SLIP OPINION NO. 2026-OHIO-3208

THE STATE EX REL. BOWLING ET AL., APPELLEES, *v.* DEWINE, GOVERNOR, ET AL., APPELLANTS.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Bowling v. DeWine*, Slip Opinion No. 2026-Ohio-3208.]

Cause dismissed as moot, and judgments of court of appeals and trial court vacated.

(No. 2025-1055—Submitted May 20, 2026—Decided August 21, 2026.)

APPEAL from the Court of Appeals for Franklin County, Nos. 25AP-191 through 25AP-193, 2025-Ohio-2313.

The below judgment entry of the court was joined by KENNEDY, C.J., and WILKIN, DETERS, HAWKINS, and SHANAHAN, JJ. FISCHER, J., dissented, respectfully disagreed with the court's decision to dismiss this matter as moot, and would have resolved the case on the merits. BRUNNER, J., dissented, with an opinion. KRISTY S. WILKIN, J., of the Fourth District Court of Appeals, sat for DEWINE, J.

{¶ 1} Sua sponte, the cause is dismissed as moot, and the judgments of the Tenth District Court of Appeals in *State ex rel. Bowling v. DeWine*, 2025-Ohio-2313, and of the trial court in *State ex. rel. Bowling v. DeWine*, Franklin C.P. Nos. 21CVH07-4469, 21CVH08-5524, and 21CVH08-5525 (Feb. 12, 2025), are vacated.

BRUNNER, J., dissenting.

{¶ 2} To obtain federal funds to support unemployed workers, the General Assembly enacted R.C. 4141.43(I), which requires the director of Ohio Job and Family Services ("ODJFS") to "take such action . . . as may be necessary to secure to this state and its citizens all advantages available under" certain federal laws relating to unemployment compensation. R.C. 4141.43(I)(1). The statute specifies that the director "shall cooperate with the United States department of labor to the fullest extent." *Id.* The question presented in this case is whether the version of R.C. 4141.43(I) that was in effect in June 2021 required the director of ODJFS to maintain Ohio's participation in a federal program that provided additional unemployment-compensation payments to people during the COVID-19 pandemic.

{¶ 3} Unfortunately, this court sidesteps this question and dismisses the cause as moot, without explanation. I agree that the mandamus claim at issue in this appeal, raised by Candy Bowling, Shawnee Huff, David Willis, Zachary Dunn, Sebastian Nash, James Parker, and Sarah Russell (collectively, "Bowling"), is moot. But on the record before us, it appears the federal benefits Bowling seeks may still be available to Ohioans who were receiving unemployment compensation during the pandemic—benefits that Bowling estimates could be valued at upwards of $900 million, *see* 2025-Ohio-2313, ¶ 13 (10th Dist.). Bowling's claims for a declaratory judgment and injunctive relief therefore are not moot.

{¶ 4} I would reverse the portion of the Tenth District Court of Appeals' judgment regarding Bowling's claim for mandamus relief and remand the matter to the trial court with instructions to dismiss that claim as moot. I would affirm the Tenth District's judgment with respect to the claims for a declaratory judgment and injunctive relief, but only as it relates to the director of ODJFS, because the version of R.C. 4141.43(I) that was in effect in June 2021 required the director to maintain Ohio's participation in the federal program that provided additional unemployment-compensation payments to Ohioan's during the COVID-19 pandemic. But I would reverse the Tenth District's judgment as it relates to the governor and would remand the matter to the trial court with instructions to grant the governor's request for summary judgment.

I. Background

{¶ 5} In July 2021, Bowling[1] filed a complaint in the Franklin County Court of Common Pleas raising claims for mandamus and injunctive relief and seeking a declaratory judgment. At the same time, Bowling filed a motion for a temporary restraining order and a preliminary injunction against appellants, Governor Mike DeWine and Matt Damschroder, the director of ODJFS (collectively, "the State"). Bowling's claims concern the governor's termination of Ohio's participation in the Federal Pandemic Unemployment Compensation ("FPUC") program, *see* 15 U.S.C. 9023, which Congress enacted in March 2000 as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, 15 U.S.C. 9001 et seq.

