In the
Supreme Court of Ohio

STATE ex rel. CANDY BOWLING, et al.,	:	Case No. _____
	:	
	:	On Appeal from the
Appellees,	:	Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
MIKE DeWINE, et al.,	:	Court of Appeals
	:	Case Nos. 25-AP-191, 25-AP-192,
Appellants.	:	25-AP-193

MEMORANDUM IN SUPPORT OF JURISDICTION

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INTRODUCTION

The Court already decided (in 2021) that the substantive question in this case merits review. The need for review is even stronger today. In this case's first time here, the Court reviewed whether an Ohio statute required Governor DeWine to seek certain federal funds under a pandemic-era unemployment program. *See 11/09/2021 Case Announcements*, 2021-Ohio-3938, at 1. The Court declared the "cause" moot then. *State ex rel. Bowling v. DeWine*, 2022-Ohio-4122, ¶1. After that, the General Assembly amended the statute to leave no doubt: the Governor does not have to seek such federal money. A Franklin County court nevertheless ordered the Governor to request these federal funds in 2025, and the Tenth District affirmed. The lower courts' decisions trample a trifecta of the other branches' powers: they defy this Court's first dismissal, the Assembly's statute, and the Governor's discretion.

STATEMENT

I. The federal government created an optional pandemic-era benefits program; Ohio participated at first, but withdrew before the program ended.

In response to Covid, Congress passed the CARES Act in March 2020. 15 U.S.C. §9001 *et seq*. Among other things, the act created temporary unemployment-benefit programs in which States had the option to participate. One program, relevant here, was the Federal Pandemic Unemployment Compensation program, or "the Program." States that joined the Program secured extra benefits for those receiving unemployment benefits. *See* 15 U.S.C. §9023. From March to July 2020, eligible recipients in participating States received $600 extra per week, and later, $300 extra per week.

See 15 U.S.C. §9023(b), (b)(3)(A)(i); American Rescue Plan Act of 2021, Pub. L. No. 117-2, §§9011, 9013, 9016.

Any State's participation was purely optional. No federal law required States to join, and States that joined could later withdraw. Federal law allowed "[a]ny State which desire[d] to do" so to "enter into … an agreement … with the Secretary of Labor," and any State could "terminate such agreement" with 30 days' notice. 15 U.S.C. §9023(a). The Program closed on September 6, 2021. Rescue Plan Act, §9013; 15 U.S.C. §9023(e)(2).

Ohio initially opted in, so eligible Ohioans received the extra weekly amount. Eventually, the extra money disincentivized returning to work, tightening labor markets. So Governor DeWine withdrew from the Program, effective June 26, 2021. After that, Ohioans no longer received Program benefits, although they continued to receive traditional unemployment-compensation benefits under state law, along with other pandemic-related benefits.

II. Several program participants sued, but the trial court refused to enter an injunction.

Several people who had been receiving Program benefits sued, challenging Ohio's withdrawal. They argued that an Ohio law—the "Cooperation Statute"—*required* the Governor and his Director of the Ohio Department of Job and Family Services to seek funds through the Program. At the time of the lawsuit, the Cooperation Statute provided: "[t]he 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" five named federal statutes. R.C. 4141.43(I) (2021 version).

Applying the Cooperation Statute in 2021, the Franklin County Court of Common Pleas denied the plaintiffs' motion for a temporary restraining order and a preliminary injunction. *State ex rel. Bowling v. DeWine*, No. 21 CVH07-4469, at 5 (Franklin Cnty. C.P. July 29, 2021) ("2021 Trial Op."). The court held that the plaintiffs were not likely to succeed on the merits, for two reasons. *First*, the court observed that the Cooperation Statute required the Director to take certain steps to obtain benefits available under specifically named federal laws. *Id.* Because the CARES Act is not one of the named laws and the CARES Act enacted the Program, the trial court concluded that the statute "clearly" did not mandate Ohio's participation in the Program. *Id.* *Second*, the trial court reasoned, because the Cooperation Statute required only that the Director adopt "rules, regulations, and administration methods and standards, as may be necessary to secure" certain federal benefits, and because the Governor's withdrawal decision did not adopt "rules, regulations, and administrative methods and standards," it did not implicate the statute at all. 2021 Trial Op.5–6.

