

**IN THE COURT OF APPEALS  
TENTH APPELLATE DISTRICT  
FRANKLIN COUNTY, OHIO**

STATE ex rel CANDY BOWLING, *et al.*,  
Appellants,

v.

MICHAEL DEWINE, *et al.*,  
Appellees.

APPEALS No. 21AP00380

ACCELERATED CALENDAR

(On Appeal from Franklin  
County Court of Common  
Pleas No. 21 CV 004469)

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**BRIEF OF *AMICI CURIAE* POLICY MATTERS OHIO, AMERICAN  
SUSTAINABLE BUSINESS COUNCIL, NATIONAL EMPLOYMENT LAW  
PROJECT, WILLIAM E. SPRIGGS, ECONOMIC POLICY INSTITUTE, AND  
ANDREW STETTNER**

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Hannah C. Halbert (0080755)  
Executive Director and Counsel  
Policy Matters Ohio  
3631 Perkins Ave., Suite 4C-E  
Cleveland, Ohio 44114  
[hhalbert@policymattersohio.org](mailto:hhalbert@policymattersohio.org)  
Telephone: (216) 361-9801  
Fax: (216) 361-9810

*Counsel for Amici Curiae*

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## **I. INTEREST OF *AMICI CURIAE***

Amici are unemployment insurance experts who engage in legal and policy advocacy for an equitable economy and have significant interest in this case.

The American Sustainable Business Council (“ASBC”) is the leading business organization serving the public policy interests of responsible companies. It partners with business organizations and companies to advocate for solutions and policies that support an equitable, sustainable, stakeholder economy. ASBC is a multi-issue business organization advocating on behalf of all sectors, sizes, and geographies of industry. ASBC and its association members collectively represent over 250,000 businesses and 325,000 business executives, owners, and investors across their network. Unemployment insurance is a top priority for ASBC. The preservation of federal CARES Act Programs considering the ongoing COVID-19 pandemic remains essential to ASBC’s policy goals and the interests of ASBC’s network of responsible businesses and business owners.

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

William E. Spriggs is a professor in the Department of Economics at Howard University and is recognized as a leading expert on U.S. social insurance programs and the implications for racial equity. As a leader in his field, he frequently comments on unemployment insurance policy issues and was recently featured in The New York Times, Wall Street

Journal, MarketWatch, NPR, Politico, Washington Post, Bloomberg News, and Forbes. As Executive Director for the National Urban League's Institute for Opportunity and Equality, Dr. Spriggs analyzed unemployment insurance programs to ensure racial equity and, as former Assistant Secretary for Policy at the U.S. Department of Labor, Dr. Spriggs similarly worked to assure that unemployment insurance would have racially equitable outcomes. He is a recipient of the National Academy of Social Insurance Robert Ball Award in recognition of his contributions to the study and implementation of America's social insurance programs. Dr. Spriggs is concerned with the possible precedent set by the withdrawal of individual states from a federal program to undermine federal policy to address economic crises that affect the nation.

The Economic Policy Institute ("EPI") is a non-profit organization with over 30 years of experience analyzing the effects of economic policy on the lives of America's working families. EPI has studied and written on unemployment insurance and the labor market recovery during this pandemic. Their work includes published research and analysis on unemployment insurance claims, questions about an economy-wide labor

shortage, and reforms to the federal unemployment system. EPI is co-author of the June 2021 report, *Reforming Unemployment Insurance: Stabilizing a System in Crisis and Laying the Foundation for Equity*, that proposes reforms to strengthen the federal unemployment insurance system together with other leading advocacy groups, think tanks, and unemployed workers. EPI is concerned that all unemployed workers—including those excluded from state UI benefits and independent contractors whose pandemic unemployment benefits will soon expire—have access to adequate income supports while the labor market recovers.

Andrew Stettner is a Senior Fellow at The Century Foundation (“TCF”), an independent think tank that conducts research, develops solutions, and drives policy change to make people’s lives better. Mr. Stettner is recognized as an expert in policy research on U.S. social insurance programs and unemployment insurance and is an elected member of the National Academy of Social Insurance. Mr. Stettner and colleagues have published numerous briefs and papers on unemployment insurance. Mr. Stettner has been a leader in analyzing the impact of states’ early termination of the CARES Act benefit programs, including

authoring the factsheet, *What's at Stake as States Cancel Federal Unemployment Benefits*. TCF also developed and maintains a public unemployment insurance data dashboard that consolidates federal and state unemployment insurance data and translates that data into actionable insights for policymakers and the public.

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

A ruling adverse to the Appellant-Plaintiffs would undermine long-standing policy goals and organizational missions of these parties.

