

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III**

ELIZABETH RUTAN-RAM; GABRIEL RUTAN-RAM; REVEREND JEANNIE ALEXANDER; REVEREND ELAINE BLANCHARD; DR. LARRY BLANZ; REVEREND ALAINA COBB; REVEREND DENISE GYAUCH; and MIRABELLE STOEDTER,

*Plaintiffs,*

vs.

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES; and COMMISSIONER OF THE DEPARTMENT OF CHILDREN'S SERVICES, currently JENNIFER NICHOLS, in her official capacity,

*Defendants.*

NO. 22-80-III

Judge Roy B. Morgan, Jr.  
Judge Carter S. Moore  
Chancellor Ellen Hobbs Lyle (Chief Judge)

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. "Finding permanent, nurturing homes for children/youth in state custody creates stability and normalcy while reducing the trauma of 'not belonging.'"<sup>1</sup> Elizabeth and Gabriel Rutan-Ram, a Knox County married couple, sought to provide children with exactly this stability, normalcy, and belonging by becoming foster and adoptive parents. After realizing that they could not have biological children of their own, the Rutan-Rams began investigating the process of fostering to adopt a child, and they identified a boy in Florida with a disability whom they hoped to welcome into their family and provide with a loving and nurturing home. But to be eligible to have the child join their home, the Rutan-Rams first had to fulfill the Tennessee Department of Children's Services' requirements that they complete a foster-parent-training program and receive a home-study certification.

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<sup>1</sup> Tennessee Department of Children's Services Annual Report State Fiscal Year July 2019–June 2020, at 12 (Jan. 2021), <https://bit.ly/3HIXRIe>.

2. The Rutan-Rams sought these services from Holston United Methodist Home for Children, a child-placing agency that receives state funds from the Department to provide placement, training, supervision, and support services on the Department's behalf to prospective and current foster parents. Holston initially told the Rutan-Rams that it would provide them with the training and home-study services they needed. But on the day that the Rutan-Rams were scheduled to begin Holston's foster-parent-training class, Holston told the Rutan-Rams that it would not serve them because they are Jewish. Holston explained that it "only provide[s] adoption services to prospective adoptive families that share our [Christian] belief system." As a result, the Rutan-Rams were not able to foster or adopt the child who they hoped could join their family, for no other child-placing agency in the Knox County area was willing to provide them the services they needed to complete the state requirements for adoption of an out-of-state child.

3. In January 2020, the Tennessee General Assembly expressly approved religious discrimination like Holston's, by enacting House Bill 836, codified as Tenn. Code Ann. § 36-1-147. This statute authorizes child-placing agencies to deny child-placement services, based on the agencies' religious policies, even if state tax dollars fund the services.

4. So that they do not again suffer the humiliation and loss of opportunity that Holston's discrimination inflicted on them, and so that their tax payments do not fund similar discrimination against anyone else in the future, the Rutan-Rams, joined by six other Tennessee taxpayers, bring this action. The plaintiffs seek a declaratory judgment that Tenn. Code Ann. § 36-1-147 facially violates the religious-freedom and equal-protection guarantees of the Tennessee Constitution by permitting state funding of child-placing agencies that discriminate in state-funded services against prospective or current foster parents based on the religious beliefs of the parents. The plaintiffs also seek declaratory and injunctive relief prohibiting the Department from continuing to fund or contract with Holston as long as Holston continues to deny state-funded services to prospective or current foster parents based on the parents' religious beliefs.

### **Jurisdiction and Venue**

5. This Court has jurisdiction under Tenn. Code Ann. §§ 1-3-121, 4-5-225, 16-11-101 *et seq.*, 29-14-102, and 29-14-103.

6. This Court has authority to enter a declaratory judgment and to provide injunctive relief under Tenn. Code Ann. §§ 1-3-121, 4-5-225, 16-11-101 *et seq.*, 29-1-101 *et seq.*, 29-14-102, and 29-14-103 and Tenn. R. Civ. P. 65.01 *et seq.*

7. Venue is proper under Tenn. Code Ann. §§ 4-4-104, 4-5-225, 20-4-101, and 20-18-102.

### **Parties**

8. Plaintiffs **Elizabeth Rutan-Ram** and **Gabriel Rutan-Ram** are a Jewish married couple who reside in Knox County, Tennessee. They are unable to have biological children. They wish to become adoptive parents and believe that they can provide children with a loving, nurturing, and stable home. As a result of Holston's decision to deny services to them because they are not Christians, the Rutan-Rams felt shocked, hurt, frustrated, and disappointed, and they were not able to adopt the child in Florida to whom they had hoped to give a home. But they did not give up on fostering and adopting children, and since June 2021, they have served as long-term foster parents of a teenage girl, whom they would adopt if the Department determines that it would be in her best interests for them to do so. The Rutan-Rams plan to serve as the long-term foster parents of at least one more child and to adopt that child if the Department determines that it would be in the child's best interest for them to do so. In furtherance of that goal, as detailed below in paragraphs 98 to 111, they will give serious consideration to again seeking the services of state-funded private child-placing agencies. As detailed below in paragraphs 112 to 128, they would like to be able to turn to those agencies without facing the risk of again being denied services based on their religion and suffering harms similar to those inflicted on them by Holston's refusal to serve them.

