

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO, ex rel
CANDY BOWLING and DAVID WILLIS,
% DannLaw
15000 Madison Avenue
Lakewood, OH 44107,

AND

SHAWNEE HUFF
% DannLaw
15000 Madison Avenue
Lakewood, OH 44107,

AND

CANDY BOWLING,
DannLaw
15000 Madison Avenue
Lakewood, OH 44107,

AND

DAVID WILLIS,
% DannLaw
15000 Madison Avenue
Lakewood, OH 44107,

Plaintiff,

v.

MICHAEL DEWINE, in his official capacity
as GOVERNOR of the State of Ohio
Riffe Center, 30th Floor
77 S. High Street
Columbus, OH 43215-6117

AND

MATT DAMSCHRODER, in his official
capacity as DIRECTOR of the OHIO
DEPARTMENT OF JOB AND FAMILY
SERVICES

Case No.:

Judge

**COMPLAINT FOR MANDAMUS,
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

4200 E. Fifth Avenue, 2nd Floor
Columbus, OH 43219

Defendants.

Plaintiffs SHAWNEE HUFF (“Huff”), CANDY BOWLING (“Bowling”), and DAVID WILLIS (“Willis”, collectively with Huff and Bowling, the “Plaintiffs”), bring this lawsuit for a writ of mandamus, injunctive relief, and declaratory judgment against Defendants Mike Dewine, in his capacity as Governor of the State of Ohio (“Dewine”) and Matt Damschroder, in his capacity as Director of the Ohio Department of Job and Family Services (“Damschroder”), Plaintiffs allege with personal knowledge with respect to themselves and on information and belief derived from, among other things, investigation of counsel and review of public documents as to other matters as follows:

PARTIES

1. Plaintiff Huff is a natural person with a principal place of residence located in the City of Lakewood, Cuyahoga County, State of Ohio.
2. Plaintiff Bowling is a natural person with a principal place of business located in the City of Cincinnati, Hamilton County, State of Ohio.
3. Plaintiff Willis is a natural person with a principal place of business located in the City of Girard, Trumbull County, State of Ohio.
4. Defendant Dewine is the governor of the State of Ohio.
5. Defendant Damschroder is the director of the Ohio Department of Job and Family Services which is a political subdivision of the State of Ohio. Damschroder holds his office by appointment by, and at the pleasure of, Dewine.
6. Venue lies in this Court pursuant to Civ. R. 3(C)(5) and/or Civ. R. 3(C)(12).

GENERAL FACTUAL ALLEGATIONS

Facts Relative to Plaintiff Shawnee Huff

7. Plaintiff Huff began receiving unemployment benefits from the State of Ohio effective February 21, 2021.

8. Huff worked in a call center before being laid off in February 2021 due to the Pandemic.

9. Huff currently receives \$339.00 in unemployment compensation plus \$300.00 weekly in FPUC which he uses for housing and necessities for his family.

10. Without the PEUC and FPUC benefits Huff will lose the ability to pay all of his living expenses including his housing, utilities, and food.

Facts Relative to Plaintiff Candy Bowling

11. Plaintiff Bowling began receiving unemployment benefits from the State of Ohio effective January 19, 2020. *See* Exhibit 1 - Affidavit of Bowling at ¶ 3

12. Bowling worked as an inspector before being laid off in January 2020 due to the Pandemic. *Id.* at ¶ 4

13. Bowling currently receives \$325.00 in unemployment compensation plus \$300.00 weekly in FPUC which she uses for housing and necessities for her family. *Id.* at ¶¶ 5-6.

14. Without the PEUC and FPUC benefits Bowling will lose the ability to pay for her ordinary household expenses including rent, utilities, necessary medications for her pets and necessary expenses for her service animals. *Id.* at ¶ 10.

Facts Relative to Plaintiff David Willis

15. Plaintiff Willis began receiving unemployment benefits from the State of Ohio

effective December 13, 2019 as his seasonal pay ceased allowing him to begin earning benefits.

See Exhibit 2 - Affidavit of Willis at ¶ 3

16. Willis worked as a landscaper before being laid off in March 2020 due to the Pandemic. *Id.* at ¶ 4

17. Willis currently receives \$325.00 in unemployment compensation plus \$300.00 weekly in FPUC which he uses for housing and necessities for his family. *Id.* at ¶¶ 5-6.

18. Without the PEUC and FPUC benefits Willis will lose his ability to pay his ordinary living expenses such as rent, utilities, and other necessities like his cell phone expense. *Id.* at ¶ 10.

