IN THE SUPREME COURT OF OHIO

CANDY BOWLING, *et al.*

Plaintiffs-Appellees,

v.

MICHAEL DEWINE, in his official capacity as GOVERNOR of the State of Ohio, *et al.*.

Defendants-Appellants.

Case No. 2021-1062

On appeal from the Franklin County Court of Appeals, Tenth Appellate District

Case No.: 21AP000380

APPELLEES' BRIEF

Brian D. Flick (0081605)
Marc E. Dann (0039425)
Emily White (0085662)
DANNLAW
15000 Madison Road
Lakewood, OH 44107
(216) 373-0539 telephone
(216) 373-0536 facsimile
notices@dannlaw.com

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

Counsel for 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, 16th Floor
Columbus, Ohio 43215
Tel: 614-466-2872
bflowers@ohioago.gov

Counsel for Appellants, Mike DeWine, et al.

Larry J. Obhof, Jr. (0088823)
*Counsel of Record
Shumaker, Loop &
Kendrick, LLP
41 South High Street,
Suite 2400
Columbus, OH 43215
(614) 463-9441
lobhof@shumaker.com

Jay R. Carson (0068526)
Robert Alt (0091753)
The Buckeye Institute
88 East Broad Street, Suite 1300
Columbus, Ohio 43215
(614) 224-4422
j.carson@buckeyeinstitute.org
robert@buckeyeinstitute.org

Counsel for Amicus Curiae
The Buckeye Institute

Daniel E. Shuey (0085398)*
*Counsel of Record
Erica M. Rodriguez (0098711)
VORYS, SATER, SEYMOUR AND PEASE
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
Telephone: (614) 464-8277
Fax: (614) 719-4616
deshuey@vorys.com;
emrodriguez@vorys.com

Counsel for amici curiae the Ohio Chamber of Commerce, the Ohio Business Roundtable, the Ohio Restaurant Association, the Ohio Hotel and Lodging Association, the Ohio Grocers Association, the Ohio Trucking Association, the Ohio Manufacturers' Association, the Ohio Council of Retail Merchants, and the Ohio Farm Bureau Federation

Kevin D. Shimp (0097660)
OHIO CHAMBER OF COMMERCE
34 S. Third St., Suite 100
Columbus, OH 43215
Telephone: (614) 228-4201
kshimp@ohiochamber.com

Counsel for amicus curiae the Ohio Chamber of Commerce

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I. INTRODUCTION

"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." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). The same is true of our Governor's authority; it may be circumscribed by the General Assembly. This is part of Ohio's tradition of separation of powers. *State v. Bodyke*, 126 Ohio St.3d 266, 933 N.E.2d 753, 2010-Ohio-2424, ¶ 39 ("The first, and defining, principle of a free constitutional government is the separation of powers.").

Under this system, Ohio's General Assembly makes law and the Governor has a duty to "see that the laws are faithfully executed." Ohio Const. Art. III, Sec. 6. In adopting our State's Constitution, the electorate committed policy-making authority to the General Assembly. *See*, *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."). And it encompasses the public policy enacted by the General Assembly—public policy that is beyond the Governor's power to countermand.

The people granted to the legislature the exclusive authority to make laws providing for the comfort and welfare of Ohio's workforce. Pursuant to that authority, the General Assembly passed Ohio's unemployment compensation laws. In so doing, the General Assembly directed the executive branch to ensure Ohioans receive the benefit of all available federal unemployment programs. It also directed that Ohio's unemployment compensation statutes be interpreted liberally to enlarge the scope of available benefits for Ohio's unemployed. And it reserved to itself the exclusive authority to modify the State's unemployment laws.

The Governor's unilateral decision to terminate Ohio's participation in the FPUC program conflicts with the legislative direction of R.C. § 4141.43(I). It also encroaches on the General Assembly's reservation of authority found in R.C. § 4141.45. Rather than comply with Ohio law, the Governor substituted his policy preferences for those announced by the legislature. Where the people have spoken and the legislature has spoken, the Governor has but limited authority to act. And in this case, he exceeded that authority.

II. STATEMENT OF THE CASE AND THE FACTS

The question before the Court of Appeals was whether the trial court abused its discretion in denying Appellees a preliminary injunction barring the Governor's termination of the FPUC benefits. The trial court's denial of the preliminary injunction was based purely on an interpretation of law. In reversing the trial court, the Court of Appeals found that Appellees possessed a likelihood of success on the merits and concluded that it is "inarguable that R.C. §.4141.43(I) expresses the General Assembly's command to the state, by enlisting the administrative efforts of the executive to procure "all available benefits" under the federal statutes listed." *State ex rel. Bowling v. DeWine*, 10th Dist. Franklin No. 21AP-380, 2021-Ohio-2902, ¶ 38. The State appeals from that decision.

The facts of this case are not in dispute. Appellees supported their complaint with affidavits that the State does not challenge. The parties also entered into stipulations regarding other relevant facts. The real dispute in this case relates to interpretation of the applicable law. Therefore, many of the relevant facts relate to the interplay of new, Covid-related amendments to federal statutes and existing state unemployment statutes.

The Social Security Act's unemployment compensation provisions

In response to economic devastation caused by the Great Depression, Congress enacted the Social Security Act, which included a federal unemployment compensation system. 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).

Pursuant to the Social Security Act's requirements, in 1936 the General Assembly passed House Bill 608, codified at G.C. Chapter 1945. Those statutes are now part of Revised Code Chapter 4141.

The CARES Act enhanced unemployment benefits.

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The CARES Act was Congress's response to the tremendous economic strain the Covid pandemic placed on all sectors of the United States economy. And FPUC was one of the Act's benefits that Congress intended to stabilize the economy and maintain consumer purchasing power by alleviating the financial strain placed on those who, through no fault of their own, could no longer work to support their families.

The CARES Act increased the regular weekly unemployment benefits available under federal unemployment laws. It created three types of benefits: (1) Pandemic Unemployment Assistance ("PUA"); (2) Pandemic Emergency Unemployment Compensation ("PEUC"); and (3) Federal Pandemic Unemployment Compensation ("FPUC"), which increased the amount of unemployment insurance benefit payments a worker could receive by $600 a week. See 15 U.S.C. § 9023. The extra $600 per week was later reduced to $300 per week through the American Rescue Plan Act of 2021 ("ARPA"), Pub L. No. 117-2, § 9011, 9013, 9016.

The CARES Act requires the U.S. Secretary of Labor to provide CARES Act benefits, including FPUC, through agreements with the States. 15 U.S.C. § 9021(f). Pursuant to that statute the Governor executed a contract on behalf of the State of Ohio with the Department of Labor in March 2020. Appendix 1 (*Stipulations*, T.d. 60, Ex. B) ("DOL Agreement"). Through that contract, Ohio accepted all PUA, PEUC, and FPUC benefits available under the CARES Act. *Id.*, ¶ XIV p. 3. The contract also placed several legal and administrative requirements on the State. For example, the contract requires that Ohio's Department of Job and Family Services "apply the methods of administration required by section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) to the functions undertaken pursuant to this Agreement." *Id.*, ¶ X, p. 3.

The operative provision of CARES Act for FPUC benefits is Sec. 2104, entitled "Emergency Increase In Unemployment Compensation Benefits":

> (1) FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.—
> Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to—
> (A) the amount determined under the State law (before the application of this paragraph), ***plus***
> ***(B) an additional amount of $600 (in this section referred to as ''Federal Pandemic Unemployment Compensation'')***.

15 U.S.C. § 9024(b) (emphasis added). Therefore, FPUC is a flat dollar increase to regular weekly unemployment benefits available under the Social Security Act.

