

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

ISLAMIC CENTER OF NASHVILLE,)
)
Plaintiff,)
)
v.) No. 21-182-IV
)
STATE OF TENNESSEE and)Chancellor Russell Perkins (Chief Judge)
TENNESSEE STATE BOARD OF) Judge William B. Acree
EQUALIZATION,) Judge Thomas Wright
)
Defendants.)

ORDER ON MOTION TO DISMISS

On March 4, 2021, Islamic Center of Nashville initiated this lawsuit for declaratory and injunctive relief against the State and the Board of Equalization. On May 17, 2021, Defendants moved to dismiss the Complaint pursuant to Tenn. R. Civ. P. 12.02(1) and (7) for lack of subject matter jurisdiction, failure to exhaust administrative remedies, ripeness, failure to join all necessary parties, and failure to attach necessary documents. On August 6, 2021, pursuant to Tenn. Sup. Ct. R. 54, the Tennessee Supreme Court ordered a three-judge panel (“the Panel”) under Tenn. Code Ann. § 20-18-101. Accordingly, Defendants’ motion came before the Panel, consisting of Chancellor Russell Perkins, Judge William Acree, and Judge Thomas Wright, for hearing on Thursday, August 26, 2021 at 9:30 a.m.

I. Facts and Procedural History

Islamic Center of Nashville (“ICN”) is a religious entity providing educational facilities and services to students from pre-kindergarten to eighth grade. Since 1995, ICN has operated a religious school in Nashville called the Nashville International Academy (“the School”), by and through its related entity of the same name (“NIA”). ICN leases

property it owns (“the Property”) to NIA exclusively for the religious and educational purposes of operating the School.

In 1996, ICN applied for and received a limited property tax exemption for the Property under Tenn. Code Ann. § 67-5-212 (“the Exemption Provision”). Specifically, the Tennessee State Board of Equalization (“the Board”) granted exemptions to ICN that year for all improvements to and for 50% of the land within the Property, effective July 3, 1996. ICN has remained a religious entity since that time and has operated the School on the Property purely and exclusively for religious and educational purposes, in accordance with its exemption.

In August 2008, ICN began constructing a new building on its property for the School’s use. The new building opened in December 2008. In the same year, ICN entered into an agreement with a subsidiary of Devon Bank (“the Bank”) to fund construction of the new building through refinancing of the Property. In compliance with Islamic financial principles, ICN and the Bank structured this transaction specifically to avoid *riba*, or prohibited interest, through what is called an *ijara* agreement. ICN entered into this *ijara* agreement in order to make its project possible, while simultaneously complying with its sincerely-held religious belief that payment of interest is prohibited.

Under the *ijara* agreement, the Bank took immediate formal ownership of the Property via warranty deed and, in exchange, agreed to lease the Property to ICN for a limited duration of time. At the end of this duration, ICN took back ownership for a nominal payment. This arrangement, which operated like an installment leasing contract, was structured in such a way that enabled ICN to finance its project without accumulating interest.¹

¹ ICN transferred legal title to the Bank by at the beginning of the *ijara* agreement’s term (August 13, 2008) in exchange for non-interest financing in the amount of \$900,000.00. ICN paid rent to the Bank during the *ijara* agreement’s term (scheduled to end no later than August 2028) until ICN paid the balance

The *ijara* agreement remained in effect from August 13, 2008 to October 25, 2013, when ICN completed payments of the full amount of the agreement and regained title to the Property. Throughout the duration of the *ijara* agreement, ICN exercised exclusive and independent control over the Property. The Bank never interfered with, oversaw, or advised on the use of the Property while holding title to it pursuant to the *ijara* agreement.

On February 26, 2014, ICN sought retroactive tax-exempt status for the Property from August 13, 2008 forward. The Board approved the exemption application, but only from January 1, 2014 forward. This operated to exclude the period during which the *ijara* agreement was in effect, plus an additional two months at the end of 2013, during which time ICN held title to the Property. ICN appealed this determination.

