

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
S.B., S.S., T.S., and B.B.,)	Civil Action No.:
)	
Plaintiffs,)	
)	
vs.)	SUMMONS
)	
Henry Dargan McMaster, in his)	
official capacity as Governor of the)	
State of South Carolina, and G. Daniel)	
Ellzey, in his official capacity as)	
Director of the South Carolina)	
Department of Employment and)	
Workforce,)	
)	
Defendants.)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/John D. Kassel
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July 28, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

S.B., S.S., T.S., and B.B.

Plaintiffs

vs.

Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, and G. Daniel Ellzey, in his official capacity as Director of the South Carolina Department of Employment and Workforce;

Defendants

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

COMPLAINT

INTRODUCTION

Recognizing the severe economic hardship visited on millions of Americans by the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act which included, among its many relief programs, enhancements to existing unemployment benefits programs. These programs have provided billions in unemployment benefits to South Carolinians affected by the pandemic and are currently scheduled to continue through September 6, 2021. These benefits, including the costs of their administration, are 100% federally funded.

Effective June 27, 2021, Defendants, Governor McMaster and Director Ellzey, prematurely ended South Carolina’s participation in these enhanced unemployment benefits. In doing so, they would forfeit more than half a billion dollars in benefits that would otherwise go to Plaintiffs and tens of thousands of other workers and their families for their benefit and the benefit of the South Carolina economy. In the first week following Defendants’ action, there was a more than 82% decrease in the number of South Carolinians receiving any kind of unemployment benefit. That week alone, South Carolina saw a reduction of more than \$39 million in the amount of unemployment benefits paid to South Carolina families.

South Carolina law requires the South Carolina Department of Employment and Workforce (“DEW”) to act as necessary to secure all benefits available under the Social Security Act, like the enhanced unemployment benefits at issue in this case, for the benefit of the State of South Carolina and her citizens. Defendants’ actions are plainly contrary to this statutory obligation. They have caused, and will continue to cause, Plaintiffs and tens of thousands of other South Carolinians severe and irreparable harm.

Plaintiffs bring this action seeking relief that would require Defendants to renew South Carolina’s participation in these enhanced unemployment benefits programs and enjoin Defendants from terminating South Carolina’s participation in those programs prior to their expiration.

PARTIES

1. Plaintiffs are citizens and residents of the State of South Carolina who are eligible for one or more Pandemic Unemployment Benefits established by the CARES Act.¹ As a result of Defendants’ premature termination of these benefits, Plaintiffs have each suffered, and will continue to suffer, hardships related to the loss or reduction of their Unemployment Insurance benefits.
2. Plaintiffs are identified by initials only due to the highly personal and sensitive nature of the relevant circumstances and the risk of ridicule and retaliation if they are personally identified.
3. Defendant Henry Dargan McMaster is the Governor of the state of South Carolina and is named in his official capacity. Governor McMaster has directed Director Ellzey and DEW, a cabinet agency within the executive branch of South Carolina state government, to opt out of Pandemic Unemployment Benefits established by the CARES Act.
4. Defendant Daniel Ellzey is the Director of the South Carolina Department of Employment and Workforce (“DEW”) and is named in his official capacity. DEW

¹ These benefits include Pandemic Unemployment Assistance (“PUA”), Pandemic Emergency Unemployment Compensation (“PEUC”), and Federal Pandemic Unemployment Compensation (“FPUC”). These benefits are described in more detail beginning at paragraph 10 below.

processes individual claims for unemployment benefits, including Pandemic Unemployment Benefits, and distributes payments to eligible individuals. At Governor McMaster's direction, Director Ellzey prematurely terminated DEW's agreement with the U.S. Department of Labor ("DOL") to administer Pandemic Unemployment Benefits.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to S.C. Const. art. V, 11, the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, and S.C. Code Ann. § 36-2-803.
6. Venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30 because the most substantial part of the acts or omissions alleged herein occurred in Richland County and, on information and belief, one or more individual defendants is a resident of Richland County.

