

protocols, despite reporting on the protocols and the execution of several inmates thereunder, including two executions earlier this year. For these reasons, the Court should deny the motion.

BACKGROUND

I. TDOC's Execution Protocols

Tennessee used electrocution as its method of execution for decades, but like many others, the State adopted lethal injection as a method of execution in 1998, Tenn. Code Ann. § 40-23-114 (Supp. 1998), because it was widely touted as a “more humane” alternative to “electrocution.” *State v. Adkins*, 725 S.W.2d 660, 664 (Tenn. 1987); *State v. Suttles*, 30 S.W.3d 252, 264 (Tenn. 2000) (citing 1998 Tenn. Pub. Acts ch. 982; 2000 Tenn. Pub. Acts ch. 2000). Two years later, lethal injection became the State's default¹ method of execution and has remained so ever since. Tenn. Code Ann. § 40- 23-114 (Supp. 2000); *State v. Morris*, 24 S.W.3d 788, 797 (Tenn. 2000).

By statute, all executions are carried out at Riverbend Maximum Security Institution (RMSI) in Nashville, Tennessee, the state penitentiary in which the Capital Punishment Unit is located. Tenn. Code Ann. § 40-23-116(a). Currently, TDOC has two operative protocols for carrying out death sentences at RMSI, the Electrocution Protocol and the Lethal Injection Protocol. Both protocols call for similar procedures on the date of the execution, with obvious differences depending on the method of execution. *See* Pls' Mem. at 4–6.

A. Lethal Injection Protocol

Under the Lethal Injection Protocol, the Special Operations Team Leader prepares syringes of saline and pentobarbital the morning of the execution. Ex. 11, 2025 Lethal Injection Protocol at

¹ If lethal injection is held unconstitutional or lethal-injection chemicals are unavailable, then the method of execution shifts to electrocution. Tenn. Code Ann. § 40-23-114(e). Persons sentenced to death for offenses committed prior to 1999 may also choose to be executed by electrocution. *Id.* § 40-23-114(b).

18. At 10:00 a.m., the condemned inmate is removed from the holding cell, secured to the gurney with restraints, and moved to the execution chamber. *Id.* Once in the execution chamber, the gurney is secured, and the inmate's arms are secured to arm extensions on the gurney. *Id.* After the Restraint Team exits, the Warden, Attorney General or designee, defense counsel witness, and clergy enter the execution chamber. *Id.* The IV team then enters and attaches the leads from the electrocardiograph (ECG), confirms that the ECG is functioning properly, determines the IV sites, and inserts primary and backup IV catheters. *Id.* at 20. Once the Special Operations Team Leader determines that the catheters are properly secured, connected to the IV lines, and out of the inmate's reach, he/she opens the IV line to start a flow of sterile saline solution which is administered at a slow rate to keep the lines open. *Id.* Any failure of the IV lines is reported to the Commissioner and, if necessary, the Physician will insert a central line. *Id.*

Official witnesses and victim witnesses are then escorted and secured in the appropriate witness rooms, and the Attorney General or designee, defense counsel witness, and clergy member leave the execution chamber and enter the official witness room. *Id.* The camera and audio system are activated, and the blinds are open to the witness rooms. *Id.* Once the Commissioner confirms that no last-minute stay or reprieve has been granted and the inmate makes any last statements, the Warden gives the signal to proceed. *Id.* The syringes of saline and pentobarbital are administered and, upon completion, the Special Operations Team Leader signals to the Warden. *Id.* at 20–21. After a five-minute waiting period, the witness blinds are closed, the camera is disengaged, the privacy curtains are closed, and the Physician enters the execution chamber to examine the inmate. *Id.* at 21. Once the Physician determines the inmate is deceased, he/she reports that finding to the Warden, who announces that the sentence has been carried out and directs the witnesses to exit. *Id.*

After the execution, the Commissioner notifies the Governor that the sentence has been carried out. *Id.* at 22. The IV team clamps and cuts the IV lines, leaving them connected to the inmate for later examination. *Id.* Media witnesses and victim witnesses who wish to speak during the post-execution briefing are escorted to the media tent. *Id.* The Warden determines when the prison will resume normal operations and TDOC's records related to the execution are collected. *Id.* The execution process is then reviewed, and the relevant officials determine whether any changes or modifications should be made. *Id.*

B. Electrocution Protocol

The procedures under the Electrocution Protocol are substantially similar. Prior to the execution, the sodium chloride solution is prepared, the sponges are saturated, and the condemned inmate is dressed in appropriate clothing without any metal. Ex. 8, 2017 Electrocution Protocol at 63. The execution chamber and equipment are prepared, and the inmate's head and legs are shaved. *Id.* at 63–64. At 7:00 p.m., the inmate is removed from the holding cell and escorted to the execution chamber, where he/she is secured in the electric chair and saturated sponges are secured on the front and rear of the inmate's ankles. *Id.*

Official witnesses and victim witnesses are then escorted and secured in the appropriate witness rooms, and the Attorney General or designee and defense counsel witness exit the execution chamber to the official witness room. *Id.* The camera and audio system are activated and the blinds to the witness rooms are opened. *Id.* at 65. Once the Commissioner confirms that no last-minute stay or reprieve has been granted and the inmate makes any last statements, the electrocution process proceeds. *Id.* When the cycle runs its course and the current is off, a five-minute waiting period begins, all blinds are closed, the camera is disengaged, and the privacy curtain is drawn. *Id.* The chair is disconnected, and the Physician enters the execution chamber to

examine the inmate. *Id.* Once the Physician determines the inmate is deceased, he/she reports the finding to the Warden who announces that the sentence has been carried out and directs the witnesses to exit. *Id.* A post-execution process, like that under the Lethal Injection Protocol, then commences.

II. Parties and Posture

Plaintiffs, “organizations that gather and publish the news in Tennessee,” employ journalists who “routinely document the manner in which law enforcement officers, the criminal justice system, and correctional institutions perform official duties, including by directly observing the operations of those institutions and reporting on their proceedings, including executions.” Compl. ¶¶ 41, 42. Plaintiffs’ journalists attended and covered the lethal injection execution of Oscar Smith on May 22, 2025, and the lethal injection execution of Byron Black on August 5, 2025. *Id.* at ¶¶ 43, 45, 47. Plaintiffs have also reported on executions by electrocution, including the execution of Leroy Hall in 2019. *Id.* at ¶¶ 52, 53.

Late October 2025—less than two months before the next scheduled execution—Plaintiffs filed this lawsuit seeking declaratory and injunctive relief based on claims that TDOC’s protocols “unlawfully prevent the public and members of the press from witnessing significant portions of execution proceedings.” *Id.* at ¶ 6. Specifically, Plaintiffs take issue with the fact that their reporters are unable to observe the preparation of the syringes/sponges for use in the execution, entry of the condemned into the execution chamber, preparation of the condemned in the execution chamber, insertion of intravenous lines into the condemned or placement of saturated ankle sponges, administration of syringes of lethal injection drugs, the physician examination and pronouncement of death, any of the process after the blinds are closed for the physician examination, and any immediate post-execution procedures in the execution chamber. *Id.* at ¶¶ 49, 54.

