

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

ELIZABETH RUTAN-RAM;)	
GABRIEL RUTAN-RAM;)	
REVEREND JEANNIE ALEXANDER;)	
REVEREND ELAINE BLANCHARD;)	
DR. LARRY BLANZ; REVEREND)	
ALAINA COBB; REVEREND DENISE)	
GYAUCH; and MIRABELLE)	
STOEDTER,)	
)	
Plaintiffs,)	
vs.)	NO. 22-80-III
)	
TENNESSEE DEPARTMENT OF)	Judge Roy B. Morgan, Jr.
CHILDREN’S SERVICES; and)	Judge Carter S. Moore
COMMISSIONER OF THE)	Chancellor Ellen Hobbs Lyle (Chief Judge)
DEPARTMENT OF CHILDREN’S)	
SERVICES, currently JENNIFER)	
NICHOLS, in her official capacity,)	
)	
Defendants.)	

PANEL MAJORITY MEMORANDUM AND FINAL ORDER
GRANTING MOTION TO DISMISS

This lawsuit was filed by a married couple, Elizabeth and Gabriel Rutan-Ram, of the Jewish faith who reside in Knoxville, Tennessee (the “Couple”), and by four pastors/ministers, a retired psychologist, and an officer of the Tennessee Chapter of Americans United For Separation of Church and State. The lawsuit stems from the refusal of a private child-placement agency, Holston United Methodist Home for Children (“Holston”), to provide foster/adoption services to the Couple because they are Jewish.

The Tennessee Department of Children’s Services (the “Department”) contracts with and pays state funds to Holston for placement, training, supervision and support services it provides to prospective and current foster parents. The Plaintiffs have sued the Department and its Commissioner in her official capacity seeking a declaratory judgment and other relief that the Defendants have violated the Tennessee Constitution by allowing state funding of agencies that discriminate based on religious beliefs in state-funded programs. The Plaintiffs also seek a declaratory judgment that the statute that authorizes private child-placement agencies to deny services based upon religion, Tennessee Code Annotated section 36-1-147,¹ violates the Tennessee Constitution. The Defendants deny liability asserting that they had no role in Holston’s refusal of services to the Couple and that there is no case or controversy because the Couple has since been approved by the Department as foster parents and serve as such.

¹ The statute 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.

TENN. CODE ANN. § 36-1-147.

On February 4, 2022 the case was assigned by the Tennessee Supreme Court to a Three Judge Panel (the “Panel”) pursuant to Tennessee Code Annotated sections 20-18-101 *et seq.*

On May 6, 2022, the *Defendants’ Motion to Dismiss* was filed. It seeks dismissal of the entire lawsuit pursuant to Tennessee Civil Procedure Rule 12.02(1). The *Motion* asserts lack of subject matter jurisdiction due to the absence of standing of the Plaintiffs to file the lawsuit. The *Defendants’ Motion* and *Defendants’ Reply in Support of Motion to Dismiss*, June 8, 2022, assert that none of the Plaintiffs has standing based on the following three grounds.

- The first ground is directed to the Plaintiff Couple for lack of constitutional standing (mootness, unripe, no injury in fact, no causation, no redressability).
- The second ground is directed to all the Plaintiffs, and it asserts lack of taxpayer standing.
- The third ground is that Tennessee Code Annotated section 1-3-121 does not relax the particularized injury requirement for standing.

The *Defendants’ Motion to Dismiss* is the matter presently before the Panel. Oral argument was conducted on the *Motion* on June 14, 2022, and the Panel took the matter under advisement.

After the Panel studied the law and the pleadings, considered argument of Counsel and conferred, two members of the Panel (“Panel Majority”) have concluded that the *Defendants’ Motion to Dismiss* shall be granted in its entirety based upon all three grounds asserted by the Defendants. From this decision, one Panel member, Chancellor Lyle,

dissents in part. She agrees with the Panel Majority decision that the operative pleading, the *First Amended Complaint*, fails to demonstrate taxpayer standing (ground two above), and she agrees with the Panel Majority decision that Tennessee Code Annotated section 1-3-121 does not relax the particularized injury requirement for standing (ground three above). On this basis, Chancellor Lyle agrees that the *Defendants' Motion to Dismiss* should be granted as to all the Plaintiffs except for the Couple, Elizabeth and Gabriel Rutan-Ram. As to these Plaintiffs, Chancellor Lyle dissents on the issue of constitutional standing (ground one above). She concludes that the allegations of the operative pleading, the *First Amended Complaint*, establish the elements of constitutional standing of the Couple, and that as to Plaintiffs Elizabeth and Gabriel Rutan-Ram the *Defendants' Motion to Dismiss* should be denied and the case should proceed as to these Plaintiffs.

