

PROPOSED

**BRIEF OF THE OHIO BUSINESS AMICI CURIAE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

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

STATE ex rel CANDY BOWLING, et al.,

Plaintiffs,

v.

MICHAEL DEWINE, et al.,

Defendants.

Case No. 21 CV 004469

JUDGE HOLBROOK

**BRIEF OF THE OHIO BUSINESS AMICI CURIAE IN OPPOSITION TO PLAINTIFFS’
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

I. INTRODUCTION

In May 2021, Governor DeWine notified the United States Department of Labor that Ohio would be terminating its administration of the Federal Pandemic Unemployment Compensation (“FPUC”) and the Mixed Earner Unemployment Compensation (“MEUC”, together with the FPUC the “Temporary Federal UI Programs”) programs. *See* Letter from Mike DeWine to Suzan LeVine (May 24, 2021), attached hereto as Exhibit A. The Governor explained that while these programs had a positive impact at the height of the pandemic when jobs were scarce or uncertain, they were now having a negative impact by discouraging Ohioans from working when the economy was in recovery and Ohio businesses were looking to hire. *Id.* Thus, the Governor decided that it was no longer in the public interest to pay extended benefits to individuals who were not working. *Id.* Now, months later, Plaintiffs ask this Court for emergency relief to override the Governor’s policy decision and force Ohio to continue these Temporary Federal UI Programs.

The Ohio Chamber of Commerce, the Ohio Business Roundtable, the Ohio Restaurant Association, the Ohio Hotel and Lodging Association, and the Ohio Grocers Association (the “Ohio Business Amici”) support the Governor’s decision and urge the Court to deny Plaintiffs’

motion for a temporary restraining order and preliminary injunction. A cursory review of the sole statute cited as the basis for Plaintiffs' claims, R.C. 4141.43(I), reveals that it does not create any obligation requiring the State of Ohio to continue participating in these now counter-productive programs. Further, from the Ohio Business Amici's perspective and based on public data substantiated by the on-the-ground experience of the Ohio Business Amici's members, it is clear that Ohio businesses – and in turn, Ohio's economy – will suffer unjustifiable harm if the requested injunction is issued. As described in greater detail below, as leading advocates for Ohio businesses, the Ohio Business Amici are uniquely positioned to explain why the Governor was correct that the public interest is not be served by continuing the Temporary Federal UI Programs.

Thus, the Ohio Business Amici urge this Court to deny Plaintiffs' requested motion and to not second-guess the Governor's wise policy decision to terminate Ohio's administration of the Temporary Federal UI Programs.

II. STATEMENTS OF INTEREST

The Ohio Business Amici and their members have significant interest in this case.

The Ohio Chamber of Commerce (the "Ohio Chamber") is Ohio's largest and most diverse statewide business advocacy organization representing businesses ranging in size from small, sole proprietorships to some of the largest U.S. companies. It works to promote and protect the interests of its more than 8,000 business members while building a more favorable business climate in Ohio by advocating for the interests of Ohio's business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a stable and predictable legal system, which fosters a business climate where enterprise and Ohioans prosper. The Ohio Chamber regularly files amicus briefs in cases important to its members' interests in courts across the state of Ohio.

The Ohio Business Roundtable (the “OBRT”), established in 1992, was founded for one sole purpose: to improve Ohio’s business climate. Since its inception, the OBRT has worked with Ohio’s governors and legislative leaders to make Ohio more business-friendly and more competitive both nationally and internationally. OBRT members – the Chief Executive Officers of many of our state’s largest, most successful businesses – have helped bring about momentous change in Ohio’s economic landscape. OBRT’s executives identify vexing, intractable issues facing Ohio’s job creators, and through their expertise, experience and resources, pursue policies that make Ohio stronger.

The Ohio Restaurant Association (the “ORA”) is the chief promoter, educator and advocate for Ohio’s restaurant and foodservice industry. The ORA is comprised of more than 2,000 members, including independent and multi-unit restaurant companies and industry purveyors, ranging from large national companies employing tens of thousands of Ohioans to small single-location, family-run neighborhood restaurants and bars. The ORA is committed to enhancing all parts of Ohio’s restaurant, hospitality and foodservice industry, an integral part of Ohio’s economy, a contributor to the vibrancy of communities throughout Ohio, and the state’s second-largest private sector employer.