Plaintiffs allege that limiting the ability of official witnesses to observe these steps violates (1) the witnesses' statutory right to be "present at the carrying out of the death sentence" under Tenn. Code Ann. § 40-23-116(a), (2) the qualified right to access judicial proceedings under the First Amendment of the United States Constitution, and (3) the freedom of the press to examine government proceedings under Article I, section 19 of the Tennessee Constitution. *Id.* at ¶ 7. Plaintiffs seek a temporary injunction that "[b]ars Defendants from enforcing the portions of the Execution Protocols that limit Plaintiffs' access to critical portions of execution proceedings" and "[r]equires Defendants to permit Plaintiffs, and other similarly situated members of the press, to observe the entirety of execution proceedings." Pls' Mot. at 10.

For the reasons stated herein, the Court should deny Plaintiffs' motion.

LEGAL STANDARD

“‘[T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or is more dangerous in a doubtful case’ than the discretion of granting an injunction.” *Moore v. Lee*, 644 S.W.3d 59, 63–64 (Tenn. 2022) (quoting *Mabry v. Ross*, 48 Tenn. 769, 774 (1870)). And an injunction which “alters the status quo and orders the defendant to take action” is an extraordinary remedy that “should be granted only in exceptional circumstances.” *Fisher v. Hargett*, 604 S.W.3d 381, 394–95 (Tenn. 2020).

Tennessee courts consider the following four factors in determining whether to grant injunctive relief: “(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on [the] defendant; (3) the probability that [the] plaintiff will succeed on the merits; and (4) the public interest.” *Id.* (cleaned up). The plaintiff bears the burden of establishing entitlement to relief under those factors. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70*

of *Alameda Cnty.*, 415 U.S. 423, 441 (1974). The Court *must* deny a request for a temporary injunction if the movant fails to make a “clear[] show[ing]” on their burden. Tenn. R. Civ. P. 65.04(2). And “[a] plaintiff’s failure to show likelihood of success on the merits is usually fatal.” *Fisher*, 604 S.W.3d at 394.

ARGUMENT

I. This Court Lacks Authority to Enjoin the Tennessee Supreme Court’s Unconditional Execution Orders.

This Court “does not have authority to stay, modify, or condition” the Tennessee Supreme Court’s “unconditional execution order[s].” *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn. 2025) (order), *cert. denied*, No. 25-5261, 2025 WL 2204938 (U.S. Aug. 4, 2025). But Plaintiffs’ request for injunctive relief would require just that; they ask this Court to “condition” any future execution on expanded media access. *See id.* Even if this Court had authority to impose such conditions—and it does not—Defendants cannot not feasibly revise the execution protocol, reengineer TDOC facilities, and retrain the execution team days before the execution of Harold Wayne Nichols on December 11, 2025. Ex. 1, Nelsen Decl. ¶¶ 35, 40, 41, 51, 56. Put simply, if the Court grants Plaintiffs’ motion, it would “effectively and practically operate[] as a stay” of the Supreme Court’s “unconditional execution order.” *Black*, 721 S.W.3d at 228. Because this Court has no authority to enjoin the Supreme Court’s execution order, the motion should be denied.

A. The Tennessee Supreme Court recently vacated an injunction that placed conditions on—and effectively stayed—the execution of Byron Black.

On July 31, 2025, the Tennessee Supreme Court held that trial courts lack authority to modify execution orders under the guise of granting temporary injunctive relief, even on issues that are purportedly collateral to the execution itself. *Black*, 721 S.W.3d at 228. Only the Supreme Court can do that. Tenn. Sup. Ct. R. 12(4).

Byron Black was executed on August 5, 2025. *Black*, 721 S.W.3d at 224. Barely a month earlier, Black moved the Davidson County Chancery Court for an injunction requiring the State defendants to deactivate his implantable cardioverter-defibrillator (ICD) via a particular method immediately before, or simultaneously with, the execution. *Id.* at 225. The trial court granted the injunction, directing the State defendants to arrange for qualified medical personnel to deactivate the ICD on the morning of the execution. *Id.* at 225-26. The defendants applied for extraordinary appeal, attaching a declaration from the Assistant Commissioner of TDOC stating that Nashville General Hospital, the third-party provider that managed Black’s care, was unwilling to deactivate the ICD. *Id.* at 226 & n.2.

The Tennessee Supreme Court assumed jurisdiction over the appeal and vacated the trial court’s injunction. *Id.* at 226, 229. Although the trial court hedged its ruling with the assurance that the “delay of Mr. Black’s execution is not being countenanced,” and Black characterized the ICD claim as “a secondary issue related to the method of execution, not the execution itself,” the Supreme Court nevertheless vacated the injunction because it “placed a precondition on Mr. Black’s execution” and “modifie[d] th[e] Court’s unconditional execution order.” *Id.* at 228. Thus, the injunction “effectively and practically operated as a stay of th[e] [Supreme] Court’s execution order.” *Id.* Because “[a] trial court does not have the authority to stay, modify, or condition this Court’s execution order,” *id.* (citing *Coe v. Sundquist*, No. M2000-00897-SC-R9-CV, 2000 WL 36776154, at *1-2 (Tenn. Apr. 19, 2000) (Order)), the Supreme Court vacated the injunction.

B. Under *Black*, this Court lacks authority to “condition” the Nichols execution on expanded media access.

The Tennessee Supreme Court set Nichols’s execution for December 11, 2025—with no strings attached. *State v. Nichols*, No. E1998-00562-SC-R11-PD (Tenn. Mar. 3, 2025) (order). If this Court grants Plaintiffs’ motion, it would “plac[e] conditions” on Nichols’s execution—

expanded media access—that directly contradict the Tennessee Supreme Court’s “unconditional execution order.” *Black*, 721 S.W.3d at 228. By its nature, such an injunction would “effectively and practically operate[] as a stay” of execution, unless and until Defendants comply with the “precondition[s]” required by the injunction. *Id.* Under *Black*, this Court has no authority to issue that kind of relief.

