IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Elizabeth Rutan-Ram, et al.,	)	
	)	Supreme Court No.
Plaintiffs/Appellees,	)	M2022-00998-SC-R11-CV
	)	
v.	)	Court of Appeals No.
	)	M2022-00998-COA-R3-CV
Tennessee Department of	)	
Children's Services, et al.,	)	Davidson County Chancery
	)	Court No. 22-80-III
Defendants/Appellants.	)	

On Application for Permission to Appeal
from the Judgment of the Court of Appeals

PLAINTIFFS-APPELLEES' ANSWER TO APPLICATION FOR PERMISSION TO APPEAL

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INTRODUCTION

The defendants seek permission to appeal a straightforward application of Tennessee standing doctrine. Because this case does not present "the need to secure uniformity of decision," "the need to secure settlement of important questions of law," "the need to secure settlement of questions of public interest," or "the need for the exercise of the Supreme Court's supervisory authority" (Tenn. R. App. P. 11(a)), this Court should deny the defendants' application.

This case arose after the Rutan-Rams—a Jewish couple in Knox County attempting to welcome foster children into their home—sought child-placement services from Holston United Methodist Home for Children, a state-funded child-placing agency. Holston refused to serve the couple after learning that they are Jewish. The Rutan-Rams continue to seek to foster and adopt children in Tennessee, but Holston and other state-funded child-placing agencies that engage in religious discrimination are not available options for the couple. The Court of Appeals correctly held that the Rutan-Rams have standing to bring a state-constitutional challenge to the defendants' funding of Holston and a statute authorizing discrimination by state-funded child-placing agencies. The court's holding was specific to the facts presented, including the details of the Rutan-Rams' experiences with the Tennessee foster-care system. This fact-bound ruling, which followed basic standing rules, is of little consequence for broader standing doctrine and does not warrant review.

The Rutan-Rams are joined as plaintiffs by six other Tennessee taxpayers. All eight plaintiffs have standing as taxpayers to challenge

the unlawful expenditure of their tax dollars to fund Holston. As the Court of Appeals correctly concluded, they are permitted to bring this case under this Court's longstanding taxpayer-standing doctrine. Contrary to what the defendants contend, the Court of Appeals' decision does not represent a departure from established doctrine. Instead, the Court of Appeals' decision is in line with well over a century of precedent upholding the right of taxpayers to challenge illegal spending of public funds. *See Lynn v. Polk*, 76 Tenn. 121 (1881). There is no need for this Court to take up review of such a simple application of precedent.

Even if this case did present important legal questions, it is a poor vehicle for resolving them, because the decision below is not a final ruling but only the reversal of a grant of a motion to dismiss, and at least one case presenting similar issues is currently moving its way through the court system.

For these reasons, the defendants' application should be denied.

STATEMENT OF FACTS

In January 2020, the Tennessee General Assembly enacted Tenn. Code Ann. § 36-1-147. (R2:224 ¶ 23.) This statute authorizes child-placing agencies—private agencies that provide placement, training, supervision, and support services to prospective and current foster parents—to discriminate against parents based on their religious beliefs even when the agencies' services are state-funded. (R2:224 ¶¶ 22, 24.)

A year after the enactment of Section 36-1-147, plaintiffs Elizabeth and Gabriel Rutan-Ram began experiencing exactly the kind of discrimination that the statute authorizes. In Tennessee, prospective parents who are interested in adopting a child in state custody must first

become foster parents; they may then adopt the foster child in their care if that child becomes available for adoption. (R2:226 ¶¶ 35–36.) The Rutan-Rams began their adoption efforts in January 2021 and sought foster-child-placement services from Holston United Methodist Home for Children that month. (R2:226–27 ¶¶ 37, 41, 46.) Holston—a private child-placing agency that is licensed by, contracts with, and receives funding from the Tennessee Department of Children's Services—refused to serve the couple after learning that they are Jewish. (R2:227–28 ¶¶ 42, 48–49, 55–58.) Holston refuses to serve prospective foster or adoptive parents who do not agree with its statement of faith, which reflects a particular understanding of Christianity. (R2:230–31 ¶¶ 73–79.)

