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IN THE  
COURT OF APPEALS OF INDIANA

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Eric Holcomb, in his official  
capacity as Governor, and  
Frederick Payne, in his official  
capacity as Commissioner of  
Workforce Development,

*Appellants-Defendants,*

v.

August 17, 2021

Court of Appeals Case No.  
21A-PL-1268

Appeal from the  
Marion Superior Court

The Honorable  
John F. Hanley, Judge

Trial Court Cause No.  
49D11-2106-PL-20140

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T.L., J.C., L.C., S.A.S., J.H.S.,  
and Concerned Clergy of  
Indianapolis,  
*Appellees-Plaintiffs.*

**Kirsch, Judge.**

[1] This is a case brought against Eric Holcomb, in his official capacity as Governor of Indiana, and Frederick Payne, in his official capacity as Commissioner of Workforce Development (together, “Defendants”), seeking relief under the Uniform Declaratory Judgment Act, Indiana Code chapter 34-14-1. In this interlocutory appeal,<sup>1</sup> Defendants appeal the trial court’s order granting a preliminary injunction to T.L., J.C., L.C., S.A.S., J.H.S., (“Workers”) and Concerned Clergy of Indianapolis (collectively, “Plaintiffs”), which enjoined Defendants from withdrawing the State of Indiana from unemployment benefits offered by the federal government through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. Defendants raise one issue for our review: whether the trial court abused its discretion

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<sup>1</sup> This appeal is brought as an interlocutory appeal as a matter of right under Indiana Appellate Rule 14(A)(5) because it concerns the granting of a preliminary injunction.

when it issued the preliminary injunction enjoining Indiana from withdrawing from the unemployment benefits under the CARES Act.

[2] We reverse.

### **Facts and Procedural History**

[3] Due to the economic effect of the global COVID-19 pandemic, in March 2020, Congress enacted the CARES Act, codified as 15 U.S.C. § 9001 et seq., which provides for benefits, in the form of cash payments to qualified recipients, extensions of time to receive benefits, and extension of some payments to persons who would otherwise be ineligible for unemployment benefits. Among other things, the CARES Act created three temporary federal unemployment programs, and Congress made the participation in these programs voluntary to the States. These three programs provide unemployment benefits above and beyond what Indiana’s unemployment insurance (“UI”) program already provides by increasing benefits, extending the duration of benefits, and awarding benefits to those who otherwise would be ineligible. The CARES Act allows the governors of each State to decide whether to participate and to withdraw at their discretion with at least thirty days’ advance notice to United States Department of Labor (“USDOL”). *See* 15 U.S.C. §§ 9021, 9023, 9025. Unlike traditional state UI programs, the federal government provides the funds for paying benefits to claimants under the CARES Act programs. *See* 15 U.S.C. § 9023(d)(3). The programs under the CARES Act were envisioned as temporary measures from their inception. Congress has twice extended the expiration dates for these programs, with the current expiration date set for

September 6, 2021. American Rescue Plan Act of 2021, Pub. L. No. 117-2, §§ 9011, 9013, 9016, 135 Stat. 4; Consolidated Appropriations Act of 2021 (Continued Assistance for Unemployed Workers Act of 2020), Pub. L. No. 116-260, §§ 201, 203, 206, 134 Stat. 1182.

[4] The three CARES Act programs at issue in this case, and the federal statutes that established them, are: (1) Pandemic Unemployment Assistance (“PUA”), which provides benefits to those who do not qualify for traditional unemployment benefits (e.g., independent contractors, the self-employed, and gig workers), 15 U.S.C. § 9021; (2) Federal Pandemic Unemployment Compensation (“FPUC”), which provides \$300 of weekly unemployment compensation in addition to any other benefits, 15 U.S.C. § 9023; and (3) Pandemic Emergency Unemployment Compensation (“PEUC”), which provides additional federally funded compensation for fifty-three weeks after a person exhausts the regular twenty-six weeks of state-provided UI benefits, 15 U.S.C. § 9025.