Even if this Court had the authority to condition Nichols’s execution on expanded media access, TDOC’s ability to comply with such an injunction is highly uncertain, because Plaintiffs’ requested relief would require numerous changes to TDOC’s facilities, operating procedures, and training. Nelsen Decl. ¶¶ 35, 40, 51. For example, the current layout of the Capital Punishment Unit would have to be redesigned and reconstructed to allow media witnesses a direct view of pre-execution procedures that are performed in private rooms connected to the execution chamber. *Id.* at ¶ 35. And to transmit video feed of those private rooms, TDOC would have to procure, install, test, and integrate cameras. *Id.* at ¶¶ 39, 40. Then, the Protocols would have to be revised to incorporate any changes to the facility and staff would need to be retrained in the changed aspects of the Protocols. *Id.* at ¶ 40, 51. Additionally, the Protocols would have to be revised to protect the identities of the execution team members and the source(s) of the lethal injection chemicals (LIC). *Id.* at ¶ 40. None of these structural or operational modifications could be completed prior to Nichols’s execution. *Id.* at ¶ 41, 51.

These feasibility issues illustrate why, “in the context of an impending execution,” the Tennessee Supreme Court does not allow trial courts to micromanage execution protocols by granting last-minute injunctive relief. *Black*, 721 S.W.3d at 228. Although this Court has jurisdiction to declare the constitutionality of TDOC’s protocol, it lacks authority to enjoin an “unconditional execution order.” *Id.*

II. Plaintiffs Cannot Show a Likelihood of Success on the Merits of Their Claims.

Putting aside the issue of authority, the Court should deny Plaintiffs’ motion because they cannot show a likelihood of success on the merits of their claims, which is “fatal” to their request for injunctive relief. *Fisher*, 604 S.W.3d at 394. TDOC’s execution protocols comply with both statutory and constitutional requirements. They allow members of the press “to be present at the carrying out of the death sentence,” as required by Tenn. Code Ann. § 40-23-116(a)(6). And neither the First Amendment to the U.S. Constitution nor Article I, section 19 of the Tennessee Constitution requires unfiltered observation of every step of the process. Plaintiffs’ argument is turtles all the way down.

A. Statutory Permission to be Present Does Not Equal Unlimited Access.

Plaintiffs claim that TDOC’s execution protocols violate Tenn. Code Ann. § 40-23-116(a).² Compl. ¶¶ 61–68. That statute requires that death-sentenced inmates be transferred to RMSI and commands the warden of RMSI to “cause the death sentence to be carried out within an enclosure to be prepared for that purpose in *strict seclusion and privacy*.” Tenn. Code Ann. § 40-23-116(a) (emphasis added). It also limits who is “entitled to be present at the carrying out of the death sentence” to the following witnesses:

- (1) The warden . . . or the warden’s duly authorized deputy;
- (2) The sheriff of the county in which the crime was committed;
- (3) A member of the clergy who has been preparing the condemned person for death;
- (4) The prison physician;

² Plaintiffs bring this claim pursuant to Tenn. Code Ann. § 1-3-121, which grants a cause of action for declaratory or injunctive relief “regarding the legality or constitutionality of a governmental action.” Compl. at 18.

(5) Attendants chosen and selected by the warden . . . as may be necessary to properly carry out the execution of the death sentence;

(6) A total of seven (7) members of the print, radio and television news media selected in accordance with the rules and regulations promulgated by [TDOC] . . .;

(7) [] Immediate family members of the victim who are eighteen (18) years of age or older. . . [] or [w]here there are no surviving immediate family members of the victim who are eighteen (18) years of age or older, . . . up to three (3) previously identified relatives or personal friends of the victim . . . ;

(8) One (1) defense counsel chosen by the condemned person; and

(9) The attorney general and reporter, or the attorney general and reporter's designee.

Id. § 40-203-116(a)(1)–(9). Other than these nine categories, “[n]o other person or persons . . . are allowed or permitted to be present at the carrying out of the death sentence.” *Id.* § 40-23-116(b). In fact, “[i]t is a Class C misdemeanor for the warden . . . to permit any other person or persons . . . to be present.” *Id.*

Plaintiffs assert that TDOC's execution protocols violate the foregoing statute “by precluding [their] journalists from being ‘present’ to observe critical stages of the ‘carrying out of the death sentence.’” Compl. ¶ 64. They complain that they “watch the condemned die, but cannot observe any other portion of the execution.” Pls' Mem. at 13. But Plaintiffs fundamentally misconstrue what it means to be present at the carrying out of the death sentence. In doing so, they attempt to transform statutory permission to attend into a right of unlimited access. But the statute does not confer such a right.

The Court's role in statutory interpretation is “to determine what a statute means.” *State v. Deberry*, 651 S.W.3d 918, 924 (Tenn. 2022). “Original public meaning is discerned through consideration of the statutory text in light of ‘well-established canons of statutory construction.’” *Id.* (quoting *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008)). The Court must give words in

a statute “their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.” *Ellithorpe v. Weismark*, 479 S.W.3d 818, 827 (Tenn. 2015). For undefined terms, courts may look to “authoritative dictionaries published around the time of a statute’s enactment.” *Deberry*, 651 S.W.3d at 925.

Under the plain language of the statute, designated members of the press have a right to be “present at the carrying out of the death sentence.” Tenn. Code Ann. § 40-23-116(a). “Present,” in this context, means “being at hand or in attendance.” *Present*, The American Heritage Dictionary of the English Language 1432 (3d ed. 1992). “Carry out” means “to bring to a conclusion; accomplish.” *Carry out*, The American Heritage Dictionary of the English Language 294 (3d ed. 1992). Thus, a person is “present” at the “carrying out of the death sentence” when he or she is “in attendance” at the “conclusion” or “accomplish[ment]” of the death sentence—i.e., the moment of death itself.

The “statutory context” supports this interpretation. *Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 59 (Tenn. 2023). Section 116(a) requires that death sentences be carried out “in strict seclusion and privacy.” Tenn. Code Ann. § 40-23-116(a). This text reflects the statute’s purpose of ensuring that death sentences are carried out privately. Given that purpose, the court should not construe the word “present” as a license for official witnesses to access anything and everything in the prison that is remotely connected to the process of preparing or documenting an execution. That would turn the statute’s focus on “strict seclusion and privacy” on its head.

Plaintiffs assert that they are not “present” at the carrying out of the death sentence because all they see is the death of the condemned inmate. But again, watching a condemned inmate die *is* being present for the execution. Because the punishment the law imposes is death itself, the moment of its infliction—not every preparatory step before it or administrative procedure after

it—constitutes “the carrying out of the death sentence.” So, TDOC satisfies any statutory access obligation by allowing witnesses to observe the actual infliction of the punishment; it need not expose every step surrounding that event.

Plaintiff’s contrary interpretation also has no limiting principle. Under their theory, TDOC would be obligated to expose every action related to the carrying out of the death sentence. This logic would require disclosure of internal security procedures, medical preparations, equipment checks, staff identities, and even post-mortem handling, simply because these activities precede or follow the moment of death. Nothing in the statute compels such a radical intrusion. Again, such a construction would directly contradict the statute’s mandate that death sentences be “carried out . . . in strict seclusion and privacy.” Tenn. Code Ann. § 40-23-116(a).

