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IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

PAMELA MOSES,	)	
	)	
Plaintiff,	)	**Case No. CT-1579-19**
	)	**Division I**
v.	)	
	)	**Judge Felicia Corbin-Johnson**
MARK GOINS, TRE HARGETT, and JONATHAN SKRMETTI, in their official capacities,	)	**Judge Suzanne S. Cook**
	)	**Judge Barry Tidwell**
	)	
Defendants.	)	

RESPONSE IN OPPOSITION TO MOTION OF DEFENDANT SKRMETTI FOR JUDGMENT ON THE PLEADINGS

Defendant Skrmetti's Motion for Judgment on the Pleadings is a transparent attempt to belatedly justify the Attorney General's inexcusable failure to participate in discovery. Blackletter law shows that Skrmetti's sovereign immunity arguments are entirely meritless; both a clear statutory exception (Tenn. Code Ann. § 1 3-121) and a longstanding common law exception (the "*Colonial Pipeline* exception") apply. So too with standing: the Tennessee Supreme Court case *City of Memphis v. Hargett* is virtually indistinguishable from this case with respect to standing, and there the Court ruled that standing existed as to the Attorney General, Secretary of State, and Coordinator of Elections in a declaratory judgment lawsuit challenging a new voter identification law. *City of Memphis v. Hargett*, 414 S.W.3d 88, 99 (Tenn. 2013).

Defendant Skrmetti, who has been a named party in this case for over two years, was content to participate as a defendant when he could affirmatively move to quash Plaintiff's efforts to obtain discovery from non-parties while wholly ignoring his own discovery responsibilities as a party to this case. He did not raise sovereign immunity or standing as a defense in either his

motion to dismiss or motion to stay discovery while his motion to dismiss was pending. *See generally* Defs.' Mem. in Support of Mot. to Dismiss; Defs.' Mem. in Support of Mot. to Stay Discovery. This was consistent with the Attorney General's participation in *Falls v. Goins*, 673 S.W.3d 173 (Tenn. 2023), a voting rights case which Defendant Skrmetti argued was so similar to this case as to merit reconsideration of the Panel's Order on Defendants' Motion to Dismiss.[1] The Attorney General participated **as a named-defendant throughout the entire duration of that case** (including an appeal to the Tennessee Supreme Court) without raising sovereign immunity or standing as a basis to dismiss the voting rights claims against him.

Skrmetti filed this motion only after Plaintiff revealed to the Panel that he has refused to search for any documents responsive to Plaintiff's discovery requests and the Panel questioned his non-participation at a hearing on Plaintiff's motion to compel. To distract from his decision to forgo raising sovereign immunity and standing defenses at any point over the course of the past few years and his failure to comply with his discovery obligations, Defendant Skrmetti claims that Plaintiff asserted "for the first time" that "she is entitled to seek substantive relief against the Attorney General" in a motion to compel filed in April 2024, Mot. at 5, but that is patently false. Plaintiff filed suit against "Defendant Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, Tre Hargett, in his official capacity as the Secretary of State for the State of Tennessee, **and Jonathan Skrmetti, in his official capacity as Attorney General and Reporter for the State of Tennessee."** Second Amended Complaint ("SAC") at p. 1 (emphasis added); *see also id.* ¶ 19 (in the "Parties" section of the complaint, alleging: "Defendant Jonathan Skrmetti is sued in his official capacity as the Attorney General and Reporter for the State of Tennessee.").

[1] *See* Defs.' Mot. to Revise and Permit Interlocutory Appeal.

