

STATE OF INDIANA )  
 )  
COUNTY OF MARION ) **IN THE MARION SUPERIOR COURT**  
 ) **SS: \_\_\_\_\_**  
 ) **CAUSE NO: 49D11-2106-PL-020140**

**T.L., J.C., L.C., S.A.S., J.H.S., and** )  
**CONCERNED CLERGY OF** )  
**INDIANAPOLIS** )

**Plaintiffs** )

**vs.** )

**ERICHOLCOMB, in his official capacity** )  
**as GOVERNOR of the State of Indiana,** )  
**and FREDERICK PAYNE, in his official** )  
**capacity as COMMISSIONER of the** )  
**INDIANA DEPARTMENT OF** )  
**WORKFORCE DEVELOPMENT,** )

**Defendants.** )

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Ind. R. Trial P. 65(a), T.L., J.C., L.C., S.A.S., J.H.S., and Concerned Clergy of Indianapolis (“CCI”) (collectively, “Plaintiffs”), by counsel, respectfully submit the following memorandum in support of their motion for a preliminary injunction enjoining Eric Holcomb, in his official capacity as Governor of the State of Indiana, and Frederick Payne, in his official capacity as Commissioner of the Indiana Department of Workforce Development (collectively, “Defendants”), from withdrawing the State from unemployment benefits offered

through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act until this Court renders a final judgment on the merits.

### **NATURE OF THE MATTER**

This case is about whether Plaintiffs will have access to unemployment benefits secured for them by Indiana statute. Effective June 19, 2021, in violation of Ind. Code section 22-4-37-1, Defendants are no longer accepting Pandemic Unemployment Assistance (“PUA”), Pandemic Unemployment Employment Compensation (“PEUC”) and the \$300 Federal Pandemic Unemployment Compensation (“FPUC”) payments for eligible individuals in the State of Indiana. In so doing, Defendants deprive Plaintiffs of statutorily guaranteed benefits and limit Plaintiffs’ ability to pay for many of life’s necessities, including housing, utilities, food, health care, and childcare.

### **STATEMENT OF THE CASE**

#### **I. CARES Act Timeline and Provisions.**

In order to augment unemployment benefits during the COVID-19 pandemic, Congress enhanced existing benefits through the CARES Act. PUA applied to workers who were not eligible for regular unemployment benefits and whose unemployment was caused by COVID-19. 15 U.S.C. § 9021. After a worker exhausted regular unemployment compensation benefits (“UI”), PEUC operated to provide extended weeks of UI benefits. 15 U.S.C. § 9025. FPUC originally

increased the amount of all unemployment benefits, including UI, PUA, and PEUC benefits, by \$600-per-week.<sup>1</sup> 15 U.S.C. § 9023. The State of Indiana entered into an agreement with the U.S. Department of Labor pursuant to these CARES Act provisions.

On December 26, 2020, the unemployment provisions in the CARES Act, including PUA and PEUC, were extended through March 14, 2021, by the Continued Assistance for Unemployed Workers Act of 2020 (“CAUWA”). Pub. L. No. 116-260, § 200–01, 206. CAUWA also reauthorized FPUC, which had expired on July 31, 2020, in the amount of \$300-per-week, payable from December 26, 2020, through March 14, 2021. Pub. L. No. 116-260, § 203. On March 11, 2021, PUA, PEUC, and FPUC were extended through September 6, 2021, by the American Rescue Plan Act of 2021 (“ARPA”). Pub. L. No. 117-2, § 9011, 9013, 9016.

## **II. The Individual Plaintiffs are eligible for CARES Act benefits.**

The individual Plaintiffs are eligible for the CARES Act unemployment insurance benefits that Defendants have announced they will terminate on June 19, 2021. T.L. is eligible for PUA under 15 U.S.C. § 9021(a)(3) in the amount of \$449.00 per week. J.C. is eligible for PEUC under 15 U.S.C. § 9025(b)(4) in the

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<sup>1</sup> FPUC is also included in the “weekly benefit amount” under PUA and PEUC. 15 U.S.C. § 9021(d)(1); 15 U.S.C. § 9025(a)(4)(A).

amount of \$528.00 per week. L.C. is eligible for PEUC under 15 U.S.C. § 9025(b)(4) in the amount of \$606.00 per week. S.A.S. is eligible for PUA benefits under 15 U.S.C. § 9021(a)(3) in the amount of \$528.00 per week. J.H.S. is eligible for FPUC benefits under 15 U.S.C. § 9023(b).