Subsection (i) of 15 U.S.C. § 9023 bolsters this conclusion. That provision provides definitions for the FPUC 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). Thus, the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. § 3306) is expressly incorporated into FPUC, and the interpretation of FPUC must be made in conjunction with those statutes.

Federal disbursements to States of FPUC funds.

Although PUA, PEUC and FPUC provided different benefits, all those benefits are administered under 15 U.S.C. § 9021. All monies paid to the states for PUA, PEUC, and FPUC benefits are disbursed from the "extended unemployment compensation account" established by section 1105(a) of title 42 of the Unemployment Trust Fund. 15 U.S.C. § 9021. "Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970." 42 U.S.C. § 1105(c). Similarly, all monies disbursed to states to cover the administrative expenses of administering the CARES Act benefits are paid through the employment security administration account. 15 U.S.C. § 9021(g)(2)(A).

Thus, all monies disbursed to Ohio to pay FPUC benefits and administration expenses are transferred from accounts established under the "Federal-State Extended Unemployment Compensation Act of 1970," which itself is a part of the Social Security Act. 15 U.S.C. § 9021. And all FPUC monies transferred into each state's "extended unemployment compensation account" supplement regular unemployment compensation benefits and then transferred to the state for payment to beneficiaries.

The Governor decides to terminate the DOL Contract.

Although it undoubtedly had the power to do so, the General Assembly took no steps to terminate Ohio's receipt of FPUC benefits. This is notable because the legislature was in session throughout the pandemic and engaged in legislative action in other areas involving the CARES Act programs and funding. Nonetheless, in May 2021, when Ohio seemed to be emerging from the pandemic crisis, the Governor unilaterally decided that the FPUC benefit was obstructing Ohio's path to economic recovery. The Governor cited complaints from businesses that they could not find workers to fill open jobs. The Governor concluded that the enhanced unemployment benefits were keeping workers at home instead of participating in the workforce.

On May 24, 2021, the Governor wrote a letter to the Department of Labor withdrawing the State from the FPUC program effective June 26, 2021. Appendix 2 (*Stipulations*, T.d. 60, Ex.

A). As a result, between June 26, 2021 and September 6, 2021 (the date FPUC benefits terminated under federal law), unemployed Ohioans who otherwise would have qualified for the additional FPUC benefits, instead saw their unemployment benefits reduced.

The impact on Appellees.

Each of the Appellees qualified for the FPUC benefits and continued to be eligible for those benefits on June 26, 2021, when the program ended in Ohio. And each is now suffering the very financial difficulties that FPUC was meant to combat. In fact, the trial court expressly found that each Appellee was in dire economic straits and that the denial of FPUC benefits is causing them irreparable harm. State Appendix 3 (*Decision*, p. 8).

III. ARGUMENT

The Governor's unilateral decision to terminate pandemic related unemployment benefits was unlawful because it was contrary to the General Assembly's legislative mandate and was made without constitutional authority. The General Assembly exercised its exclusive constitutional powers to enact legislation to protect workers when it enacted state legislation for Ohio to join the federal unemployment program. In R.C.§ 4141.43, the legislature issued a clear legislative mandate directing the executive branch to "cooperate" with the U.S. Department of Labor "to the fullest extent" in order "to secure to this state and its citizens all advantages available" that "relate to unemployment compensation" under the Social Security Act. FPUC benefits fall clearly within this provision because they relate to unemployment compensation. Thus, by rejecting available FPUC benefits, the Governor failed to execute his duty to faithfully execute the law.

The State's attempts to justify the decision are without merit. The State's primary argument is that R.C. § 4141.43 does not obligate the State to accept FPUC benefits for unemployed Ohioans. It further argues that the statute does not place any obligations on the State regarding the FPUC benefits specifically. It also asserts that R.C. § 107.17 authorizes the Governor to both execute and terminate the DOL Agreement. Finally, it posits that the Governor, as supreme executive of the State, had the inherent power to terminate the DOL Agreement based on his preferred policy choices.

The State's arguments ignore the overriding objectives of the legislation and disregard the commandment of R.C. § 4141.45 to interpret the unemployment statutes liberally. The arguments require a tortured reading of the statute that is contrary to the plain meaning of the text. Finally, and most disturbingly, the State declares the Governor the ultimate arbiter of Ohio public policy in areas in which there is any arguable ambiguity in the law.

A. R.C. 4141.43 Was Enacted Pursuant to the General Assembly's Exclusive Constitutional Authority to Enact Law and Make Policy Regarding Unemployment Benefits.

The General Assembly enacted Ohio's unemployment statute pursuant to the power granted to it by Art. II, Sec. 34 of the Ohio Constitution. *State v. Iden*, 71 Ohio App. 65, 70-71 (Muskingum Co. 1942). That provision 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 Constitution, Art. II, Sec. 34.

B. R.C. 4141.43 Provides A Clear Statutory Mandate To the Executive to Secure "All Available Benefits" that "Relate to Unemployment Compensation"

Statutory construction begins with an analysis of the plain meaning of language employed by the legislature. "When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said." *Jones v. Action Coupling & Equip., Inc.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12, *citing Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553, 721 N.E.2d 1057 (2000). And an unambiguous statute is to be applied, not interpreted. *McConnell v. Dudley*, 158 Ohio St.3d 388, 2019-Ohio-4740, 144 N.E.3d 369, ¶ 2.

Here, the language of R.C. § 4141.43(I) provides 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) (emphasis added). The emphasized language echoes the liberal construction requirement of R.C. § 4141.46.

The plain meaning of this statutory language, liberally construed to effectuate the purpose of the statute, is that the General Assembly has directed the executive branch, through the agency director, to maximize all unemployment compensation benefits available to Ohioans. There is nothing in the statute to suggest the General Assembly wanted the executive branch to do anything other than maximize unemployment benefits available from the federal government, or that the Governor had the discretion or authority to limit available unemployment compensation benefits.

C. FPUC Benefits Relate to Unemployment Compensation under the Social Security Act.

FPUC benefits fall squarely within the category of "available benefits" that "relate to unemployment compensation" under the Social Security Act that the Ohio General Assembly directed the executive branch to secure in R.C. § 4141.43.

The COVID-19 pandemic, and the ensuing governmental shut-down of a huge portion of the economy, triggered the involuntary unemployment of hundreds of thousands of Ohioans—precisely the kind of economic crisis which the unemployment compensation was designed to alleviate. In response to the unprecedented economic turmoil created by the pandemic, Congress enacted the CARES Act. With respect to FPUC, the CARES Act did two things. First, it authorized the additional weekly benefit to state unemployment recipients, subject to the individual states' acceptance of the benefits. Second, it appropriated monies for that additional weekly benefit, which would be transferred to the States under the provisions of Social Security Act.

FPUC is a benefit that "relate[s] to unemployment compensation" because it is available only to those who received unemployment compensation under the Social Security Act or the Federal-State Extended Unemployment Compensation Act of 1970. The CARES ACT did not establish new eligibility guidelines for FPUC benefits. It did not create a mechanism whereby individuals could make a claim for the benefit outside of that individual's existing state unemployment claim. And while Congress created the FPUC benefit to supplement regular unemployment benefits, entitlement to the benefit is determined exclusively under one of the existing, enumerated statutes.

This interpretation is also consistent with the legislative purpose of the unemployment program, which was to provide relief to the voluntarily unemployed.