9. The Rutan-Rams also pay sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. They object to the Department's use of their tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because they believe that all Tennessee residents should have equal access to and equal opportunity to benefit from state-funded services regardless of the residents' religious beliefs, and because they understandably do not want their own tax payments to be used to support discrimination against them. It violates their consciences

to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

10. Plaintiff **Reverend Jeannie Alexander** is an ordained interfaith pastor who served as a prison chaplain for several years and is now the executive director of a nonprofit organization that advocates for the rights of people who are incarcerated. She is a resident of Davidson County, Tennessee. She pays sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. She objects to use by the Department of her tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because she believes that state funding of religious discrimination violates the separation of religion and government, is against the public interest, and is unlawful. It violates her conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

11. Plaintiff **Reverend Elaine Blanchard** is a minister, commissioned by the Disciples of Christ, who serves as the lead pastor of a Disciples of Christ church in Tennessee. She is a resident of Shelby County, Tennessee. She pays sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. She objects to use by the Department of her tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because she believes that state funding of religious discrimination undermines the religious plurality that is fundamental to American democracy and opens the door to state support of other forms of invidious discrimination. It violates her conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

12. Plaintiff **Dr. Larry Blanz** is a retired psychologist with more than forty years of professional experience that has included working with foster parents and children. He is a resident of Davidson County, Tennessee. He pays sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. He objects to use by the

Department of his tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because he has seen firsthand children's need for stable, loving, and nurturing foster and adoptive parents and believes that turning away good parents simply because of their faith hurts children in need. It violates his conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

13. Plaintiff **Reverend Alaina Cobb** is an ordained Christian minister who directs an interfaith justice ministry in Tennessee and has experience in serving adoptive families. She is a resident of Davidson County, Tennessee. She pays sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. She objects to use by the Department of her tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because she believes that state funding of religious discrimination violates the separation of religion and government that is vital to protecting Christianity and all other religions and that such funding opens the door to state-sanctioned discrimination against any person based on any difference in religious belief. It violates her conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

14. Plaintiff **Reverend Denise Gyauch** is an ordained Unitarian Universalist minister who serves as the lead minister of a Unitarian Universalist church in Tennessee. She is a resident of Davidson County, Tennessee. She pays sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. She objects to use by the Department of her tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because she believes that state taxes paid by people of diverse faiths should be used to serve all Tennesseans equally regardless of their religion and that it is a misuse of religion to keep children who need loving homes away from parents who are willing to provide those homes. It violates her conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

15. Plaintiff **Mirabelle Stoedter** is the vice-president and treasurer of the Tennessee chapter of Americans United for Separation of Church and State. She is a resident of Davidson County, Tennessee. She identifies as an atheist and a Jew. She pays sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tenn. Code Ann. §§ 55-4-101, 55-4-105, and 55-4-111. She objects to use by the Department of her tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because she believes that public funds should never be used to support discrimination and that such use of public funds violates the separation of religion and government and could result in the use of her own tax payments to support discrimination against people with beliefs like hers. It violates her conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general.

16. Defendant **Tennessee Department of Children's Services** is a department of the Tennessee state government.

17. Defendant **Commissioner of the Department of Children's Services**, currently **Jennifer Nichols**, is sued in her official capacity.

18. The Commissioner heads the Department and has broad authority over its operations.<sup>2</sup>

19. The Department has statutory responsibility for licensing, approving, and supervising child-placing agencies.<sup>3</sup>

20. The Department has statutory authority to license, approve, supervise, and regulate child-placing agencies.<sup>4</sup>

21. The Department, through the Commissioner, has statutory authority to receive, administer, allocate, disburse, and supervise grants and funds to child-placing agencies.<sup>5</sup>

22. Under Tennessee law, a child-placing agency is "any entity or person that places children in foster boarding homes or foster homes for temporary care or for adoption or any other

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<sup>2</sup> See Tenn. Code Ann. § 37-5-105.

<sup>3</sup> Tenn. Code Ann. § 37-5-109(1).

<sup>4</sup> Tenn. Code Ann. §§ 36-1-108, 37-5-109(1), 37-5-112.

<sup>5</sup> See Tenn. Code Ann. §§ 37-5-105, 37-5-111.

entity or person or group of persons who are engaged in providing adoption studies or foster care studies or placement services as defined by the rules of the department.”<sup>6</sup>

### **General Allegations**

#### ***Tennessee’s Authorization of Religious Discrimination by Child-Placing Agencies***

23. In January 2020, the Tennessee General Assembly enacted House Bill No. 836, which was signed into law the same month by Governor Bill Lee and codified as Tenn. Code Ann. § 36-1-147.

24. Tenn. Code Ann. § 36-1-147 states:

(a) To the extent allowed by federal law, no private licensed child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency’s written religious or moral convictions or policies.

(b) To the extent allowed by federal law, the department of children’s services shall not deny an application for an initial license or renewal of a license or revoke the license of a private child-placing agency because of the agency’s objection to performing, assisting, counseling, recommending, consenting to, referring, or participating in a placement that violates the agency’s written religious or moral convictions or policies.

(c) To the extent allowed by federal law, a state or local government entity shall not deny to a private licensed child-placing agency any grant, contract, or participation in a government program because of the agency’s objection to performing, assisting, counseling, recommending, consenting to, referring, or participating in a placement that violates the agency’s written religious or moral convictions or policies.