Pursuant to Tennessee Code Annotated section 20-18-101(b)(5), “in the event of a disagreement among the three judges comprising the panel, the majority prevails.” It is therefore ORDERED that the *Defendants' Motion to Dismiss* for lack of standing is granted, and court costs are taxed to the Plaintiffs.

The allegations of the *First Amended Complaint*, the law and the reasoning on which the Panel’s rulings are based are as follows.

Standard Of Review

The parties agree that the following standard of review governs disposition of the *Defendants' Motion to Dismiss* (the “*Motion*”).

Whether a court has subject matter jurisdiction is a question of law. *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712–13 (Tenn. 2012). Challenges to a court’s subject matter jurisdiction call into question the court’s “lawful authority to adjudicate a controversy brought before it.” *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000). A plaintiff bears the burden to demonstrate that a court has jurisdiction over the claims. *Id.*

When a defendant challenges a court’s subject matter jurisdiction, factual allegations are presumed true and are viewed in the light most favorable to the non-moving party. *Id.* However, “legal conclusions set forth in a complaint are not required to be taken as true.” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 434 (Tenn. 2011) (quoting *Riggs v. Burson*, 941 S.W.2d 44, 48 (Tenn. 1997)).

This is the standard the Panel has applied in ruling on the *Motion*.

Pertinent Factual Allegations From the *First Amended Complaint*

The operative pleading, the *First Amended Complaint For Declaratory And Injunctive Relief*, was filed April 8, 2022 (the “*Amended Complaint*”). The *Amended Complaint* contains two causes of action, each seeking a declaratory judgment and injunctive relief. The first cause of action asserts that Tennessee Code Annotated section 36-1-147 violates Article I, Section 3 of the Tennessee Constitution;² the second cause of

² Article I, § 3 of the Tennessee Constitution provides,

action asserts that section 36-1-147 violates Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution.³

Culled from the *Amended Complaint* are the factual allegations pertinent to the *Motion*, and those allegations are provided as follows.

In January 2021, the Couple identified a disabled child in Florida they wanted to adopt (*Amended Complaint* at ¶ 37). The Florida Department of Children and Families informed the Couple that, as an out-of-state family, they first had to receive Tennessee certification to begin the foster-to-adopt process, including a home study. *Id.* at ¶ 40. In Tennessee prospective foster or adoptive parents must work with a Tennessee licensed child-placing agency to complete the home study. Several agencies informed the Couple

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.

³ Pursuant to Article I, Section 8:

No man to be disturbed but by law.—That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the judgment of his peers or the law of the land.

Article XI, Section 8 provides,

General laws only to be passed.—The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

These two provisions of the Tennessee Constitution apply to different circumstances but, together, guarantee equal privileges and immunities for all those similarly situated. *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993).

that they would not be able to provide these services for the adoption of an out-of-state child. *Id.* at ¶ 41.

Holston is a child-placing agency licensed by the Department, and Holston receives funding from the Department. *Id.* at ¶¶ 44, 55-64. Holston provides classes and home-study certifications to families wishing to foster-to-adopt an out-of-state child. *Id.* at ¶¶ 43, 44.

Holston initially told the Couple that it would be able to provide the services that the Couple needed to be able to adopt the child from Florida, and the Couple enrolled with Holston. *Id.* at ¶ 45. The Couple understood that once they completed the class and received the certification, Tennessee would have presented the certification to Florida, and the Couple would have been eligible to foster the child from Florida in their home for six months and to complete the adoption process. *Id.* at ¶¶ 46, 47.

On January 21, 2021, the same day that they were scheduled to begin the foster-parent-training class, Holston refused to enroll the Couple in its classes because of the Couple's Jewish faith. *Id.* at ¶ 48. Holston's e-mail rejecting the Couple stated that "as a Christian organization, our executive team made the decision several years ago to only provide adoption services to prospective adoptive families that share our belief system in order to avoid conflicts or delays with future service delivery." *Id.* at ¶ 49.

After Holston refused to serve them, the Couple was not able to find another agency in the Knox County area that was willing to provide them the services required for them to be eligible to adopt an out-of-state child. As a result, they were not able to foster or adopt the child from Florida. *Id.* at ¶ 54.

