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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY
AT NASHVILLE

NASHVILLE CARES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 26-1413-III**
	)	**Chancellor I'Ashea L. Myles**
TENNESSEE DEPARTMENT OF HEALTH; AND COMMISSIONER JOHN R. DUNN, in his official capacity,	)	
	)	
Defendants.	)	

PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY INJUNCTION

At its core, Plaintiff, Nashville CARES asserts that the Department has created a new condition of eligibility for the Ryan White Part B and Housing Opportunities for People with AIDS (HOPWA) programs, namely citizenship or proper immigration status, in violation of the UAPA, the Constitution, and federal law. Despite its efforts to the contrary, the Department's Response in Opposition reaffirms that the agency has done exactly that. The Department erroneously asserts that it is (now) required to implement a verification requirement to check for citizenship and immigration status pursuant to federal and state law and seeks to impose the same new mandate broadly across two programs affecting individuals living with HIV or AIDS: Ryan White Part B and HOPWA. While the Department seeks to frame its actions as part of a run-of-the-mill contract dispute, it is anything but. The action reflects a sea change and establishment of new eligibility criteria for the programs—changes that are inconsistent with the law, the Department's historical

practice for *14 years*, and that compound the harm to the Plaintiff, the clients it serves, and the public health.

As testament to the scope of the underlying mandate, *even without signing a contract amendment*, Plaintiff Nashville CARES will be barred from currently entering client eligibility information into the Ryan White Eligibility System (RWES). Carpenter Decl. ¶ 12. That means that *all* of Nashville CARES Ryan White patients (not just its IAP)—more than 1,300 participants, citizens and non-citizens alike—will become ineligible to receive *any* type of Ryan White services when they come up for recertification or have a change of circumstances necessitating an update of their information in the RWES. **Reply Ex. 1,** 2nd Hoke Decl. ¶¶ 3-4.

The temporary injunction should issue.

The Department Does Not Seriously Contest That the Directive Will Cause Irreparable Harm to Nashville CARES Mission, Nashville CARES' Clients, or the Public Health

Notably, the Tennessee Department of *Health* makes almost no attempt to defend its action on the basis of public health considerations. The Department makes no attempt to counter the sworn declaration of Stephen Raffanti, MD, MPH, who was instrumental in establishing the current Ryan White program in Tennessee and who asserts that the Department's actions endanger the public health and increases the risk of HIV transmission, progression of the disease state into AIDS, cancer, heart attack, stroke, and other highly deadly infections. **Compl. Ex. F ¶¶** 13-15. Dr. Raffanti makes clear that "The support services offered through Ryan White Part B are essential to maximize the success of treatment for HIV infected patients . . ." Compl. Ex. F ¶ 13. And the Ryan White IAP is "an essential way to maintain access to care, based on a recognition that, without health insurance, low-income individuals cannot afford treatment." *Id.* And "'Wrap around' services, such as housing funding through HOPWA are critical to effective treatment." *Id.*

The Department does not contest Dr. Raffanti's testimony. It can only complain that it will require the Department to spend 40 to 60 additional hours of training and labor to comply with a temporary injunction, and it speculates that it "may" also need to explore other funding structures if ineligible applicants are enrolled in insurance while an injunction is pending. (Carpenter Decl. ¶ 16), The agency's complaints hardly amount to irreparable harm. By contrast, "[N]ew obstacles" that immigration-related verification puts between programs and recipients "are a well-established irreparable harm." *New York v. United States DOJ*, 804 F.Supp.3d 294, 329-30 (D.R.I. 2025).

The Department also does not credibly challenge the testimony from Nashville CARES Chief Operating Officer Jessica Hoke that the directive undermines the nonprofit's mission, **(Compl. Ex. G ¶¶ 26)** Numerous courts have recognized such harm, especially for those in the HIV/AIDS service sector, as irreparable.[1]

The Department's Attempt to Frame Its Mandate as a Contractual Dispute Fails; Plaintiff Is Likely to Succeed on the Merits

The Department tries to frame Plaintiff's action as one rooted in a bilateral contract dispute and within an ongoing negotiation. It contends that the contract amendments that include citizenship verification language are merely "offers" (Carpenter Decl. ¶ 5), are part of ordinary contractual negotiations between parties (Defs.' Br. at 14), and are not in effect with any current Nashville CARES contract (Carpenter Decl. ¶¶ 4, 12 (IAP). But this is inaccurate.

