

IN THE SUPREME COURT OF OHIO

STATE ex rel. CANDY BOWLING et al.,	:	Case No. 2021-1062
	:	
Plaintiffs-Appellees,	:	
	:	
v.	:	
	:	On Appeal from the Franklin County
GOVERNOR MIKE DEWINE, et al.,	:	Court of Appeals, Tenth Appellate District
	:	
	:	Case No. 21AP000380
Defendants-Appellants.	:	

**BRIEF OF *AMICUS CURIAE* OHIO LEGAL AID ORGANIZATIONS, OHIO POLICY
LAW CENTER, POLICY MATTERS OHIO, AND THE OHIO EMPLOYMENT
LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLEES CANDY
BOWLING, DAVID WILLIS, AND SHAWNEE HUFF AND URGING AFFIRMATION**

Kristy A. Michel (0089088)*
**Counsel of Record*
The Legal Aid Society of Columbus
1108 City Park Avenue
Columbus, Ohio 43206
Phone: (614) 737-0125
Fax: (614) 224-4514
kmichel@columbuslegalaid.org

Counsel for Amicus Curiae
The Legal Aid Society of Columbus

Katherine B. Hollingsworth (0087579)
The Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
Phone: (216) 861-5260
Fax: (216) 861-0704
khollingsworth@lasclev.org

Counsel for Amicus Curiae
The Legal Aid Society of Cleveland

Regina Campbell (0067291)
The Legal Aid Society of Greater Cincinnati
215 East Ninth Street, Suite 200
Cincinnati, Ohio 45202
Phone: (513) 241-9400
Fax: (513) 241-6800
rcampbell@lascinti.org

Counsel for Amicus Curiae
The Legal Aid Society of Greater Cincinnati

Michelle Wrona Fox (0070425)
Community Legal Aid Services, Inc.
Ohio One Building
25 East Boardman Street, Suite 520
Youngstown, Ohio 44503
Phone: (330) 983-2603
Fax: (330) 744-2503
mwrona@communitylegalaid.org

Counsel for Amicus Curiae
Community Legal Aid Services, Inc.

Kristen Finzel Lewis (0074392)
Southeastern Ohio Legal Services
255 2nd Street NE, Suite D
New Philadelphia, Ohio 44663
Phone: (614) 827-0529
Fax: (330) 339-6672
klewis@seols.org

Counsel for Amicus Curiae
Southeastern Ohio Legal Services

Rebecca Steinhauser (0066842)
Advocates for Basic Legal Equality, Inc.
1340 West High Street, Building A
Defiance, Ohio 43512
Phone: (419) 930-2494
Fax: (419) 782-5830
rsteinhauser@ablelaw.org

Counsel for Amicus Curiae
Advocates for Basic Legal Equality, Inc.

Megan O'Dell (0092063)
Ohio Poverty Law Center
1108 City Park Avenue, Suite 200
Columbus, Ohio 43206
Phone: (614) 221-7201
Fax: (614) 221-7625
modell@ohiopoveritylaw.org

Counsel for Amicus Curiae
Ohio Poverty Law Center

Lori K. Elliott (0014935)
Legal Aid Society of Southwest Ohio, LLC
10 Journal Square, 3rd Floor
Hamilton, Ohio 45011
Phone: (513) 362-2819
Fax: (513) 894-7669
lelliott@lascinti.org

Counsel for Amicus Curiae
Legal Aid Society of Southwest Ohio, LLC

Kevin Mulder (0054293)
Legal Aid of Western Ohio, Inc.
525 Jefferson Avenue, Suite 400
Toledo, Ohio 43604
Phone: (419) 724-0030
Fax: (419) 321-1582
kmulder@lawolaw.org

Counsel for Amicus Curiae
Legal Aid of Western Ohio, Inc.

Hannah C. Halbert (0080755)
Policy Matters Ohio
3631 Perkins Avenue, Suite 4C-E
Cleveland, Ohio 44114
Phone: (216) 361-9801
Fax: (216) 361-9810
hhalbert@policymattersohio.org

Counsel for Amicus Curiae
Policy Matters Ohio

Christina Marie Royer (0073695)
Employment Law Partners, LLC
4700 Rockside Road
Suite 530
Independence, OH 44131
Phone: (216-381-0250)
chris@employmentlawpartners.com

*Counsel for Amicus Curiae
Ohio Employment Lawyers Association*

Brian D. Flick (0081605)*
**Counsel of Record*

Marc E. Dann (0039425)
Emily White (0085662)
Dann Law
150000 Madison Road
Lakewood, Ohio 44107
Phone: (216) 373-0539
Fax: (216) 373-0536
notices@dannlaw.com

