IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Elizabeth Rutan-Ram, et al.,	)	
	)	
Plaintiffs/Appellants,	)	
	)	
v.	)	Case No.
	)	M2022-00998-COA-R3-CV
Tennessee Department of	)	
Children's Services, et al.,	)	
	)	
Defendants/Appellees.	)	

Rule 3 Appeal from the Final Judgment of the
Chancery Court for Davidson County, Case No. 22-80-III

BRIEF OF APPELLANTS ELIZABETH RUTAN-RAM, ET AL.

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Oral Argument Requested

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ISSUES PRESENTED

1. Do Elizabeth and Gabriel Rutan-Ram have standing, as foster parents in need of child-placement services, to challenge Tennessee's authorization and funding of religious discrimination by child-placing agencies, including by an agency that has refused to serve them because they are Jewish?

2. Do the Rutan-Rams and six other Tennesseans have standing, as Tennessee taxpayers, to challenge Tennessee's authorization and funding of religious discrimination by child-placing agencies?

STATEMENT OF THE CASE

This case arose after the Rutan-Rams—a Jewish couple in Knox County attempting to foster and adopt a child—sought child-placement services in January 2021 from the child-placing agency Holston United Methodist Home for Children. (A5 ¶ 8; A12 ¶¶ 41, 46.)* Holston refused to serve the couple after learning that they are Jewish. (A12 ¶¶ 48, 49; A28–29.) Although the agency receives funding for its child-placement services from the Tennessee Department of Children's Services, Holston refuses to serve any prospective foster parents who do not subscribe to its Christian statement of faith. (A13 ¶ 55; A15–16 ¶¶ 73–78.) Discrimination of this type was authorized and approved by the Tennessee General Assembly in January 2020 through the enactment of Tenn. Code Ann. § 36-1-147, a statute that guarantees to child-placing

* The plaintiffs' appendix is cited as "A[page number]." Portions of the record that are not in the appendix are cited as "R[volume number]:[page number]."

agencies that they may discriminate based on religion even if they are funded by the State. (A9 ¶¶ 23–24.)

On January 19, 2022, the Rutan-Rams—joined by six Tennessee residents who, like the Rutan-Rams, pay taxes to the State—filed this lawsuit against the Department and its Commissioner. (R1:1.) The plaintiffs allege that Section 36-1-147 and the Department's funding of Holston violate Sections 3 and 8 of Article I and Section 8 of Article XI of the Tennessee Constitution. (A23–25 ¶¶ 129–41.) Section 3 of Article I "guarantees freedom of worship and separation of church and state." *City of Nashville v. State Bd. of Equalization*, 360 S.W.2d 458, 469 n.5 (Tenn. 1962). Together, Section 8 of Article I and Section 8 of Article XI "guarantee equal privileges and immunities for all those similarly situated." *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993).

The plaintiffs seek a declaratory judgment that Section 36-1-147 facially violates these constitutional clauses by authorizing state funding of child-placing agencies that discriminate in state-funded services or programs against prospective or current foster parents based on the religious beliefs of the parents. (A25 ¶ 1.) 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. (A25 ¶¶ 2–3.)

The plaintiffs filed an amended complaint on April 8, 2022. (A3.) On May 6, 2022, the defendants moved to dismiss the amended complaint, solely on standing grounds. (R2:282.) In response, the

plaintiffs argued that the Rutan-Rams have standing as foster parents because they continue to need child-placement services and suffer a variety of harms—including the denial of superior service options and the stigma inflicted by discrimination—from Section 36-1-147's authorization and the Department's funding of religious discrimination by child-placing agencies. (R3:316–28.) The plaintiffs further argued that they all have standing as taxpayers under long-established Tennessee case law that grants state taxpayers a right to challenge unlawful uses of public funds. (R3:329–38.)

Because this case was brought against a state department and seeks a declaration that a state statute is unconstitutional, it was assigned to a three-judge trial-court panel. (R1:149 (citing Tenn. Code Ann. § 20-18-101).) On June 27, 2022, the panel held that no plaintiff has standing and dismissed the case. (A119–20.)

By a 2–1 vote, the panel ruled that the Rutan-Rams do not have standing as foster parents in need of child-placement services. (A126–32.) The majority concluded that the Rutan-Rams have no injury because the Department itself is now serving them (A127–28), ignoring the Rutan-Rams' points that they are being denied superior private-agency service options and that the stigma that discrimination inflicts is alone a sufficient basis for standing (*see* R3:317–21). The panel further decided that the plaintiffs lack standing as taxpayers, on the ground that they did not allege a "specific illegality in the expenditure of public funds" (A133 (quoting *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010))—even though the defendants had not made that argument (*see* R2:296–300; R3:356–60) and the plaintiffs clearly alleged that the

Department's funding of Holston violates three clauses of the Tennessee Constitution (*see* A24–25 ¶¶ 134, 141).

The plaintiffs filed a timely notice of appeal on July 22, 2022. (R3:387.)

STATEMENT OF FACTS

Tennessee's Authorization of Religious Discrimination by State-Funded Child-Placing Agencies

In January 2020, the General Assembly enacted Tenn. Code Ann. § 36-1-147. (A9 ¶ 23.) This statute authorizes child-placing agencies—private agencies that provide placement, training, supervision, and support services (collectively, "child-placement services") to prospective and current foster parents—to discriminate against parents based on the agencies' religious beliefs even when the agencies' services are state-funded. (A8–9 ¶¶ 22, 24.) Section 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.

When it enacted Section 36-1-147, the General Assembly understood that the statute would enable state-funded child-placing agencies to deny services to Jews and other religious minorities. (A10–11 ¶¶ 28–30, 32.) The General Assembly also understood that a number of religiously affiliated child-placing agencies in Tennessee contract with the State and receive state funding, and that a principal purpose of Section 36-1-147 was to permit these kinds of agencies to engage in religion-based discrimination even while receiving state funds. (A11 ¶¶ 31–33.)

Holston's Religious Discrimination Against the Rutan-Rams

A year after the enactment of Section 36-1-147, plaintiffs Elizabeth and Gabriel Rutan-Ram suffered exactly the kind of discrimination that the statute authorizes. The Rutan-Rams are a Jewish married couple who reside in Knox County. (A5 ¶ 8.) They are unable to have biological children and would like to foster and then adopt a child in need of a loving home. (A5 ¶ 8.)

In January 2021, the Rutan-Rams began their efforts to foster and then adopt a child, and they identified a boy in Florida with a disability whom they wanted to welcome into their home. (A11 ¶ 37.) To do so, they needed to first obtain foster-parent training and a home study from a

child-placing agency licensed by Tennessee. (A11–12 ¶¶ 38–40.) They would have then been eligible to serve as foster parents for the Florida boy for six months and to complete the adoption process thereafter. (A12 ¶ 47.)

The Rutan-Rams contacted several child-placing agencies but learned that these agencies were not able to provide the services needed for the adoption of an out-of-state child. (A12 ¶ 41.) One of these agencies referred the Rutan-Rams to Holston United Methodist Home for Children. (A12 ¶ 41.) Holston is a private child-placing agency that is licensed by, contracts with, and receives funding from the Tennessee Department of Children's Services. (A12–13 ¶¶ 42, 55–58.) The Department pays state funds to Holston for placement, training, supervision, and support services that Holston provides to prospective and current foster parents. (A13 ¶ 55.)

Holston initially informed the Rutan-Rams that it would provide them the needed training and home-study services. (A12 ¶ 45.) But on the day that the Rutan-Rams were scheduled to begin their training, Holston notified the Rutan-Rams that it would not serve them because they are Jewish. (A12 ¶ 48.)

A Holston employee explained in an email to Ms. Rutan-Ram 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." (A12 ¶ 49; A28–29.) Specifically, Holston refuses to serve prospective foster or adoptive parents who do not agree with Holston's statement of faith, which reflects a particular

understanding of Christianity. (A15–16 ¶¶ 73–74, 76, 78; A107–08; A115.) Even a substantial proportion of Christians likely would not agree with Holston's statement of faith. (A15 ¶ 75.)

The Rutan-Rams were hurt, saddened, frustrated, and disappointed by Holston's refusal to serve them. (A13 ¶¶ 50–51.) And because the Rutan-Rams were not able to find another agency in the Knox County area that would provide the training and home-study services needed for an out-of-state adoption, they could not welcome the Florida boy into their home. (A13 ¶ 54.)

