

INTRODUCTION

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act expanded unemployment insurance to preserve the purchasing power of workers displaced by COVID-19 to help maintain their housing, food security, and other basic necessities. In turn, the CARES Act stabilized local economies at an unprecedented time. Unemployment compensation has long served as an automatic stabilizer within the federal–state economic framework.¹ Congress enacted the CARES Act against this backdrop to mitigate the economic disruption caused by the COVID-19 pandemic. Among its provisions, the CARES Act created the Federal Pandemic Unemployment Compensation (“FPUC”) program to temporarily provide supplemental benefits to individuals eligible for unemployment assistance under other unemployment insurance programs. 15 U.S.C. § 9023 (2020).

On March 28, 2020, Ohio formally entered into an agreement with the U.S. Department of Labor to deliver FPUC benefits to eligible working Ohioans impacted by COVID-19. This decision followed Ohio Revised Code 4141.43(I), securing Ohio and its citizens all advantages available under applicable federal laws. FPUC benefits were especially important for unemployed Ohio workers under the Federal Poverty Level and the State’s ALICE households—an acronym for Asset Limited, Income Constrained, Employed—who earn above the Federal Poverty Level but cannot afford basic necessities. In 2019, thirty-seven percent of Ohio households fell below the ALICE threshold, with many working in essential but low-wage industries such as child care, food service, retail, personal care, and delivery.² Families in this category routinely face painful

¹ U.S. Dep’t of Labor, *Unemployment Compensation: Federal–State Partnership* (May 2019) available at <https://oui.doleta.gov/unemploy/pdf/partnership.pdf> (last accessed Jan. 15, 2026) [<https://perma.cc/TF4Y-ENW7>].

² Ohio United Way, *ALICE in the Crosscurrents 2024 Update* available at <https://liveunitedcentralohio.org/wp-content/uploads/2025/01/2024-ALICE-Update-OH-FINAL.pdf> (last accessed Jan. 15, 2026) [<https://perma.cc/T3SX-F692>].

trade-offs between food, medicine, utilities, and transportation and when Ohioans became unemployed as a result of COVID-19, their financial obligations did not stop - rent, utilities, groceries, and car payments continued.

Ohio's unilateral withdrawal from FPUC on June 26, 2021 violated Ohio Revised Code 4141.43(I) and caused economic harm to thousands of Ohio workers who remained unemployed due to COVID-19. Since that time, economic conditions have worsened. Between 2021 and 2022, the share of Ohio workers living at or below the Federal Poverty Level and those classified as ALICE households has increased from thirty-seven percent to thirty-nine percent, further undermining families' ability to meet basic needs.³ At the same time, many critical safety-net programs that helped families remain housed and fed have ended or are nearing expiration. Ohio's withdrawal from FPUC deprived eligible unemployed workers of up to ten additional weeks of benefits needed to cover basic necessities and removed an estimated \$900 million from the State's broader economy.⁴ The remaining FPUC benefits would provide meaningful relief by enabling affected workers to catch up on essential expenses and monthly bills. Nothing suggests that these benefits are unavailable to remedy the unlawful withdrawal or to redress the resulting harm.

STATEMENT OF FACTS AND CASE

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

ARGUMENT AND LAW

³ *Id.*

⁴ Donaldson, *Ohio extends legal fight over undistributed \$900 million in COVID-19 benefits*, The Statehouse News Bureau (August 15, 2025) available at <https://www.stateneews.org/government-politics/2025-08-15/ohio-extends-legal-fight-over-undistributed-900-million-in-covid-19-benefits> (last accessed Jan. 26, 2026) [<https://perma.cc/S6JL-76ND>].

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

I. The Tenth District applied the correct version of R.C. 4141.43(I) in its Decisions.

The Ohio Revised Code requires the Governor to:

“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)(1).