On January 20, 2015, an administrative law judge (“ALJ”) held a contested case hearing on the application for tax-exempt status. The ALJ issued his Initial Decision and Order on February 9, 2015, holding that the effective date of the exemption was October 25, 2013. This corrected the time period during which ICN held title to the Property, but provided no relief for the time period during which the *ijara* agreement was in effect. The ALJ held that this outcome was inevitable under the Exemption Provision, which the ALJ determined requires occupation, use, and ownership by way of legal title by the exempt entity.

ICN appealed again, and the State Board of Equalization Assessment Appeals Commission (“the Commission”) affirmed the ALJ’s Order, based on its determination that Tennessee law did not permit a tax exemption where there had been a transfer of legal title, like the one inherent in an *ijara* agreement. The Commission also noted that

in full (October 25, 2013). ICN retained all rights of ownership and use of the Property. The Bank agreed to transfer the Property back to ICN once the amount of the agreement was paid in full for a nominal fee of \$10.00.

other transfers of title, such as bank foreclosures on traditional interest-bearing mortgages, would not result in a loss of exempt status.

Throughout the proceedings described above, the administration consistently referenced ICN's attempts to comply with its sincerely-held religious beliefs. While the Commission was sensitive to ICN's plight, it saw no other alternative under the parameters of the Exemption Provision. ICN paid the taxes as assessed, despite its position that the Exemption Provision should have been applied to the time period during which the Property was subject to the *ijara* agreement.

ICN filed suit in the United States District Court for the Middle District of Tennessee in September 2016. Therein, ICN asserted that the Exemption Provision violates the U.S. Constitution's religious Free Exercise guarantee, as well as various federal and state statutory claims. The District Court dismissed the suit, finding that the claims were barred by the Tax Injunction Act. ICN appealed to the Sixth Circuit Court of Appeals. The Sixth Circuit affirmed the District Court's decision on September 20, 2017. The Sixth Circuit concluded that, even if the Tax Injunction Act did not bar the action, the federal-state comity doctrine would, given that federal courts are ill-equipped to interfere with or reshape state tax provisions, even if such provisions are unconstitutional.

The Sixth Circuit advised ICN that the proper avenue for its claims was within the state court system. ICN sought reconsideration of the Sixth Circuit's opinion on October 4, 2017; however, the Sixth Circuit denied reconsideration on October 16, 2017. Subsequently, ICN filed a Complaint for declaratory judgment and injunctive relief in Chancery Court (No. 18-910-III)("the Prior Action"). Defendants moved to dismiss the Complaint in the Prior Action on October 31, 2018 on grounds of *res judicata* and lack of standing and/or ripeness. The Court granted the motion to dismiss on these grounds on January 22, 2019. In its Order, the Court stated, "*if* harm actually occurs in the future or

is concretely threatened, the Plaintiff is permitted to file a lawsuit challenging this alleged facial unconstitutionality without first seeking administrative review.” Final Order, p. 20 (filed Jan. 22, 2019)(citing *Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 454 (Tenn. 1995)).

On December 9, 2020, ICN began a new construction project on the Property. In order to finance the new construction project, ICN intends to once again enter into an *ijara* agreement, which by definition will require it to formally transfer legal title to the Property to the lender for the duration of the project. ICN is now proposing to finalize an agreement with Devon Bank outlining the terms of a new financing arrangement (“the Proposed Agreement”) for a line of credit available to ICN in the event it requires additional financing. Under the terms of the Confidential Term Sheet, Devon Bank has agreed to provide a loan of \$500,000.00, which will mature twelve months from the date of funding. ICN has not yet triggered the start of this loan, and an *ijara* agreement has not yet been entered. *See* Plaintiffs’ First Amended Complaint and Request for Declaratory and Injunctive Relief (“Amended Complaint”), Ex. A.

The Proposed Agreement outlines the security involved in the transaction between ICN and the Bank. Under the terms of the Confidential Term Sheet, first real estate mortgages and assignments of rents on the property located at 1312 Sweetbriar Avenue, Nashville, Tennessee are to be held in a Bank LLC. Additionally, a blanket mortgage will apply to the properties located at 2515 12th Avenue South, Nashville, Tennessee and 7335 Charlotte Pike, Nashville, Tennessee. The Exemption Provision, as written, operates to preclude tax exempt status where a transfer of title occurs, as it would under the terms of the Proposed Agreement.

