IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CANDY BOWLING, *et al.* Plaintiff, v. MICHAEL DEWINE, in his official capacity as GOVERNOR of the State of Ohio, *et al.*. Defendant.	Case No.: 21 CV 004469 Judge Michael Holbrook **PLAINTIFFS' REPLY TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs Shawnee Huff, David Willis, and Candy Bowling, through Counsel and for their reply to *Defendants DeWine and Damschroder's Joint Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction* filed on July 21, 2021, respectfully request this Court grant Plaintiffs' Motion. A supporting memorandum follows.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' REPLY

In opposition to Plaintiffs' motion, the State argues that Defendants Mike DeWine and his appointee, Ohio Department of Jobs and Family Services Acting Director Damschroder were justified in cutting off unemployment benefits to Ohioans. However, the decision on the extent of Ohio's participation in the federal unemployment compensation system is one that is exclusively reserved to the Ohio General Assembly under the Ohio Constitution and under federal and state statute.

Since its inception, the state of Ohio has participated in the federal unemployment program, enacted by Congress and signed by President Franklin Roosevelt in the landmark Social Security Act. The Ohio General Assembly has directed the state unemployment compensation program "to secure to this state and its citizens all advantages available under the provisions of the 'Social Security Act' that relate to unemployment compensation", R.C. § 4141.43(I). In light of this clear legislative directive and in the absence of any contrary statutory or constitutional authority, Governor DeWine simply lacks authority to contradict the express instruction of the Ohio General Assembly and deny Ohio citizens "all advantages available" under federal unemployment compensation benefits made available by Congress due to the COVID-19 pandemic.

I. FACTUAL BACKGROUND

The federal unemployment system was originally created to respond to the crisis of extended unemployment following the Great Depression. Title IX of the landmark 1935 Social Security Act created a joint state and federal unemployment system, with each participating state eligible for federal funding provided that the state program meets certain minimum program requirements. Social Security Act of 1935, Title IX.

State participation in the federal unemployment program is voluntary, and in order for any state to join the system and receive federal funding, the Social Security Act expressly required each state legislature to pass legislation creating a state unemployment compensation system, and to have that legislation approved by the federal government. Social Security Act of 1935, Title IX, Sec. 903; see also 42 U.S.C. § 503(a) (providing that the Department of Labor must certify that "the laws of the State" meet certain requirements).

Consistent with the federal statutory requirements of the Social Security Act, in 1936 the Ohio General Assembly called a special session and passed House Bill 608, which established a comprehensive unemployment insurance system in Ohio. The legislation created an unemployment commission, established eligibility and funding for eligible workers, and required cooperation with the U.S. Department of Labor. The legislation further provided that "This act is enacted as a part of a national plan of unemployment compensation and social security, and for the purpose of assisting in the stabilization of employment conditions." HB 608, § 1345-34. The legislation further provided that:

> All the rights, privileges, or immunities conferred by this act, or by acts done pursuant thereto, shall exist subject to the power of the general assembly to amend or repeal this act at any time.

H.B. 608, § 1345-30. House Bill 608 was signed into law by Governor Martin Davey on December 17, 1936, the day after it was approved by the General Assembly, and the law took immediate effect. Ohio's unemployment system was approved by the Social Security Board on December 22, 1936 and the general framework of this system has remained in place ever since.

The Social Security Act has been amended by Congress numerous times to expand benefits and to modify program requirements and administration. In response the Ohio General Assembly has maintained the unemployment compensation system and taken steps to expressly

state its policy intention to secure for Ohio and Ohio citizens "all available advantages" concerning unemployment compensation and to require that state officials cooperate with the Department of Labor to the "fullest extent" consistent with the law. R.C. § 4141.43(I).

In the face of a global pandemic, in 2020 and 2021 Congress again took action to amend the federal unemployment compensation program in the Social Security Act. In order to augment unemployment benefits during the COVID-19 pandemic, Congress enhanced existing benefits through the CARES Act. PUA applied to workers who were not eligible for regular unemployment benefits and whose unemployment was caused by COVID-19. 15 U.S.C. § 9021. After a worker exhausted regular unemployment compensation benefits ("UI"), PEUC operated to provide extended weeks of UI benefits. 15 U.S.C. § 9025. Another amendment resulted in FPUC, which originally increased the amount of all unemployment benefits, including UI, PUA, and PEUC benefits, by $600-per-week. 15 U.S.C. § 9023. The State of Ohio entered into an agreement with the U.S. Department of Labor pursuant to these CARES Act provisions.