Plaintiff made no distinction among the defendants with respect to the manner in which they would participate as a defendant in this case, and she petitioned the Panel to: "**[d]irect Defendants** . . . to immediately restore Plaintiff's right to vote and permit her to register to vote and vote in Tennessee elections;" "**[e]njoin Defendants** . . . from preventing Tennessee citizens released from incarceration . . . related to any of the Permanent Disenfranchisement Statutes from registering to vote and exercising the right to vote;" "**[r]equire Defendants** . . . to notify all people with past felony convictions under either of the Permanent Disenfranchisement Statutes . . . that they may lawfully regain their voting rights;" and "**[r]equire Defendants** . . . to engage in and take such additional steps as this Cout deems just and appropriate." SAC at pp. 39-41 (emphases added). In other words, Plaintiff brought claims against Defendant Skrmetti and requested relief in connection with his alleged conduct. With claims against all three named defendants pending, Plaintiff served each defendant with written discovery, defining the words "you" and "your" in her discovery requests to "mean Defendant Mark Goins, in his official capacity as Coordinator of Elections, Tre Hargett, in his official capacity as Secretary of State of Tennessee, [and] **Jonathan Skrmetti, in his official capacity as the Attorney General for the State of Tennessee**." *See* Plf.'s First RFPs (emphasis added) (excerpt attached as **Exhibit A**); Plf.'s Second RFPs (emphasis added) (excerpt attached as **Exhibit B**).

The only reason Plaintiff specifically raised Defendant Skrmetti's failure to search for responsive documents with the Panel for the first time in April 2024 is that Plaintiff was previously unaware of Defendant Skrmetti's refusal to participate in discovery. Plaintiff was unaware of Defendant Skrmetti's abdication of his obligations under the Tennessee Rules of Civil Procedure for good reason: all three defendants, including Defendant Skrmetti, jointly served responses to Plaintiff's discovery requests, which represented that "**defendants are performing** a reasonable

inquiry and search for information." Defs.' First RFP Response, at 3 (emphasis added) (excerpt attached as **Exhibit C**); Defs.' Second RFP Response, at 3 (excerpt attached as **Exhibit D**). Nor can there be any doubt that these responses were from all three defendants as, when they supplemented their objections and responses in June 2023, they were explicit in stating that "Defendants, Tennessee State Coordinator of Elections Mark Goins, Tennessee Secretary of State Tre Hargett, **and Tennessee Attorney General and Reporter Jonathan Skrmetti** . . . supplement **their** previous objections and responses." Defs.' Supp. First RFP Response, at 1 (emphasis added) (excerpt attached as **Exhibit E**). Through these and other actions,[2] Defendant Skrmetti created the impression that he was participating in discovery, and Defendant Skrmetti's non-participation was only uncovered during a meet-and-confer teleconference in the Spring of 2024, when his counsel indicated that Defendant Skrmetti had not undertaken any searches for responsive documents.

Setting aside Defendant Skrmetti's illusory justification for waiting over two years to raise sovereign immunity and standing defenses, the Court should find that Defendant Skrmetti's motion is meritless for two reasons. First, Plaintiff's claims against Defendant Skrmetti for injunctive and declaratory relief are not barred by sovereign immunity because they fall within well-settled carveouts to sovereign immunity under Tennessee law. Second, Plaintiff has standing to maintain her claims against Defendant Skrmetti because her alleged injury is fairly traceable to Defendant

[2] For example, Defendants' first interrogatory responses state that "Tennessee Attorney General and Reporter Jonathan Skrmetti, Tennessee Secretary of State Tre Hargett, and Tennessee State Coordinator of Elections, Mark Goins, in their official capacities only (collectively 'Defendants'), pursuant to Rule 33 of the Tennessee Rules of Civil Procedure submit the following objections and responses to Plaintiff's First Set of Interrogatories to Defendants." Defs.' First Interrogatory Response, at 1 (excerpt attached as **Exhibit F**). That response also stated that "Defendants are performing a reasonable inquiry and search for information" and some responses are specifically responses from Defendant Skrmetti. *See, e.g.*, *id.* at 5 (responding that "Defendants Skrmetti and Hargett do not 'communicate' with County Elections Commissions").

Skrmetti's alleged conduct and can be redressed by a favorable court order against the Attorney General. Accordingly, the Panel should deny Defendant Skrmetti's motion.