Andrew M. Engel (0047371)
Advocate Attorneys, LLP
1629 K Street NW, Suite 300
Washington, D.C. 20006
Phone: (202) 935-6990
aengel@advocateattorneys.com

Counsel for Plaintiffs-Appellees

Dave Yost (0056290)
Ohio Attorney General
Benjamin M. Flowers* (0095284)
Solicitor General

* *Counsel of Record*

Michael J. Hendershot (0081842)
Chief Deputy Solicitor General
Julie M. Pfeiffer (0069762)
Allison D. Daniel (0096186)
Eric A. Baum (0052534)
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 466-8980
Fax: (614) 466-5087
bflowers@ohioago.gov
julie.pfeiffer@ohioattorneygeneral.gov

Counsel for Defendants-Appellants

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INTEREST OF *AMICUS CURIAE*

The *Amici Curiae* parties include **The Legal Aid Society of Columbus, The Legal Aid Society of Greater Cincinnati, The Legal Aid Society of Cleveland, Community Legal Aid Services Inc., Southeastern Ohio Legal Services, The Legal Aid Society of Southwest Ohio LLC, Advocates for Basic Legal Equality Inc., and Legal Aid of Western Ohio**. These Ohio legal aid organizations (“Legal Aid”) have a particular interest in this case as its outcome directly affects the rights and opportunities of low-income Ohioans. Legal Aid provides representation in a broad range of civil matters to low-income Ohioans including assistance in accessing important public benefits like unemployment compensation. Therefore, these *Amici* are well situated to inform the Court on this matter of great importance.

The **Ohio Poverty Law Center**, a nonprofit limited liability company, provides support and assistance to the Legal Aid community through project management, policy advocacy, and training.

Policy Matters Ohio is a nonprofit, nonpartisan research institute with the mission of creating a more vibrant, equitable, inclusive, and sustainable Ohio. Policy Matters Ohio has offices in Cleveland and Columbus and focuses especially on economic policy, including unemployment compensation. Since 2001, Policy Matters Ohio has produced numerous studies on the subject, including how unemployment compensation benefits support reemployment and labor market connection.

The **Ohio Employment Lawyers Association** (OELA) is a state-wide professional membership organization in Ohio comprised of lawyers who represent employees in labor, employment, and civil rights disputes. OELA strives to protect the rights of its members’ clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. As an organization focused on protecting the interests of employees, OELA is firmly committed to, *inter*

alia, protecting access to unemployment compensation benefits for their members' clients, especially during the coronavirus pandemic. OELA files this Amicus brief in favor of preserving workers' rights to additional unemployment benefits sanctioned and provided by the federal government by statute, which are necessary to workers' livelihoods and abilities to support their families during an unprecedented time.

A ruling adverse to the Plaintiff-Appellees would undermine longstanding policy goals and organizational missions of these parties.

INTRODUCTION

The unemployment compensation program “maintains unemployed workers’ purchasing power which also acts as an economic stabilizer in times of economic downturn...which ensures that a significant proportion of the necessities of life can be met on a week-to-week basis.” See U.S. Dept. of Labor, *Unemp. Comp. Fed-State Partnership* (May 2019), available at <https://oui.doleta.gov/unemploy/pdf/partnership.pdf> (last accessed Jan. 31, 2022). The federal-state unemployment compensation program, created by the Social Security Act of 1935, “offers an economic line of defense against the ripple effects of unemployment.” *Id.* The program is a federal-state partnership based upon Federal law and administered by state employees under state law to provide temporary partial wage replacement for unemployed workers that have been attached to the labor force while they seek new employment. *Id.*

To mitigate the economic effects of the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, in part, to provide economic stabilization to individuals who were unemployed or underemployed. One of the CARES Act’s provisions, Federal Pandemic Unemployment Compensation (“FPUC”), provided additional emergency unemployment benefits to individuals who met eligibility requirements to receive

unemployment benefits under a variety of programs. 15 U.S.C. §9023 (2020). On March 28, 2020, Ohio elected to enter into an agreement with the U.S. Secretary of Labor to provide FPUC benefits to its citizens.

The CARES Act also contained a provision to allow a state to temporarily waive weekly federal-required work search requirements from mid-March 2020 through December 1, 2020. 15 U.S.C. §9025(a)(7)(B). Weekly work search requirements must be met for an individual to maintain eligibility for unemployment benefits. R.C. 4141.29(A)(4). Ohio chose to waive the federal work search requirements during this period. However, starting the week of December 6, 2020, Ohio resumed the work search requirements for any new unemployment claims and reinstituted the work search requirements for all other individuals filing claims for unemployment benefits the week of May 23, 2021.¹

In addition to retaining eligibility for unemployment benefits, an individual is required to return to work or accept an offer of suitable employment, unless there is good cause for the refusal. R.C. 4141.29(A)(4). This requirement was not impacted by any provision under the CARES Act. At all times, individuals filing claims for unemployment benefits had to meet this requirement.