{¶ 6} The FPUC program initially provided eligible persons an additional $600 in weekly unemployment benefits. 15 U.S.C. 9023(b)(3)(A)(i). That amount

1. The initial complaint was filed by Bowling and two others. The complaint was later amended, and additional plaintiffs were added.

later decreased to $300 a week. 15 U.S.C. 9023(b)(3)(A)(ii). The additional benefits were to be paid "as if [the] State law had been modified in a manner such that the amount of regular compensation . . . payable for any week . . . equal[ed] . . . the amount determined under the State law . . . plus [the FPUC amount]." 15 U.S.C. 9023(b)(1). Congress left to the individual states the choice whether to participate in the program, and on March 28, 2020, Governor DeWine executed the necessary agreement with the United States Department of Labor for Ohio to do so.

{¶ 7} The agreement required ODJFS to "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 [the] Agreement." Congress made clear that the states were to treat FPUC benefits "in the same manner as if those benefits were regular compensation," 15 U.S.C. 9023(g)(1), and Congress defined "compensation" as having the same meaning used in 26 U.S.C. 3304 et seq., the Federal-State Extended Unemployment Compensation Act of 1970, *see* 15 U.S.C. 9023(i)(1). The Federal-State Extended Unemployment Compensation Act of 1970 defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." 26 U.S.C. 3306(h).

{¶ 8} Under the agreement, the governor was permitted to terminate the agreement "with respect to any of the provisions" therein "on thirty days' written notice." On May 24, 2021, Governor DeWine provided written notice to the United States Department of Labor that Ohio intended to end its participation in the FPUC program as of the week ending June 26, 2021. Bowling sought a temporary restraining order and preliminary injunction to prevent the State from withdrawing from the program and denying Bowling the additional unemployment-compensation benefits that Bowling had been receiving under the FPUC.

{¶ 9} The trial court applied the four-part test stated in *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267 (1st Dist. 2000), and determined that a preliminary injunction was not warranted, because Bowling had failed to pass the first part of the test, which required Bowling to demonstrate by clear and convincing evidence a substantial likelihood of success on the merits of the claims. The trial court rejected Bowling's argument that under R.C. 4141.43(I), the State was required to continue participating in the FPUC program. The trial court noted that while Bowling's claims for a declaratory judgment and mandamus relief remained pending, its entry denying Bowling's motion for a temporary restraining order and preliminary injunction was a final, appealable order. Bowling filed an interlocutory appeal of that order, and the Tenth District granted expedited consideration of the appeal. *State ex rel. Bowling v. DeWine*, 2021-Ohio-2902, ¶ 17 (10th Dist.).

{¶ 10} The Tenth District reversed the trial court's decision. *Id.* at ¶ 1, 61. The Tenth District disagreed with the trial court's analysis, concluding that the "FPUC [was] one of the 'available advantages' described in R.C. 4141.43(I) that the General Assembly require[d] [the State to] 'secure'" for Ohioans. *Id.* at ¶ 47. It remanded the matter to the trial court to perform a complete analysis of Bowling's argument for injunctive relief under the remaining *Proctor* factors. *Id.* at ¶ 60.

{¶ 11} The State appealed that decision, and this court accepted jurisdiction over the appeal. *See* 2021-Ohio-3938. However, this court denied Bowling's request to allow the trial court to proceed with the Tenth District's mandate, which would have likely resulted in the trial court's issuance of an injunction. *See* 2021-Ohio-3015, ¶ 3 (Brunner, J., concurring in part and dissenting in part). The FPUC program ended on September 6, 2021, under federal law. *See* 15 U.S.C. 9023(e)(2). As a result of the governor's withdrawal of Ohio from the FPUC program, Ohioans who otherwise would have qualified for FPUC benefits did not receive them from June 26 through September 6, 2021.