On December 26, 2020, the unemployment provisions in the CARES Act, including PUA and PEUC, were extended through March 14, 2021, by the Continued Assistance for Unemployed Workers Act of 2020 ("CAUWA"). Pub. L. No. 116-260, § 200–01, 206. CAUWA also reauthorized FPUC, which had expired on July 31, 2020, in the amount of $300-per-week, payable from December 26, 2020, through March 14, 2021. Pub. L. No. 116-260, § 203. On March 11, 2021, PUA, PEUC, and FPUC were extended through September 6, 2021, by the American Rescue Plan Act of 2021 ("ARPA"). Pub. L. No. 117-2, § 9011, 9013, 9016.

The Ohio General Assembly has not enacted any amendment to the unemployment compensation law to reject these benefits or to amend R.C. § 4141.43(I). Nevertheless, on May 24, 2021, Defendants notified the U.S. Department of Labor that they had decided to terminate

these unemployment benefits. The benefits were terminated as of June 26, 2021.

II. LAW AND ARGUMENT

A. Plaintiffs Are Entitled to A Temporary Restraining Order, A Preliminary Injunction, and a Peremptory Writ of Mandamus

Defendants' brief in opposition is premised on the argument that Defendants had the authority to terminate Ohio's participation in the FPUC program. However, the decision whether to decline federal unemployment compensation is a power that is exclusively entrusted to the Ohio General Assembly, not the Governor or his appointee. In its most recent enactments on the subject of the unemployment benefits under the Social Security Act, the Ohio General Assembly clearly expressed its intention that Ohio secure all advantages to its citizens under the federal unemployment program. In rejecting the unemployment benefits at issue in this case, Defendants have acted contrary to the clear direction of the Ohio General Assembly, and without constitutional or statutory authority.

1. The Ohio Constitution Commits Policy Decisions Regarding Unemployment Compensation To the Ohio General Assembly Alone

Like its federal counterpart, the Ohio Constitution commits legislative power to the legislative branch, the Ohio General Assembly. Further, Article II, Section 34 of the Ohio Constitution specifically reserves to the General Assembly the authority to legislate matters concerning the welfare of employees:

> Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

Ohio Const. Art. II, Sec. 34.

By contrast, like his federal presidential counterpart, the Ohio Governor has the duty to "see that the laws are faithfully executed." Ohio Const. Art. III, Sec. 6. The Governor also has

the duty to "communicate at every session, by message to the general assembly" and to "recommend such measures as he shall deem expedient." Ohio Const. Art. III, Sec. 7. But legislative power remains exclusively in the legislature, not the executive.

In his well known concurrence in *Youngstown Sheet & Tube Co*., Justice Jackson set forth an instructive description of the separation of powers and functions between the legislature and the executive:

> 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.
>
> 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.
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> 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring). This case presents the third scenario—one in which the executive is attempting to act contrary to the expressed intentions of the legislative branch.

2. The Ohio General Assembly Has Spoken Clearly In Adopting A Policy of Securing for Ohioans "All Advantages Available" Related to Federal Unemployment Benefits, Including the Benefits at Issue before this Court.

The Ohio General Assembly has exercised its constitutional prerogative to enact a comprehensive statutory scheme creating a state unemployment compensation system, and to direct that the program director act "to the fullest extent" of the law to take all steps to "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. . . " R.C. § 4141.43(I).