(d) Refusal of a private licensed child-placing agency to perform, assist, counsel, recommend, consent to, refer, or participate in a placement that violates the agency’s written religious or moral convictions or policies shall not form the basis of a civil action for either damages or injunctive relief.

25. House Bill 836 became law despite public outcry over its discriminatory purpose and effect.

26. For example, Dr. Allison Padilla-Goodman, the Vice President of the Anti-Defamation League’s Southern Division, stated publicly that “[i]t is shocking that the state of Tennessee has passed a bill that openly sanctions discrimination against Jews, LGBTQ people

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<sup>6</sup> Tenn. Code Ann. § 37-5-501(b)(7).

and others. Allowing a taxpayer-funded child placement agency to discriminate is outrageous. No child should be denied a loving foster or adoptive home simply because of a prospective parent’s religion, sexual orientation or identity. We therefore call on Governor Lee to veto this shameful legislation.”<sup>7</sup>

27. Reverend Jasmine Beach-Ferrara, the Executive Director of the Campaign for Southern Equality, said, “We strongly oppose Gov. Lee’s decision [to sign the Bill] and urge him to deeply and prayerfully consider the damage and harm of this bill, which could do a colossal disservice to the many children in Tennessee waiting to be adopted by safe and loving families. It opens the door to taxpayer-funded adoption agencies turning away potential parents just because of who they are.”<sup>8</sup>

28. During debate on the Bill in the Tennessee House of Representatives, Representative Mitchell raised concerns that the Bill would allow a child-placing agency to refuse to serve Jewish couples because of their faith, and Representative Rudd, the sponsor of the Bill in the House, did not deny that the Bill could have this effect.<sup>9</sup>

29. During debate on the Bill in the Tennessee Senate, Senator Dickerson asked whether the Bill would allow an Episcopalian child-placing agency to refuse to serve a Muslim family, and Senator Rose, the sponsor of the Bill in the Senate, agreed that the Bill would allow this type of discrimination.<sup>10</sup>

30. During debate on the Bill in the House Judiciary Committee, Representative Camper asked whether the Bill would allow a child-placing agency to refuse to serve an individual because they perceive the individual to be atheist, and Representative Rudd did not deny that the Bill could have this effect.<sup>11</sup>

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<sup>7</sup> *ADL Deeply Troubled by Passage of Discriminatory Tennessee Adoption Bill*, ANTI-DEFAMATION LEAGUE (Jan. 16, 2020), <https://bit.ly/3z8IHUY>.

<sup>8</sup> Adam Polaski, *Tennessee Governor Signs Discriminatory Adoption Law, in Sharp Contrast to Momentum for LGBTQ Equality in Southern States*, CAMPAIGN FOR SOUTHERN EQUALITY (Jan. 24, 2020), <https://bit.ly/3z7R2aj>.

<sup>9</sup> *House Floor Session*, 111 Gen. Assemb., 1:49:20–1:52:00 (Apr. 1, 2019), <https://bit.ly/3d556Hf>.

<sup>10</sup> *Senate Session*, 111 Gen. Assemb., 34:20–34:47 (Jan. 14, 2020), <https://bit.ly/31bwOQo>.

<sup>11</sup> *House Judiciary Committee*, 111 Gen. Assemb., 1:09:07–1:11:00 (Mar. 20, 2019), <https://bit.ly/3G12t5D>.



31. During debate on the Bill in the Senate Judiciary Committee and on the Senate Floor, Senator Rose stated that a number of religiously affiliated child-placing organizations in Tennessee contract with Tennessee and receive state funding from Tennessee.<sup>12</sup>

32. After Senator Yarbrow introduced a proposed amendment that would have rendered the Bill inapplicable to child-placing agencies that receive public funds, Senator Rose strongly objected to the amendment because it would have prevented religiously affiliated child-placing agencies that receive state funds from engaging in religion-based discrimination.<sup>13</sup>

33. Senator Yarbrow's proposed amendment was rejected by a voice vote.<sup>14</sup>

34. The discriminatory purpose and likely effect of the Bill were well understood at the time of its passage.

#### ***Holston's Religious Discrimination Against the Rutan-Rams***

35. In Tennessee, prospective adoptive parents must first become foster parents.

36. After becoming foster parents, prospective adoptive parents may adopt the foster child in their care if that child becomes available for adoption.

37. The Rutan-Rams learned about this process and began their efforts to adopt a child in earnest in January 2021. The couple identified a boy in Florida with a disability whom they wanted to adopt. In their eyes, he appeared resilient, upbeat, and adorable.

38. After identifying the child, the Rutan-Rams contacted the Florida Department of Children and Families to begin the foster-to-adopt process. The Florida Department informed them that, as an out-of-state family, they first had to receive Tennessee certification to begin the foster-to-adopt process.

39. Under the Interstate Compact on the Placement of Children, prospective Tennessee adoptive parents seeking to care for a child in the custody or guardianship of another state's public child-welfare agency must first receive a home study in Tennessee.