The Rutan-Rams were hurt by Holston's refusal to serve them, but they did not give up on their dream of fostering and adopting children. (*See* R2:228 ¶¶ 50–51; R2:232–33 ¶¶ 87–99.) The Department itself provided the Rutan-Rams with approval to serve as foster parents, along with the training and home-study needed for that approval, and the Rutan-Rams became foster parents for the Department in June 2021. (R2:233 ¶¶ 94–95.)

When the plaintiffs' operative complaint was filed, the Rutan-Rams were serving as long-term foster parents of a teenage girl whom they hoped to adopt, and they were planning to commence a second long-term foster-care placement shortly thereafter. (R2:233 ¶¶ 96–99.) The Rutan-Rams were ultimately unable to adopt the teenage girl. They are now seeking a new long-term foster-care placement that they hope will lead to adoption, and they plan to continue seeking long-term foster-care placements (which would involve fostering only one child long-term at a

time) until they are able to foster and adopt at least two children. The Rutan-Rams' current situation is thus similar to the one that existed when the operative complaint was filed.[1]

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. (R2:235 ¶ 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. (R2:233–34 ¶¶ 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. (R2:234 ¶ 105.) Additionally, private child-placing agencies, including Holston, may operate group-care facilities. (R2:234 ¶ 106.) An agency's operation of such a facility can make the adoption process easier, but this option is not available when working directly with the Department. (R2:234 ¶¶ 107–09.)

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

[1] If desired by the Court, the Rutan-Rams can provide supporting declarations about the developments that occurred after the operative complaint was filed.

option for them because they are Jews. (R2:237 ¶ 123.) They 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 child-placing agencies that engage in religious discrimination in the provision of state-funded foster-care services. (R2:237 ¶ 123.)

The Rutan-Rams are joined as plaintiffs in this case by six Tennessee residents who, like the Rutan-Rams, pay taxes to Tennessee. (R2:220–23 ¶¶ 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. (R2:220–23 ¶¶ 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. (R2:220–23 ¶¶ 9–15.) Moreover, the Rutan-Rams object to their own tax payments being used to support discrimination against them. (R2:220–21 ¶ 9.)

Prior to filing this action, the plaintiffs' counsel sent demand letters to the Department on behalf of the plaintiffs, 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. (R2:229 ¶¶ 66–67; R2:231 ¶¶ 83–84.) The Department never provided a substantive response. (R2:230 ¶ 70; R2:232 ¶ 86.)

On January 19, 2022, the plaintiffs filed this lawsuit against the Department and its Commissioner in Davidson County Chancery Court. (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. (R2:238–40 ¶¶ 129–41.) 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. (R2:240.) 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. (R2:240.)

The plaintiffs filed an amended complaint on April 8, 2022. (R2:218.) On May 6, 2022, the defendants moved to dismiss the amended complaint, solely on standing grounds. (R2:282.) On June 27, 2022, a three-judge panel of the Chancery Court held that no plaintiff had standing and dismissed the case. (R3:365.) The plaintiffs appealed, and on August 24, 2023, the Court of Appeals reversed the trial court, holding that the Rutan-Rams have standing as foster parents and that all plaintiffs have standing as taxpayers. (Defs.' App. 1.) The defendants' application for permission to appeal followed.

REASONS FOR DENYING REVIEW

I. The Court of Appeals' decision that the Rutan-Rams have standing as foster parents was a fact-based ruling that correctly applied existing law.

The Court of Appeals' holding that the Rutan-Rams have standing as foster parents was an unremarkable, fact-specific application of existing law on standing. 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)). Standing is a fact-intensive inquiry that turns on the unique circumstances of the plaintiffs. (Defs.' App. 1 at 10 ("To determine whether Plaintiffs have standing to bring this case, [the court] must examine the particular allegations of their complaint and evaluate whether they are entitled to adjudicate the claims." (citing *Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020))).)

Here, the Rutan-Rams pled facts sufficient to satisfy each of the three elements of standing.

A. The Rutan-Rams suffer ongoing 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 (R2:233 ¶¶ 96–101; R2:235 ¶ 111), the Rutan-Rams have done exactly that. The Rutan-Rams 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.