Despite the pain inflicted by Holston's discrimination, the Rutan-Rams did not give up their dream of fostering and adopting children. (A17 ¶ 87.) 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. (A17 ¶ 88.) As Holston had already made clear that it would not provide any foster or adoption services to the Rutan-Rams because they are Jews, Holston was not an option for them with respect to the services they needed to be approved to foster Tennessee children. (A17 ¶ 90.) This perpetuated the hurt, sadness, disappointment, and frustration that the Rutan-Rams felt when Holston initially informed them that it would not serve them. (A17 ¶ 93.) Ultimately, the Department itself provided the Rutan-Rams with approval to serve as foster parents for Tennessee children, along with the training and home study needed for that approval, and the Rutan-Rams became foster parents for the Department in June 2021. (A18 ¶¶ 94–95.)

The Ongoing and Future Harms Faced by the Rutan-Rams

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 is in the girl's best interests for them to do so. (A18 ¶ 96.) The Rutan-Rams believe it likely that, within about six months, either they will be able to adopt the teenage girl or she will be reunified with her parents, and either way their service as foster parents for her will conclude. (A18 ¶ 97.) Shortly after that occurs, the Rutan-Rams plan to serve as 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 interests for them to do so. (A18 ¶¶ 98–99.) In the future, the Rutan-Rams plan to foster in-state children rather than again attempting to foster-to-adopt an out-of-state child, as the out-of-state process is more difficult due to the need to coordinate with more than one state. (A18 ¶ 100.)

The Rutan-Rams will need placement, training, supervision, and support services from a public or private child-placing agency for their future service as foster parents. (A18 ¶ 101; A20 ¶ 111.) 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 instead of continuing to work directly with the Department when they commence the process of serving as the long-term foster parents of another child. (A20 ¶ 112.) While the Rutan-Rams deeply appreciate the efforts of and services provided to them by Department employees, the Department is understaffed and its employees are overworked, and as a result the Department is at times

slow, inefficient, and difficult to work with. (A18–19 ¶¶ 102–04.) Many private child-placing agencies have reputations of being more efficient, being easier to work with, and providing better experiences and services to foster parents. (A19 ¶ 105.)

What is more, there are particular benefits for couples such as the Rutan-Rams—who are interested in potentially adopting children whom they foster—to partnering with private child-placing agencies that also operate residential facilities for children known as "Group Care Facilities." (A19 ¶¶ 106–09.) Children who are placed in Group Care Facilities are particularly likely to become available for adoption soon thereafter. (A19 ¶ 107.) A child-placing agency that operates a Group Care Facility will often place children from the Facility with foster parents affiliated with that agency. (A19 ¶ 106.) In those circumstances, the agency is also particularly likely to be able to share with the foster parents detailed knowledge about a child's characteristics and needs, which can ease the child's transition into a new family. (A19 ¶ 108.)

To the plaintiffs' knowledge, the only child-placing agencies that operate a Group Care Facility in Eastern Tennessee are Holston and Smoky Mountain Children's Home. (A20 ¶ 117.) Holston, of course, does not serve Jews, even though it is funded by the Department. (A12–13 ¶¶ 48–49, 55; A15–16 ¶¶ 73–74, 76–78; A28–29; A107–08; A113; A115.) Smoky Mountain—which apparently also receives funding from the Department—makes statements on its website suggesting (but not clearly stating) that it, too, serves only Christian foster parents. (A20–21 ¶¶ 116–17.) A third Knoxville-area child-placing agency, Free Will Baptist Ministries (which does not appear to operate a Group Care

Facility), likewise suggests (but does not clearly state) on its website that it serves only Christian foster parents. (A20 ¶ 116.)

Thus, the Rutan-Rams face further religious discrimination by private child-placing agencies as a result of Section 36-1-147's authorization of that discrimination and the Department's funding of it. (A20–21 ¶¶ 114–20.) They are denied the opportunity to participate in a governmental program on the same footing as those who satisfy the religious litmus tests of discriminatory agencies. (A22 ¶ 123.) The particularly beneficial option of working with an agency that operates a Group Care Facility is likely rendered unavailable to them. (A20–21 ¶¶ 116–18.) And the hurt, sadness, disappointment, and frustration that the Rutan-Rams suffered when Holston initially refused to serve them are perpetuated by Holston's continuing refusal to do so and would be exacerbated by refusals by other agencies. (A21 ¶¶ 119–20.)

Section 36-1-147 and the Department's implementation of it therefore have a chilling effect on the Rutan-Rams' consideration of turning to private child-placing agencies in the future, making the Rutan-Rams less likely to do so even though they are dissatisfied with the quality of service that they receive from the Department. (A18–20 ¶¶ 101–05, 110, 112, 115.) Indeed, the very process of deciding whether to continue to work with the Department or seek out a private child-placing agency will harm the Rutan-Rams, as it will force them to take into account the risk of being rejected again because they are Jewish. (A21 ¶¶ 121–22.) Furthermore, ascertaining whether certain agencies discriminate based on religion would require the Rutan-Rams to contact the agencies and to thereby expose themselves to the risk of

humiliation and pain from again being told directly that they will not be served because they are Jewish. (A21–22 ¶ 122.)

Ultimately, the Rutan-Rams feel that Section 36-1-147 and the Department have turned them into second-class citizens, disfavored based on their religious beliefs, by creating an environment in which some state-funded child-placing agencies—including Holston—are not an option for them because they are Jews. (A22 ¶ 123.) The Rutan-Rams accordingly feel that the State of Tennessee values them less than adherents of favored religious groups such as those that Holston will serve. (A22 ¶ 123.) For these reasons, the Rutan-Rams have ongoing feelings of humiliation, sadness, hurt, disappointment, and frustration as a result of Section 36-1-147's authorization and the Department's funding of religious discrimination by child-placing agencies. (A22 ¶ 123.)

The Harms to the Plaintiffs as Taxpayers

The Rutan-Rams are joined as plaintiffs in this case by six Tennessee residents who, like the Rutan-Rams, pay taxes to Tennessee: the Rev. Jeannie Alexander, the Rev. Elaine Blanchard, Dr. Larry Blanz, the Rev. Alaina Cobb, the Rev. Denise Gyauch, and Mirabelle Stoedter. (A5–8 ¶¶ 9–15.) All the plaintiffs object to the Department's use of their tax payments to fund Holston or any other child-placing agencies that discriminate based on religion in state-funded programs or services. (A5–8 ¶¶ 9–15.) It violates each plaintiff's conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general. (A5–8 ¶¶ 9–

15.) Moreover, the Rutan-Rams object to their own tax payments being used to support discrimination against them. (A5 ¶ 9.)

On November 3, 2021, seventy-five days before filing this case, the plaintiffs' counsel sent a demand letter to the Department on behalf of the Rutan-Rams, explaining that the Department's funding of Holston violates the Tennessee Constitution and requesting that the Department stop contracting with and funding Holston unless Holston stops discriminating based on religion in the provision of programming funded with public dollars. (A14 ¶¶ 66–67; A64–73.) On December 7, 2021, the plaintiffs' counsel sent a demand letter to the Department on behalf of the other six plaintiffs, explaining that they were joining this request. (A16 ¶¶ 83–84; A110–11.) Each letter expressly stated that failure to respond to the letter within thirty days or to end discrimination by Holston in state-funded services by then would be deemed a denial of the request. (A15–16 ¶¶ 69, 85.) The Department never provided a substantive response to either letter. (A15 ¶ 70; A17 ¶ 86.)

STANDARD OF REVIEW

"Whether a court has subject matter jurisdiction over a case is a question of law that [appellate courts] review de novo with no presumption of correctness." *Word v. Metro Air Servs., Inc.*, 377 S.W.3d 671, 674 (Tenn. 2012). "In making that determination based solely on the pleadings, [courts] must accept 'the allegations of fact as true.'" *Massengale v. City of East Ridge*, 399 S.W.3d 118, 124 (Tenn. Ct. App. 2012) (quoting *Nat'l Gas Dist. v. Sevier Cnty. Util. Dist.*, 7 S.W.3d 41, 43 (Tenn. Ct. App. 1999)).

SUMMARY OF ARGUMENT

Tennessee's Declaratory Judgment Act and the recently enacted Tenn. Code Ann. § 1-3-121 call for liberal construction of standing rules when a plaintiff seeks declaratory or injunctive relief against the government. But even without the benefit of those statutes, all the plaintiffs have standing to challenge Tennessee's authorization and funding of religious discrimination by child-placing agencies.

The Rutan-Rams suffer both practical and stigmatic injuries from the resulting discrimination. They are denied options for child-placement services—including especially beneficial ones—because they are Jews. They feel the humiliation and hurt that discrimination inflicts on its victims. The panel majority erred by concluding that the Rutan-Rams have no injury because the Department itself now serves them, for the Department's services are deficient, and the debasement that discrimination wreaks is not cured by receipt of services from another. The Rutan-Rams' injuries would be remedied by the declaratory and injunctive relief they seek, which would result in broader service options for them, or at least removal of the stigma associated with governmental support of discrimination.