The Department is imposing a *new* eligibility requirement, namely citizenship and immigration status, for the Ryan White and HOPWA programs based on its erroneous

[1] *See Caron Found of Fla., Inc. v. City of Delray Beach*, 879 F.Supp.2d 1353, 1373 (S.D. Fla. 2012); *see Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n,* 790 F.Supp. 1197, 1208 (D. Conn. 1992).

interpretation of PRWORA and EVEA. *See* Defs.' Br. at 25. As set forth below, that new mandate adversely affects Nashville CARES regardless of whether it signs a contract amendment or not.

The Department is implementing its new mandate, in part, through its contracts of adhesion[2] across multiple programs, Ryan White (General), Ryan White Insurance Assistance Program (IAP), and the Housing Opportunities for People With AIDS (HOPWA). The Department has asserted that its "contractual amendments" *are required* by its interpretation of the law (Defs.' Br. at 25 stating "[T]DH's verification requirement does not conflict with federal law. *It enforces it*.")(emphasis added). Plaintiff must accept the amendments to continue with the programs. *See* Defs.' Br. at 8. Sudden changes to long-standing interpretations of law, "as well as the resulting change in plans that comes from it, is a form of irreparable harm." *New York v. United States DOJ*, 804 F.Supp.3d at 330 (stating "[T]he confusion and chaos imposed by an overnight change to a thirty-year-old interpretation of law, as well as the resulting change in plans that come from it, is a form of irreparable harm.").

If this was a mere contract dispute and the obligation of Nashville CARES to enforce the Department's new eligibility rule depended upon its ratification of a new contract amendment, as the Department claims, Nashville CARES would not stand to be harmed under its current contract. But by the Department's own admissions, the organization and its patients are already harmed – and seriously so – even though the Department acknowledges that the contract remains unamended and that there have been no adverse audit findings regarding Nashville CARES' compliance with the contract terms. (Carpenter Decl. ¶ ¶ 4, 9). The Department concedes that:

[2] The Department's October 1, 2026 Memorandum (**Compl. Ex. P**), which the Department has not purported to rescind, states that one of the Memorandum's purposes is "To announce that TDH *is accordingly amending existing contracts*" to include the disputed language and "You have received contract amendment communications from TDH to amend the scope of your contract with this language." (emphasis)

> "[a] subrecipient [like Nashville CARES] who *does not* sign the amendment *will not* be able to enter client eligibility information into the Ryan White Eligibility System . . ." (Carpenter Decl. ¶ 12) (emphasis added)

Yet the Department simultaneously asserts that, "If CARES declines the proposed amendment, it simply does not take effect, and CARES' existing contracts continue their present terms until expiration." Defs.' Br. at 15.

The Department's refusal to allow Nashville CARES, as a subrecipient that has not signed amendments to the organization's Ryan White and HOPWA contracts, to enter client eligibility information into the Ryan White Eligibility System has an immediate, seriously adverse impact on Plaintiff Nashville CARES, the HIV patients the organization serves, and transmission of the HIV virus in Tennessee. **Reply Ex. 1**, 2nd Hoke Decl. ¶¶ 3-4. All patients, in order to receive any Ryan White service, must have their eligibility information entered into RWES. *Id*. Nashville CARES inability to enter such information into RWES means that all of the organization's Ryan White patients, citizens and non-citizens alike, will become ineligible to receive all Ryan White services (not just IAP). *Id.* That will happen as soon as the individuals come up for annual recertification of their eligibility, or sooner if they have a change of circumstances requiring an update of their eligibility information. *Id.* In either event, Nashville CARES will be barred from entering the patients' eligibility information into RWES and they will lose their Ryan White services. *Id.* The number of people affected is approximately 1,305, more than 1/3 of the RWPB participants in Middle Tennessee, which include citizens and non-citizens. *Id.* ¶ 4.