LEGAL STANDARD

"[A] motion for judgment on the pleadings is 'in effect a motion to dismiss for failure to state a claim upon which relief can be granted.'" *King v. Betts*, 354 S.W.3d 691, 709 (Tenn. 2011) (quoting *Timmins v. Lindsey*, 310 S.W.3d 834, 838 (Tenn. Ct. App. 2009)). "*Such a motion admits the truth of all relevant and material averments in the complaint* but asserts that such facts cannot constitute a cause of action." *Timmins*, 310 S.W.3d at 838 (emphasis added). In considering a motion for judgment on the pleadings, a court "should construe the complaint liberally in favor of the plaintiff taking all of the allegations of fact therein as true." *Waldron v. Delffs*, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998). A judgment on the pleadings should not be granted "unless the moving party is clearly entitled to judgment." *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991). The Tennessee Rules of Civil Procedure embody a "strong preference" for "cases stating a valid legal claim brought by Tennessee citizens be decided on their merits." *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d 422, 432 (Tenn. 2011).

ARGUMENT

I. Plaintiff's Claims Against Defendant Skrmetti Are Not Barred by Sovereign Immunity

Contrary to Defendant Skrmetti's assertions otherwise, Mot. 8-11, Plaintiff's claims against the Attorney General are not barred by sovereign immunity. Skrmetti concedes that Tennessee law allows a state officer to be sued to prevent enforcement of an unconstitutional law, or when a state statute waives sovereign immunity. *Id.* at 7-8. Both exceptions apply here.

While "American courts generally reject the archaic legal fiction that the sovereign can do no wrong," Tennessee courts have "interpreted [the] state constitution as upholding the doctrine

of sovereign immunity." *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 848 (Tenn. 2008). "[T]he Tennessee Constitution provides that '[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.'" *Smith v. Tenn. Nat'l Guard*, 551 S.W.3d 702, 708 (Tenn. 2018) (quoting Tenn. Const. art. I, § 17). "The traditional construction of the clause is that suits cannot be brought against the State unless explicitly authorized by statute." *Colonial Pipeline*, 263 S.W.3d at 849. This construction "generally extends to . . . state officers acting in their official capacity." *Id.*

As Skrmetti concedes, there are two sets of circumstances under which sovereign immunity does not bar a lawsuit against a state officer. Mot. at 7-8. First, as noted above, the General Assembly may exercise its authority "to waive Tennessee's sovereign immunity and to prescribe the terms and conditions under which the State may be sued." *Smith*, 551 S.W.3d at 708-09. Second, "sovereign immunity does not bar a declaratory judgment or injunctive relief against state officers to prevent the enforcement of an unconstitutional statute." *Colonial Pipeline*, 263 S.W.3d at 854. This is because "in those incidences the officials do not act under the authority of the state, i.e., their actions are *ultra vires*." *Payne v. Carpenter*, No. M2014-00688-COA-R3-CV, 2016 WL 4142485, at *3 (Tenn. Ct. App. Aug. 2, 2016). Here, Plaintiff's claims against Defendant Skrmetti are not barred by sovereign immunity because they fit each of the two aforementioned carveouts to the general prohibition of suits against state officials.

With respect to legislative waiver of sovereign immunity, "[t]he General Assembly clearly and unmistakably waived sovereign immunity by enacting Tennessee Code Annotated Section 1-3-121," *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 168 (Tenn. 2022), and this explicit statutory waiver of sovereign immunity encompasses Plaintiff's claims against Defendant Skrmetti. "The statute broadly declares:

'Notwithstanding any law to the contrary, a cause of action shall exist . . . for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action.'" *Id.* (quoting Tenn. Code Ann. § 1-3-121). Put differently, this waiver of sovereign immunity by the General Assembly "expressly recognizes the existence of causes of action regarding the legality or constitutionality of government action that seek declaratory or injunctive relief." *Id.* Plaintiff's claims against Defendant Skrmetti fall within this statutory waiver of sovereign immunity because she is an affected person—a Tennessee resident subject to the challenged permanent disenfranchisement statutes—seeking declaratory and injunctive relief in an action regarding the constitutionality of those statutes. *See, e.g.*, SAC ¶¶ 16 (alleging she was denied her voting rights by Defendants), 99-100, 121-23 (alleging she has been subjected to unconstitutional permanent disenfranchisement), pp. 39-41 (exclusively requesting declaratory and injunctive relief).