The Rutan-Rams also have standing as taxpayers, as do all the other plaintiffs. Under Tennessee case law, state taxpayers have the right to challenge unlawful uses of public funds. The panel erred by deciding that the plaintiffs had not alleged a "specific illegality in the expenditure of public funds" (A133 (quoting *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010))), for the plaintiffs unambiguously

alleged that the Department's funding of Holston violates the religious-freedom and equal-protection guarantees of the Tennessee Constitution.

ARGUMENT

I. Tennessee statutes call for liberal construction of standing rules when a plaintiff seeks equitable relief against a governmental body.

The plaintiffs sue under two Tennessee statutes that weigh against restrictive application of standing rules: the Declaratory Judgment Act, and Tenn. Code Ann. § 1-3-121. (A4–5 ¶¶ 5–6.)

The Declaratory Judgment Act provides courts with "the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Tenn. Code Ann. § 29-14-102(a). The Act "is to be liberally construed and administered" in line with its "remedial . . . purpose." Tenn. Code Ann. § 29-14-113. Declaratory-judgment actions serve as a "proactive means of preventing injury to the legal interests and rights of a litigant," for "'[c]ourts should operate as preventive clinics as well as hospitals for the injured.'" *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836–37 (Tenn. 2008) (quoting Henry R. Gibson, *Gibson's Suits in Chancery* § 545 (6th ed. 1982)).

To obtain a decision under the Declaratory Judgment Act, "the only controversy necessary . . . is that the question must be real, and not theoretical; the person raising it must have a real interest, and there must be some one having a real interest in the question who may oppose the declaration sought." *City of White House v. Whitley*, 979 S.W.2d 262, 264–65 (Tenn. 1998) (quoting *Miller v. Miller*, 261 S.W. 965, 972 (Tenn. 1924)). "It is not necessary that any breach should be first committed,

any right invaded, or wrong done." *Id.* (quoting *Miller*, 261 S.W.3d at 972).

Tenn. Code Ann. § 1-3-121 was enacted by the General Assembly fairly recently, in 2018. *See* 2018 Tenn. Pub. Acts ch. 621, § 1. This statute states: "Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action." The statute's legislative history shows that the General Assembly intended to broaden Tennesseans' rights to challenge unlawful governmental action, especially through taxpayer lawsuits.

During House floor debate on the legislation, its sponsor, Representative Casada, explained: "This legislation . . . has to do with giving the right of the citizen to take government to court if they violate our state law or our constitutional rights. It makes it very clear and cold we have that right." *House Floor Session*, 110 Gen. Assemb., 1:07:09–1:07:27 (Mar. 15, 2018), https://bit.ly/3dLdagE. Representative Clemmons then asked Representative Casada, "Well you still have a standing issue. The standing issue, is that what you're trying to address? Or are you saying everybody regardless if they're impacted or not has standing?" *Id.* at 1:08:52–1:09:03. Representative Casada responded, "No, I'm giving standing to the citizens in that particular jurisdiction that they—so, I'm giving standing, you are correct." *Id.* at 1:09:03–1:09:10.

After Representative Clemmons asked for clarification, Representative Casada referred the question to the late Representative Carter, then Chair of the House Civil Justice Committee. *Id.* at 1:09:12–

1:09:33. Representative Clemmons restated his question: "Are you trying to create standing for everyone to bring a cause of action whether or not they actually have standing as that's defined in the rules and the law?" *Id.* at 1:09:44–1:10:01. Representative Carter responded, "Currently, the law generally in Tennessee is that a taxpaying citizen does not have standing to bring a case. This changes that and says if you are affected and are a taxpayer you can bring a case." *Id.* at 1:10:04–1:10:17. Representative Casada subsequently added, "I think we as taxpaying citizens of this state have a right to take our government to court if they don't comply with, for example, state law." *Id.* at 1:11:32–1:11:40. Representative Casada later elaborated, "[C]ourts have opined that citizens don't have this right. So we're making it very clear that we as citizens of this state do have a right to take our governments to court." *Id.* at 1:13:07–1:13:17.

The panel below viewed Tenn. Code Ann. § 1-3-121 as irrelevant, relying on *Grant v. Anderson*, No. M2016-01867-COA-R3-CV, 2018 WL 2324359, at *9 (Tenn. Ct. App. May 22, 2018), *perm. app. denied* (Tenn. Oct. 10, 2018), in which the Court stated, "Our reading of [Tenn. Code Ann. § 1-3-121] is that it does not relax the particularized injury requirement for standing." (A134.) But *Grant* is not binding precedent (*see* Tenn. Sup. Ct. R. 4(G)(1)), and there is no indication in it that the Court considered the legislative history presented here. Moreover, *Grant* was decided before the Tennessee Supreme Court broadly construed Tenn. Code Ann. § 1-3-121, holding that it waived sovereign immunity,

in *Recipient of Final Expunction Order v. Rausch*, 645 S.W.3d 160, 168–69 (Tenn. 2022).

Thus, in analyzing both the Rutan-Rams' standing as foster parents and the standing of all the plaintiffs as taxpayers, the Court should construe standing rules liberally, consistent with the purposes of the Declaratory Judgment Act and Tenn. Code Ann. § 1-3-121.

II. The Rutan-Rams have standing as foster parents.

Regardless of whether the requirements for standing are construed liberally or restrictively, the Rutan-Rams have standing as foster parents in need of child-placement services. To demonstrate standing, a plaintiff must show (1) "an injury that is 'distinct and palpable'"; (2) "a causal connection between the alleged injury and the challenged conduct"; and (3) "that the injury [is] capable of being redressed by a favorable decision of the court." *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013) (quoting *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006)). In assessing whether a party has direct (but not taxpayer, *see infra* pp. 45–47) standing, Tennessee courts often rely on federal case law. *See, e.g.*, *Darnell*, 195 S.W.3d at 619–26; *Hargett*, 414 S.W.3d at 98–101.

A. The Rutan-Rams suffer both practical and stigmatic injuries.

"In determining whether the plaintiff has a personal stake sufficient to confer standing, the focus should be on whether the complaining party has alleged an injury in fact, economic or otherwise, which distinguishes that party, in relation to the alleged violations, from the undifferentiated mass of the public." *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001) (quoting 32 Am. Jur. 2d *Federal Courts*

§ 676 (1995)). As foster parents in need of current and future placement, training, supervision, and support services (A18 ¶¶ 96–101; A20 ¶ 111), the Rutan-Rams have done exactly that. They have personally suffered, continue to suffer, and will in the future suffer both practical and stigmatic injuries because of Tennessee's support for and funding of religious discrimination by child-placing agencies such as Holston.

Holston has already refused to serve the Rutan-Rams because they are Jews and has made crystal clear that it will not serve them—or anyone else who will not agree to its Christian statement of faith—in the future. (A12 ¶¶ 48–49; A15–16 ¶¶ 73–74, 76–78; A28–29; A107–08; A113; A115.) Two other religiously affiliated Eastern Tennessee child-placing agencies—Smoky Mountain Children's Home and Free Will Baptist Ministries—suggest on their websites that they also do not serve non-Christians. (A20 ¶ 116.) The Rutan-Rams thus have fewer options for placement, training, supervision, and support services than do Christians. (A22 ¶ 123.) And the particularly beneficial option of working with a child-placing agency that operates a Group Care Facility is likely unavailable to the Rutan-Rams, because the only such agencies in Eastern Tennessee are Holston and Smoky Mountain. (A20–21 ¶¶ 116–18.)

Holston's refusal to serve the Rutan-Rams because of their Jewish faith hurt, saddened, disappointed, and frustrated them. (A13 ¶¶ 50–51.) The continuing nature of that refusal perpetuates those feelings, and future religion-based service refusals by other agencies would exacerbate those feelings. (A21 ¶¶ 119–20.) Thus, even though the placement, training, supervision, and support services that the Rutan-Rams now

receive from the Department are of poorer quality than services provided by private child-placing agencies, the Department's support of discriminatory agencies makes it less likely that the Rutan-Rams will turn to private agencies for future services. (A18–20 ¶¶ 101–05, 110, 112, 115.) Indeed, the Rutan-Rams are chilled from approaching private agencies for future services partly because the very process of ascertaining whether an agency discriminates could again subject the Rutan-Rams to the degradation of being rejected because they are Jews. (A20–22 ¶¶ 115, 121–22.) In these ways, Section 36-1-147's authorization and the Department's funding of religious discrimination by child-placing agencies causes the Rutan-Rams to feel disfavored, devalued, and humiliated by their state government. (A22 ¶ 123.)