The legislative history of this language is instructive. This language regarding "all advantages available" did not appear in the original 1936 law. After questions arose concerning the eligibility of Ohioans for supplemental unemployment insurance in the 1950s, the Ohio Supreme Court held that it was the duty of the General Assembly to clarify the scope of unemployment benefits:

> [T]his court is not permitted to concern itself with the question whether supplemental unemployment benefits should be sanctioned by the law of this state. That, of course, is not a judicial problem but one of legislative policy for determination by the General Assembly or by constitutional amendment. And, as has been said repeatedly in matters of statutory construction, it is not a question as to what the Legislature intended to enact; rather it is a question of the meaning of that which the Legislature did enact.
> . . .
> If such a plan of supplemental unemployment benefits is to be approved in this state, that approval should not be left to mere inference but should be placed on the sound basis of definite statutory or constitutional amendment.

United Steel Workers of America v. Doyle, 168 Ohio St. 324, 325-26, 328 (1958).

After the *Doyle* decision was issued, the Ohio General Assembly took action to amend Ohio's unemployment compensation law to expressly state its intention was to ensure that the state and its citizens would secure the greatest access to benefits. The statute now states as follows:

> (I) The director shall cooperate with the United States department of labor to the fullest extent consistent with this chapter, and shall take such action, through the adoption of appropriate rules, regulations, and administrative methods and standards, as may be 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," (1970) 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, the "Wagner-Peyser Act," (1933) 48 Stat. 113, 29 U.S.C.A. 49, the "Federal-State Extended Unemployment Compensation Act of 1970," 84 Stat. 596, 26 U.S.C.A. 3306, and the "Workforce Innovation and Opportunity Act," 29 U.S.C.A. 3101 *et seq*.

R.C. § 4141.43(I).

The enhanced unemployment benefits at issue in this case fall squarely within those "advantages available" under the Social Security Act that relate to unemployment compensation and also the Federal Unemployment Tax Act under R.C. § 4141.43(I). Enhanced unemployment benefits under the CARES Act are funded by and through the federal unemployment programs established under 42 U.S.C. §§ 1101(a), 1104(a), and 1105(a). Simply stated, Congress did not create a separate vehicle for the enhanced federal benefits in the CARES Act. The two are inextricably linked. The PUA weekly benefit amount includes the $300-per-week FPUC payments. 15 U.S.C. § 9021(d)(1). All PUA benefits—including FPUC—and administrative costs are funded by 42 U.S.C. §§ 1104(a) and 1105(a). 15 U.S.C. § 9021(g). The PEUC benefits also include the $300-per-week FPUC payments. 15 U.S.C. § 9025(a)(4)(A). PEUC benefits, including FPUC, are funded by 42 U.S.C. §§ 1104(a) and 1105(a), while PEUC administration costs are funded by 42 U.S.C. § 1101(a). 15 U.S.C. § 9025(d). The FPUC benefits conferred under 42 U.S.C. §§ 1101, *et seq*. are an extension of the existing Federal Unemployment Tax Act, 26 U.S.C. §§ 3301.01, *et seq.* The Federal Unemployment Tax Act is one of the specifically enumerated covered laws under R.C. § 4143.43(I).

Defendants' arguments that the benefits at issue in this case do not fall within those specified in the statute is without merit and ignores the clear language of the CARES Act and the

American Recovery Act. Congress, through 42 U.S.C. § 1101, *et seq*., established various funds and accounts to hold money for the states, including the Unemployment Trust Fund, the Employment Security Administration Account, and the Extended Unemployment Compensation Account. The PUA, PEUC, and FPUC benefits are "conferred under" 42 U.S.C. §§ 1101, 1104, and 1105 for the purposes of R.C. § 4141.43(I). These CARES Act provisions incorporate the Unemployment Trust Fund, the Employment Security Administration Account, and the Extended Unemployment Compensation Account —the benefits of 42 U.S.C. § 1101, *et seq*.—as temporary enhancements to UI benefits. PUA, PEUC, and FPUC achieve this by providing a framework for agreements between states and the U.S. Department of Labor. These agreements are a mechanism for the states to access the benefits of 42 U.S.C. § 1101, *et seq*. Put simply, PUA, PEUC, and FPUC do not create new benefits. Rather, they authorize states to draw from benefits already conferred under 42 U.S.C. § 1101, *et seq*. in a greater amount through a specified process for a particular purpose.