## **ARGUMENT**

### **I. Preliminary Injunction Standard**

Unemployment insurance benefits are intended to assist workers who are out of work through no fault of their own bridge their loss of wages until they can find suitable new employment. Indiana Code section 22-4-37-1 requires the state to issue all federal Unemployment Compensation benefits to all eligible claimants. By ending the program in Indiana, the Plaintiffs will lose the benefits that our state law intends for them to receive and they will be irreparably harmed.

Four factors support the court's grant of a preliminary injunction in this matter. Under Indiana law, the moving party is entitled to a preliminary injunction after showing that:

(1) the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) threatened injury to the movant outweighs the potential harm to the nonmoving party resulting from the granting of an injunction; and (4) the public interest would not be disserved.

*Apple Glen Crossing, LLC v. Trademark Retail, Inc.* 784 N.E.2d 484, 487 (Ind. 2003). The moving party must make this showing by a preponderance of the evidence. *Id.* Each of these factors strongly favor Plaintiffs in this case.

**A. Remedies at law are inadequate and would cause Plaintiffs irreparable harm.**

Plaintiffs will endure irreparable harm if Defendants are not enjoined from terminating PUA, PEUC, and FPUC benefits during the pendency of this litigation. “The object of a preliminary injunction is ‘to maintain the status quo pending adjudication of the underlying claim.’” *Jay Cnty. Rural Elec. Membership Corp. v. Wabash Valley Power Ass’n, Inc.* 692 N.E.2d 905, 909 (Ind. Ct. App. 1998) (quoting *Wells v. Auberry*, 429 N.E.2d 679, 683 (Ind. Ct. App. 1982), *trans. denied*) “The necessity of maintaining the status quo is to prevent harm to the moving party which could not be corrected by a final judgment.” *Id.* “A legal remedy is adequate only where it is as ‘plain, complete and adequate—or, in other words, as practical and efficient to the ends of justice and its prompt administration—as the remedy in equity.’” *Id.* (quoting *McKain v. Rigsby*, 237 N.E.2d 99, 103 (Ind. 1968)).

T.L. will be irreparably harmed if she does not receive PUA during the pendency of this litigation. T.L. is currently unable to work because she cannot find childcare for her 19-month-old daughter. (Plaintiffs’ Exhibit 1: Affidavit of T.L. ¶ 5-8) T.L. has been searching for childcare so that she may return to work.

(*Id.* ¶ 9-10) Her search is difficult because a pediatrician recommended that her daughter not attend a day care facility due to her health conditions. (*Id.* ¶ 6) The day care facilities in T.L.'s area have waiting lists extending many months. (*Id.* ¶ 9) T.L.'s husband is currently working, but their family's living expenses exceed this single-person income. (*Id.* ¶ 11) T.L. relies on weekly PUA benefits to cover her family's essential costs of living, including food. (*Id.*) If T.L. no longer receives PUA after June 19, 2021, her family will struggle to pay for food and other living expenses. (*Id.* ¶ 11-12) Any remedy at law, including a retroactive payment of PUA, will be too late to avoid this irreparable harm.

J.C. also faces irreparable harm if he loses his PEUC benefits while this litigation is pending. He was already on UI when the COVID-19 pandemic broke out. (Plaintiffs' Exhibit 2: Affidavit of J.C. ¶ 4) Although J.C. has welding experience, the job market in his area has shrunk due to the pandemic. (*Id.* ¶ 3, 5) J.C. has actively sought work and did obtain an offer to work in a restaurant; however, that restaurant has never reopened. (*Id.* ¶ 4) J.C. signed a six-month lease in June 2021, relying on his PEUC benefits which he expected to receive through early September 2021. (*Id.* ¶ 10) If J.C. loses his PEUC benefits, he would likely be evicted as soon as July 2021. (*Id.* ¶ 13) An eviction would be expensive, time consuming, and damaging to J.C.'s record, which would ultimately hinder his

ability to find new housing or employment. (*Id.* ¶ 13-17) Monetary damages at the conclusion of litigation would not sufficiently remedy these injuries.