Several recent federal-court decisions in cases like this one have held that the kinds of injuries that the Rutan-Rams have suffered and face here suffice for standing. For example, in *Maddonna v. United States Department of Health & Human Services*, 567 F. Supp. 3d 688, 706–08 (D.S.C. 2020), where a government-funded foster-care agency refused to serve a prospective foster parent because of her Catholic faith, the court held that the plaintiff's legally cognizable injuries included both the practical harms she suffered from being denied services by an agency that had certain advantages over other agencies and the stigmatic harm from personally suffering discrimination. In *Dumont v. Lyon*, 341 F. Supp. 3d 706, 720–22 (E.D. Mich. 2018), the court ruled that LGBTQ prospective foster parents who were turned away by state-funded, religiously affiliated foster-care agencies because of their sexual orientation suffered injuries sufficient for standing both because of the

practical curtailment of their options for foster-care services and the stigmatic harms from discrimination. Similar rulings were issued on similar facts in *Rogers v. United States Department of Health & Human Services*, 466 F. Supp. 3d 625, 640–42 (D.S.C. 2020), and *Marouf v. Azar*, 391 F. Supp. 3d 23, 33 (D.D.C. 2019).

Practical injuries—such as the denials of otherwise-beneficial options that the plaintiffs in these cases experienced and that the Rutan-Rams have suffered and continue to face here—are, of course, sufficient for standing. *See, e.g.*, *Wilson v. Pickens*, 196 S.W.3d 138, 142 (Tenn. Ct. App. 2005) (one way to establish injury sufficient for standing is to show that "the plaintiff is 'forced to take some action or otherwise suffer "some actual inconvenience," such as incurring an expense, as a result of the defendant's negligent or wrongful act'" (quoting *John Kohl & Co. P.C. v. Dearborn & Ewing*, 977 S.W.2d 528, 532 (Tenn. 1998))). And the U.S. Supreme Court has repeatedly made clear that stigmatic and emotional harms from discrimination—like those that the Rutan-Rams and plaintiffs in similar cases also have suffered and are experiencing—are legally cognizable as well.

The U.S. Supreme Court has straightforwardly held that "stigmatizing injury . . . caused by . . . discrimination . . . accords a basis for standing . . . to 'those persons who are personally denied equal treatment' by the challenged discriminatory conduct." *Allen v. Wright*, 468 U.S. 737, 755 (1984) (quoting *Heckler v. Mathews*, 465 U.S. 728, 740 (1984)), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). The Court has explained

that "discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." *Heckler*, 465 U.S. at 739–40 (quoting *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982)). Thus, "[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group . . . [t]he 'injury in fact' . . . is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Ne. Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 (1993).

That is because "acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages cause unique evils." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984). "Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public . . . ." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 292 (1964) (Goldberg, J., concurring) (quoting S. Rep. No. 88-872, at 16 (1963)). Discrimination "reinvokes a history of exclusion," "denigrates the dignity of the excluded," and communicates an "'assertion of . . . inferiority'" to "all those who may later learn of the discriminatory act." *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 142 (1994) (quoting *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880)).

The panel majority was wrong to conclude (A127–28) that the Rutan-Rams have no injury and that the case is "moot" because the Department eventually served them itself. That conclusion ignored both the fact that the Department's services are of poorer quality than those provided by private agencies (A18–19 ¶¶ 103–05) and the law that the stigmatic injury inflicted by discrimination is sufficient by itself for standing (*see, e.g.*, *Allen*, 468 U.S. at 755).

Indeed, contrary to what the panel thought (*see* A132), in three of the four federal foster-care cases we cite, the courts concluded that the injury requirement was satisfied even though the plaintiffs were able to receive foster-care services from other agencies. *See Dumont*, 341 F. Supp. 3d at 722; *Maddonna*, 567 F. Supp. 3d at 707–08; *Rogers*, 466 F. Supp. 3d at 641–42. As explained in *Dumont*, "Plaintiffs[] need not demonstrate that they would have been completely foreclosed—only that they could not compete for the right to adopt on the same footing as everyone else." 341 F. Supp. 3d at 722; *accord Maddonna*, 567 F. Supp. 3d at 708 ("Plaintiff need not allege that she has been excluded entirely from participation in the state foster care program or even that she has been rejected by a majority of" state-funded foster-care agencies); *Rogers*, 466 F. Supp. 3d at 641–42.

Adopting a contrary rule would be no different than holding that when a restaurant refuses to serve Black people based on race, they suffer no injury if they can obtain service from another restaurant across the street. Or that there is no injury to Jews who are refused admission to private universities based on their faith, because they can be admitted

to state schools instead. Of course, that is not the law. In a challenge to the validity of a federal statute that prohibits racial discrimination in public accommodations, a motel that refused to serve Black customers made such an argument, contending that "there was not any shortage of rooms in the United States for [Black] people to use." *See* Transcript of Oral Argument, *Heart of Atlanta*, 379 U.S. 241, https://bit.ly/2yfJP9A. The Supreme Court refused to adopt that argument and ruled against the motel. *See Heart of Atlanta*, 379 U.S. at 261–62. For the primary purpose of prohibitions on discrimination "is the vindication of human dignity and not mere economics." *Id.* at 291 (Goldberg. J., concurring).

B. The Rutan-Rams' injuries are fairly traceable to the challenged statute and governmental conduct.

The causation element of the standing analysis "is not onerous." *Hargett*, 414 S.W.3d at 98. It requires only that a plaintiff make "a showing that the injury to [her] is 'fairly traceable' to the conduct of the adverse party." *Id.* (quoting *Darnell*, 195 S.W.3d at 620). Thus, "[t]he causation need not be proximate," and "the fact that an injury is indirect does not destroy standing as a matter of course." *Parsons v. U.S. Dep't of Just.*, 801 F.3d 701, 713 (6th Cir. 2015). Demonstrating that the challenged conduct "is at least in part responsible for" the plaintiff's injury is sufficient. *See Libertarian Party of Va. v. Judd*, 718 F.3d 308, 316 (4th Cir. 2013).

Here, the Rutan-Rams' allegations demonstrate much more—they show that Section 36-1-147 is a but-for cause of the discrimination that the Rutan-Rams have suffered and face. The statute (1) prohibits child-placing agencies from being required to serve prospective foster parents

if doing so would contradict the agencies' religious policies or convictions, (2) prohibits the Department from denying funding or licensing to child-placing agencies because of the agencies' religion-based refusals to provide services, and (3) bars suits against the agencies for such religion-based refusals. Indeed, the purpose of Section 36-1-147 was to ensure that child-placing agencies could engage in religion-based discrimination without risking loss of state funding or other adverse consequences, and the General Assembly well understood that the statute would have that effect. (A9–11 ¶¶ 26–34.)

That is exactly what has occurred. Before Section 36-1-147 was enacted, all state-funded child-placing agencies were barred by statute—and Holston was specifically barred by contract—from discriminating against foster parents based on religion. The Tennessee Human Rights Act bars religious discrimination by "place[s] of public accommodation" (Tenn. Code Ann. § 4-21-501) and defines "places of public accommodation" to "include[ ] any place, store or other establishment . . . that is supported directly or indirectly by government funds" (Tenn. Code Ann. § 4-21-102(15)). Similarly, the Department's contract with Holston—which was signed before (*see* A58) the January 2020 passage (A9 ¶ 23) of Section 36-1-147—contains a "Nondiscrimination" clause that requires "that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract . . . on the grounds of . . . creed . . . religion . . . or any other classification protected by federal or state law" (A39 § D.9). But Section 36-1-147 now prevents the Human Rights Act from being applied to religion-based discrimination by child-placing

agencies and prevents the Department from enforcing the nondiscrimination clause in its contract with Holston. *See* Tenn. Code Ann. §§ 36-1-147(a), (d).

In addition to being caused by Section 36-1-147, the discrimination that the Rutan-Rams have suffered and face is fairly traceable to the Department's funding of Holston. If the Department did not fund child-placing agencies that discriminate based on religion, Holston likely would not engage in such discrimination. (*See* A22 ¶ 126.) Yet the Department has continued to fund Holston even after the plaintiffs informed the Department about Holston's discriminatory practices. (*See* A13–17 ¶¶ 55–56, 66–70, 81–86; A64–65; A110.)

The federal courts that have considered cases similar to this one have concluded that the causation element of standing was satisfied on similar facts. The court presiding over *Maddonna*, 567 F. Supp. 3d at 709–11, and *Rogers*, 466 F. Supp. 3d at 642–44, concluded that the causation requirement was met where the government funded a discriminatory child-placing agency and governmental officials took actions expressly authorizing—like Section 36-1-147 does—receipt of public funds by the agency in spite of its discriminatory practices. In *Marouf*, 391 F. Supp. 3d at 33–37, the court ruled that causation was sufficiently alleged where the federal government—as here—continued to fund and contract with a discriminatory foster-care provider after the plaintiffs notified the federal government of the discrimination. And in *Dumont*, 341 F. Supp. 3d at 722–24, the court held that a state's funding of and contracting with discriminatory child-placing agencies was

sufficient to satisfy the causation element where—again, as here—the contracts contained an antidiscrimination clause that the state failed to enforce.