This language has not changed since the date this case commenced. What has changed effective October 3, 2023, is the addition of language stating the Governor has the power to:

decline and to cease participation in “any voluntary, optional, special, or emergency program offered by the federal government, including programs offered under any of the federal acts listed in division (I)(1) of this section, the "Coronavirus Aid, Relief, and Economic Security Act," 15 U.S.C. 9023, or any other federal program enacted to address exceptional unemployment conditions.” R.C. 4141.43(I)(2).

The intervening change in the statute does not govern this case because the General Assembly did not expressly make the change retroactive, and the amended and supplemental complaint relates back to the original 2021 filing date.

A. The October 3, 2023 amendment to R.C. 4141.43(I) cannot be applied retroactively.

Ohio Constitution’s Article II §28 establishes a fundamental limitation on the General Assembly’s legislative power to pass retroactive laws. This principle is reinforced in Ohio’s Revised Code, establishing a statutory presumption that “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” R.C. 1.48. The legal test for determining whether a new law is unconstitutionally retroactive in Ohio is a two-part analysis. *State v.*

Hubbard, 167 Ohio St.3d 77, 80 (2021). First, courts examine whether the General Assembly expressly made the statute retroactive by “clearly proclaim[ing] its retroactive application.” *Hyle v. Porter*, 117 Ohio St.3d 165, 167 (2008). If so, then courts must determine whether the statute is substantive or remedial in nature. *Id.*

In the current case, the amendment to Ohio Revised Code 4141.43(I) was passed by the 135th General Assembly under House Bill 33, Ohio’s operating appropriations bill for fiscal years 2024-2025. The operating appropriations bill was passed into law on July 4, 2023. The amendment to Ohio Revised Code 4141.43(I) became effective on October 3, 2023. House Bill 33 does not expressly proclaim that the statute is retroactive, nor does language in the amended statute expressly proclaim it should have retroactive application.

In *Hyle*, the Ohio Supreme Court provided two examples of clear expressions of retroactivity. *Hyle*, at 168. The first was a statute that had the following verbiage: “notwithstanding any provisions of any prior statute or rule of law in this state.” *Id.* The second was a statute that said “was convicted of or pleaded guilty to a sexually oriented offense prior to the effective date of this section, if the person was not sentenced for the offense on or after” the date. *Id.* This Court found that these two statute examples included “strong and unmistakable declarations of retroactivity.” *Id.* In the case at hand, the amended statute language does not contain anything close to these two examples.

B. The Amended and Supplemental Complaint relates back to the original filing date and is governed by the law in effect at the time the original Complaint was filed, not new law enacted after that date.

If a party does not amend its pleading within twenty-eight days after serving it, the party may only amend its pleading with the opposing party’s written consent or the court’s leave. Civ.R. 15(A). Whenever a claim “asserted in the amended pleading arose out of the conduct, transaction,

or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” Civ.R. 15(C). When changing parties, additional requirements apply. *Id.* If the parties are not changed, the amendment relates back to the original pleading. *Amerine v. Haughton Elevator Co.*, 42 Ohio St.3d 57, 59 (1989). A party may also file a motion with a court to file a supplemental pleading to set forth transactions, occurrences, or events that happened after an initial complaint was filed. Civ.R. 15(E). Similar to amended complaints, supplemental complaints relate back to the date of the original pleadings. *David Rentals, LLC v. Virginia Woods, LLC*, 2024-Ohio-1446 ¶15 (1st Dist.).

The plaintiffs in this case all filed their initial complaints between July and August 2021. *See* Decision in *State ex rel. Bowling v. DeWine*, 21 CVH07-4469, 21 CVH08-5524, 21 CVH08-5525, dated March 11, 2024. The Court granted Appellees’ motion for leave to file a consolidated class action complaint on March 11, 2024, finding the proposed pleading is both an amendment and supplemental pleading. *Id.* No new defendants were named and the asserted claims arose out of the conduct, transaction, or occurrence outlined in the original pleadings. Therefore, the amended and supplemented complaint relates back to the original pleadings filed in the year 2021 and the October 3, 2023 change to R.C. 4141.43(I) does not govern this case.