## **II. ARGUMENT SUMMARY**

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act established three federally funded expanded unemployment insurance programs to assist states in providing economic aid to working

people who are displaced by the COVID-19 pandemic. 15 U.S.C § 9021 (2020).

There is no justification for terminating FPUC early. The decision runs counter to the public interest, and creates economic harm for thousands of Ohioans, particularly low-income and gig-workers, Black workers, women workers, and those living in areas of the state, like Appalachian Ohio, who continue to experience high rates of unemployment and low rates of job growth. Further, the assertion that FPUC is slowing Ohio's recovery or damaging employers is largely unfounded. While some employers maybe struggling, the more likely reasons for slow hiring are related to childcare access, the continuing pandemic, job quality, or simply being in an area of high growth, where employers must offer more competitive pay and benefits.

**A. Continuing the Federal CARES Act Benefits Serves the Public Interest as it is Essential for Ohio's Economic Recovery**

The instant case is vital to the interests not only to the Appellant-Plaintiffs, and the hundreds of thousands of unemployed Ohioans who need Federal Pandemic Unemployment Compensation (FPUC), but also

for the Ohio economy and thus all Ohioans. Cutting benefits to the 255,000 unemployed people who, according to the Ohio Department of Job and Family Services were receiving the additional \$300 in unemployment compensation benefits as of mid-June, means that more than \$75 million a week is not being spent on goods and services provided by Ohio businesses.

Moreover, Alan Blinder, a former vice chair of the Federal Reserve Board, and economist Mark Zandi of Moody's Analytics found that during the last recession, every dollar of unemployment insurance resulted in a \$1.61 increase in economic output, because as benefits are spent, they have a multiplier effect, allowing businesses to hire or add hours for existing workers. Blinder, Alan and Mark Zandi, *The Financial Crisis: Lessons for the Next One* (Oct. 15, 2015), <https://bit.ly/3s3NL8g>.

During the pandemic, more than \$11 billion in FPUC benefits have been paid to claimants in Ohio. Ohio Department of Job & Family Services, *Presentation* (July 29, 2021), Unemployment Compensation Modernization and Improvement Council. This has played an important

role in keeping the economy afloat—and the withdrawal of these dollars conversely will hurt Ohio businesses, which will not see the spending that would have resulted, and the Ohio economy. One key factor Judge Fletcher-Hill of the Circuit Court for Baltimore City cited in approving an injunction keeping federal benefits flowing in Maryland was the economic stimulus produced by the benefits. *D.A. et. al. v. Larry Hogan et. al.; Harp et. al. v. Governor Larry Hogan et. al.*, Circuit Court of Baltimore Nos. 24-C-21-002988, 24-C-21-002999, p. 23 (“[u]nemployment benefits themselves stimulate the economy and have a secondary ripple effect.”).

The Ohio Department of Job & Family Services (ODJFS) has agreed on this point. “UI benefits allow the unemployed to maintain more of their previous consumption than they otherwise would be able to,” the agency noted in a 2014 filing. Ohio Department of Job & Family Services, *Business Impact Analysis under the Common Sense Initiative, Regulation/Package Title 41421-15 Contribution Rates, Rule Numbers 4141-15-01, 4141-15-07* (April 29, 2014). ODJFS also noted that, “[g]enerally, the rules in Chapter 4141 of the Ohio Administrative Code

help to support an Unemployment Insurance (UI) system that has been found to have a net positive impact on the economy, with substantial benefits to the business community as a whole.” *Id.* *ODJFS* further explains that “[w]hen the unemployed cut back on spending, the business owners that serve them lose. By cushioning the fall in these families’ incomes, unemployment insurance not only helps the families that receive it, but also prevents further production cuts and layoffs.” *Id.*

**B. Unemployment compensation benefits support labor force attachment and do not discourage people from returning to work.**

Unemployment benefits ensure that unemployed workers have the resources necessary to seek and maintain long-term employment. Benefits ensure that workers can afford the necessities, so they have the time and resources to search for jobs. Moreover, without the ability afford reliable internet access or transportation costs, searching for and interviewing for a job becomes near impossible. The supplemental benefits at issue herein alleviate these concerns by ensuring workers can afford these expenses and, in turn, have the resources necessary to find reemployment.

Some businesses in Ohio are having trouble attracting workers. There are some good explanations for this, which have nothing to do with unemployment compensation. Many workers are concerned about their health and that of their loved ones and may not be able to serve in public-facing jobs that expose them to COVID-19, especially as the Delta variant unfortunately has ramped up the number of cases. Others are unable to find child care for their children, with the closing or reduction in operations of centers and family care across the state. Between June 2020 and a year later, there was a 24.46% loss of family childcare homes in 28 Appalachian counties, according to data from the Corporation for Ohio Appalachian Development. George Goddard, Email (Aug. 2, 2021) Corporation for Ohio Appalachian Development, provided upon request. In these rural areas, where population density won't support center-based options, this makes it difficult for many to go to work.