The Couple then applied for approval to serve as foster parents for children in the custody of the State of Tennessee. *Id.* at ¶¶ 82, 83. The Plaintiffs allege that Holston was not an option made available to the Couple for obtaining the foster-parent training and home-study because Holston had already made clear that it would not provide any services related to foster parenting or adoption to the Couple because they are Jewish. *Id.* at ¶ 93. The Department itself provided to the Couple the foster-parent training and home-study needed to serve as foster parents for children in State of Tennessee custody. *Id.* at ¶ 94.

On June 4, 2021, the Department approved the Couple to serve as foster parents for the Department. *Id.* at ¶ 95. Since June 2021, the Couple has served as long-term foster parents of a teenage girl, whom they would adopt if the Department determines that it would be in her best interests for them to do so. *Id.* at ¶¶ 95, 96.

The *Amended Complaint* further alleges that the Couple believes that it is likely, within about six to twelve months, they will either be permitted to adopt the teenage girl or she will be reunified with her parents, and either way their service as foster parents for the teenage girl will be concluded. *Id.* at ¶ 97. Once their service as foster parents for the teenage girl is concluded, the Couple plans to serve as the long-term foster parents of at least one more child, and to adopt that child if the Department determines that it would be in the child's best interest for them to do so. *Id.* at ¶ 98.

In conjunction with commencing the process of serving as the long-term foster parents of another child, the Couple will give serious consideration to partnering with and serving as the foster parents for a private child-placing agency instead of continuing to

work directly with the Department because of efficiency and other benefits and advantages of working with private agencies. *Id.* at ¶¶ 102-113.

The harms the Plaintiffs assert that they have, are and will continue to suffer from the requirement in Tennessee. Code Annotated section 36-1-147 that the Department fund child-placing agencies even if they discriminate based on religion are,

- religious discrimination,
- deprivation or limitation on the Couple’s access to the benefits and advantages of private agencies, and
- stigmatism of the Couple as second-class citizens, disfavored based on their religious beliefs, denied the opportunity to participate in a governmental program on the same footing as those who satisfy the agencies’ religious tests, and humiliation, sadness, hurt, disappointment, and frustration.

Id. at ¶¶ 113-123.

In addition, the Couple and all the Plaintiffs assert harm as taxpayers. They assert that they pay sales, gasoline, and motor-vehicle taxes to the State of Tennessee, including the annual privilege tax on the operation of motor vehicles that is levied under Tennessee Code Annotated sections 55-4-101, 55-4-105, and 55-4-111, and they object to the Department’s use of their tax payments to fund Holston or any other child-placing agency that discriminates based on religion in state-funded programs or services, because they believe that all Tennessee residents should have equal access to and equal opportunity to benefit from state-funded services regardless of the residents’ religious beliefs, and because they do not want their own tax payments to be used to support discrimination against them.

Id. at ¶¶ 9-15.

Analysis of Plaintiffs' Standing

As noted, the *Motion* and *Reply* have three parts. The first part challenges the constitutional standing of the Couple. The second part challenges the taxpayer standing asserted by all the Plaintiffs. The third part asserts that Tennessee Code Annotated section 1-3-121 does not relax the particularized injury requirement for standing.

1. Constitutional Standing

Tennessee courts require plaintiffs to establish standing before their claims can proceed to the merits. *City of Memphis v. Hargett*, 414 S.W.3d 88, 498 (Tenn. 2013) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). A plaintiff must establish three “indispensable” elements to establish constitutional standing. The Plaintiff must,

- “show an injury that is ‘distinct and palpable,’”
- “demonstrate a causal connection between the alleged injury and the challenged conduct,” and
- show that the injury is “capable of being redressed by a favorable decision of the court.”

City of Memphis, 414 S.W.3d at 98 (citing *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006)).

The Tennessee Supreme Court has explained these three elements as follows.

First, a party must show an injury that is “distinct and palpable”; injuries that are conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general citizenry are insufficient in this regard. Second, a party must demonstrate a causal connection between the alleged injury and the challenged conduct. While the causation element is not onerous, it does require a showing that the injury to a plaintiff is “fairly

traceable” to the conduct of the adverse party. The third and final element is that the injury must be capable of being redressed by a favorable decision of the court.