Plaintiffs admit that witnesses “watch the condemned die.” Pls’ Mem. at 13. The natural and ordinary meaning of Tenn. Code Ann. § 40-23-116 requires nothing more. So, Plaintiffs are unlikely to succeed on the merits of their claim that TDOC’s protocols violate the statute.

B. The First Amendment Does Not Require Unlimited Public Access to Execution Proceedings.

Plaintiffs’ First Amendment claim is equally unlikely to succeed. Plaintiffs assert that, by prohibiting media witnesses from observing every step before and after a death sentence is carried out, Defendants violate their “qualified First Amendment right of access to Tennessee’s execution proceedings.” Compl. ¶ 80. But the Constitution does not afford the press or the public such an extensive right of access.

As a prefatory matter, the press is not entitled to receive special treatment under the First Amendment regarding access to government proceedings. *Branzburg v. Hayes*, 408 U.S. 665, 684 (1972) (“the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally”). A First Amendment right of access is not

triggered simply because an event is newsworthy. *Id.* at 684–85 (the media has “no constitutional right of access to the scenes of a crime or disaster when the general public is excluded”). And members of the press have “no constitutional right of access to prisons or their inmates beyond that afforded the general public.” *Pell v. Procunier*, 417 U.S. 817, 834 (1974). In sum, regardless of whether “news gathering may be hampered,” the media’s right of access is coextensive with that of the public. *Id.*

It is also well-established that the public does not have “a right of access to all sources of information within government control.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 9 (1978); *McCaleb v. Long*, 152 F.4th 728, 731 (6th Cir. 2025) (“the First Amendment does not confer a general right to access information in the government’s possession”). Nonetheless, in a series of decisions, the Supreme Court established an exception for public access to certain criminal proceedings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 574 (1980) (criminal trials); *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 (1982) (testimony of a child victim); *Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501, 510–11 (1984) (“*Press-Enterprise I*”) (voir dire examinations); *Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 8–9 (1986) (“*Press-Enterprise II*”) (preliminary hearings). *Richmond Newspapers* and its progeny established that “a qualified First Amendment right of public access attaches” to criminal proceedings which “pass[] the[] tests of experience and logic,” i.e., when (1) “the place and process have historically been open to the press and general public” and (2) “public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise II*, 478 U.S. at 8–10.³

³ Even if these two prongs are satisfied, the right of access “is not absolute” and may be overridden if “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise II*, 478 U.S. at 9 (quoting *Press Enterprise I*, 464 U.S. at 510) (quotations omitted).

Plaintiffs rely exclusively on the *Press Enterprise II* experience-and-logic test to support their claim that TDOC's protocols violate their First Amendment right of access to Tennessee's execution proceedings. Pls' Mem. at 18. But this test does not apply to executions. And even if it did, application of the two prongs demonstrates that no qualified right of public access attaches to executions under the First Amendment. Finally, assuming the test applies and the two prongs are satisfied, TDOC's interests override any qualified right of access.

1. Executions are not government proceedings to which the *Press-Enterprise II* test applies.

The United States Supreme Court has never applied the *Press-Enterprise II* framework outside the context of criminal judicial proceedings. *McCaleb*, 152 F.4th at 731 (noting that the Supreme Court has only applied the experience-and-logic test adopted in *Press-Enterprise II* “to requests for access to criminal proceedings”); *Oklahoma Observer v. Patton*, 73 F. Supp. 3d 1318, 1324 (W.D. Okla. 2014) (“the Supreme Court has not applied the exception outside the criminal adjudication process”). Executions, which are the post-judgment enforcement of sentences, are not part of the criminal adjudication process. The Ninth Circuit recognized such separation when it considered whether “the constitutional principles that animate granting public access to governmental proceedings—particularly those comprising the process of trying, convicting and sentencing criminal defendants—carry over to the process of executing a condemned inmate within the confines of the prison.” *California First Amend. Coal. v. Woodford*, 299 F.3d 868, 874 (9th Cir. 2002).

In *Woodford*, nonprofit organizations whose members attended and reported on executions in California, challenged the constitutionality of San Quentin Institutional Procedure 770, which “prohibit[ed] witnesses from observing the execution until after the execution team members exit[ed] the chamber.” *Id.* at 871. The court applied the *Press-Enterprise II* framework and found

that the public has a First Amendment “right to view executions from the moment the condemned is escorted into the execution chamber, including those ‘initial procedures’ that are inextricably intertwined with the process of putting the condemned inmate to death.” *Id.* at 877. Courts within the Ninth Circuit and one Pennsylvania district court have followed *Woodford*’s application of the *Press Enterprise II* framework to executions. See *Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012); *First Amend. Coal. of Arizona, Inc. v. Ryan*, 938 F.3d 1069, 1075 (9th Cir. 2019); *Phila. Inquirer v. Wetzel*, 906 F. Supp. 2d 362 (M.D. Pa. 2012). But most courts to address the issue after *Woodford* have declined to adopt the same reasoning.

In *Oklahoma Observer v. Patton*, the court expressed “considerable doubt” that the framework “even potentially applies” to executions. 73 F. Supp. 3d at 1324. The court found that the decision in *Press-Enterprise II* “strongly suggests” that the Supreme Court “views the *Press-Enterprise* exception as applying to the criminal *adjudication* process rather than to the process of *implementing* a court’s judgment, such as is involved” in an execution. *Id.* (emphasis in original). And it found that the Supreme Court’s “different treatment of access issues in the prison context . . . suggests the Court would not take principles directed to the process of determining guilt and superimpose them in a different context—the implementation of a sentence.” *Id.* at 1324–25 (“Unlike the tradition of openness which exists as to criminal trials, the Court has emphasized the closed nature of prisons”) (citing *Richmond Newspapers*, 448 U.S. at 577 n. 11). Thus, the district court concluded that the *Press-Enterprise II* framework “does not extend” to executions as they are “outside the criminal adjudication process.” *Id.* at 1325.