The Department also highlights the dispute over Ryan White Insurance Assistance Program (IAP) because Nashville CARES is the only contractor in the State for that program. The Department largely ignores its imposition of the same requirements in the Ryan White Part B (General) contract, which affects 15 other entities including Nashville CARES, and the Housing

Opportunities for People with AIDS (HOPWA), which affects an unspecified number of other entities. (Carpenter Decl. ¶¶ 2-3). Taken together, the Department is seeking to enforce a thinly-veiled mandate, not an offer.

Elsewhere, the Department insists that the agency has rescinded its August 18th Memorandum[3] and does not intend to reinstate it (Carpenter Decl. ¶ 10). But the Department goes on to make clear that it is still insisting on key parts of that Memorandum.

The Department continues to assert, as it did in the August 18th Memorandum, that Ryan White's Insurance Assistance Program (IAP) is not an exempt public benefit (Carpenter Decl. ¶ 11 As; *cf*. Compl. Ex. A). As it did in the August 18th Memorandum, the Department only identifies the HIV/AIDS Drug Assistance Program, testing, treatment, and associated core medical services, as exempt from state or federal benefit definition (Carpenter Decl. ¶¶ 11, 13; *cf*. Compl. Ex. A) but excludes IAP as a core medical service despite its express reference as a core medical service for Ryan White under federal law. *See* 42 U.S.C. § 300ff-22(b)(3)(F) (referencing health insurance premium and cost sharing assistance). And while it has added a purported qualifier, "to the extent grant funds provide a state or local public benefit" or "federal public benefit" in the October 1st Memorandum (Compl. Ex. P), the Department's imposition of a new eligibility criterion involving citizenship or immigration status is (now) clear. *See* Defs.' Br. at 25.

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[3] The August 18, 2026 Memorandum stated that: "Effective immediately, no patients without documentation of citizenship or legal residency may be newly enrolled in any RWPB services or benefits other than HIV testing, treatment, and associated core medical services via [the HIV Drug Assistance Program]. New enrollment in IAP or supportive services requires verification. It is the responsibility of each RWPB subrecipient organization to check citizenship or residency status for all new program enrollees seeking these services and provide auditable records to the RWPB program upon request." **Compl. Ex. A**.

In other words, we arrive back where we started. The Rule is a TDH regulation, standard, statement, or document of general applicability that affects private rights, privileges, or procedures available to the public. Under the UAPA, "general applicability" does not mean every member of the public. "It is enough that it is applicable to all member of a class or category—that is, a group sharing common attributes." *Emergency Med. Care Facilities, P.C. v. Div. of TennCare*, 671 S.W.3d 507, 513 (Tenn. 2023). The Department is applying the *same* new mandate for both the Ryan White and HOPWA programs, which affects 15 entities for RWPB, Nashville CARES for Ryan White IAP, and an undisclosed number of other entities for HOPWA (Carpenter Decl. ¶¶ 2-3). And the new (erroneous) interpretation of law seeks to apply additional eligibility criteria that affects participants and grant subrecipients alike. And while implementation of state and federal laws are not "rules" under the UAPA, Tenn. Code Ann. § 4-5-102(12)(B), *erroneous* implementation of state and federal laws have no such safe harbor.

The Department's mandate therefore constitutes a "rule" within the meaning of the UAPA. Tenn. Code Ann. § 4-5-102(10) and (13). Because the Department has not complied with any of the procedural requirements for promulgating a rule set forth in Tenn. Code Ann. §§ 4-5-202 to 207 and 4-5-211, Tenn. Code Ann. § 4-5-216 requires that the Rule be declared "void and of no effect and [that it] shall not be effective against any person or party nor shall it be invoked by the agency for any purpose." Tenn. Code Ann. § 4-5-216.