When Governor DeWine backed out of Ohio's FPUC agreement effective June 26, 2021, thousands of Ohioans who had been receiving these benefits experienced economic harm—particularly those living in areas with high unemployment rates and low rates of job growth. While Ohio businesses have experienced difficulties in filling vacancies, there were a wide variety of reasons for this. Lack of childcare options, continued health concerns related to COVID-19, and

¹ See Ohio Governor Mike Dewine News Release *Ohio Restores Unemployment Benefits Weekly Work-Search Requirement* (May 10, 2021) available at <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/ohio-restores-unemployment-benefits-weekly-work-search-requirement-05102021#:~:text=On%20Dec.%206%2C%20ODJFS%20resumed%20the%20work-search%20requirement,days%20or%20less%2C%20and%20individuals%20in%20approved%20training> (last accessed Feb. 2, 2022).

individuals retiring earlier than planned all slowed improvement in Ohio's work force participation rate. See CNBC.com, *6 reasons why Americans aren't returning to work* (Oct. 20, 2021) available at <https://www.cnbc.com/2021/10/20/6-reasons-why-americans-arent-returning-to-work.html> (last accessed Feb. 5, 2022).

Governor DeWine's decision to terminate FPUC benefits early by executive fiat was in violation of R.C. 4141.43(I) and Ohio's Constitution. It also caused harm to those Ohioans who had been unable to find suitable employment and needed those benefits to pay for basic living expenses. The court of appeals was correct in holding that R.C. 4141.43(I) required the Governor to secure these benefits for the citizens of Ohio. See *State ex rel. Bowling v. DeWine*, 2021-Ohio-2902, ¶ 47, 2021 WL 37333205, *11 (10th Dist., August 24, 2021).

STATEMENT OF FACTS AND CASE

The Ohio Legal Aid Organizations, the Ohio Poverty Law Center, Policy Matters Ohio, and the Ohio Employment Lawyer's Association adopt by reference the Statement of Facts and Case set forth in the Plaintiff-Appellees' Brief.

ARGUMENT AND LAW

Proposition of Law: Revised Code 4141.43(I) does compel the Governor to participate in all federal unemployment compensation programs created by the federal CARES Act.

On March 27, 2020, Congress passed the federal Coronavirus Aid, Relief, and Economic Security ("CARES") Act which established three federally-funded expanded unemployment insurance programs to assist states in providing economic help to individuals that became unemployed or underemployed due to the COVID-19 pandemic. 15 U.S.C. §9021, *et al* (2020). Through agreements with the states, the U.S. Secretary of Labor provided these CARES Act

benefits. 15 U.S.C. § 9023(a) and 15 U.S.C. § 9025(a)(1). The CARES Act created three types of expanded unemployment benefits:

- (1) Pandemic Unemployment Assistance (“PUA”) to support self-employed individuals, independent contractors and others who don’t qualify for traditional unemployment benefits;
- (2) Pandemic Emergency Unemployment Compensation (“PEUC”) - an extension of traditional unemployment benefits; and
- (3) Federal Pandemic Unemployment Compensation (“FPUC”) - additional weekly benefits to eligible claimants in multiple unemployment programs. *Id.*

On March 28, 2020, Ohio Governor DeWine entered into agreements with the U.S. Secretary of Labor to provide the state’s unemployed or underemployed citizens with these three CARES Act benefits. The extra FPUC benefits of \$600 per week lasted from mid-March through July 2020 and were later renewed at \$300 per week from January through September 4, 2021. Governor DeWine also temporarily waived the weekly federal-required work search requirements from mid-March 2020 through December 1, 2020, as allowed under the CARES Act.² On December 6, 2020, Ohio resumed the work search requirements for any new unemployment claims and on May 23, 2021, the work search requirements were reinstated for all other individuals filing claims for unemployment benefits. *Id.* The federal and state requirement that an individual return to work or accept an offer of suitable employment, unless there was good cause for the refusal, remained in place.

² See Ohio Governor Mike Dewine News Release *Ohio Restores Unemployment Benefits Weekly Work-Search Requirement* (May 10, 2021) available at <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/ohio-restores-unemployment-benefits-weekly-work-search-requirement-05102021#:~:text=On%20Dec.%206%2C%20ODJFS%20resumed%20the%20work-search%20requirement,days%20or%20less%2C%20and%20individuals%20in%20approved%20training>. (last accessed Feb. 2, 2022).