Before Virginia abolished the death penalty, rendering the case moot, a district court there also expressly declined to follow the reasoning of *Woodford*, finding that “[i]t is quite a reach” to say that *Richmond Newspapers* and its progeny “dictate public, and hence press, access to

executions, which do not occur in the adjudicatory process.” *BH Media Grp., Inc. v. Clarke*, 466 F. Supp. 3d 653, 662 (E.D. Va. 2020), *vacated and remanded*, 851 F. App’x 368 (4th Cir. 2021). And the court rejected the argument that executions are part of the criminal adjudication process. *Id.* at 663. The court held that executions were part of “the penal process that follows entry of a judgment in a criminal case” and found it doubtful that the Supreme Court would “extend the public’s First Amendment right of access to the penal portion of a criminal defendant’s sentence.” *Id.*

More recently, a district court in Indiana noted that “the Seventh Circuit has never extended the *Press-Enterprise II* framework to an event beyond a judicial proceeding, let alone something after the imposition of a judgment in a case, such as an execution.” *Associated Press v. Neal*, 788 F. Supp. 3d 959, 964–65 (S.D. Ind. 2025). And, trailing the footsteps of the district courts in Oklahoma and Virginia, the court declined to “bridge the gap” by following *Woodford*, “absent authority from the Supreme Court or the Seventh Circuit.” *Id.* at 966. Like the Eastern District of Virginia, the court also rejected the argument that executions are criminal proceedings because custody of a defendant transferred to the executive branch after imposition of a sentence. *Id.*

Relatedly, the Eighth Circuit rejected the notion that the *Press-Enterprise II* framework applied to prisoners’ claims that they were entitled to information regarding the source of the drug to be used in their executions. *Zink v. Lombardi*, 783 F.3d 1089, 1111–12 (8th Cir. 2015). “[U]nlike the Ninth Circuit,” the court held that the Eighth Circuit has never “ruled that an execution constitutes the kind of criminal proceeding to which the public enjoys a qualified right of access under the First Amendment.” *Id.* at 1112. Similarly, the Sixth Circuit has “neither adopted nor rejected the Ninth Circuit’s position,” but it has held that the *Press-Enterprise II* framework does not apply to requests by death row inmates for information related to executions because it is

“neither information of the type filed in a government proceeding nor its functional equivalent.” *Phillips*, 841 F.3d at 419. And just two months ago, the Sixth Circuit declined to “extend application of the *Press Enterprise* test beyond the adjudicatory context” to meetings of the Tennessee Judicial Advisory Commission. *McCaleb*, 152 F.4th at 731. The court expressly rejected the notion, which Plaintiffs advance here, that the *Press-Enterprise* framework applies “to all requests for access to government proceedings” simply because a prior opinion referred to the framework as a “test of general applicability.” *Id.* at 733 (“[T]he court meant ‘general’ in the sense of both judicial and administrative adjudicatory proceedings. It did not mean to suggest that the test applies to any request for government information.”); *see* Pls’ Mem. at 20.

This overwhelming authority demonstrates that executions are not criminal adjudicatory proceedings to which the *Press-Enterprise II* test attaches. *Woodford* and the decisions following it are outliers, and they lack any persuasive value given the weight of the contrary authority discussed above. Because Plaintiffs rely solely on the inapplicable test from *Press-Enterprise II*, they cannot show a likelihood of success on the merits of their First Amendment claim.

2. There is no First Amendment right to access executions under the *Press-Enterprise II* test.

Even assuming the *Press-Enterprise II* framework applies to executions, which Defendants dispute, that does not mean a First Amendment right of access automatically attaches. As Plaintiffs concede, Pls’ Mem. at 20, a qualified right attaches only if (1) “the place and process have historically been open to the press and general public” and (2) “public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise II*, 478 U.S. at 8–10. Neither of these prongs are satisfied with respect to executions.

First, executions have not been historically open to the public in any meaningful sense. Of course, “there is historical evidence to suggest that public access to executions has existed at some

times in the past.” *Oklahoma Observer*, 73 F. Supp. 3d at 1325. But as early as 1830, executions “became private events and moved from the public square to inside prison walls.” *Arkansas Times, Inc. v. Norris*, No. 5:07CV00195 SWW, 2008 WL 110853, at *4 (E.D. Ark. Jan. 7, 2008) (citation omitted). “[C]onsistent with the practice of other states,” Tennessee shifted to private executions in 1883 and specified by law who could attend as witnesses. Pls’ Mem. at 23; 1883 Tenn. Acts 139–40, Ch. CXII, § 1, Ex. 4 to Compl. Plaintiffs make much of the fact that, even after the move to private executions, most States still implemented procedures to allow members of the public or the press to attend as official witnesses. Pls’ Mem. at 24–28. They assert these procedures “bridged the historical transition” from public to private executions, continuing the tradition of public access. *Id.* at 28. But merely allowing some representatives of the public to attend executions is not comparable to the “unbroken, uncontradicted history” of public access to criminal trials, *Richmond Newspapers*, 448 U.S. at 573, “[t]he presumptive openness of the jury selection process,” *Press-Enterprise I*, 464 U.S. at 508, or the “tradition of accessibility to preliminary hearings.” *Press-Enterprise II*, 478 U.S. at 10.

Put simply, “penal institutions, where public access is generally limited, do not share the long tradition of openness associated with courtrooms[.]” *Richmond Newspapers*, 448 U.S. at 577 n. 11. “Members of the public cannot attend an execution in the same way that they could walk into a courthouse and observe a trial.” *Neal*, 788 F. Supp. 3d at 967. In fact, the Supreme Court has held, albeit not in the First Amendment context, that restrictions “as to the number and character of those who may witness [an] execution, and the exclusion altogether of reporters . . . are regulations which the legislature, in its wisdom, and for the public good, could legally prescribe in respect to executions[.]” *Holden v. State of Minn.*, 137 U.S. 483, 491 (1890).

Second, public access does not play a significant role in the functioning of executions. Executions in the United States have functioned without public access for nearly two centuries. For the entire period in which modern methods of execution and modern Eighth Amendment jurisprudence developed, executions have not been publicly accessible. This unbroken historical practice of excluding the general public from executions demonstrates that public attendance is neither integral nor beneficial to the process. Plaintiffs' contrary assertions—that the press acts as a surrogate for the public to ensure Eighth Amendment compliance, to advance public debate, or to promote deterrence—miss the mark.

The suggestion that media presence is necessary to monitor constitutional compliance assumes that members of the press, observing from a distance and without medical or legal expertise, can identify constitutional violations. That assumption is unfounded. Nothing about the proper functioning of an execution turns on whether the press can witness every portion of the procedure. Members of the press “are not a substitute for or an adjunct of government[.]” *Houchins*, 438 U.S. at 8. “[T]hey are ‘ill equipped’ to deal with problems of prison administration” and courts “must not confuse the role of the media with that of the government[.]” *Id.* Advancing public debate is also not a functional component of executions. While public discourse about the death penalty is important, executions function to implement a final judgment of a court, not to serve as public commentary or to generate a record for advocacy. Finally, the deterrent effect of capital punishment derives from the existence of the death penalty and the State’s enforcement of it, not from public spectatorship. In fact, public executions were abolished, in part, because they were “decried . . . as festivals of disorder that subverted morals, increased crimes, excited sympathy with the criminal, and wasted time.” Jeffrey L. Kirchmeier, *Let’s Make a Deal: Waiving the Eighth Amendment by Selecting a Cruel and Unusual Punishment*, 32 Conn. L. Rev. 615, 648 (2000).

Because executions have not historically been open to the public and because public access does not contribute to the functioning of executions, no qualified right of public access attaches under the First Amendment. Thus, to the extent the *Press-Enterprise II* test applies outside the context of criminal adjudicatory proceedings, Plaintiffs are unlikely to succeed on the merits of their First Amendment claim.

