DEATH PENALTY CASE
Case No. W1997-00097-SC-DDT-DD
EXECUTION SCHEDULED FOR May 21, 2026, at 10:00 a.m.

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

TONY VON CARRUTHERS,
Movant,

v.

STATE OF TENNESSEE,
Respondent.

MOTION FOR POST-CONVICTION DNA TESTING AND REQUEST TO APPOINT A SPECIAL MASTER PURSUANT TO TENN. S. CT. R. 12.4(E)

Maria DeLiberato*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

ATTORNEY FOR MOVANT
TONY VON CARRUTHERS

**pro hac vice* pending

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STATEMENT OF THE CASE

The State of Tennessee is on the verge of carrying out the execution of Tony Carruthers despite the fact that available, probative, and untested physical evidence exists that could confirm what Mr. Carruthers has been unequivocally arguing for three decades — that he is innocent of the kidnapping murders of Marcellos Anderson, Frederick Tucker, and Delois Anderson. Mr. Carruthers seeks access to forensic evidence collected in this case for DNA testing under the provisions of Tenn. Code Ann. § 40-30-304 (2024) and/or Tenn. Code Ann. § 40-30-305 (2024).

Mr. Carruthers files this motion for DNA testing access in this Court pursuant to Tennessee Supreme Court Rule 12.4(E) because the motion and related litigation may "potentially affect" the timing of the scheduled execution. *See* Rule 12.4(E) (mandating that once an execution date is set, if a proposed motion will potentially affect the timing of an execution, a defendant must file that motion in the Tennessee Supreme Court). Mr. Carruthers anticipates that, if granted, the DNA testing itself will be concluded prior to his May 21st execution date, so this Motion for Testing, in and of itself, is unlikely to affect the

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timing of his scheduled execution.[1] However, if the DNA results confirm Mr. Carruthers' innocence or cast doubt on the appropriateness of his death sentence, Mr. Carruthers will move to stay his execution. As such, Counsel files the Motion with this Court.

This Court can and should grant DNA testing on the face of this Motion, without the need for additional fact-finding by a special master. However, should this Court determine that there are factual matters of dispute, Mr. Carruthers requests the appointment of a special master to adjudicate these issues.

[1] Mr. Carruthers' federal counsel filed a claim under *Ford v. Wainwright*, 477 U.S. 399 (1986) that Mr. Carruthers is incompetent to be executed. The Shelby County Criminal Court rejected that claim, but an appeal of that denial is pending before this Court. *Carruthers v. State*, W1997-00097-SC-DDT-DD (Appellant's brief filed on 4/7/2026).

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STATEMENT OF THE FACTS

I. The State's case against Tony Carruthers was built upon circumstantial evidence and rested on the testimony of convicted felons and paid informants.

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). On March 3, 1994, their bodies were found in a grave in a Memphis cemetery. *Id.* Their bodies were found on top of one another, underneath a piece of plywood that was underneath a casket. Marcellos Anderson's hands were bound behind his back with cloth ties. Frederick Tucker was also bound with cloth ties at his hands and feet. Delois Anderson had two red socks knotted together wrapped around her neck, and one arm was tied behind her back with a pair of knotted pantyhose (Ex. 1, 1996 Trial Transcript, Vol. 13, p. 1864-1867).

Ms. Anderson had been reported missing, and the State believed her home was the scene of the kidnapping. The prosecution drew this conclusion based on the facts that Ms. Anderson did not take her purse with her, someone answered the phone when her niece telephoned the residence but failed to speak, and a half-eaten meal was found in Ms.

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Anderson's bedroom. The police collected multiple latent prints suitable for comparison from Ms. Anderson's house, including prints from the doorknobs and the phone receiver.

The State's ultimate theory at trial was that Mr. Carruthers, along with his co-defendants, James and Jonathan Montgomery, kidnapped Marcellos Anderson to rob him. *Carruthers*, 35 S.W.3d at 524. Marcellos Anderson was "heavily involved in the drug trade" and known to carry large amounts of cash and valuables. *Id.* It was Jonathan Montgomery who led authorities to the bodies in the grave, which led police to the involvement of his brother James. Jonathan was found hanged in his cell prior to trial. *Id.* at 524 n.2.

The case against Mr. Carruthers was originally dismissed in General Sessions Court for lack of evidence (Ex. 2, Docket and news article showing dismissal of charges). The State was only able to secure an indictment and proceed with its case against Mr. Carruthers after it enlisted the services of a career snitch named Alfredo Shaw, who testified to his purported confession (Ex. 3, Crimestoppers Report dated 4/3/94). In the words of the investigating officer,

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> This CI gave a statement that Tony Carruthers confessed to murders. This CI testified at the Grand Jury. When this information was received, Tony Carruthers [sic] case in General Sessions Court had been dismissed for lack of evidence. Without this information and his testimony in Grand Jury Carruthers would have been released.

Id.

The State's original theory of prosecution was based on Mr. Shaw's grand jury testimony that two brothers, Jerry and Terry Durham, hired Tony Carruthers to commit the three murders for $100,000 and a kilogram of cocaine (Ex. 4, Trans. Alfredo Shaw GJ Testimony). But before trial, Mr. Shaw recanted his grand jury testimony in a TV news statement where he confessed that the police had paid him to testify against Tony Carruthers. *See* Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (interview previously introduced as Ex. 5 (transcript) and Ex. 9 (video) in *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000), Response to Motion to Set Execution Date (filed Dec. 30, 2019)).