Revised Code 4141.46 provides: "Sections 4141.01 to 4141.46, inclusive, of the Revised Code shall be liberally construed." *See also, Lorain County Auditor v. Unemployment Comp*, 113 Ohio St. 3d 124, 130, 2007-Ohio-1247, ¶ 31 (2007). "A liberal construction has been defined as giving 'generously all that the statute authorizes,' and 'adopting the most comprehensive meaning of the statutory terms in order to accomplish the aims of the Act and to advance its purpose, with all reasonable doubts resolved in favor of the applicability of the statute to the particular case. Interpretation and construction should not result in a decision so technical or narrow as to defeat the compensatory objective of the Act.'" *Bailey v. Republic Engineered Steels, Inc*., 91 Ohio St.3d 38, 40, 741 N.E.2d 121 (2001) (citations omitted).

This Court has recognized that "the purpose of R.C. Chapter 4141 is to protect employees from economic adversity." *Lorain Cty. Aud.*, 113 Ohio St.3d 124, ¶ 20 (*citing Tzangas, Plakas & Mannos v. Administrator*, 73 Ohio St. 3d 694, 697 (1995). The statute's purpose is "to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day." *Irvine v. State, Unemployment Compensation Bd. of Review*, 19 Ohio St. 3d 15, 17 (1985) (*quoting Leach v. Republic Steel Corp*., 176 Ohio St. 221, 223 (1964)).

Interpreting the statutory language liberally, and in light of the legislative purpose of providing relief and assistance to Ohio workers, it is clear that the FPUC benefits fall squarely within the "available benefits" that "relate to unemployment compensation" that the legislature intended to maximize.

D. The State's Arguments Are Contrary to the Plain Language And Legislative Purpose of the State Unemployment System.

The State argues that FPUC benefits are not "available under" any of the five statutes listed in R.C. § 4141.43(I) and is thus not covered by the statute. The State that FPUC is a stand-alone program that is utterly independent from the enumerated unemployment statutes. This interpretation is but one example of the State's narrow, technical constructions that contradicts the liberal construction mandate.

FPUC is not a stand-alone benefit. FPUC benefits are tied inextricably to regular unemployment benefits, PUA benefits, or PEUC benefits. No one in Ohio—or in the whole of the United States—received *only* FPUC payments. FPUC benefits were available exclusively as an increase in normal unemployment benefits under the Social Security Act or under the Federal-State Extended Unemployment Compensation Act of 1970, through PUA and PEUC. In sum, the statute calls for the executive to secure all available benefits that "relate to unemployment compensation" and FPUC benefits do in fact relate to unemployment compensation under the Social Security Act.

In its brief, the State concedes this fact:

> First, the Federal Pandemic Unemployment Compensation program, which added dollars to the amount payable for weekly unemployment benefits. This extra money applied to all available unemployment programs for individuals eligible for the base weekly benefit, including traditional unemployment benefits, Pandemic Unemployment Assistance benefits, and Pandemic Emergency Unemployment Compensation.
>
> * * *
>
> States that chose to enroll in the Program secured extra unemployment benefits for their unemployed citizens. *See* 15 U.S.C. § 9023. Between March and July of 2020, eligible individuals in participating States received an extra $600 per week. Later, the amount decreased to $300 per week. *See* 15 U.S.C. §9023(b)(3)(A).

State's Brief, pp. 6-7.

The best that can be said for the State's argument is that FPUC benefits are available under—that is "by reason of" or "depending on its rights upon"—both the CARES Act and the Social Security Act. The benefit is available because both statutes, read in conjunction, make them available. FPUC benefits would not exist but for the CARES Act, while the only way someone could qualify for the extra monies was to be eligible for unemployment benefits under the Social Security Act or PUA/PEUC under the Federal-State Extended Unemployment Compensation Act of 1970.

The State asks the Court to add language to the statute that the General Assembly did not. It asks the Court to conclude that only benefits available *exclusively* under an enumerated statute fall within the scope of R.C. 4141.43(I). There is no suggestion in the language chosen by the legislature to reach such a conclusion.

Alternatively, the State wants the Court to define "available under" to mean funded through an enumerated statute. In making this assertion, it relies on an erroneous conclusion by the Court of Appeals that FPUC funding was not transmitted to Ohio under the provisions of the Social Security Act. The Court of Appeals noted that funding of PUA and PEUC benefits came from the extended unemployment compensation account established under the Social Security Act and transmitted to the State pursuant to 15 U.S.C. 9021(g) and 15 U.S.C. 9025(d) respectively. *Appellate Decision*, ¶ 43. The Court of Appeals then wrongly concluded that FPUC funds were not routed to the states through the extended unemployment compensation account. *Id*. ¶ 44.

While it is true that 15 U.S.C. § 9023 does not contain an express funding mechanism, this is a function of the definition of the PUA and PEUC benefits payable to individuals. For example, 15 U.S.C. § 9021(d), which addresses PUA payments to the states, the amount of the individual PUA benefit is defined as follows:

> (d) AMOUNT OF ASSISTANCE.—
> (1) IN GENERAL.—The assistance authorized under subsection (b) for a week of unemployment, partial unemployment, or inability to work shall be—
> (A)(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; ***and***
> ***(ii) the amount of Federal Pandemic Unemployment Compensation under section 2104;***

15 U.S.C. § 9021(d) (emphasis added). Thus, by definition, FPUC benefits are a part of PUA benefits. They are one and the same for purposes of funding. The same is true of PEUC benefit funding. See, 15 U.S.C. § 9025(b)(3) ("For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment plus the amount of Federal Pandemic Unemployment Compensation under section 2104"). Thus, funding of FPUC is channeled through the extended unemployment compensation account, which was undeniably created by the Social Security Act.

In sum, the FPUC benefits fall precisely within the category of "advantages available" to the citizens of Ohio "related to unemployment compensation" under the Social Security Act that the legislature directed the executive to secure.

E. Any Reasonable Interpretation of R.C. 4141.43(I) Reveals That The Legislature Directed The Executive Branch To Actually Secure All Available Benefits, Not Merely Prepare To Do So.

The State also argues that even if the provisions of R.C. § 4141.43(I) are applicable to FPUC benefits, the statute did not require the State to accept those benefits for Ohio's unemployed. It asserts that the statute requires it only to “get ready” to accept the benefits, not actually secure them. But this argument is disingenuous and contradicts the Governor’s constitutional duty to “see that the laws are faithfully executed.” Ohio Const. Art. III, Sec. 6.

To support its argument, the State focuses on two discrete phrases taken from the middle of R.C. § 4141.43(I). The first is “through the adoption of appropriate rules, regulations, and administrative methods and standards.” The State argues that the duty imposed by the statute is limited to adopting rules and regulations. The second phrase is “as may be necessary to secure” available benefits. This language, argues the State, merely means the State must adopt such rules and regulations needed to prepare to receive benefits.

The State concludes that these phrases, viewed in isolation, impose minimal duties that are limited to the State “put[ting] itself in a position to obtain any available “advantages” under the listed statutes.” If getting new federal unemployment benefits were a footrace, the State believes R.C.4141.43(I) says “ready,” and “set,” the Governor alone having the power to yell “go.” Therefore, it reasons, the Governor was free to terminate the program at any time.

But such a construction is contrary to the plain legislative intent behind R.C.§ 4141.43(I) and Ohio’s unemployment compensation system in general. It asks the Court to construe the statute narrowly and against the State’s securing the available federal benefits.

In its brief, the State repeatedly asserts that the statute requires only the adoption of rules and regulations. This interpretation is both facially incorrect and overly strict. The relevant portion of the statute requires the State to “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 . . ..” R.C. § 4141.43(I).

In numerous points in its brief, the State omits reference to "administrative methods and standards." The term "administrative method" is not defined in Ohio law. A plain meaning of the term is an action in furtherance of administration. It could encompass virtually any step taken to operate an enterprise.