CARES ACT AND PANDEMIC UNEMPLOYMENT COMPENSATION

19. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES”) was signed into law and is codified into law as 15 U.S.C. § 9001, *et seq.*

20. The CARES Act temporarily enhanced federal unemployment insurance benefits by establishing the following benefits:

- A. Pandemic Unemployment Assistance (“PUA”) for workers who were not eligible for regular unemployment benefits and whose unemployment was caused by COVID-19¹;
- B. Pandemic Emergency Unemployment Compensation (“PEUC”), which extended regular unemployment compensation benefits for workers who have exhausted their unemployment insurance benefits;²
- C. Federal Pandemic Unemployment Compensation (“FPUC”), which increased the amount of UI benefits by \$600-per-week from March 27, 2020, through

¹ 15 U.S.C. § 9021

² 15 U.S.C. § 9025

July 31, 2020.

21. PUA, PEUC, and FPUC are funded by and conferred under 42 U.S.C. § 1101, 1104, and 1105.4.

22. On December 26, 2020, the unemployment provisions in the CARES Act, including PUA and PEUC, were extended through March 14, 2021, by the Continued Assistance for Unemployed Workers Act of 2020 (“CAUWA”). Pub. L. No. 116-260, 200—01, 206. CAUWA reauthorized FPUC in the amount of \$300-per-week, payable from December 26, 2020, through March 14, 2021. Pub. L. No. 116-260, 203.

23. On March 11, 2021, PUA, PEUC, and FPUC were extended through September 6, 2021, by the American Rescue Plan Act of 2021 (“ARPA”). Pub. L. No. 117-2, 9011, 9013, 9016.

24. Huff is eligible to receive both PEUC benefits under 15 U.S.C. § 9021 and PUA Benefits under 15 U.S.C. § 9025 as well as FPUC Benefits.

25. Bowling and Willis are each eligible to receive PEUC Benefits under 15 U.S.C. § 9021 as well as FPUC Benefits.

26. The CARES Act required the Secretary of the Department of Labor to provide PUA benefits, including FPUC through agreements with each State, including Ohio. *See* 15 U.S.C. § 9021(b).

27. PEUC benefits, including FPUC, are also administered through agreements between the State and the federal government; however, a state may terminate PEUC and FPUC with 30-days’ notice. *See* 15 U.S.C. § 9023(3), 9025(a).

28. The Ohio Department of Job and Family Services entered into an agreement regarding PUA, PEUC, and FPUC with the United States Department of Labor on behalf of the

State of Ohio when the CARES Act was passed on March 27, 2021.

29. On May 13, 2021, Governor Dewine announced that Ohio will end its participation in all federally funded pandemic unemployment insurance programs, including PUA, PEUC and FPUC effective June 26, 2021.³

30. Dewine's termination of Ohio's participation in these programs will reduce or eliminate the benefits to which Plaintiffs would otherwise be entitled to.

31. If PUA, PEUC, and FPUC benefits are terminated in Ohio while Plaintiffs are in need of the programs' benefits, each of the Plaintiffs will be unable to cover basic living expenses such as housing, utilities, food, health care and children.

32. Ohio's unemployment insurance program is governed generally by Ohio Revised Code 4141.01, *et seq.*

33. Ohio's unemployment insurance program is directed by the Ohio Department of Job and Family Services ("JFS") through its director, Damschroder.

34. Pursuant to ORC 4141.43(I), Damschroder's duties as director of JFS include:

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.* (emphasis added)

35. The PUA, PEUC, and FPUC benefits conferred under 42 U.S.C. §§ 1101, *et seq.* are an extension of the existing Federal Unemployment Tax Act, 26 U.S.C. §§ 3301.01, *et seq.*

³ "Ohio ending extra unemployment benefits program in June" May 13, 2021 (<https://www.fox19.com/2021/05/13/live-gov-dewine-gives-update-after-announcing-vaccine-lottery-health-order-end-date/>) (last visited July 2, 2021)

36. By terminating Ohio's participation in PUA, PEUC, and FPUC benefits conferred under 42 U.S.C. §§ 1101, 1104, and 1105, Defendants are violating their clear legal and statutory duty to secure such benefits for employees in the State, including the Plaintiffs.

COUNT I
Declaratory Judgment

37. Plaintiffs reallege and incorporate paragraphs 1 through 36 of the Complaint as if fully restated herein.

38. There exists an actual controversy of a justiciable issue between the Plaintiffs and the Defendants. Specifically the justiciable issue is whether ORC 4141.43(I) the Defendants are required to secure all possible federal pandemic unemployment benefits available to unemployed Ohioans conferred under 42 U.S.C. §§ 1101, 1104, and 1105.

