From the outset, the court wants to point out that this case is not about whether you agree or disagree with the CARES program and its related benefits. It is a case concerning whether or not the defendants have the discretion to opt in, and, conversely, opt out, of the CARES program. This matter is before me on Plaintiffs' motion for restraining order / injunction; Defendant's motion to dismiss and Defendant's motion for Plaintiffs to identify themselves.

The court finds that the CARES program and related benefits constitute new benefits, not previously available to unemployed workers in this state. It was enacted for the laudable purpose to provide safeguards to the unemployed, nationwide. S.C. Code Ann. § 41-29-230 requires DEW to cooperate with the U.S. Secretary of Labor to the fullest extent consistent with the provisions of Title 41 through the promulgation of appropriate rules, regulations, administrative methods and standards, as necessary to secure to the state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment tax act, the Wagner-Peyser Act and the Federal State Extended Unemployment Compensation act of 1970.

Plaintiffs claim that benefits under the CARES Act ["PUA," "PEUC" and "FPUC"] are advantages available under the provisions of the Social Security Act that relate to unemployment compensation. The Court disagrees. The benefits provided under the CARES act are new benefits, never previously available to unemployed workers and are provided by legislation separate and apart from the Social Security Act. The fact that the federal government chose to use the funding mechanisms available through the Social Security Administration does not mean that these new benefits fall under the Social Security Act. In fact, the Social Security Act was amended specifically to provide for municipalities and for nonprofits. This demonstrates that Congress knew how to and very well could have amended the Social Security Act to provide that the CARES benefits fall under the advantages available under the Social Security Act. Therefore, Plaintiffs' complaint falls to state a claim under which relief can be granted, and the defendant's motion to dismiss pursuant to Rule 12[b][6] is granted.

Normally, the Plaintiff is to be granted the opportunity to amend its pleadings upon a motion for 12 [b][6]. However, the Court finds that, under the facts of this case, no amendment is feasible that would allow Plaintiffs relief. Therefore, the Plaintiffs shall not be given the opportunity to amend their pleadings.

Plaintiffs' motion for TRO/injunction: First, the court must find that there is an immediate, irreparable threat of harm. Second, there must be likelihood of success on the merits. Third, there must be no adequate remedy at law. The Court finds that the Plaintiffs have likely met the elements of 1 and 3. However, the court finds that the plaintiffs do not have a likelihood of success on the merits for the reasons set forth below.

Plaintiffs argue that once South Carolina voluntarily opted into the CARES program that S.C. Code Ann. §41-29-230[1] required the director of DEW as well as the governor to accept all advantages available under the CARES act. These advantages are "PUA," "PEUC" and "FPUC." Plaintiffs assert that the director and governor have no discretion under S.C. Code Ann. §41-29-230[1] other than to accept all CARES act advantages. The Court disagrees. First, the Court questions whether or not Plaintiffs have the right to maintain this action by virtue of S.C. Code

Ann. §41-29-25[d], which provides, "nothing in this section gives rise to a cause of action against the executive director or any decision made by the executive director concerning departmental operations or development." Further, statutes must be read *in pari materia.* S.C. Code Ann. §41-29-25 "Executive Director: Discharge of Duties" provides that the director shall discharge his duties "in good faith," "with the care the ordinarily prudent person in a like position would exercise under the circumstances" in "a manner he reasonably believes to be in the best interest of the department." Best interest is defined as "achieving, for the purposes of the department" preservation of the "financial integrity of the department and its ongoing operations" and "exercise of the powers of the department" in accordance with "good business practices and the requirements of applicable laws and regulations." See S.C. Code Ann. §41-29-25[a].

S.C. Code Ann. § 41-29-120 "Employment, Stabilization Report Requirements, Joint Electronic Filing" provides "the department, with the advice and aid of its advisory counsels and through its appropriate divisions shall take appropriate steps to: [A] Reduce and prevent unemployment and … [D] Promote the reemployment of unemployed workers throughout the state in every way that is feasible.

It is abundantly clear that the director of DEW is vested with discretion in the implementation of S.C. Code Ann. §41-29-230[1], §41-29-120, as well as the other relevant code sections and regulations. Plaintiffs' assertion that the Director and Governor have no discretion under §41-29-230[1] is misplaced and ignores the basic tenets of statutory construction. Therefore, the Court finds that the Plaintiffs have little likelihood of success on the merits, and, therefore, their motion for temporary restraining order should be and is denied. In denying Plaintiffs' application, the court is cognizant that, typically, motions for restraining orders are to maintain the status quo. Plaintiffs' action was not filed until 83 days following the termination of South Carolina's participation in the CARES program. Finally, Plaintiffs' motion to identify themselves is moot, considering the grant of the motion to dismiss without ability to amend. However, the court finds that if the motion to dismiss was granted in error, that Plaintiffs should be required to identify themselves for the reasons argued by Defendants.

The Plaintiffs argue that the discretion, or lack thereof, of the Director of DEW and the Governor is one and the same. The court disagrees. The governor has much more expansive discretion and powers than urged by the Plaintiffs. The court asks that respective counsel for the Governor and Director of DEW prepare orders consistent with this memo as well as consistent with their briefings.

The proposed orders are to be provided to opposing counsel **prior** to their submission to the undersigned. I want to thank all counsel on record for their fine briefing and arguments.

R. Lawton McIntosh
Presiding Circuit Judge