The share of working-age Ohioans in the labor force has not returned to pre-pandemic levels: The state's labor force participation rate was just 60.2% in June 2021, down from 63.7% in February 2020. U.S. Bureau of Labor Statistics, *Local Area Unemployment Statistics* (Aug. 9, 2021),

<https://bit.ly/3Ctbjbd>. By definition, those not in the labor force are not employed or unemployed and seeking work—meaning they are not collecting unemployment benefits. The economic crisis is not over for Ohio—the state has 289,100 fewer jobs than it did in February 2020. Michael Shields, JobWatch: *Ohio adds jobs in June*, July 16, 2021, <https://bit.ly/3CxymLu> (Aug. 9, 2021).

Some observers have claimed that the difficulties some businesses are having recruiting workers is a result of the federal pandemic unemployment benefits. But such claims ring hollow considering the data. Data from the U.S. Department of Labor show that in the 12 months ended March 31, much of which time unemployed workers were eligible for an additional \$300 or \$600 a week in benefits, *just 19.5% of Ohio claimants* for unemployment compensation exhausted the full amount of benefits to which they could have been entitled (generally 26 weeks). U.S. Department of Labor, *Quarterly UI Summary*, 2021 Q1, [https://oui.doleta.gov/unemploy/data\\_summary/SummaryTables.pdf](https://oui.doleta.gov/unemploy/data_summary/SummaryTables.pdf) (Aug.9, 2021). That was the third-lowest rate of any state in the country, after South Dakota and New Hampshire. *Id.* On average, UC claimants in

Ohio received benefits for 14.63 weeks, well below the national average and far less than the length of time for which benefits are available. *Id.* This illustrates that unemployed Ohioans are hardly sitting around collecting benefits.

Even a survey by Axios, which is often cited by those stretching to blame legitimate employer challenges to hiring workers on programs like FPUC, because of its flashy headline: *Poll: 1.8 million Americans have turned down jobs due to unemployment benefits*, actually shows that childcare obligations (cited 13.8 percent) and COVID-19 (13.0 percent) related reasons were more common causes for turning down jobs than unemployment benefits (cited 13.0 percent, but ranked behind COVID response, likely due to rounding). Sam Ro, <https://bit.ly/3Cx2j56> (Aug. 9, 2021). Further, it must be noted that the poll seeks to extrapolate from a measly survey size of just 463 respondents. *Id.* The data and the polling suggests that the employment crunch some employers are feeling is due to other factors than the specter of a free-riding labor force.

Numerous research studies over the past year have concluded that additional benefits from FPUC did not keep large numbers of unemployed

workers from returning to work. *See*, Nicolas Petrosky-Nadeau and Robert G. Valletta, Federal Reserve Bank of San Francisco, working Paper 2021-13, *UI Generosity and Job Acceptance: Effects of the 2020 CARES Act*, June 2021, <https://www.frbsf.org/economic-research/publications/working-papers/2021/13/> (Aug. 9, 2021) and Joseph Altonji et. al., Tobin Center for Economic Policy, Yale University, *Employment Effects of Unemployment Insurance Generosity During the Pandemic*, July 14, 2020, at <https://bit.ly/37sOy99> (Aug. 9, 2021).

We are now beginning to see how the cut-off of federal benefits is affecting the labor market, since some states acted to do so before Governor DeWine. The evidence from these very recent studies does not support the argument that FPUC is keeping large numbers of unemployed from work.

Researchers from the University of Chicago and the JPMorgan Chase Institute (JPMCI) investigated the question using administrative data from JPMCI on 800,000 benefit recipients from 10 large states. “We conclude that unemployment supplements are not the key driver of the job-finding rate through April 2021 and that U.S. policy was therefore

successful in insuring income losses from unemployment with minimal impacts on employment,” the authors found. Peter Ganong, Fiona Greig, Pascal Noel, Daniel M. Sullivan and Joseph Vavra, *Micro and Macro Disincentive Effects of Expanded Unemployment Benefits*, July 29, 2021, at <https://bit.ly/3CvXtFl> (Aug. 9, 2021) 1.