No forensic evidence linked Mr. Carruthers to the crime. *Carruthers*, 35 S.W.3dat 523–72 (established by omission). There were no eyewitnesses to the murder. *Id.* The fingerprints collected from Ms.

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Anderson's house excluded Mr. Carruthers and Mr. Montgomery, and it included 6 unidentified prints.[2]

At trial, the prosecution's case rested almost entirely on the testimony of convicted felons and paid informants. Jimmy Lee Maze Jr., "a convicted felon," testified that he had received two letters from Mr. Carruthers about a "master plan" to "make those streets pay me." *Carruthers*, 35 S.W.3d at 524. Mr. Maze then recounted a conversation he purportedly had with Mr. Carruthers discussing plans for the kidnapping. *Id.* Charles Ray Smith testified that Mr. Carruthers had commented to him, while working together on a prison work detail in a cemetery, that hiding a body under the grave of another would be a good way to dispose of a corpse. *Id.* Finally, Alfredo Shaw testified that Mr. Carruthers confessed to him. *Id.* at 528–29.

Mr. Carruthers was forced to represent himself at trial. The jury never heard about the any evidence regarding the fingerprints from Ms.

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[2] In 2022, the Memphis Police Department ran the unidentified prints in AFIS. *See* Ex. 5, Latent Fingerprint Report, dated 1/24/22. One print on the northwest bedroom door matched Ms. Anderson's niece, but there still remain 6 unidentified prints.

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Anderson's house — neither that there were unidentified prints — nor that Mr. Carruthers and Mr. Montgomery were excluded from the prints. The only putative "confession" in this case was obtained by Mr. Shaw—a career snitch. Much of the remaining evidence against Mr. Carruthers was circumstantial at best. For example, Nakeita Shaw testified that she witnessed Mr. Carruthers and James Montgomery at her home on the night of the kidnappings. *Id.* at 526. Without more, however, this testimony did little to inculpate Mr. Carruthers and it has never been asserted that Mr. Carruthers was unacquainted with the Montgomery brothers. Likewise, Chris Hines's testimony that Jonathan Montgomery beeped him and said "[m]an, a n——r got them folks," apparently meaning "Cello and them." *Id.* at 526. But this testimony does not inculpate Mr. Carruthers, as it only shows that Jonathan Montgomery had knowledge of the murders, which he clearly did since he led police to the location of the bodies.

Both Mr. Montgomery and Mr. Carruthers were convicted and sentenced to death. On direct appeal, this Court found that James Montgomery was so prejudiced by Mr. Carruthers' forced self-representation that Mr. Montgomery was entitled to a new trial. *State*

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v. Carruthers, 35 S.W.3d 516, 553–54 (Tenn. 2000) (reversing Montgomery's conviction and death sentence because "the record demonstrates that Montgomery was severely prejudiced by Carruthers' self-representation…").

II. In the decades since Mr. Carruthers' conviction and death sentence, the circumstantial evidence against him at trial was further undermined, and in some instances, was outright retracted.

A. Forensic Testing conducted on significant physical evidence prior to co-defendant James Montgomery's re-trial affirmatively excluded Mr. Carruthers.

As part of the re-trial proceedings, co-defendant James Montgomery sought forensic testing on multiple pieces of physical evidence collected from both the kidnapping scene and the grave site scene where the bodies were located. Testing revealed several pieces of critical information (Ex. 6, Affidavit of Alan Keel, Attachment 2).

First, the testing did not reveal any DNA matches to Mr. Montgomery or Mr. Carruthers on the evidence. A majority of the samples were either too small to produce a profile under 2003 technology, were inconclusive, or matched the victims. However, there

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was one robust male profile on a white blanket that was buried with the victims. *Id*. Mr. Carruthers, Mr. Montgomery, and the male victims were excluded as a source of the DNA. The unknown male profile was suitable for upload into the Combined DNA Index System (CODIS) database. The last report Mr. Carruthers obtained, through a request under James Montgomery's case, was in 2019 and indicated that there were no hits in CODIS (Ex. 7, 2019 CODIS Report).

In the wake of the release of the DNA results, the State offered and Mr. Montgomery accepted an *Alford* plea to a reduced charge of three counts of second-degree murder. *See North Carolina v. Alford*, 400 U.S. 25 (1970). Mr. Montgomery was sentenced to 27 years in prison on each count, to be run currently, and was released in 2016 (Ex. 8, James Montgomery Plea Form and Transcript).

B. From the time of Mr. Carruthers' arrest through the next 30 years, the State affirmatively concealed Alfredo Shaw's status as a paid government informant.

For thirty years, the State withheld information about Alfredo Shaw's status as a paid government informant. It did so despite repeated requests for exculpatory and impeachment materials. While bias is a classic form of impeachment, the damage to the State's theory

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from this information was particularly important because Alfredo Shaw himself had admitted in a confession to the media that he had been paid by the police for falsely implicating Mr. Carruthers.

The State's attempts to hide Mr. Shaw's status began as soon as Mr. Carruthers' prosecution commenced, as evidenced by State's repeated failures to disclose any information about Shaw's history as an informant. *See e.g.,* Ex. 9, Defense Supplemental Motion for Discovery and Inspection; Ex. 10, State's Response to Motion for Discovery; Ex. 11, Motion for the Disclosure of Impeaching Information; Ex. 12, Resp of State to Mtn for Disc. Of Impeaching Information.