39. Plaintiffs and Defendants hold antagonistic claims that can only be resolved by a declaratory judgment.

40. Based on the foregoing allegations, *supra*, Plaintiffs are entitled to a declaration pursuant to ORC 2721.12 that the Defendants must secure all possible federal pandemic unemployment benefits available to unemployed Ohioans conferred under 42 U.S.C. §§ 1101, 1104, and 1105 as required by ORC 4141.43(I) including by not limited to PUA, PEUC, and FPUC benefits.

COUNT II
Injunctive Relief

41. Plaintiffs reallege and incorporate paragraphs 1 through 40 of the Complaint as if fully restated herein.

42. The actions of the Defendants demonstrate their intention to terminate PEUC benefits conferred under the CARES ACT on July 3, 2021 more than two months prior to the September 6, 2021 expiration of those benefits.

43. Should the Defendants succeed in terminating these benefits more than two months early, Plaintiffs will suffer immediate, substantial, and irreparable harms for which they have no adequate remedy at law. These harms, including, inter alia, a loss of housing or medical care and the inability to access food and transportation, constitute irreparable harm pending resolution of this action and are not adequately compensable by an award of damages.

44. Nor can delayed payment of benefits now due as a result of the ultimate conclusion of this controversy on the merits adequately compensate for the immediate and dire consequences Plaintiffs face.

45. Plaintiffs are likely to succeed on the merits. Neither R.C. 4141.43(I) nor any other provision of Ohio law grants to Defendants discretion to disregard the requirement of R.C. 4141.43(I).

46. The State's costs to administer the CARES Act Benefits are covered by CARES Act Funding. *See* 15 U.S.C. §§ 9021(g), 9023(d), 9025(a)(4)(A). Therefore, the State is neither harmed nor inconvenienced by continued distribution of CARES Act benefits until September

47. The harm to Plaintiffs created by the loss of benefits far outweighs any inconvenience or detriment to the State.

48. Enjoining the State from terminating federally-funded unemployment benefits needed by eligible Ohioans like Plaintiffs is not contrary to the public interest.

COUNT III
MANDAMUS

49. Plaintiffs Bowling and Willis restate and reallege the allegations contained in Paragraphs 1 through 48 as if fully restated herein.

50. This Court has jurisdiction to issue a writ of mandamus pursuant to R.C. § 2731.01, *et seq.*

51. By withdrawing Ohio from participation in the FPUC and PEUC programs Defendants are depriving the Plaintiffs of weekly FPUC and PEUC benefits that they could receive until the FPUC and PEUC benefits expire, if they remain eligible for those benefits. *See* 15 U.S.C. § 9021(b) generally.

52. ORC 4141.43(I) explicitly states:

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.*

53. The PEUC and FPUC benefits are part of the federal unemployment benefits provided by the United States Department of Labor covered by RC § 4141.43(I).

54. Defendants have a clear statutory duty to secure for Ohians all available federal unemployment benefits, including those under FPUC and PEUC.

55. Defendants have failed to fulfill their statutory duties under R.C. § 4141.43(I).

56. Plaintiffs have no plain and adequate remedy in the ordinary course of the law to obtain the benefits under FPUC and PEUC terminated by Defendants.

57. Pursuant to R.C. § 2731.01, *et seq.*, Plaintiffs are entitled to a writ from this Court requiring the Defendants to take all actions necessary to immediately restore FPUC and PEUC

benefits as is required by R.C. § 4141.43(I).

58. Affidavits from Plaintiffs Bowling and Willis supporting the statement of facts upon which the claim for relief is based are attached hereto as Exhibits 1 and 2 respectively.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered in her favor and against Defendants as follows:

- A. That the Court declare Governor Dewine and Director Damschroder to be in violation of their statutory duties under R.C. 4141.43(I) by terminating Ohio's participation in PUA, PEUC, and FUPC benefits as of the week of June 26, 2021;
- B. Enjoin Governor Dewine and Director Damschroder, their officers, employees, and agents, all persons acting in concert or participation with any Defendant, or under any Defendant's supervision, direction, or control from withdrawing the State of Ohio from unemployment benefits offered through the CARES Act;
- C. Ordering Governor Dewine and Director Damschroder, on behalf of the State of Ohio, to immediately notify the United States Department of Labor of the State's continued participation in the CARES Act programs for the duration of those programs;
- D. Issue a peremptory writ of mandamus requiring the Defendants' perform their statutory duties required by ORC 4141.43(I) and immediately take all action necessary to reinstate Ohio's participation in all federal unemployment insurance benefit available from the United States Department of Labor;
- E. Award Plaintiff attorney's fees and the costs of this proceeding;
- F. Issue such other and further relief to which Plaintiffs are entitled.

Respectfully submitted,

/s/Brian D. Flick
Brian D. Flick (0081605)
Marc E. Dann (0039425)
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 Plaintiffs