The Ohio Hotel & Lodging Association (the “OHLA”) was formed in 1893 and serves as the leading voice for owners, operators, and professionals in every type of lodging business across the Buckeye State. The OHLA’s mission is to support efforts that grow Ohio’s travel economy, provide jobs for hospitality professionals, and maintain a prosperous hotel and lodging market. Through its advocacy, the OHLA works with policymakers throughout Ohio to advance the interests of its members at the Ohio Statehouse, the Governor’s Office, and in local communities, so that Ohio is a welcoming state for travelers and the professionals who serve them.

The Ohio Grocers Association (the “OGA”), founded in 1899, has served Ohio’s food industry for more than 120 years. With over 500 members, there is an OGA business located in nearly every community across Ohio. OGA’s members range from small family-owned establishments to the State’s largest grocery stores, food manufacturers, distributors, and wholesalers which uniquely positions the OGA to represent the industry in front of Ohio’s policymakers. As part of OGA’s mission, the association advocates for a better business and legal climate in Ohio that helps their members grow and advance Ohio’s economic prosperity.

III. ARGUMENT

In order to obtain a temporary restraining order and/or a preliminary injunction, Plaintiffs must show: (1) a substantial likelihood that they will prevail on the merits; (2) they will suffer irreparable injury or harm if the requested relief is denied; (3) no unjustifiable harm to third parties will occur if the injunctive relief is granted; and (4) the injunctive relief requested will serve the public interest. *Franks v. Rankin*, 10th Dist. Franklin No. 11AP-934, 2012-Ohio-1920, ¶ 28; *Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, 159 N.E.3d 852, ¶ 32 (10th Dist.). Plaintiffs have the burden of establishing their right to an injunction by demonstrating clear and convincing evidence of these factors. *LaRose* at ¶ 32.

The Supreme Court of Ohio has held that “[g]reat caution should be exercised when a court of law enjoins the functions of other branches of government.” *Dandino v. Hoover*, 70 Ohio St.3d 506, 510, 639 N.E.2d 767 (1994). Indeed, “[c]ourts should take ‘particular caution * * * in granting injunctions, especially in cases affecting a public interest where the court is asked to interfere with or suspend the operation of important works or control the action of another department of government.’” *Aids Taskforce of Greater Cleveland v. Ohio Dept. of Health*, 2018-Ohio-2727, 116 N.E.3d 874, ¶ 20 (8th Dist.), citing *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 604, 653 N.E.2d 646 (1995). The Governor has the difficult

and complicated task of guiding Ohio's economy out of the COVID-19 pandemic, and adjusting Ohio's participation in the Temporary Federal UI Programs is just one important prong of that process. Thus, this Court should be cautious of issuing an injunction that interferes with the executive branch's policy decisions, which could throw off-balance the Governor's comprehensive efforts to support Ohio's economy.

The Court should especially refuse to enjoin the executive branch's actions here, where the Plaintiffs cannot demonstrate that any of the injunction factors weigh in their favor. Although the Ohio Business Amici believe that all of the injunctive factors weigh against the Plaintiffs in this case, the Ohio Business Amici specifically focus on why factors 1, 3 and 4 require the Court to deny the requested injunction.

A. Plaintiffs cannot show a substantial likelihood that they will prevail on the merits.

Plaintiffs' claims will fail on the merits, because there is no legal authority requiring the State of Ohio to continue participating in the Temporary Federal UI Programs. Instead, the Governor acted within his authority and discretion to make the policy decision to terminate Ohio's administration of these programs pursuant to the termination procedure under federal statute.

Plaintiffs contend that Defendants "are violating their clear legal and statutory duty to secure [] benefits for employees in the State." (Compl. ¶ 36.) Plaintiffs rely solely on R.C. 4141.43(I) as the basis for this alleged legal and statutory duty. This provision provides that the director of the Ohio Department of Jobs and Family Services (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" a list of specific federal acts. In their motion, Plaintiffs do not

offer this Court any legal analysis of the statute. They simply quote the statute and then summarily state “the language is clear” and favors granting an injunction.

A cursory analysis of the language of R.C. 4141.43(I) reveals that Plaintiffs are incorrect. There are multiple reasons why this statute does not impose any duty on the Governor or the Director to contract with the Department of Labor to continue the Temporary Federal UI Programs.

As an initial matter, R.C. 4141.43(I) applies only to the Director. It does not apply to the Governor. Thus, this statute cannot impose any duty on the Governor to force Ohio to continue participating in the Temporary Federal UI Programs and the Governor could not have violated this statutory provision when he provided notice that Ohio was terminating its administration of those programs.