STATEMENT OF FACTS

7. The COVID-19 pandemic visited severe economic hardship on South Carolinians and disproportionately affected those least able to afford it. From June 2019 to June 2020, South Carolina's economy lost 126,100 seasonally adjusted, nonfarm jobs, an outcome largely driven by COVID-19.² By far, the hardest hit industry has been leisure and hospitality with 62,500 jobs lost over that period in an industry whose workers earn the lowest average wage of workers in any industry group - \$373.00 per week.³
8. While recovery is underway, it is incomplete. Many thousands of South Carolina families are still struggling to recover financially. The number of unemployed South Carolinians in May 2021 is approximately 78% higher than it was in January 2020.⁴ The U.S. Census

² S.C. Department of Employment and Workforce, *Labor Market Trends*, Vol. 1: Issue 5, June 2020.

³ *Id.*

⁴ U.S. Bureau of Labor Statistics, Local Area Unemployment Statistics, available at <https://data.bls.gov/pdq/SurveyOutputServlet> (accessed July 14, 2021)

Bureau estimates that 176,832 South Carolina households are behind on rent and collectively owe \$481,923,073 in back rent.⁵

Congress Provides Pandemic Unemployment Benefits to Alleviate the Economic Hardship Caused by COVID-19.

9. To alleviate some of the economic hardship that the COVID-19 pandemic caused, Congress enacted the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. Signed into law on March 27, 2020, the CARES Act provides for a variety of pandemic relief programs including several types of enhanced unemployment benefits (collectively “Pandemic Unemployment Benefits”). 15 U.S.C. § 9001 *et seq.*
10. Pandemic Unemployment Assistance (“PUA”) is one type of Pandemic Unemployment Benefit and is available to workers who would not otherwise be eligible for regular Unemployment Insurance (“UI”) benefits including the self-employed, underemployed, independent contractors, and others whose unavailability or inability to work was caused by COVID-19. 15 U.S.C. § 9021.
11. Pandemic Emergency Unemployment Compensation (“PEUC”) is a second type of Pandemic Unemployment Benefit and provides additional weeks of benefits for workers who have exhausted their regular UI benefits. 15 U.S.C. § 9025.
12. Federal Pandemic Unemployment Compensation (“FPUC”) is a third type of Pandemic Unemployment Benefit which increased the amount of regular UI benefits by \$600 per week from March 27, 2020, through July 31, 2020. 15 U.S.C. § 9023. From December 27, 2020, through September 6, 2021, FPUC increases regular UI benefits by \$300 per week. Continued Assistance for Unemployed Workers Act of 2020 (“CAUWA”). Pub. L. No. 116-260, § 200–01, 206; American Rescue Plan Act of 2021 (“ARPA”). Pub. L. No. 117-2, § 9013 (March 11, 2021). Workers receiving PUA and PEUC also receive an additional \$300 per week included in their benefit payments although this technically is not an FPUC payment.

⁵ <https://nationalequityatlas.org/rent-debt> (accessed July 14, 2021)

13. Funds have been appropriated by congress for Pandemic Unemployment Benefits and are available in the Unemployment Trust Fund to be distributed to eligible South Carolinians through September 6, 2021. ARPA §§ 9011, 9013, and 9016.⁶
14. The costs of Pandemic Unemployment Benefits and the costs to states of administering these programs, including startup costs and ongoing administration costs, are 100% federally funded. 15 U.S.C. §§ 9021(f)(2), 9023(d)(1)(A), 9025(d)(2)(A).⁷
15. Pandemic Unemployment Benefits and administration costs are funded through Sections 901, 904, and 905 of the Social Security Act, 42 U.S.C. § §§ 1101(a), 1104(a), and 1105(a). 15 U.S.C. §§ 9021(g), 9025(d).⁸
16. As a result, Pandemic Unemployment Benefits are “advantages available under the provisions of the Social Security Act that relate to unemployment compensation” as that phrase is used in S.C. Code Ann. § 41-29-230(1).
17. Shortly after the CARES Act was enacted, DEW entered into an agreement with the United States Department of Labor (“DOL”) to administer Pandemic Unemployment Benefits on behalf of the State of South Carolina. As of July 12, 2021, DEW had distributed the following amounts under these programs:

Pandemic Unemployment Benefit	Amount Distributed as of July 12, 2021^{9,10}
FPUC	\$3,699,971,279.20

⁶ The CARES Act provided for three additional types of enhanced unemployment benefits which are not at issue in this case.