The Rutan-Rams face "practical barriers making it more difficult for them to compete for the right to adopt on the same footing as others." (Defs.' App. 1 at 12.) This limitation on the services available to the Rutan-Rams—which will continue, absent judicial relief, as long as they seek to foster or adopt children (*see* R2:233–37 ¶¶ 101–18, 123)—is an ongoing practical injury sufficient to confer standing. (*See* Defs.' App. 1 at 12); *see also Maddonna v. U.S. Dep't of Health & Hum. Servs.*, 567 F. Supp. 3d 688, 706–08 (D.S.C. 2020); *Dumont v. Lyon*, 341 F. Supp. 3d 706, 720–22 (E.D. Mich. 2018); *Rogers v. U.S. Dep't of Health & Hum. Servs.*, 466 F. Supp. 3d 625, 640–42 (D.S.C. 2020); *Marouf v. Azar*, 391 F. Supp. 3d 23, 33 (D.D.C. 2019).

Furthermore, the Rutan-Rams are experiencing and will continue to experience stigmatic and emotional harms from the Department's authorization and funding of discrimination against them. (R2:236–37 ¶¶ 119–23.) As stated by the U.S. Supreme Court, discrimination "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 v. Mathews*, 465 U.S. 728, 739–40 (1984). Such stigmatic injuries are sufficient to confer standing. *Id.*; *see also* (Defs.' App. 1 at 15–16); *Maddonna*, 567 F. Supp. 3d at 707; *Rogers*, 466 F. Supp. 3d at 641; *Marouf*, 391 F. Supp. 3d at 33; *Dumont*, 341 F. Supp. 3d at 721.

The defendants contend that the Court of Appeals' injury analysis was improperly reliant on "speculation" and "contingencies." (*See* Appl. 23–25.) The defendants are wrong. They attempt to pick apart the Rutan-Rams' specific factual allegations to suggest that the Rutan-Rams are not sufficiently likely to have future contact with the Tennessee foster-care system. (*Id.*) In doing so, the defendants ignore the well-established rule that on a motion to dismiss, the court is required to draw all factual inferences in the plaintiff's favor. *See Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 149 (Tenn. 2022). Properly drawing inferences in the plaintiffs' favor, the Court of Appeals concluded that the Rutan-Rams have standing because they "ha[ve] a need of continuing services and ha[ve] alleged that they plan to foster in hopes of adopting a second child." (Defs.' App. 1 at 14.) This conclusion was well-supported by the allegations of the amended complaint. (*See* R2:233 ¶¶ 96–100.)

The defendants further argue that the Rutan-Rams' stigmatic injury is based "on past stigmatic harm and theoretical future stigmatic harm." (Appl. 27.) But the stigmatic harm to the Rutan-Rams did not conclude after they were first rejected by Holston, and there is nothing theoretical about the ongoing stigma they face and will continue to face

as long as the Department continues to fund Holston and similar agencies despite their discriminatory practices. (*See* R2:236–37 ¶¶ 119–23.) The Department's funding and authorization of religious discrimination in the provision of state-funded foster-care services causes the Rutan-Rams to feel disfavored, devalued, and humiliated by their state government because of their Jewish faith. (R2:237 ¶ 123.) That stigmatic harm is ongoing, because the Rutan-Rams continue to need child-placement services but are unable to receive them from Holston or other state-funded agencies that discriminate on the basis of religion. (R2:233 ¶¶ 96–101; R2:235–37 ¶¶ 111, 119, 123.)

Thus, the Court of Appeals correctly concluded that the Rutan-Rams have alleged an injury in fact.

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

The causation element of the standing analysis requires only that a plaintiff make "a showing that the injury to [her] is 'fairly traceable' to the conduct of the adverse party." *Hargett*, 414 S.W.3d at 98 (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).