Next, any duties that the statute might impose on the Director are related to “advantages” that are provided under federal acts enumerated by the statute: the Social Security Act, the Federal Unemployment Tax Act, the Wagner-Peyser Act, the Federal-State Extended Unemployment Compensation Act of 1970, and the Workforce Innovation and Opportunity Act. *See* R.C. 4141.43(I). This statute does not mention the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which created the Temporary Federal UI Programs, and therefore cannot impose any duty on the Director related to securing advantages available under the CARES Act.

Even if the CARES Act was listed in R.C. 4141.43(I), which it is not, the statute also limits the types of actions that the Director must take to secure advantages available under the listed federal acts. The Director shall take necessary actions “through the adoption of rules, regulations, and administrative methods and standards.” R.C. 4141.43(I). Plaintiffs have failed to identify any rule, regulation, or administrative method or standard that the Director should have adopted but did not or that the Director could adopt to secure any alleged advantages under the CARES Act.

Further, nothing in the statute requires the Director to take action to execute contracts that bind the State of Ohio to participating in the Temporary Federal UI Programs, especially after the Governor has determined that these programs are no longer advantageous to Ohio. The Governor executed the agreement between the State of Ohio and the Secretary of Labor to participate in the Temporary Federal UI Programs and the Governor issued the notice terminating Ohio's participation. *See Agreement Implementing the Relief of Workers Affected by Coronavirus Act (Mar. 27, 2020)*, attached hereto as Exhibit B; *see also* Exhibit A. Nothing in this statute requires, or authorizes, the Director to execute a contract on behalf of the State behind the Governor's back and in contravention of the Governor's decision.

In sum, nothing in R.C. 4141.43(I) required the Governor or the Director to execute a contract with the Department of Labor to participate in the Temporary Federal UI Programs created by the CARES Act, and nothing in R.C. 4141.43(I) prohibits the Governor or the Director from exercising Ohio's right to terminate its administration of those programs. Without an express statutory duty, Plaintiffs claims fail. *See State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St. 3d 327, 767 N.E.2d 719, 2002-Ohio-2219, ¶ 18 (“[C]ourts are not authorized to create [a] legal duty enforceable in mandamus.”); *State ex rel. Columbia Res. Ltd. v. Lorain Cty. Bd. of Elections*, 111 Ohio St.3d 167, 2006 Ohio 5019, 855 N.E.2d 815, ¶ 32 (court cannot “add a requirement that does not exist in the statute”). “[T]he creation of [a] duty is a legislative and not a judicial function.” *State ex rel. Whitehead v. Sandusky Cty. Bd. of Comm'rs*, 133 Ohio St. 3d 561, 979 N.E.2d 1193, 2012-Ohio-4837, ¶ 31.

Because Plaintiffs cannot point to a specific legal duty that the State has violated, and the Court cannot create a legal duty for them, Plaintiffs cannot succeed on the merits of their claim and their motion for a preliminary injunction must be denied. *See State ex rel. AFSCME v. Taft*,

156 Ohio App. 3d 37, 2004-Ohio-493, 156 Ohio App. 3d 37, 804 N.E.2d 88, ¶ 59 (3d Dist.) (finding the trial court abused its discretion when it issued an injunction ordering the Governor to take an action when the Governor had no legal duty to take the action).

B. An injunction forcing Ohio to continue participating in the Temporary Federal UI Programs would unjustifiably harm third parties, including members of the Ohio Business Amici, and would not serve the public interest.

Granting an injunction in this case and forcing Ohio to resume administering the Temporary Federal UI Programs would result in unjustifiable harm to Ohio Business Amici members and would not serve the public interest. Requiring Ohio to offer extended unemployment benefits will result in a scenario where many individuals will make more in unemployment than when working. This will discourage Ohioans from returning to work at a time when Ohio businesses have reopened and have hundreds of thousands of job openings available. This artificially created labor shortage in turn harms Ohio businesses and the Ohio economy.

As Governor DeWine explained in his letter to the Department of Labor, as the economy recovers from the pandemic, Ohio businesses are back and need workers:

You can see it as you drive through any part of Ohio, with many signs looking for workers and offering signing bonuses. The need for workers is apparent in many industries, including restaurants, retail, and manufacturing.