In a footnote, Defendant Skrmetti offers two arguments regarding why Tenn. Code Ann. § 1-3-121 does not waive the Attorney General's sovereign immunity in this case, Mot. at 8 n.6, but both arguments are meritless. As a threshold matter, Skrmetti appears to suggest that this well-accepted statutory carveout to sovereign immunity cannot apply here because Plaintiff did not cite the statute in her complaint. *See id.* (framing his discussion of the statutory carveout as a hypothetical about whether it could apply "if Plaintiff had invoked it"). But plaintiffs are not required to plead the existence of a statute barring sovereign immunity before anyone has even invoked sovereign immunity; it is sufficient for a plaintiff to plead facts that establish the applicability of this type of statute.[3] As such, it is no surprise that Defendant Skrmetti fails to offer

[3] *See, e.g., Taylor v. NYC*, No. 20-cv-5036, 2020 WL 4369602, at *2 (S.D.N.Y. July 30, 2020) (considering whether plaintiff "plead any facts that would give rise to an inference that he is suing under a statute that waives the DOJ's sovereign immunity"); *Houston Indep. Sch. Dist. v. Christoy*, No. 06-cv-1692, 2006 WL 2168503, at *2 (S.D. Tex. July 31, 2006) (analyzing whether the

any authority supportive of the baseless suggestion that a plaintiff needs to expressly reference a statutory carveout of sovereign immunity in her complaint.

Separately, Defendant Skrmetti's merits argument against the application of Tenn. Code Ann. § 1-3-121 fares no better. Skrmetti appears to suggest that the statutory carveout does not apply because "Plaintiff has not alleged that the Attorney General has taken any 'action' against her." Mot. at 8 n.6. But this argument ignores Plaintiff's allegation that Defendant Skrmetti has denied Plaintiff the "right to vote" (SAC ¶ 16) in contravention of the relevant legal standard for a motion for judgment on the pleadings (*i.e.*, that the Panel accept all factual allegations in the complaint as true). In any event, as noted above, Plaintiff's claims against Defendant Skrmetti plainly meet the requirements in Tenn. Code Ann. § 1-3-121 because she is an "affected person[] who [is] seeking declaratory and injunctive relief, rather than damages, and challenging the legality of a governmental action." *Parents' Choice Tenn. v. Golden*, No. M2022-01719-COA-R3-CV, 2024 WL 1670663, at *18 (Tenn. Ct. App. Apr. 18, 2024). To the extent that Defendant Skrmetti is pushing back on the nature of the Attorney General's actions against Plaintiff, Defendant Skrmetti appears to be conflating the issue of standing with the issue of Tenn. Code Ann. § 1-3-121's sovereign immunity waiver, which does not depend on the type of "action" alleged against a particular defendant.

Independent of the applicability of Tenn. Code Ann. § 1-3-121, Plaintiff's claims against Defendant Skrmetti are not barred by sovereign immunity because they meet what Defendant

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plaintiff "cite[d] any federal statute or constitutional provision under which the Government has waived sovereign immunity" *or* whether the plaintiff "plead any facts that would establish a waiver of sovereign immunity in th[e] case"); *Quality Mech. Contractors, Inc. v. Moreland Corp.,* 19 F. Supp. 2d 1169, 1172 (D. Nev. 1998) (rejecting defendant's argument that plaintiff did not point to a statute waiving sovereign immunity and holding a party "has sufficiently pled jurisdiction" if "the party alleges facts that if proved would establish jurisdiction"); *cf. Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1211–12 (9th Cir. 1980) (finding that allegations in plaintiff's complaint demonstrated federal jurisdiction even though plaintiff did not cite a federal statute).