⁷ See also Unemployment Insurance Program Letter (“UIPL”) 15-20, p. 3 (FPUC); 16-20, p. 5 (PUA), 17-20, p. 3-4 (FPUC) (Exhibits A, B, and C attached hereto).

⁸ PUA benefits, including FPUC and administration costs, are funded by 42 U.S.C. §§ 1104(a) and 1105(a). 15 U.S.C. § 9021(g). PEUC benefits, including FPUC, are funded by 42 U.S.C. §§ 1104(a) and 1105(a), while PEUC administration costs are funded by 42 U.S.C. § 1101(a). 15 U.S.C. § 9025(d).

⁹ <https://www.dew.sc.gov/data-and-statistics/data-dashboard> (accessed July 14, 2021)

¹⁰ Three Pandemic UI Benefit programs not at issue in this case are omitted from these totals.

PEUC	\$681,879,826.25
PUA	\$543,498,066.88
Total	\$4,925,349,172.33

18. Many tens of thousands of South Carolinians, including Plaintiffs, are entitled to receive and have been receiving Pandemic Unemployment Benefits since DEW began administering these programs.

Defendants Prematurely Terminate Pandemic Unemployment Benefits for Tens of Thousands of South Carolinians

19. On May 6, 2021, Director Ellzey issued a memorandum to Governor McMaster purporting to assess the impact should South Carolina decide to “opt-out” of Pandemic Unemployment Benefits effective June 27, 2021, rather than participate through the currently scheduled end of those programs in early September 2021.¹¹ In his memorandum, Director Ellzey estimated that such action would result in the loss of the following amounts of federal funding between June 27, 2021, and September 4, 2021:

Program	Anticipated 10-Week Funding Loss (June 27, 2021 – September 4, 2021)
FPUC	\$370.0 million
PEUC	\$146.0 million

¹¹ Exhibit D attached hereto

PUA	\$62.0 million
Total	\$578 million¹²

20. The same day Director Ellzey issued his memorandum, Governor McMaster directed DEW to terminate South Carolina's participation in the Pandemic Unemployment Benefits effective June 30, 2021.¹³

21. The effects of Defendants' actions on vulnerable South Carolinians were swift and dramatic. In the first week after Defendants opted out of Pandemic Unemployment Benefits, the number of South Carolinians receiving unemployment benefits of any kind fell by more than 82% (71,604).¹⁴

	June 27 – July 3	July 4 – July 10	Change
Individuals receiving Unemployment Benefits of any kind	87,018	15,414	(71,604)

22. South Carolinians received over \$39,000,000 less in Pandemic Unemployment Benefits between July 4, 2021, and July 10, 2021, than they did the week before Defendants' decision to opt out of those benefits took effect.¹⁵ This weekly loss will most likely increase as Defendants' decision takes full effect.

¹² DEW estimates that an additional \$7.3 million in benefits will be lost during this time under the three Pandemic UI Programs that are not at issue in this case.