Given the term's breadth, it is no stretch to conclude that entering into a contract is an administrative method. And that is what the State did. It entered into the DOL Agreement as a necessary step in securing for Ohio the advantages of the FPUC program. This interpretation is consistent with a liberal construction of the statute

The State argues that the statute imposes only the duty to prepare to receive new benefits. If this is correct, it would be a prime example of wasteful spending and the inefficiency of government. The State actually argues that its duty under the statute was to spend time and money creating rules, regulations, and methods merely in the off-chance the Governor decided to accept free federal money. This is nonsensical.

Of course, the bigger problem with this interpretation of the statute is that it ignores what administrative steps were necessary to "prepare" to receive FPUC benefits. The most important administrative action needed was to enter into the DOL Agreement. *See*, 15 U.S.C. 9023(a). The DOL Agreement itself placed duties on the State regarding specific rules to apply in the administration of the FPUC benefits. For example, the agreement dictates the allowable methods of paying FPUC benefits to individuals, prohibits reducing regular state unemployment benefits by the amount of FPUC benefits, and imposes duties on the State regarding participant fraud and overpayments. *DOL Agreement*, (*Stipulations*, T.d. 60, Ex. B), p. 6. Each of those contractual provisions requires establishment of necessary rules, regulations, and administrative methods and standards necessary for the State to receive FPUC benefits.

The State over-parses the text of the statute and ignores the statutory objective–securing financial relief for those involuntarily unemployed. It interprets and construes R.C. § 4141.43(I) technically and narrowly "to defeat the compensatory objective of the Act." *See Bailey v. Republic Engineered Steels, Inc.*, *supra,* 91 Ohio St.3d at 40. On the other hand, a liberal construction of the statute, one that gives "generously all that the statute authorizes" and resolves all reasonable doubts in favor of its application. *Id*.

Read liberally, R.C. § 4141.43(I) mandates the State to take such action needed to actually secure all available federal unemployment benefits for Ohio's citizens, whereas the State's proposed reading would frustrate that purpose.

F. R.C. § 107.17 Is Inapplicable To This Situation Because Acceptance of the Funds Was Already Authorized By Ohio Law.

The State argues that R.C. § 107.17 gave the Governor the authority to execute the DOL Agreement and also permitted him to withdraw from it notwithstanding R.C.§ 4141.43. Revised Code 107.17 is a general grant of authority to the Governor to accept dollars doled out for new federal programs. However, that provision has no bearing on this action for two reasons. First, as this Court has acknowledged, R.C. § 107.17 comes into play only if the Governor invokes it through executive order. *State ex rel. Cleveland Right to Life v. Ohio Controlling Bd.,* 138 Ohio St. 3d 57, 2013 Ohio 5632, ¶ 26 (2013). And the Governor issued no executive order regarding the FPUC benefits.

Second, and more importantly, R.C. § 107.17 and R.C.§ 4141.43 are perfectly compatible. Revised Code § 107.17 relates solely to acceptance of monies from a "federal program not authorized by existing state law." Through R.C. § 107.17, the legislature expressly limited the Governor's ability to accept federal funds for programs not yet authorized by Ohio law. No overarching principle of executive power supersedes that statute.

The State's unemployment compensation system was established in 1936 to comply with the Social Security Act's requirements. And R.C. § 4141.43(I), which authorizes the State to take all action necessary to maximize federal unemployment benefits for Ohioans, has been in place for 60 years. Ohio's receipt of federal unemployment compensation benefits under the Social Security Act is certainly a federal program authorized by existing state law. Thus, R.C. § 107.17 has no applicability to this case.

However, the fact the Governor did not invoke R.C. § 107.17 is an acknowledgement that FPUC was not a new, stand-alone program. If, as the State argues, FPUC was a new and independent program, R.C. § 107.17 was the only avenue available to the Governor to accept the monies. But the Governor never issued an executive order invoking R.C. § 107.17. Therefore, the executive authority to enter into the DOL Agreement had to come from elsewhere.

Of course, acceptance of FPUC benefits was already authorized by Ohio law. R.C. § 4141.43(I) authorized the Governor to take such action as was necessary to secure the FPUC benefits as an advantage available under the Social Security Act. No other provision of Ohio law gave the Governor the power to enter into the DOL agreement.

G. Even if R.C. 4141.43(I) does not require the State to secure available benefits, it does not follow that the Governor had the authority to terminate the State's participation in FPUC.

The State reasons that if Ohio was not obligated under R.C. § 4141.43(I) to accept FPUC benefits in the first place the Governor was free to terminate the agreement at any time. That logic is flawed. Whether the Governor was bound by law to enter the DOL Agreement is not the core issue in this case. The issue is whether the Governor could, after binding the State to the SOL Agreement, also terminate it on his own, without legislative input.

1. Neither the FPUC statute nor the DOL Agreement dictate how, under state law, the Agreement could be terminated.

The State makes the argument that 15 U.S.C. § 9023(a), as well as the DOL Agreement itself, provide that a state may terminate the contract on 30-days' notice. It then concludes that those provisions also give the Governor the unilateral power to terminate the Agreement. That conclusion, however, does not logically flow from the premise.

The agreement is between the Department of Labor and the State. The Governor is not personally a party to it. Further, the statutory provision and the contract grant the right to terminate the agreement to the "State." It does not, however, dictate *how* the State decides whether to terminate. The federal statute does not grant such authority to the Governor, nor could it, as that is a power reserved to the legislature under the Ohio Constitution. The precise legal mechanism required to invoke a state's exercise of its right to terminate the agreement is therefore left to state law.

2. The Governor did not possess the inherent power to terminate the DOL Agreement.

The State argues that the Governor is presumed to have the authority to terminate the agreement because he holds the "supreme executive power" in the state. Therefore, it asserts, the Governor is *presumed* to possess all power not explicitly denied him by the General Assembly. The State concludes by warning this Court not to step on the Governor's political toes when considering this case. This analysis ignores relevant provisions of both the Constitution and Chapter 4141.

While the Governor holds the State's executive power, he is also charged with the duty to "see that the laws are faithfully executed." Ohio Const. Art. III, Sec. 6. That provision encompasses all of Ohio's laws, not just those the Governor deems worthy.

As stated above, Ohio's citizens adopted Article II, Section 34 of the Constitution. That section reads:

> 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. "The authority vested in the General Assembly by Article II, Section 34 to pass laws advancing employees' comfort and general welfare therefore includes laws providing for the assistance, support, well-being, and prosperity of Ohio's working people." *City of Cleveland v. State*, 157 Ohio St. 3d 330, 335, 2019-Ohio-3820, ¶ 23. "We have described the language used in Section 34 as 'so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary. * * * [I]t is the duty of courts to enforce the provision as written.' " *Id*., ¶ 20 (*quoting Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 15, 539 N.E.2d 103 (1989)").

Ohio's unemployment compensation system was expressly designed to provide assistance and support to Ohio workers during times of involuntary unemployment. "Unemployment benefits provide cash to a newly unemployed worker 'at a time when otherwise he would have nothing to spend,' serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or private charity." *California Human Resources Dept. v. Java*, 402 U.S. 121, 132 (1971); *see also, Irvine v. State, Unemployment Compensation Bd. of Review*, 19 Ohio St. 3d 15, 17 (1985) ("Essentially, the Act's purpose is 'to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.' " (citations omitted)). Thus, Revised Code Chapter 4141 falls plainly under the General Assembly's broad authority granted by Article II, Section 34.