And the Rule exceeds the Department's Rulemaking authority because it conflicts with federal law in multiple ways:

First, the Rule is counter to federal law and the Department's own statements about eligibility, which do not require a showing of citizenship or immigration status to obtain services.[4]

Second, the Rule does restrict HIV treatment, which is expressly excepted from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)'s verification requirements, 8 USC § 1611(b)(1)(C). By its terms, the October 1st Memorandum requires citizenship status verification of all federal, state, or local benefits by a Grantee regardless of whether the beneficiary/applicant falls within an exception to verification like treatment of a communicable disease. ***See* Compl. Ex. P, Oct. 1st Memorandum**.[5] Further, despite the Department's statements to the contrary (Carpenter Decl. ¶¶ 11, 13), IAP *is* directly linked to treatment and *is* a Ryan White core medical service. The Department's own Health Insurance Attestation *expressly* links health insurance to access to medication.[6]

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[4] 42 USC § 300ff-26(b) (requiring an individual only to (1) have a medical diagnosis of HIV/AIDS; and (2) be a low-income individual, as defined by the State to be eligible for services other than showing that that the individual lives in the service area). Similarly, the federal Department of Health and Human Services through its subagency the Health Resources and Services Administration revised "Policy Notice 21-02" reiterate the same eligibility requirements for individuals living in the service area. *See* **Compl. Ex. C** at 3. Further, as of September 16, 2026, the Department does not list citizenship or legal residency documentation as something that an individual must possess in order to enroll in the Ryan White Part B or HOPWA program. *See* **Compl. Ex. B** at 9**.**

[5] In its declaration, the Department does state that it considers treatment through HDAP as exempt, *See* Carpenter Decl. ¶ 13, but it's directive does not reference the treatment being exempt.

[6] *See* **Compl. Ex. G**, Hoke Decl. Attach. 2, stating:

> The Ryan White Part B Program requires clients to enroll in a qualified health insurance plan to receive their HIV medication and medical care. *Studies show that individuals with health insurance have better health outcomes, access to more health services, and higher viral suppression than those who don't have insurance. . .If you fail to enroll in a qualified health insurance plan your access to medication and HIV care through the program will be limited*. . . . You understand that you will have limited options for your healthcare until you enroll in a qualified insurance plan. (emphasis added).

More fundamentally, *all* of the core and support services in the Ryan White Part B and HOPWA programs are integral to treatment. **Compl. Ex. F**, Raffanti Decl. ¶¶ 13-15. Indeed, the federal court's injunction in *Davids v. Adams,* which involved very similar facts, applied broadly to *all* benefits under the Ryan White Program. 2025 U.S. Dist. LEXIS 14300, *47 (D. Idaho July 24, 2025) (stating "The Court enjoins Defendants and their officers, agent, employees, attorneys, and any person who is in active concert or participation with them from implementing or enforcing H.B. 135 to impose immigration status verification requirements on Patient Plaintiffs *for benefits* under the Ryan White Program.")(emphasis added).

Notably, *no* federal administration, *including the 2nd Trump Administration*, has ever identified the Ryan White Part B program as subject to PRWORA. Even the Department of Health and Human Services' 2025 Notice, which was subsequently vacated,[7] did not reference Ryan White among the programs subject to PRWORA that it added. *See* **Reply Exhibit 2**, 2025 Vacated HHS Notice (July 10, 2025).

Third, the Rule conflicts with the federal requirement that HIV support services be integrated with other services, coordinated with other available programs, and that continuity of care and prevention services is enhanced. 42 USC § 300ff-81(c) and (d). Non-profits, like Nashville CARES, are required to provide assurances to the Secretary that *services funded under [the Ryan White Program] will be integrated with other such services*, that programs *will be coordinated with other available programs* (including Medicaid), and *that the continuity of care*

[7] *See New York v. U.S. Dep't of Just.*, No. 1:25-cv-00345-MSM-PAS, 2026 WL 2823528 (D.R.I. Sept. 21, 2026).

and prevention services of individuals with HIV is enhanced.[8] It cannot truthfully do so under the Department's directive. Thus seen, TDH's directive to separate these services based on citizenship or immigration status is in conflict with and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Fourth, TDH's directive directly conflicts with federal law that makes clear that "a nonprofit charitable organization, in providing any Federal public benefit … is not required under this title [title 8] to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits." 8 USC § 1642(d). The Department's October 1st Memorandum (**Compl. Ex. P**) and contractual amendments expressly require this even though the Department asserts through a Declaration that at least for IAP, it will be completed by the Department. Carpenter Decl. ¶ 12. The Department's directive, expressly places that obligation on the Grantee, and makes no such exception for IAP. **Compl. Ex. P**.