[5] In March 2020, as the COVID-19 pandemic caused the shutdown of large portions of the economy across the United States, Indiana entered into an agreement with USDOL to implement the new federal CARES Act benefits for Indiana residents pursuant to 15 United States Code section 9023(a). *Appellant’s App. Vol. II* at 94–105. Under that section, participation in the CARES Act programs is voluntary, and States that enter into agreements under the section may terminate the agreement upon providing thirty days’ written notice to USDOL. 15 U.S.C. § 9023(a). Accordingly, paragraph XI of

Indiana’s agreement provides, “[t]his agreement with respect to any of the provisions identified in paragraph XIV may be terminated by either party on thirty days’ written notice.” *Appellant’s App. Vol. II* at 96.

- [6] On May 17, 2021, Governor Holcomb announced that these additional temporary federal benefits had now become detrimental to the recovery of the Hoosier economy because they were disincentivizing some workers from returning to the labor force. Press Release, Governor Eric J. Holcomb, Indiana Will End Federal Pandemic Unemployment Benefits (May 17, 2021), [https://events.in.gov/event/indiana\\_will\\_end\\_federal\\_pandemic\\_unemployment\\_benefits](https://events.in.gov/event/indiana_will_end_federal_pandemic_unemployment_benefits). On the same day, Frederick Payne, the Commissioner of the Department of Workforce Development (“DWD”) provided written notice to USDOL that Indiana wished to terminate the State’s participation in the CARES Act benefits programs, effective June 19, 2021. *Id.* at 106.
- [7] On June 14, 2021, Plaintiffs filed their complaint seeking to prevent the State from terminating the CARES Act benefits. *Id.* at 19-30. The Plaintiffs requested that the trial court declare that Defendants’ termination of the CARES Act benefits was invalid because terminating the agreement violated Indiana Code section 22-4-37-1 and requested injunctive relief to require the continued administration of the CARES Act benefits. *Id.* On the same day, Plaintiffs filed a motion for a preliminary injunction that sought to enjoin Defendants from withdrawing the State from the CARES Act programs pending final judgment. *Id.* at 31-33. Indiana’s withdrawal from those CARES

Act programs took effect on June 19, 2021. *Id.* at 106. A hearing was held on Plaintiffs’ motion for preliminary injunction on June 23, 2021. *Id.* at 75.

[8] On the afternoon of Friday, June 25, the trial court issued a preliminary injunction enjoining the State “from withdrawing . . . from unemployment benefits offered through the [CARES Act] until this Court renders a final judgment on the merits.” *Id.* at 17–18. It also ordered Defendants to “notify [USDOL] immediately of its continued participation in the CARES Act programs pending further action by this Court.” *Id.* In reaching its conclusion, the trial court determined that Indiana Code section 22-4-37-1 imposed a statutory duty on Defendants to secure all rights and benefits available under the enumerated federal statutes that are related to any kind of unemployment benefits and that Defendants’ decision to withdraw Indiana from the CARES Act programs violated this mandatory duty. *Id.* at 15-16.

[9] To comply with the preliminary injunction, on Monday, June 28, Defendants notified USDOL of the trial court’s order and began the process of determining how to reinstate the relevant CARES Act benefits, which took several weeks, but USDOL allowed Indiana to resume its participation and restart the CARES Act benefit payments on July 14, 2021. *See* Indiana Unemployment FAQ for Claimants, [https://www.in.gov/dwd/files/Indiana\\_Unemployment\\_FAQ.pdf](https://www.in.gov/dwd/files/Indiana_Unemployment_FAQ.pdf) at 28 (Section K, Q1). Unless Congress enacts a third extension of the CARES Act benefits, they will expire for the entire nation on September 6, 2021. 15 U.S.C. §§ 9021(c), 9023(e), 9025(g). Defendants filed this interlocutory appeal and now challenge the trial court’s issuance of the preliminary injunction.