III. The Tenth District reversed; this Court granted review, but it dismissed the case as moot.

The Tenth District court of appeals reversed. That court concluded that the Governor (through the Director) had no choice but to seek Program benefits. The court read one provision in the CARES Act to mean that Program funds were, despite not being listed there, available "under" one of the federal laws named in the Cooperation Statute. *State ex rel Bowling v. DeWine*, 2021-Ohio-2902, ¶¶45–47 (10th Dist.) ("2021

App.Op."). Thus, the Tenth District concluded, the Cooperation Statute obliged the Governor to seek the funding. *Id.* The court also made two constitutional observations. *First*, it reasoned that the General Assembly alone had the power to make public policy, and that the Governor, in withdrawing from the Program, improperly exercised legislative power. *Id.* at ¶53. *Second*, the court cited Article II, Section 34 of the Ohio Constitution, and reasoned that the Governor improperly interfered with legislative authority conferred by that Section. *Id.* at ¶¶48–55.

This Court granted review, but it eventually dismissed the case as moot. In its entirety, the opinion says, "This cause is dismissed, sua sponte, as moot." *State ex rel. Bowling v. DeWine*, 2022-Ohio-4122, ¶1. In a later order, the Court declined the Governor's request to clarify that the dismissal should lead to vacating the Tenth District's 2021 judgment. *State ex rel. Bowling v. DeWine*, 2022-Ohio-4617.

IV. Plaintiffs renewed their claims; the trial court enjoined the Governor to rejoin the program; and the Tenth District affirmed.

Plaintiffs returned to the common-pleas court, renewing their request for an injunction. While the case progressed, the General Assembly amended the statute. A new subsection says, "[n]othing … precludes the director from ceasing to participate in, any voluntary, optional, special, or emergency program offered by the federal government, including programs offered under" the CARES Act. R.C. 4141.43(I)(2).

The trial court entered a permanent injunction. It reasoned that declaratory and injunctive relief were required by the Tenth District's 2021 analysis. *State ex rel. Bowling v. DeWine*, No. 21 CVH07-4469, at 10, 12 (Franklin Cnty. C.P. Feb. 12, 2025) ("2025 Trial Op."). Citing the 2021 appellate opinion, the trial court ordered the

Governor to "take all action necessary" to "reinstate" Ohio's "participation" in the Program from June 26, 2021 through September 6, 2021, and to "take all action necessary" to secure Ohio's share of program benefits from the U.S. Department of Labor. *Id.* at 12.

The Tenth District affirmed again. The court first refused to dismiss the case as moot based on this Court's 2022 order. In the appeals court's view, this Court's judgment declaring the "cause" moot did not "necessarily imply" that the "underlying claims … were moot." *State ex rel. Bowling v. DeWine*, 2025-Ohio-2313, ¶20 (10th Dist.) ("2025 App.Op."). Next, the Court rejected the State's arguments that the trial court could not grant meaningful relief for this long-expired program. The Tenth District said that relief might be possible. *Id.* at ¶22. Finally, on the merits, the Tenth District concluded that the 2021 panel's judgment was binding law-of-the-case, even if the new panel "might have ruled" otherwise. *Id.* at ¶26.

THIS CASE RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND INVOLVES A QUESTION OF PUBLIC AND GREAT GENERAL INTEREST

For five reasons, this Court should review the Tenth District's decision.

I. The judgment below is effectively the same judgment this Court reviewed in 2022.

First, this case merits review because it raises the same substantive question that the Court agreed to review in 2021. The question remains whether an Ohio statute handcuffs the Governor from withdrawing from a federal program if he decides continuation is no longer in Ohio's best interests.

The Tenth District's 2025 judgment explicitly rests on the 2021 judgment that this Court already voted to review. The Tenth District held that, even if the 2025 panel

disagreed with the 2021 panel's analysis, it had no choice under law-of-the-case principles but to follow the 2021 decision. *See* 2025 App.Op. at ¶26. Despite the intervening four years, the judgment below is effectively the same judgment that this Court already decided to review. Much like the Court routinely grants review when a later case presents a similar question as a pending case, the Court should grant review here. *See, e.g.*, *State v. Taylor*, 2025-Ohio-2048; *State v. T.S.*, 2025-Ohio-481; *Marysville Exemp. Vill. Sch. Bd. of Ed. v. Union Cnty. Bd. of Revision*, 2025-Ohio-481.

II. Events since 2022 enhance the need to review the judgment below.

While all the reasons that supported review in 2021 remain true today, the last four years have only intensified the reasons for review.