ICN reasonably expects that it will suffer financial harm as it moves forward with this new period of construction, similar to the application of the Exemption Provision to

its previous *ijara* agreement. More specifically, ICN alleges that, in order to enter into a financing agreement compliant with the tenets of its sincerely-held religious beliefs, ICN must be willing to forfeit tax-exempt status for the life of the financing agreement. Accordingly, ICN will once again have to pay taxes, when other non-Islamic entities with construction financing, both religious and non-religious, are able to obtain advantageous tax-exempt status covering their relevant periods of financing.

While ICN remains willing to pay any taxes assessed against it in the future, it seeks to be treated the same as other similarly-situated non-Islamic entities with financing agreements. ICN does not dispute that the Exemption Provision, as currently written and applied, bars exempt status for ICN for all time periods during which an *ijara* agreement is in effect, as title will be formally held by the lending institution. ICN disputes the constitutionality of the Exemption Provision under both the U.S. Constitution and the Tennessee Constitution and argues that the Exemption Provision should be declared unconstitutional and stricken due to the resulting unequal treatment of Islamic entities. At the motion to dismiss hearing, ICN urged that the statute's failure, on its face, to include provisions allowing sincerely-held religious beliefs to be accommodated renders the statute facially unconstitutional.

ICN asserts that the Exemption Provision violates the Establishment Clause, the Free Exercise Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. and Tennessee Constitutions, as well as the Tennessee Religious Freedom Restoration Act. ICN asks this Panel to declare the Exemption Provision unconstitutional on its face and to enjoin its application to ICN.

As grounds for their motion to dismiss, Defendants assert that the Court lacks subject matter jurisdiction over the Complaint because ICN failed to exhaust its administrative remedies under Tenn. Code Ann. § 4-5-225 by bypassing the Board's

review of its claims and also because the claim is not ripe. Defendants further assert that ICN did not join all necessary parties pursuant to Tenn. R. Civ. P. 19, alleging that both the Metropolitan Government of Nashville and Davidson County (“Metro”), as the ultimate recipient of the property tax, and its Assessor, as the entity created to assess property located within Davidson County, are necessary parties to this lawsuit. Lastly, Defendants assert that the Complaint should be dismissed for ICN’s failure to attach the *ijara* agreement and other financing documents referenced in its Complaint pursuant to Tenn. R. Civ. P. 10.03.

II. Standards

A motion to dismiss for lack of subject matter jurisdiction challenges the court’s lawful authority to adjudicate the claims brought before it. *See Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000). Subject matter jurisdiction relates to “the nature of the cause of action and the relief sought” and can only be conferred on a court by the constitution or the legislature. *Id.* As such, it is a question of law for the Court to determine. *See id.*

The plaintiff has the burden of establishing subject matter jurisdiction, *see Staats v. McKinnon*, 206 S.W.3d 532, 542-43 (Tenn. Ct. App. 2006), and “when a defendant asserts a facial challenge to a court’s subject matter jurisdiction, the factual allegations in the plaintiff’s complaint are presumed to be true.” *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445-46 (Tenn. 2012). If the challenged Complaint alleges any facts, which, if true, establish subject matter jurisdiction, then the court must deny the motion to dismiss. *See Staats*, 206 S.W.3d at 542-43.

A three-part inquiry is appropriate in determining whether a dismissal under Tenn. R. Civ. P. 12.02(7) should be granted. *See In Re Josiah T.*, No. E2019-00043-COA-R3-PT, 2019 WL 4862197, at *4 (Tenn. Ct. App. Oct. 2, 2019). Initially, the Court

must determine whether the nonparty falls within a category of indispensable persons described in Tenn. R. Civ. P. 19.01. *See id.* Secondly, if the nonparty should be joined under Tenn. R. Civ. P. 19.01, then the Court must determine whether joinder is feasible. *See id.* Joinder is not feasible if the nonparty is not subject to the Court’s personal jurisdiction. *See* Tenn. R. Civ. P. 19.01 (“A person who is subject to service of process shall be joined as a party[.]”). Lastly, if joinder is not feasible, then the Court must determine whether the case can proceed without the absentee or whether the absentee is an indispensable party such that the action must be dismissed. *See In Re Josiah T.*, 2019 WL 4862197, at *4. Factors to be considered in making the determination of whether a nonparty is indispensable are provided in Tenn. R. Civ. P. 19.02.