Fisher v. Hargett, 604 S.W.3d 381, 396 (Tenn. 2020) (quoting *ACLU of Tenn. v Darnell*, 195 S.W.3d at 620).

The Panel Majority adopts the Defendants’ analysis and concludes that none of the three essential elements listed above is present in this case for the Couple to have constitutional standing because of the following established by the averments of the *Amended Complaint*:

- mootness,
- lack of ripeness,
- with the Florida adoption, there is no causal connection to the Department because the services Holston would have provided would have been paid and regulated by Florida, not the Department,
- Tennessee Code Annotated section 36-1-147 shows no sectarian preference, and
- Plaintiffs’ alleged injuries are not redressable by the Panel.

Mootness/Failure to Establish Injury In Fact and Redressability

On mootness the Defendants assert that the Couple is unable to demonstrate a present injury/case/controversy that is redressable because the allegations of the *Amended Complaint* acknowledge the following facts. The Department has approved the Couple as foster parents, and the Couple is seeking to adopt a teenage girl currently placed in their foster care (*Amended Complaint* at ¶¶ 95-97). The Couple was certified through DCS in

May 2021, a few months after they were denied services by Holston (*Amended Complaint* at ¶¶ 94-95). Because the Couple has received the very services they claim they were previously denied, the Panel Majority adopts the Defendants’ analysis and concludes that any issue related to denial of services is not capable of the prospective relief the Plaintiffs seek and is now moot. As stated succinctly by the Defendants, “Most fundamentally, no Plaintiff has ever requested, or been denied, state-funded adoption services from Holston. (Am. Compl. at ¶¶ 8-15, 91; Pls.’ Resp. at 1.) Nor are Plaintiffs currently seeking adoption services or being denied such services. (Am. Compl. at ¶ 92.)” *Defendants’ Reply in Support of Motion to Dismiss*, June 8, 2022 at 3.

Lack of Ripeness/Not Redressable

As to lack of ripeness asserted by the Defendants, the Panel Majority concludes that the Couple’s additional allegations of planning to foster at least one more child and in that process giving serious consideration to working with private agency adoptions (*Amended Complaint* at ¶¶ 97, 98, 112), are future, speculative events that are not ripe and therefore not redressable for adjudication. *See Clapper v. Amnesty Intl. USA*, 568 U.S. 398, 414 (2013).

Absence of Causal Connection

The Panel Majority further concludes that the allegations of the *Amended Complaint* do not state a claim of a causal connection between the adoption of the child from Florida

and the Department. The contract the Department has with Holston (Exhibit B to the *Amended Complaint*) provides funds only for services for children “in the custody of the State of Tennessee.” Thus the services the Couple sought from Holston are not funded by the Department and therefore lack a causal connection to the alleged injury. In addition, there are no allegations that the child from Florida, if adopted by the Couple, would have become a child placed in the Department’s custody. These allegations preclude a claim of any injury from the failed Florida adoption to be “fairly traceable” to the Department, needed to establish standing to pursue liability of the Defendants related to the Florida adoption. *See City of Memphis*, 414 S.W.3d at 98.

No Sectarian Preference of The Statute/Stigmatism

The Panel Majority adopts the Defendants’ analysis that the Couple’s allegations of stigmatism do not create standing because the statute shows no sectarian preference. *Cf. URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 9-10 (1st Cir. 2011) (“In constitutional jurisprudence, stigmatization is a term of art. The Supreme Court has made clear that a procedural due process claim cannot rest upon reputational harm alone. . . . [T]he change in rights or status [must] be directly attributable to the challenged governmental action.”).

A showing of stigmatic injury requires that the Plaintiffs sufficiently allege that the Defendants have denied them “equal treatment solely because of their membership in a disfavored group,” citing *Heckler v. Matthews*, 465 U.S. 728, 739-40 (1984). Yet, in this

case the Defendants are currently providing the Couple with child-placement services (*Amended Complaint* at ¶¶ 94-96, 101). In addition the Panel Majority adopts the Defendants' argument that the Plaintiffs have not shown that the Defendants would not contract with a Jewish agency similarly situated to Holston; therefore the Act does not single out people of the Jewish faith as a disfavored, innately inferior group.