Similarly, L.C. will suffer irreparable harm if she were to lose her PEUC benefits during litigation. L.C. cares for her dependent fifteen-year-old daughter; dependent twenty-one-year-old son, who has a disability; nineteen-year-old daughter, who is currently quarantined with COVID-19; and two-year-old granddaughter. (Plaintiffs' Exhibit 3: Affidavit of L.C. ¶ 8) L.C. is a school bus driver who lost her job and thereafter many schools switched to remote learning. (*Id.* ¶ 5) L.C. has been applying for bus-driving positions but will not be hired until the next school year begins in August or September of 2021. (*Id.* ¶ 6) She is relying on her PEUC benefits to get her through the summer until she can drive buses again. (*Id.* ¶ 11) Without this income, L.C. will likely face eviction by August 2021. (*Id.* ¶ 13) J.C. has applied for Indianapolis rental assistance but has not been accepted. (*Id.* ¶ 10) She has also tried to deliver food through Door Dash, but any income from that still falls well short of her weekly benefit amount and her family's monthly expenses. (*Id.* ¶ 7) If evicted, L.C. will face even more challenges in finding employment or a place to live in the future. (*Id.* ¶ 15-17) Remedies at law will not protect L.C. from this irreparable harm.

S.A.S. will suffer irreparable harm if she loses her PUA benefits in the pendency of this litigation. S.A.S. lost her job as a delivery driver for an auto parts

store during COVID-19. (Plaintiffs' Exhibit 4: Affidavit of S.A.S. ¶ 3) S.A.S. was unable to start a new job that she had lined up after she was required to quarantine due to her own COVID-19 exposure. (*Id.* ¶ 4) She relies on PUA benefits to cover her rent and utilities. (*Id.* ¶ 6-9) S.A.S. also uses PUA benefits to pay for her phone, which is an essential tool in her job search. (*Id.* ¶ 9) If she were to lose PUA benefits, S.A.S. would likely face eviction as early as July 2021. (*Id.*) This expensive and time-consuming process would take her away from her job search. (*Id.* ¶ 12-13) Record of an eviction would also jeopardize S.A.S.'s ability to obtain affordable housing, land employment, and secure loans. (*Id.*) These irreparable harms would not be properly remedied by remedies at law alone.

J.H.S. is a 70-year-old former employee of a home improvement store. (Plaintiffs' Exhibit 5: Affidavit of J.H.S. ¶ 3-4). J.H.S. was let go from his position in sales at the home improvement store on March 2, 2021. (*Id.* ¶ 3) J.H.S. is receiving the FPUC amount of \$300 per week to supplement his weekly benefit amount of \$182 per week. (*Id.* ¶ 5) J.H.S. has a right rotator cuff tear for which he needs therapy. (*Id.* ¶ 9) He cannot afford the therapy plus his other life expenses without the supplemental FPUC benefits. (*Id.* ¶ 10) J.H.S. will suffer an increased risk of injury and exacerbate an existing injury if he is forced to end therapy and take a job he is not well suited for in order to make ends meet. (*Id.* ¶ 9-11) This is irreparable harm that cannot be properly remedied by a remedy at law.



CCI will also be irreparably harmed without a preliminary injunction.

Members of CCI assist the community they serve with charitable assistance to pay for housing, food, and healthcare. (Plaintiffs' Exhibit 6: Declaration of Reverend David Greene, ¶ 11) If the aforementioned emergency unemployment benefits are prematurely suspended, members of CCI will see a significant increase in requests from parishioners and community members for help paying for these necessities. (*Id.* ¶ 22) Similarly, members of CCI will see a negative impact on health and safety in their communities if the emergency unemployment benefits are suspended. (*Id.* ¶¶ 16-18) There is no remedy at law for CCI if the benefits are illegally suspended: they cannot recover at law the value of the increased contributions they will be required to provide absent the emergency benefits.

Therefore, because the remedies at law are inadequate for all Plaintiffs, it is crucial that Defendants be enjoined as an equitable remedy to prevent irreparable harm while this litigation is pending.

**B. Plaintiffs' claim for declaratory judgment is reasonably likely to succeed.**

It is reasonably likely that Plaintiffs will obtain a judgment declaring that Defendants' refusal to accept PUA, PEUC, and FPUC benefits violates Indiana Code section 22-4-37-1. Plaintiffs need only demonstrate this factor by a preponderance of the evidence. *Apple Glen Crossing, LLC*, 784 N.E.2d at 487. As previously shown, Plaintiffs face a great level of irreparable harm if Defendants

withdraw Indiana from PUA, PEUC, and FPUC. Indiana courts have consistently held that “where there is a great danger of irreparable harm to the petitioner or the public, there is less of a need to go beyond the establishment of a prima facie case on the merits.” *Ind. State Bd. of Pub. Welfare v. Tioga Pines Living Center, Inc.* 637 N.E.2d 1306, 1311 (Ind. Ct. App. 1994) (citing *Wells v. Auberry*, 429 N.E. 2d 679, 683 (Ind. Ct. App. 1982)).