Prior to trial, Alfredo Shaw went to the media and admitted that his grand jury testimony was false and given only as a result of pressure and payment from the State Attorney and law enforcement. *See* Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (interview previously introduced as Ex. 5 (transcript) and Ex. 9 (video) in *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000), Response to Motion to Set Execution Date (filed Dec. 30, 2019)).

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At trial, Mr. Carruthers, forced to act as his own counsel, called Mr. Shaw to the stand to admit his recantation from the media interview. Prior to calling Mr. Shaw, the Court called in Mr. Shaw's counsel, and in open court, cautioned that if Mr. Shaw repeated his recantation from the media interview: "The State has indicated that if that is indeed his testimony today, then they plan to seek indictments for aggravated perjury in both of those instances." (Ex. 13, 1996 Trial Transcript, Vol. 14, p. 2128.) After meeting with his client, Mr. Shaw's lawyer reported that Mr. Shaw would "testify that what he has testified before was all true and correct." *Id*. at 2136. Mr. Shaw kept his lawyer's promise and repeated for the jury the "confession" that Mr. Carruthers purportedly gave him (Ex. 14, 1996 Trial Transcript, Vol. 15, p. 2174-2178). Mr. Carruthers, acting *pro se*, attempted to discover if Mr. Shaw was a paid informant. The prosecutor successfully objected to the question and kept the jury from learning the truth. *Id*. at 2254.

In post-conviction, through counsel, Mr. Carruthers continued his quest to prove that Alfredo Shaw was indeed acting as paid informant for the State (Ex. 15, Letter from Charles R. Ray, post-conviction counsel, to John W. Campbell, Assistant District Attorney (Aug. 6,

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2002); Ex. 16, Letter from John W. Campbell, Assistant District Attorney to Charles R. Ray, post-conviction counsel (Aug. 26, 2002); Ex. 17, Letter from Charles R. Ray, post-conviction counsel, to John W. Campbell, Assistant District Attorney (Aug. 30, 2002)).

On September 12, 2002, post-conviction counsel filed a "Motion to Compel the State to Reveal All Agreements, Renumeration, Or Other Consideration Given To The State's Witnesses" (Ex. 18, Motion to Compel). The prosecution denied giving Mr. Shaw a deal but parsed carefully its denial of payment to Mr. Shaw:

> [T]he State again submits that Shaw was not given any deal in exchange for his testimony. Furthermore, the State submits that Shaw was not a 'paid government agent' planted in the jail to obtain evidence against petitioner.

(Ex. 19, Response of the State of Tennessee to Petitioner's Motion to Reveal All Agreements Given to State's Witnesses).

Concerned regarding the equivocations of the State, post-conviction counsel filed a second Motion to Compel specifically as it related to Alfredo Shaw (Ex. 20, Motion to Compel (Alfredo Shaw)). The post-conviction court ordered that the State file a written response "divulging whether Alfredo Shaw was or was not a paid government

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agent for either the county, state, or federal government during the time period he had conversations with petitioner in the Shelby County Jail." (Ex. 21, Dec. 3, 2002, Order). The prosecutor's response on December 10, 2002, asserted that Alfredo Shaw "was not a 'paid government agent' planted in the jail to get a statement from petitioner . . . The State does not understand why another Response is necessary." (Ex. 22, Response of the State of Tennessee). The State doubled down on this answer in a January 7, 2003, letter:

> I thought this matter was resolved by my earlier response. But just in case [sic], **I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. . . I do not know how much clearer I can be on this topic.**

(Ex 23, Letter from John W. Campbell, Assistant District Attorney General to Charles R. Ray, Post-conviction Counsel for Mr. Carruthers (Jan. 7, 2003) (emphasis added)).

Over the ensuing decades, Mr. Carruthers's counsel requested documents related to Alfredo Shaw's work as a confidential informant through Tennessee Public Records requests, Freedom of Information Act requests directed to federal law enforcement agencies, and through

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discovery in federal habeas proceedings. (Ex. 24, Letter from Timothy A. Beacham, Assistant District Attorney General to Richard L. Tennent, Assistant Federal Public Defender (Oct. 28, 2019); Ex. 25, Shelby County Sheriff's Office Public Records Redacted Response showing Shaw as a paid informant from 1991 to 1998).

Finally, on May 9, 2024, the Shelby County Criminal Court, Division V, ordered the Memphis Police Department to provide information regarding Alfredo's Shaw's employment as a confidential informant to the Shelby County District Attorney's Justice Review Unit (Ex. 26, Agreed Order). On August 6, 2024, Assistant District Attorney Kevin Rardin provided the counsel for Mr. Carruthers more than 20 pages of information regarding Alfredo Shaw's employment as a confidential informant. The documents included signed confidential agreements between Shaw and law enforcement dating back to mid-1980s and ledgers of payments to Mr. Shaw continuing until at least 2003 (Ex. 27, Shaw informant file).

C. Trial testimony from medical examiner that victims were buried alive has been proven false.

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For decades, the State has perpetuated the false narrative that the victims were buried alive, based entirely on the testimony of medical examiner Dr. O.C. Smith. *Carruthers*, 35 S.W.3d at 527. There was no scientific basis for this conclusion, and even Dr. Smith himself has subsequently disavowed this conclusion. (Ex. 28, Affidavit of Dr. O.C. Smith *(*"I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin."); Ex. 29, Testimony of Dr. Cleland Blake and Dr. George Nichols (post-conviction expert testimony that there was no scientific basis for Dr. Smith's trial testimony)).