The discrimination that the Rutan-Rams face is fairly traceable to the Department's funding of Holston and to the passage of Section 36-1-147. (*See* Defs.' App. 1 at 17–21.) If the Department did not fund child-

placing agencies that discriminate based on religion, Holston likely would not engage in such discrimination. (*See* R2:237 ¶ 126.) Moreover, before the enactment of Section 36-1-147, all state-funded child-placing agencies were barred by statute—and Holston was specifically barred by its contract with the Department—from discriminating against foster parents based on religion. *See* Tenn. Code Ann. § 4-21-501; (R1:31 § D.9).[2] Section 36-1-147 now prevents the state anti-discrimination statute 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). Thus, the Court of Appeals correctly concluded that "the allegations of the complaint are sufficient to demonstrate that Tenn. Code Ann. § 36-1-147 and the Department's actions authorized and enabled Holston's discrimination against the Couple based upon their religion." (Defs.' App. 1 at 21.)

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[2] The defendants assert that a refusal by the Department to fund Holston because of Holston's discriminatory practices "would itself likely be illegal." Appl. 27 n.2. This legal question goes to the merits, not standing. But regardless, the defendants are wrong. The plaintiffs' claims are based solely on the Tennessee Constitution (R2:238–40 ¶¶ 129–41), and the Tennessee Preservation of Religious Freedom Act cannot override the Tennessee Constitution. Moreover, *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), is not applicable here. The ruling in *Fulton* was based solely on the fact that the contract between the city and the foster-care agency there allowed the city to grant exemptions from the applicable antidiscrimination provision on a discretionary basis and to thereby favor nonreligious agencies over religious ones. *See id.* at 1877–79, 1881–82. The constitutional provisions upon which the plaintiffs rely do not permit discretionary exemptions.

The defendants assert that the Rutan-Rams' injuries were caused solely by "the independent actions of a third party." (Appl. 25.) But as the Court of Appeals explained, the involvement of a third party does not necessarily defeat standing. (Defs.' App. 1 at 18–21.) An injury is traceable to a governmental defendant when the government "permits or authorizes third-party conduct that would otherwise be illegal in the absence of the Government's action." *Id.* at 19 (quoting *Marouf*, 391 F. Supp. 3d at 34); *see also Maddonna*, 567 F. Supp. 3d at 709. Here, the Department permits, authorizes, and funds Holston's illegal discrimination.

The defendants cite three cases in support of their argument that the government's funding and authorization of a contractor's illegal discriminatory conduct are not sufficient to render the contractor's discrimination traceable to the government. *See* Appl. 25–26 (citing *Bennett v. Spear*, 520 U.S. 154, 169 (1997); *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 42–43 (1976); *Turaani v. Wray*, 988 F.3d 313, 316 (6th Cir. 2021)). But none of those cases involved allegations of governmental funding of discrimination; nor did they involve the government's authorization of discrimination that was previously illegal. Given the fact-specific nature of the standing analysis, unrelated fact patterns are unlikely to be illuminating. The Court of Appeals instead looked to, and concurred with, cases involving similar facts, which held that foster parents may sue governmental actors for funding child-placing agencies that discriminate in the provision of foster-care services. *See* (Defs.' App. 1 at 18–21); *Maddonna*, 567 F. Supp. 3d at 709–11; *Rogers*, 466 F. Supp.

3d at 642–44; *Marouf*, 391 F. Supp. 3d at 33–35; *Dumont*, 341 F. Supp. 3d at 722–24.

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). That prong is met here because issuance of the declaratory judgment and injunction sought by the plaintiffs 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. (R2:237 ¶ 125); *see Ne. Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 & n.5 (1993). The defendants' application does not challenge the Court of Appeals' ruling that the redressability element of standing is met in this case. (*See* Appl. 22–28; Defs.' App. 1 at 21–22.)

* * * * *

The Court of Appeals correctly concluded that the specific facts of the Rutan-Rams' engagement with the foster-care system are sufficient to confer standing in this case, and the defendants' arguments against standing do not fit the Rule 11 criteria for permission to appeal. Rather than an "important question[ ] of law" that warrants this Court's review (Ten. R. App. P. 11(a); *see also* Appl. 22–23), the standing analysis in this case presents a fact-bound question that is better resolved by the lower courts. The Court of Appeals dutifully applied the law to the facts before

it. It did not create "major shifts in settled standing jurisprudence." (*Contra* Appl. 30.)