Skrmetti refers to as the "*Colonial Pipeline* exception." This exception "does not deal with a waiver of immunity by statute." *Colonial Pipeline*, 263 S.W.3d at 851 n.17. Rather, the Tennessee Supreme Court has held that "sovereign immunity simply does not apply to a declaratory judgment action challenging the constitutionality of a statute against state officers." *Id.* at 853. Under those circumstances, "the officials do not act under the authority of the state." *Payne*, 2016 WL 4142485, at *3. In other words, "[b]ecause sovereign immunity does not apply, a waiver is unnecessary." *Colonial Pipeline*, 263 S.W.3d at 853. Here, the "*Colonial Pipeline* exception" applies to Plaintiff's claims against Defendant Skrmetti because Plaintiff has filed a declaratory judgment action against a state officer challenging the constitutionality of Tennessee's permanent disenfranchisement statutes. *See, e.g.*, SAC ¶¶ 16 (alleging she was denied her voting rights by Defendants), 99-100, 121-23 (alleging she has been subjected to unconstitutional permanent disenfranchisement), pp. 39-40 (requesting declaratory relief).

Similar to his statutory waiver argument, Defendant Skrmetti also asserts that this exception does not apply because "the Attorney General is not an official 'responsible for enforcing' an allegedly unconstitutional statute.'" Mot. at 9 (citing *Colonial Pipeline*). But he cites no precedent supporting the argument that the "*Colonial Pipeline* exception" contains any requirement of direct enforcement responsibility. The Tennessee Supreme Court held in *Colonial Pipeline* that sovereign immunity does not apply to "a declaratory judgment action challenging the constitutionality of a statute against state officers," full stop. *Colonial Pipeline*, 263 S.W.3d at 853. Contrary to Defendant Skrmetti's assertion otherwise, Mot. at 9, the Tennessee Supreme Court has not suggested that a plaintiff asserting such an action must also demonstrate that the state official alleged to be engaged in *ultra vires* conduct directly enforces the challenged statute. Indeed, the Tennessee Supreme Court has interpreted Tenn. Code Ann. § 29-14-107 "*to require*

the Attorney General to be a party defendant in any proceeding where the constitutionality of the Act of the legislature is before the Court on declaratory judgments proceeding." *Cummings v. Beeler*, 223 S.W.2d 913, 916 (Tenn. 1949) (emphasis added).

Defendant Skrmetti acknowledges the Tennessee Supreme Court's *Cummings* decision and the line of cases which interpret Tenn. Code Ann. § 29-14-107 to require the Attorney General's participation as a party defendant in declaratory judgment actions challenging the constitutionality of statutes, Mot. at 10, but he attempts to sidestep those cases by asserting that those cases "deviate from modern practice" without identifying any on-point precedent supportive of his assertion, *id.* To the contrary, modern practice does support the practice of requiring the Attorney General to be a party defendant in such cases regardless of whether the Attorney General is directly responsible for enforcing the challenged statutes.

In recent cases, courts have rejected the Attorney General's attempts to make the very same argument that Defendant Skrmetti raises here. For instance, only five years ago, the Attorney General argued that he was "not a proper defendant to invoke the *Ex Parte Young* exception to sovereign immunity" in a case where he purportedly "lack[ed] a sufficient connection to the Sex Offender Registration Act because enforcement of the Act 'is statutory tasked to the Tennessee Bureau of Investigation.'" *Burns v. Helper*, No. 18-cv-01231, 2019 WL 5987707, at *5 (M.D. Tenn. Oct. 24, 2019), *report and recommendation adopted*, No. 18-cv-01231, 2019 WL 5964546 (M.D. Tenn. Nov. 13, 2019). The court rejected this argument, cited the *Cummings* line of Tennessee cases, and held that, "in the absence of any contrary argument or legal authority from [the Attorney General], the Court should decline to depart from its earlier finding that the [Attorney General] [wa]s a proper defendant to th[e] action." *Id.* Other recent decisions have reached similar conclusions. *See, e.g.*, *Kelly v. Lee*, No. 18-cv-00170, 2020 WL 2120249, at *3 (E.D. Tenn. May

4, 2020) (holding the Attorney General was "a proper party in th[e] case to the extent that the constitutionality of the Act is being challenged"). These decisions are aligned with the Attorney General's recent participation as a party defendant in the *Falls v. Goins* voting rights case. *See Falls*, 673 S.W.3d 173.