The Panel Majority adopts the Defendants' analysis that *Allen v. Wright*, 468 U.S. 737, 758 (1984) specifically rejected standing of the type of third-party injury the Plaintiffs assert in this case, holding rather that IRS exemptions at issue were fairly traceable to the plaintiffs' harm "only if there were enough racially discriminatory private schools receiving tax exemptions . . . to make an appreciable difference in public school integration." 468 U.S. at 758. The *Allen* court noted that "it is entirely speculative . . . whether withdrawal of a tax exemption from any particular school would lead the school to change its policies." *Id.* The Panel Majority adopts the Defendants' analysis of *Heckler* that the unequal treatment that caused stigmatic injury was inherent in the law itself, not based on the actions of third parties. 465 U.S. at 735 (challenging a law that applied a pension offset to plaintiff "and other nondependent men but not to similarly situated nondependent women"). Thus, the Panel Majority agrees with the Defendants that neither *Allen* nor *Heckler* supports a finding of injury based on the actions of third parties, even where the third party receives government benefits.

Plaintiffs' Alleged Injuries Are Not Redressable By The Panel

The Panel Majority concludes that the Plaintiffs have failed to show that their alleged injuries are redressable by this lawsuit. The redressability requirement is met when the relief granted would provide to the plaintiffs the benefits that were discriminatorily denied to them. *See Heckler*, 465 U.S. at 738-40. In this case, however, the Couple has already “receive[d] [state-funded] placement, training, supervision, and support services” from Defendants. (*Amended Complaint* at ¶ 101.) Therefore, there are no benefits being discriminatorily denied to Couple by Defendants. Additionally to the extent that Plaintiffs ask the Court to require third parties to provide services to the Couple, such parties are beyond the reach of this case.

Federal Cases Cited by Plaintiffs

In support of their claim of constitutional standing, the Plaintiffs cite to the following foster/adoption cases: *Maddonna v. U.S. Department of Health & Human Services*, ___ F. Supp. 3d ___, No. 6:19-cv-3551, 2020 WL 13178283, at *8–9 (D.S.C. Aug. 10, 2020); *Dumont v. Lyon*, 341 F. Supp. 3d 706, 720–22 (E.D. Mich. 2018); *Rogers v. U.S. Department of Health & Human Services*, 466 F. Supp. 3d 625, 640–42 (D.S.C. 2020); *Marouf v. Azar*, 391 F. Supp. 3d 23, 33 (D.D.C. 2019).⁴

⁴ In construing and applying the provisions of the Tennessee Constitution in issue in this case, Tennessee courts have used the analysis and the law developed by the federal courts with respect to the Establishment Clause and equal protection guarantees of the U.S. Constitution. *See e.g. Tennessee Small Schools Systems v. McWhorter*, 851 S.W.2d 139, 152 (Tenn. 1993); *Brooks v. City of Oak Ridge*, 222 F.3d 259, 264 (6th Cir. 2000).

The Panel Majority adopts the following analysis of the Defendants that the foregoing cases do not support a finding of constitutional standing in this case.

Plaintiffs cite to federal district court cases finding foster parent standing where the plaintiffs suffered a “practical curtailment” of their options for foster care services. (Pls.’ Resp. at 16-17.) However, the Rutan-Rams are differently situated from the plaintiffs in those cases. In each case, plaintiffs were currently seeking and had not been granted access to the state’s adoption system. Here, Plaintiffs are currently benefiting from all state-funded child placement services they have sought. It is unclear in what sense that Plaintiffs are currently facing a barrier to state-funded adoption services, given that they are currently receiving and have never been denied such services. (Am. Compl. at ¶¶ 8-15, 91-92; Pls.’ Resp. at 1.)

Defendants’ Reply in Support of Motion to Dismiss, June 8, 2022 at 4-5.

As to this first section of the Panel Majority’s decision, Chancellor Lyle dissents on constitutional standing. That dissent is provided at the conclusion of this Memorandum.

2. Taxpayer Standing

All the Panel conclude that the averments of the *Amended Complaint* fail to demonstrate taxpayer standing. In this regard Tennessee law provides “[t]he mere status of a taxpayer or voter is not sufficient to bring an action in and of itself.” *Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn. Ct. App. 1980), *perm. app. den’d* (Tenn. Aug. 29, 1980); *see also Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010) (citing *Patten v. City of Chattanooga*, 65 S.W. 414, 420 (Tenn. 1901)) (“Over one hundred years ago, this Court observed that where there is no injury that is not common to all citizens, a taxpayer lacks standing to file a lawsuit against a governmental entity.”); *Bennett v. Stutts*, 521 S.W.2d 575, 576 (Tenn. 1975) (“It is the settled law in this state that private citizens,

as such, cannot maintain an action complaining of the wrongful acts of public officials unless such private citizens aver special interest or a special injury not common to the public generally.”).