These courts also rejected the argument, which the panel majority appeared to adopt (*see* A130), that a governmental agency is not responsible for the discriminatory actions of agencies that it funds. As the court in *Marouf* explained, acceptance of the proposition that "a [governmental] agency cannot be held to account for a grantee's known exclusion of persons from a [government-]funded program on a prohibited ground" would be "an astonishing outcome." 391 F. Supp. 3d at 34; *accord Maddonna*, 567 F. Supp. 3d at 709; *Rogers*, 466 F. Supp. 3d at 643; *Dumont*, 341 F. Supp. 3d at 722–24.

The cases cited by the panel majority (*see* A129–30) do not support its attempt to "pass the buck" (*see* A136 (dissent of Chancellor Lyle)) from the Department to third parties. In *Allen*, 468 U.S. at 746, the plaintiffs had not personally experienced or faced the discrimination that they challenged. In *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 9–10 (1st Cir. 2011), the court did not even address standing and held only that there is no procedural-due-process right that protects people from governmental conduct that results in stigmatizing reputational harm. And in *Heckler*, 465 U.S. at 740 n.9, the Court determined that the causation element of standing had been satisfied.

The panel majority went further astray in concluding that causation is lacking on the ground that Holston's services for the Florida child whom the Rutan-Rams initially wished to adopt would not have

been funded by the Department because he was an out-of-state child. (*See* A128–29.) It may be correct that Florida, not Tennessee, would have paid for Holston's services concerning the Florida child. *See* A17 ¶ 91; Tenn. Code Ann. § 37-4-201, art. V. But after they lost the opportunity to adopt the Florida child, the Rutan-Rams decided to foster and attempt to adopt only Tennessee children, and so they needed, continue to need, and will in the future need placement, training, supervision, and support services for Tennessee children. (A17–18 ¶¶ 87–89, 98–100; A20 ¶ 111.) The Department funds the placement, training, supervision, and support services provided by Holston and other child-placing agencies with respect to Tennessee children. (A17 ¶¶ 91–92.) And Holston has made crystal clear that it will not serve the Rutan-Rams—or any other non-Christian foster parents—with respect to *any* foster or adoption services, regardless of whether the child is in Tennessee or out of state. (A12 ¶¶ 48–49; A15–16 ¶¶ 73–74, 76–78; A17 ¶ 90; A28–29; A107–08; A113; A115.) The discrimination that the Rutan-Rams have suffered and face at the hands of Holston and other discriminatory agencies thus fully encompasses state-funded services that the Rutan-Rams have needed, now need, and will continue to need.

The Panel Majority additionally erred in concluding that because Section 36-1-147 "shows no sectarian preference"—in that it allows religiously affiliated child-placing agencies to engage in religion-based discrimination regardless of what the agencies' religious beliefs are—the Rutan-Rams' stigmatic injuries are not attributable to the statute. (*See* A129–30.) As noted above, Section 36-1-147 authorizes state-funded child-placing agencies to discriminate based on religion, bars the

Department from stopping them from doing so, and was expressly and principally intended to have these effects. (*See* A9–11 ¶¶ 24–34.) The harms from discrimination are amplified when laws "put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied," thus "disparag[ing] their choices and diminish[ing] their personhood." *See Obergefell v. Hodges*, 576 U.S. 644, 672 (2015). That is exactly what Section 36-1-147 and the Department's effectuation of it have done here by authorizing and providing state funding for religious discrimination by child-placing agencies.

That Section 36-1-147 would also—as the panel majority pointed out (A130)—authorize a hypothetical state-funded Jewish agency to discriminate against non-Jews does not somehow prevent or remove the stigmatic harm to the Rutan-Rams. Arguing that it does is akin to arguing that a Black person would not suffer stigmatic harm from being denied service based on race at a restaurant if it would be lawful for him to open a restaurant of his own that discriminates against Whites. Section 36-1-147's authorization of discrimination by any religious group just means that members of any group—including Christians—could suffer harm similar to what the Rutan-Rams have suffered.

Moreover, Jews and other religious minorities are more likely to experience discrimination as a result of Section 36-1-147. When discriminatory practices are authorized or prevalent, members of minority groups are victimized more often. *See, e.g.*, David Crump, *The Narrow Tailoring Issue in the Affirmative Action Cases: Reconsidering the Supreme Court's Approval in* Gratz *and* Grutter *of Race-Based Decision-Making by Individualized Discretion*, 56 Fla. L. Rev. 483, 500

(2004). And to the plaintiffs' knowledge, the only child-placing agencies in Tennessee that discriminate based on religion are Christian agencies that only serve Christians. (*See* A20 ¶ 116.)

C. The relief sought by the Rutan-Rams would redress their injuries.

To satisfy the redressability prong of the standing inquiry, a plaintiff needs to show only that the relief sought would "at least partially redress" the plaintiff's injuries. *See Meese v. Keene*, 481 U.S. 465, 476 (1987); *accord Parsons*, 801 F.3d at 716 ("[I]t need not be likely that the [plaintiffs'] harm will be *entirely* redressed, as partial redress can also satisfy the standing requirement."). The Rutan-Rams clear this hurdle with room to spare.

The remedies that the plaintiffs seek are (1) a declaratory judgment that Section 36-1-147 facially violates 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, and (2) 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. (A25 ¶¶ 1–3.) Issuance of the requested relief would cause Holston, as well as any other Department-funded child-placing agencies that discriminate based on religion, either to stop doing so or to stop accepting state funds. (A22 ¶ 125.) Contrary to what the panel majority apparently assumed (*see* A131), the plaintiffs are not seeking an order requiring Holston or any other private agency to stop discriminating. But

at least in the case of Holston, the plaintiffs believe that the relief they do request would be far more likely to cause the agency to stop discriminating based on foster parents' religious beliefs than to cause the agency to stop accepting state funds. (A22 ¶ 126.)

If Holston 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 injuries suffered and faced by the Rutan-Rams in a number of ways. (A22–23 ¶ 127.) It would reduce or eliminate the risk that the Rutan-Rams could be victims of religious discrimination in child-placement services in the future. (A22 ¶ 127.) It would make available to them greater and more beneficial options for the receipt of child-placement services. (A22 ¶ 127.) And it would reduce or eliminate the chilling effect that Section 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. (A22–23 ¶ 127.)

If Holston or other discriminatory child-placing agencies instead stop accepting state funds as a result of the requested relief, that would also redress the injuries suffered and faced by the Rutan-Rams. (A23 ¶ 128.) It would eliminate the feelings the Rutan-Rams have that Tennessee, by funding child-placing agencies that refuse to serve Jews, disfavors the Rutan-Rams based on their religious beliefs and has rendered them second-class citizens. (A23 ¶ 128.) It would thereby alleviate the humiliation, sadness, hurt, disappointment, and frustration that the Rutan-Rams now feel as a result of Section 36-1-147's

authorization and the Department's funding of religious discrimination by child-placing agencies. (A23 ¶ 128.)

These benefits would satisfy the redressability requirement. The U.S. Supreme Court has explained that, in a challenge to a statute that results in discrimination, the redressability element is met *either* when the relief granted would provide to the plaintiffs the benefits that were discriminatorily denied to them *or*—even if the plaintiffs would not obtain the benefits—when the relief would eliminate the statutory support for the discrimination. *See Heckler*, 465 U.S. at 738–40; *accord Ne. Fla. Chapter*, 508 U.S. at 666 & n.5 ("When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing.").

As with the other prongs of the standing inquiry, the federal courts that have considered cases like this one have held the redressability element to be satisfied. In three of those cases, the courts held that injunctive relief prohibiting states from continuing to fund discriminatory child-placing agencies would remedy the plaintiffs' injuries, even though it was not known whether the agencies would respond by stopping their discrimination or by ceasing to accept state funds. *See Maddonna*, 567 F. Supp. 3d at 711; *Rogers*, 466 F. Supp. 3d at 644–45; *Dumont*, 341 F. Supp. 3d at 724–25. The courts explained that the requested relief would redress the plaintiffs' injuries by either increasing the service options available to the plaintiffs or alleviating the

stigma inflicted by government-aided discrimination. *See Maddonna*, 567 F. Supp. 3d at 711; *Rogers*, 466 F. Supp. 3d at 644–45; *Dumont*, 341 F. Supp. 3d at 724–25; *see also Marouf*, 391 F. Supp. 3d at 35–37.