Arindrajit Dube, a professor of economics at the University of Massachusetts, Amherst, reviewed data from the U.S. Census Household Pulse Survey to compare states that had cut off benefits to those that did not. He concluded:

Overall, the mid-June expirations of pandemic UI seem to have sharply reduced the share of population receiving any unemployment benefits. But this doesn't seem to have translated into most of these individuals having jobs in the first 2-3 weeks following expiration. However, there is evidence that the reduced UI benefits increased self-reported hardship in paying for regular expenses. Of course, this evidence is still early, and more data is needed to paint a fuller picture.

Arindrajit Dube, *Early impacts of the expiration of pandemic unemployment insurance programs*, July 18, 2021, <https://arindube.com/2021/07/18/early-impacts-of-the-expiration-of-pandemic-unemployment-insurance-programs/> (August 9, 2021).

Likewise, Aaron Sojourner, a labor economist and associate professor at the University of Minnesota Carlson School of Management, found that the number of continued unemployment claims in regular state programs “seems to be declining just as fast in not-cutting as in cutting states.” Aaron Sojourner, Twitter thread, July 27, 2021, <https://bit.ly/3xKlFA1> (Aug. 9, 2021).

Ohio job growth has largely stalled since November 2020. Michael Shields, *JobWatch, supra*. After adding jobs in June, Ohio is still missing 289,100 from the state’s pre-COVID total. *Id.* The accommodation and food services industry remains the hardest hit by COVID-19; where, Ohio has 68,300 (14.0%) fewer jobs than it did in February 2020. *Id.* Further, the state’s own job posting website, OhioMeansJobs.com, which has received state promotion and offers free job listings for employers showed a total of 249,618 postings between May 14, 2021, and June 13, 2021. Ohio Labor Market Information, Online Job Postings Analytics, Statewide Snapshot, June 2021, <https://bit.ly/2XeIBej> (Aug.9, 2021). There were 291,300 Ohioans unemployed in June. Ohio Labor Market Information, Current Labor Force Statistics, June 2021,

<https://ohiolmi.com/> (Aug. 9, 2021). This means that there were *more* unemployed people than posted jobs in Ohio.

- C. Ending FPUC early causes harms to all unemployed Ohioans, and disproportionately harms those workers regular state unemployment benefits fail to cover, making Ohio's recovery less equitable.

The relatively low statewide unemployment rate of 5.2 percent is masking the ongoing statewide unemployment crisis. When the statewide rate is disaggregated and examined regionally, the ongoing crisis of unemployment is clear. Those people living in areas of Ohio, which have not experienced a job growth rebound, primarily in North and Southeastern (Appalachian) Ohio are risk of real economic harm from Governor DeWine's decision to end FPUC. *See, Ohio Labor Market Information, June 2021, Unemployment Rates Map, <https://bit.ly/3xAKgaC> (Aug. 9, 2021).*

Black workers and women workers are also more likely to be harmed by premature termination of FPUC. Black workers have faced some of the highest rates of unemployment loss and COVID infection in the state. Black worker unemployment stood at 11.0 percent at the end of

the second quarter of 2021. Economic Policy Institute, *Analysis of BLS Local Area Unemployment Statistics*, July 2021, <https://www.epi.org/indicators/state-unemployment-race-ethnicity/> (Aug. 9, 2021). The rate for white workers was 4.2 percent. *Id.* This creates a ratio of nearly 3 Black workers remaining unemployed for every white worker who is unemployed. *Id.* Women, unlike prior recessions, were more likely to be unemployed than their male counterparts: women comprise 47 percent of the U.S. workforce but were dealt 55 percent of the job losses in 2020. Clair Ewing-Nelson, National Women's Law Project, *Another 275,000 Women Left the Labor Force in January*, Feb. 2021, <https://bit.ly/3ixqEj7> (Aug. 9, 2021). Black workers and women workers are also disproportionately represented in the low-wage economy in Ohio. *See*, Michael Shields, Policy Matters Ohio, *Fairer Pay will Boost Ohio*, April 13, 2021, <https://bit.ly/3xzOIX4> (Aug. 9, 2021).

The communities of workers that are still struggling in the COVID economy are also the communities FPUC is designed to help. FPUA and FPUC extended benefits and increased the benefit amount to workers who are not covered in regular state unemployment programs, because they

were paid too little by employers, offered too few hours, or worked as contractors, or as so-called “gig” workers. Black workers and other people of color, and less educated workers are less likely than their white peers, or their highly educated peers to receive unemployment benefits. *See generally*, Alex Gould-Werth and H. Luke Shaefer, *Unemployment Insurance Participation by Education and by Race and Ethnicity*, Monthly Labor Review, Oct. 2021, <https://bit.ly/3fMkREG> (Aug. 9, 2021). FPUA program and the FPUC support is an irreplaceable support for these workers who are still struggling against a challenging job market for jobs.