II. The present case is not moot because only one cause was found to be moot, not the entire case.

In its November 22, 2022, Decision in *State ex rel. Bowling v. DeWine*, S. Ct. No. 2022-Ohio-4122, this Court found the cause before it to be moot, while declining to find the entire case moot. In cases seeking multiple remedies, one portion of a case can become moot and others remain justiciable. For example, in *State ex rel. Brown v. Dayton Malleable*, 1 Ohio St.3d 152 (1982), the Attorney General of Ohio filed an action for the defendant's failure to comply with certain environmental regulations, seeking (1) an injunction requiring defendant to comply with

regulations, and (2) civil penalties. *Id.* Before trial, the defendant came into compliance with the regulations. *Id.* The trial court therefore dismissed the injunction portion of the Attorney General's action due to mootness. However, it proceeded to assess \$493,500 in civil penalties against the defendant. *Id.*, at 152–153. This Court upheld the imposition of civil penalties despite the injunction being moot. *Id.*

Another example is with actions in forcible entry and detainer. Landlords often file a first cause of action for possession of the property, and a second cause of action for unpaid rent. At trial, if the tenant has vacated rental premises, the judge or magistrate will dismiss the first cause as moot since possession has been restored to the landlord, but this does not dismiss the entire case. The case continues because the landlord still has a cause of action for unpaid rent. Similarly, in the present case, only the specific preliminary injunctive relief sought in plaintiffs' original complaint was found to be moot, not the entire case.

III. This Court can grant effectual relief because the Department of Labor has not changed its position that FPUC funds are still available.

When finding a particular cause of a case to be moot, Ohio's mootness doctrine still requires courts to determine whether they "can grant any effectual relief" on the remaining claims. *Doe v. Upper Arlington Board of Education*, 2021-Ohio-3805, ¶6 (10th Dist.). An action is only moot when it would be impossible to provide meaningful relief even in a ruling in favor of the party seeking relief. *Allen v. Totes/Isotoner Corp.*, 123 Ohio St.3d 216, 2009-Ohio-4231, ¶ 18. Meaningful relief to Appellees would include receiving the FPUC benefits they seek. Whether the undistributed FPUC funds set aside for Ohio families are still available is of central importance to whether this case is moot.

Recent correspondence between the United States Congress and the Department of Labor ("DOL") reinforces Appellees' argument that the funds are still available. On September 3, 2021,

Jim Garner, DOL Administrator of the Office of Unemployment Insurance, wrote to state labor officials advising that states could retroactively re-enroll claimants in pandemic UI programs including FPUC.⁵ In a July 12, 2024, Declaration, Garner stated that the 2021 email “continues to represent the position of the Department.”⁶ In a June 9, 2025 letter, members of the United States House of Representatives Committee on Ways and Means requested that the Secretary of the DOL issue formal guidance to rescind the DOL’s standing policy that allows federally funded supplemental unemployment benefits authorized by the CARES Act to be paid retroactively.⁷ The letter references an April 11, 2025, email sent to the Committee by DOL officials which indicated that the DOL’s position was that the guidance included in Jim Garner’s letter of September 2021 was still valid and in effect.⁸ The Ways and Means Committee letter even advised the DOL of the present lawsuit.⁹

Despite this request, the DOL appears to have declined to issue such formal guidance. The Department of Labor issues formal guidance by posting letters on their Guidance Search website.¹⁰ Since the issuance of the June 9, 2025, letter from the Ways and Means Committee, the DOL has issued thirty-seven publications (one FAQ letter, sixteen Training and Employment Guidance Letters, thirteen Unemployment Insurance Program Letters, and seven Advisory Opinion

⁵ Jim Garner, U.S. DOL ETA’s Office of Unemployment Insurance *Sept. 3, 2021 Email* https://oui.doleta.gov/unemploy/pdf/cares_act_termination.pdf (accessed Jan. 20, 2026) [<https://perma.cc/D6KM-JBU3>].