For the aforementioned reasons, the Panel should find that Plaintiff's claims against Defendant Skrmetti are not barred by sovereign immunity.

II. Plaintiff Has Standing to Maintain Her Claims Against Defendant Skrmetti

Defendant Skrmetti errs in asserting that Plaintiff lacks standing to maintain her claims against him. Mot. at 11-13. Plaintiff has alleged an injury fairly traceable to Defendant Skrmetti's conduct that can be redressed by a favorable court order against the Attorney General.

To establish constitutional standing, a plaintiff must "show an injury that is 'distinct and palpable,'" show some "causal connection between the alleged injury and the challenged conduct," and show the injury is "capable of being redressed by a favorable decision of the court." *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013). The "causation element is not onerous," and only entails showing that the injury is "fairly traceable" to the defendant at issue. *Id*. "The stage of the proceedings impacts the extent of the burden imposed upon a plaintiff to establish injury, causation, and redressability." *Rutan-Ram v. Tenn. Dep't of Children's Servs.*, No. M2022-00998-COA-R3-CV, 2023 WL 5441029, at *7 (Tenn. Ct. App. Aug. 24, 2023). When a court "address[es] standing based solely on the pleadings, [it] must accept the allegations of fact as true." *Keller v. Est. of McRedmond*, 495 S.W.3d 852, 867 n.20 (Tenn. 2016) (citation and internal quotations omitted).

City of Memphis v. Hargett offers the clearest path for rejecting Defendant Skrmetti's standing argument. In that case, voters challenged an allegedly unconstitutional voting law about voter identification, seeking a declaratory judgment against the Attorney General, Secretary of

State, and Coordinator of Elections to remedy the fact that they could not vote. *City of Memphis*, 414 S.W.3d at 99. Defendants challenged standing, and the Tennessee Supreme Court found standing existed. *Id.* First, the Court found "[t]he individual Plaintiffs have met the first, or 'injury,' element of standing by asserting **multiple infringements of their right of suffrage**, including claims that the photo ID requirement established by the Act unlawfully burdens their ability to cast an in-person ballot, impermissibly adds a voting qualification to those enumerated in our constitution, and **violates their right to equal protection** by imposing different requirements for in-person and absentee voters." *Id.* (emphasis added). Here, Plaintiff likewise charges multiple unconstitutional infringements of her right to suffrage, under multiple theories (*e.g.*, equal protection, substantive due process, and the Free and Equal Elections Clause). Next, the Court went on to address the two elements of standing challenged by Defendant Skrmetti in this case:

> **As to the second element, [Plaintiffs] have alleged facts that demonstrate a fairly traceable causal connection between their claimed injuries and the challenged conduct. Specifically, they maintain that the Defendants' enforcement of the Act precluded them from voting** without presenting one of the forms of photo ID recognized as valid under the Act, which in turn caused the various asserted infringements of their constitutional right to vote. [Plaintiffs] have **likewise met the third element of standing because a declaratory judgment in their favor on any of their constitutional claims would render the photo ID requirement unenforceable, thereby allowing them to exercise their right to vote free of its constraints**.

Id. (emphasis added). Here, Plaintiff is in the exact same position: "Defendants' enforcement of [the statutes at issue] preclude[] [Plaintiff] from voting . . . which in turn cause[s] the various asserted infringements of [her] constitutional right to vote." *Id.* Finally, just like the plaintiffs in *City of Memphis*, Plaintiff meets the "third element of standing because a declaratory judgment in [her] favor on any of [her] constitutional claims would render the [challenged statutes] unenforceable, thereby allowing [her] to exercise [her] right to vote . . . ." *Id.*

If there was standing to sue the Attorney General in *City of Memphis*, there is standing here. More specifically, and contrary to Defendant Skrmetti's assertion otherwise, Plaintiff has alleged sufficient facts to demonstrate that her injury is fairly traceable to Defendant Skrmetti's alleged conduct. As an initial matter, Defendant Skrmetti does not dispute that Plaintiff has alleged a "distinct and palpable" injury. *See* Mot. at 12. Rather, Defendant Skrmetti asserts that Plaintiff has not alleged a connection between her alleged injury and the Attorney General's alleged conduct. *Id.* However, Defendant Skrmetti improperly disregards Plaintiff's allegation that she has "been denied [voting] registration" by defendants, including Defendant Skrmetti. SAC ¶ 16.