First, the General Assembly in 2023 confirmed expressly, by statutory amendment, that nothing in Ohio law "precludes" the Governor "from ceasing to participate in" many federal programs, including the very program at issue here. R.C. 4141.43(I)(2). So even if the Tenth District had been right in 2021, this express grant of power to the Governor makes the Tenth District wrong today. That makes the case about separation of powers twice over. The Tenth District affirmed an injunction compelling the Governor to take actions that the General Assembly now declares are discretionary. *Compare* 2025 App.Op. at ¶27; 2025 Trial Op., at 12, *with* R.C. 4141.43(I)(2). The Tenth District purported to defend legislative prerogative by limiting the Governor, but by not giving effect to the *express legislative grant,* the court trod on legislative power as well as on executive power.

Second, this Court's 2022 holding that this "cause" is moot adds a reason that the Tenth District erred. This Court did not declare the "appeal" moot, but the "cause" moot. A cause is a case. Black's Law Dictionary defines "cause" as "[a] lawsuit; a case." Black's Law Dictionary 275 (12th ed. 2024). So when both lower courts continued to entertain this lawsuit after this Court declared it moot, they defied this Court's instructions. That is a reason to grant review. *See, e.g.*, *Phoenix Lighting Grp., LLC v. Genlyte Thomas Grp., LLC*, 2024-Ohio-5729, ¶¶17–18.

Third, because the Tenth District disclaimed its power to revisit its 2021 judgment, only this Court's intervention can fix that 2021 error. The 2025 Tenth District opinion relied on law-of-the-case to disclaim the power to revisit the 2021 decision. App.Op. ¶26. Even if the Tenth District were right to conclude that it could not "revive[] an issue" settled in 2021 "[to] be relitigated," *State ex rel. AWMS Water Solutions, L.L.C. v. Mertz*, 2024-Ohio-200, ¶27, this Court is "not bound by prior decisions of a lower court," *Farmers State Bank v. Sponaugle*, 2019-Ohio-2518, ¶24. Because the Tenth District believed it could not reassess its 2021 judgment, only this Court can reach the merits of the badly flawed 2021 Tenth District judgment.

III. The judgment below implicates the separation of powers.

The case warrants review because it involves substantial constitutional questions about the separation of powers and the meaning of Article II, Section 34 of the Ohio Constitution. Those are questions this Court regularly reviews. *See, e.g.*, *City of Toledo v. State*, 2018-Ohio-2358, ¶25; *City of Norwood v. Horney*, 2006-Ohio-3799,

¶125; *Cleveland v. State*, 2019-Ohio-3820, ¶41; *Kaminski v. Metal & Wire Prods. Co.*, 2010-Ohio-1027, ¶63.

Like those cases, this one involves the separation of powers. The Tenth District said that the Governor's decision to decline the federal money "encroached" on the General Assembly's exclusive power over "matters of public policy." 2021 App.Op. at ¶53. That is dubious, as the Constitution commits to the Governor all "executive power," a line-item veto, and more. *See* Ohio Const. art. III, §§5, 16. The Governor does not read the decision below to mean that he is stripped of all public-policy decision-making. But the lower courts might read the language that way, so that is a reason for review. The idea that the Constitution limits the Governor from policy-making decisions raises exactly the kind of issue that this Court sits to decide.

An injunction aimed at the Governor's policymaking authority deserves this Court's attention. *See State ex rel. Gilligan v. Hoddinott*, 36 Ohio St. 2d 127, syl. ¶3 (1973) (exercising extraordinary writ powers to spare Governor Gilligan from the effects of an injunction). After all, if the Governor acted within his authority—that is, if the Cooperation Statute and the Ohio Constitution did empower the Governor to withdraw from the Program—then courts are "without authority to substitute [their] judgment for that of the Governor, and to exact the performance of a duty not imposed by law." *State ex rel. Armstrong v. Davey*, 130 Ohio St. 160, 164 (1935). The Court should grant review to enforce that principle of judicial restraint.

IV. The judgment below affects hundreds of thousands of Ohioans

The question here also merits review because it affects a critically important policy decision the Governor made during Ohio's recovery from the Covid pandemic.

That decision is certainly of immense importance to would-be recipients of Program funds. Plaintiffs here claim that Ohio's withdrawal from the Program affected over 300,000 Ohioans. 2021 App.Op. at ¶11. This Court has frequently reviewed benefits cases affecting far fewer individuals. *See, e.g.*, *Bernard v. Unemployment Comp. Rev. Comm'n*, 2013-Ohio-3121; *Lang v. Dir., Ohio Dep't of Job & Fam. Servs.*, 2012-Ohio-5366. If the benefits questions in cases like *Bernard* and *Lang* meet the public-or-great-general-interest threshold, the question in this case does as well.