On May 13, 2021, Governor DeWine announced that he was terminating the \$300 per week FPUC benefits effective June 26, 2021, thereby unilaterally terminating Ohio's contract to provide CARES Act benefits that are creatures of federal statute and that were funded exclusively by the federal government—at no cost to Ohio's unemployment compensation fund.

A. The Court of Appeals was correct in finding FPUC was one of the “available advantages” described in Revised Code 4141.43(I) and required Ohio Governor DeWine to “secure” FPUC to the citizens of Ohio.

Pursuant to R.C. 4141.35(I),

“[t]he 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.” (*Emphasis added*)

Funding of both PUA and PEUC benefits came through the Unemployment Trust Fund established by the Social Security Act. 42 U.S.C. § 1104(a). Within the Unemployment Trust Fund, there is an extended unemployment compensation account. 42 U.S.C. § 1105(a). Monies from the general fund of the United States Treasury were transferred into the extended unemployment compensation account and used to pay a State which entered into an agreement with the U.S. Secretary of Labor to provide PUA and PEUC benefits to unemployed individuals. 15 U.S.C. § 9021(g)(1) and 15 U.S.C. § 9025(d). Funding of FPUC benefits was also appropriated from the general fund of the United States Treasury. 15 U.S.C. § 9023(d)(3).

In each agreement between a state and the U.S. Secretary of Labor under the CARES Act, there is a provision that FPUC shall be applied with respect to unemployment benefits described in 15 U.S.C. § 9023(i)(2) “to the same extent and in the same manner as if [FPUC] benefits were

regular compensation.” 15 U.S.C. § 9023(g)(1). Further, subsection 15 U.S.C. § 9023(i)(2) states that any reference to FPUC refers to extended compensation, regular compensation, PUA, PEUC, and short-term compensation. 15 U.S.C. § 9023(i)(2). Accordingly, the Court of Appeals correctly determined there is “no categorical distinction between FPUC and PUA, or FPUC and PEUC that Congress...recognized.” *See State ex rel. Bowling v. DeWine*, 2021-Ohio-2902, ¶ 47, 2021 WL 37333205, *11 (10th Dist., August 24, 2021). As PUA and PEUC were administered through a provision of the Social Security Act that *relates to* unemployment compensation, FPUC benefits were an “available advantage” that Governor DeWine was required to “secure” for the citizens of Ohio.

While Ohio entered into agreements to receive CARES Act unemployment benefits by each separate program (PUA, PEUC, and FPUC), the CARES Act does not separate FPUC from PUA, PEUC, or other noted unemployment benefit programs. 15 U.S.C. § 9023(a). Below are additional portions of the PUA and PEUC sections from the CARES Act related to benefit amounts and their relation to FPUC benefits:

“...[Pandemic Unemployment Assistance]...shall be the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed...*and the amount of Federal Pandemic Unemployment Compensation* under section 9023 of this title.” (*Emphasis added*) 15 U.S.C. § 9021(d)(1)(A).

“[T]he amount of Pandemic Emergency Unemployment Compensation...shall be equal to (i) the amount of the regular compensation...payable to such individual during such individual’s benefit year under the State law for a week of total unemployment; (ii) *the amount of Federal Pandemic Unemployment Compensation* under section 9023(b)(1)(B) of this title; and (iii) the amount (if any) of Mixed Earner Unemployment Compensation under section 9023(b)(1)(C) of this title.” (*Emphasis added*) 15 U.S.C. § 9025(a)(4)(A).

The plain language in these CARES Act provisions clearly states that FPUC benefits are to be paid as long as PUA or PEUC benefits are paid. While Governor DeWine chose to improperly terminate Ohio’s agreement to provide its citizens with FPUC, the PUA and PEUC benefit

programs continued. The FPUC program works in tandem with PUA and PEUC and by continuing PUA and PEUC, Governor DeWine was required to continue FPUC benefit payments.

Governor DeWine's decision to terminate Ohio's agreement with the U.S. Secretary of Labor to pay its citizens FPUC benefits also violates the Ohio Constitution. Ohio's Constitution separates powers into the legislative branch, executive branch and judicial branch. The Governor of Ohio is vested with supreme executive powers of the State. Ohio Const. Art. III, §5. The legislative power of Ohio is vested in a general assembly. Ohio Const. Art. II, §1. The general assembly has legislative power to pass laws for the general welfare of employees and "no other provision of the constitution shall impair or limit this power." Ohio Const. Art. II, §34. In line with its constitutional duty, Ohio's general assembly passed R.C. 4141.43(I), a statute that applies to the general welfare of Ohio employees, and that requires that "all advantages" under the applicable federal unemployment laws be secured for its citizens. Governor DeWine should not have abrogated his statutory duty by terminating unemployment benefits that he was required to provide for Ohio workers.