Any exercise of executive power relating to a law enacted pursuant to Art. 2, Sec. 34 must, therefore, be viewed skeptically. This is even more true when the executive branch tampers with unemployment benefits provided under R.C. Chapter 4141. As part of that Chapter, the General Assembly passed R.C. § 4141.45, which reads: "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 provision ensures that rights conferred under existing unemployment compensation laws can be terminated or modified only by the General Assembly.

The legislature made clear its intent to protect unemployment compensation benefits from interference by the executive branch. That provision, enacted under the umbrella of Art. 2, Sec. 34, may not be ignored by the Governor. No action by the Governor, without the authority of the legislature, may modify or terminate an eligible worker's benefits.

3. If the Governor Disagreed with Ohio's Continued Participation in the FPUC Program He Should have gone to the General Assembly, not acted unilaterally.

Through Art. II, Sec. 34, the people gave broad power to the General Assembly to provide for Ohio's workforce. The General Assembly then exercised that power by enacting the unemployment laws, including R.C. § 4141.43(I). It also mandated that those laws be liberally construed so as to maximize available benefits for unemployed workers. R.C. § 4141.46. And it expressly reserved to itself the power to alter the rights and benefits provided under those laws. R.C. § 4141.45.

Nothing in Ohio law grants to the Governor any unilateral authority to alter the unemployment system or the rights and benefits granted to workers. The legislature retained that power itself. Once rights were conferred under the unemployment compensation system, the Governor could not alter those rights through executive action. Only the General Assembly could do so pursuant to R.C.§ 4141.45.

This is not to say that the Governor could not have terminated the DOL Agreement. Revised Code § 4141.45 provided a path for the Governor to do so, with the consent of the General Assembly. All he had to do was ask.

In addition to his specific constitutional and statutory duties, the Governor 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. There was nothing to stop the Governor from communicating with the General Assembly and proposing legislation that would alter the requirements of R.C. 4141.43(I) and permit him to terminate the DOL Agreement.

"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.").

This 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.

The General Assembly having reserved to itself the power to alter Ohio's unemployment laws, the Governor's termination of FPUC benefits usurped that power in violation of the principles of separation of powers.

IV. CONCLUSION

Ohio law evinces a strong commitment to protect Ohio's workforce. And the people entrusted that commitment to the General Assembly. Pursuant to that power, the General Assembly employed the legislative process to make the clear policy decision to provide Ohio workers with all available federal unemployment benefits. And it directed the executive branch to do what was needed to secure those benefits.

The people of Ohio expected the Governor to respect this legal framework. They did not want significant policy decisions–decisions that would affect hundreds of thousands of Ohioans–to be made by a single person. Such decisions were to be made only by the legislature. Unfortunately, that did not happen.

Instead, the Governor substituted his policy preferences for those of the General Assembly. Even though Ohio's unemployed qualified for FPUC benefits available under the unemployment system, the Governor decided they should not get those benefits. He decided that he knew better than the people, who placed the topic of worker protection in the hands of the General Assembly. He thought he knew better than the General Assembly, which reserved to itself the power to alter the laws under which benefits were awarded to the unemployed. And he ignored the plain purpose of the unemployment system to provide support and subsistence to workers during precarious economic times.

The pandemic caused massive disruption to Ohio's society and wreaked havoc on the economy. Millions of Americans saw their economic lives thrown into turmoil. Congress responded by throwing a lifeline to those who found themselves suddenly unemployed through no fault of their own. The question before the Court is whether it was solely within the Governor's discretion to accept that lifeline for Ohio's unemployed and, more importantly, to decide when to cut it.

The Court of Appeals was correct in holding that the plain meaning of R.C. 4141.43(I) removed all discretion from the executive branch. Its intent was to maximize benefits to Ohio's workers in their time of need.

For the foregoing reasons, Appellees ask the Court to affirm the decision of the 10th District Court of Appeals and to remand this case to the trial court.

Respectfully submitted,

/s/ Marc E. Dann
Brian D. Flick (0081605)
Marc E. Dann (0039425)
Emily White (0085662)
DANNLAW
15000 Madison Road
Lakewood, OH 44107
(216) 373-0539 telephone
(216) 373-0536 facsimile
notices@dannlaw.com

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

Counsel for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022 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, and by email directly to counsel on the date of filing.

/s/ Andrew M. Engel
Andrew M. Engel

Counsel for Appellees

EXHIBIT B
ODJFS - UDOL Agreement

Agreement Implementing the
Relief for Workers Affected by Coronavirus Act

AGREEMENT BETWEEN

THE STATE OF OHIO

AND

THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR

The Secretary of Labor, U.S. Department of Labor, and the State of Ohio, in order to carry out the provisions of the Relief for Workers Affected by Coronavirus Act (Public Law 116-136), hereinafter referred to as the "Act," hereby agree as follows:

I. The Ohio Department of Job and Family Services, State Workforce Agency, hereinafter referred to as the "Agency," will make payments of benefits in accordance with the provisions of the Act identified in paragraph XIV, and any future amendments thereto (which are incorporated herein by reference), and will cooperate with the U.S. Department of Labor (Department of Labor), and with other state agencies in making such payments.

II. The Agency and other state officials concerned will perform all of the functions and duties undertaken pursuant to the provisions of the Act identified in paragraph XIV in accordance with the terms of this Agreement, and all guidance or operating instructions issued by the Department of Labor.

III. This Agreement will immediately terminate with respect to any of the provisions of the Act identified in paragraph XIV and no further benefits will be payable under such provision or provisions of the Act identified in paragraph XIV, upon the Department of Labor's determination that the state did not comply with all of the requirements of such provision or provisions of the Act identified in paragraph XIV, or any applicable guidance or operating instructions issued by the Department of Labor.

IV. The Agency will maintain such records pertaining to the administration of each provision of the Act identified in paragraph XIV as the Department of Labor requires, and will make all such records available for inspection, examination, and audit by such federal officials or employees as the Department of Labor may designate or as may be required by law.

V. The Agency will furnish to the Department of Labor such information and reports as the Department of Labor determines are necessary or appropriate for carrying out the purposes of the provisions of the Act identified in paragraph XIV

VI. Payments to States.

A. The Agency will be paid from time to time, in advance, the amount of the estimated cost of the benefits to be paid or reimbursed the amount of benefits already paid by the Agency under this Agreement regarding the provisions of the Act identified in paragraph XIV. This amount may be reduced or increased by any amount which the Secretary of Labor finds that the prior estimate for any calendar month was greater or less than the amount which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Department of Labor and the Agency.

B. The Agency also will be paid, from funds appropriated for such purpose, the amounts the Department of Labor determines to be necessary in the state for the proper and efficient administration of the provisions of the Act identified in paragraph XIV under this Agreement.

VII. The Agency will use all money paid to the state pursuant to this agreement for the payment of benefits, and related administrative costs, for the purpose for which the money was paid to the state, and will return to the United States Treasury, upon request of the Department of Labor, any such money (a) if the Department of Labor finds that the money is not needed for such purpose or that the money has been used for a purpose other than that for which it was paid, or (b) on termination of this Agreement. The "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 apply to funds distributed under this Agreement. Additionally, the Notice of Award issued will include other terms and conditions that may be applicable to these grants.

VIII. Consistent with the requirements of the provisions identified in paragraph XIV, and the related addenda, the Agency will take such action as reasonably may be necessary to recover for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits or the administration of this Agreement.

IX. To the extent that agencies of the state obtain bonds to protect funds of the state, the Agency will obtain bonds to protect funds made available to it for the payment of benefits and the costs of administration of this Agreement. The pro rata cost of such bonds shall be considered a necessary cost of the administration. If under state law the state acts as a self-insurer of state funds and does not obtain bonds to protect them, the Agency shall so inform the Department of Labor in writing and in such case the state will act as a self-insurer with respect to funds which are paid to the state under this Agreement.