This case also matters to Ohioans more broadly. Governor DeWine opted out of the Program after determining that the additional benefits disincentivized returning to work. That was a serious problem in 2021: employers across Ohio and the country were desperate for employees. At the time, the Governor's Office related that it had "heard over and over again from employers who can't find workers to fill open positions." *Governor, Lt. Governor Issue Statement on Federal Pandemic Unemployment Compensation Ruling*, Office of the Governor (July 29, 2021), https://perma.cc/6NJX-YTT3. In the Governor's eyes, withdrawing from the Program encouraged Ohioans to "find quality, well-paying jobs," and doing so contributed to Ohio's strong economic recovery with an "unemployment rate … below the national average." *Id.* In the long run, "both employers and workers" benefited. *Id.*

With the pandemic-era economy in the rearview mirror, the concern that additional payments may have perverse effects is even more heightened. Such payments tighten the market for labor; employers may be unable to find employees; and therefore they may be forced out of business, forced to forgo investment opportunities, or forced to make investments in States with more favorable labor markets. It is telling that no State, nor the federal government, is suggesting that such enhanced unemployment benefits are needed or helpful *in 2025*.

Whether one agrees with the Governor's decision or not, no one can deny that the decision has vast importance.

V. The judgment below is a lone outlier nationally.

This Court should also review the judgment below because the Tenth District's answer to the question whether a governor may decline CARES Act money is the only appellate case in the country to so hold. That signals both the question's importance and the need for review. Both the New Hampshire and South Carolina supreme courts have held that statutes nearly identical to Ohio's Cooperation Statute do "not obligate" state actors "to secure" federal funds "for the entire federally-funded period." *Caron v. N.H. Dep't of Emp't Sec.*, 175 N.H. 540, 545 (2022); *Brannon v. McMaster*, 434 S.C. 386, 389 (2021) (same). Appellate courts in Arizona and Indiana reached the same conclusion. *See Unemployed Workers United v. Ducey*, 254 Ariz. 95, 96-97 (App. 2022); *Holcomb v. T.L.*, 175 N.E.3d 1177, 1181 (Ind. App. 2021). And the supreme courts of Arkansas and Oklahoma stayed injunctions that would have required state officials to rejoin the Program. *See Hutchinson v. Armstrong*, No. CV-21-365

(Arkansas S. Ct. Aug. 5, 2021), https://perma.cc/S9HW-TPKF; *Owens v. Zumwalt*, No. 119,786 (Oklahoma S. Ct. Aug. 17, 2021), https://perma.cc/QNY9-WCSV. This nationwide consensus shows both that this is an important issue needing review and that the decision below was wrong.

*

In sum, this case raises questions about the legality of an important public policy and the role of each branch of government. That warrants the Court's attention.

ARGUMENT

Appellants' Proposition of Law:

Revised Code 4141.43(I) does not today compel the Governor to participate in all federal unemployment-compensation programs created by the federal CARES Act.

The Tenth District erred at four levels.

I. The Tenth District defied this Court's mandate.

First, the Tenth District erred by adhering to its 2021 decision despite this Court declaring the "cause" moot. This Court's intervening decision both resolved the case by declaring it moot and released the Tenth District from any law-of-the-case constraints flowing from its own 2021 decision. *See, e.g.*, *In re Adoption of A.K.*, 2022-Ohio-350, ¶10 (lead op.); *id.* at ¶34 (DeWine, J., concurring in judgment only); *cf. State ex rel. Reddin v. Vill. of N. Baltimore*, 139 Ohio St. 535, 536 (1942) (appeal of denied injunction moot when law repealed); *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 2009-Ohio-604, ¶21 (challenge to utility rate moot after rate-plan change).

II. The Tenth District defied the General Assembly's mandate.

Second, the Tenth District erred by adhering to its 2021 decision even after the General Assembly *expressly confirmed* the Governor's power to decline the CARES Act funds. The amended law says the Governor is free to "ceas[e] participat[ing] in …programs offered under" the CARES Act, R.C. 4141.43(I)(2), but the renewed injunction orders the Governor to resume participating. That change in law also overrides any law-of-the-case effect from the 2021 judgment. *See, e.g.*, *Loc. 4501, Commc'ns Workers of Am. v. Ohio State Univ.*, 24 Ohio St. 3d 191, 194 (1986).