¹³ Exhibit E attached hereto

¹⁴ <https://www.dew.sc.gov/data-and-statistics/data-dashboard> (accessed July 14, 2021, for June 27-July 3 data and accessed July 15, 2021, for July 4-July 10 data)

¹⁵ <https://www.dew.sc.gov/data-and-statistics/data-dashboard> (accessed July 14, 2021, for June 27-July 3 data and accessed July 15, 2021, for July 4-July 10 data)

	June 27 – July 3	July 4 – July 10	Change
FPUC Benefits Paid	\$29,311,525.00	\$3,479,806.00	(\$25,831,719.00)
PEUC Benefits Paid	\$10,583,318.00	\$1,062,149.00	(\$9,521,169.00)
PUA Benefits Paid	\$4,276,299.00	\$445,028.00	(\$3,831,271.00)
Total	\$44,171,142.00	\$4,986,983	(\$39,184,159.00)

23. While Defendants’ decision to opt out of Pandemic Unemployment Benefits has taken effect, that action is not irrevocable. On July 12, 2021, DOL issued guidance to state workforce agencies which clarified that “[a]ny state that has provided notice to [DOL] of its intent to terminate any of the Pandemic Unemployment Benefits prior to the September 6, 2021, end date may reinstitute participation in any or all programs it previously indicated it would be terminating.”¹⁶

24. DOL’s July 12 guidance indicates that if the date on which a state has indicated it will terminate participation in Pandemic Unemployment Benefit programs has passed, as it has in South Carolina, the state may need to enter into a new agreement with DOL to reinstitute operations. Doing so may result in a lapse in FPUC and PEUC benefits because the new agreement would become effective the week of unemployment after that agreement is signed.¹⁷

25. Thus, every week that passes without an agreement between DEW and DOL to administer Pandemic Unemployment Benefits may result in the permanent loss of tens of

¹⁶ Unemployment Insurance Program Letter No. 14-21, Change 1 (Exhibit F attached hereto and available at https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9502)

¹⁷ UIPL 14-21 at 7

millions in federal unemployment benefits for needy South Carolinians, including Plaintiffs.

26. PUA benefits will not lapse if South Carolina enters into a new agreement with DOL because the state would be required to provide individuals receiving PUA an opportunity to certify for the missing weeks.¹⁸

Individual Plaintiffs and the Harms They Have Suffered as a Result of Defendants’ Conduct.

Plaintiff S.B.

27. Plaintiff S.B. lives in Spartanburg with her three children ages 15, 11, and 7. Her youngest has cerebral palsy, is profoundly disabled, and receives \$789.00 per month in Supplemental Security Income (“SSI”) benefits.
28. She served for two years in the United States Air Force before being honorably discharged due to a disability. She receives approximately \$170.00 per month in VA benefits from her service. Aside from her VA benefits and her child’s SSI, there is currently no other income coming into her household.
29. In June of 2020, S.B. was terminated from her job as a front desk manager at a hotel. She applied for unemployment benefits and was initially determined to be ineligible because DEW found she was terminated from her job for misconduct.
30. S.B. appealed this initial determination and, in November 2020, DEW reversed its decision and found that she was eligible for unemployment benefits effective June 14, 2020, because she had been terminated without cause connected to her employment.
31. S.B. started receiving unemployment benefits of \$299.00 per week in November of 2020.
32. In December of 2020, S.B. started receiving an additional \$300.00 per week in FPUC.

¹⁸ UIPL 14-21 at 7

33. In April of 2021, S.B. received a notice that she was eligible for PEUC as of July 5, 2020.
34. In June of 2021, S.B. received an email from DEW saying that the following week would be the last week that she would be eligible for PEUC, and FPUC. She has not received any unemployment benefits since DEW stopped participating in these programs.
35. S.B. has continued to search for work since she became unemployed. She has applied for approximately 30-40 jobs through DEW's online portal since April of 2021. She was offered one phone interview as a result, but she was not able to take the job because it required 2nd or 3rd shift work and she cannot leave her youngest at home with her other children overnight.
36. S.B. has completed another 60-80 applications since she became unemployed but has not been able to find suitable employment. Until her youngest goes back to school, S.B. would need to make enough to pay for babysitting or daycare, which is particularly expensive for a special needs child.
37. S.B. is approximately 3 months behind on rent and 1.5 months behind on her utility and car payments. The unemployment benefits S.B. was receiving made it possible for her to stay much closer to current on these bills and pay other expenses for herself and her children.
38. S.B. is concerned that if it becomes public knowledge that she was a part of this lawsuit, she could face harassment, retaliation, or the loss of job opportunities.
39. S.B. is currently eligible for PEUC and FPUC and would be receiving those benefits had Defendants not prematurely ended South Carolina's participation in those programs.