Fifth, TDH's directive seeks to regulate in an area, alien registration, that is comprehensively preempted by federal law. [9]

Plaintiff's Claims Are Ripe

The Department asserts that Plaintiff's claims are not ripe. It asserts that no contract binds Plaintiff Nashville CARES to provide citizenship or immigration screening and that the harms that

[8] 42 USC § 300ff-81(d). As a condition of receiving funds from HHS, States *are also required* to provide assurances to the Secretary that health support services "funded under title (42 USC §§ 300ff) *will be integrated with other such services*, *that programs will be coordinated with other available programs* (including Medicaid), and that the *continuity of care and prevention services of individuals with HIV/AIDS is enhanced*." 42 USC § 300ff-81(c).

[9] *See League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244, 1253, 1259 (C.D. Cal. 1997); *see also Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585, 605 (E.D. Va. 2004) ("[I]t does appear that Congress has preempted the field of determining alien eligibility for certain public benefits.")

the organization alleges are contingent and speculative. Defs.' Br. at 18. But the challenged rule is already in effect and is already affecting the Plaintiff. The Declaration of Rand Carpenter, DVM, filed on the Department's behalf, makes that clear:

> 12. The case managers of RWPB subrecipients that have signed the eligibility verification amendment, collect basic identifying information from the applicant, such as name, address, and Social Security number or other eligibility documentation. Subrecipients under the grant contract must retain records for work performed under the contract. *The Department verifies eligibility for services before the client is eligible for IAP. A subrecipient who does not sign the amendment will not be able to enter client eligibility information into the Ryan White Eligibility System ("RWES"),* and the Department will have no means to verify eligibility status for these clients. Because this verification is done by the case manager and the Department, there is no verification to complete by CARES under their IAP contract. [italics added]

Because it has refused to sign the amendment, Nashville CARES will be denied the ability to enter client eligibility information into the Ryan White Eligibility System, as the Carpenter declaration acknowledges. Carpenter Decl. ¶ 12. That denial by the Department, which enforces their new rule, inflicts immediate harm on the Plaintiff and its patients and impairs its ability to fulfill its obligations under federal law. **Reply Ex. 1**, 2d Hoke Dec.¶ ¶ 3-4.

Moreover, the quoted declaration acknowledges that, even as Nashville CARES' current contracts remain unamended, the Department is already applying the rule: TDH "verifies eligibility for services before the client is eligible for IAP." That means that Nashville CARES cannot enroll eligible HIV patients in the IAP program under its present contract, without subjecting those patients to TDH screening for immigration status, in violation of Nashville CARES' duties under federal law. The Plaintiffs' claims are ripe, and the protection of a temporary injunction is urgently needed.

The Balancing of the Equities and Public Interest Still Weigh in Favor of an Injunction

The Department contends that the Court must carefully balance the equities and weigh the impact of an injunction on the Defendant as well as on the public interest. Defs.' Br. at 30 (citing *Moore v. Lee,* 644 S.W.3d 59, 63 (Tenn. 2022)). True enough, but both factors way in favor of granting an injunction, not against it. Indeed, the Department asserts that it will potentially cost $12,000 per person who is enrolled in insurance but later determined ineligible. *See* Defs.' Br. at 34. But "courts routinely" conclude that the type of "irreparable harm involv[ing] delay in or inability to obtain medical services" at issue here outweighs any "significant costs" or administrative hassle claimed by the party opposing the injunction. *Wilson v. Gordon*, 822 F.3d 934, 958 (6th Cir. 2016). The Department's claims of harm from its sudden new interpretation of federal and state law is belied by its entire history administering the programs until now. And, as previously stated, the Department makes no serious attempt to claim that its actions will not result in an increase in the transmission or progression of disease states in individuals from one of the most deadly communicable diseases in world history. *See generally*, Defs.' Br; *cf.* **Compl. Ex. F**, Raffanti Decl. ¶¶ 13-15.

