

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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Sep 13 2021

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Hon. R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2021-000883

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Sheena Brannon, Shane Stencil, Tina Sullivan, and Brandon Beaty

Appellants,

v.

Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, and G. Daniel Ellzey, in his official capacity as Director of the South Carolina Department of Employment and Workforce

Respondents.

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**APPELLANTS' MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

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Appellants hereby move, pursuant to Rule 212(b), SCACR, to supplement the Record on Appeal with the documents attached hereto and described below. Counsel for Appellants have consulted with counsel for Respondents and have been informed that Respondents do not consent to this motion and intend to oppose it.

On September 11, 2021, Appellants were made aware of an email, dated September 3, 2021, which appears to have been sent from the United States Department of Labor ("DOL") to officials in each of the states that, like South Carolina, terminated their participation in Pandemic Unemployment Benefits prematurely. This email references an Unemployment Insurance Program Letter ("UIPL") which was also amended on September 3, 2021. This email

and the UIPL touch on points which have been argued in this case and which are relevant to its ultimate resolution for the reasons that follow.<sup>1</sup>

First, the email indicates that if a state rescinds its early termination of Pandemic Unemployment Benefits, whether voluntarily or in response to a court order, and the DOL accepts that rescission, “all weeks of unemployment after the earlier termination will be covered under the state’s previously signed implementing agreement and all administrative and benefit costs will be federally funded.” In short, if a state rescinds its early termination of Pandemic Unemployment Benefits, those benefits will be paid retroactive to the date that the state previously terminated those programs.

Respondents placed significant weight on their argument that it was too late for this Court to grant Appellants the relief they seek. Resp Br. p. 8 – 11. Specifically, Respondents argued that the relief Appellants seek would be precluded after the passage of two dates, September 6, 2021, and August 28, 2021. September 6<sup>th</sup>, Respondents argued, was the date on which Pandemic Unemployment Benefits “all officially end (no matter whether a State terminated its participation early).” Resp. Br. p. 8. Respondents thus implied that Appellants could not be granted the relief they seek after that date. The DOL’s September 3<sup>rd</sup> email makes clear that the passage of September 6<sup>th</sup> does not affect a state’s ability to reinstate its participation in Pandemic Unemployment Benefits and that such reinstatement would be retroactive. Further, Respondents argued August 28<sup>th</sup> was the date by which South Carolina must have an agreement in place to administer PEUC and FPUC, otherwise an injunction would

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<sup>1</sup> In addition to the September 3<sup>rd</sup> email and UIPL, Appellants move to include the attached Biography of Office of Unemployment Insurance Administrator Jim Garner and the Office of Unemployment Insurance Organization. These documents are included simply to confirm that the sender of the September 3<sup>rd</sup> email is the Administrator of the DOL Office of Unemployment Insurance and that a number of those who received that email are in leadership positions at DOL.

not provide any relief to Appellants. Resp. Br. p. 9. As before, the DOL's September 3<sup>rd</sup> email makes clear that the passage of August 28<sup>th</sup> has no effect on the ability of this State, or any other, to reinstate Pandemic Unemployment Benefits retroactively.

Second, the email indicates that states which are reconsidering their termination of one or more Pandemic Unemployment Benefits, whether voluntarily or in response to a court order, may be required to make any changes to these programs prior to October 6, 2021, subject to limited exceptions discussed in the UIPL. According to the email, October 6<sup>th</sup> is the last day that an individual can submit a new claim for PUA benefits. Thus, while the relief that Appellants seek is still available, and is proper for the reasons Appellants have previously argued, the window is closing.

In summary, the September 3<sup>rd</sup> email and UIPL address the extent to which this Court can afford Appellants the relief they seek and rebut a substantial portion of Respondents' argument in opposition to that relief. For the reasons stated above, Appellants move that the Record on Appeal be supplemented with the September 3<sup>rd</sup> email, UIPL, and other documents attached hereto.

Respectfully Submitted,

September 13, 2021

SOUTH CAROLINA APPLESEED  
LEGAL JUSTICE CENTER

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