Plaintiff S.S.

40. Plaintiff S.S. is 35 years old and lives in Easley, South Carolina. He lives with his mother who has cancer and has lived with her since 2012 to be her caregiver. S.S.'s mother receives approximately \$830.00 per month in SSI survivor's benefits. Currently that is the only income coming into S.S.'s household.

41. In February 2020, S.S. was let go from his job at a security company that he had held for about 6 months. He applied for unemployment benefits but was found ineligible from March 22, 2020, through July 11, 2020, because DEW said S.S. had been fired for cause. He appealed this decision, but it was upheld.
42. S.S. was preparing to start a new job doing janitorial work at a school in March of 2020 when he got notice that the school would be closing because of the pandemic.
43. S.S. was found eligible for PEUC in June of 2020 and started receiving \$214.00 in weekly benefits before tax, \$182.00 per week after tax.
44. In November of 2020, S.S. got notice that he was eligible for PUA benefits from March 22, 2020, because his place of employment closed as a result of COVID-19. This notice said the pandemic assistance period would end on September 4, 2021
45. In December of 2020, S.S. started receiving an additional \$300.00 per week in FPUC.
46. In June of 2021, S.S. received notice from DEW that they were not going to be participating in PEUC, PUA, and FPUC after the end of that month. He received his last unemployment benefits check of \$47.00 about two weeks ago.
47. S.S. has continued to search for work since he became unemployed in February of 2020. He has applied for hundreds of jobs in that time but has been unable to find suitable employment. S.S. has continued to go to appointments with DEW to help with his job search even though his benefits have ended, and he has been told that he does not have to do this anymore.
48. S.S. and his mother struggled to make ends meet before his unemployment benefits were stopped. Since then, they have struggled to put food on the table. They have borrowed money from family for necessities, but S.S. does not know how long those resources will last. S.S.'s car is more than 20 years old and he relies on it to get his mother to her frequent surgeries and doctor's appointments. They have remained current on their rent and utilities so far, but S.S. is unsure how long they will be able to do so without the unemployment benefits he was receiving.

49. S.S. is concerned that if it becomes public knowledge that he was a part of this lawsuit, he could face harassment, retaliation, or the loss of job opportunities.
50. S.S. is currently eligible for PEUC and FPUC and would be receiving those benefits had Defendants not prematurely ended South Carolina's participation in those programs.¹⁹

Plaintiff T.S.

51. Plaintiff T.S. is 49 years old and a resident of Marion, South Carolina.
52. T.S. lost her job on March 11, 2020, when the company she was working for closed her division and moved its operations to Columbia, South Carolina.
53. T.S. applied for unemployment benefits and was approved for \$151.00 per week in regular Unemployment Insurance ("UI"). After exhausting regular UI, she was moved to extended benefits under the PEUC program.
54. T.S. started receiving an additional \$600.00 per week in FPUC in April of 2020. She received this benefit through July of 2020 when it ended.
55. After her FPUC assistance ended, T.S. lost her house and her car was repossessed. She was able to get her car back, but only by borrowing money from family. She moved in with a friend and their agreement is that T.S. is to pay half of the utilities.
56. In December 2020, T.S. started receiving an additional \$300.00 per week when FPUC was re-started. She received FPUC and PEUC until DEW stopped participating in the programs in June of 2021.
57. T.S. is no longer receiving unemployment benefits of any kind since DEW stopped participating in PEUC and FPUC.
58. T.S. has been required to, and has continued to, search for work since she became unemployed. She has conducted at least 288 job searches using the DEW online portal

¹⁹ DEW has also determined S.S. to be eligible for PEUC and has alternated paying benefits to him under that program and PUA.

and has not received even an offer to interview. T.S. has been searching for jobs outside of the DEW online portal and has had four interviews, but no job offers.