3. Even assuming there is a qualified right to access executions, TDOC's interests override that right.

Even if this Court chooses to apply the *Press-Enterprise II* framework and is convinced that the two prongs of that test are met, Plaintiff's First Amendment claim is still unlikely to succeed because TDOC's interests override any qualified right of access the Plaintiffs may have. Limitations on witnesses' ability to view certain steps before and after a death sentence is carried out are "essential to preserve higher values" and TDOC's protocols are "narrowly tailored to serve that interest." *Press-Enterprise I*, 464 U.S. at 510.

"[I]t takes little imagination to recognize that there are some kinds of government operations that would be totally frustrated if conducted openly." *Press-Enterprise II*, 478 U.S. at 8–9. The Founding Fathers of our nation's government "recognized the benefits of sometimes keeping window curtains closed." *McCaleb*, 152 F.4th at 730 (noting that "secrecy at the Constitutional Convention helped facilitate the forming of our nation"). And the Supreme Court of Tennessee, along with the Tennessee General Assembly, have recognized the importance of "protecting the identities of those involved with executions[.]" *West v. Schofield*, 460 S.W.3d 113, 123–25 (Tenn. 2015) (noting that it is "the public policy of Tennessee to favor the anonymity of those involved in carrying out capital punishment"); see Tenn. Code Ann. § 10-7-504(h)(1).⁴

⁴ This provision of the Tennessee Public Records Act provides that records "identifying an individual or entity as a person or entity who or that has been or may in the future be directly

[T]he reasons supporting nondisclosure of the identities of those involved in the execution of a death row inmate “are obvious, including avoiding the risk of harassment or some other form of retaliation from persons related to the prisoners or from others in the community who might disapprove of the execution as well as simply offering those willing to participate whatever comfort or peace of mind that anonymity might offer.”

Id. (quoting *Owens v. Hill*, 758 S.E.2d 794, 805 (Ga. 2014)).

TDOC’s practice of opening the blinds to the witness room after the condemned is secured to the gurney or electric chair and closing them before the physician enters the execution chamber to pronounce death ensures the confidentiality of the execution participants’ identities. Nelsen Decl. ¶¶ 27–30. It is axiomatic that if witnesses were permitted to observe the preparation of the syringes or sponges, the entry and preparation of the condemned in the execution chamber, the insertion of intravenous lines or placement of sponges, the administration of the lethal injection drugs or activation of the electrical current, the physician examination and pronouncement of death, and any other post-execution procedures, the identities of numerous execution participants would be exposed. *Id.* at ¶¶ 27–32.

None of these procedures can be carried out without the participation of the individuals involved in the execution. So, preventing witnesses from viewing those portions leading up to and following an execution is essential to ensure that TDOC “is able to recruit and retain employees who are able to carry out death sentences safely, humanely, and in accordance with the law” and “is able to procure LIC in order to carry out death sentences in accordance with the orders of the Tennessee Supreme Court.” *Id.* at ¶¶ 24, 25. And TDOC’s protocols are narrowly tailored to serve that interest. Under both protocols, the blinds are only closed during the limited periods when execution participants are physically present in the execution chamber. *Id.* at ¶¶ 14, 15. This is not

involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to public inspection.” Tenn. Code Ann. § 10-7-504(h)(1).

a blanket restriction; it is a targeted, minimal limitation that precisely protects the anonymity of those involved.

Based on the foregoing, Plaintiffs cannot show a likelihood of success on their First Amendment claim because, even if they have a qualified right of access to executions under the *Press-Enterprise II* framework, TDOC's interest in maintaining the confidentiality of execution participants' identities overrides that right.

C. Article 1, Section 19 of the Tennessee Constitution Does Not Require Unlimited Public Access to Executions.

The Tennessee Constitution confers no stouter support than the First Amendment for Plaintiffs' invented right to see pre- and post-execution events. To the contrary, Tennessee precedent confirms that Article I, section 19 of the Tennessee Constitution "clearly does not" guarantee "unrestricted free access" to government proceedings, let alone executions. *Mayhew v. Wilder*, 46 S.W.3d 760, 772 (Tenn. Ct. App. 2001). It only "protects the publication and dissemination of materials critical of governmental actions." *Id.* Plaintiffs' claim under Article I, section 19 therefore fails.

Article I, section 19 provides, in relevant part, "[t]hat the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof." Tenn. Const. art. I, § 19. Although the Tennessee Supreme Court has authority to interpret the state constitution to provide greater protection than the federal constitution, *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 525 (Tenn. 1993), it has *never* found the *existence* of a "right to access" government

proceedings in Article I, section 19—certainly not one *broad*er than the right protected by the First Amendment.⁵

In fact, the Tennessee Court of Appeals has specifically rejected the notion that Article I, section 19 protects a general “right of access” to government proceedings. *Mayhew*, 46 S.W.3d at 772. In *Mayhew*, a gaggle of media companies and press associations asserted that the Tennessee General Assembly violated Article I, section 19 when it held closed meetings during the legislative sessions that led to the passage of a state budget for the 2000-2001 fiscal year. *Id.* at 765-66. The plaintiffs argued that Article I, section 19 guaranteed them “unrestricted free access to all legislative sessions, or its committee meetings.” *Id.* at 772. But the Court of Appeals rejected this argument because the Constitution “clearly does not say” that “*the press* has the right to *attend* all meetings of the Legislature.” *Id.* (emphasis in original). The Court of Appeals looked to the plain text of Article I, section 19 as well as other authorities and concluded, “[w]e are confident that Article I, section 19 of our Constitution restricts prior restraints on the publication and dissemination of materials critical of governmental actions. It does not provide a right of access to all legislative meetings.” *Id.*; see also *Moncier v. Harris*, No. E2016-00209-COA-R3-CV, 2018 WL 1640072, at *7 (Tenn. Ct. App. Apr. 5, 2018) (“[A]rticle I, section 19 does not provide for an unrestricted right of access by the public to examine the proceedings of the Legislature or of any other branch of government.”).

Mayhew is dispositive here. Because Article I, section 19 only prohibits “prior restraints on the publication and dissemination of materials critical of governmental actions,” and “does not provide a right of access” to all government proceedings, it does not grant Plaintiffs unrestricted

⁵ The Tennessee Supreme Court’s cases recognizing a right to access judicial proceedings have only discussed the First Amendment, not Article I, section 19. See, e.g., *State v. Drake*, 701 S.W.2d 604, 607 (Tenn. 1985).

access to pre- and post-execution procedures. TDOC regulations safeguard the right protected by Article I, section 19 by providing that, “[i]mmediately after the execution of the death sentence is complete, all News Media Agency Representatives shall make themselves available for a news conference of other news media representatives and shall remain at the news conference until it is completed.” Tenn. Comp. R. & Regs. 0420-03-04-.05. This ensures that the press has a full and fair opportunity to publish and disseminate information related to the execution without undue government interference.