In an attempt to minimize this highly relevant allegation, Defendant Skrmetti argues Plaintiff did not "specifically allege the Attorney General has denied any such attempt," Mot. at 12, but this argument misses the mark. Just like in *City of Memphis*, it is entirely permissible for Plaintiff here to plead allegations that apply to multiple named state official defendants, and she need not specifically name each defendant in connection with each allegation. The allegation in question refers to all three defendants, which unquestionably includes Defendant Skrmetti. Defendant Skrmetti also attempts to avoid the implications of this allegation by disputing it. *See id.* (noting Plaintiff could not have specifically alleged the Attorney General denied voting registration). But this argument is impermissible as his motion for judgment on the pleadings requires him to "admit[] the truth of all relevant and material averments in the complaint." *Timmins*, 310 S.W.3d at 838. At this stage of the case, the Panel "should construe the complaint liberally in favor of the plaintiff," *Waldron*, 988 S.W.2d at 184, and the Panel should accept as true the allegation that Plaintiff has "been denied [voting] registration" by Defendant Skrmetti (SAC ¶ 16) and hold that Plaintiff has demonstrated the requisite causal connection between the alleged injury and Defendant Skrmetti's alleged conduct.

In any event, Plaintiff's Attorney General-specific allegations about the Attorney General's role in interpreting state election law suffices to establish standing on its own. Specifically, Plaintiff alleges Defendant Skrmetti issues opinions interpreting Tennessee law. SAC ¶ 19. Defendant Skrmetti wrongly asserts that Plaintiff cannot meet the causal-connection prong of the standing inquiry through this allegation because she "has not explained how this duty has any connection to the enforcement of a statute barring her from registering to vote because of her conviction," *id*. But it is obvious that the person charged with interpreting election laws on behalf of the state, including the felony disenfranchisement laws, and providing guidance to other defendants about those laws, plays a role in enforcing those laws. Here, the Panel should give Plaintiff "the benefit of all the inferences that can be reasonably drawn from the pleaded facts," *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49, 54 (Tenn. Ct. App. 2004), including the inference that Plaintiff's injury is fairly traceable to the Attorney General's opinions interpreting and enforcing Tennessee voting laws, which is an inference reasonably drawn from Plaintiff's allegations concerning the Attorney General's interpretive authority and his role in denying Plaintiff registration. *See* SAC ¶¶ 16, 19; *see also City of Memphis*, 414 S.W.3d at 97-101 (plaintiffs "alleged facts that demonstrate a fairly traceable causal connection between their claimed injuries and the challenged conduct. Specifically, they maintain that the **Defendants' enforcement of the Act precluded them from voting** . . . ." (emphasis added)). This inference is particularly reasonable because the "opinion[s] of the attorney general may be persuasive," *Whaley v. Holly Hills Mem'l Park, Inc.*, 490 S.W.2d 532, 533 (Tenn. Ct. App. 1972), and "government officials rely upon them for guidance," *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995). *See also Caney Fork Elec. Coop., Inc. v. Tenn. State Bd. of Equalization*, No. M2016-

00316-COA-R12-CV, 2016 WL 5385868, at *2 n.3 (Tenn. Ct. App. Sept. 23, 2016) ("[I]t has long been the position of the Attorney General that state officials should follow his advice.").