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<sup>12</sup> See *Senate Judiciary Committee*, 111 Gen. Assemb., 2:05:42–2:06:00 (Apr. 23, 2019), <https://bit.ly/32Ogzco>; *Senate Session*, 111 Gen. Assemb., 21:36–22:16, 26:30–26:38 (Jan. 14, 2020), <https://bit.ly/31bwOQo>.

<sup>13</sup> See Amend. 2, S.B. 1304, 111 Gen. Assemb., 2020 Reg. Sess. (Tenn. 2020), <https://bit.ly/3DTSzTM>; *Senate Session*, 111 Gen. Assemb., 18:00–22:00 (Jan. 14, 2020), <https://bit.ly/31bwOQo>.

<sup>14</sup> See *Senate Session*, 111 Gen. Assemb., 18:00–25:31 (Jan. 14, 2020), <https://bit.ly/31bwOQo>.

40. In Tennessee, prospective foster or adoptive parents must work with a Tennessee-licensed child-placing agency to complete the home study. As part of this process, they must complete a TN KEY foster-parent-training class.<sup>15</sup>

41. After obtaining this information, the Rutan-Rams began searching for Tennessee-licensed child-placing agencies to provide the necessary home study and training class. Several agencies informed the Rutan-Rams that they would not be able to provide these services for the adoption of an out-of-state child. One of these agencies referred the Rutan-Rams to Holston.

42. Holston is a child-placing agency licensed by the Department.

43. Holston also operates residential child-caring facilities classified by the Department as Group Care Facilities.

44. Holston provides TN KEY foster-parent-training classes and home-study certifications to families wishing to foster-to-adopt an out-of-state child.

45. Holston initially told the Rutan-Rams that it would be able to provide the services that the Rutan-Rams needed to be able to adopt the boy in Florida whom they hoped to welcome into their home.

46. The Rutan-Rams signed up for Holston's TN KEY foster-parent-training class and home-study certification process.

47. They understood that once they completed the class and received the certification, Tennessee would have presented the certification to Florida. The Rutan-Rams would then have been eligible to foster the child in their home for six months and to then complete the adoption process.

48. On January 21, 2021, the same day that they were scheduled to begin the TN KEY foster-parent-training class with Holston, Melissa Russell, a Holston employee, emailed Ms. Rutan-Ram to inform her that Holston would not serve the Rutan-Rams because of the couple's Jewish faith.

49. Ms. Russell's e-mail, attached as Exhibit A, stated that "as a Christian organization, our executive team made the decision several years ago to only provide adoption services to prospective adoptive families that share our belief system in order to avoid conflicts or delays with future service delivery."

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<sup>15</sup> See *Training for Potential Foster Parents*, TN DEPARTMENT OF CHILDREN'S SERVICES, <https://bit.ly/3I0Rx96> (last visited Jan. 12, 2021).

50. Ms. Rutan-Ram was deeply hurt and shocked when she received Ms. Russell's e-mail. Holston's refusal to serve her felt like a punch in the gut or a slap in the face. Ms. Rutan-Ram did not expect that a state-funded agency would reject a loving family simply because the family did not share the agency's preferred religious beliefs. She felt sad that Holston would not help her provide a loving home to the child whom she and her husband had hoped to welcome into their family.

51. Mr. Rutan-Ram similarly was hurt, frustrated, and disappointed to learn that his family had been discriminated against because of their religious beliefs.

52. Before January 21, 2021, Holston had not communicated to the Rutan-Rams that Holston does not serve Jews.

53. During January 2021, Holston's website never disclosed that Holston does not serve Jews.

54. After Holston refused to serve them, the Rutan-Rams continued to search for an agency that would provide the services they needed to adopt the child in Florida to whom they intended to give a loving home and family. But they were not able to find another agency in the Knox County area that was willing to provide them the services that Tennessee required for them to be eligible to adopt an out-of-state child. As a result, they were not able to foster or adopt the child from Florida.

#### ***The Department's Funding of Holston***

55. The Department provides state funds to Holston for placement, training, supervision, and support services that Holston provides to prospective and current foster parents.

56. The Department enters into contracts with Holston, which are signed by the Commissioner, to engage and pay Holston to provide those services on the Department's behalf.

57. The most recent of these contracts in the possession of the plaintiffs, together with Attachment 1 thereto, is attached as Exhibit B.

58. On June 15, 2020, Commissioner Nichols signed an amendment to this contract, which extended the contract. The amendment is attached as Exhibit C.

59. The Department enters into similar contracts with other private child-placing agencies.

60. In Tennessee, private agencies that provide placement, training, supervision, and support services to prospective and current foster parents typically do so under contract with the Department and with funding from the Department.

61. The tax payments made by the plaintiffs to the State of Tennessee flow into the State's general fund.

62. State funds that the Department provides to Holston and other child-placing agencies for placement, training, supervision, and support services for current and prospective foster parents come from the State's general fund.

63. The General Assembly annually appropriates funds from the State's general fund to the Department that the Department then pays to private child-placing agencies for placement, training, supervision, and support services for current and prospective foster parents.

64. For example, the General Assembly appropriated \$382,748,900 from the State's general fund to the Department for the 2021–22 fiscal year, of which \$39,717,200 was designated for “Family Support Services,” \$105,924,800 was designated for “Custody Services,” \$69,961,600 was designated for “Adoption Services,” and \$105,819,700 was designated for “Child and Family Management.”<sup>16</sup>

65. The plaintiffs are informed and believe that the funds that the Department provides to private child-placing agencies for placement, training, supervision, and support services for current and prospective foster parents come from one or more of these four line items.