{¶ 12} Nonetheless, briefing proceeded in this court and oral argument was held on May 25, 2022. On November 22, 2022, we issued an opinion, which read as follows: "This cause is dismissed, sua sponte, as moot." 2022-Ohio-4122, ¶ 1.

The State filed a motion for reconsideration, urging us to clarify our opinion "to leave no doubt that the Tenth District's judgment was vacated." Motion for Reconsideration at 1, Supreme Court No. 2021-1062. The State asked that we add the following language to our opinion: "The Tenth District's judgment is vacated and the case is remanded with instructions to dismiss the case as moot." *Id.* at 1-2. We denied the State's motion. 2022-Ohio-4617.

{¶ 13} After this court's November 2022 decision, the trial court sought to determine what remained of the case "more than one year after the expiration of the FPUC benefits." Franklin C.P. No. 21 CV 4469, 4 (Feb. 12, 2025). The trial court had already determined that it was premature to declare the case moot if Ohio could retroactively reinstate its participation in the FPUC program and potentially access remaining benefit funds. *See* Franklin C.P. No. 21 CV 4469, 14 (Mar. 12, 2024). The trial court had further concluded that this court's judgment of dismissal related only to the preliminary injunctive relief Bowling had sought, which had been the sole basis of the original appeal. *See id.* at 15. The matter proceeded on Bowling's claims for a declaratory judgment, a permanent injunction, and mandamus relief. And the trial court eventually considered the parties' competing motions for summary judgment.

{¶ 14} The trial court looked at the analysis performed by the Tenth District in determining Bowling's likelihood of success on the merits and determined that Bowling was entitled to summary judgment on the claims for declaratory judgment and injunctive relief and was entitled to a writ of mandamus compelling the State to "take all action necessary to reinstate Ohio's participation in the FPUC program from June 26, 2021 through its expiration."[2] Franklin C.P. No. 21 CV 4469, 12 (Feb. 2, 2025). The trial court also relied on a July 12, 2024 statement from an

2. The trial court found that Bowling's mandamus claim seeking an order for the State to "promptly pay" any additional benefits received was premature. Franklin C.P. No. 21 CV 4469, 11-12 (Feb. 12, 2025). Bowling did not appeal that aspect of the trial court's decision.

administrator with the United States Department of Labor that was submitted by both Bowling and the State with their respective motions for summary judgment, explaining that the federal government would still consider a state's request to rescind its early termination of the program. *Id.* at 6-7.

{¶ 15} The trial court issued an order declaring that the FPUC benefits were "'available advantages'" under R.C. 4141.43(I) that the State was required to "'secure'" on behalf of its citizens and that the State had violated R.C. 4141.43(I) when it prematurely terminated Ohio's participation in the FPUC program. *Id.* at 12. The trial court accordingly denied the State's motion for summary judgment and ordered the State to take all action necessary to reinstate Ohio's participation in the program and obtain Ohio's share of the benefits. *Id.* The Tenth District affirmed, 2025-Ohio-2313 at ¶ 27 (10th Dist.), and this court accepted the State's appeal for discretionary review, 2025-Ohio-4853.

II. Not all of Bowling's claims are moot

{¶ 16} Generally, a claim will become moot if an event occurs that through no fault of either party renders it impossible for the court to grant any relief. *See State ex rel. Cincinnati Enquirer v. Ross*, 2026-Ohio-510, ¶ 18. "The corollary is that 'if an actual controversy exists because it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted.'" *Maurent v. Spatny*, 2025-Ohio-5002, ¶ 11, quoting *State ex rel. Gaylor, Inc. v. Goodenow*, 2010-Ohio-1844, ¶ 11.