X. The Agency will apply the methods of administration required by section 303(a)(l) of the Social Security Act (42 U.S.C. 503(a)(l)) to the functions undertaken pursuant to this Agreement.

XI. This Agreement with respect to any of the provisions identified in paragraph XIV may be terminated by either party on thirty days' written notice. If the Agreement is terminated with respect to any of the provisions identified in paragraph XIV of this Agreement, the Agency will process and pay benefits for all weeks of unemployment which end prior to the date of termination for which such payments are due.

XII. A state may enter into a subsequent Agreement with respect to any additional provisions identified in paragraph XIV that were not included in a prior Agreement.

XIII. This Agreement shall be effective when both parties have signed it.

XIV. This Agreement applies to the provisions in the Act that the State agrees to implement by checking the box below. By checking the box, the State agrees to participate in the provision's program and abide by the requirements in the statute, operating instructions and guidance, and program-specific addendum attached to this Agreement:

- ✓ Pandemic Unemployment Assistance (Section 2102), Addendum No. 1
- ✓ Emergency Unemployment Relief For Governmental Entities And Nonprofit Organizations (Section 2103)
- ✓ Emergency Increase in Unemployment Compensation Benefits - Federal Pandemic Unemployment Compensation (Section 2104), Addendum No. 2
- ✓ Temporary Full Federal Funding Of The First Week Of Compensable Regular Unemployment For States With No Waiting Week (Section 2105), Addendum No. 3
- ✓ Pandemic Emergency Unemployment Compensation (Section 2107), Addendum No. 4

3/27/20

John P. Pallasch   Date

Assistant Secretary for
Employment and Training

U.S. Department of Labor

By ____________________

(State Signatory)   Date MARCH 28, 2020

GOVERNOR

(Title)

DATE: 28 MARCH 2020

For the State of: OHIO

CERTIFICATION OF AUTHORITY

NAME: ____________________

TITLE: ____________________

I hereby certify that the above-named person has the authority under the Constitution and laws of this state to sign this Agreement on behalf of the state.

____

Signature

____

Title

____

Date

Addendum No. 1
Pandemic Unemployment Assistance

The state of Ohio agrees to follow the requirements of section 2102 of the Relief for Workers Affected by Coronavirus Act, including the following:

I. For purposes of administering Pandemic Unemployment Assistance, except where contrary to the statute or operating instructions or guidance, the state will administer the program in accordance with the Disaster Unemployment Assistance regulations at 20 CFR Part 625, including follow the provisions for fraud and overpayments.

II. Pandemic Unemployment Assistance is payable for weeks of unemployment beginning on January 27, 2020.

Addendum No. 2
Emergency Increase in Unemployment Compensation Benefits –
Federal Pandemic Unemployment Compensation

The state of Ohio agrees to follow the requirements of section 2104 of the Relief for Workers Affected by Coronavirus Act, including the following:

I. Federal Pandemic Unemployment Compensation – The state agrees to make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the state law were applied, with respect to any week for which the individual is otherwise entitled under the state law to receive regular compensation, as if such state law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week is equal to the amount determined under state law plus an additional amount of $600.

II. Allowable Methods of Payment – Any Federal Pandemic Unemployment Compensation shall be payable either—as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

III. Non-reduction Rule – The state will not modify its state law, regulations, or policies in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement (determined disregarding any Federal Pandemic Unemployment Compensation) will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law, as in effect on January 1, 2020.

   a. For purposes of this provision, maximum benefit entitlement means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.

IV. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual—

   a. Shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

b. Shall be subject to prosecution under section 1001 of title 18, United States Code.

V. Repayment –In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the state shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the state agency, except that the state agency may waive such repayment if it determines that –

a. The payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

b. Such repayment would be contrary to equity and good conscience.

VI. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.

VII. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

VIII. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

Addendum No. 3
Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week

The state of Ohio agrees to follow the requirements of section 2105 of the Relief for Workers Affected by Coronavirus Act, including the following:

I. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment for the waiting week to which such individual was not entitled, such individual shall be subject to prosecution under section 1001 of title 18, United States Code.

II. Repayment –In the case of individuals who have received payment for the waiting week to which they were not entitled, the state shall require such individuals to repay the waiting week payment to the state agency, except that the state agency may waive such repayment if it determines that –
   a. The payment of such waiting week amounts was without fault on the part of any such individual; and
   b. Such repayment would be contrary to equity and good conscience.

III. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the waiting week to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.

IV. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

V. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

Addendum No. 4
Pandemic Emergency Unemployment Compensation

The state of Ohio agrees to follow the requirements of section 2107 of the Relief for Workers Affected by Coronavirus Act, including the following:

I. The state will make payments of Pandemic Emergency Unemployment Compensation to individuals who –

   a. Have exhausted all rights to regular compensation under the state law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

   b. Have no rights to regular compensation with respect to a week under such law or any other state unemployment compensation law or to compensation under any other Federal law;

   c. Are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

   d. Are able to work, available to work, and actively seeking work.

II. For purposes of I.a., an individual has exhausted all rights to regular compensation under a state law when –

   a. No payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

   b. Such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

III. For purposes of section I.d., the term actively seeking work means that an individual –

   a. Is registered for employment services in such a manner and to such extent as prescribed by the state agency;

   b. Has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the state;

   c. Has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

   d. When requested, has provided such work search record to the state agency.

IV. Flexibility – The state will provide flexibility in meeting the requirement in III. if an individual is unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

V. Non-reduction Rule – The state will not modify its state law, regulations, or policies in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law, as in effect on January 1, 2020.

a. For purposes of this provision, maximum benefit entitlement means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.

VI. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Pandemic Emergency Unemployment Compensation to which such individual was not entitled, such individual—

a. Shall be ineligible for further Pandemic Emergency Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

b. Shall be subject to prosecution under section 1001 of title 18, United States Code.

VII. Repayment –In the case of individuals who have received amounts of Pandemic Emergency Unemployment Compensation to which they were not entitled, the state shall require such individuals to repay the amounts of Pandemic Emergency Unemployment Compensation to the state agency, except that the state agency may waive such repayment if it determines that –

a. The payment of such Pandemic Emergency Unemployment Compensation was without fault on the part of any such individual; and

b. Such repayment would be contrary to equity and good conscience.

VIII. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any Pandemic Emergency Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.

IX. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

X. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

EXHIBIT A
Letter to DOL - Susan LeVine

Appendix B

MIKE DEWINE
GOVERNOR OF OHIO

Administration
Office 614.644.3555

77 S. High Street, 30th Floor
Columbus, OH 43215
www.governor.ohio.gov

May 24, 2021

Suzan LeVine
Principal Deputy Assistant Secretary for Employment and Training
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Principal Deputy Assistant Secretary LeVine,

Ohio intends to end its administration of the Federal Pandemic Unemployment Compensation (FPUC) benefit and the Mixed Earner Unemployment Compensation (MEUC) program[1]. The above-named programs will end with the week ending June 26, 2021. Ohio's economy is showing positive trends, with a current low unemployment rate of 4.7 percent, and more than 43 percent of Ohioans have received at least one dose of the COVID-19 vaccine, with more Ohioans being vaccinated daily.

The FPUC money has been a great help to Ohioans in need, especially at the height of the pandemic. Like so many Americans, Ohioans suddenly found themselves without a job, through no fault of their own. This extra money – on top of base unemployment benefits – helped buy groceries and pay rent.