66. On November 3, 2021, on behalf of the Rutan-Rams, the plaintiffs' counsel sent the letter attached as Exhibit D to Commissioner Nichols, to the Department's General Counsel and Assistant General Counsel, and to Holston's President/CEO.

67. The November 3 letter explained that the Department's funding of Holston violates the Tennessee Constitution and requested that the Department stop contracting with and funding Holston unless Holston stops discriminating based on religion in its provision of programming funded with public dollars.

68. The letter further explained that the Rutan-Rams were making this request “both as individuals who have suffered discrimination at the hands of Holston and as Tennessee

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<sup>16</sup> See 2021 Tenn. Pub. Acts Ch. 454, at 11, <https://bit.ly/3uO7wIV>.

taxpayers whose tax payments to the State have funded and continue to fund Holston's discriminatory practices."

69. The November 3 letter warned that failure to respond to the letter by December 3, 2021, or "to end religious discrimination by Holston in state-funded programming by then will be treated as a denial of this request," in which case the Rutan-Rams, joined by other Tennessee taxpayers who also object to the Department's funding of Holston's discrimination, would file a lawsuit against the Department.

70. Neither the Department nor Holston ever provided a substantive response to the November 3 letter.

71. An attorney for Holston did send a letter to the plaintiffs' counsel on December 2, 2021, identifying himself as counsel for Holston with respect to the matter.

72. On the same day, Holston filed a lawsuit in the United States District Court for the Eastern District of Tennessee challenging a federal regulation that prohibits discrimination on the basis of age, disability, sex, race, color, national origin, religion, gender identity, and sexual orientation in programs funded by the U.S. Department of Health and Human Services.

73. In the complaint initiating its federal suit, which is attached as Exhibit E, Holston confirmed that it refuses to serve prospective foster or adoptive parents who do not subscribe to Holston's understanding of Christianity, as reflected in Holston's statement of faith.

74. Exhibit F is Holston's statement of faith.

75. The understanding of Christianity set forth in Holston's statement of faith is not universally held by all Christians. A substantial proportion of Christians likely would not agree with Holston's statement of faith.

76. Sometime after January 2021, Holston changed its website to disclose that it only serves foster parents who are Christian and subscribe to its statement of faith.

77. Sometime after January 2021, Holston changed its website to state—under the heading "Become a Foster Parent" on a webpage that is attached as Exhibit I and entitled "Join Our Foster Parent Ministry"— "Holston United Methodist Home for Children partners with loving, Christian families who feel called to provide love, support, encouragement and a temporary home for children who have experienced trauma, teenagers, sibling groups, and children with medical concerns."

78. This webpage has a link to a document—which was added to Holston’s website sometime after January 2021, is attached as Exhibit J, and is entitled “What Does It Take to Become a Foster Parent with Holston Home for Children?”—that lists “Commit to the agency’s Statement of Faith” as one of the “Minimum Requirements for Therapeutic Foster Parents.”

79. In the complaint initiating its federal suit, Holston also explained that it advances its religious beliefs by refusing to serve prospective foster or adoptive parents who do not subscribe to Holston’s statement of faith.

80. When a government-funded child-placing agency serves only foster parents of a particular faith, that inherently advances that faith, including by directing public funds exclusively to the benefit of members of the faith, and by increasing the likelihood that children served by the agency will be taught or raised in that faith.

81. On December 3, 2021, the plaintiffs’ counsel spoke to the Department’s General Counsel, who stated that he had passed on the November 3 letter to someone in the Tennessee Attorney General’s office and recommended that the plaintiffs’ counsel contact the Attorney General’s office directly.

82. Later the same day, via the e-mail attached as Exhibit G, the plaintiffs’ counsel forwarded the November 3 letter to Tennessee’s Attorney General and Chief Deputy Attorney General.

83. On December 7, 2021, on behalf of all the plaintiffs, the plaintiffs’ counsel sent the letter attached as Exhibit H to the Department’s General Counsel and Assistant General Counsel, to the Attorney General and Chief Deputy Attorney General, and to Holston’s counsel.

84. The December 7 letter stated that plaintiffs Rev. Alexander, Rev. Blanchard, Dr. Blanz, Rev. Cobb, Rev. Gyauch, and Ms. Stoedter are Tennessee taxpayers who object to the Department’s use of their tax payments to fund Holston’s discriminatory programming, and that they were joining and reiterating the Rutan-Rams’ request that the Department stop contracting with and funding Holston unless Holston stops discriminating based on religion in its provision of programs funded with public dollars.

85. The December 7 letter warned that failure to respond by January 6, 2022, or “to end religious discrimination by Holston in state-funded services by then will be deemed to be a denial of this request,” in which case the plaintiffs would file a lawsuit against the Department shortly thereafter.

86. Neither the Department nor Holston ever responded to the December 7 letter.

***The Harm Suffered and the Future Harm Faced by the Rutan-Rams  
As a Result of the Department's Funding of Religious Discrimination***

87. After Holston refused to serve them and they lost the opportunity to foster or adopt the child from Florida, the Rutan-Rams did not give up on fostering and adopting children.