The pandemic has disrupted the labor market just as it is causing a shortage of microchips for carmakers and supply issues for items ranging from furniture to school supplies. It is unrealistic to expect an immediate return to the pre-pandemic job market.

**D. The pandemic is not over, and unemployed Ohioans are entitled to full federal unemployment compensation relief while COVID surges.**

The Ohio economy has been improving in recent months. However, COVID-19 is unrelenting. As of August 8, 2021, all but four counties in

Ohio were reporting “high” or “substantial” community spread. Centers for Disease Control and Prevention, *COVID Tracker*, Aug. 8, 2021, [https://covid.cdc.gov/covid-data-tracker/#cases\\_community](https://covid.cdc.gov/covid-data-tracker/#cases_community) (Aug. 9, 2021). Overall, Ohio is one of 39 states reporting a “high” rate of transition. *Id.* Only as of Aug. 9, 2021, could Ohio state that 50 percent of the population had at least one vaccine shot. Ohio Dept of Health, *Vaccine Status Statewide*, <https://bit.ly/3fQ9cVp> (Aug. 9, 2021). Many Ohio county health departments are issuing mask advisories, further mandates are stifled by the recently enacted legislation preventing local health officials and the Governor from going further. The law allows the General Assembly to reject or modify state health orders, and to extend or end any state of emergencies issued by the Governor. R.C. § 101.36. The crisis that prompted the federal government to expand unemployment compensation and provide a higher wage replacement rate than regular state benefits for the hundreds of thousands of people displaced by this pandemic has not ended.

The average weekly benefit in Ohio under the regular unemployment compensation program for the first six months of 2021

was \$378.43. Ohio Department of Job & Family Services, Summary of activities under regular Ohio unemployment compensation law, June 2021, <https://bit.ly/37xNilc> (Aug. 9, 2021). This means that the average weekly benefit under the regular state program is below the federal poverty level this year of \$21,960 for a family of three. U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *2021 Poverty Guidelines*, at <https://bit.ly/3AmUexS> (Aug. 9, 2021). Based on the average annual wage for the year ended June 30, 2020, and considering the additional \$300 a week, the average weekly benefit for those on regular UC in Ohio would be under two-thirds of the average wage. *See*, Inter-Office Communication from Coretta Pettway, Bureau Chief, Labor Market Information, to Kimberly Hall, Director, Ohio Department of Job & Family Services, Nov. 9, 2020.

Many of those receiving Federal Pandemic Unemployment Assistance, another temporary federal benefit for self-employed and others who would not qualify for regular Ohio state benefits because their employers pay too little or offer too few hours, are getting just \$189 a

week without the \$300 supplement. *See*, Ohio Department of Job and Family Services, *Expanded Eligibility FAQ*, <https://bit.ly/3CyAUzP>, (Aug. 9, 2021). Besides allowing families to cover basic living costs as well as expenses associated with job-seeking, FPUC is a support to Ohio’s economy because it stabilizes spending and allows for better job matching across the labor market.

FPUC is functioning as designed. The benefits are providing a higher-than-normal wage replacement value to more people to meet the once-a-generation scope of this crisis. The program kept hundreds of thousands both out of poverty and out of danger.

There is little to no basis for ending FPUC that aligns with the public interest. Ohio has not recovered, and the health emergency persists according to public health data. Yet, Governor DeWine has interrupted Ohioans’ access to federally provided benefits. Governor DeWine committed to FPUC benefits, and once accepted he must adopt “rules, regulations, and administrative methods and standards” that are “necessary to secure to this state and its citizens all advantages available under the provisions of the ‘Social Security Act’.” R.C. § 4141.43(I).

### III. CONCLUSION

For the reasons stated above, this Court should overturn the trial court's denial of the Appellant-Plaintiffs' request for a temporary restraining order and preliminary injunction.

Respectfully submitted,

/s/ Hannah C. Halbert

Hannah C. Halbert (0080755)  
Executive Director and Counsel  
Policy Matters Ohio  
3631 Perkins Ave., Suite 4C-E  
Cleveland, Ohio 44114  
[hhalbert@policymattersohio.org](mailto:hhalbert@policymattersohio.org)  
Telephone: (216) 361-9801  
Fax: (216) 361-9810

*Counsel for Amici Curiae*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, pursuant to App. R. 13(C)(3) & (6) and L.R. 2(E), on this the 11<sup>th</sup> Day of August 2021, a true and correct copy of the above and foregoing document was electronically filed and served via email to all parties.

*/s/ Hannah C. Halbert*  
Hannah C. Halbert (0080755)

*Counsel for Amici Curiae*