Plaintiffs overstate the protection offered by Article I, section 19. They cherry pick one sentence from the Tennessee Supreme Court’s 1978 opinion in *Press, Inc. v. Verran*, 569 S.W.2d 435, 441–42 (Tenn. 1978), which stated, in passing, that “[t]o the extent of this controversy this is a substantially stronger provision than that contained in the First Amendment to the Federal Constitution.” *Id.* at 442. The “controversy” at issue in that defamation case, however, was not the public right to access government proceedings; the sole issue for review was “whether plaintiff [wa]s a “public official” or a “public figure” under the law of libel as it has developed under recent decisions of the Supreme Court of the United States.” *Id.* at 437. And despite finding that Article I, section 19 has “substantially stronger” protection for libel than the First Amendment, the Court nevertheless adopted the “actual malice” standard from First Amendment jurisprudence, holding that the state constitution “does not constitutionalize false and malicious defamations, and publishers are answerable for abuse.” *Id.* at 442. Thus, *Press, Inc.* provides no support for Plaintiffs’ claim that Article I, section 19 protects a broader “right to access” government proceedings than the First Amendment.

At the end of the day, Article I, section 19 simply does not grant the public or the press an unrestricted right to access pre- and post-execution events. To the extent Article I, section 19

protects a right to access government proceedings at all, Plaintiffs are unlikely to succeed on the merits of their state constitutional claim for the same reasons that they are unlikely to succeed under the First Amendment.

III. The Remaining Temporary Injunction Factors Favor Denial.

Plaintiffs' inability to demonstrate a likelihood of success on the merits of their claims is "fatal" to their motion. *Fisher*, 604 S.W.3d at 394. Because Plaintiffs cannot show a statutory or constitutional violation, their claim of irreparable harm evaporates. The balance of the equities and the public interest also weigh in favor of denying temporary injunctive relief. The requested relief would impose significant operational and security burdens on TDOC—potentially delaying executions and compromising the identities of execution participants—just so media witnesses can satisfy their curiosity as to what goes on behind closed doors. Nelsen Decl. ¶¶ 22–25, 35–41, 51, 56. Allowing such access would defy the public policy of the State which "favor[s] the anonymity of those involved in carrying out capital punishment." *West*, 460 S.W.3d at 123–25.

Accordingly, the motion should be denied.

IV. Gross Laches Bars Injunctive Relief.

The Court should apply the doctrine of laches and decline to grant the extraordinary remedy of a temporary injunction due to Plaintiffs' unreasonable and prejudicial delay in challenging the Protocols, which have consistently limited witnesses' view of pre- and post-execution procedures since at least 2007.

The doctrine of laches "is an equitable defense which requires the finder of fact to determine whether it would be inequitable or unjust to enforce the claimant's rights." *Finova Cap. Corp. v. Regel*, 195 S.W.3d 656, 660 (Tenn. Ct. App. 2005). It bars relief when the asserting party "has delayed unreasonably in pursuing his rights" and the delay prejudices the opposing party. *Dennis Joslin Co., LLC v. Johnson*, 138 S.W.3d 197, 200 (Tenn. Ct. App. 2003) (citation omitted).

Although the doctrine typically applies where no statute of limitations governs, “it may be applied within a statutory limitations period in the case of gross laches,” which “occurs where there has been a long and unreasonable acquiescence in adverse rights.” *Finova Cap. Corp.*, 195 S.W.3d at 660 (cleaned up). This too requires a showing of prejudice, such as a loss of evidence or other harm, and it depends on the facts of the case. *Id.*

Here, there is nothing new about the portions of the Protocols that Plaintiffs claim violate their constitutional or statutory rights. The pleadings and evidence show that these portions have been the same since at least 2007, and possibly as long as a quarter-century, based on the *Tennessean*’s account of the Coe execution in 2000. *See* Ex. 13 to Compl. Specifically, witnesses have not been able to view any of the events that Plaintiffs claim a right to access, including when:

- an inmate enters the execution chamber;⁶
- an inmate is secured to a gurney or the electric chair;⁷
- execution team members insert IV lines or apply sponges to inmates’ ankles;⁸
- execution team members prepare syringes or saltwater solution;⁹

⁶ Ex. 2, 2007 Lethal Injection Protocol, at 64; Ex. 3, 2007 Electrocution Protocol, at 62; Ex. 4, 2013 Lethal Injection Protocol, at 64; Ex. 5, 2014 Electrocution Protocol, at 64; Ex. 6, 2014 Lethal Injection Protocol, at 63; Ex. 7, 2015 Lethal Injection Protocol, at 63; Ex. 8, 2017 Electrocution Protocol, at 64; Ex. 9, 2018 Lethal Injection Protocol, at 66, 69; Ex. 10, 2018 Revised Lethal Injection Protocol, at 65; Ex. 11, 2025 Lethal Injection Protocol, at 19.

⁷ 2007 Lethal Injection Protocol, at 64; 2007 Electrocution Protocol, at 62; 2013 Lethal Injection Protocol, at 64; 2014 Electrocution Protocol, at 64; 2014 Lethal Injection Protocol, at 63; 2015 Lethal Injection Protocol, at 63; 2017 Electrocution Protocol, at 64; 2018 Lethal Injection Protocol, at 66, 69; 2018 Revised Lethal Injection Protocol, at 65; 2025 Lethal Injection Protocol, at 19.

⁸ 2007 Lethal Injection Protocol, at 64; 2007 Electrocution Protocol, at 62; 2013 Lethal Injection Protocol, at 64; 2014 Electrocution Protocol, at 64; 2014 Lethal Injection Protocol, at 63; 2015 Lethal Injection Protocol, at 63; 2017 Electrocution Protocol, at 64; 2018 Lethal Injection Protocol, at 66, 69; 2018 Revised Lethal Injection Protocol, at 65; 2025 Lethal Injection Protocol, at 20.

⁹ 2007 Lethal Injection Protocol, at 38, 39; 2007 Electrocution Protocol, at 35, 36; 2013 Lethal Injection Protocol, at 38, 39; 2014 Electrocution Protocol, at 38, 39; 2014 Lethal Injection Protocol, at 37; 2015 Lethal Injection Protocol, at 37; 2017 Electrocution Protocol, at 38, 39; 2018

- execution team members administer LIC or electrical current from rooms adjoining the Execution Chamber;¹⁰
- an inmate is examined after LIC or electrical current is applied;¹¹
- a physician or TDOC employee makes a pronouncement of death;¹² or
- any other post-execution procedure.¹³

Compl. ¶¶ 49, 54, 81-82. Yet, Plaintiffs, whose journalists covered executions under these prior Protocols, waited decades to challenge the viewing restrictions. Plaintiffs cannot explain why injunctive relief is essential *now*. And this unreasonable delay prejudices TDOC by threatening to derail Nichols's impending execution, upsetting reliance interests in constructing prison facilities, and undermining the confidentiality of execution team members and the LIC source(s). Nelsen Decl. ¶¶ 21–32, 35, 40–45, 51, 56.