## Discussion and Decision

- [10] “The grant or denial of a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion.” *Duke Energy of Ind., LLC v. City of Franklin*, 69 N.E.3d 471, 481-82 (Ind. Ct. App. 2016). A preliminary injunction is an interlocutory order issued while an action is pending. *Lake Cnty. v. House*, 168 N.E.3d 278, 287 (Ind. Ct. App. 2021). The purpose of a preliminary injunction is to preserve the status quo pending an adjudication of a case on the merits. *Id.* An “injunction” is a “court order commanding or preventing an action.” *Id.* (citing Black’s Law Dictionary (11<sup>th</sup> ed. 2019)).
- [11] To obtain a preliminary injunction, the moving party has the burden of showing by a preponderance of the evidence that: (1) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (2) the movant’s remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (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 by the granting of the injunction. *Vickery v. Ardagh Glass Inc.*, 85 N.E.3d 852, 859-60 (Ind. Ct. App. 2017), *trans. denied*. In order to grant a preliminary injunction, the moving party has the burden of showing, by a preponderance of the evidence, that the facts and circumstances entitle him to injunctive relief. *U.S. Land Servs., Inc. v. U.S. Surveyor, Inc.*, 826 N.E.2d 49, 62-63 (Ind. Ct. App. 2005). The movant must prove each of the requirements to obtain a

preliminary injunction, and if the movant fails to prove even one of these requirements, the trial court cannot grant an injunction. *Drees Co. v. Thompson*, 868 N.E.2d 32, 45 (Ind. Ct. App. 2007), *trans. denied*; *Mayer v. BMR Props., LLC*, 830 N.E.2d 971, 978 (Ind. Ct. App. 2005). The power to issue a preliminary injunction should be issued sparingly, and such relief should not be granted except in rare instances in which the law and facts are clearly within the moving party's favor. *U.S. Land Servs.*, 826 N.E.2d at 63.

[12] Defendants argue that the trial court abused its discretion when it issued the preliminary injunction enjoining the State from withdrawing from unemployment benefits offered through the CARES Act until the trial court renders a final judgment on the merits and ordered Defendants to notify USDOL immediately of its continued participation in the CARES Act programs pending further action by the trial court. Defendants contend that Plaintiffs did not properly establish any of the criteria necessary for a preliminary injunction. Specifically, Defendants assert that Plaintiffs did not demonstrate that they had a reasonable likelihood of success on the merits because Indiana Code section 22-4-37-1 does not create a private right of action, does not impose on any state official any specific duties enforceable through a judicial mandate, and does not require or even contemplate the State's participation in these CARES Act programs.

[13] Plaintiffs alleged in their complaint, and the trial court's order concluded, that the State's action in terminating its agreement with the USDOL to participate



in the CARES Act benefits violated Indiana Code section 22-4-37-1. That statute provides, in pertinent part:

It is declared to be the purpose of this article to secure to the state of Indiana and to employers and employees in Indiana all of the rights and benefits which are conferred under the provisions of 42 U.S.C. 501 through 504, 42 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29 U.S.C. 49 et seq., and the amendments to those statutes.

Ind. Code § 22-4-37-1.

[14] Plaintiffs' complaint sought a declaration that the State's termination of the CARES Act benefits was invalid because such action violated Indiana Code section 22-4-37-1 and requested injunctive relief to require continued administration of the CARES Act benefits. *Appellant's App. Vol. II* at 19-30. In its order granting a preliminary injunction to Plaintiffs, the trial court found that Plaintiffs had a reasonable likelihood of success on the merits of their claim. *Id.* at 14-16. In support of this conclusion, the trial court found that the benefits afforded under the CARES Act are funded by and through the federal unemployment programs established under 42 United State Code sections 1101(a), 1104(a), and 1105(a), which are the same statutes enumerated in Indiana Code section 22-4-37-1. *Id.* at 15. The trial court thus concluded that Indiana Code section 22-4-37-1 "charges the State . . . with the responsibility of securing 'all the rights and benefits' conferred under certain federal statutes, including 42 U.S.C. §§ 1101, 1104 and 1105." *Id.* Because Congress authorized an "enhanced use of benefits conferred under 42 U.S.C. § 1101, et

*seq.* for pandemic relief through September 6, 2021,” the trial court found that Defendants violated their statutory duty by rejecting these benefits after June 19, 2021. *Id.* The trial court further concluded that, under Indiana Code section 22-4-37-1, our legislature instructed the DWD to administer unemployment benefits available in the Unemployment Trust Fund, and the statute was a binding directive to the State to secure all rights and benefits conferred by 42 U.S.C. § 1104. *Id.* at 15-16. Based on this reasoning, the trial court found that the State of Indiana’s decision to prematurely end the CARES Act benefits in Indiana violated Indiana Code section 22-4-37-1 and that Plaintiffs had shown a reasonable likelihood of success on the merits of their declaratory judgment action. *Id.* at 16.