59. Since her unemployment benefits ended, T.S. has gotten behind in her utility payments. If she is unable to continue these payments, she will not be able to live where she is anymore and she does not have any place else to go. While T.S. is current on her car payment now, she has no way to keep paying and her car will likely be repossessed again. Because she does not have health insurance right now, she must pay for prescriptions and copays out of pocket, and she is currently in need of medical treatment for kidney problems.
60. T.S. is concerned that if it becomes public knowledge that she was a part of this lawsuit, she could face harassment, retaliation, or the loss of job opportunities.
61. T.S. is currently eligible for PEUC and FPUC and would be receiving those benefits had Defendants not prematurely ended South Carolina's participation in those programs.

Plaintiff B.B.

62. Plaintiff B.B. is 41 years old and a resident of Myrtle Beach, South Carolina. She lives with her nephews ages 10 and 12 who she cares for.
63. B.B. started a cake-making business in Myrtle Beach in 2021 and operated it full time until lockdowns began due to the pandemic in March of 2020. B.B. had to close her business because very few events were happening, and few people were ordering cakes.
64. B.B. applied for unemployment benefits in March of 2020 and started receiving Pandemic Unemployment Assistance ("PUA") in June of 2020. B.B. has also received Federal Pandemic Unemployment Compensation ("FPUC") when it was available.
65. B.B. was receiving PUA and FPUC when DEW stopped participating in these programs in June of 2021. Because DEW stopped participating in these programs, B.B. currently has no income.

66. Now that the economy seems to be recovering and people are holding events again, B.B. had planned to use PUA and FPUC benefits to get her business re-started. But she will not be able to do this without income because she will need to buy supplies and pay vendors to do this.
67. B.B. has applied for at least 50-60 jobs since she had to close her business, but she has not received a job offer nor has she been offered an interview.
68. B.B. has applied for PPP and SBA loans to get her business operating again but has always been told that there is no money available.
69. B.B. is currently behind on her house taxes because of the pandemic, and she is concerned that, unless she can get her business restarted, she will eventually lose her home.
70. B.B. has been able to stay current on most of her bills while she was receiving unemployment benefits. But because these benefits have been stopped, B.B. Does not know how she will keep paying for things like food and utilities.
71. B.B. is concerned that if it becomes public knowledge that she was a part of this lawsuit, she could face harassment, retaliation, or the loss of job opportunities.
72. B.B. is currently eligible for PUA and FPUC and would be receiving those benefits had Defendants not prematurely ended South Carolina's participation in those programs.

FIRST CLAIM FOR RELIEF
Declaratory Judgment

73. The Uniform Declaratory Judgements Act, S.C. Code Ann. § 15-53-10 *et seq.*, provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20.
74. South Carolina law provides that DEW

must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters, and act, through the promulgation of appropriate rules, regulations, administrative methods and standards, as 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

S.C. Code Ann. § 41-29-230(1) (emphasis added).

75. Pandemic Unemployment Benefits are “advantages available under the provisions of the Social Security Act that relate to unemployment compensation” within the meaning of Section 41-29-230(1).
76. By terminating DEW’s participation in the Pandemic Unemployment Benefits, Director Ellzey has caused DEW to violate its statutory obligation to secure all advantages available under the provisions of the Social Security Act and has exceeded his authority.
77. By directing DEW to terminate its participation in the Pandemic Unemployment Benefits, in violation of DEW’s statutory obligations, Governor McMaster has acted in direct contravention to legislative mandate and has exceeded his authority.
78. Plaintiffs have suffered and will continue to suffer direct, severe, and irreparable harm because of Defendants’ actions.
79. An actual case or controversy exists between the parties to this action insofar as Defendants have acted or failed to act in a manner contrary to their obligations under S.C. Code Ann. § 41-29-230(1) and, in doing so, have caused and will continue to cause the Plaintiffs irreparable harm.
80. A declaration from this Court will terminate the controversy between the parties and remove existing uncertainty in their legal relations.