Letter from Mike DeWine to Suzan LeVine (May 24, 2021), Ex. A. The Governor explained that this labor shortage is creating a real and concrete harm to the Ohio economy: **“The shortage of workers is have a real impact on our supply chain and the cost and availability of goods we rely on to keep our state moving.”** *Id.* (emphasis added). And, he explained that the labor shortage was caused, in part, by the continuation of the Temporary Federal UI Programs: “It is clear that Ohio workers are no longer out of work because of the pandemic shutdown. The FPUC extra \$300 a week in assistance is now discouraging some from returning to work.” *Id.*

Governor DeWine's analysis is substantiated by the experiences of the Ohio Business Amici's members across the state and by recent data. The Ohio Business Amici's members have reported that they have reopened and are looking to hire, but Ohioans are not returning to the workforce due to the extended unemployment benefits. The Ohio Business Amici's member feedback is supported by data. According to OhioMeansJobs,¹ there are currently 204,510 jobs available in Ohio, with 111,263 of those jobs offering a salary of over \$50,000 per year. Despite these job opportunities, Ohio's labor force participation rate (59.9% in May 2021) has not returned to pre-pandemic levels (63.7% in February 2020). *See* Ohio Unemployment Statistics Database, U.S. Bureau of Labor Statistics.²

Drilling down to a more granular level reveals just how devastating the disincentive to work created by the Temporary Federal UI Programs, and the resulting labor shortage, has been to Ohio businesses. For example, a live industry survey on workforce issues conducted by the OHLA revealed that 98% of Ohio's lodging businesses are understaffed: 62.5 percent report being "Severely Understaffed" and 35.6 percent report being "Somewhat Understaffed." *See* Letter from Joseph Savarise to Kevin Shimp (July 20, 2021), attached hereto as Exhibit C. Despite offering competitive wages, wage incentives, flexible hours, and benefits, 76% of respondents cited a lack of applications or applicants not showing up to interviews. *Id.* This lack of labor means that 85% of respondents cannot sell their inventory, and more than half must limit other revenue producing activity such as food/beverage/banquet operations. *Id.* This same story can be told by Ohio

¹ Available at <https://ohiomeansjobs.ohio.gov/wps/portal/gov/omj/home> (last accessed July 21, 2021).

² Available at <https://data.bls.gov/timeseries/LASST3900000000000004> (last accessed on July 21, 2021).

businesses across every segment of the Ohio economy. Issuing the requested injunction will impose again these harms on Ohio businesses.

Moreover, forcing Ohio's participation in the Temporary Federal UI Programs is not in the public interest because these extended benefits make Ohio's UI program more attractive to scam artists who have already submitted hundreds of millions of dollars in false claims under the programs. According to a Government Accountability Report, states across the country have made approximately \$12.9 billion in overpayments in unemployment insurance programs during the first four quarters of the pandemic (April 2020 through March 2021), with substantial amounts of these overpayments attributable to fraud. *See* United States Government Accountability Office, Report to Congressional Committees: COVID-19 - Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity (July 2021) at 160–61.³ Ohio has not been impervious to these fraudulent claims, as the number of fraudulent unemployment claims skyrocketed in Ohio under the federal programs. Ohio alone has paid out over \$444 million for fraudulent claims through the Pandemic Unemployment Assistance program. *See* Ohio On The Hunt To Recover \$465M In Unemployment Fraud, Statehouse News Bureau (July 8, 2021).⁴

Between the harms to Ohio businesses, Ohio's economy, and the substantial fraud, Ohio's continued participation in the Temporary Federal UI Programs is not in the public interest. But, even if there could be a policy debate as to whether these programs have a positive or negative impact, this Court should not second-guess policy decisions made by politically accountable officials in other branches. Governor DeWine, the elected official in whom "[t]he supreme executive power of this state" is vested, *see* Ohio Constitution, Article III § 05, has already

³ Available at <https://www.gao.gov/assets/gao-21-551.pdf> (last accessed July 21, 2021).

⁴ Available at <https://www.statenews.org/post/ohio-hunt-recover-465m-unemployment-fraud> (last accessed July 21, 2021)

weighed the public interest when he decided to terminate Ohio’s administration of the Temporary Federal UI Programs.⁵ In Ohio, each branch has “their own unique powers and duties that are separate and apart from the others.” *O’Neal v. State*, 10 Dist. Franklin Nos. 19AP-260, 19AP-289, 2020-Ohio-506, ¶ 28 (Feb. 13, 2020). “[E]ach of the three grand divisions of the government must be protected from the encroachments of the others so far that its integrity and independence may be preserved.” *Id.* (citations and quotations omitted). As such, “courts . . . must give due deference to [] administrative interpretation[s].” *Id.* at ¶ 33. (citations and quotations omitted). Here, a quintessential policy issue is at play. The Governor has determined that declining to accept further federal benefits will spur stable employment by ceasing to incentivize unemployment. The Court cannot substitute its own judgment for that of the accountable branches to overturn this decision.