III. Discussion

The Court notes that this case is, in substantial part, a declaratory judgment action. The Chancery Court “may entertain a complaint for a declaratory judgment in any case of equitable cognizance for the purpose of declaring rights, status or other legal relations whether further relief is or could be claimed.” HENRY R. GIBSON, GIBSON’S SUITS IN CHANCERY § 44.11 (8th ed. 2004). A declaratory judgment “may be either affirmative or negative in form and effect[.]” *Id.*; Tenn. Code Ann. § 29-14-102. Ideally, a declaratory judgment suit does not involve disputed issues of fact, although the Tennessee Declaratory Judgment Act specifically provides that factual disputes in declaratory judgment suits should be tried and determined in the same manner as in other civil actions. *See Goodwin v. Metropolitan Bd. of Health*, 656 S.W.2d 383 (Tenn. Ct. App. 1983); Tenn. Code Ann. § 29-14-108.

The Tennessee Declaratory Judgment Act (“the Act”) provides that:

[a]ny person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity

arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. § 29-14-103. Under the Act, courts may, for example, construe a contract “before or after there has been a breach thereof.” Tenn. Code Ann. § 29-14-104. Additionally, fiduciaries may seek declaratory judgments under Tenn. Code Ann. § 29-14-105 for issues including the “construction of wills and other writings.” Tenn. Code Ann. § 29-14-105(3). It is clear that declaratory judgment suits may be brought in Chancery Court on a variety of underlying legal theories.

If a requested declaratory judgment or decree would not “terminate the uncertainty or controversy[.]” then the court may refuse to enter it. Tenn. Code Ann. § 29-14-109. A party may apply for and be awarded further relief after a declaratory judgment has been entered. *See* Tenn. Code Ann. § 29-14-110. The Act is remedial and is designed “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]” Tenn. Code Ann. § 29-14-113. Consequently, the Act is to be liberally construed. *See id.*

Tenn. R. Civ. P. 57 provides, in its entirety, as follows:

The procedure for obtaining a declaratory judgment pursuant to Tennessee Code Annotated [§ 29-14-101] et seq., shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not necessarily preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Id. This rule does not change any substantive principle under the Act. It merely clarifies the procedural context for declaratory judgment actions, including the potential role of juries in deciding disputed questions of fact.

Courts, however, have viewed the broad language of the Act through the prism of overarching legal principles such as justiciability and sovereign immunity. *See LaRouche*

v. Crowell, 709 S.W.2d. 585 (Tenn. Ct. App. 1985), *cert. denied*, 106 S. Ct. 1265 (1986); *Parks v. Alexander*, 608 S.W.2d 881 (Tenn. Ct. App. 1980), *cert. denied*, 101 S. Ct. 2019 (1981). Additionally, although courts have discretion in declaratory judgment cases, courts have long been admonished to exercise caution in entertaining declaratory judgment suits. *See Tennessee Farmers Mut. Ins. Co. v Hammond*, 290 S.W.2d 860 (Tenn. 1956). It is undisputed that the Act, a remedial statute which became law in 1923, generally creates a vehicle for the rights of parties to be construed and declared, affording relief against uncertainty and insecurity. It is clear, therefore, that the Act may be brought in a court of competent jurisdiction as a vehicle for asserting certain substantive claims.

“The primary purpose of the Declaratory Judgment Act is ‘to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]’” *West v. Schofield*, 460 S.W.3d 113, 129 (Tenn. 2015)(quoting Tenn. Code Ann. § 29-14-113). A declaratory judgment action cannot be used “to decide a theoretical question” or to “render an advisory opinion which may help a party in another transaction,” or to “allay fears as to what may occur in the future[.]” *Id.* at 129-30 (citations omitted). “Thus, in order to maintain an action for a declaratory judgment[,] a justiciable controversy must exist.” *Id.* at 130. “If the controversy depends upon a future or contingent event, or involves a theoretical or hypothetical state of facts, the controversy is not justiciable.” *Id.*

Motions to dismiss are seldom appropriate in declaratory judgment actions, provided there is an actual controversy that may be resolved by means of a declaration of the parties’ respective rights. *See Blackwell v. Haslam*, No. M2011-00588-COA-R3-CV, 2012 WL 113655, at *7 (Tenn. Ct. App. Jan. 11, 2012). This rule is only applicable, however, if there is a justiciable controversy. *See id.* (citations omitted).