When this program was implemented, it was a lifeline at a time when the only weapon we had in fighting the virus was to slow its spread through social distancing, masking, and sanitization. We are now in the economic recovery stage of the pandemic. As I travel the state, employers are telling me that their businesses are coming back. You can see it as you drive through any part of Ohio with many signs looking for workers and offering signing bonuses. The need for workers is apparent in many industries, including restaurants, retail, and manufacturing. The shortage of workers is having a real impact on our supply chain and the cost and availability of goods we rely on to keep our state moving.

It is clear that Ohio workers are no longer out of work because of the pandemic shutdown. The FPUC extra $300 a week in assistance is now discouraging some from returning to work. This assistance was always intended to be temporary. Now is the time to end it. We understand from the federal Department of Labor that ending FPUC means that Ohio is also required to end the

[1] Pursuant to guidance by the federal Department of Labor on May 21, 2021, the Continued Assistance for Unemployed Workers Act of 2020 does not provide states the right to participate in the MEUC program without also participating in FPUC.

MEUC program for individuals in traditional unemployment who have shown proof of earnings in self-employment of at least $5,000.

The State of Ohio hereby gives its 30-day written notice of its intent to terminate administration of the FPUC benefit and the MEUC program, which were authorized by Section 2104 of the CARES Act. This decision is pursuant to Paragraph XI of the Agreement Implementing the Relief for Workers Affected by Coronavirus Act, executed March 28, 2020, as amended.

The Ohio Department of Job and Family Services will continue to pay FPUC and the MEUC extra $100 on all eligible claims for the period on or before June 26, 2021, whether or not those claims are fully resolved by that date.

Very respectfully yours,

Mike DeWine

Mike DeWine
Governor

TITLE II—ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

Subtitle A—Unemployment Insurance Provisions

Relief for Workers Affected by Coronavirus Act.

SEC. 2101. SHORT TITLE.

15 USC 9001 note.

This subtitle may be cited as the "Relief for Workers Affected by Coronavirus Act".

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

15 USC 9021.

(a) DEFINITIONS.—In this section:

(1) COVID–19.—The term "COVID–19" means the 2019 Novel Coronavirus or 2019-nCoV.

(2) COVID–19 PUBLIC HEALTH EMERGENCY.—The term "COVID–19 public health emergency" means the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.

(3) COVERED INDIVIDUAL.—The term "covered individual"—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;

(ii) the individual has to quit his or her job as a direct result of COVID–19;

(jj) the individual's place of employment is closed as a direct result of the COVID–19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

(4) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(5) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID–19.—Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual—

Time period.

(A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19—

(i) beginning on or after January 27, 2020; and

(ii) ending on or before December 31, 2020; and

(B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

(3) ASSISTANCE FOR UNEMPLOYMENT BEFORE DATE OF ENACTMENT.—The Secretary shall establish a process for making assistance under this section available for weeks beginning on or after January 27, 2020, and before the date of enactment of this Act. Time period.

(d) AMOUNT OF ASSISTANCE.—

(1) IN GENERAL.—The assistance authorized under subsection (b) for a week of unemployment, partial unemployment, or inability to work shall be—

(A)(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; and

(ii) the amount of Federal Pandemic Unemployment Compensation under section 2104; and

(B) in the case of an increase of the weekly benefit amount after the date of enactment of this Act, increased in an amount equal to such increase.

(2) CALCULATIONS OF AMOUNTS FOR CERTAIN COVERED INDIVIDUALS.—In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 2104.

(3) ALLOWABLE METHODS OF PAYMENT.—Any assistance provided for in accordance with paragraph (1)(A)(ii) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as the assistance provided for in paragraph (1)(A)(i) is payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any assistance provided for in paragraph (1)(A)(i).

(e) WAIVER OF STATE REQUIREMENT.—Notwithstanding State law, for purposes of assistance authorized under this section, compensation under this Act shall be made to an individual otherwise eligible for such compensation without any waiting period.

(f) AGREEMENTS WITH STATES.—

(1) IN GENERAL.—The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies.

(2) PAYMENTS TO STATES.—There shall be paid to each State which has entered into an agreement under this subsection an amount equal to 100 percent of—

(A) the total amount of assistance provided by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary), including any administrative expenses necessary to facilitate processing of applications for assistance under this section online or by telephone rather than in-person.

Reimbursement. Determination. Estimate.

(3) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this subsection shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subsection for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(g) FUNDING.—

(1) ASSISTANCE.—

(A) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used to make payments to States pursuant to subsection (f)(2)(A).

(B) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(2) ADMINISTRATIVE EXPENSES.—

(A) IN GENERAL.—Funds in the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section

904(a) of such Act (42 U.S.C. 1104(a)) shall be used to make payments to States pursuant to subsection (f)(2)(B).

(B) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(3) CERTIFICATIONS.—The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under paragraphs (1) and (2).

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE.—Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if—

Applicability. Definitions.

(1) the term "COVID–19 public health emergency" were substituted for the term "major disaster" each place it appears in such section 625; and

(2) the term "pandemic" were substituted for the term "disaster" each place it appears in such section 625.

SEC. 2103. EMERGENCY UNEMPLOYMENT RELIEF FOR GOVERNMENTAL ENTITIES AND NONPROFIT ORGANIZATIONS.

15 USC 9022.

(a) FLEXIBILITY IN PAYING REIMBURSEMENT.—The Secretary of Labor may issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws.

(b) FEDERAL FUNDING.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

"Transfers for Federal Reimbursement of State Unemployment Funds

"(i)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the transfer of funds during the applicable period to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with the succeeding provisions of this subsection.

"(B) The amount of funds transferred to the account of a State under subparagraph (A) during the applicable period shall, as determined by the Secretary of Labor, be equal to one-half of the amounts of compensation (as defined in section 3306(h) of the Internal Revenue Code of 1986) attributable under the State law to service to which section 3309(a)(1) of such Code applies that were paid by the State for weeks of unemployment beginning and ending during such period. Such transfers shall be made at such times as the Secretary of Labor considers appropriate.

"(C) Notwithstanding any other law, funds transferred to the account of a State under subparagraph (A) shall be used exclusively to reimburse governmental entities and other organizations described in section 3309(a)(2) of such Code for amounts paid (in lieu of contributions) into the State unemployment fund pursuant to such section.

Definition. Time period.

"(D) For purposes of this paragraph, the term 'applicable period' means the period beginning on March 13, 2020, and ending on December 31, 2020.

"(2)(A) Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the Federal unemployment account such sums as the Secretary of Labor estimates to be necessary for purposes of making the transfers described in paragraph (1).

"(B) There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in subparagraph (A) and such sums shall not be required to be repaid.".

15 USC 9023.

SEC. 2104. EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary").

Time period. Notification.

Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to—

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of $600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

(2) ALLOWABLE METHODS OF PAYMENT.—Any Federal Pandemic Unemployment Compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

(c) NONREDUCTION RULE.—

Determination.

(1) IN GENERAL.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State

law of that State has been modified in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement (determined disregarding any Federal Pandemic Unemployment Compensation) will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on January 1, 2020.

(2) MAXIMUM BENEFIT ENTITLEMENT.—In paragraph (1), the term "maximum benefit entitlement" means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year. Definition.

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(i) the total amount of Federal Pandemic Unemployment Compensation paid to individuals by the State pursuant to such agreement; and

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary). Determination.

(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved. Reimbursement. Determination. Estimate.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

(e) APPLICABILITY.—An agreement entered into under this section shall apply to weeks of unemployment— Time period.

(1) beginning after the date on which such agreement is entered into; and

(2) ending on or before July 31, 2020.

(f) FRAUD AND OVERPAYMENTS.—

(1) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result

of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual—

(A) shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

(2) REPAYMENT.—In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) RECOVERY BY STATE AGENCY.—

Time period.