To this day, public perception of this case is shaped by the mistaken belief that Mr. Carruthers buried the victims alive. *See, e.g.*, Evan Mealins, *Tennessee Supreme Court sets 2026 execution dates for Christa Pika, three others*, The Tennessean (Oct. 1, 2025), https://perma.cc/VG3H-KZ72 (claiming Carruthers was convicted of "burying alive three people"); WREG Staff, *Memphis man convicted of triple murder goes from death row to freedom*, WREG (Sept. 26, 2016), https://wreg.com/news/memphis-man-convicted-of-triple-murder-goes-

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from-death-row-to-freedom/ (recounting co-defendant Montgomery's release from prison and conviction for burying the victims alive).[3]

D. James Montgomery's Statement Exonerating Mr. Carruthers and Inculpating Ronnie Irving.

In 2010, co-defendant James Montgomery, while serving out his remaining sentence, gave a statement to an investigator with the Capital Habeas Unit indicating that he kidnapped Marcellos and Fred and that he dispatched Ronnie "Eyeball" Irving to kidnap Ms. Anderson. He confirmed to the investigator that Mr. Carruthers was not involved in the kidnapping or the murders. Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. To date, the unidentified physical evidence (the latent fingerprints or unknown male DNA profile) has not been compared to Mr. Irving.

1. Post conviction efforts for fingerprint testing

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[3] The State continues to assert this false narrative in the present day. "[T]rial testimony established that they had all died of injuries associated with being buried alive." *see* State's Brief at 9, *Carruthers v. State*, No. W2026-00226-CCA-R3-PD (Tenn. Crim. App. filed Mar. 23, 2026).

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On September 21, 2021, Mr. Carruthers, acting *pro se*, filed a petition for fingerprints analysis pursuant to Tenn. Code Ann. 40-30-401 (2021), et seq. On February 2, 2022, the State responded in opposition to Mr. Carruthers's *pro se* pleading. The Federal Public Defender for the Middle District of Tennessee filed a notice of intent to represent Mr. Carruthers in his fingerprints matter and filed a Reply to the State's opposition. On January 16, 2026, the Shelby County Criminal Court dismissed the request for fingerprint testing without an evidentiary hearing. The case remains on appeal. *Carruthers v. State*, No. W2026-00226-CCA-R3-PD.

2. Post conviction efforts for DNA Testing

In state post-conviction, Mr. Carruthers argued that his counsel was ineffective during pre-trial litigation for failing to retain a DNA expert, who would have testified: (1) DNA was available on blood found on "blanket-like cloth"; and (2) the DNA did not belong to the victim nor any of the three co-defendants. The post-conviction court rejected this claim, concluding that this testimony and DNA results "are only very minimally helpful to the petition. In no ways does this evidence negate all other proof in the case and it is rank speculation to assume that this

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indicates that a third party might have committed this crime." Carruthers *v. State*, No. W2006-00376-CCA-R3PD, 2007 WL 4355481, at *38 (Tenn. Crim. App. Dec. 12, 2007).

Mr. Carruthers next moved *pro se* in 2011 to reopen state-post conviction proceedings under the Tennessee's post-conviction DNA statute, seeking testing of the vaginal swab and blanket from trial, using a pre-printed form. The post-conviction court dismissed the motion, relying on the 2007 ruling in his post-conviction case that the DNA testing "has already occurred, and the results are only minimally helpful to Petitioner." *Carruthers v. State*, 2013 WL 3968787 (Aug. 1, 2013). Mr. Carruthers sought testing under only the mandatory provisions of the Tennessee DNA testing statute. Tenn. Code Ann. Section 40-30-304.

The State opposed the testing, arguing that while the DNA sample from the blanket did not match any of the codefendants, it had been uploaded to CODIS as of April 2012 and there were no hits. The Court ruled that Mr. Carruthers did not meet the statute's requirement for mandatory testing because a "new CODIS match might identify the depositor of the biological material on the blanket but could not prove

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that it was deposited at a time contemporaneous with the crime for which Petitioner was convicted." *Id*. at *4.

III. Items Now Sought to be DNA Tested

First, Mr. Carruthers seeks the DNA testing of items, which are still in existence and which have never been subjected to DNA testing: 1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson[4]; 2) the bindings of Marcellos Anderson[5] and 3) the bindings of Delois Anderson, which include knotted pantyhose around her hand and the red socks knotted around her neck.[6] New advances in DNA testing and analysis create a likelihood that testing will provide

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[4] These are in the custody of the Shelby County Medical Examiner.

[5] These are packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number E-C94-586; 15305 ("Marcellos Anderson, cloth ties, knotted").

[6] These are separately packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number C-C94-588;15305 and 15305a ("Delores (sic) Anderson knotted pantyhose", "dirty red sock", and "bloody red sock"). The red sock listed as "bloody" (15305a) was tested in 2003 and revealed a weak unknown profile from a bloodstain, but it appears that the mate - listed as "dirty" (15305) - was never tested. Both socks appeared to be knotted together around her neck. *See* Ex. 6, Affidavit of Alan Keel.

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investigative leads to answers far beyond the unanswered question of whose blood was on the blanket. (Ex. 6, Affidavit of Alan Keel, p. 2).