Concerning the public interest prong, the Department asserts that it has a substantial interest in enforcing a statute duly enacted by the General Assembly is enforced. Defs.' Br. at 31. But the Department's newfound interpretation of one of the operative laws is wrong as discussed below and inconsistent with its historical practice.

The Department's Interpretation of EVEA Is Both New and Erroneous

The Department asserts that EVEA's verification requirements in Tenn. Code Ann. § 4-58-103, require the October 1st Memorandum, and citizenship and immigration screening and verification. Defs.' Br. at 21-22. But EVEA's verification requirements, Section 103, *have been*

around since the statute's original enactment in 2012 and have *always* applied to the Department as a state entity since that time. *Cf.* **Reply Ex. 3**, Acts 2012, ch. 1061, section 1 with current. Tenn. Code Ann. § 4-58-103. The text of the two versions are set forth below:

Original 2012 Enactment, Acts 2012, Ch. 1061, Section 1	**Current Tenn. Code Ann. § 4-58-103**
"Except where prohibited by federal law, every state governmental entity and local health department shall verify that each applicant eighteen (18) years of age or older, who applies for a federal, state, or local public benefit from the entity or local health department, is a United State citizen or lawfully present in the United States in the manner provided in this chapter."	"Except where prohibited by federal law, every state governmental entity, local governmental entity, and local health department shall verify, in the manner provided in this chapter, that each applicant who is eighteen (18) years of age or older and applies for a federal, state, or local public benefit from the state governmental entity, local governmental entity, or local health department is a United States citizen or lawfully present in the United States pursuant to the federal Immigration and Nationality Act."

Under the Department's theory, since the operative law concerning PRWORA and EVEA, have not changed, the Department is tacitly asserting that it has been incorrectly administering the Ryan White and HOPWA programs *by not requiring verification for citizenship or immigration status for the programs for the past 14 years*. Balderdash. It is instead seeking to apply a new (erroneous) verification requirement where none previously existed. This both makes the Department's actions a rule under the UAPA and undermines the Department's arguments about public interest. The Department is asserting that there is a public interest in enforcing a verification requirement that, under its own theory, it was supposed to apply, but failed to, for the past 14 years.

The Department's interpretation of EVEA is comparable to the federal government's attempt to redefine PRWORA, sows similar chaos and irreparable harm, and should meet the same

result. *See New York v. United States DOJ*, 804 F.Supp.3d at 330 (stating "[T]he confusion and chaos imposed by an overnight change to a thirty-year-old interpretation of law, as well as the resulting change in plans that come from it, is a form of irreparable harm.").

The Court Has Jurisdiction

The Department contends that the Court does not possess jurisdiction because Plaintiff has failed to exhaust its administrative remedies by filing suit in Chancery after filing a Petition with the Agency that it has not yet decided. Defs.' Br. at 16-17. The Department relies on two cases interpreting the UAPA exhaustion of remedies requirement (Tenn. Code Ann. § 4-5-225(b)), namely *Nat'l Coll. of Bus. & Tech. v. Tenn. Higher Educ. Comm'n*, 2010 WL 987161 (Tenn. Ct. App. Mar. 18, 2010) and *Stewart v. Schofield*, 368 S.W.3d 457 (Tenn. 2012). But the text of the UAPA's exhaustion of remedies requirement, Tenn. Code Ann. § 4-5-225(b), and seminal cases on the UAPA support *Plaintiff's* position, not the Department's.

The UAPA's exhaustion of remedies requirement, Tenn. Code Ann. § 4-5-225(b),[10] prohibits *a declaratory judgment* from being rendered unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order; it does not prohibit a temporary injunction from being rendered or the Court assuming subject matter jurisdiction. "In Tennessee, exhaustion is not statutorily required unless the statute 'by its plain words' requires it." *Thomas v. State Bd. of Equalization*, 940 S.W.2d 563, 566 (Tenn. 1997) (quotations omitted).

