

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

I.D., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 21AC-CC00309
MICHAEL L. PARSON,)	
Governor of Missouri, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This case involves a challenge to the Governor of Missouri’s decision to terminate temporary, enhanced federal pandemic-related unemployment benefits under the CARES Act pursuant to an agreement between the State and the federal government. This agreement allowed the State to terminate its participation in this program with thirty days’ written notice, which was done.

Plaintiffs request a preliminary injunction. *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (listing four factors courts consider). Having fully considered the parties’ pleadings, evidence, and written and oral arguments, the Court will deny Plaintiffs’ motion for a preliminary injunction.

Plaintiffs have failed to show a probability of success on the merits. The text of the Employment Security Law, on which they base their request for declaratory relief, supplies no express nor implied private right of action for purported violations of §§ 288.340 and 288.020,¹ regardless of whether the State is a party to the case.

¹ Whether a statute creates a cause of action is not a jurisdictional question. *Cf. Nw.*

Accord State, Dep't of Soc. Servs., Div. of Med. Servs. v. Brundage, 85 S.W.3d 43, 47–48 (Mo. App. W.D. 2002) (affirming dismissal for failure to state a claim because “statute d[id] not explicitly authorize [cause of] action”).

Plaintiffs fare no better under the Declaratory Judgment Act, which cannot be used as an “end run” around the lack of a private right of action to enforce purported violations of §§ 288.340 and 288.020. *Neighbors Against Large Swine Operations v. Cont'l Grain Co.*, 901 S.W.2d 127, 132–33 (Mo. App. W.D. 1995) (Stith, J.).

Even if the Employment Security Law confers some private rights, it does not do so under §§ 288.340 and 288.020, and certainly not on *these* plaintiffs in *these* circumstances. These statutes were enacted in the 1950s—well before the enactment of the CARES Act in 2020. And the benefits at issue expire after September 6. Yet, Plaintiffs believe that a legislature from seventy years ago intended to confer a civil remedy on a class that only came into existence in the last year—and will only be

Airlines, Inc. v. Cty. of Kent, Mich., 510 U.S. 355, 365 (1994) (“The question whether a federal statute creates a claim for relief is not jurisdictional.”); MO. CONST. art. V, § 14(a) (circuit courts have subject-matter jurisdiction over all civil cases); *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo. banc 2009) (“Subject matter jurisdiction ... is ... the court’s authority to render a judgment in a particular category of case.”). Nor is it a question of justiciability. See *Schweich v. Nixon*, 408 S.W.3d 769, 773 (Mo. banc 2013) (per curiam) (“Justiciability is [not] a ... jurisdictional doctrine.”); *id.* at 774 n.5 (“[T]he concept of standing is better understood as a matter of justiciability, that is, of a court’s authority to address a particular issue when the party suing has no justiciable interest in the subject matter of the action. ... [S]tanding is a prerequisite to the court’s authority to address substantive issues and so must be addressed before all other issues.”). Rather, whether a statute authorizes a cause of action here is a substantive, merits issue. See *id.*

around until next week—for benefits wholly unrelated to the law that legislature enacted. The Court is unpersuaded.

Even if Plaintiffs have a private right of action to enforce purported violations of §§ 288.340 and 288.020, Plaintiffs’ interpretation of these statutes is contrary to their plain and ordinary meaning. Plaintiffs add an atextual affirmative, mandatory obligation on the State to pay temporary, newly-created federal benefits under a longstanding law unrelated to such benefits for a completely optional program. To be sure, § 288.340.1 commands that the State “cooperate” with the federal government. But that is in the context of administering the traditional unemployment program under the existing infrastructure, not the temporary, enhanced benefits under the CARES Act. The purported obligation of the Governor to continue federal CARES Act benefits indefinitely, which Plaintiffs impute to the statutes, is simply not present in the plain language of the statutes,² directly contradicts the terms of Missouri’s agreement with the federal government, and would transform an optional federal unemployment program into a state-law requirement, in violation of § 288.340.3, which provides that the Executive Branch must “oppose and prevent” the “complete or substantial federalization of the unemployment compensation fund[.]”

In the absence of a mandate that controls the Governor’s discretion, Plaintiffs

² Contrary to Plaintiffs’ contention, “[t]his plain and ordinary meaning is not altered by principles of liberal ... construction[.]” so § 288.020 “has no impact on the analysis of this case.” *Austin v. AM Mech. Servs.*, 604 S.W.3d 665, 672 (Mo. App. W.D. 2020) (quoting *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 68 n.5 (Mo. banc 2018)).

are left to debate the wisdom of the Governor's strategy as a matter of policy. But "[i]t is not for this Court to evaluate the wisdom or desirability of [such] policy decisions[.]" *Dodson v. Ferrara*, 491 S.W.3d 542, 561 (Mo. banc 2016).

Accordingly, Plaintiffs have failed to show a probability of success on the merits. Because the Court denies the request for a preliminary injunction on these non-constitutional grounds, it will not reach Plaintiffs' constitutional claim that the Governor failed to faithfully execute the Employment Security Law. *See Kohner Properties, Inc. v. Johnson*, 553 S.W.3d 280, 287 n.5 (Mo. banc 2018) (per curiam).

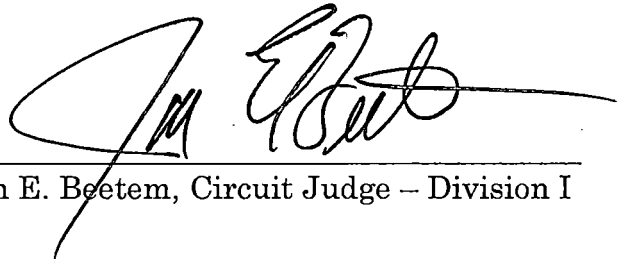
And because Plaintiffs cannot show a probability of success on the merits, the Court need not consider the remaining three factors under *Gabbert*. But even if the Court did, the balancing of harms and the public interest strongly favor the Governor's decision to promote economic recovery and encourage workers' re-entry into Missouri's critically understaffed labor force. The Court will not substitute its judgment for that of Missouri's duly elected Governor on such an important policy question, which both Missouri law and the principle of separation of powers confer on Missouri's Executive Branch.

Plaintiffs' request for a preliminary injunction is denied.

So Ordered.

Date:

8/31/2021



Jon E. Beetem, Circuit Judge – Division I