II. The Court of Appeals correctly applied longstanding precedent in ruling that 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 to challenge the defendants' unconstitutional funding of Holston's discriminatory practices. "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 also Badgett v. Rogers*, 436 S.W.2d 292, 294 (Tenn. 1968) (taxpayers may bring suit when they allege "that public funds are misused"); *Lynn v. Polk*, 76 Tenn. 121 (1881) (permitting state taxpayers to challenge constitutionality of state spending act); *Fannon v. City of LaFollette*, 329 S.W.3d 418, 428 (Tenn. 2010) ("[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. 1946) (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). The plaintiffs' challenge to the Department's funding of Holston falls squarely within this doctrine, and the defendants' arguments to the contrary are unavailing.

This Court has set out three requirements for taxpayer standing: "1) taxpayer status, 2) specific illegality in the expenditure of public funds, and 3) prior demand." *Cobb*, 771 S.W.2d at 126; *see also Fannon*, 329 S.W.3d at 427. The plaintiffs satisfy each of these three requirements. First, all the plaintiffs pay taxes to the State of Tennessee. (R2:220–23 ¶¶ 9–15.) Second, they allege that the defendants' funding of Holston is illegal because it violates the religious-freedom and equal-protection guarantees of the Tennessee Constitution, as Holston discriminates in the provision of state-funded child-placement services based on the religious beliefs of prospective foster parents. (R2:228 ¶¶ 55–56; R2:230–31 ¶¶ 73–78; R2:238–40 ¶¶ 129–41.) And third, before filing suit, the plaintiffs sent demand letters to the defendants—which were ignored—asking them to stop providing that funding unless Holston ends its religious discrimination. (R2:229–30 ¶¶ 66–70.) Thus, the Court of Appeals' holding that all the plaintiffs have standing as taxpayers was based on a straightforward application of this Court's precedent. (*See* Defs.' App. 1 at 24–30.)

The defendants argue—contrary to decades of Tennessee law—that a taxpayer is required to show a "special interest or special injury" to have standing to challenge an illegal governmental expenditure, misleadingly quoting *Fannon*, 329 S.W.3d at 427, in support of this proposition. (*See* Appl. 17.) The defendants leave out *Fannon*'s statement, just two paragraphs later, that "there are, however, exceptions to this general rule" and that taxpayer standing constitutes such an exception. *See* 329 S.W.3d at 427; *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))).

The defendants eventually acknowledge the longstanding exception permitting taxpayer suits challenging a misuse of public funds. (*See* Appl. 18.) But the defendants go on to invent two additional requirements for such suits that have no basis in law. (*Id.* at 18–21.)

First, the defendants claim that taxpayer standing to challenge the misuse of governmental funds applies "only in challenges to *local government funding decisions*." (*Id.* at 19.) They cite no case that establishes this rule. (*See id.*) Instead, they cite taxpayer-standing cases that happen to involve local spending decisions but that do not, at any point, say that standing turns on that fact. (*Id.* at 19–20.)

In fact, one of Tennessee's earliest cases recognizing taxpayer standing, *Lynn*, was a challenge to the constitutionality of a state spending enactment. *See* 76 Tenn. at 122–25 (Turney, J.), 156 (Freeman, J.), 264–65 (McFarland, J.), 326–27 (Deaderick, C.J.). The defendants assert that standing in *Lynn* was based on an increased tax burden (Appl. 20), but in fact it was uncertain whether the challenged enactment would have increased or reduced the plaintiffs' tax burden, for the enactment provided for the settlement of outstanding state debt while lowering the interest rate on it from six percent to three percent. *See* 76 Tenn. at 124–25 (Turney, J.), 161 (Freeman, J.), 288 (Ewing, Sp. J., dissenting). The defendants also suggest that *Lynn* has been undermined by U.S. Supreme Court rulings on federal taxpayer-standing doctrine (Appl. 21),

but those cases are inapposite because Tennessee and most other states "take a dramatically different approach to taxpayer standing than their federal counterparts." (Defs.' App. 1 at 23.)