If the governor is permitted to unilaterally refuse federal unemployment funds, this unchecked power may permit the governor to refuse other funds for benefit programs that provide a lifeline to Ohio employees during financially strenuous times. Again, the economic security of Ohio employees is of such paramount importance that it was enshrined in the Ohio Constitution through its provision that requires the legislative protection of the "health, safety, and welfare of employees." Ohio Const. Art. II, §34.

To comply with this mandate, the Ohio legislature established several programs that receive federal funding, much like unemployment benefits. Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), and Medicaid are

among the federally funded programs that benefit working Ohioans. TANF is a program tailored to help parents remain employed, be working towards finding a job, or taking classes aimed at increasing their long-term employability. Similar to R.C. 4141.43(I), there is a mandate to take action to ensure Ohio workers have access to this program. Specifically, “the department of job and family services shall administer [the TANF Ohio Works First program], as long as federal funds are provided for the program.” R.C. 5107.03. Ohio statute also mandates that the director of Ohio Department of Job and Family Services “shall administer and expend [for the administration of SNAP]...all sums paid to the state by the United States as authorized by the Food and Nutrition Act of 2008.” R.C. 5101.54 (A). Further, the Department of Medicaid “shall supervise ... the administration of the Medicaid program.” R.C. 5162.03.

These statutes require departments of the executive branch to comply with the legislature’s lawful exercise of constitutionally authorized power to provide for the “health, safety, and welfare of employees.” If the Court finds the Governor can refuse to accept federal funding for programs that benefit Ohio employees against Ohio’s legislative authority, Ohioans will be at risk of also being deprived of these economic supports during times of need.

B. The Governor’s Decision to End the Federal Pandemic Unemployment Compensation (FPUC) Program Harmed Ohio Citizens and Did Not Delay Employees Returning to Work.

1. The Loss of FPUC Payments Harmed Ohio Citizens Who Were Already Struggling to Access Unemployment Benefits.

Throughout the pandemic Ohio’s legal aid offices were flooded with calls from unemployed Ohioans frustrated with their inability to apply for or receive benefits. Requests for unemployment assistance from Legal Aid across the state increased by over 400% during the first year of the pandemic. Most of the clients needed help accessing or navigating Ohio’s

unemployment systems' portals or were trying to figure out what was preventing them from receiving benefits. While the pandemic placed an unprecedented strain on Ohio's unemployment system and required the implementation of a whole new computer system for the PUA federal program, unemployed Ohioans experienced the following difficulties:

- Inability to apply for benefits over the phone due to high demand and too few employees with Ohio Department of Job and Family Services ("ODJFS"), Ohio's agency administering unemployment benefit programs. (This problem was especially pronounced at the beginning of the pandemic).
- Inability to apply for benefits on-line for individuals who lacked technology skills, a computer, or internet access.
- Lack of language access for workers who had limited English proficiency.
- Inability to connect with ODJFS representatives who could assist with questions and problems.
- The lack of an option to apply for benefits in person or get assistance with the application process or denial confusion at a physical ODJFS location.
- Unhelpful, confusing notices, leaving applicants unsure why their applications were denied and what action was required to prove they were eligible.
- Disruptions to benefit payments when the unemployment agency claimed required documentation was not submitted even though individuals would submit the documents numerous times.
- Incorrect determinations that benefits had been fraudulently procured, causing an interruption in benefits.

- Delays by the unemployment agency in processing applications, claims, and appeals, in contravention of statutory deadlines.

As a result of these sorts of obstacles and delays, many individuals did not receive timely unemployment benefits that otherwise would have covered their mortgage, rent, or other basic living expenses, leading to secondary consequences such as foreclosures, evictions, utility shut-offs, negative impacts to individuals' credit scores, and financial penalties for inability to cover bills.

The extra \$300 per week of FPUC was not a windfall but merely brought workers' income closer to what it would have been had they maintained employment, as unemployment benefits only provide a fraction of the income an individual earns while working. For individuals eligible for traditional state unemployment benefits (and the PEUC extension) the standard weekly benefit amount was 50% of their average weekly wage during the time they were employed. 15 U.S.C. § 9025(a)(4)(A). Individuals eligible for PUA were also eligible for 50% of their average weekly wages with a minimum benefit amount of \$189 per week. 15 U.S.C. § 9021(d)(1)(A). The additional FPUC benefits were intended to help buffer the impact of an individual losing half of their normal employment income because of the pandemic.