⁶ *State ex rel. Bowling v. DeWine*, 2025-Ohio-2313, ¶12, <https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2025/2025-Ohio-2313.pdf> (accessed Jan. 20, 2026).

⁷ U.S. House of Representatives Committee on Ways and Means, *June 9, 2025 Letter to Department of Labor*, <https://waysandmeans.house.gov/wp-content/uploads/2025/06/WM-Letter-to-DOL-RE-OHIO-FPUC-LAWSUIT.pdf> (accessed Jan. 20, 2026) [<https://perma.cc/SAF3-JJM5>].

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Department of Labor, *Guidance Search* website, <https://www.dol.gov/guidance> (accessed Jan. 20, 2026) [<https://perma.cc/HB8W-FFRA>].

Letters).¹¹ None of these publications include the formal guidance requested by the Ways and Means Committee in their June 9, 2025 letter. The DOL’s refusal to issue new guidance on this issue in the face of a Congressional Committee’s formal request, and with knowledge of this pending lawsuit, strongly suggests that it has not changed positions, and that the FPUC dollars set aside for Ohio’s hard-working citizens are still available.

IV. FPUC benefits matter to Ohio working families and Ohio’s economy.

The legal question presented in this appeal has practical consequences for Ohio working families and Ohio’s economy. The federal pandemic unemployment programs, including FPUC, were designed to stabilize household finances and local markets during a historic economic shock due to the outbreak of COVID-19. The welfare and stability of working families depend on maintaining stable housing, consistent nutrition, and reliable childcare, while also meeting other basic expenses. The statewide indicators below summarize wage adequacy, housing affordability, and food hardship in Ohio since the pandemic to provide context for assessing the real-world effects of temporary income supports, like FPUC, on working families.

- Wages and working poverty: Ohio-specific analysis of “working poverty” emphasizes the issue of whether earnings are sufficient to cover basic expenses. A “basic cost-of-living” for a family of three in Columbus is \$79,622 (2024), which is the annual cost of a modest household budget including housing, food, child care, transportation, health care, taxes, and other necessities.¹² Measured against that benchmark, 82.3 percent of jobs in Ohio pay

¹¹ *Id.*

¹² Policy Matters Ohio, *Still working for too little in Ohio, 2025* (May 6, 2025), p. 2 (basic cost-of-living for a family of three; discussion of EPI Family Budget basis).

<https://policymattersohio.org/wp-content/uploads/2025/05/Still-working-for-too-little-in-Ohio-2025.pdf>.

[<https://perma.cc/7V49-D27C>]

a median wage below the basic cost-of-living for a family of three.¹³ For several of the state's most common jobs, the median wage is low enough that a full-time, year-round worker with a family of three would qualify for food assistance (SNAP), including fast food and counter workers, retail salespeople, cashiers, and home health and personal care aides.¹⁴ These comparisons underscore that wage adequacy is a central component of family economic stability.

- Housing affordability: An Ohio worker must earn \$22.51 per hour to afford a modest two-bedroom rental home at the state's fair market rent without spending more than 30% of income on housing.¹⁵ For 2025, the Ohio two-bedroom fair market rent was \$1,171 per month, implying an annual income of \$46,825.¹⁶ The average renter in Ohio earns \$18.62 per hour (equivalent to \$38,730 per year), leaving a gap between typical renter wages and the wage needed to afford a modest two-bedroom unit.¹⁷ This affordability gap is larger than it was at the beginning of the pandemic period. In 2020, the reported two-bedroom housing wage for Ohio was \$15.99 per hour, while the reported average renter wage was \$14.42.¹⁸ In 2024, the two-bedroom housing wage for Ohio was \$20.81, while the average

¹³ *Id.*, p. 2 (82.3% of jobs in Ohio pay a median wage below the basic cost-of-living for a family of three). Fine print from source: "Determined using the median annual earnings for detailed occupations reported by the Bureau of Labor Statistics. Occupational Employment and Wage Statistics Survey, May 2024. This number assumes a three-person family with two adults and one child, with one adult working. Many families have two working parents, and the cost-of-living varies for each family. Total employment for detailed occupations (5,499,390) does not add up to total employment across the state (5,526,300) due to limits in reporting for occupations with low sample sizes."