IV. CONCLUSION

For the aforementioned reasons, this Court should deny Plaintiffs’ request for a temporary restraining order and preliminary injunction.

Respectfully submitted,

s/ Daniel E. Shuey

Daniel E. Shuey (0085398)

Erica M. Rodriguez (0098711)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

Telephone: (614) 464-8277

Facsimile: (614) 719-4616

deshuey@vorys.com

emrodriguez@vorys.com

Attorneys for Amici Curiae the Ohio Chamber of Commerce, the Ohio Business Roundtable, the Ohio Restaurant Association, the Ohio Hotel and Lodging Association, and the Ohio Grocers Association

⁵ Governor DeWine is not an outlier in coming to this conclusion, as twenty-five other states are also terminating their administration of the Temporary Federal UI Programs.

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2021, I electronically filed the foregoing *Brief of the Ohio Business Amici Curiae in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction* with the Clerk of Courts, Franklin County, Ohio, and service was made via the court's e-service upon the following:

Marc E Dann
Brian D. Flick
Emily White
The Dann Law Firm
PO Box 6031040
Cleveland, OH 44103

Andrew M. Engel
7925 Paragon Rd.
Dayton, OH 45459

Attorneys for Plaintiffs

Eric A. Baum
Principal Assistant Attorney General
Office of the Ohio Attorney General
One Government Cent, Suite 1340
Toledo, OH 43604
Rick.baum@ohioago.gov

*Counsel for Defendant Director,
Ohio Department of Job and Family Services*

/s/ Daniel E. Shuey
Daniel E. Shuey (0085398)

The Ohio Business Amici Brief

Exhibit A



MIKE DEWINE

GOVERNOR OF OHIO

Administration
Office 614.644.3555

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

May 24, 2021

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

Dear Principal Deputy Assistant Secretary LeVine,

Ohio intends to end its administration of the Federal Pandemic Unemployment Compensation (FPUC) benefit and the Mixed Earner Unemployment Compensation (MEUC) program¹. The above-named programs will end with the week ending June 26, 2021. Ohio's economy is showing positive trends, with a current low unemployment rate of 4.7 percent, and more than 43 percent of Ohioans have received at least one dose of the COVID-19 vaccine, with more Ohioans being vaccinated daily.

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

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

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

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

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

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

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

Very respectfully yours,



Mike DeWine
Governor

The Ohio Business Amici Brief

Exhibit B

**Agreement Implementing the
Relief for Workers Affected by Coronavirus Act**

AGREEMENT BETWEEN

THE STATE OF OHIO

AND

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

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

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

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

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

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

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

VI. Payments to States.

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

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

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

IX. To the extent that agencies of the state obtain bonds to protect funds of the state, the Agency will obtain bonds to protect funds made available to it for the payment of benefits and the costs of administration of this Agreement. The pro rata cost of such bonds shall be considered a necessary cost of the administration. If under state law the

state acts as a self-insurer of state funds and does not obtain bonds to protect them, the Agency shall so inform the Department of Labor in writing and in such case the state will act as a self-insurer with respect to funds which are paid to the state under this Agreement.

X. The Agency will apply the methods of administration required by section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) to the functions undertaken pursuant to this Agreement.

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

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

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

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

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

John P. Pallasch 3/27/20
John P. Pallasch Date

Assistant Secretary for
Employment and Training
U.S. Department of Labor

By M. D. Pallasch
(State Signatory) Date MARCH 28, 2020

GOVERNOR
(Title)

DATE: 28 MARCH 2020

For the State of: OHIO

CERTIFICATION OF AUTHORITY

NAME: _____

TITLE: _____

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

Signature

Title

Date

Addendum No. 1
Pandemic Unemployment Assistance

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

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

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

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

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

- I. Federal Pandemic Unemployment Compensation – The state agrees to make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the state law were applied, with respect to any week for which the individual is otherwise entitled under the state law to receive regular compensation, as if such state law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week is equal to the amount determined under state law plus an additional amount of \$600.
- II. Allowable Methods of Payment – Any Federal Pandemic Unemployment Compensation shall be payable either—as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or made separately from, but on the same weekly basis as, any regular compensation otherwise payable.
- III. Non-reduction Rule – The state will not modify its state law, regulations, or policies in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement (determined disregarding any Federal Pandemic Unemployment Compensation) will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law, as in effect on January 1, 2020.
 - a. For purposes of this provision, maximum benefit entitlement means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.
- IV. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual—
 - a. Shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