Legal Aid client William Hummel's case is illustrative of what many workers experienced. At high risk for COVID-19 due to health conditions, Mr. Hummel was unable to continue working during the pandemic. He welcomed the news of PUA benefits and was relieved he would be able to buy food and take care of other necessities. However due to the backlog of claims and ODJFS delays, Mr. Hummel did not receive his benefits. Eventually the Legal Aid Society of Columbus filed a petition for a writ of mandamus in Franklin County Common Pleas Court (Case Number 21 CV 003103), leading ODJFS to release his benefits – a year after he

applied for them. During that one-year period he struggled financially and ultimately filed for bankruptcy, incurring court costs, mandatory credit counseling, and attorney's fees.

Mahogany Smith, a mother of six children, became unemployed due to the pandemic and applied for benefits in April of 2021. Due to ODJFS delays and incorrect denials she had still not received benefits by January of 2022. Only after the Legal Aid Society of Columbus filed a mandamus action in the Tenth District Court of Appeals (Case No. 22-AP-000021) were the benefits finally released to her, 271 days after she applied for them. During the delay she struggled to make ends meet, fell behind in rent and utilities and was unable to cover other basic costs of living for her and her family.

The following are additional experiences of other Ohio Legal Aid clients:

- Client endured nearly two years of delays before receiving benefits. During the delay she was evicted, leading to dire consequences. In an email to her Legal Service attorney, she wrote these words:

“[I]t took them 2 months shy of 2 years to pay me the benefits that I was owed. . . it cost me everything I've ever owned. I literally lost everything and I'm sleeping in my car on the freaking Street . . . I mean this has caused serious turmoil and just an all-around uproar in my entire life! I mean I have literally lost everything I have lost things that my children have made me and bought me I have lost things of my father's who is deceased sentimental things that I'm never going to see again.... I lost custody of my son because I couldn't provide stable housing because [they] couldn't get my money out to me in a better time frame than 2 years. How am I going to get that l[o]st time back with my child, I can't.”

- Client was self-employed but was forced to close his company due to pandemic restrictions. He filed for PUA benefits, but after three months of trying to contact ODJFS to resolve issues with his application, had still not

received any of those benefits. To avoid eviction, he ended up placing his belongings in storage and moved in with his family.

- Client became unemployed in April of 2020 due to COVID-19, applied for benefits, but was erroneously flagged as a potential fraud case in July 2020. At the time of her referral, she was nearing her pregnancy due date and living in a homeless shelter. When the misidentification was resolved, she was finally determined to be eligible for unemployment benefits and received eighteen weeks of back pay, allowing her to leave the shelter and secure housing for her and her children.

These client stories are representative of what thousands of Ohioans experienced: Pandemic-related job loss, inability to receive timely benefits due to delays and mistakes by an overwhelmed state agency, and the primary and secondary negative consequences stemming from being unable to pay for basic living expenses.

After Governor DeWine terminated Ohio's participation in the FPUC program, individuals who remained unemployed during the ten-week period from June 27 through September 4, 2021, did not receive up to a maximum of \$3,000 in federal benefits that they otherwise would have received. Should the FPUC program be reinstated for those ten weeks, these Ohioans will finally receive these benefits. For Legal Aid clients who suffered various financial harms and secondary consequences, this money will provide a welcome financial boost, allowing them to get caught up on bills, improve their shelter situation, or begin to repair their credit.

2. While Economic Data Does Indicate Ohio's Labor Force Experienced Changes Due to the Pandemic, there is No Indication FPUC Delayed Employees' Return to Work.

Governor DeWine terminated Ohio's participation in the FPUC program based upon his determination that FPUC benefits "discouraged people from returning to work" which created a

serious problem because employers in Ohio and the country were desperate for employees. (Appellant’s Brief at 7). He believed opting out of the FPUC program would encourage individuals to “find quality, well-paying jobs” and that both employers and workers would benefit in the long run. (Appellant Brief at 8). The Buckeye Institute and the Chamber of Commerce submitted *amicus* briefs citing various articles, reports, and studies to support the contention that the early termination of FPUC actually did improve Ohio’s economy by bringing back workers and lowering unemployment. Some of the articles and reports these amicus briefs cited are dated prior to June 26, 2021, and provided speculation as to what *could* happen if FPUC ended early in Ohio, but obviously could not speak to what actually did happen.³ The cited studies and reports which are dated after June 26, 2021, are more relevant but are not specific to Ohio. Instead, they group Ohio data with data from other States, the majority of which ended all CARES Act unemployment benefits early, not just FPUC.⁴

In contrast, the Bureau of Labor Statistics, also cited in the amicus briefs, does allow one to focus on Ohio-specific monthly changes to unemployment and labor force participation rates. This data, embedded below, clearly establishes that there was no dramatic impact to either indicator after FPUC ended in June 2021. See U.S. Bureau of Labor Statistics, *Data, Tables, & Calculators By Subject (Ohio)* available at <https://data.bls.gov/pdq/SurveyOutputServlet> (last accessed Feb. 5, 2022).