The Tennessee Supreme Court case of *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008), establishes two basic, interrelated threshold hurdles that parties must clear in order to pursue a declaratory judgment action in a state court on constitutional issues against the State, a state agency, and/or state officials. First, the Act does not contain an explicit waiver of the State’s sovereign immunity; this precludes the filing of an as applied constitutional challenge against the State unless statutorily established administrative remedies have been exhausted. Secondly, and as the other side of the same coin, a declaratory judgment action cannot be brought against the State or its officials unless a party first seeks a declaratory order from the agency below under Tenn. Code Ann. § 4-5-322. If a party does not first seek a declaratory order from the agency, then a court will not obtain subject matter jurisdiction over the as applied constitutional challenge under the Act.

To determine whether a particular case involves a legal controversy, a court uses justiciability doctrines such as the prohibition against advisory opinions, standing, ripeness, mootness, the political question doctrine, and the exhaustion of administrative remedies doctrine. *See West v. Schofield*, 468 S.W.3d 482, 490 (Tenn. 2015). The exhaustion of administrative remedies doctrine reflects a court’s deference to administrative expertise. Parties whose acts and interests are overseen by an administrative agency ordinarily may not obtain judicial relief for an alleged injury until all prescribed administrative remedies have been pursued to their conclusion. *See Wilson v. Sentence Info. Servs.*, No. M1998-00939-CAO-R3-CV, 2001 WL 422966, at *2 (Tenn. Ct. App. Apr. 26, 2001).

The exhaustion of administrative remedies doctrine enables an administrative agency to “(1) function efficiently and have an opportunity to correct its own errors; (2) afford the parties and the courts the benefit of its experience and expertise without the

threat of litigious interruption; and (3) compile a record which is adequate for judicial review.” *Ready Mix, USA, LLC v. Jefferson Cty.*, 380 S.W.3d 52, 63 (Tenn. 2012). “Requiring that administrative remedies be exhausted often leaves courts better equipped to resolve difficult legal issues by allowing an agency to perform functions within its special competence.” *Colonial Pipeline Co.*, 263 S.W.3d at 839. When a claim is first cognizable by an administrative agency, a court will not interfere “until the administrative process has run its course.” *Id.* at 838 (quoting *United States v. West Pac. R.R. Co.*, 352 U.S. 59, 63 (1956)).

Many exhaustion requirements are mandated by legislation. When a statute provides specific administrative procedures, “one claiming to have been injured must first comply with the provisions of the administrative statute.” *Id.* (quoting *State v. Yoakum*, 297 S.W.2d 635, 641 (Tenn. 1956)). Exhaustion of administrative remedies is not an absolute prerequisite for relief, unless a statute requires exhaustion by its plain terms. *See Thomas v. State Bd. of Equalization*, 940 S.W.2d 563, 566 (Tenn. 1997). A statute does not require exhaustion when the language providing for an appeal to an administrative agency is worded permissively. *See id.* Absent statutory mandate, whether to dismiss a case for failure to exhaust administrative remedies is a matter of discretion. *See Reeves v. Olsen*, 691 S.W.2d 527, 530 (Tenn. 1985).

Tenn. Code Ann. § 67-5-1511(a) provides:

The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board. Judicial review shall not be available as to exemptions requiring application to the state board of equalization under part 2 of this chapter, or as to the proper value, assessment or classification of property, unless the petitioner has first obtained a ruling on the merits from the board or an administrative judge sitting for the board concerning the exempt status, proper value, assessment or classification of the property.

Id. Further, Tenn. Code Ann. § 67-5-212, which governs exemptions for religious property, provides:

All questions of exemption under this section shall be subject to review and final determination by the board; provided, that any determination by the board is subject to judicial review by petition of certiorari to the appropriate chancery court. All other provisions of law notwithstanding, no property shall be entitled to judicial review of its status under this statute, except as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and only after the exhaustion of administrative remedies as provided in this section.