88. They decided to apply for approval to serve as foster parents for children in the custody of the State of Tennessee, which is easier to obtain than approval to foster and adopt an out-of-state child.

89. To obtain approval to serve as foster parents for children in the custody of the State of Tennessee, the Rutan-Rams still needed to obtain a TN KEY foster-parent training and a home study.

90. Holston was not an option available to the Rutan-Rams for obtaining the foster-parent training and home-study needed for approval to serve as foster parents for children in the custody of the State of Tennessee, because Holston had already made clear that it would not provide any services relating to foster parenting or adoption to the Rutan-Rams because the Rutan-Rams are Jews.

91. Though the plaintiffs are informed and believe that the services that the Rutan-Rams sought from Holston with respect to the Florida child would have been funded by the State of Florida, the training and placement services that Holston would have provided to the Rutan-Rams (had it been willing to serve them) to enable them to be approved to serve as foster parents for children in the custody of the State of Tennessee would have been funded by the Department with state dollars.

92. Likewise, the other placement, training, supervision, and support services that the Rutan-Rams could have received or could receive in the future from Holston (if Holston did not discriminate against Jews) or other state-funded child-placing agencies in connection with serving as foster parents for children in the custody of Tennessee would have been funded by the Department with state dollars.

93. The fact that Holston's refusal to serve them because of their Jewish faith rendered Holston unavailable as an option for obtaining the foster-parent training and home-study needed for approval to serve as foster parents for children in the custody of the State of Tennessee perpetuated the feelings of hurt, sadness, disappointment, and frustration that the Rutan-Rams initially felt when Holston informed them that it would not serve them.

94. The Rutan-Rams obtained from the Department itself the foster-parent training and home-study needed to serve as foster parents for children in State of Tennessee custody.

95. On June 4, 2021, the Department approved the Rutan-Rams to serve as foster parents for the Department.

96. Since June 2021, the Rutan-Rams have served as long-term foster parents of a teenage girl, whom they would adopt if the Department determines that it would be in her best interests for them to do so.

97. The Rutan-Rams believe that it is likely that, within about six to twelve months, they will either be able to adopt the teenage girl or she will be reunified with her parents, and either way their service as foster parents for the teenage girl will be concluded.

98. Once their service as foster parents for the teenage girl is concluded, the Rutan-Rams plan to serve as the long-term foster parents of at least one more child, and to adopt that child if the Department determines that it would be in the child's best interest for them to do so.

99. The Rutan-Rams plan to commence the process of serving as the long-term foster parents of another child shortly after their service as foster parents for the teenage girl is concluded.

100. With respect to future long-term foster placements, based on their experiences since January 2021 with the foster-care and adoption system, the Rutan-Rams plan to foster in-state children rather than to again attempt to foster-to-adopt an out-of-state child—because the out-of-state process is generally more difficult due to the need to coordinate with more than one state, and because the in-state process allows the foster parents and the child to determine whether they are a good fit for each other before a commitment to adopt is made, while the out-of-state foster-to-adopt process is understood to come with a commitment or expectation to adopt the child after six months.

101. As foster parents for the Department, the Rutan-Rams receive placement, training, supervision, and support services from Department staff.

102. The Rutan-Rams deeply appreciate the efforts of and services provided to them by Department staff.

103. Unfortunately, the Department is understaffed, and its staff are overworked.



104. As a result, the Rutan-Rams have found the Department to at times be slow, inefficient, and difficult to work with.<sup>17</sup>

105. The Rutan-Rams understand that many private child-placing agencies have reputations of being more efficient and easier to work with than the Department is and of providing better experiences and services to foster parents than the Department does.

106. In addition, a private child-placing agency that operates a facility referred to as a “Group Care Facility” by the Department—a residential facility for children whom the Department classifies as temporarily unable to live at home or with a foster family—will often place those children with foster parents affiliated with that agency once the children are deemed ready to be placed in a foster home.

107. Children who reside in Group Care Facilities are particularly likely to have had their parental rights terminated or to be close to having those rights terminated, and are therefore particularly likely to be or soon become available for adoption.

108. A child-placing agency that operates a Group Care Facility is also particularly likely to have detailed knowledge about the characteristics and needs of children from its Group Care Facility whom the agency places with foster parents affiliated with the agency, which the agency can then share with the foster parents to ease the children’s transition to the foster home.

109. Thus, partnering with a child-placing facility that also runs a Group Care Facility can be especially beneficial to couples, like the Rutan-Rams, who are interested in eventually adopting a child whom they foster.

110. For these reasons, once their service as the long-term foster parents of the teenage girl is concluded, and in conjunction with commencing the process of serving as the long-term foster parents of another child, the Rutan-Rams will give serious consideration to partnering with and serving as the foster parents for a private child-placing agency instead of continuing to work directly with the Department.

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<sup>17</sup> See also Ben Hall, *Foster parents warn of a crisis at the Department of Children’s Services: One child had five DCS caseworkers in 18 months*, NEWSCHANNEL 5 NASHVILLE (Mar. 2, 2022), <https://bit.ly/3x9E1Og> (describing excessive caseloads and high turnover of Department staff and resulting service problems); Yue Stella Yu, *‘It’s emotionally exhausting’: Tennessee’s Children’s Services workers express frustration in workload, leadership*, TENNESSEAN (Aug. 5, 2021), <https://bit.ly/3uRsJvo> (describing how Department staff are overworked and have excessive caseloads).