For example, it is plausible that Plaintiff, whose allegedly disqualifying felony convictions were procured via guilty plea, was denied the ability to register (SAC ¶ 16), in part, because the Attorney General issued numerous interpretive opinions which failed to account for the plain language of the Free and Equal Elections Clause noting "the right of suffrage . . . shall never be denied to any person entitled thereto, **except upon conviction by a jury** of some infamous crime." Tenn. Const. art. I, § 5 (emphasis added). The Attorney General has issued repeated opinions endorsing the disenfranchisement of convicted felons without distinguishing between those convicted by a jury and those convicted via a guilty plea. *See, e.g.*, Attorney General Opinion No. 20-02 (Feb. 25, 2020) ("Restoration of Voting Rights"), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2020/op20-02.pdf; Attorney General Opinion No. 20-06 (Mar. 26, 2020) ("Restoration of Voting Rights for Out-of-State Felons"), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2020/op20-06.pdf. For example, the Attorney General has interpreted Tennessee law to require that "*[a]ll individuals who have been convicted of a crime constituting a felony* . . . must meet the criteria for eligibility in subsections 202(a), (b), and (c), before they are eligible to apply for reinstatement of their voting rights." *Id.* (emphasis added).

For the purposes of this motion, the Panel can and should infer that the Attorney General's interpretative guidance (SAC ¶ 19), including guidance ignoring what appears to be an explicit constitutional requirement that felon disenfranchisement be premised only upon conviction by a jury, contributed to the denial of Plaintiff's attempt to register to vote by providing the legal framework that contributed to Defendant Skrmetti's co-defendants' decision to take action to deny Plaintiff the right to vote. *See Caney Fork*, 2016 WL 5385868, at *2 n.3 (quoting from an Attorney

General Opinion that "when a public official is aware of an Attorney General's opinion concerning an aspect of his official responsibilities, he or she is under a duty to conform his conduct with the view of [the Attorney General]." (quoting Attorney General Opinion No. 89-20 (Feb. 13, 1989)).

Additionally, while the Panel's analysis of causation should focus on the averments in Plaintiff's complaint, Defendant Skrmetti's attempt to depart from the pleadings and delve into the responsibilities of the Attorney General (Mot. at 12-13) ignores, among other things, the Attorney General's authority to request the Coordinator of Elections to conduct an investigation of the administration of the election laws. *See, e.g.*, T.C.A. § 2-11-202 (Coordinator of Elections can conduct an investigation "pursuant to the request of the attorney general and reporter"). This is but one mechanism through which Plaintiff's alleged injury (*i.e.*, the wrongful denial of her voting rights) may be fairly traceable to Defendant Skrmetti's conduct. It is possible that, pursuant to this statutory authority, Defendant Skrmetti requested the Coordinator of Elections to conduct an investigation of Plaintiff, which may have led to the denial of Plaintiff's voting registration. However, it is unknown whether this was the case given Defendant Skrmetti has refused to participate in discovery. And to the extent Defendant Skrmetti contends that he is not, in fact, the cause of any injury to Plaintiff, such contention is improper on a motion for judgment on the pleadings and would only become proper on a motion for summary judgment *after* discovery.

Ultimately, however, the Court need not get into any of this, because it can simply rely on the binding decision in *City of Memphis* considering and rejecting the Attorney General's analogous standing argument and holding that an allegation that "Defendants" including the Attorney General participating in enforcing voting rights statutes was sufficient.

Plaintiff can also show that a favorable court order against Defendant Skrmetti is capable of redressing her alleged injury. In particular, an order enjoining Defendant Skrmetti from issuing

further unconstitutional guidance concerning felon disenfranchisement, which might otherwise encourage wrongful investigations or prosecutions of Plaintiff, and requesting the Coordinator of Elections to investigate Plaintiff's right to vote as a result of her felony convictions would satisfy the redressability prong of the standing analysis.

In sum, Plaintiff has alleged sufficient facts which—in conjunction with the inferences that can be reasonably drawn from those facts—support standing to pursue her claims against Defendant Skrmetti.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion of Defendant Skrmetti for Judgment on the Pleadings.

Respectfully submitted,

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I hereby certify that the foregoing document has been served via email and the Court's electronic filing system on July 5, 2024, as follows:

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