A. Our prior dismissal affected only Bowling's request for a temporary restraining order and preliminary injunction

{¶ 17} We can proceed to reach a decision in appeals before us only on the questions and issues presented. *See Snyder v. Old World Classics, L.L.C.*, 2025-Ohio-1875, ¶ 4. When we dismissed "[t]his cause" as moot in the initial appeal, 2022-Ohio-4122, the only question before us was whether Bowling's request for immediate relief in the form of a temporary restraining order and preliminary injunction was properly denied by the trial court. *See Bowling*, 2021-Ohio-2902, at ¶ 29 (10th Dist.) (Bowling's sole assignment of error challenged the trial court's decision denying a motion for temporary restraining order and preliminary injunction). Because the FPUC program had ended, this court could not grant Bowling's request for immediate reinstatement of the FPUC program. *See id.* at ¶ 25 (noting that "the federal funds in question [were] only available for a limited amount of time . . . and there [was] no indication that Congress [would] extend the availability period"), citing 15 U.S.C. 9025(g). We could have vacated the court of appeals' judgment entirely or made clear that Bowling's entire case was moot, but we specifically declined to do so. Therefore, our judgment of dismissal did not resolve Bowling's claims for a declaratory judgment or mandamus relief, and it did not resolve Bowling's request for a permanent injunction against the State.

B. Mandamus relief is no longer available to Bowling

{¶ 18} R.C. 2731.01 explains that "[m]andamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." To be entitled to a writ of mandamus, Bowling needed to establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the governor or the director of ODJFS to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Haydocy v. Ohio Pub. Emps. Retirement Sys*., 2026-Ohio-1928, ¶ 14.

{¶ 19} The trial court determined that Bowling was entitled to a writ of mandamus compelling the State to "restore" participation in the FPUC program because of the legal duty set forth in R.C. 4141.43(I) that the director secure such benefits for the citizens of Ohio. Franklin C.P. No. 21 CV 4469 at 11 (Feb. 12, 2025). However, by the time the trial court considered Bowling's motion for summary judgment on the mandamus claim, the General Assembly had extinguished the director's duty under R.C. 4141.43(I) by amending that statute.

See 2023 Am.Sub.H.B. No. 33 (effective Oct. 3, 2023). The amendment created a new statutory provision that specifically exempted the director from any obligation "to participate in . . . any voluntary, optional, special, or emergency program offered by the federal government," R.C. 4141.43(I)(2), including the CARES Act.

{¶ 20} In general, when considering whether to issue a writ of mandamus, a court should consider the circumstances as of the time that it is determining whether to grant the writ. *See State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, ¶ 11. And a change in the law during the pendency of a mandamus action may moot the claim. *See State ex rel. Citizens for Community Values, Inc. v. DeWine*, 2020-Ohio-4547, ¶ 9. Because the director has no clear legal duty under R.C. 4141.43(I)(2) to secure any FPUC funds that may remain available, mandamus relief was no longer available to Bowling when the trial court granted it. The cause with respect to Bowling's request for mandamus relief was therefore moot and should have been dismissed by the trial court.

C. This court should review the merits of Bowling's claims for a declaratory judgment and permanent injunction

{¶ 21} Although the trial court was unable to issue a writ of mandamus to compel the State to comply with R.C. 4141.43(I) because of the statute's amendment in 2023, Bowling could still obtain a declaration of the State's obligations under former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49 (effective Oct. 3, 2023), if Bowling suffered an injury that remains redressable.

{¶ 22} A claim for a declaratory judgment is a cause of action seeking a court's declaration of "rights, status, and other legal relations." R.C. 2721.02(A). Because Bowling seeks a declaration of a statutory obligation or violation that existed only in the past, we should use caution to avoid issuing a purely advisory opinion about the parties' prior conduct. *See State v. Logan*, 2025-Ohio-1772, ¶ 27 (Brunner, J., dissenting) (it is well settled that courts will not "indulge in advisory opinions"), citing *Smith v. Leis*, 2006-Ohio-6113, ¶ 16. But when meaningful relief remains available beyond a mere declaration about past obligations, a controversy remains between the parties. *See Maurent*, 2025-Ohio-5002, at ¶ 11, citing *Gaylor*, 2010-Ohio-1844, ¶ 11.