111. In that case, the Rutan-Rams would receive placement, training, supervision, and support services—as well as any services needed for the renewal of their status as approved Tennessee foster parents, which expires on May 28, 2023—from the private agency instead of the Department.

112. If state-funded private child-placing agencies were not permitted to discriminate against foster parents based on religion, the Rutan-Rams would likely choose to work with a private child-placing agency when they commence the process of serving as the long-term foster parents of another child.

113. Indeed, if Holston itself were to end its practice of discriminating against foster parents based on religion, and Holston turned out to be the best fit for the Rutan-Rams based on neutral criteria unrelated to religion, the Rutan-Rams would seriously consider partnering with Holston.

114. But the requirement in Tenn. Code Ann. § 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion, and the Department's concomitant willingness to fund private child-placing agencies such as Holston that do discriminate based on religion, will again make the Rutan-Rams face religious discrimination should they seek services from private child-placing agencies.

115. The requirement in Tenn. Code Ann. § 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion, and the Department's concomitant willingness to fund private child-placing agencies such as Holston that do discriminate based on religion, thus have a chilling effect on the Rutan-Rams' consideration of seeking services from private child-placing agencies in the future.

116. In addition to Holston, which has made clear that it does not serve non-Christian foster parents, there are at least two other religiously affiliated private child-placing agencies in the Knoxville area—Smoky Mountain Children's Home and Free Will Baptist Family Ministries—whose websites contain statements that suggest that they might serve only Christian foster parents. The websites are ambiguous, however, and fail to make clear whether the agencies discriminate based on religion against foster parents.

117. Holston and Smoky Mountain Children's Home are, to the plaintiffs' knowledge, the only child-placing agencies that both serve the Knoxville area and operate a Group Care Facility in Eastern Tennessee. Plaintiffs are informed and believe that Smoky Mountain

Children’s Home, like Holston, receives funding from the Department for placement, training, supervision, and support services that it provides to current and prospective foster parents.

118. The requirement in Tenn. Code Ann. § 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion and the Department’s concomitant willingness to fund private child-placing agencies such as Holston that do discriminate based on religion thus deprive, or at best limit, the availability to the Rutan-Rams of what would otherwise be a particularly attractive option to them—a child-placing agency that also operates a Group Care Facility.

119. The fact that Holston’s refusal to serve them because of their Jewish faith renders Holston unavailable as an option for obtaining current or future foster-care placement, training, supervision, and support services has continued and will continue to perpetuate the feelings of hurt, sadness, disappointment, and frustration that the Rutan-Rams initially felt when Holston informed them that it would not serve them, and these feelings will be exacerbated if the Rutan-Rams seek services from private child-placing agencies in the future.

120. If another state-funded child-placing agency were to refuse to provide services to the Rutan-Rams because the Rutan-Rams are Jews, this would further make them feel hurt, sad, disappointed, and frustrated.

121. The requirement in Tenn. Code Ann. § 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion, and the Department’s concomitant willingness to fund private child-placing agencies such as Holston that do discriminate based on religion, force the Rutan-Rams to consider and assess the risk of suffering religious discrimination in the future when deciding whether to continue to partner with the Department or work with a private child-placing agency, and, if they choose the latter, when selecting a private child-placing agency.

122. Having to do so in itself inflicts harm on the Rutan-Rams. Instead of being able to decide whether to work with the Department or a private agency—and if the latter, which private agency—based on neutral criteria unrelated to religion, the Rutan-Rams must take into account the risk of being rejected because they are Jews. Moreover, with respect to private child-placing agencies that fail to make clear on their websites whether they discriminate based on religion—as is the case with Smoky Mountain Children’s Home and Free Will Baptist Family Ministries—determining whether the agencies do in fact discriminate based on religion would involve

contacting the agencies, which would result in the Rutan-Rams again suffering the humiliation of being told directly that the agencies will not serve them if the agencies answer that they, like Holston, do not work with Jews.

123. For the foregoing reasons, the Rutan-Rams feel that Tenn. Code Ann. § 36-1-147 and the Department have turned them into second-class citizens, disfavored based on their religious beliefs, by creating an environment where some state-funded child-placing agencies—including Holston—are not an option for them because they are Jews, meaning that the Rutan-Rams are denied the opportunity to participate in a governmental program on the same footing as those who satisfy the agencies' religious tests. This makes the Rutan-Rams feel that the State of Tennessee values them less than and does not view them as equal to adherents of favored religious groups such as those that Holston will serve. The Rutan-Rams thus have ongoing feelings of humiliation, sadness, hurt, disappointment, and frustration as a result of the requirement in Tenn. Code Ann. § 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion and the Department's concomitant willingness to fund private child-placing agencies such as Holston that do discriminate based on religion.

124. Issuance of the requested relief summarized in paragraph 4 above and detailed in paragraphs 1–3 of the “Request for Relief” section below would redress the foregoing harms suffered and faced by the Rutan-Rams.