Criminalist and DNA expert Alan Keel concludes that it is likely each of these items, the fingernails and the materials used as bindings "bear transfer biology from whomever bound the victims." (Ex 6, Affidavit of Alan Keel, p. 6). Mr. Keel has conducted DNA testing in hundreds of cases in over 36 states and has reviewed the prior testing in this case of the Tennessee Bureau of Investigation and Bode Technology Group and their supporting records. (Ex. 6, Affidavit of Alan Keel, p. 1-2). Because of revolutionary advances in forensic DNA testing, analysis today can lead to highly discriminating DNA profiles from common sources across different items of evidence, including sources not previously considered suitable for testing. *Id.*, p. 2. Mr. Keel concludes that the bindings should be sampled for transfer or touch biology from the assailant in light of current technology. He explains:

> This approach could also produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket. Such a finding would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the relevance of the foreign blood

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> previously discovered on the #16 blanket as originating from an assailant.

Id. at p. 6. In other words, the analysis could create a lead to the true perpetrator's profile. Additionally, if the male DNA profile on the bindings matched the unidentified profile from the blood on the blanket, it would support the inference that the blood was deposited at the time of the murders.

Mr. Keel also stresses the importance of testing the fingernail scrapings:

> Fingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested. It is likely that one or more of the victims struggled with the perpetrator(s) during the assault. I have personally examined fingernail evidence in over 50 cases. My experience attests and the scientific literature documents that most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived. Hence, foreign biology associated with the fingernails of homicide victims is usually relevant to the crime. Biology transferred from a person to another person's fingernails is rarely self-evident and often is not from blood. Any available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation.

Id. at p. 7.

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Assuming a profile is obtained from any or all of those items, Mr. Carruthers seeks to compare that profile to the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and to upload any unmatched profile to CODIS.

Mr. Carruthers also seeks to compare the unknown male profile that was found on a white blanket in the grave with the victims.[7] As noted above, this profile had already been compared to Mr. Carruthers, co-defendant James Montgomery, and the victims and uploaded to CODIS. (Ex. 7, 2019 CODIS Report). Mr. Carruthers' counsel was provided an update in 2019 that there have been no hits. Counsel has not been provided with a more recent update. Mr. Carruthers seeks to have that unknown male profile re-run in CODIS and compared to Ronnie Irving, who James Montgomery identified as his co-defendant and the one responsible for the kidnaping of Delois Anderson.

[7] This profile from the blanket is in the custody of the Tennessee Bureau of Investigation under Lab Case #063001146, marked as Exhibit 02-a.

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SUMMARY OF THE ARGUMENT

Before the State of Tennessee carries out the irreversible execution of Tony Carruthers, this Court should require the State to submit critical evidence for DNA testing. As described herein, this Motion requests DNA testing on specific pieces of probative physical evidence, most of which has never been tested, and which will likely point to the real perpetrator or perpetrators and avoid a wrongful execution.

Mr. Carruthers' case shares many of the hallmarks of other wrongful convictions cases. He was convicted primarily on the testimony of snitches and informants, the leading cause of wrongful convictions. The remaining evidence against him was circumstantial, and he was at an even higher risk of a wrongful conviction and/or a wrongful death sentence due to his forced self-representation. This Court should evaluate the totality of the information known at Mr. Carruthers' trial, as well as the significant new evidence discovered since his trial, and grant this Motion for Post-Conviction DNA Testing.

ARGUMENT

THIS COURT SHOULD GRANT DNA TESTING PRIOR TO CARRYING OUT AN IRREVERSIBLE EXECUTION.

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A. Mr. Carruthers' case is exactly the kind of case for which Tennessee's Post-Conviction DNA Statute was created.

Tennessee's Post-Conviction DNA Analysis Act of 2001 ("DNA Act") was created to serve two purposes. "[F]irst, to aid in the exoneration of those who are wrongfully convicted and second, to aid in identifying the true perpetrators of the crimes." *Powers v. State*, 343 S.W. 3d 36, 51 (Tenn. 2001). The *Powers* Court specifically concluded that the DNA Act granted more than just exclusionary testing. "DNA analysis that only compares a petitioner's profile with a profile developed from biological material found at a crime scene cannot effectuate this second purpose." *Id*. "When, however, uploading the latter into a DNA database can potentially identify the person responsible for the crime, the Act also serves a 'law-enforcement,' or justice-finding, purpose: the apprehension of criminals who may still be at large." *Id*.

The United States Supreme Court has recognized and echoed this purpose:

> DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both

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> the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure—usually but not always through legislation.

Dist. Attorney's Off. for Third Jud. Dist. v. Osborne, 557 U.S. 52, 55, (2009). See also *Brief for The Innocence Network as Amicus Curiae Supporting Appellee*, *State v. Jones*, No. 2025-0913, 2026 WL 221492, at *3 (Ohio Jan. 27, 2026) (noting that postconviction DNA testing is a powerful tool to prevent wrongful incarceration and that all 51 legislatures have enacted postconviction DNA testing statutes).

Granting DNA testing here would advance both of those stated purposes — to exonerate Mr. Carruthers and to identify the guilty party or parties. Mr. Carruthers has maintained his innocence for 30 years. No physical evidence connected him to the crime. The DNA testing completed in 2003 in co-defendant James Montgomery's case excluded Mr. Carruthers and revealed the presence of an unidentified male profile.