The panel majority took the position that the Rutan-Rams' "allegations of planning to foster at least one more child and in that process giving serious consideration to working with private agency adoptions . . . are future, speculative events that are not ripe and therefore not redressable for adjudication." (A128.) But the panel majority did not even apply the test for ripeness adopted by the Tennessee Supreme Court, which asks: (1) "[i]s the claim fit for judicial decision in the sense that it arises in a concrete factual context and concerns a dispute that is likely to come to pass?" and (2) "what is the hardship to the parties of withholding court consideration?" *West v. Schofield*, 468 S.W.3d 482, 491 (Tenn. 2015) (quoting *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008) (en banc)).

The Rutan-Rams satisfy this test. They need child-placement services now and will continue to need them in the future, as they are currently serving as long-term foster parents of one child and intend to take on at least one more long-term foster placement, starting in approximately six months. (A18 ¶¶ 96–101; A20 ¶ 111.) Holston has already refused to serve the Rutan-Rams, will not serve them now, and intends not to serve them in the future. (A12 ¶¶ 48–49; A15–16 ¶¶ 73–74, 76–78; A17 ¶ 90; A28–29; A107–08; A113; A115.) Without legal relief, the Rutan-Rams will continue to be denied superior options for child-placement services and will continue to suffer the stigma of state-authorized and state-funded discrimination. (A18–23 ¶¶ 101–28.) Thus,

there is a concrete factual context, the dispute is current and ongoing, and withholding court consideration will inflict continuing harm on the Rutan-Rams.

Both Tennessee and federal courts have regularly adjudicated cases that involve far greater contingencies than any that may arguably exist here. For example, in *Hargett*, 414 S.W.3d at 98–100, the Tennessee Supreme Court held that two voters had standing to challenge a photographic-identification requirement for voting in person, even though they might not have voted in future elections, might have voted absentee, or might have obtained a free photo-identification card that would have complied with the requirement. In *Cummings v. Beeler*, 223 S.W.2d 913, 914–15, 917–18 (Tenn. 1949), the Court ruled that the Tennessee Secretary of State was entitled to a declaratory judgment upholding the constitutionality of a statute that limited a proposed constitutional convention to certain specified purposes, even though the vote on whether to have the convention had not yet been held. In *Miller v. Miller*, 261 S.W. 965, 966, 972 (Tenn. 1924), the Court concluded that a widow was entitled to a declaratory judgment as to her ability to sell portions of her deceased husband's estate, even though there was "no present actual controversy in the sense of threatened litigation" challenging her right to do so.

In *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 152, 156–57 (2014), the U.S. Supreme Court unanimously held that two advocacy organizations had standing to challenge a statute prohibiting certain kinds of false statements during political campaigns, even though it was quite uncertain whether the statute would be enforced against them,

given that the candidate who had previously submitted a complaint about their speech had left the country, that the organizations maintained that they would make only true statements, and that the commission charged with enforcing the statute had never determined whether the organizations' past statements were prohibited. And in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 718–19 (2007), the Court held that a group of parents had standing to challenge a school district's use of racial criteria to maintain diversity in certain high schools, even though the parents' children might not have applied for admission to the affected high schools or their chances of admission might have been *increased* by the challenged criteria. *See also Riva v. Massachusetts*, 61 F.3d 1003, 1006, 1010–11 (1st Cir. 1995) (retiree's challenge to statute that would have reduced his disability-related benefits was ripe, even though statute would not have affected him for at least seven more years, and potentially would not have affected him at all because he might have recovered from his disability, he might have died, or statute might have been repealed); *Browning-Ferris Indus. v. Ala. Dep't of Env't Mgmt.*, 799 F.2d 1473, 1475, 1477, 1480 (11th Cir. 1986) (waste-disposal business's challenge to statute requiring legislative approval of new hazardous-waste-treatment facilities was ripe, even though it would have been at least five years before statute could have been enforced against business, and statute might not have prevented construction of proposed treatment site at all because site might have failed to meet regulatory requirements, legislature might have granted approval for site, or statute might have been modified or repealed).

The only case that the panel majority cited in support of its view that the Rutan-Rams' injuries "are not ripe and therefore not redressable" (A128) is *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). But the Supreme Court did not even discuss redressability or ripeness in that case. Rather, the Court concluded that plaintiffs who challenged a provision of the Foreign Intelligence Surveillance Act could not demonstrate injury because it was highly unlikely that the challenged provision would actually result in interception of communications with the plaintiffs—including, notably, because the provision prohibited the government from targeting the plaintiffs for surveillance. *See id.* at 410–14.

* * * * *

Tennessee's authorization and financing of religious discrimination by state-funded child-placing agencies has inflicted, continues to inflict, and will further inflict practical and stigmatic harms on the Rutan-Rams. Ending the Department's support for that discrimination would remedy those harms. The Rutan-Rams therefore have standing as foster parents.

III. All the plaintiffs have standing as taxpayers.

Even if the Rutan-Rams do not have standing as foster parents, they and all the other plaintiffs have standing as taxpayers. Tennessee courts have repeatedly held that taxpayers have standing to challenge unlawful uses of public funds. The plaintiffs are challenging unconstitutional state spending. The panel erred by concluding that they did not allege a "specific illegality in the expenditure of public funds" (A133 (quoting *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn.

2010))). The plaintiffs have clearly alleged that the Department's funding of Holston violates three separate clauses of the Tennessee Constitution.

The defendants were incorrect in arguing below that only local taxpayers, not state taxpayers, have a right to challenge illegal governmental spending. And even if it were correct, as the defendants contended below, that state taxpayers must allege some sort of special injury to have standing, the plaintiffs do so here, because they suffer a special injury to their right not to be taxed for the support of religion.

A. Tennessee courts have repeatedly held that taxpayers have standing to challenge unlawful uses of public funds.

While federal taxpayer-standing doctrine permits taxpayer standing only in narrow circumstances, most states—including Tennessee—are much more welcoming of taxpayer suits. *See, e.g.*, Edward A. Zelinsky, *Putting State Courts in the Constitutional Driver's Seat: State Taxpayer Standing after* Cuno *and* Winn, 40 Hastings Const. L.Q. 1, 36, 42, 46 (2012). That is partly because of a long historical tradition of allowing taxpayer suits in state courts that does not exist in federal court. *See* Louis L. Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 Harv. L. Rev. 1265, 1269–82, 1307–14 (1961). It also is partly because the strict limitations on federal-taxpayer standing are rooted in Article III of the U.S. Constitution, which does not apply to state courts (*see ASARCO Inc. v. Kadish*, 490 U.S. 605, 611, 617 (1989)), including Tennessee's (*see Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 148 (Tenn. 2022)). Thus, Tennessee courts have not relied on federal case law in assessing taxpayer standing

(*see* cases cited at pp. 46–51 *infra*), even though they regularly look to federal case law in considering direct standing (*see supra* at p. 26).

Instead of following restrictive federal taxpayer-standing doctrine, the Tennessee Supreme Court has on many occasions affirmed the right of taxpayers to bring suit when they allege "that public funds are misused." *Badgett v. Rodgers*, 436 S.W.2d 292, 294 (Tenn. 1969). "It has always been recognized [in Tennessee] that a taxpayer/citizen has standing to challenge 'illegal' uses of public funds . . . ." *Cobb v. Shelby Cnty. Bd. of Comm'rs*, 771 S.W.2d 124, 126 (Tenn. 1989) (quoting *Soukup v. Sell*, 104 S.W.2d 830, 831 (Tenn. 1937)); *see, e.g.*, *Lynn v. Polk*, 76 Tenn. 121 (1881) (permitting state taxpayers to challenge constitutionality of state spending act, as discussed in more detail *infra* at pp. 50–51); *Fannon*, 329 S.W.3d at 428 ("[T]he misuse or diversion of public funds may entitle the taxpayer standing to sue."); *Southern v. Beeler*, 195 S.W.2d 857, 868 (Tenn. 1947) (taxpayers "may appeal to the courts to prevent . . . misapplication" of public funds); *Kennedey v. Montgomery County*, 38 S.W. 1075, 1079 (Tenn. 1897) (where use of tax funds "was unauthorized and illegal," taxpayers "had the right to enjoin any threatened misappropriation" and "to have relief from the further diversion" of the funds); *see also LaFollette Med. Ctr. v. City of LaFollette*, 115 S.W.3d 500, 504 (Tenn. Ct. App. 2003) ("[A] taxpayer may sue without averring or establishing any special injury where an illegal use of public funds is involved." (quoting *Wamp v. Chattanooga Hous. Auth.*, 384 F. Supp. 251, 255 (E.D. Tenn. 1974))); *Moody v. Johnson City*, 1988

WL 55021, at *3 (Tenn. Ct. App. June 3, 1988) (same quote), *perm. app. denied* (Tenn. July 3, 1989).