Moreover, the defendants identify no logical reason why taxpayer standing should be circumscribed to municipal spending. They assert that "a taxpayer who is *a resident of that municipality* would necessarily be affected by the municipality's funding decisions in a way that someone residing elsewhere would not." (Appl. 18.) But the same can be said of state residents: a taxpayer who is a resident of the State of Tennessee is necessarily affected by the state's funding decisions in a way that someone residing in some other state would not be. Taxpayer standing exists to empower citizens to challenge illegal spending of their tax dollars. It makes no difference whether the spending decision is made at a local or state level.

Second, the defendants assert that taxpayer standing requires a showing that "funds have been diverted *from stated purposes*." (Appl. 21.) But the actual rule, as the defendants acknowledge elsewhere in their application, is that Tennessee permits taxpayer suits alleging that "public funds are *misused or* unlawfully diverted from stated purposes." (Appl. 18 (quoting *Badgett*, 436 S.W.2d at 294) (emphasis added).) The use of the conjunction "or" means that a plaintiff can establish taxpayer standing based on either misuse or diversion, not that the plaintiff must demonstrate both. Here, the plaintiffs allege a misuse of public funds in that the Department's funding of Holston violates the Tennessee Constitution. (R2:238–40 ¶¶ 129–41.)

Finally, the defendants make the baseless assertion that the recognition of standing in this case has "opened the floodgates." (Appl. 21.) They claim that "[t]he Court of Appeals has effectively invited every Tennessee taxpayer to challenge any law with which the taxpayer finds fault." (*Id.* at 12.) This contention has no basis in reality. The Court of Appeals' decision is consistent with the rule that taxpayer challenges to governmental spending are limited to cases in which there is a "specific illegality in the expenditure of public funds" and the plaintiff makes a prior demand on the government to fix the illegality. *See Cobb*, 771 S.W.2d at 126. For example, taxpayers may not bring suit to challenge spending they merely disagree with as a matter of policy or challenge the legality of governmental action that does not involve unlawful governmental expenditures. *See*, *e.g.*, *Parks v. Alexander*, 608 S.W.2d 881, 883–84, 891 (Tenn. 1980) (taxpayers lacked standing to bring challenge contending that amendment to state constitution was enacted in an invalid manner). Here, the plaintiffs' suit is squarely within what Tennessee's longstanding taxpayer-standing caselaw permits, as the plaintiffs challenge unconstitutional spending.

A Court of Appeals decision following a taxpayer-standing doctrine that has existed for more than 140 years will not cause a deluge of new taxpayer litigation. The courts have not been inundated with taxpayer lawsuits over the last century and a half, and there is no reason to think that they will be now. The defendants are asking this Court to overrule precedent and limit Tennessee taxpayers' rights and ability to act as a check on unlawful governmental spending. The Court should not take up this invitation.

III. This case is a poor vehicle for Supreme Court review.

The Court of Appeals' decision merely followed established precedent. But even if the standing issues in this case did present any important questions of law, this appeal is a poor vehicle for resolving them.

The defendants seek review of the reversal of a grant of a motion to dismiss. There has been no final ruling fully exploring the issues raised by the case. If this Court did wish to review some aspect of the standing analysis, it would be better positioned to do so once the factual record is fully developed and there has been a final adjudication below.

Furthermore, if this Court does wish to review its well-established taxpayer-standing doctrine, it would benefit from additional input from the lower courts. As the defendants note, another case involving taxpayer standing is currently being evaluated by the Tennessee courts. *See* Appl. 13 n.1 (citing *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, No. M2022-01786-COA-R3-CV (Tenn. Ct. App.)). The Court would best fulfill its supervisory role by permitting the caselaw to develop further in the lower courts before intervening.

CONCLUSION

For the foregoing reasons, the Court of Appeals' decision does not warrant this Court's review.

Respectfully submitted,

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Date: November 7, 2023

CERTIFICATE OF COMPLIANCE

This answer complies with the word limit of Tennessee Rules of Appellate Procedure 11(d) and 30(e) because, excluding the parts of the answer exempted by the rules, it contains 4,969 words.

/s/ Alex J. Luchenitser
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CERTIFICATE OF SERVICE

I certify that, on November 7, 2023, I caused the foregoing answer to be served via the Court's electronic filing system and email on the following attorneys for the defendants-appellants:

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