¹⁴ *Id.*, pp. 2, 4 (report uses May 2024 BLS Occupational Employment and Wage Statistics; identifies common occupations and notes SNAP eligibility for a family-of-three worker in those jobs).

¹⁵ National Low Income Housing Coalition, *Out of Reach 2025*, p. 203 (two-bedroom housing wage; two-bedroom FMR; annual income; renter wage). https://nlihc.org/sites/default/files/oor/2025_OOR_FullReport.pdf.
[<https://perma.cc/DEF6-X6JK>]

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ National Low Income Housing Coalition, *Out of Reach 2020*, "State Summary" table (Ohio) (two-bedroom housing wage \$15.99; average renter wage \$14.42). (Central Florida Foundation) https://www.ncsha.org/wp-content/uploads/OOR_BOOK_2020.pdf, p196 [<https://perma.cc/9B8H-29KX>].

renter wage was \$18.26.¹⁹ From 2020 to 2025, the gap between the housing wage and the average renter wage in Ohio increased roughly 148%.²⁰

Additionally, the U.S. federal Emergency Rental Assistance (ERA) program, a safety net that provided over \$46 billion to states and localities to help keep tenants housed due to COVID-19 related rent/utility arrears and housing stability, has ended.²¹ In Franklin County alone, more than 50,000 families narrowly avoided becoming unhoused over a four-year period thanks to over \$218 million from this federal funding distributed by the city of Columbus and the County.²² That money ran out in September of 2025, leaving families scrambling to find new solutions to the region's growing housing affordability and eviction crisis.²³ These families dealing with a lack of affordable housing, increasing housing costs and stagnant wages are at risk of worsening the homelessness rates in Franklin County which have risen each year since 2022, and are projected to increase another 16% by 2028.²⁴

- Food hardship and charitable demand: Food hardship affects families by reducing reliable access to adequate nutrition and increasing stress on household budgets already constrained by rent, utilities, and child-related expenses. Ohio's charitable hunger network reported a

¹⁹ National Low Income Housing Coalition, *Out of Reach 2024: Ohio* (state report), p. 1 (two-bedroom housing wage \$20.81; renter wage \$18.26). https://nlihc.org/sites/default/files/2024_OOR.pdf p191 [<https://perma.cc/Q87H-SDKV>].

²⁰ See FNs 18 and 19.

²¹ U.S. Treasury, Emergency Rental Assistance Program, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last accessed January 21, 2026) [<https://perma.cc/4343-8NZZ>].

²² King, *Rental assistance ends as eviction, homelessness crisis hits all-time highs*, The Columbus Dispatch (Sept. 24, 2025). <https://www.dispatch.com/story/news/2025/09/24/covid-era-rental-assistance-eviction-housing-columbus-ohio/86245940007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epi=z11xx62p116450c116450d00---v11xx62d--61--&gca-ft=231&gca-ds=sophi> (last accessed January 21, 2026) [<https://perma.cc/JZ5U-6UPU>].