SECOND CLAIM FOR RELIEF
Preliminary and Permanent Injunctive Relief

81. The plain language of Section 41-29-230(1) requires DEW to act to secure all advantages available under the Social Security Act to this State and its citizens. By prematurely

opting out of Pandemic Unemployment Benefits, Defendants have caused DEW to violate that obligation to the detriment of Plaintiffs and tens of thousands of other South Carolinians. As a result, Plaintiffs are likely to succeed on the merits of their claim for declaratory relief.

- 82. Plaintiffs have suffered and are likely to continue suffering irreparable harm including homelessness, loss of utility service, food insecurity, and lack of needed medical treatment.
- 83. Plaintiffs have no remedy at law which is as practical and efficient as injunctive relief, or which would otherwise prevent their constantly recurring grievances.

THIRD CLAIM FOR RELIEF
Writ of Mandamus

- 84. The plain language of Section 41-29-230(1) requires DEW to act to secure all advantages available under the Social Security Act to this State and its citizens.
- 85. Pandemic Unemployment Benefits are “advantages available under the provisions of the Social Security Act that relate to unemployment compensation” within the meaning of Section 41-29-230(1).
- 86. As a result, Defendants have a statutory obligation to secure Pandemic Unemployment Benefits to this State and its citizens.
- 87. The acts necessary to achieve this objective are ministerial in nature and leave nothing to the exercise of discretion.
- 88. Plaintiffs, by virtue of Section 41-29-230(1), have a specific legal right to receive continuing Pandemic Unemployment Benefits and it is necessary that Defendants discharge their duty in order for Plaintiffs to receive those benefits.
- 89. In the absence of declaratory and/or injunctive relief, Plaintiffs have no other legal remedy available to vindicate their rights.

THEREFORE, Plaintiffs respectfully request that this Honorable Court grant them the following relief:

- A. Hold a hearing on Plaintiffs' request for declaratory relief as soon as possible pursuant to Rule 57, SCRPC.
- B. Declare that:
 - i. Section 41-29-230(1) requires DEW to secure Pandemic Unemployment Benefits for the benefit of South Carolina and her citizens;
 - ii. Governor McMaster's May 6, 2021, directive to Director Ellzey demanding that DEW terminate its participation in Pandemic Unemployment Benefits was unlawful and *ultra vires*;
 - iii. Director Ellzey's termination of DEW's participation in Pandemic Unemployment Benefits was unlawful and *ultra vires*;
- C. Issue a preliminary and permanent injunction:
 - i. Requiring Director Ellzey to immediately enter into a new agreement with DOL to administer Pandemic Unemployment Benefits;
 - ii. Requiring Director Ellzey to provide all South Carolinians who were receiving PUA benefits prior to DEW's withdrawal from that program with notice of PUA reinstatement and an opportunity to certify for any weeks of benefits they did not receive because of DEW's withdrawal;
 - iii. Requiring Director Ellzey to pay prospective and retroactive PEUC and FPUC benefits to all South Carolinians who qualify for them or who would have qualified for them but for DEW's withdrawal from these programs;
 - iv. Enjoining Defendants, Governor McMaster and Director Ellzey, their officers, employees, agents, and all persons acting in concert or participation with them from taking any action that will prevent or delay the State of South Carolina or

any individuals who qualify from receiving any and all Pandemic Unemployment Benefits.

- v. Enjoining Defendants, Governor McMaster and Director Ellzey, their officers, employees, agents, and all persons acting in concert or participation with them, from withdrawing the State of South Carolina from Pandemic Unemployment Benefits for the duration of those programs.

- D. In the alternative, issue a Writ of Mandamus directing the relief requested herein.
- E. Allow Plaintiffs to proceed in this action anonymously and direct that neither counsel, the parties, nor any witnesses may directly or indirectly divulge their identities without further order of the Court;
- F. Award Plaintiffs the costs of this action;
- G. Award plaintiffs such other and further relief as the Court deems just and proper.

Respectfully Submitted,

July 28, 2021

SOUTH CAROLINA APPLESEED
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