Other courts have concluded that similar legislative language requiring states to cooperate with the federal government "to the fullest extent" or to "secure all available benefits" expressed clear legislative intent to mandate to accept the unemployment benefits at issue in this case. For example, in evaluating similar legislative language in Maryland requiring state officials to cooperate with the Department of Labor "to the fullest extent", a Maryland court recently held that state officials lacked authority to reject pandemic unemployment benefits:

> The Court concludes that Plaintiffs have shown a likelihood of success in demonstrating that the "fullest extent" language of § 8-310(a)(1) should be interpreted in this context to constrain administrative discretion and require the Maryland Labor Secretary to maximize use of any available federal unemployment benefits. By plain language, the General Assembly meant cooperation "to the fullest extent that this title allows" to be extensive and comprehensive. In the same section, the command that the Maryland Secretary "shall cooperate" with the federal Secretary "to the fullest extent" contrasts with the discretion accorded that she "may afford reasonable cooperation" with other

> federal units. Id. § 8-310(b)(1) (emphasis added). Moreover, mandating cooperation "to the fullest extent that this title allows" carries the implication that the Maryland Secretary must act whenever an opportunity for cooperation exists within the bounds of Maryland law. This is not just "the Secretary should be very cooperative with federal officials." It requires action as far as Maryland law in this arena will permit.

D.A. v. Hogan, Maryland Circuit Court for Baltimore City, Case No.24-C-21-002988 (Memorandum Opinion Granting Temporary Restraining Order, July 3, 2021).

In Indiana, the Marion Superior Court interpreted similar statutory language as a legislative mandate to secure the same federal unemployment benefits at issue here:

> (4) Indiana Code § 22-4-37-1 states, in relevant part, that "[i]t is declared to be the purpose of this article to secure to the state of Indiana and to employers and employees in Indiana all the rights and benefits which are conferred under the provisions of 42 U.S.C. 501 through 504, 42 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 331 1, and 29 U.S.C. 49 *et seq*., and the amendments to those statutes." The enumerated US Code sections deal with the establishment and funding of federal and state unemployment benefits schemes.
>
> (15) The Legislature's determination in I.C. 22-4-37-1 is an instruction to the Department of Workforce Development to administer unemployment benefits available in the Unemployment Trust Fund. Similar to the Legislature's determination of other aspects of the system of unemployment benefits in Indiana, like the number of weeks a claimant may be eligible or how to calculate a claimant's monetary benefit amount, I.C. 22-4-37-1 's directive to secure all rights and benefits conferred by 42 U.S.C. § 1104 is binding on the State.
>
> (l6) A preponderance of the evidence demonstrates the State of Indiana's decision to prematurely end PUA, PEUC and FPUC benefits in Indiana violates I.C. 22-4-37-1. Therefore, Plaintiffs have shown reasonable likelihood of prevailing on the merits of their declaratory judgment action.

T.L. v. Holcomb, Marion Superior Court, Case No. 49D11-2106-PL-020140 (Findings of Fact, Conclusions of Law, and Judgment, July 22, 2021).

In sum, by rejecting these benefits after June 26, 2021, Defendants are in violation of their statutory duties, entitling Plaintiffs to declaratory and injunctive relief. Plaintiffs are likely to succeed on their claims.

3. Defendants usurped the legislative power reserved by the General Assembly.

In their motion, Defendants caution the Court against overstepping its bounds. They remind the Court of the doctrine of separation of powers on which our system of government rests and suggest that the Court should honor the desires of the executive branch merely because it is the executive branch. Defendants are correct that there is a separation of powers issue presented in this case, but it is not the one they advance.

Revised Code Section 4141.45 reserves to the legislature the power to alter the program benefits available under Ohio's unemployment program:

> All the rights, privileges, or immunities conferred by sections 4141.01 to 4141.46, inclusive, of the Revised Code, or by acts done pursuant thereto, shall exist subject to the power of the general assembly to amend or repeal such sections at any time.

R.C. § 4141.45. This language harkens to Justice Jackson's description of executive power quoted above. When the legislature has reserved a power to itself, the executive's authority is at its "lowest ebb" and is derived solely from the constitutional grant.