{¶ 23} If Bowling is entitled to a declaratory judgment that the State had an obligation to maintain Ohio's participation in the FPUC program under former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49, then Bowling may be entitled to a permanent injunction requiring the director of ODJFS to secure any remaining FPUC benefits.

III. Interpretation of R.C. 4141.43(I)

{¶ 24} The question presented in this case is whether the version of R.C. 4141.43(I) that was in effect in June 2021 required the director of ODJFS to maintain Ohio's participation in the FPUC program. The State argues that former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49, required the director only to adopt "rules, regulations, and administrative methods and standards" and did not compel the director to actually participate in federal unemployment-compensation programs. In the alternative, the State argues that if former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49, did require the State's participation in federal unemployment-compensation programs, that duty was triggered if the benefits were "advantages available under" one of the enumerated federal statutes. The State believes that the FPUC benefits at issue here were not made "available under" any of the statutes.

{¶ 25} The State argues that the other states that have examined this issue have all concluded that the FPUC benefits do not fall under the enumerated statutes in those states' laws that are nearly identical to former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49. In general, those states concluded that the FPUC benefits were not made "available under" the Social Security Act. *See, e.g.*, *Brannon v. McMaster*, 434 S.C. 386, 390 (2021); *Caron v. New Hampshire Dept. of Emp. Sec.*, 175 N.H. 540, 545 (2022). As previously stated, the agreement entered into between the State and the United States Department of Labor required ODJFS to "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 [the] Agreement." The Social Security Act is one of the enumerated statutes in former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49.

{¶ 26} I agree that having states administer the FPUC funds in the manner specified in the Social Security Act does not demonstrate that the funds were made "available under" the Social Security Act. But Congress did define the FPUC benefits as the same benefits available to people as regular compensation under the Federal-State Extended Unemployment Compensation Act of 1970. That statute is also one of the enumerated statutes in former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49.

{¶ 27} Congress instructed the states that entered into the FPUC program to administer the benefits received through the program in the same manner as they administered benefits already coming to the states through the Social Security Act, and it made clear that the FPUC benefits were the same as regular unemployment-compensation benefits. It instructed the states to treat the FPUC benefits "as if . . . State law had been modified" in such a way that the eligible persons would receive an additional $600 or $300 in weekly unemployment compensation. 15 U.S.C. 9023(b)(1) and (b)(3). In an unprecedented time of emergency, Congress chose to enact the FPUC program in one comprehensive bill that established other emergency-relief programs, instead of amending the specific provisions of the Social Security Act or the Federal-State Extended Unemployment Compensation Act of 1970, and Congress directed the states to treat the benefits as unemployment compensation, as though state law had been modified as such.

{¶ 28} So, while the CARES Act *authorized* the FPUC funds, Congress made the additional compensation indistinguishable from the "advantages available under the provisions of . . . the 'Federal-State Extended Unemployment

Compensation Act of 1970,'" R.C. 4141.43(I)(1), that unemployed Ohioans were already receiving. When the governor entered into the agreement, the FPUC benefits became "advantages available" under former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49, that the director of ODJFS had an obligation to secure for the citizens of Ohio through his administrative role, i.e., he had an obligation to "cooperate with the United States department of labor" and "to take such action, through the adoption of appropriate rules, regulations, and administrative methods and standards," *id.*

{¶ 29} Therefore, in my view, the director had a duty to continue to cooperate with the federal government in securing the FPUC benefits for Ohioans, and to the extent those benefits are still available, he should be required to do so through the trial court's issuance of a permanent injunction.