- b. Shall be subject to prosecution under section 1001 of title 18, United States Code.
- V. Repayment –In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the state shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the state agency, except that the state agency may waive such repayment if it determines that –
 - a. The payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and
 - b. Such repayment would be contrary to equity and good conscience.
- VI. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.
- VII. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.
- VIII. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

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

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

- I. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment for the waiting week to which such individual was not entitled, such individual shall be subject to prosecution under section 1001 of title 18, United States Code.
- II. Repayment –In the case of individuals who have received payment for the waiting week to which they were not entitled, the state shall require such individuals to repay the waiting week payment to the state agency, except that the state agency may waive such repayment if it determines that –
 - a. The payment of such waiting week amounts was without fault on the part of any such individual; and
 - b. Such repayment would be contrary to equity and good conscience.
- III. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the waiting week to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.
- IV. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.
- V. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

Addendum No. 4
Pandemic Emergency Unemployment Compensation

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

- I. The state will make payments of Pandemic Emergency Unemployment Compensation to individuals who –
 - a. Have exhausted all rights to regular compensation under the state law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);
 - b. Have no rights to regular compensation with respect to a week under such law or any other state unemployment compensation law or to compensation under any other Federal law;
 - c. Are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and
 - d. Are able to work, available to work, and actively seeking work.
- II. For purposes of I.a., an individual has exhausted all rights to regular compensation under a state law when –
 - a. No payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or
 - b. Such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.
- III. For purposes of section I.d., the term actively seeking work means that an individual –
 - a. Is registered for employment services in such a manner and to such extent as prescribed by the state agency;
 - b. Has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the state;
 - c. Has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and
 - d. When requested, has provided such work search record to the state agency.

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

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

- VI. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Pandemic Emergency Unemployment Compensation to which such individual was not entitled, such individual—
 - a. Shall be ineligible for further Pandemic Emergency Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and
 - b. Shall be subject to prosecution under section 1001 of title 18, United States Code.

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

- VIII. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any Pandemic Emergency Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with

respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.

- IX. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.
- X. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

The Ohio Business Amici Brief

Exhibit C



OHIO HOTEL & LODGING ASSOCIATION
175 SOUTH THIRD STREET, SUITE 170
COLUMBUS, OH 43215-5134
P: (614) 461-6462

July 20, 2021

Kevin Shimp
Director, Labor & Legal Affairs
Ohio Chamber of Commerce
35 South Third Street, STE 100
Columbus, OH 43215

RE: Workforce Survey

Dear Kevin,

Thank you for your and the Chamber's work on removing disincentives to work as we enter the recovery phase of the pandemic. As our organizations have discussed publicly, there are plentiful jobs available in many industries, including the hospitality and travel sector.

The Ohio Hotel & Lodging Association has a **live industry survey on workforce issues**. Results to date illustrate the challenges facing these businesses, and those employees who work in them and are performing expanded duties due to this crisis:

- 62.5 percent of Ohio's lodging businesses report they are "Severely Understaffed"
- 35.6 percent are "Somewhat Understaffed" – an astonishing total of 98 percent
- More than half of our member businesses say competitors are not offering higher wages
- 72 percent say transportation is not a barrier (a reason often suggested as an obstacle)
- 78.4 percent are offering wage incentives
- 64 percent are offering highly flexible hours
- More than 98 percent of hotels offer benefits to full time employees
- And yet, 76 percent cite a lack of applications
- 86.5 percent say applicants do not show up for interviews
- Only 0.5 percent say they currently have no hiring challenges

Lack of labor will impede recovery. 85 percent of lodging businesses are already reporting they can not sell all of their available inventory, more than half must limit other revenue producing aspects, such as food and beverage or banquet operations.

It is critical for Ohio to move forward into recovery by eliminating unnecessary disincentives to work. The Ohio Hotel & Lodging Association supports the Ohio Chamber on any steps we can take in this regard.

Thank you for your help.

Sincerely,

Joseph Savarise
President & CEO
joe@ohla.org