Contrary to Defendants' arguments, the FPUC is part of the Social Security Act and is administered as part of the state's unemployment compensation system. The statute itself clarifies that fact. Subsection (i) of 15 U.S.C. § 9023 provides definitions for the statute:

> (i) Definitions
> For purposes of this section—
>
> (1) the terms "compensation", "regular compensation", "benefit year", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note); and
>
> (2) any reference to unemployment benefits described in this paragraph shall be considered to refer to —
>
> (A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970);

> (B) regular compensation (as defined by section 85(b) of title 26) provided under any program administered by a State under an agreement with the Secretary;
>
> (C) pandemic unemployment assistance under section 9021 of this title;
>
> (D) pandemic emergency unemployment compensation under section 9025 of this title; and
>
> (E) short-time compensation under a short-time compensation program (as defined in section 3306(v) of title 26).

15 U.S.C. § 9023(i). Both the Federal-State Extended Unemployment Compensation Act of 1970 and 26 U.S.C. § 3306 are incorporated into FPUC and are specifically referenced in R.C. § 4141.43(I).

Indeed, the very contract that Defendants terminated specifies that the FPUC is part of Ohio's unemployment compensation system. The first paragraph of Addendum No. 2, which pertains exclusively to FPUC, identifies the additional $300 benefit as being unemployment compensation. For the Defendants to argue otherwise is disingenuous.

Plaintiffs ask the Court to order Defendants to reinstate the FPUC program in Ohio because Defendants were without authority to terminate Ohio's participation in that program. Whereas R.C. § 4141.43(I) required the State to participate in the FPUC program, R.C. § 4141.45 prohibits the State from withdrawing from that program. Only an act of the General Assembly may do so. By exercising a power reserved to the legislature, Defendants are the ones who have violated the principle of separation of powers.

"The first, and defining, principle of a free constitutional government is the separation of powers." *State v. Bodyke*, 126 Ohio St.3d 266, 933 N.E.2d 753, 2010-Ohio-2424, ¶ 39. "The separation-of-powers doctrine represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously

fostering autonomy and comity, as well as interdependence and independence, among the three branches." *Stetter v. R.J. Corman Derailment Services, L.L.C.*, 125 Ohio St.3d 280, 927 N.E.2d 1092, 2010-Ohio-1029, (2010); *see also Hale v. State* (1896), 55 Ohio St. 210, 214, 45 N.E. 199, 200 ("[T]he people possessing all governmental power, adopted constitutions, completely distributing it to appropriate departments.").

The Ohio Supreme Court has long lauded the Constitution's system of checks and balances:

> As James Madison explained in Federalist Paper No. 47, the sharing of powers through a system of checks and balances complemented the principle of separation of powers by acting as an additional restraint on government. This blending of powers not only limits government itself, it also provides mechanisms by which each branch can defend its place in our constitutional system. The Federalist Papers No. 47 (Madison 1788) (Wills Ed.1982), at 243-246.

DeRolph v. State, 93 Ohio St.3d 309, 327, 754 N.E.2d 1184, 2001-Ohio-1343, (2001). Where a specific power is expressly reserved to one branch, the other branches have no authority to intrude on that power. Yet that is what Defendants have done. Even though R.C. § 4141.45 specifically reserved the power to terminate or modify Ohio's employment compensation system, Defendants decided to act in their own self-interest and in complete disregard of the law.

Such a violation of law, especially when that violation has caused tangible harm to thousands of Ohioans, cannot be permitted to stand.

4. Defendants Have No Authority to Contravene The Clear Mandate of R.C. § 4141.43

Defendants and *amici curiae* advance various policy arguments in an attempt to justify Defendants' decision to refuse the unemployment benefits at issue in this case. However, policy arguments cannot justify contravention of the express directive of the Ohio General Assembly.

Defendants have a constitutional duty to execute the existing laws, regardless of whether they agree with them. If Defendants have policy disagreements about the scope of unemployment benefits, these must be directed to the General Assembly for redress. Ohio Const. Art. III, Sec. 7. The Governor and his appointee have no authority to unilaterally limit unemployment benefits, particularly when the legislature has commanded that the agency secure all available advantages to Ohioans under the unemployment compensation program. As Justice Jackson stated in *Youngstown Sheet & Tube Co*., "[w]ith all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 655 (1952) (Jackson, J., concurring).