The Tennessee Supreme Court has explained that Tennessee "courts typically confer standing when a taxpayer (1) alleges a 'specific illegality in the expenditure of public funds' and (2) has made a prior demand on the government entity asking it to correct the alleged illegality." *Fannon*, 329 S.W.3d at 427 (quoting *Cobb*, 771 S.W.2d at 126). In other words, the Court has described the three "elements of taxpayer standing" as "1) taxpayer status, 2) specific illegality in the expenditure of public funds, and 3) prior demand." *Cobb*, 771 S.W.2d at 126. And this Court has regularly cited and applied this three-part test. *See, e.g.*, *Lewis v. Cleveland Mun. Airport Auth.*, 289 S.W.3d 808, 817 (Tenn. Ct. App. 2008); *Ragsdale v. City of Memphis*, 70 S.W.3d 56, 62 (Tenn. Ct. App. 2001); *City of New Johnsonville v. Handley*, No. M2003-00549-COA-R3-CV, 2005 WL 1981810, at *13 (Tenn. Ct. App. Aug. 16, 2005), *perm. app. denied* (Tenn. Feb. 6, 2006).

B. The plaintiffs challenge unlawful state spending.

The plaintiffs easily satisfy the three-part test for taxpayer standing. They pay taxes to the State of Tennessee, including sales, gasoline, and motor-vehicle taxes. (A5–8 ¶¶ 9–15.) They allege that the defendants are violating the religious-freedom and equal-protection guarantees of the Tennessee Constitution by funding a child-placing agency that discriminates in state-funded programming against prospective and current foster parents based on the parents' religious beliefs. (A13 ¶¶ 55–56; A15–16 ¶¶ 73–78; A23–25 ¶¶ 129–41.) And,

seventy-seven and forty-eight days before filing suit, the plaintiffs sent demand letters to the defendants—which were ignored—asking them to stop providing that funding unless the agency ended its religious discrimination. (A14–17 ¶¶ 66–70, 83–86; A64–65; A110–11.)

The panel took the position that the plaintiffs failed to allege a "specific illegality in the expenditure of public funds" (A133 (quoting *Fannon*, 329 S.W.3d at 427)), even though the defendants had not argued that (*see* R2:296–300; R3:356–60), and without giving any explanation for why it thought that. This puzzling ruling was wrong, as the plaintiffs' amended complaint specifically alleges that Section 3 of Article I, Section 8 of Article I, and Section 8 of Article XI of the Tennessee Constitution each "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" (A24–25 ¶¶ 132, 139), as explained in detail in the plaintiffs' initial demand letter to the Department (A65–66; A69–70).

Tennessee courts have recognized a wide variety of legal prohibitions as sufficient to meet the requirement that a "specific illegality in the expenditure of public funds" be alleged. For example, in *Southern*, 195 S.W.2d at 861, 863, the Tennessee Supreme Court permitted a group of taxpayers to challenge spending that allegedly violated Section 8 of Article XI of the Tennessee Constitution, which is one of the three constitutional provisions that the plaintiffs allege are being violated here. In *Fannon*, 329 S.W.3d at 428, the case cited by the panel for its unexplained ruling (A133), the Tennessee Supreme Court concluded that the "specific illegality" requirement was met where the

challenged spending was alleged to have been enacted in a manner prohibited by procedural provisions of a city charter. In *Cobb*, 771 S.W.2d at 124, 126, the Tennessee Supreme Court ruled that taxpayers had standing to challenge a county board's salary increase on the grounds that it violated the city charter, a state statute, and state public policy. And in *LaFollette Medical*, 115 S.W.3d at 502–04, this Court concluded that taxpayers had standing to challenge a city council's decision to sell a public hospital in violation of a statute that required consent by the hospital's board of trustees for the sale. The plaintiffs' allegations of unlawful spending here are well within the scope of the kinds of allegations treated by these cases as qualifying for taxpayer standing.

C. The same standards apply to state and local taxpayers.

Below, the defendants' principal argument concerning taxpayer standing was that only local taxpayers have a right to challenge unlawful uses of tax funds. (R2:298–300; R3:357–59.) This argument, which the panel did not address (A133), is incorrect. The defendants relied (R2:298–99) on the following language from *Fannon*, 329 S.W.3d at 427, which quoted *Cobb*, 771 S.W.2d at 126: "the taxpayer's complaint 'must allege a specific legal prohibition on the disputed use of funds or demonstrate that it is outside the grant of authority to the local government.'" But *Fannon* and *Cobb* referenced local taxpayers in that sentence merely because the plaintiffs in both cases happened to be local taxpayers challenging municipal actions. *See Fannon*, 329 S.W.3d at 420; *Cobb*, 771 S.W.2d at 124. Nowhere does *Fannon* or *Cobb* say that state taxpayers lack the same rights to sue that local taxpayers have.

On the contrary, other language (initially quoted above) in *Fannon* and *Cobb* discusses taxpayers' right to sue generally, without making any distinction between state and local taxpayers. *See Cobb*, 771 S.W.2d at 126 ("It has always been recognized that a taxpayer/citizen has standing to challenge 'illegal' uses of public funds . . . ."); *Fannon*, 329 S.W.3d at 428 ("[T]he misuse or diversion of public funds may entitle the taxpayer standing to sue."); *id.* at 427 (taxpayers who make a demand have standing when they allege "a specific illegality in the expenditure of public funds" (quoting *Cobb*, 771 S.W.2d at 126)). And, in affirming taxpayers' rights to challenge unlawful public spending, numerous other above-cited Tennessee cases likewise refer to taxpayers generally and do not suggest that state taxpayers' rights are somehow lesser than local taxpayers' rights. *See Southern*, 195 S.W.2d at 868; *Lewis*, 289 S.W.3d at 817; *LaFollette Med.*, 115 S.W.3d at 504; *Ragsdale*, 70 S.W.3d at 62–63; *Handley*, 2005 WL 1981810, at *14; *Moody*, 1988 WL 55021, at *3.

Indeed, more than 140 years ago, in *Lynn*, 76 Tenn. 121, the Tennessee Supreme Court expressly rejected by a 4–1 vote the argument that state taxpayers should not have the same rights as local taxpayers to challenge unconstitutional spending. One Justice made that argument in a dissenting opinion, but the other four Justices—each of whom wrote separately due to the importance of the case—disagreed. *Compare id.* at 123–25 (opinion of Turney, J.), 156 (opinion of Freeman, J.), 264–65 (opinion of McFarland, J.), and 326–27 (opinion of Deaderick, C.J.), *with id.* at 287–93 (Ewing, Sp. J., dissenting). The four Justices in the majority on the taxpayer-standing issue agreed that a group of state taxpayers

had standing to challenge the constitutionality of an act passed by the state legislature that provided for the funding of settlement of state debt. *See id.* at 122–25 (Turney, J.), 156 (Freeman, J.), 264–65 (McFarland, J.), 326–27 (Deaderick, C.J.).

The Tennessee Supreme Court has also allowed taxpayers to challenge the constitutionality of actions of the Tennessee legislature on a number of other occasions. For example, in *Southern*, 195 S.W.2d at 861, the Court permitted a taxpayer to challenge an enactment by the state legislature that authorized a particular county to issue bonds to erect and repair school buildings. In *Ford v. Farmer*, 28 Tenn. (9 Hum.) 152, 158–59 (1848), and *Bridgenor v. Rodgers*, 41 Tenn. (1 Cold.) 259, 260 (1860), the Court allowed taxpayers to challenge state legislation that created new counties. And in *Dykes v. Hamilton County*, 191 S.W.2d 155, 156–57 (Tenn. 1945), the Court permitted taxpayers to challenge a state legislative act that created a juvenile court and a juvenile-court commission for a county. Moreover, according to an article that surveyed the taxpayer-standing law of other states, "the majority rule is that, by case law and/or statutes, state taxpayers generally have standing to challenge state taxes and expenditures in the state courts." *See* Zelinsky, 40 Hastings Const. L.Q. at 46.

D. The plaintiffs suffer a special injury to their right not to be taxed for the support of religion.

Even if it were correct that, as the defendants contended below, Tennessee standing law requires state taxpayers to allege a "special injury" (R2:297) beyond simple unlawful use of state tax dollars, the plaintiffs do so here. For they allege that Tennessee's funding of a child-

placing agency that discriminates in state-funded programming based on religion violates Section 3 of Article I of the Tennessee Constitution. (A13 ¶¶ 55–56; A15–16 ¶¶ 73–78; A23–24 ¶¶ 129–34.) This clause states:

> 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.