[15] We disagree with the trial court’s determination that Plaintiffs had shown a reasonable likelihood of success on the merits of their action for declaratory judgment and the reasoning underlying its determination. Indiana Code section 22-4-37-1 does not require the State of Indiana to participate in the CARES Act programs. Indiana Code section 22-4-37-1 states that “[i]t is declared to be the purpose of [article 4] to secure to the state of Indiana and to employers and employees in Indiana all of the rights and benefits which are conferred under” certain enumerated federal statutes, including 42 U.S.C. 1101 through 1109, and any amendments thereto. Ind. Code § 22-4-37-1. The trial court found that the CARES Act benefits at issue here were funded by and through programs established under 42 U.S.C. §§ 1101(a), 1104(a), and 1105(a) and that, pursuant to section 22-4-37-1, the State was required to secure all

rights and benefits conferred under 42 U.S.C. §§ 1101, 1104, and 1105.

However, the statutes relied upon by the trial court as conferring the CARES Act benefits do not actually do so. “Confer” is defined as “to give (something, such as a property or characteristic) to someone or something.” *See* <https://www.merriam-webster.com/dictionary/confer>. The CARES Act benefits at issue in this case were established and conferred under 15 U.S.C. §§ 9021, 9023, and 9025. The statutes enumerated in Indiana Code section 22-4-37-1 do not establish or give the CARES Act benefits; instead, they establish the accounts within the federal treasury to hold the monies to be transferred to the States for unemployment programs established by the other statutes enumerated in Indiana Code section 22-4-37-1.

- [16] Under the traditional federal-state cooperative UI system, all benefits paid to claimants come from the state trust fund into which employers pay -- federal funds are not used to pay benefits. Ind. Code § 22-4-1-2(a). Federal funds are used to cover DWD’s administrative costs, and the federal statutes enumerated in section 22-4-37-1 -- “42 U.S.C. 501 through 504, 42 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29 U.S.C. 49 *et seq.*” -- establish that traditional system and makes federal funds available for administrative costs. Specifically, 42 U.S.C. §§ 1101-1109 establish the Unemployment Trust Fund in the United States Treasury, which is used to assist States in administering their UI programs, establishing and maintaining public employment offices, and for veterans’ employment and training. *See* 42 U.S.C. §§ 1101-1104. To allow for the CARES Act benefits to be paid to the States, Congress wrote into

42 U.S.C. § 1103 language that states the Treasury Department shall transfer from the federal Treasury's general fund to the Unemployment Trust Fund any sums that are necessary to provide the CARES Act benefits through the existing UI system. 42 U.S.C. § 1103(i)(1)(D), (i)(2)(A).

[17] The trial court found this system of distribution in which the CARES Act benefits are distributed through the existing traditional UI programs as incorporating the CARES Act benefits statutes into section 22-4-37-1:

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). See 15 U.S.C. §§ 9021(g), 15 U.S.C. § 9025(d) and 15 U.S.C. § 9023(d). These are the same statutes enumerated in Ind. Code 22-4-37-1.

*Appellant's App. Vol. II* at 15. However, sections 1101(a), 1104(a), and 1105(a), which the trial court found "established" federal unemployment programs, do not themselves do so; rather, those subsections establish accounts within the federal treasury to hold and account for funds for eventual transfer to the States for use in the unemployment programs that are actually established by the other federal statutes listed in section 22-4-37-1. See 42 U.S.C. §§ 1101(a) (establishing an employment security administration account in the Unemployment Trust Fund), 1104(a) (establishing the Unemployment Trust Fund, in which the Secretary of the Treasury is authorized and directed to receive and hold in all moneys deposited therein by a State agency from a State unemployment fund or otherwise deposited in or credited or any account therein), 1105(a) (establishing an extended unemployment compensation

account in the Unemployment Trust Fund). Thus, the cited statutes are accounting statutes and describe how funds are to flow from the federal treasury to the federal trust fund accounts and then to the state unemployment trust funds.