III. The Tenth District defied even the pre-amended statute.

Even without the clear command in the amended law, the injunction would be illegitimate for a simple reason: the pre-amendment statute imposed no mandatory duty to accept CARES Act funds. Two textual limits show why.

One, the old statute was not a naked command to secure all federal money. The old statute directed the Director to take defined actions, all of which concern the adoption of rules and standards, to "secure … advantages." R.C. 4141.43(I) (2021). The statute thus aimed to avoid Ohio's missing out on federal aid by failing to enact rules that federal law makes a condition of receiving aid. That is why the statute commanded the Director to adopt rules and standards that may be *necessary for* securing such advantages. Read as a whole, the Cooperation Statute said nothing about a mandate to accept all federal funds; rather, the statute required the Director to take steps to ensure that the State *could* obtain aid if it so chose. The Director did so, even though the Governor chose not to accept all available federal benefits.

Two, under the old statute, the Director had to act *only* as necessary to secure funds "available under" the listed federal statutes. In this context, the word "under" is "most naturally read to mean … pursuant to or by reason of the authority of." *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 124 (2018) (quotation marks omitted). Thus, the Director's duty to adopt rules and policies ran *only* to rules and policies needed to obtain the benefits available under the five federal laws that the Cooperation Statute listed. The Program's funds were not available "by reason of" those acts. Instead, the Program's funds were available "by reason of" the CARES Act alone.

The Tenth District sidestepped both textual limits. For starters, the court never confronted the "secure … advantages clause" in context. "Parsing individual words is useful only within a context. The Revised Code, like any document, is designed to be understood as a whole." *State v. Porterfield*, 2005-Ohio-3095, ¶12; *Matter of Establishing the Solar Generation Fund Rider,* 2022-Ohio-4348, ¶14.

The Tenth District instead focused on language in the CARES Act that it thought "defined" funds available through the Program as funds "administered under" the Federal-State Extended Unemployment Compensation Act of 1970, one of the acts under which the Cooperation Statute imposes duties. 2021 App. Op. at ¶¶45–46 (citing 15 U.S.C. §9023(i)(2)). That reasoning contains two distinct errors. For one thing, the part of the CARES Act the Tenth District cited says only that the CARES Act's use of the phrase "extended compensation" refers to compensation available through the Federal-State Extended Unemployment Compensation Act of 1970. *See* 15 U.S.C. §9023(i)(2). The quoted language thus has nothing at all to do with the

Program—it does not "define," describe, or even address anything about the Program. For another, even if the CARES Act defined the Program as being part of the Federal-State Extended Unemployment Compensation Act for purposes of federal law, the question here is what *the Cooperation Statute* means when it refers to benefits "available under" that federal statute. As explained above, it means benefits available "by reason of" the Federal-State Extended Unemployment Compensation Act. The Program's benefits are available "by reason of" the CARES Act alone, making the federal definition the Tenth District identified irrelevant.

If the General Assembly wanted to require the Governor to accept all available federal money, it "could have" said so. *State v. Bryant*, 2020-Ohio-1041, ¶18. Compare Maryland: its legislature passed a law requiring the State's executive branch to do "everything possible to maximize" benefits available to Maryland. *D.A. v. Hogan*, No. 24-C-21-002988, at 15 n.6 (C.C. Balt. City July 13, 2021) (citing 2021 Maryland Laws Ch. 49 §3(a) (April 21, 2021)). Ohio passed no similar law. Indeed, Ohio law is now opposite Maryland law. R.C. 4141.43(I)(2). What is more, all appellate courts that have considered the question disagree with the Tenth District. *See* above at 9-10.

IV. The Tenth District incorrectly overread the Ohio Constitution.

Finally, the Tenth District erred to the extent that it rested its judgment on a flawed constitutional analysis. It first cited the proposition that matters of public policy are reserved to the General Assembly. *See* 2021 App. Op. ¶53. That is true when the case pits the courts against the Assembly, but incomplete when the policy

choice is made in the executive branch. The Tenth District also cited Article II, Section 34, reasoning that the Governor intruded on the legislature's Section 34 authority by violating the Cooperation Statute. *Id*. That argument wrongly assumes that the Governor's withdrawal decision violated the Cooperation Statute. As just explained, it did not. Thus, even if the Cooperation Statute is Section 34 legislation, the Governor did not interfere with the legislature's Section 34 power.

CONCLUSION

The Court should accept jurisdiction and reverse the judgment below.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction of was served on August 12, 2025, by e-mail on the following:

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