The Panel concludes that the *Amended Complaint* fails to demonstrate a special or uncommon injury along the lines of the precedent of an increased tax burden: *Lynn v. Polk*, 76 Tenn. 121, 124 (1981); *Southern v. Beeler*, 195 S.W.2d 857, 864 (Tenn. 1964); *Bridgenour v. Rodgers*, 41 Tenn. 259, 260 (1860); *Ford v. Farmer*, 28 Tenn. 152, 159 (1848); or “specific illegality in the expenditure of public funds.” *Fannon*, 329 S.W.3d at 427.

This deficiency is fatal to the Plaintiffs’ claims of taxpayer standing and makes it unnecessary for the Panel to resolve Counsel’s varying views on whether Tennessee standing law makes a distinction between a challenge to local government action and state action, or whether to adopt the analysis used by the federal courts, or to decide whether to import the “legislative nexus” requirement into Tennessee case law. It is sufficient in deciding the taxpayer standing issue that the *Amended Complaint* fails to demonstrate a special or uncommon injury.

3. Tennessee Code Annotated Section 1-3-121

The Plaintiffs argue that denying them standing would be contrary to Tennessee Code Annotated section 1-3-121. It provides,

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. A cause of action shall not exist under this chapter to seek damages.

In support of dismissal, the Defendants cite *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), where the court stated, “Our reading of [Tenn. Code Ann. § 1-3-121] is that it does not relax the particularized injury requirement for standing.”

The Plaintiffs’ rejoinder is that *Grant* is not binding precedent, citing Tenn. Sup. Ct. R. 4(G)(1).

As asserted by the Defendants, all of the Panel give deference to the analysis and decision in *Grant*, and conclude that section 1-3-121 does not relax the particularized injury requirement for standing.

Chancellor Ellen Hobbs Lyle Dissenting in Part

Chancellor Lyle most respectfully to colleagues on the Panel dissents from that part of the decision of the Panel Majority holding that the Couple has failed to demonstrate constitutional standing. This is the first ground for dismissal analyzed above. While Chancellor Lyle agrees that the claims of the other Plaintiffs should be dismissed for lack of taxpayer standing or any additional basis under Tennessee Code Annotated section 1-3-121, she concludes that the allegations of the *Amended Complaint* demonstrate the three essential elements required under Tennessee law to establish constitutional standing of the Couple for them to proceed with this lawsuit. On this basis she would deny the

Defendants' Motion to Dismiss the claims of Elizabeth Rutan-Ram and Gabriel Rutan-Ram.

Chancellor Lyle's conclusion that the Plaintiff Couple has demonstrated constitutional standing is based upon the foster/adoption federal cases relied upon by the Plaintiffs: *Maddonna v. U.S. Department of Health & Human Services*, ___ F. Supp. 3d ___, No. 6:19-cv-3551, 2020 WL 13178283, at *8–9 (D.S.C. Aug. 10, 2020); *Dumont v. Lyon*, 341 F. Supp. 3d 706, 720–22 (E.D. Mich. 2018); *Rogers v. U.S. Department of Health & Human Services*, 466 F. Supp. 3d 625, 640–42 (D.S.C. 2020); *Marouf v. Azar*, 391 F. Supp. 3d 23, 33 (D.D.C. 2019). Chancellor Lyle concludes that the cases are not materially distinguishable, as asserted by the Defendants, and Chancellor Lyle concludes that these cases establish that the Couple has standing to proceed with this lawsuit.

As to injury in fact and redressability, the law is that plaintiffs need not demonstrate that they would have been completely foreclosed from fostering/adoption—only that they cannot compete for the right to adopt on the same footing as everyone else. *Dumont*, 341 F. Supp. 3d at 708. *See also Marouf v. Azar*, 391 F. Supp. 3d at 36-37. Demonstrating injury in fact does not require an allegation of exclusion entirely from participation in the state foster care program or even by a majority. Allegations of practical barriers to a plaintiff's participation in the state foster care program that make it more difficult for members of one group to obtain a benefit than it is for members of another group are sufficient to establish standing. *Rogers*, 466 F. Supp. 3d at 641-42. In *Rogers* Plaintiffs' allegations, such as not all foster care agencies are equivalent or offer the same services,

and denial of access to well-resourced agencies that can provide comprehensive support to foster families, were sufficient to establish standing. *Id.* at 641.