[18] When the CARES Act benefits were created, Congress chose to use the existing accounting system, that was already in place to direct federal funds to the States for use in the area of unemployment, to efficiently distribute funds for the CARES Act benefits. Utilizing this established accounting system and specifying how funds should be moved around and made available for distribution is entirely different from creating a new federal benefit program, which the CARES Act is. Therefore, Indiana’s traditional UI program was created by Indiana Code article 22-4, the federal statutes governing how and under what circumstances the federal government will certify state UI programs for federal assistance are found in the federal statutes cited in section 22-4-37-1, and the CARES Act benefits at issue here were created and conferred by 15 U.S.C. §§ 9021, 9023, and 9025. Nothing in the Indiana Code requires participation in the CARES Act programs and benefits, and Indiana Code section 22-4-37-1 does not make any reference to 15 U.S.C. §§ 9021, 9023, or 9025.

[19] In *Jug’s Catering, Inc. v. Indiana Department of Workforce Development*, 714 N.E.2d 207 (Ind. Ct. App. 1999), *trans. denied*, a case that interpreted Indiana Code section 22-4-37-1, this court rejected an argument that relied on the same reasoning used by the trial court in the present case. *Id.* at 210-11. There, a

business underpaid unemployment taxes into the state trust fund after it misclassified certain employees as independent contractors, and after the IRS discover the misclassification during an audit, it provided the business with a “prior audit safe haven status” under 26 U.S.C. § 3401, which granted the business some relief from paying back federal unemployment taxes and penalties. *Id.* at 208, 209. That statute was not included in 26 U.S.C. §§ 3301-3311, which were statutes enumerated in and explicitly referenced in section 22-4-37-1. *Id.* at 212. However, the business argued that 26 U.S.C. § 3401 effectively amended 26 U.S.C. § 3301, and to avoid paying the State the unpaid UI contributions, it reasoned that because 26 U.S.C. § 3301 was referenced in section 22-4-37-1, section 22-4-37-1 prevented DWD from collecting state unemployment insurance contributions once the IRS granted the business the safe haven status. *Id.* at 211-212. This court rejected the business’s argument and found that the relied upon portion of 26 U.S.C. § 3401 was not specified in section 22-4-37-1 or any of the enumerated federal statutes, was not an amendment to any of the enumerated statutes because it did not alter them by modification, addition, or deletion, and was not part of the statutes found at 26 U.S.C. §§ 3301-3311, whose purpose differed significantly from that of 26 U.S.C. § 3401. *Id.* at 211.

[20] We find the same reasoning to apply here. In the present case, 15 U.S.C. §§ 9021, 9023, and 9025 are not enumerated in the text of Indiana Code section 22-4-37-1, and those sections do not amend any of the enumerated statutes by modification, addition, or deletion, and the purpose of sections 9021, 9023, and

9025 are to create the CARES Act benefits, which is different than the purpose of 42 U.S.C. §§ 1101, 1104 and 1105. The CARES Act benefits are distributed by utilizing the same accounting systems used to fund the administrative costs of the state UI programs, but the CARES Act benefits are established and conferred by entirely different statutes than those enumerated in Indiana Code section 22-4-37-1. Congress needed an efficient way to distribute the CARES Act benefits, and such a system was already in place under the statutes enumerated in Indiana Code section 22-4-37-1. But utilizing the same system to distribute the CARES Act benefits is not evidence that Congress intended to change or amend the traditional UI scheme through the CARES Act. The CARES Act is intended to be temporary, provides different benefits to more types of people and for different amounts of time, and serves as a supplement to traditional UI benefits during an unprecedented pandemic.

[21] Because we find that Indiana Code section 22-4-37-1 does not require participation in the CARES Act programs, the State's decision to terminate the benefits did not violate the statute. We, therefore, conclude that Plaintiffs have not shown a reasonable likelihood of success at trial, and because the movant must prove each of the requirements to obtain a preliminary injunction, we hold that the trial court abused its discretion when it granted the Plaintiffs' motion for preliminary injunction and enjoined Defendants from withdrawing Indiana from the CARES Act benefits.

[22] Reversed.

May, J., and Vaidik, J., concur.