³ E.g. (page citations are to The Buckeye Institute amicus brief filed 1-10-22) June 4, 2020 letter by the Congressional Budget Office (p. 7), December 3, 2020 Wall Street Journal article (p.11), May 24, 2021 CNN article (p. 7).

⁴ CNBC report (p.7-8), Goldman-Sachs study (p. 10), University of Wisconsin-Madison study (p.11), Mercatus Center study (p.11), National Bureau of Economic Research working paper (p.12).

Year: 2020				Year: 2021			
Mo.	labor force participation rate	unemployment rate	Weekly FPUC Paid to Eligible Ohioans	Mo.	labor force participation rate	unemployment rate	Weekly FPUC Paid to Eligible Ohioans
Jan	63.7	4.5		Jan	62.3	5.3	\$300
Feb	63.7	4.7		Feb	62.1	5.0	\$300
Mar	63.1	4.9		Mar	62.1	4.7	\$300
Apr	59.8	16.4	\$600	Apr	62.3	4.7	\$300
May	63.0	14.9	\$600	May	59.9	5.0	\$300
Jun	61.4	10.3	\$600	Jun	60.2	5.2	\$300
Jul	62.0	9.3	\$600	Jul	60.5	5.4	
Aug	62.7	9.0		Aug	60.8	5.4	
Sep	61.2	7.4		Sep	61.1	5.3	
Oct	61.5	5.6		Oct	61.2	5.1	
Nov	61.9	5.6		Nov	61.3	4.8	
Dec	62.2	5.6		Dec	61.5(P)	4.5(P)	

Unemployment rates actually increased in July of 2021, the month after FPUC ended, and the labor force participation rate only saw a minor uptick. These minor shifts are consistent with a May 2021 study on the economic impact of unemployment benefit increases and extensions that were put in place during the Great Recession. *See American Economic Journal: Economic Policy* 2021, *Unemployment Insurance Generosity and Aggregate Employment* 13(2): 58-99 (May 2021) available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/pol.20160613> (last accessed Feb. 4, 2022). Comparing adjacent counties located in neighboring states, the study found that increasing benefits had no statistically significant impact on aggregate employment. *Id.* Regarding extensions of benefits the authors concluded, “our results suggest that the overall employment impact of the sizable UI extensions during the Great Recession was likely modest. At worst, they led to a small

reduction in aggregate employment, and at best, they slightly boosted employment in the local economy.” *Id.* at 98.

Other studies conducted at various points during 2021 corroborate that the States that did not terminate the enhanced unemployment benefits under the CARES Act versus States that did terminate the programs early “just don’t look that different.”⁵ In fact, the Associated Press analyzed state-by-state data and found the workforces in the twenty-five States that maintained FPUC actually grew slightly more from May through September 2021 in comparison to the other States that cut off the payment early.”⁶ Further, a study published in mid-August by researchers from Columbia University, Harvard University, the University of Massachusetts Amherst and the University of Toronto reviewed the impact for low-income and credit-constrained workers and found a similar trend.⁷ Factors such as lack of available childcare and health concerns likely had more of an effect on keeping people from going back to work but to what degree is unclear. *Id.*

Ohio’s unemployment rate peaked at 16.4 percent in April 2020, up from 4.9 percent in March 2020, but within a year had recovered, reaching lows of 4.7 percent in March and April of 2021 when Ohioans were still receiving FPUC benefits provided under the CARES Act. It held between 4.8 and 5.4 percent through November 2021. FPUC benefits stopped in June 2021 when the unemployment rate dipped to 5.2 percent. In July, after FPUC benefits had ended, Ohio’s unemployment rate actually increased to 5.4 percent which held steady through the following

⁵ See Cleveland Plain Dealer, *Jobless Ohioans didn’t surge back to work after state cut extra \$300 unemployment, data suggests* (Dec. 3, 2021) available at <https://www.msn.com/en-us/money/markets/jobless-ohioans-didnt-surge-back-to-work-after-state-cut-extra-dollar300-unemployment-data-suggests/ar-AARoDdg> (last accessed Feb. 1, 2022).

⁶ See Associated Press, *States that cut off jobless aid see no surge of job seekers* (Oct. 22, 2021) available at <https://www.pbs.org/newshour/economy/states-that-cutoff-of-jobless-aid-see-no-surge-of-job-seekers> (last accessed Jan. 31, 2022).

⁷ See Cleveland Plain Dealer, *Jobless Ohioans didn’t surge back to work after state cut extra \$300 unemployment, data suggests* (Dec. 3, 2021) available at <https://www.msn.com/en-us/money/markets/jobless-ohioans-didnt-surge-back-to-work-after-state-cut-extra-dollar300-unemployment-data-suggests/ar-AARoDdg> (last accessed Feb. 1, 2022).

month. These numbers fail to show that ending FPUC early had any positive effect on Ohio's unemployment rate.