Enhanced unemployment benefits under the CARES Act are funded by and through the federal unemployment programs established under 42 U.S.C. §§ 1101(a), 1104(a), and 1105(a). Simply stated, Congress does not have a separately created vehicle for the enhanced federal benefits in the CARES Act. The two are inextricably linked. The PUA weekly benefit amount includes the \$300-per-week FPUC payments. 15 U.S.C. § 9021(d)(1). All PUA benefits—including FPUC—and administrative costs are funded by 42 U.S.C. §§ 1104(a) and 1105(a). 15 U.S.C. § 9021(g). The PEUC benefits also include the \$300-per-week FPUC payments. 15 U.S.C. § 9025(a)(4)(A). 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).

Indiana law requires the State to secure for “employers and employees in Indiana all the rights and benefits which are conferred under the provisions of . . . 42 U.S.C. § 1101 through 1109 . . . , and the amendments to those statutes.” Ind. Code

§ 22-4-37-1. Congress, through 42 U.S.C. § 1101, *et seq.*, established various funds and accounts to hold money for the states, including the Unemployment Trust Fund,<sup>2</sup> the Employment Security Administration Account,<sup>3</sup> and the Extended Unemployment Compensation Account.<sup>4</sup>

The PUA, PEUC, and FPUC benefits are “conferred under” 42 U.S.C. §§ 1101, 1104, and 1105 for the purposes of Indiana Code section 22-4-37-1. These CARES Act provisions incorporate the Unemployment Trust Fund, the Employment Security Administration Account, and the Extended Unemployment Compensation Account—the benefits of 42 U.S.C. § 1101, *et seq.*—as temporary enhancements to UI benefits. PUA, PEUC, and FPUC achieve this by providing a framework for agreements between states and the U.S. Department of Labor. These agreements are a mechanism for the states to access the benefits of 42 U.S.C. § 1101, *et seq.* Put simply, PUA, PEUC, and FPUC do not create new benefits. Rather, they authorize states to draw from benefits already conferred under 42 U.S.C. § 1101, *et seq.* in a greater amount through a specified process for a particular purpose.

Indiana Code section 22-4-37-1 charges the State of Indiana with the responsibility of securing “all the rights and benefits” conferred under certain

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<sup>2</sup> 42 U.S.C. § 1104.

<sup>3</sup> 42 U.S.C. § 1101.

<sup>4</sup> 42 U.S.C. § 1105

federal statutes, including 42 U.S.C. §§ 1101, 1104 and 1105. Presently, Congress has authorized an enhanced use of benefits conferred under 42 U.S.C. § 1101, *et seq.* for pandemic relief through September 6, 2021. By rejecting these benefits after June 19, 2021, Defendants are in violation of their statutory duties, entitling Plaintiffs to declaratory and injunctive relief.

Plaintiffs' claim to entitlement under Indiana Code Section 22-4-37-1 is buttressed by the General Assembly's explicit mandate that combating economic insecurity should be the guiding framework for interpreting unemployment benefits laws. *See*, I.C. § 22-4-1-1. When interpreting Indiana's unemployment law, Courts have also recognized "unemployment compensation statutes were enacted for the purpose of relieving the harsh social consequences resulting from unemployment, and if these statutes are to accomplish their purpose they must be given a liberal interpretation." The state of Indiana is no exception to this doctrine of liberal construction of social welfare statutes." *Renwanz v. Review Bd. of Ind. Emp't Sec. Div.*, 267 N.E.2d 844, 847 (1971).

**C. The balance of harms in granting the injunction favors the Plaintiffs.**

The threatened injury to Plaintiffs far outweighs Defendants' potential harm if an injunction were granted. Defendants are not harmed by the continued distribution of CARES Act benefits during the pendency of this litigation. The enhanced benefits under PUA, FEUC, and FPUC, as well as their administrative

costs, are funded entirely by the Federal government without any cost to the State.<sup>5</sup> 15 U.S.C. §§ 9021(g), 9025(a)(4)(A). On the other hand, if the Court declined to grant injunctive relief, Plaintiffs, who are unable to work, would lose their ability to cover necessary expenses, including housing, utilities, food, health care, and childcare, resulting in a degree of harm that is inconceivable by Defendants.

**D. The public interest would not be disserved by granting the injunction.**

Plaintiffs' proposed injunction would not disserve the public interest. Rather, the public interest is served by granting injunctive relief which secures Federal benefits for unemployed Hoosiers at no cost to the State.

“Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale and welfare of the people of this state and to the maintenance of public order within this state.” Ind. Code § 22-4-1-1. Indiana law requires that to further this public policy, the state is required to coordinate with federal agencies with the same mission. *Id.* The injunction would serve this explicitly articulated public policy interest. The benefits at issue are instrumental in allowing Hoosiers to regain financial stability at an individual level while the State

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<sup>5</sup> Notably, the ostensible justification for rejecting these benefits is to spur jobseekers into the labor market. Early reviews from other states that have already rejected the benefits indicate that job searches subsequently *decreased*. See Denitsa Tsekova, “Job searches fell in states canceling unemployment benefits early,” Yahoo! Money, June 10, 2021, available at <https://money.yahoo.com/job-searches-fell-in-states-canceling-unemployment-benefits-early-183421915.html> (“Job seekers in states that will eliminate [emergency unemployment benefits] over the next week haven’t accelerated their online searches for new jobs, new data from Indeed found. In fact, job searches have actually fallen off in those states.” The Plaintiffs in this matter have stated that the decrease in benefits *hurts* their ability to look for work, because it threatens their housing, health, and ability to take care of their children. (See Statement of the Case *supra*)

continues to face challenges presented by the COVID-19 pandemic during its return to normalcy. Indiana law recognizes the importance of these benefits. Indiana law requires the state to accept these benefits.

The loss of unemployment benefits hurts Plaintiffs as well as their communities. A recent study estimated the economic impact from the lost unemployment benefits in Indiana is over \$1.3 billion<sup>6</sup>. As the unemployed face difficult decisions about how to manage their daily living expenses, the ripple effects of the loss of these federal unemployment benefits will expand well beyond Plaintiffs' households. The impact of a loss of federal unemployment benefits coinciding with the end of the federal eviction moratorium poses a particular hardship and irreparable harm for some of the Plaintiffs.<sup>7</sup>

The public interest of the unemployment compensation system goes beyond the financial stability unemployment insurance benefits provide. Workers and employers benefit from having an unemployment system that is designed to get

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<sup>6</sup> National Employment Law Project. "3.9 Million Workers Face Premature Cutoff of Pandemic Unemployment Programs." *National Employment Law Project*, 10 June 2021, [www.nelp.org/publication/3-9-million-workers-face-premature-cutoff-of-pandemic-unemployment-programs/](http://www.nelp.org/publication/3-9-million-workers-face-premature-cutoff-of-pandemic-unemployment-programs/).

<sup>7</sup> See Weiss, Debra Cassens. "Appeals Court Allows Eviction Moratorium to Continue, Says CDC Likely to Win Appeal." *ABA Journal*, 2021, [www.abajournal.com/news/article/appeals-court-allows-eviction-moratorium-to-continue-says-cdc-likely-to-win-appeal?utm\\_medium=email&utm\\_source=salesforce\\_402097&sc\\_sid=04757340&utm\\_campaign=weekly\\_email&promo=&utm\\_content=&additional4=&additional5=&sfmc\\_j=402097&sfmc\\_s=83310314&sfmc\\_l=1527&sfmc\\_jb=1018&sfmc\\_mid=100027443&sfmc\\_u=11587510](http://www.abajournal.com/news/article/appeals-court-allows-eviction-moratorium-to-continue-says-cdc-likely-to-win-appeal?utm_medium=email&utm_source=salesforce_402097&sc_sid=04757340&utm_campaign=weekly_email&promo=&utm_content=&additional4=&additional5=&sfmc_j=402097&sfmc_s=83310314&sfmc_l=1527&sfmc_jb=1018&sfmc_mid=100027443&sfmc_u=11587510).

workers to the right job, not just any job. Indiana Code 22-4-15-2 recognizes this public policy in its concept of “suitable work”. If a worker rushes into a job because it is available quickly, but the job is not a suitable one, the worker is not likely to stay in the position. This turnover hurts both the worker and the employer.

### **CONCLUSION**

For the reasons stated herein, Plaintiffs respectfully request that the Court enter a preliminary injunction enjoining Defendants, their officers, employees, and agents; all persons acting in active concert or participation with any Defendant, or under any Defendant’s supervision, direction, or control; and all other persons within the scope of Indiana Trial Rule 65, from withdrawing the State from unemployment benefits offered through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act until this Court renders a final judgment on the merits.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on June 14, 2021, a copy of the foregoing was served via operation of the Court's electronic filing system on all Counsel of Record.

Respectfully submitted,

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