(A) IN GENERAL.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

Determination.
Notification.

(B) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

Determination.

(4) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(2) to the same extent and in the same manner as if those benefits were regular compensation.

(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND CHIP.—The monthly equivalent of any Federal pandemic unemployment compensation paid to an individual under this section shall be disregarded when determining income for any purpose under the programs established under titles XIX and title XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) .

(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 the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary;

(C) pandemic unemployment assistance under section 2102; and

(D) pandemic emergency unemployment compensation under section 2107.

SEC. 2105. TEMPORARY FULL FEDERAL FUNDING OF THE FIRST WEEK OF COMPENSABLE REGULAR UNEMPLOYMENT FOR STATES WITH NO WAITING WEEK. 15 USC 9024.

(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement. Time period. Notice.

(b) REQUIREMENT THAT STATE LAW DOES NOT APPLY A WAITING WEEK.—A State is eligible to enter into an agreement under this section if the State law (including a waiver of State law) provides that compensation is paid to individuals for their first week of regular unemployment without a waiting week. An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the State law no longer meets the requirement under the preceding sentence. Determination.

(c) PAYMENTS TO STATES.— Determinations.

(1) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(A) the total amount of regular compensation paid to individuals by the State for their first week of regular unemployment; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(2) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the

Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(d) FUNDING.—

(1) COMPENSATION.—

(A) IN GENERAL.—Funds in the Federal unemployment account (as established by section 905(g)) of the Unemployment Trust Fund (as established by section 904(a)) shall be used to make payments under subsection (c)(1)(A).

(B) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the Federal unemployment account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(2) ADMINISTRATIVE EXPENSES.—

(A) IN GENERAL.—Funds in the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used to make payments to States pursuant to subsection (c)(1)(B).

(B) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(3) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

Time period.

(e) APPLICABILITY.—An agreement entered into under this section shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into; and

(2) ending on or before December 31, 2020.

Applicability.

(f) FRAUD AND OVERPAYMENTS.—The provisions of section 2107(e) shall apply with respect to compensation paid under an agreement under this section to the same extent and in the same manner as in the case of pandemic emergency unemployment compensation under such section.

(g) DEFINITIONS.—For purposes of this section, the terms “regular compensation”, “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).

SEC. 2106. EMERGENCY STATE STAFFING FLEXIBILITY.

Section 4102(b) of the Emergency Unemployment Stabilization and Access Act of 2020 (contained in division D of the Families First Coronavirus Response Act) is amended— *Ante*, p. 194.

(1) by striking "or employer experience rating" and inserting "employer experience rating, or, subject to the succeeding sentence, personnel standards on a merit basis"; and

(2) by adding at the end the following new sentence: "The emergency flexibility for personnel standards on a merit basis shall only apply through December 31, 2020, and is limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.". Termination date.

SEC. 2107. PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION. 15 USC 9025.

(a) FEDERAL-STATE AGREEMENTS.—

(1) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement. Time period. Notification.

(2) PROVISIONS OF AGREEMENT.—Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(3) EXHAUSTION OF BENEFITS.—For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(B) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(4) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this section—

(A) the amount of pandemic emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to—

(i) the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment; and

(ii) the amount of Federal Pandemic Unemployment Compensation under section 2104;

(B) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for pandemic emergency unemployment compensation and the payment thereof, except where otherwise inconsistent with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section;

(C) the maximum amount of pandemic emergency unemployment compensation payable to any individual for whom an pandemic emergency unemployment compensation account is established under subsection (b) shall not exceed the amount established in such account for such individual; and

(D) the allowable methods of payment under section 2104(b)(2) shall apply to payments of amounts described in subparagraph (A)(ii).

Applicability. Determination.

(5) COORDINATION RULE.—An agreement under this section shall apply with respect to a State only upon a determination by the Secretary that, under the State law or other applicable rules of such State, the payment of extended compensation for which an individual is otherwise eligible must be deferred until after the payment of any pandemic emergency unemployment compensation under subsection (b) for which the individual is concurrently eligible.

(6) NONREDUCTION RULE.—

Determination.

(A) IN GENERAL.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on January 1, 2020.

Definition.

(B) MAXIMUM BENEFIT ENTITLEMENT.—In subparagraph (A), the term "maximum benefit entitlement" means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.

(7) ACTIVELY SEEKING WORK.—

(A) IN GENERAL.—Subject to subparagraph (C), for purposes of paragraph (2)(D), the term "actively seeking work" means, with respect to any individual, that such individual— Definition.

(i) is registered for employment services in such a manner and to such extent as prescribed by the State agency;

(ii) has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;

(iii) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

(iv) when requested, has provided such work search record to the State agency.

(B) FLEXIBILITY.—Notwithstanding the requirements under subparagraph (A) and paragraph (2)(D), a State shall provide flexibility in meeting such requirements in case of individuals unable to search for work because of COVID–19, including because of illness, quarantine, or movement restriction.

(b) PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.—

(1) IN GENERAL.—Any agreement under this section shall provide that the State will establish, for each eligible individual who files an application for pandemic emergency unemployment compensation, an pandemic emergency unemployment compensation account with respect to such individual's benefit year.

(2) AMOUNT IN ACCOUNT.—The amount established in an account under subsection (a) shall be equal to 13 times the individual's average weekly benefit amount, which includes the amount of Federal Pandemic Unemployment Compensation under section 2104, for the benefit year.

(3) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment plus the amount of Federal Pandemic Unemployment Compensation under section 2104.

(c) PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.—

(1) IN GENERAL.—There shall be paid to each State that has entered into an agreement under this section an amount equal to 100 percent of the pandemic emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(2) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this section or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of

any compensation to the extent the State is entitled to reimbursement under this section in respect of such compensation.

Reimbursement. Estimate.

(3) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this section shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(d) FINANCING PROVISIONS.—

(1) COMPENSATION.—

(A) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used for the making of payments to States having agreements entered into under this section.

(B) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(2) ADMINISTRATION.—

(A) IN GENERAL.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a)) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this section.

(B) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(3) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each

State the sums payable to such State under this subsection. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

(e) FRAUD AND OVERPAYMENTS.—

(1) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of pandemic emergency unemployment compensation under this section to which such individual was not entitled, such individual—

(A) shall be ineligible for further pandemic emergency unemployment compensation under this section in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

(2) REPAYMENT.—In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that— Waiver authority. Determination.

(A) the payment of such pandemic emergency unemployment compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) RECOVERY BY STATE AGENCY.—

(A) IN GENERAL.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State. Time period.

(B) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final. Determination. Notification.

(4) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(f) DEFINITIONS.—In this section, the terms "compensation", "regular compensation", "extended compensation", "benefit year", "base period", "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).

Time period.

(g) APPLICABILITY.—An agreement entered into under this section shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into; and

(2) ending on or before December 31, 2020.

15 USC 9026.

SEC. 2108. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

(a) PAYMENTS TO STATES.—

(1) IN GENERAL.—Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986) under the provisions of the State law.

Reimbursement.
Estimate.

(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(3) LIMITATIONS ON PAYMENTS.—

(A) GENERAL PAYMENT LIMITATIONS.—No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

(B) EMPLOYER LIMITATIONS.—No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

Time period.

(b) APPLICABILITY.—Payments to a State under subsection (a) shall be available for weeks of unemployment—

(1) beginning on or after the date of the enactment of this Act; and

(2) ending on or before December 31, 2020.

(c) NEW PROGRAMS.—Subject to subsection (b)(2), if at any point after the date of the enactment of this Act the State enacts a State law providing for the payment of short-time compensation