Prior decisions related to DNA testing in Mr. Carruthers's case should not control this motion. First, as a matter of law, when

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evaluating a request for DNA testing, "[p]revious appeals should not, however, be used to determine 'the merits of any claim,' that is, whether the reasonable probability threshold [for testing] has been established." *Powers v. State*, 343 S.W.3d 36, 56 (Tenn. Crim. App. 2011). Equally as important, Mr. Carruthers seeks testing under new facts about newly available DNA testing, new facts that have come to light since his prior post-conviction proceedings, and a different provision, Tennessee Code § 40-30-305 (2024), the permissive DNA testing statute.

In post-conviction, Mr. Carruthers raised an ineffective assistance of counsel claim alleging that the counsel who represented him during pre-trial proceedings failed to conduct a meaningful investigation of the case by failing to hire a DNA expert. An evidentiary hearing was held on the claim. At that hearing:

> Todd Bille, accepted as an expert in forensic DNA analysis, testified that, in November 2002, he was hired by codefendant James Montgomery to serve as an expert in his case. Bille was asked to examine evidence to determine if there could be potential biological fluids and whether DNA analysis could be performed. Bille examined a total of nineteen items, including Marcellos Anderson's socks, pants, shirt, underwear and belt; Tucker's socks, jeans, belt, shirt, and boots; Delois Anderson's dress and underwear; an

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> unidentified red sock; ties or bindings from Tucker; and a section of a white cloth blanket. From the testing done on these items, Bille prepared a summary report in June 2003 and a final report on March 17, 2005.
>
> Bille reported that samples from the white blanket did not match the DNA of any of the victims, the petitioner, or the codefendants. Bille commented that the tests performed on the white blanket could not have been performed at the time of the trial, but similar tests could have been performed with the same results.

Carruthers, 2007 WL 4355481, at *33 (Tenn. Crim. App. Dec. 12, 2007).

In evaluating the claim, the Tennessee Court of Criminal Appeals ultimately concluded that Mr. Carruthers could not establish prejudice because it agreed with the post-conviction court that the 2003 DNA results "only very minimally helpful to the petitioner" and did not satisfy the standard for prejudice for an ineffectiveness claim. *Id*.

Under *Powers*, this Court cannot substitute the prior ineffectiveness finding as a merits ruling against this request for testing. Moreover, the new evidence of a third-party suspect and new evidence of prosecutorial misconduct cast the case in a different light. Mr. Montgomery gave a statement in 2010 admitting that Montgomery committed the crime and confessing that he dispatched Ronnie Irving to

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kidnap Delois Anderson - not Tony Carruthers. He provided new evidence that Mr. Carruthers is innocent of the kidnapping and murders. The testing Mr. Carruthers' now seeks has the potential to show that the State of Tennessee has convicted and sentenced the wrong man to death.

B. Mr. Carruthers should be granted testing under either the mandatory or discretionary avenues for relief under the DNA Act.

Tennessee's DNA Act allows two separate paths for a petitioner to secure DNA testing; one is mandatory, and the other is discretionary. Mr. Carruthers satisfies all four prongs under either mandatory or discretionary testing.

First, pursuant to Tenn. Code. Ann. § 40-30-304 (2024), the Court *shall* grant testing if the following four prongs are met:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

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> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Second, pursuant to Tenn. Code. Ann. § 40-30-305 (2024), the Court *may* grant testing if the following four prongs are met:

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

There are no statutory time limits for requesting testing, and a petitioner cannot waive the right to DNA analysis under the Act by implication. *See Griffin v. State,* 182 S.W.3d 795, 799 (Tenn. 2006). The third prong expressly permits restesting when the evidence was not

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subjected "to the analysis that is now requested." Tenn. Code. Ann. § 40-30-305 (2024) [8]

Where Tennessee courts have denied requests for DNA testing, it is primarily in cases where the proposed DNA testing could not conclusively identify an alternate suspect, where the testing was based on pure speculation of another perpetrator, or where there was overwhelming evidence of guilt. *See Alley v. State*, No. W2004–01204–CCA–R3–PD, 2004 WL 1196095, at *9 (Tenn. Crim. App. May 26, 2004) (holding that the purpose of the DNA Act was "not to create conjecture or speculation that the act may have possibly been perpetrated by a phantom defendant" and denying DNA testing where Petitioner's had confessed, his allegation of innocence was recent, and he had set forth an insanity defense at trial). *See also McBee v. State*, No. E2025-00053-CCA-R3-PC, 2026 WL 230074, at *8 (Tenn. Crim. App. January 28,

[8]As noted above, Mr. Carruthers filed a pro se request for mandatory DNA testing in 2011 asking for DNA testing on the vaginal swab collected from Delois Anderson and the white blanket containing male DNA. The instant Motion is not seeking the same analysis. Instead, he is seeking testing of several pieces of evidence that have either never been subject to DNA testing or that he is now seeking to compare to a known alternate suspect.

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2026) (denying mandatory DNA testing on a gun and laser sight where the defense at trial was that the victim shot herself during a struggle over the gun and exculpatory testing could only possibly result in some impeachment evidence).