Tenn. Code Ann. § 67-5-212(b)(4).

Neither Tenn. Code Ann. § 67-5-1511(a) nor Tenn. Code Ann. § 67-5-212(b)(4) is worded permissively. *See Bellamy v. Cracker Barrel Old Country Store, Inc.*, 302 S.W.3d 278, 281 (Tenn. 2009)(Use of the word “shall” indicates the intention that the requirement is mandatory, not discretionary). Instead, under both statutes, exhaustion of administrative remedies is an absolute prerequisite for relief. *See* Tenn. Code Ann. § 67-5-1511(a); Tenn. Code Ann. § 67-5-212(b)(4). ICN argues, however, that it can bring a facial constitutional challenge directly to this Court. *See Richardson v. Board of Dentistry*, 913 S.W.2d 446 (Tenn. 1995). A facial challenge involves a claim “that the statute fails a constitutional test and should be found invalid in all applications.” *Waters v. Farr*, 291 S.W.3d 873, 921 (Tenn. 2009)(citing *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Conversely, an as-applied challenge “presumes that the statute is generally valid . . . [but] asserts that specific applications of the statute are unconstitutional.” *Id.* at 923.

“Administrative tribunals do not lack the authority to decide every constitutional issue.” *Colonial Pipeline*, 263 S.W.3d at 843. In *Richardson*, the Tennessee Supreme Court developed three broad categories of constitutional disputes: 1) challenges to the facial constitutionality of a statute authorizing an agency to act or rule; 2) challenges to the agency’s application of a statute or rule as unconstitutional; and 3) challenges to the

constitutionality of the procedure used by an agency. *See Richardson*, 913 S.W.2d at 454-55. “Administrative tribunals have the power to decide constitutional issues falling into the second and third categories, but the first category falls exclusively within the ambit of the judicial branch.” *Colonial Pipeline*, 263 S.W.3d at 843 (citing *Richardson*, 913 S.W.2d at 454-55).

The allegations in ICN’s Amended Complaint demonstrate that ICN’s constitutional challenge of Tenn. Code Ann. § 67-5-212 is an as-applied challenge. *See, e.g.*, Amended Compl., ¶¶ 50-52, 55, 69, 70, 83-84, 91-93, 112-14. As previously stated, an as-applied challenge “presumes that the statute is generally valid” but “asserts that specific applications of the statute are unconstitutional.” *Waters*, 291 S.W.3d at 923. Here, ICN is clearly arguing that the application of Tenn. Code Ann. § 67-5-212’s ownership requirement to it is unconstitutional because it prevents ICN from receiving a tax exemption in light of its entering into an *ijara* agreement with the Bank. Stated differently, ICN is arguing that the Exemption Provision operates unconstitutionally when applied to ICN’s particular circumstances.

After careful review, it does not appear that ICN is actually challenging the constitutionality of Tenn. Code Ann. § 67-5-212 in all of its applications.² *See Waters*, 291 S.W.3d at 921. ICN has previously enjoyed (and is currently enjoying) the benefits of the Exemption Provision and is in essence fighting to keep those benefits in place during the term of the *ijara* agreement. As such, ICN is not arguing that Tenn. Code Ann. § 67-5-212 is facially unconstitutional. Additionally, ICN’s thoughtful argument that the General Assembly should have written the statute to address potential conflicts

² There is nothing on the face of Tenn. Code Ann. § 67-5-212 that suggests that members of other faiths enjoy benefits that members of the Islamic faith do not. The statute allows “any religious, charitable, scientific, or nonprofit educational institution” to receive a property tax exemption for property owned and used by the institution. Tenn. Code Ann. § 67-5-212(a)(1). Thus, any religious community, including the Islamic community, can benefit from the exemption under the circumstances provided under the statute. In fact, ICN has enjoyed (and is enjoying) the statute’s tax exemption benefits.

between a religious entity's sincerely-held religious beliefs and the statute's facially neutral language and structure is either an as applied challenge and/or an argument, if upheld, that could have the effect of unduly scrutinizing and restricting broad legislative prerogatives. It appears to the Panel that ICN is clearly seeking a determination that the property tax exemption (more specifically, its ownership requirement) is unconstitutional as applied to ICN and the *ijara* agreement it negotiated with Devon Bank. "Questions of whether the *application* of a statute violates constitutional principles should be submitted to the agency through a petition for a declaratory order before any action is brought in the Chancery Court." *Colonial Pipeline*, 263 S.W.3d at 846 (emphasis in original).