²³ *Id.*

²⁴ King, *Advocates planning homeless count*, The Columbus Dispatch (Jan. 20, 2026). <https://www.dispatch.com/story/news/local/2026/01/20/homelessness-has-been-on-the-rise-for-years-2026-annual-count-coming-up/88196379007/> (last accessed Jan. 30, 2026) [<https://perma.cc/48D7-V3MY>].

sustained, historically high demand after the end of pandemic-era supports. Feeding America reported an overall food insecurity rate of 15.3% and a child food insecurity rate of 20.1% in Ohio in 2023.²⁵ The Ohio Association of Foodbanks’ twelve regional food banks observed more visitors between July and December 2024 than any other six-month period in the Association’s 35-year history, with food pantries averaging between 1.3 million and 1.4 million total visits each month.²⁶ 2024 saw a “staggering 58% increase in children and a 90% increase in older adults seeking assistance in 2024 compared to 2017.”²⁷

Statewide indicators show that many Ohio working families continue to face persistent poverty and “working poverty,” widening housing affordability gaps, and sustained record demand for food assistance. In 2025, leaders from across Ohio came together at the United Way ALICE Policy Summit with a shared goal of helping working families move from survival to stability.²⁸ Governor DeWine emphasized that reducing the impact of benefit cliffs is key to helping families advance, Ohio Department of Job and Family Services shared results from Ohio’s Benefit Bridge initiative to help families take raises or promotions without immediately losing support, and a

²⁵ Feeding America, *Map the Meal Gap* (Ohio overall; 2023 data) (food insecurity rate 15.3% in 2023). <https://perma.cc/VXZ3-CN8P>. Feeding America, *Map the Meal Gap* (Ohio child; 2023 data) (child food insecurity rate 20.1% in 2023). <https://map.feedingamerica.org/county/2023/child/ohio> [<https://perma.cc/8SCW-XTEH>].

²⁶ Frank, *Ohio food banks report highest visitation numbers in 35 years, as pressures rise*, WYSO (Mar. 31, 2025) (reporting July–Dec. 2024 record visitors; 1.3–1.4 million pantry visits per month) available at <https://www.wyso.org/news/2025-03-31/ohio-food-banks-report-highest-visitation-numbers-in-35-years-as-pressures-rise> (last accessed Jan. 30, 2026) [<https://perma.cc/PK4M-TB3G>].

²⁷ The Ohio Association of Foodbanks, *The Ohio Association of Foodbanks Urges Action for Funding to Address Food Insecurity in 2026-2027* State Budget Media Release (Feb. 10, 2025) (record demand in prior six months; 58% increase in children seeking assistance in 2024 compared with 2017) available at https://ohiofoodbanks.org/site/assets/files/3112/lobby_day_2025_media_release.pdf (last accessed Jan. 30, 2026) [<https://perma.cc/48YK-ZKCC>].

²⁸ United Way Greater Cleveland, *Collaboration at work: building stability for Ohio’s ALICE households* (Oct. 25, 2025) available at <https://www.unitedwaycleveland.org/collaboration-at-work-building-stability-for-ohios-alice-households/> (last accessed Jan. 29, 2026) [<https://perma.cc/57UJ-Z9Q7>].

bipartisan proposal was described to gradually phase out benefits as wages increase.²⁹ While Ohio leaders are focused on improving the stability of working families, the stabilizing effects are especially salient when Ohio families are looking ahead amid federal policy and funding uncertainty in other programs, including SNAP, Medicaid, federal rental assistance, and Continuum of Care grants that support shelters and homelessness services. Evidence supports treating temporary unemployment supplements, like FPUC, as both household relief and economic stabilization: when benefits are paid, households tend to spend them quickly on necessities, supporting local businesses and reducing immediate hardship; when benefits are taken away, communities lose purchasing power and families face increased difficulty paying basic expenses.

CONCLUSION

Ohio's unilateral withdrawal from the Federal Pandemic Unemployment Compensation (FPUC) program on June 26, 2021 violated Ohio Revised Code § 4141.43(I) and inflicted economic harm on thousands of Ohioans who remained unemployed due to COVID-19. The record makes clear that reinstating Ohio's participation for the June 26–September 6, 2021 period would deliver up to \$900 million in federally funded benefits—critical resources that would stabilize household finances and inject substantial economic activity throughout the state. The Court should affirm the judgment below and compel the State to rescind its unlawful early termination of FPUC and secure the benefits owed to eligible Ohioans.

²⁹ *Id.* argument