Tennessee courts have also recognized that wrongful convictions often occur because of false identifications and false confessions and therefore have never limited the granting of DNA testing "to only those cases in which there was tenuous evidence supporting the jury's finding of guilt." *Powers v. State*, 343 S.W.3d 36, 57 (Tenn. 2011) (granting DNA testing in a sexual assault case where the defendant was identified through a photo line-up). The *Powers* Court noted:

> As past cases demonstrate, however, many DNA exonerations have occurred despite the fact that there was substantial evidence supporting the conviction. *See* Cynthia E. Jones, *The Right Remedy for the Wrongly Convicted: Judicial Sanctions for Destruction of DNA Evidence,* 77 Fordham L.Rev. 2893, 2926 (2009) ("[A]s is demonstrated with over 200 exonerations, DNA evidence, standing alone, has the persuasive force to prove that an innocent person has been wrongly convicted, notwithstanding all other evidence used at trial to prove guilt beyond a reasonable doubt."); Rodney Uphoff, *Convicting the Innocent: Aberration or Systemic Problem?,* 2006 Wis. L.Rev. 739, 778 (2006) (discussing the Arizona case of

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> Larry Youngblood, who, "[c]ontrary to the 'overwhelming evidence,' ... was, in fact, innocent" and had his conviction vacated in 2000).

Id. at 56–57.

There is no overwhelming evidence of guilt here, and Mr. Carruthers is not seeking to pin these murders on a "phantom" defendant. Rather, before his life is taken by the State of Tennessee, he seeks to have an opportunity to prove what he has been saying for 30 years: that he is not guilty of the kidnapping and murder of the victims, and that someone else committed the crime with James Montgomery. He further submits that has satisfied all four prongs under the mandatory or discretionary standard. Each one will be discussed in turn below.

C. Mr. Carruthers would not have been prosecuted or convicted if exculpatory DNA results are returned as a result of this testing.

This Court must "presume that the DNA analysis at issue is exculpatory or favorable to the defense" and "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *McBee*, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026) (citing *Powers v. State*, 343 S.W. 3d 36, 55 (Tenn. 2001)).

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"A 'reasonable probability' of a different result exists when the evidence at issue, in this case potentially favorable DNA results, undermines confidence in the outcome of the prosecution. *See, e.g., State v. Workman,* 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002). In making this determination, we must consider the 'potentially favorable' DNA results along with the existing evidence." *Alley*, 2004 WL 1196095, at *9 (Tenn. Crim. App. May 26, 2004).

One example of the potentially favorable DNA evidence testing in this case could yield is evidence under the victims' fingernails that implicate the alternative third suspect, Ronnie Irving. Additionally, the bindings are likely to contain touch DNA from the person or persons who secured the bindings on the victims. As noted herein, the case against Mr. Carruthers was never overwhelming. No physical evidence or eyewitness testimony directly linked him to the murders. Indeed, it was not until paid career informant Alfredo Shaw came forward with Mr. Carruthers' purported "confession" that the State had enough evidence to secure an indictment and move forward with their prosecution. That fact alone should weigh in favor of DNA testing. Neither is this a case where Mr. Carruthers' assertion of his innocence

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is recent, or where there were multiple, consistent confessions by Mr. Carruthers.

When weighing the potentially favorable DNA results, this Court's required analysis of all "existing evidence" must include three key pieces of new evidence that Mr. Carruthers' jury never knew: (1) the 2010 statement from James Montgomery exonerating Mr. Carruthers and implicating Mr. Irving; (2) the State's recent admission (after decades of denying it) that Alfredo Shaw was indeed a career paid informant; and (3) the false testimony from the medical examiner that the victims were buried alive.

A fair analysis of exculpatory DNA results when viewed in the context of the State's existing evidence, gives rise to a reasonable probability that Mr. Carruthers would not have been prosecuted or convicted. Indeed, the DNA analysis done in 2003 pursuant to Mr. Montgomery's re-trial cast such a doubt on the State's theory of prosecution, that it accepted a negotiated *Alford* plea for Mr. Montgomery, who was sentenced to a term of years on a reduced charge and who has been a free man for the last decade.

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As for the prongs regarding condition and location of the evidence and status of any previous testing, Mr. Carruthers can first show that the evidence he seeks to test is available and suitable for DNA testing. The fingernail specimens are in the custody of the Shelby County Medical Examiner; the bindings of Marcellos Anderson and the knotted pantyhose and red socks from Delois Anderson are in the custody of the Shelby County Criminal Court Clerk, and the unknown male profile from the white blanket is in the possession of the Tennessee Bureau of Criminal Investigation.

As far as previous testing, the fingernail specimens and the bindings on Marcellos Anderson and Delois Anderson have never been subjected to DNA testing[9]. The white blanket was subject to DNA testing, and an unknown male profile was developed. Mr. Carruthers is not requesting further sampling of the white blanket; he simply seeks to

[9] There were two red socks recovered from Delois Anderson, one marked as "bloody" and one marked as "dirty." The "bloody" red sock was subjected to DNA testing on the blood only in 2003. It does not appear the "dirty" sock was tested at all. Neither sock was tested for touch DNA, which is what Mr. Carruthers now requests.

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compare that unknown profile to Mr. Irving and to further ensure the sample has been recently run in CODIS to see if there are any matches.

As for the final prong, Mr. Carruthers does not submit this Motion for any other reason other to prove the innocence that he has steadfastly professed for 30 years. While it is true that an execution date has been set, as indicated in the attached affidavit of Alan Keel (Ex. 6), this testing should be able to be completed within 14 days of delivery to the DNA lab. As such, the results will be available prior to Mr. Carruthers' execution. While the results themselves may generate further motions or litigation, the inquiry for this Court is whether the *request for testing* is done for purposes of delay.[10] That is simply not the case here.