Defendants assert that ICN's claims are not ripe for adjudication. Ripeness is a question of timing. "[I]ts basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements[.]" *West*, 468 S.W.3d at 490 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977)). "The central concern of the ripeness doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all." *B & B Enters. of Wilson Cty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010).

Ripeness is a viable defense to a declaratory judgment action. *See Colonial Pipeline*, 263 S.W.3d at 838. As the Panel has determined that the allegations in the Amended Complaint raise an as-applied constitutional challenge to the Exemption Provision, which challenge should be brought before the administrative tribunal, *see Colonial Pipeline*, 263 S.W.3d at 843 (citing *Richardson*, 913 S.W.2d at 454-55), the defense of ripeness should also be brought before the administrative tribunal in the

proceedings below.³ As it pertains to the proceedings before this Panel, however, until and unless the Board denies ICN its property tax exemption under Tenn. Code Ann. § 67-5-212, ICN's claims are not ripe for adjudication by this Court. *See Colonial Pipeline*, 263 S.W.3d at 838 (A court “may not render advisory opinions based on hypothetical facts.”). Given this ruling, the Court respectfully declines to reach Defendants’ insistence at oral argument that ICN’s Amended Complaint is not ripe because the ijara agreement has not yet been entered.

As the Panel has determined that the allegations in the First Amended Complaint assert an as-applied constitutional challenge appropriate for determination by the administrative agency below and that the justiciability doctrines of exhaustion of administrative remedies and ripeness apply here, the Panel determines that it lacks subject matter jurisdiction over the instant Complaint. As such, the Panel declines to reach the procedural issues of whether the Complaint should be dismissed for failure to join necessary parties under Tenn. R. Civ. P. 19 or for failure to attach necessary documents under Tenn. R. Civ. P. 10.03. *See Berlanga v. Tennessee Dep’t of Safety*, No. M2017-00745-COA-R3-CV, 2019 WL 360337, at *4 (Tenn. Ct. App. Jan. 29, 2019)(“When a trial court lacks subject matter jurisdiction, the case must be dismissed without reaching the merits of the petition.”).

IV. Conclusion

For the foregoing reasons, the Panel determines that it lacks subject matter jurisdiction over the instant Complaint. As such, the Panel determines that Defendants’

³ For example, it has been alleged that ICN has not, as of yet, entered into the *ijara* agreement. As such, the allegations in the Amended Complaint could potentially assert contingent future events not ripe for adjudication. *See West*, 468 S.W.3d at 490-91. Because ICN’s as-applied constitutional challenge to the Exemption Provision is not properly before this Court, the Court declines to rule upon the application of the ripeness doctrine to the as-applied constitutional allegations in the Amended Complaint. The defense of ripeness, as well as the as-applied constitutional challenge to the Exemption Provision, are appropriate for determination by the administrative tribunal. *See Colonial Pipeline*, 263 S.W.3d at 843 (citing *Richardson*, 913 S.W.2d at 454-55).

motion to dismiss is well taken and hereby GRANTS said motion. Accordingly, the Complaint is DISMISSED without prejudice for lack of subject matter jurisdiction pursuant to Tenn. R. Civ. P. 12.02(1) given the Court's application of the doctrines of exhaustion of administrative remedies and ripeness. Costs of this cause are taxed to Plaintiff, Islamic Center of Nashville, for which execution may issue if necessary.

IT IS SO ORDERED.

s/Russell T. Perkins
RUSSELL T. PERKINS
Chief Judge

s/William B. Acree
WILLIAM B. ACREE
Senior Judge

s/Thomas J. Wright
THOMAS J. WRIGHT
Senior Judge

cc: Tamanna Qureshi, Esq.
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