Ohio's labor force participation rate experienced minor upticks after July 2021. However, since individuals in receipt of FPUC benefits were already included in the labor force participation calculation, as they were required to complete work search activities to qualify, any movement in these numbers was not the result of the termination of FPUC benefits. See U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey Concepts and Definitions available at* <https://www.bls.gov/cps/definitions.htm#lfpr> (last accessed Feb. 4, 2022). Labor force participation rates use the total number of employed and unemployed workers in the labor force of those age 16 to 64 who are not institutionalized ("labor force") and divides that number by the total civilian noninstitutional population. *Id.* Ohio's labor force participation rate was 63.7 percent in February 2021. In June 2021, the last month that FPUC was available to unemployment claimants, the labor force participation rate was 60.2 percent and changed slightly to 60.5 percent in July 2021 after FPUC ended. The fact that Ohio has lost more than 200,000 citizens in its labor force since February 2020 must be due to other reasons.

When determining the cause of a labor shortage in Ohio, unemployment benefits may be an easy target, but in reality there are many factors outside of unemployment benefits to consider. Ohio's population projections suggest that the number of prime working-age Ohioans, those ages 25 to 54, will continue to shrink through 2025 and will not match its 2015 level until after 2050. See Ohio Department of Job and Family Services, *Ohio Labor Force Nonparticipants: An Asset for Increasing Participation?* (Feb. 2020) *available at* https://ohiolmi.com/_docs/ResearchPublications/publications/Nonparticipation.pdf (last accessed Feb. 4, 2022). Other than increasing migration into the state, the only way to grow the labor force

is to increase labor force participation. *Id.* This means turning labor force nonparticipants into participants and keeping participants from becoming nonparticipants. *Id.*

Ohio's labor force participation rate peaked in 2007 at 67.3 percent before starting a decline in 2008 during the Great Recession. *Id.* Normally, recessions lead to temporary declines in the labor force participation rate because of the lack of jobs but those rates typically rise during the subsequent recovery. *Id.* However, the labor force participation rate after the Great Recession continued to decline well into the recovery. *Id.* Even as the economy began to grow, a smaller proportion of those 16 and older were working or actively looking for work, mostly because of retiring workers in the Baby Boom generation. *Id.*

Ohio has also recognized the demand is growing for workers with bachelor's degrees or higher and has recommended that increasing workers' education levels or obtaining training could increase labor force participation. *Id.* Improvements to labor force participation could also be made through workplace accommodations for individuals with disabilities, reduction of substance use disorders, and increases in the number of private industry jobs in areas with high job competition. *Id.*

In the end, none of the studies, reports, or articles identified in other amicus briefs support the contention that FPUC benefits caused a labor shortage in Ohio. Nor do they establish that the early termination of FPUC benefits resulted in individuals returning to the workforce. What the Bureau of Labor Statistics data does show is minor fluctuations in unemployment and labor force participation rates after FPUC ended that were statistically insignificant changes that could be attributed to a host of other factors.

CONCLUSION

For the foregoing reasons, *amicus curiae* Ohio Legal Aid Organizations, Ohio Poverty Law Center, Policy Matters Ohio, and the Ohio Employment Lawyer's Association respectfully request that this Court affirm the judgment of the Tenth District Court of Appeals in its finding that R.C. 4141.43(I) does compel the Governor to participate in all federal unemployment compensation programs created by the federal CARES Act, including the FPUC program.

Respectfully Submitted,

/s/Kristy A. Michel
Kristy A. Michel (0089088)
Counsel for Amicus Curiae
The Legal Aid Society of Columbus
1108 City Park Avenue
Columbus, Ohio 43206
Phone: (614) 737-0125
Fax: (614) 224-4514
kmichel@columbuslegalaids.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Brief of *Amicus Curiae* Ohio Legal Aid Organizations, Ohio Policy Law Center, Policy Matters Ohio, and the Ohio Employment Lawyers Association in Support of Plaintiff-Appellees of Plaintiffs-Appellees Candy Bowling, David Willis, and Shawnee Huff and Urging Affirmation was served on all counsel of record via the Court's electronic filing system and email on the 9th day of February 2022.

Respectfully Submitted,

/s/ Kristy A. Michel

Kristy A. Michel (0089088)
Counsel for Amicus Curiae
The Legal Aid Society of Columbus
1108 City Park Avenue
Columbus, Ohio 43206
(614) 737-0125 (Office)
(614) 224-4514 (Fax)
kmichel@columbuslegalaid.org (Email)