D. Mr. Carruthers' verdict or sentence would have been more favorable if exculpatory DNA results are returned as a result of this testing.

Exculpatory DNA results would have been extremely relevant and meaningful to Mr. Carruthers' jury in an otherwise circumstantial case,

[10] Moreover, undersigned counsel became only recently involved in Mr. Carruthers' case, in late March of 2026.

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and had they been available, there is a reasonable probability Mr. Carruthers would have been convicted of a lesser charge and/or would not have been sentenced to death. As the Tennessee Court of Criminal Appeals explained earlier this year:

> If a petition does not meet the criteria for mandatory testing, a post-conviction court has discretion to order testing if a "reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction" and the criteria in (2), (3), and (4) are met. T.C.A. § 40-30-305. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome." *Powers v. State*, 343 S.W.3d 36, 54 (Tenn. 2011) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009) (citations and quotation marks omitted). Although the post-conviction court must presume that the DNA analysis at issue is exculpatory or favorable to the defense, the court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *Id*. at 55.

McBee, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026).

As noted above, Mr. Carruthers meets the remaining three prongs under the discretionary statute, as they are identical to the mandatory prongs. The evidence is in existence and suitable for testing, it has not

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been previously tested in the manner in which is now being requested, and this Motion is not being filed to delay Mr. Carruthers execution, but rather to assert his innocence of both the crime and of the death penalty.

Of particular importance with respect to his innocence of the death penalty is the fact that Tennessee allows residual doubt to be considered as a mitigation factor. *State v. Hartman*, 42 S.W.3d 44, 56 (Tenn. 2001) (citing *State v. Teague,* 897 S.W.2d 248, 256 (1995) (*Teague IV*)). Surely, at least one juror would have been swayed by this exculpatory DNA evidence to harbor residual doubt as to his guilt and refuse to join an unanimous verdict for the death penalty.

This conclusion is further underscored by the State's own treatment of the previous DNA results in Mr. Montgomery's case. The fact that Mr. Carruthers and Mr. Montgomery were excluded from the evidence previously tested, coupled with the discovery of an unknown male profile on a blanket buried with the victims, led Mr. Montgomery himself to a more favorable verdict and sentence — he entered an *Alford* plea to a reduced charge and a term of years. Montgomery was originally charged, convicted and sentenced to death in the same trial

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and under the same state theory as Mr. Carruthers. He was sentenced to a term of years and was released from custody in 2016 due to the strength of these favorable DNA results. And yet, Mr. Carruthers now sits six weeks away from his scheduled execution. This Court should refuse to let his execution take place without first requiring the requested evidence be submitted for DNA testing.

E. If additional fact finding is necessary, appointment of a special master is appropriate.

Pursuant to Rule 12, Mr. Carruthers requests that this Court appoint a special master, consistent with the procedures outlined in Tennessee Rule of Civil Procedure 53, if it determines that this litigation may involve additional fact finding. Tenn. Sup. Ct. Rule 12.4(E).

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CONCLUSION

For the reasons stated above, Mr. Carruthers respectfully asks that this Court grant DNA testing and/or appoint a special master to adjudicate his *Motion for Post-Conviction DNA Testing* claim. As Justice Sotomayor recently concluded in her dissent from denial of certiorari for a Texas Petitioner seeking DNA testing, "It is inexplicable why the Bastrop County District Attorney's Office refuses to allow DNA testing…despite the very substantial possibility that such testing could exculpate Rodney Reed and identify the real killer…Because the Court refuses to do so, the State will likely execute Reed without the world ever knowing whether Reed's or Fennell's DNA is on the murder weapon, even though a simple DNA test could reveal that information." *Reed v. Goertz,* 146 S. Ct. 936, 939 (2026) (Sotomayor, J., dissenting from denial of certiorari).

The State of Tennessee should not follow the State of Texas' lead here. Granting this DNA testing could definitively prove what Mr. Carruthers has been saying for 30 years, that he is not guilty of these kidnapping murders. If the State had known of these exculpatory results or if his jury had been told about this exculpatory evidence, he

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would not have been prosecuted, convicted as charged, and/or sentenced to death. This Court should grant the Motion.

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PRAYER FOR RELIEF

1. Grant DNA testing.
2. Appoint a special master to make factual findings as necessary regarding Mr. Carruthers's right to DNA testing.
3. Any other relief the Court deems just.

Respectfully submitted this the 9th day of April, 2026.

Maria DeLiberato*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org
Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

ATTORNEY FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* pending

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CERTIFICATE OF COMPLIANCE

I certify that this Brief contains 7,860 words as determined by the word processing program used to prepare this document. This is under the 15,000 word limit set forth in Tennessee Supreme Court Rule 46, § 3.02.

/s/ Maria DeLiberato
Maria DeLiberato
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

ATTORNEY FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* pending

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CERTIFICATE OF SERVICE

I, Lucas Cameron-Vaughn, certify that on April 9, 2026, a true and correct copy of the foregoing was served via electronic filing to opposing counsel, Courtney Orr, Nicholas Spangler, Katherine Redding, Benjamin Barker, G. Kirby May, Sarah Stone, Leslie Price, and Leslie Byrd..

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

ATTORNEY FOR MOVANT TONY VON CARRUTHERS

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