With respect to the essential standing element of causation, the foregoing federal cases state the law that the routine proximate cause standard, derived from tort law, does not apply. The “fairly traceable” causation element for constitutional standing is simply whether a defendant’s alleged actions are in part responsible for a plaintiff’s injuries.

In *Marouf v. Azar*, 391 F. Supp. 3d 23, 35 (D.C. Cir. 2019) the Government’s alleged inaction that allowed an agent to continue to discriminate in providing services was a factor establishing both causation and injury in fact. A defendant’s attempt to “pass the buck” to a third party is not a defense to causation.

“Imposition of the stringent proximate cause standard, derived from principles of tort law, has been held to ‘wrongly equate injury fairly traceable to the defendant with injury as to which the defendant's actions are the very last step in the chain of causation.’” *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 315–16 (4th Cir. 2013) (quoting *Bennett v. Spear*, 520 U.S. 154, 168–69, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)) (internal alterations omitted). Accordingly, the relevant inquiry to determine traceability is simply whether the Defendants’ alleged actions are “at least in part responsible for” Plaintiffs’ injuries. *Id.*

* * *

Despite Defendants’ attempt to pass-the-buck on to Miracle Hill, courts in this circuit have held that “a ‘challenged agency action *authorizing* the conduct that allegedly caused’ [Plaintiff’s] injuries” is sufficient to establish causation and traceability for purposes of standing. *Mathis v. Geo Group, Inc.*, No. 2:08-CT-21-D, 2010 WL 3835141, at *6 (E.D.N.C. Sept. 29, 2010) (quoting *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 440 (D.C. Cir. 1998) (*en banc*)) (internal alterations omitted) (emphasis added). Plaintiff has met that standard. As discussed above, Plaintiff alleges she suffered the stigma resulting from being discriminated against on the basis of her religion, as well as the practical barriers to their participation in

the State foster care program. (ECF Nos. 1 at 5; 24 at 17; 38 at 42–43). To show that the stigma and practical barriers to fostering were the result of the Defendants’ conduct, Plaintiff’s Complaint details the progression of events within both the federal and state governments that ultimately lead to McMaster’s 2018 Executive Order and the HHS Waiver which she challenges. *See* (ECF No. 1 at 7–17).

Maddonna v. United States Dep’t of Health & Hum. Servs., No. 6:19-CV-3551-TMC, 2020 WL 13178283, at *10, *11 (D.S.C. Aug. 10, 2020)

As stated in *Dumont v. Lyon*, 341 F. Supp. 3d 706 (S.D. Mich. 2018) (quoting the Sixth Circuit in *Parsons v. U.S. Dept of Justice*, 801 F.3d 701, 713 (6th Cir. 2015)), “The causation need not be proximate . . . [and] the fact that an injury is indirect does not destroy standing as a matter of course.” The Plaintiffs’ allegations in *Dumont* “that because of the State Defendants’ practice of continuing to enter into contracts that allow the child placing agencies to use religious criteria in excluding same-sex couples,” were held to establish stigmatic and practical harm fairly traceable to the State Defendants so as to provide constitutional standing. *Id.* at 724.

The foregoing law makes clear that the allegations in the *Amended Complaint*, such as the barriers the Couple faces now as foster parents and continue to face in obtaining the efficiencies and other benefits and advantages of working with private agencies, are sufficient to establish standing. The hurdle to standing erected by the Defendants of “it is unclear in what sense the Plaintiffs are currently facing a barrier to state-funded adoption services, given that they are currently receiving and have never been denied such services,” *Defendants’ Reply in Support of Motion to Dismiss*, June 8, 2022 at 4-5, does not exist in the law. For these reasons, Chancellor Lyle concludes that the *Amended Complaint*

demonstrates constitutional standing of Elizabeth Rutan-Ram and Gabriel Rutan-Ram and that the lawsuit should not be dismissed as to these Plaintiffs.

s/Roy B. Morgan, Jr.
JUDGE ROY B. MORGAN, JR.

s/Carter S. Moore
JUDGE CARTER S. MOORE

s/Ellen Hobbs Lyle
CHANCELLOR ELLEN HOBBS LYLE

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Rule 58 Certification

A copy of this order has been served upon all parties or their Counsel named above.

s/Phyllis D. Hobson _____ June 27, 2022
Deputy Clerk
Chancery Court