[10] Tenn. Code Ann. § 4-5-225(b) states "*A declaratory judgment shall not be rendered* concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order." (emphasis added).

In *Nat'l Coll. of Bus. & Tech*, which involved a pending, unresolved administrative petition, the Court of Appeals followed the text of Tenn. Code Ann. § 4-5-225(b), like Plaintiff has. It expressly stated that the trial court *had* subject matter jurisdiction over the suit, but "*may not render a declaratory judgment* 'unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.'" (emphasis added). Here, as shown in the Complaint, Plaintiff expressly does not ask the Court to do this. Compl. ¶ 12, at 31.

And while the text of the statute should end the discussion, the seminal cases on the UAPA frame the exhaustion of remedies requirement as "asking" or "requesting" a declaratory order with the agency first before filing suit, *not waiting until a refusal*.[11]

Schofield does state, "The UAPA does not permit an inmate to seek a declaratory judgment in Chancery Court, however, unless the inmate has first petitioned TDOC for a declaratory order and been refused." 368 S.W.3d at 464-65. But even *Schofield*, itself, elsewhere frames the exhaustion requirement as asking or requesting the agency for a declaratory order before filing suit.[12] Regardless, *Schofield* is distinguishable. It did not involve urgent invocations of extraordinary relief on a truncated timetable or irreparable harm and instead concerned the procedures an inmate must follow to dispute the determination of parole eligibility when the

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[11] *Colonial Pipeline v. Morgan,* 263 S.W.3d 827, 842 (Tenn. 2008) *(*stating "In no uncertain terms, [Section 4-5-225] requires a prospective plaintiff *to make a request* for a declaratory order with an agency *before* bringing an action for a declaratory judgment in the Chancery Court."); *Watson v. Dept' of Corr.*, 970 S.W.2d 494, 497 (Tenn. Ct. App. 1998) (stating "The plain language of [Section 4-5-225] requires a petition to *request* a declaratory order from the agency prior to filing a petition for declaratory judgment.")

[12] *Schofield,* 368 S.W.3d at 465 (stating "While the record establishes that Petitioner administratively appealed the Board's decision denying him parole, Petitioner's administrative appeal to the Board *does not satisfy the statutory requirement that Petitioner ask* TDOC *for a declaratory order before proceeding to court*. Conspicuously absent from this record is any proof that Petitioner *asked* TDOC for a declaratory order.")(emphasis added).

inmate is serving consecutive determinate sentences. *Schofield*, 368 S.W.3d at 459. In *Schofield*, the Petitioner/Plaintiff had ample time to let the 60-day clock run for the agency to decide whether or not to grant the declaratory order. Here, Plaintiff does not. The UAPA's exhaustion of remedies requirement by its terms prohibits the Court from issuing a declaratory judgment before the agency has had a change to rule on it. It does not bar the situation asserted here, where a State Department issues an unpromulgated rule outside of its authority that will cause irreparable harm.

The Injunction Bond Is Appropriate

The Department takes issue with the injunction bond that the Court required as part of its issuance of the Temporary Restraining Order. Defs.' Br. at 33-34. It asserts that the amount of any injunction bond should be $450,000 because it is 15% of the $3,000,000 that CARES receives for administering the IAP program and takes issue with the Plaintiff's initiation of litigation less than two weeks before open enrollment. *Id.* at 34-35.[13] The Department's arguments should fail.