Lethal Injection Protocol, at 39–41; 2018 Revised Lethal Injection Protocol, at 39, 40; 2025 Lethal Injection Protocol, at 18.

¹⁰ 2007 Lethal Injection Protocol, at 43, 44; 2007 Electrocution Protocol, at 38, 39, 63; 2013 Lethal Injection Protocol, at 43, 44; 2014 Electrocution Protocol, at 42, 65; 2014 Lethal Injection Protocol, at 41, 42; 2015 Lethal Injection Protocol, at 41, 42; 2017 Electrocution Protocol, at 42, 65; 2018 Lethal Injection Protocol, at 45, 46; 2018 Revised Lethal Injection Protocol, at 44, 45; 2025 Lethal Injection Protocol, at 18, 21.

¹¹ 2007 Lethal Injection Protocol, at 65; 2007 Electrocution Protocol, at 63; 2013 Lethal Injection Protocol, at 65; 2014 Electrocution Protocol, at 65; 2014 Lethal Injection Protocol, at 64; 2015 Lethal Injection Protocol, at 64; 2017 Electrocution Protocol, at 65; 2018 Lethal Injection Protocol, at 67, 70; 2018 Revised Lethal Injection Protocol, at 66; 2025 Lethal Injection Protocol, at 21.

¹² 2007 Lethal Injection Protocol, at 65; 2007 Electrocution Protocol, at 63; 2013 Lethal Injection Protocol, at 65; 2014 Electrocution Protocol, at 65; 2014 Lethal Injection Protocol, at 64; 2015 Lethal Injection Protocol, at 64; 2017 Electrocution Protocol, at 65; 2018 Lethal Injection Protocol, at 67, 70; 2018 Revised Lethal Injection Protocol, at 66; 2025 Lethal Injection Protocol, at 21.

¹³ 2007 Lethal Injection Protocol, at 65, 66; 2007 Electrocution Protocol, at 63, 64; 2013 Lethal Injection Protocol, at 65, 66; 2014 Electrocution Protocol, at 65, 66; 2014 Lethal Injection Protocol, at 64, 65; 2015 Lethal Injection Protocol, at 64, 65; 2017 Electrocution Protocol, at 66, 67; 2018 Lethal Injection Protocol, at 67, 70–72; 2018 Revised Lethal Injection Protocol, at 66–68; 2025 Lethal Injection Protocol, at 21, 22.

The length of Plaintiffs' delay is enough to render it unreasonable. *See Finova Capital Corp.*, 195 S.W.3d at 658, 660–61 (delay of eight years after a breach of contract and five years after a cause of action accrued); *Memphis A. Phillip Randolph Inst. v. Hargett*, 473 F. Supp. 3d 789, 801, 2020 WL 4279623 (M.D. Tenn. 2020) (delay of seven weeks to file complaint and two months to file motion for preliminary injunction after COVID emergency order); *A.S. v. Lee*, No. 3:21-CV-00600, 2021 WL 3421182, at *3 (M.D. Tenn. Aug. 5, 2021) (delay of one month to file temporary restraining order after law took effect). But even if TDOC's implementation of the most recent Lethal Injection Protocol somehow vindicated Plaintiffs' decades-long delay, they still waited until two inmates had been executed under that Protocol to seek injunctive relief. When Plaintiffs filed the instant motion, over nine months had passed since TDOC implemented the 2025 Lethal Injection Protocol, five months had passed since Oscar Smith's execution, and over two months had passed since Byron Black's execution. If it is true that "Plaintiffs will again be prevented this December from observing the most significant aspects of Mr. Nichols's execution," Pls' Mem. at 12, why did they not consider the "significant aspects" of the executions of Smith and Black earlier this year to be worth observing? Again, Plaintiffs' Complaint and Motion are silent. Such "long and unreasonable acquiescence in adverse rights" without explanation is unreasonable and constitutes gross laches. *Finova Cap. Corp.*, 195 S.W.3d at 660.

Plaintiffs' delay in seeking injunctive relief also prejudices TDOC, because it has configured its facilities, staffing, and training around the viewing parameters that Plaintiffs so belatedly challenge. Prejudice under laches can come in different forms. Sometimes courts look for loss of evidence or accrued costs. *Id.* at 660. In other cases, courts look more generally for evidence of "prejudicial reliance by the defendants on the acts or silence of the complainant." *Whitehaven Util. Dist. of Shelby Cnty. v. Ramsay*, 387 S.W.2d 351, 353 (Tenn. 1964). For example,

in *Whitehaven*, the Tennessee Supreme Court found prejudicial reliance where the City of Memphis and Shelby County built, operated, and maintained sewer systems for more than eight years in the absence of any challenge from the plaintiff as to control or ownership. *Id.* at 352.

Just as the governmental defendants did in *Whitehaven*, TDOC can show prejudicial reliance on Plaintiffs' yearslong delay. TDOC has operated, maintained, and upgraded the Capital Punishment at RMSI at considerable expense during the years Plaintiffs sat on their alleged rights. Nelsen Decl. ¶¶ 42, 43. Equipment has been added, including cameras, audio equipment, and security technology. *Id.* at ¶ 43. Until now, TDOC has had no reason to expect a challenge to the viewing parameters of its execution Protocols. *Id.* at ¶¶ 44, 45. Given these facts, TDOC would suffer prejudice if forced to alter its Protocols, facilities, or procedures because of Plaintiffs' delay.

TDOC also has reliance interests in the confidentiality of the identities of execution team members as well as the source(s) of the LIC used in executions, which must be protected from disclosure. *See West*, 460 S.W.3d at 123–25; Tenn. Code Ann. § 10-7-504(h)(1). The Protocols keep this information confidential by preventing witnesses from viewing information that could reveal the supplier(s) of LIC in the Lethal Injection Room. Nelsen Decl. ¶ 31. The Protocols also protect the identities of the IV Team Members, the Special Operations Team Leader, and execution team members by shielding them from view. *Id.* at ¶¶ 26–32. TDOC and its employees have relied on this confidentiality for years. *Id.* at ¶¶ 22–25. If this Court removes that confidentiality by allowing witnesses to see LIC information or identifying characteristics of execution team members, TDOC will unquestionably be prejudiced. *Id.* at ¶¶ 23–25.

The Court should apply the doctrine of gross laches and deny Plaintiffs' motion.

CONCLUSION

Plaintiffs' motion for a temporary injunction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed and served by operation of the Court's eFileTN filing system and via email on this the 24th of November 2025, upon:

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