{¶ 30} But former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49, did not impose that same duty directly on the governor. Even though the director is appointed by and serves at the pleasure of the governor, *see* R.C. 121.03(E), Bowling has not offered a plausible theory for how the director's duty either bound the governor to participate in the FPUC program once he signed the agreement with the United States Department of Labor or prevented him from terminating Ohio's participation in the FPUC program. *See State v. Quarterman*, 2014-Ohio-4034, ¶ 19 (courts should not "search the record or formulate legal arguments on behalf of the parties").

{¶ 31} Bowling argues that the real question presented in this case is whether the governor had the authority to terminate Ohio's participation in the FPUC program once he entered the agreement with the United States Department of Labor on behalf of Ohio. Bowling relies on R.C. 4141.45, which provides that "[a]ll the rights, privileges, or immunities conferred by [R.C. 4141.01 through 4141.46], or by acts done pursuant thereto, shall exist subject to the power of the general assembly to amend or repeal such sections at any time." Under Bowling's reading of that statute, once the FPUC benefits were conferred on Ohio, only the legislature could withdraw Ohio's participation in the program.

{¶ 32} But Bowling's complaint and amended complaint made no mention of R.C. 4141.45. Bowling's claim for a declaratory judgment against both the governor and the director of ODJFS was rooted solely in the duty to secure the FPUC benefits for Ohioans under former R.C. 4141.43(I), 2017 Am.Sub.H.B. No. 49. I therefore would reverse the Tenth District's judgment affirming the trial court's judgment granting Bowling declaratory and injunctive relief against the governor.

IV. Conclusion

{¶ 33} For the foregoing reasons, I respectfully dissent from this court's judgment dismissing this cause as moot. I would affirm the judgment of the Tenth District Court of Appeals with respect to Bowling's claims for a declaratory judgment and permanent injunction pertaining to the director of ODJFS. But I would reverse the Tenth District's judgment as to Bowling's mandamus claim and the claims against the governor, and I would remand this matter to the trial court to dismiss the mandamus claim as moot and to grant the governor's request for summary judgment.

DannLaw, Marc E. Dann, Brian D. Flick, and Andrew M. Engel; and Zimmerman Law Offices, P.C., and Thomas A. Zimmerman Jr., for appellees, Candy Bowling, Zachary Dunn, Shawnee Huff, Sebastian Nash, James Parker, Sarah Russell, and David Willis.

D. Andrew Wilson, Ohio Attorney General, Mathura J. Sridharan, Solicitor General, Michael J. Hendersot, Chief Deputy Solicitor General, and Ann Yackshaw, Assistant Attorney General, for appellants, Governor Mike DeWine and Director Matt Damschroder.

Legal Aid of Southeast and Central Ohio and Kristy A. Michel, urging affirmance for amicus curiae Legal Aid Society of Columbus.

Legal Aid Society of Greater Cincinnati and Regina Campbell, urging affirmance for amicus curiae Legal Aid Society of Greater Cincinnati.

Legal Aid Society of Cleveland, Barbara Barreno-Paschall, and Patrick Haney, urging affirmance for amicus curiae Legal Aid Society of Cleveland.

Community Legal Aid Services, Inc., and Michelle Wrona Fox, urging affirmance for amicus curiae Community Legal Aid Services, Inc.

Legal Aid Society of Southwest Ohio, L.L.C., and Stephanie Moes, urging affirmance for amicus curiae Legal Aid Society of Southwest Ohio, L.L.C.

Ohio Poverty Law Center and Zack Eckles, urging affirmance for amicus curiae Ohio Poverty Law Center.

Advocates for Basic Legal Equality, Inc., and Heather L. Hall, urging affirmance for amicus curiae Advocates for Basic Legal Equality, Inc.

Employment Law Partners, L.L.C., and Christina Marie Royer, urging affirmance for amicus curiae Ohio Employment Lawyers Association.

Policy Matters Ohio and Hannah C. Halbert, urging affirmance for amicus curiae Policy Matters Ohio.

The Buckeye Institute, Jay R. Carson, David C. Tryon, and Alex M. Certo, urging reversal for amicus curiae Buckeye Institute.
