



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 28, 2021

Committee on Federalism
Idaho State Capitol
700 W. Jefferson Street
Boise, ID 83702
Via Hand Delivery

Re: *A.E. v. Little* (CARES Act Unemployment Insurance Litigation)

Dear Committee Members:

You requested an update on the *A.E. v. Little* matter, litigation pending in state court about Idaho's participation in special federal unemployment insurance programs first offered under the CARES Act. The primary issue is whether state law required Idaho to participate in these federal programs until they expired on September 6, 2021. The Attorney General's Office, on behalf of Governor Little and Director Revier of the Department of Labor, has argued that state law does not require participation. An Idaho trial court held a hearing last week, and it has not yet issued a decision.

By way of background, in March 2020 the federal government passed the CARES Act, a stimulus bill intended to address the economic downturn caused by the global COVID-19 pandemic. Pertinent here, the CARES Act funded three special unemployment insurance programs. These were optional programs, as each State had to decide whether to participate by executing an agreement with the U.S. Department of Labor and each State could end participation at any time by terminating the agreement with 30 days' written notice. The federal government funded the programs until September 6, 2021, but in May 2021 Governor Little announced that Idaho would end participation in June 2021.

In late August, Idaho Legal Aid, on behalf of several individual plaintiffs, sued Governor Little and Director Revier in state court. They alleged that the decision to end early Idaho's participation in the CARES Act unemployment insurance programs violated Idaho Code § 72-1341, a law that says the "director [of the Idaho Department of Labor] shall cooperate with the United States department of labor, and is directed to take such action as may be necessary to secure

to Idaho all advantages under [certain] federal laws.” The plaintiffs asked the Court for a preliminary and permanent injunction ordering Governor Little and Director Revier to have Idaho re-join the programs and to facilitate retroactive payment of benefits to those Idahoans that were otherwise eligible after June 19, 2021 when Idaho stopped participating in the programs.

The State opposed the plaintiffs’ request, arguing that their claims were procedurally deficient and failed on the merits. As to the merits, the State argued that Idaho Code § 72-1341 does not apply. The law mentions only “the director,” but Governor Little—not Director Revier—issued the notice of termination ending early Idaho’s participation in the CARES Act programs and is the only person with the power to rescind the notice so that Idaho could re-join the programs. The State further argued that even if Idaho Code § 72-1341 applies, it does not require Idaho to participate in the programs. The law says only that Director Revier needs to secure all “advantages” to Idaho. The programs, however, are no longer advantageous to Idaho as the State’s strong economy, low unemployment rate, and dire labor shortage mean it is more advantageous for Idaho as a whole if the State encourages Idahoans to return to work rather than to continue to receive unemployment benefits.

As to procedure, the State argued that (1) the plaintiffs failed to exhaust their administrative remedies, (2) the plaintiffs raise a political question that the courts cannot decide, as Governor Little had discretion to make a policy decision about how to balance some individual’s need for benefits with the State’s need for more workers, (3) the claims are barred by sovereign immunity to the extent that the plaintiffs seek money damages, (4) the plaintiffs lack standing to assert claims on behalf of the approximately 14,000 to 17,000 Idahoans that might be eligible for benefits but are not party to the lawsuit, and (5) the claims are barred by the doctrines of unclean hands and laches, as plaintiffs delayed bringing suit until well after the May 11 announcement that Idaho would end early its participation in the programs.

I hope you find this update helpful. Please contact me if you have any additional questions.

Sincerely,



Cory M. Carone
Deputy Attorney General