Institute, and William E. Spriggs, (hereinafter referred to collectively as “Applicants”) respectfully request leave to appear as *amici curiae* in this matter and file an *amici curiae* brief in support of Appellants. In support of this Motion, Applicants state as follows:

Interest of Proposed *Amici Curiae*

1. Applicants are unemployment insurance experts who engage in legal and policy advocacy for an equitable economy.

2. Applicants' interests are substantially aligned with Appellants in seeking to reverse the Circuit Court's dismissal and issue an injunction.

3. The **South Carolina Small Business Chamber of Commerce** ("SCSBCC") is a statewide advocacy organization founded in 2000. With over 5,000 small business and entrepreneur supporters, SCSBCC has successfully worked to make South Carolina more small business-friendly in areas such as healthcare, taxation, regulation, worker training, energy/conservation, workers' compensation and economic development. SCSBCC is particularly interested in ensuring the preservation of federal Pandemic Unemployment Benefits for South Carolinians who are self-employed since they would otherwise be ineligible for state unemployment insurance. For SCSBCC, these benefits provide vital income support to self-employed South Carolinians who are not joining the labor market for reasons unrelated to benefits, such as a desire to maintain their self-employment, to mitigate health risks from the pandemic, or to take on caretaking responsibilities in the absence of reliable childcare. Finally, the SCSBCC is particularly concerned about the harm to local small business by the state's decision to forfeit this federally funded income to unemployed South Carolinians, who would otherwise be spending these benefits in their local economies.

4. The **American Sustainable Business Council** ("ASBC") is the leading business organization serving the public policy interests of responsible companies. It partners with business organizations and companies to advocate for solutions and policies that support an equitable, sustainable, stakeholder economy. ASBC is a multi-issue business organization advocating on behalf of all sectors, sizes, and geographies of industry. ASBC and its association members collectively represent over 250,000 businesses and 325,000 business executives, owners, and investors across their network. Unemployment insurance is a top priority for ASBC.

The preservation of federal CARES Act Programs in light of the ongoing COVID-19 pandemic remains essential to ASBC’s policy goals and the interests of ASBC’s network of responsible businesses and business owners.

5. The **Shriver Center on Poverty Law** (“Shriver Center”) is a non-profit legal and policy advocacy organization that has provided national leadership for over 50 years in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty. The Shriver Center convenes the Legal Impact Network, a dynamic collaborative of 36 state-level legal advocacy organizations from over thirty states working with communities to end poverty and achieve racial justice at the federal, state and local levels. The Shriver Center has long held that laws and policies must support people by ensuring fair work at a living wage and by providing the income supports the families need to be successful. Through the Legal Impact Network and its working group on unemployment insurance issues, the Shriver Center is invested in ensuring effective implementation of the federal pandemic unemployment insurance programs at the state level to bring stability to low-income workers and their families.

6. The **National Employment Law Project** (“NELP”) is a non-profit law and research organization that has advocated for the employment rights of unemployed workers for over 50 years. NELP works in partnership with community-based and national advocacy organizations, labor unions, academic institutions, and government agencies at all levels to ensure equitable and robust social insurance programs and access to job protections for all. NELP is a national expert on unemployment insurance (“UI”) and seeks to ensure equitable access to unemployment insurance programs by reforming the programs to better align with the realities of workers in today’s economy. NELP has testified on UI programs in the U.S. Congress and nearly all 50 state legislatures; appeared in the U.S. Supreme Court, federal courts of appeal,

and state courts on priority issues; and advises state and federal policymakers on UI best practices.

7. The **Economic Policy Institute** (“EPI”) is a non-profit organization with over 30 years of experience analyzing the effects of economic policy on the lives of America’s working families. EPI has studied and written on unemployment insurance and the labor market recovery during this pandemic. Their work includes published research and analysis on unemployment insurance claims, questions about an economy-wide labor shortage, and reforms to the federal unemployment system. EPI is co-author of the June 2021 report, “Reforming Unemployment Insurance: Stabilizing a System in Crisis and Laying the Foundation for Equity,” that proposes reforms to strengthen the federal unemployment insurance system together with other leading advocacy groups, think tanks, and unemployed workers. EPI is concerned that all unemployed workers—including those excluded from state UI benefits and independent contractors whose pandemic unemployment benefits will soon expire—have access to adequate income supports while the labor market recovers.

8. **William E. Spriggs** is a professor in the Department of Economics at Howard University and is recognized as a leading expert on U.S. social insurance programs and the implications for racial equity. As a leader in his field, he frequently comments on unemployment insurance policy issues and was recently featured in The New York Times, Wall Street Journal, MarketWatch, NPR, Politico, Washington Post, Bloomberg News, and Forbes. As Executive Director for the National Urban League’s Institute for Opportunity and Equality, Dr. Spriggs analyzed unemployment insurance programs to ensure racial equity and, as former Assistant Secretary for Policy at the U.S. Department of Labor, Dr. Spriggs similarly worked to assure that unemployment insurance would have racially equitable outcomes. He is a recipient of the

National Academy of Social Insurance Robert Ball Award in recognition of his contributions to the study and implementation of America's social insurance programs. Dr. Spriggs is concerned with the possible precedent set by the withdrawal of individual states from a federal program to undermine federal policy to address economic crises that affect the nation as a whole.