Article I, Section 3 "guarantees freedom of worship and separation of church and state." *City of Nashville v. State Bd. of Equalization*, 360 S.W.2d 458, 469 n.5 (Tenn. 1962). The provisions of Article I, Section 3 are the state counterparts of the U.S. Constitution's Establishment and Free Exercise Clauses. *See Carden v. Bland*, 288 S.W.2d 718, 721 (Tenn. 1956). But the state's nonestablishment guarantee provides protections greater than those of its federal counterpart. *See id.* (while the federal and state establishment and free-exercise clauses "are practically synonymous," "[i]f anything, [Tennessee's] own organic law is broader and more comprehensive in its guarantee of freedom of worship and freedom of conscience"); *State ex rel. Comm'r of Transp. v. Eagle*, 63 S.W.3d 734, 761 (Tenn. Ct. App. 2001) (Tennessee's establishment clause is "stronger than its federal counterpart"); *see also* Tenn. Op. Att'y Gen. 15-34, 2015 WL 1872222, at *1 (Apr. 13, 2015) (describing Tennessee's "constitutional protection against religious establishment as 'substantially stronger' than the protection afforded by the

Establishment Clause of the federal Constitution" (quoting *Eagle*, 63 S.W.3d at 761)).

As noted above, unlike most state courts, federal courts do not recognize a general right by state (or federal) taxpayers to challenge unlawful governmental spending. *See* Zelinsky, 40 Hastings Const. L.Q. at 46. But even federal courts make an exception to this rule and allow taxpayers to challenge public spending when they allege that it is in aid of religion and therefore violates the Establishment Clause. *See Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 138–41 (2011); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 348–49 (2006); *Flast v. Cohen*, 392 U.S. 83, 103–04 (1968).

The U.S. Supreme Court has explained that the federal Establishment Clause was intended to prevent government from "employ[ing] its taxing and spending powers to aid one religion over another or to aid religion in general." *Flast*, 392 U.S. at 104. The Establishment Clause's framers viewed this type of taxation and spending as "coerc[ing] a form of religious devotion in violation of conscience." *See Ariz. Christian*, 563 U.S. at 141. "[T]he 'injury' alleged in Establishment Clause challenges to [governmental] spending" is thus "the very 'extract[ion] and spend[ing]' of 'tax money' in aid of religion alleged by a plaintiff." *DaimlerChrysler*, 547 U.S. at 348 (quoting *Flast*, 392 U.S. at 106). "[A]n injunction against that spending would of course redress that injury, regardless of whether lawmakers would dispose of the savings in a way that would benefit the taxpayers personally." *Id.* at 348–49. As the nonestablishment guarantee of Section 3 of Article I of

the Tennessee Constitution provides protections greater than those of the federal Establishment Clause, it would be anomalous for Tennessee taxpayers not to have at least the same rights to challenge governmental spending in aid of religion in state court under the Tennessee Constitution as federal taxpayers have in federal court under the U.S. Constitution.

And the plaintiffs here suffer the same injury that the U.S. Supreme Court has recognized as sufficient for standing in federal court in Establishment Clause challenges. All the plaintiffs object to the Department's use of their tax payments to fund Holston or any other child-placing agencies that discriminate in state-funded programs or services based on religion. (A5–8 ¶¶ 9–15.) It violates each plaintiff's conscience to contribute tax dollars toward the support of discriminatory practices that advance Holston's religious beliefs in particular or religious beliefs in general. (A5–8 ¶¶ 9–15.) When a state-funded child-placing agency serves only foster parents of a particular faith, that inherently advances that faith, including by directing state funds exclusively to the benefit of members of the favored faith, and by increasing the likelihood that children served by the agency will be taught or raised in that faith. (A16 ¶ 80.) Indeed, Holston itself has 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. (A16 ¶ 79; A79–80 ¶¶ 25–28.)

The injury to taxpayers' right of conscience inflicted by the Department's funding of Holston is particularly acute for the Rutan-Rams because their own tax payments are used to support discrimination

against them. (A5 ¶ 9; A12–14 ¶¶ 48–49, 55–56, 61–62; A17 ¶ 90; A20 ¶ 116.) Similarly, plaintiff Stoedter is an atheist and a Jew, and Holston is using her tax payments to support discrimination against people with beliefs like hers. (A8 ¶ 15; A13–16 ¶¶ 55–56, 61–62, 73–78.)

To be sure, in addition to limiting taxpayer standing in federal court to challenges to spending in aid of religion, the U.S. Supreme Court has required taxpayer plaintiffs to demonstrate a nexus between the challenged spending and legislative action. *See Hein v. Freedom From Religion Found.*, 551 U.S. 587, 603–09 (2007) (three-Justice plurality opinion). This Court should not import this "legislative nexus" requirement into Tennessee case law because there is no logical basis for it (and also because doing so would be inconsistent with the principle that Tennessee's nonestablishment guarantee is stronger than the federal Establishment Clause). As six members of the U.S. Supreme Court agreed in *Hein* (while disagreeing about whether there should be taxpayer standing in federal Establishment Clause cases at all), the injury to taxpayers' conscience rights from governmental spending in aid of religion is the same regardless of whether the spending results from legislative or executive-branch action. *See id.* at 618, 628–31 (Scalia, J., concurring in the judgment, joined by Thomas, J.); *id.* at 637–41 (Souter, J., dissenting, joined by three other Justices).

In all events, there is a strong nexus between legislative action and the challenged spending here. The U.S. Supreme Court has held that the legislative-nexus test was satisfied when Congress authorized federal grant spending for a particular purpose, even though the Executive Branch was responsible for selecting the grant recipients that allegedly

used federal funds to advance religion. *See Bowen v. Kendrick*, 487 U.S. 589, 619–20 (1988). The Sixth Circuit has concluded that to satisfy the legislative-nexus test, it is sufficient to show that the legislature intended or understood that the funding at issue would aid religion. *See Murray v. U.S. Dep't of Treasury*, 681 F.3d 744, 750–52 (6th Cir. 2012). By contrast, the U.S. Supreme Court has concluded that the legislative-nexus test was not met when taxpayers challenged "purely discretionary" expenditures for internal executive-branch operations that were financed by general, unrestricted appropriations not designated for any particular purpose. *See Hein*, 551 U.S. at 595, 615 (plurality opinion).

Here, the General Assembly has specifically authorized the Department to receive, administer, allocate, disburse, and supervise grants and funds to private child-placing agencies. (A8 ¶ 21 (citing Tenn. Code Ann. §§ 37-5-105, 37-5-111).) The General Assembly has also granted responsibility and authority to the Department to license, approve, supervise, and regulate child-placing agencies. (A8 ¶¶ 19–20 (citing Tenn. Code Ann. §§ 36-1-108, 37-5-109(1), 37-5-112).) And the General Assembly annually appropriates state funds to the Department—itemizing how the funds may be used—that the Department then pays to private child-placing agencies for placement, training, supervision, and support services for current and prospective foster parents. (A14 ¶¶ 63–65 (citing 2021 Tenn. Pub. Acts. ch. 454, at 11, https://bit.ly/3uO7wlV).)

Moreover, by enacting Section 36-1-147, the General Assembly expressly authorized private child-placing agencies to discriminate based on religion in services funded by state tax dollars. *See* A9 ¶¶ 23–24; Tenn.

Code Ann. § 36-1-147(c). In addition, the General Assembly was well aware that such religious discrimination could occur as a result of the legislation. (A10–11 ¶¶ 28–33.) During debate on the legislation, its Senate sponsor stated that a number of religiously affiliated child-placing agencies in Tennessee contract with Tennessee and receive funding from the state. (A11 ¶ 31.) After another senator introduced a proposed amendment that would have rendered the legislation inapplicable to child-placing agencies that receive public funds, the Senate sponsor 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, and the proposed amendment was rejected by a voice vote. (A11 ¶¶ 32–33.) Further, in response to questions during debate about whether the legislation would allow child-placing agencies to discriminate against Jews, Muslims, and atheists, the sponsors of the legislation either agreed or did not dispute that it would have that effect. (A10 ¶¶ 28–30.)

CONCLUSION

The Rutan-Rams have standing as foster parents, and all the plaintiffs have standing as taxpayers. The panel's order dismissing the case should be reversed. The plaintiffs should be permitted to litigate the merits of their claims that Tennessee's authorization and funding of religious discrimination by child-placing agencies violates the Tennessee Constitution.

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Tennessee Rule of Appellate Procedure 30(e) because, excluding the parts of the brief exempted by the rule, it contains 12,980 words.

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CERTIFICATE OF SERVICE

I certify that, on October 27, 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-appellees:

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