Moreover, when it enacted R.C. § 4141.43(I), the General Assembly already considered and rejected the policy arguments posed by Defendants. The scope of unemployment benefits in Ohio was not without controversy at the time R.C. § 4141.43(I) was enacted. A contemporary observer noted that there was a fierce policy debate concerning the expansion of benefits in the 1950s, but that the Ohio General Assembly had ultimately passed legislation firmly and unambiguously in favor of the expansion of benefits in the face of a previous economic and employment emergency:

> With that invitation [of the *Doyle* court] still ringing in their ears, and with the aftereffects of the recession of 1958 very much before them, the members of both Houses of the General Assembly in 1959 elected to pass the amendments referred to at the beginning of this article. It may be fortunate that circumstances combined to bring about this result, since there was formidable opposition to the very last. It may be presumed that many of the same groups who fought the unemployment insurance program in the beginning, and who have periodically opposed amendments to liberalize the state laws and keep the program up-to-date, were behind the opposition to the solution through private supplementation. In any event, the issue has finally been settled in Ohio, at least for the present.

Edwin Teple, Supplemental Unemployment Benefits, 20 Ohio St. L.J. 583 (1959).

In an echo of past debates, many of the same interest groups which unsuccessfully advocated against expansion of unemployment benefits in the past now seek to participate in this case as *amici curiae* to express the same policy arguments that the Ohio General Assembly previously considered and rejected in adopting a policy of securing all available unemployment benefits to Ohioans. If Defendants wish to change policy, that decision must be made by the General Assembly.

B. Plaintiffs Will Be Irreparably Harmed if the Court Fails to Act

Defendants argue that no irreparable harm will exist if the Court fails to issue a preliminary injunction, asserting that monetary remedies would be available in the event Plaintiffs prevail on the merits. However, the benefits at issue in this case are intended to provide emergency relief to unemployed workers during a pandemic. Delaying such benefits until months or years later will not pay for rent and food today, and will defeat the purpose of the unemployment compensation program. Irreparable harm will result if injunctive relief is not granted.

C. The Doctrine of Laches Does Not Bar this Suit

Defendants complain that Plaintiffs waited unreasonably long to commence this suit to challenge events and policy that took effect less than two weeks before the lawsuit was filed.

Laches is an equitable doctrine that bars litigation where a party has unreasonably delayed commencement of legal action. The elements of a laches defense are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party. *State ex rel. Carrier v. Hilliard City Council*, 144 Ohio St.3d 592, 2016-Ohio-155, 45 N.E.3d 1006, ¶ 8.

In this case it would be inequitable to apply laches to bar a legal action commenced little more than a week after the government action challenged by the suit took effect and became ripe. Plaintiffs are Ohio citizens of modest means who are unemployed and seeking work. Under these circumstances a delay of little more than a week to secure legal counsel, investigate complex constitutional and statutory claims, and to commence litigation is not unreasonable.

Moreover, Defendants have identified no prejudice as a result of the delay. "Delay in asserting a right does not of itself constitute laches, and in order to successfully invoke the equitable doctrine of laches it must be shown that the person for whose benefit the doctrine will operate has been materially prejudiced by the delay of the person asserting his claim." *Smith v. Smith*, 168 Ohio St. 447, 156 N.E.2d 113, syllabus ¶ 3 (1959). Although Defendants allege prejudice generally, they provide no support for the assertion. On the contrary, the facts of the case make it obvious that neither Defendants nor the state of Ohio could be prejudiced by any delay in bringing this suit. Defendants have taken no action in reliance on the alleged delay. They have expended no funds or incurred any liability as a result of the alleged delay. The doctrine of laches simply has no application in this instance.

III. CONCLUSION

WHEREFORE Plaintiffs Shawnee Huff, David Willis, and Candy Bowling, through Counsel respectfully request this Court grant their Motion for Temporary Restraining Order, Preliminary Injunction, a Peremptory Writ of Mandamus and for all other relief this Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2021 a copy of the foregoing was submitted electronically to the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served via regular U.S. Mail to his, her or its respective address as indicated by previous filings herein. Parties may access this filing through the Court's system.

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