As the Court of Appeals has recognized, Federal Rule of Civil Procedure 65(c) is "essentially identical to the Tennessee rule." *South Cent. Tenn. R.R. Auth. V. Harakas*, 44 S.W.3d 912, 917 (Tenn. Ct. App. 2000). And cases in the Sixth Circuit have routinely found that, *despite the language of the Rule*, courts enjoy wide discretion over an injunction bond especially in cases involving the public interest or constitutional violations. [14] Indeed, the federal district court in

[13] But any timing issues are a function of the Department's decisions, not Plaintiff's. Plaintiff, through counsel, reached out to express serious concerns on September 4, 2026 (Harrell Cert. Attach. 1), shortly after the Department's August 18, 2026 Memorandum (**Compl. Ex. A**), submitted its original Petition for Declaratory Order on September 29 (**Compl. Ex. J**), reached out again on October 6th, 2026 following the Department's October 1st Memorandum (**Compl. Ex. P.**) without receiving a substantive response from the Department. Harrell Cert. ¶ 5.

[14] *Moltan Co v. Eagle-Picher Indus*., 55 F.3d 1171, 1176 (6th Cir. 1995) ("While we recognize that the language of Rule 65(c) appears to be mandatory, and that many circuits have so interpreted it, the rule in our circuit has long been that the district court possesses discretion over whether to require the posting of security. *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 539 (6th Cir.

Davids v. Adams, which involved very similar facts, used its discretion under Rule 65(c) to require no bond. 2025 U.S. Dist. LEXIS 143000, *47 (D. Idaho July 24, 2025). Here, the action seeks to enjoin the Department from enforcing an unpromulgated rule that is in excess of the Agency's authority, that conflicts with federal law in multiple ways, and that will harm the public health. The bond is appropriate.

It Is Unnecessary at This Stage of the Litigation to Consider Plaintiffs' Claims under 42 U.S.C. § 1983

The Department argues that Plaintiff's claims under 42 U.S.C. § 1983 may not properly be joined with an action for judicial review of an administrative action. Defs.' Br. at 19. The Plaintiff's Section 1983 claims assert a violation, under color of state law, of rights protected by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Compl. at 29-30. The Plaintiff requests an award of attorneys' fees pursuant to 42 U.S.C. § 1988. *id.* at 32.

The Department is partly correct, but the status of Plaintiff's Section 1983 claim does not affect Plaintiff's right to a temporary injunction, which is amply supported by Plaintiff's other claims discussed above. The Tennessee Supreme Court has ruled that a plaintiff may join a claim for attorneys' fees under 42 U.S.C. § 1983 with an action under the UAPA for judicial review of an agency' administrative action. *Wimley v. Rudolph,* 931 S.W.2d 513, 517 (Tenn. 1996). However, *Wimley* holds that a Section 1983 claim may not be joined with a suit for judicial review for purposes of obtaining injunctive relief. Plaintiff acknowledges that, under *Wimley* and the cases

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1978), *cert. denied*, 440 U.S. 944 (1979); *Urbian v. Knapp Bros. Manuf. Co.*, 217 F.2d 810, 815-16 (6th Cir. 1954), *cert. denied*, 349 U.S. 930 (1955)."); *see also*, *NACCO Materials Handling Grp., Inc. v. Toyota Materials Handling USA, Inc*., 246 Fed. Appx. 929, 952-953 (6th Cir. 2007); 13 Moore's Federal Practice, § 65.52 (3d Ed.)

cited by the Department, the Complaint should not have sought declaratory and injunctive relief pursuant to Section 1983 but should have limited the remedy sought pursuant to Section 1983 to a request for attorneys‘ fees.

The Plaintiff therefore intends to amend its complaint to clarify its position and will also clarify that the Equal Protection and Due Process violations *do* support a declaratory order invalidating the Department’s rule pursuant to Tenn. Code Ann. § 4-5-322(h)(1). However, it is unnecessary to consider the Fourteenth Amendment violations at this time in the context of Plaintiff's request for a temporary injunction, since there are independent grounds for granting such relief. *State v. Taylor*, 70 S.W.3d 717, 720 (Tenn. 2002).

CONCLUSION

For the foregoing reasons and as originally stated, the proposed temporary injunction should issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document as well as Reply Ex. 1, Second Declaration of Jessica Hoke, Reply Ex. 2, 2025 HHS Vacated Notice, and Reply Ex. 3, 2012 EVEA Verification Excerpt, were filed electronically with the Clerk and Master and sent via e-mail to the following addresses on October 30th, 2026.

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