9. Applicants have a strong interest in this appeal as a ruling adverse to the Appellants would undermine Applicants' long-standing policy goals.

How the *Amici Curiae* Brief Will Assist the Court

10. At issue in this case is the Respondents' decision to deny South Carolinians their right to expanded pandemic unemployment insurance benefits provided for in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (hereinafter referred to as "Pandemic Unemployment Benefits") by terminating the state's administration of the benefits before the September 6, 2021 end date.

11. That decision, if allowed to stand, will have a devastating impact on South Carolina's vulnerable families, businesses, and the entire South Carolina economy.

12. While the case ultimately rests on whether the state's decision violates South Carolina law, Applicants' brief will contextualize for the Court the gravity of the state's decision to deny South Carolinians these expanded benefits and further illuminate why reversing the dismissal and granting an injunction to continue the Pandemic Unemployment Benefits promotes, rather than harms, the public interest.

13. Applicants represent a collective voice of workers, independent contractors, self-employed individuals, and responsible businesses that challenge the policy arguments put forth by the state. As such, Applicants' brief will assist the Court by demonstrating that cutting off the Pandemic Unemployment Benefits early not only violates state law but will cause irreparable

harm for Appellants and all unemployed South Carolinians as well as South Carolina's businesses.

14. As unemployment insurance experts representing workers, independent contractors, self-employed individuals, and responsible businesses, Applicants' brief can provide an important policy perspective on the consequences for South Carolina's unemployed population, its businesses, and its economy if the Circuit Court's decision is upheld.

15. Applicants are filing their *amici curiae* brief contemporaneously with this motion, which for the reasons set forth above, Applicants believe will assist the Court in considering the questions presented on appeal.

WHEREFORE, the Applicants respectfully request that the Court grant them leave to appear as *amici curiae* and permission to file their *amici curiae* brief.

August 24, 2021

Respectfully submitted,

/s/ Jack E. Cohoon

Jack E. Cohoon (Bar No. 74776)
BURNETTE SHUTT & MCDANIEL, P.A.
912 Lady St., 2nd Floor
Columbia, SC 29202
Phone: (803) 904-7914
Email: jcohoon@burnetteshutt.law

Counsel for Amici Curiae
*South Carolina Small Business Chamber of
Commerce
American Sustainable Business Council
Shriver Center on Poverty Law
National Employment Law Project
Economic Policy Institute
William E. Spriggs*

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-000883

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

Appellants,

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,

Respondents.

CERTIFICATE OF SERVICE

I certify that I have served MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANTS and BRIEF OF SOUTH CAROLINA SMALL BUSINESS CHAMBER OF COMMERCE, AMERICAN SUSTAINABLE BUSINESS COUNCIL, SHRIVER CENTER ON POVERTY LAW, NATIONAL EMPLOYMENT LAW PROJECT, ECONOMIC POLICY INSTITUTE, AND WILLIAM E. SPRIGGS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT-PLAINTIFFS on all parties by E-mail to their counsel of record pursuant to *In Re; Operation of the Appellate Courts During the Coronavirus Emergency (as Amended May 29, 2020)*, Appellate Case No. 2020-000447 on August 24, 2021.

Adam Protheroe - adam@scjustice.org

Susan B. Berkowitz - sberk@scjustice.org

John Kassel - jkassel@kassellaw.com

Thomas A. Limehouse, Jr. - tlimehouse@governor.sc.gov

Wm. Grayson Lambert - glambert@governor.sc.gov

Todd Timmons - ttimmons@dew.sc.gov
Steven Jordan, Jr. - sjordan@dew.sc.gov
Rebecca Laffitte - blaffitte@robinsongray.com
Robert E. Tyson, Jr. - rtyson@robinsongray.com
Vordman Carlisle Traywick, III- ltraywick@robinsongray.com

August 24, 2021

/s/ Jack E. Cohoon

Jack E. Cohoon (S.C. Bar No. 74776)
BURNETTE SHUTT & MCDANIEL, P.A.
912 Lady St., 2nd Floor
Columbia, SC 29202
Phone: (803) 904-7914
Email: jcohoon@burnetteshutt.law

*Counsel for Amici Curiae
South Carolina Small Business Chamber of
Commerce
American Sustainable Business Council
Shriver Center on Poverty Law
National Employment Law Project
Economic Policy Institute
William E. Spriggs*