125. Issuance of the requested relief would cause Holston, as well as any other Department-funded child-placing agencies that discriminate based on religion, to either stop discriminating against foster parents based on the parents' religion or stop accepting state funds.

126. At least in the case of Holston, the plaintiffs are informed and believe that issuance of the requested relief would be far more likely to cause the agency to stop discriminating against foster parents based on the parents' religion than to cause the agency to stop accepting state funds.

127. If Holston and/or other discriminatory child-placing agencies become willing to serve Jewish foster parents as a result of issuance of the requested relief, that would redress the above-described harms suffered and faced by the Rutan-Rams, including because it would reduce or eliminate the risk that the Rutan-Rams could be victims of religious discrimination in child-placement services in the future, make greater and more attractive options for the receipt of child-placing services available to the Rutan-Rams, reduce or eliminate the chilling effect that

Tenn. Code Ann. § 36-1-147 and the Department’s implementation thereof impose on the Rutan-Rams’ consideration of working with private child-placing agencies in the future, and reduce or eliminate the harms associated with having to take into account the risk of being discriminated against when deciding from whom to seek child-placement services.

128. If Holston and/or other discriminatory child-placing agencies stop accepting state funds as a result of issuance of the requested relief, that would also redress the above-described harms suffered and faced by the Rutan-Rams, including because (1) it would eliminate the feelings that the Rutan-Rams have that Tennessee, by funding child-placing agencies that refuse to serve Jews, has rendered the Rutan-Rams second-class citizens, disfavors them based on their religious beliefs, and values them less than and does not view them as equal to adherents of favored religious groups such as those that Holston now serves, and (2) it would thereby alleviate the feelings of humiliation, sadness, hurt, disappointment, and frustration that the Rutan-Rams now feel as a result of the requirement in Tenn. Code Ann. § 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion and the Department’s concomitant willingness to fund private child-placing agencies such as Holston that do discriminate based on religion.

### **Claims for Relief**

#### ***First Cause of Action:***

#### ***Violation of Article I, Section 3 of the Tennessee Constitution***

129. Plaintiffs repeat and incorporate by reference each of the foregoing allegations as if fully set forth here.

130. Article I, Section 3 of the Tennessee Constitution provides: “That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.”

131. Article I, Section 3 “guarantees freedom of worship and separation of church and state.”<sup>18</sup>

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<sup>18</sup> *City of Nashville v. State Bd. of Equalization*, 360 S.W.2d 458, 469 n.5 (Tenn. 1962).

132. Article I, Section 3 prohibits the State of Tennessee from providing state funds to organizations that discriminate based on religion in the programs or services that are funded by the State.

133. Tenn. Code Ann. § 36-1-147 facially violates Article I, Section 3 by permitting state funding of child-placing agencies that discriminate in state-funded programs or services against prospective or current foster parents based on the religious beliefs of the parents.

134. The defendants are violating Article I, Section 3 by funding and contracting with Holston, because Holston refuses to provide state-funded services and programs to prospective and current foster parents who do not subscribe to the religious beliefs set forth in Holston's statement of faith.

***Second Cause of Action:***

***Violation of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution***

135. Plaintiffs repeat and incorporate by reference each of the foregoing allegations as if fully set forth here.

136. Article I, Section 8 of the Tennessee Constitution provides: "That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land."

137. Article XI, Section 8 of the Tennessee Constitution provides: "The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested."

138. Together, Article I, Section 8 and Article XI, Section 8 "guarantee equal privileges and immunities for all those similarly situated."<sup>19</sup>

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<sup>19</sup> *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993).

139. Article I, Section 8 and Article XI, Section 8 prohibit the State of Tennessee from providing state funds to organizations that discriminate based on religion in the programs or services that are funded by the State.

140. Tenn. Code Ann. § 36-1-147 facially violates Article I, Section 8 and Article XI, Section 8 by permitting state funding of child-placing agencies that discriminate in state-funded programs or services against prospective or current foster parents based on the religious beliefs of the parents.

141. The defendants are violating Article I, Section 8 and Article XI, Section 8 by funding and contracting with Holston, because Holston refuses to provide state-funded services and programs to prospective and current foster parents who do not subscribe to the religious beliefs set forth in Holston's statement of faith.

### **Request for Relief**

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Declare that Tenn. Code Ann. § 36-1-147 facially violates Article I, Section 3, Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution by permitting state funding of child-placing agencies that discriminate in state-funded programs or services against prospective or current foster parents based on the religious beliefs of the parents.
2. Declare that the defendants have violated and are continuing to violate Article I, Section 3, Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution by funding and contracting with Holston, because Holston discriminates, in services and programs funded by the Department, based on the religious beliefs of prospective or current foster parents.
3. Enjoin the defendants from continuing to fund or contract with Holston as long as Holston continues to discriminate, in services or programs funded by the Department, based on the religious beliefs of prospective or current foster parents.
4. Grant the plaintiffs attorney's fees, expenses, and costs to the extent authorized by law.
5. Grant any other relief that the Court deems appropriate.

Dated: April 8, 2022

Respectfully submitted,

/s/ Alex J. Luchenitser

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## CERTIFICATE OF SERVICE

I certify that, on April 8, 2022, I caused the foregoing document and any supporting documents submitted therewith to be served via the Court's electronic filing system and email on the following attorneys for the defendants:

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