

No. M2026-00150-COA-R10-CV

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

ASSOCIATED PRESS, et al.,

Plaintiffs – Appellees,

v.

KENNETH NELSEN, et al.,

Defendants – Appellants.

On Appeal from the Davidson County Chancery Court
Case No. 25-1513-III

ANSWER TO APPELLANTS' RULE 10 APPLICATION FOR
EXTRAORDINARY APPEAL

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QUESTIONS PRESENTED

While, as discussed below, extraordinary review pursuant to Tenn. R. App. P. 10 is not warranted in this case, should review be granted, the Court should address the following questions:

1. Did the trial court properly exercise its authority to address the merits of Plaintiffs' motion for temporary injunction, which sought greater access to observe executions?
2. On the likelihood of success on the merits, did the trial court properly find that there is a qualified First Amendment right of access to execution proceedings and that Defendants have not carried their burden to overcome that presumption of access?
3. On the likelihood of success on the merits, did the trial court properly construe Tenn. Code Ann. § 40-23-116(a), which entitles selected media witnesses to be "present at the carrying out of the death sentence," to include being present at the execution from the moment the condemned enters the execution chamber to the moment the condemned is pronounced dead?
4. Because the Court can affirm on any grounds, is there a likelihood of success on the merits that Article I, Section 19 of the Tennessee Constitution provides a right of access to executions that independently supports the trial court's temporary injunction order?

INTRODUCTION

In a clear, well-reasoned decision, the Davidson County Chancery Court issued a temporary injunction vindicating Plaintiffs’ constitutional and statutory rights to view execution proceedings from the moment the condemned enters the execution chamber until the pronouncement of death. Defendants¹ now ask this Court to permit them another bite at the apple under Tenn. R. App. P. 10(a), a provision “reserved only for *extraordinary* departures from the accepted and usual course of judicial proceedings.” *Gilbert v. Wessels*, 458 S.W.3d 895, 898 (Tenn. 2014) (emphasis in original). But Defendants have pointed to nothing that prevents them from complying with the injunction or even remotely suggests they will be harmed by its enforcement, and nothing that otherwise makes immediate review necessary.

First, the temporary injunction here is not barred by the Tennessee Supreme Court’s recent decision in *Black v. Strada*, 721 S.W.3d 223 (Tenn. 2025), or recent amendments to Tenn. Sup. Ct. R. 12(4)(E), because it does not affect the method or timing of any future executions or otherwise have any impact on any execution order from the Tennessee Supreme Court. It does not require Defendants to adopt different or additional medical procedures on the day of the execution, and it does not threaten to stay any future executions by imposing conditions the State is unable to meet. It simply requires Defendants to keep witness-room

¹ Defendants are Kenneth Nelsen, the Warden at Riverbend Maximum Security Institution and Frank Strada, the Commissioner for the Tennessee Department of Correction (“TDOC”), both of whom are sued in their official capacity.

blinds open during these executions and to provide personal protective equipment to protect the anonymity of execution staff. This eminently straightforward and feasible order was entirely within the chancery court's power to grant.

Second, the trial court's temporary injunction order does not constitute an abuse of discretion, let alone a "plain and palpable" one sufficient to warrant extraordinary review. *Gilbert*, 458 S.W.3d at 898. The trial court's conclusion that the First Amendment guarantees a right to access execution proceedings is amply supported by well-established case law. Indeed, the only appellate court to have considered this question reached the same result by applying the same bedrock legal principles. And the trial court's conclusion that the State's access restrictions violate the Press Coalition's statutory right to be "present at the carrying out of the death sentence," Tenn. Code Ann. § 40-23-116(a), is grounded in basic principles of statutory construction, persuasive precedent, and common sense. These well-reasoned conclusions are a far cry from the kinds of arbitrary action that warrant Rule 10 review.

Finally, in all of their exhaustive rehashing of their disagreements with the *merits* of the trial court's decision, Defendants do not come close to showing why immediate review in the form of an extraordinary appeal under Rule 10 is necessary or appropriate here. They allude vaguely to a need for "clarity on their legal obligations" under the temporary injunction issued by the trial court, but they do not point to anything in the facially clear injunction that is actually ambiguous. Appellants' Application for Extraordinary Appeal Pursuant to Tenn. R. App. P. 10 ("Appellants' Appl.") at 19, 43. Beyond that, they never bother to explain

why complying with the temporary injunction through the duration of the litigation in the trial court (and, as applicable, through any appeals), would actually cause them any injury—irreparable or otherwise. The injunction makes modest alterations to the state’s Execution Protocols that would vindicate the press’s constitutional and statutory rights to access and “be present” at execution proceedings. But the injunction does not require destruction of a building that cannot be rebuilt or revelation of information that cannot be taken back—or cause any other harm that could not be undone at the conclusion of an appeal in the ordinary course. There is simply no need for immediate, interlocutory review. Likewise, Defendants’ even more far-fetched request that this Court “summarily vacate” the trial court’s order entirely, Appellants’ Appl. at 5, 23—before any briefing or full appellate review on the merits—should be rejected out of hand.

In sum, because Defendants have not met—and cannot meet—their heavy burden to justify this extraordinary appeal, their Application should be denied.

BACKGROUND

On October 28, 2025, the Press Coalition² filed this action alleging that by restricting access to execution proceedings the Tennessee Execution Protocols, App’x at 126–239, violate (1) its statutory right to be “present at the carrying out of the death sentence” under Tenn. Code Ann. § 40-23-116(a), (2) its right to access government proceedings under

² The Plaintiff Press Coalition is comprised of the Associated Press, Gannett Co., Inc., Nashville Public Media, Inc., Nashville Public Radio, Scripps Media, Inc., Six Rivers Media, LLC, and TEGNA Inc.

the First Amendment of the United States Constitution, and (3) its right to access government proceedings under Article I, Section 19 of the Tennessee Constitution. App'x at 2–30. The Complaint seeks, among other things, declaratory relief and an injunction requiring Defendants “to permit the public and the press to observe the totality of executions, including those pre- and post-execution procedures inextricably intertwined with the execution process.” App'x at 28–29.

On October 29, 2025, the Press Coalition also moved for a temporary injunction requiring Defendants to permit media witnesses “to observe the entirety of execution proceedings, either through direct observational or closed circuit audio and video access,” including the following steps:

- (1)the preparation of the syringes for use in lethal injections and of sponges for use in electrocutions.
- (2)the entry of the condemned into the execution chamber;
- (3)the preparation of the condemned in the execution chamber, including the insertion of intravenous lines into the condemned for lethal injections and the placement of saturated ankle sponges and the securing of the condemned to the electric chair for electrocutions;
- (4)the administration of syringes of lethal injection drugs for lethal injections and the activation of the electrical current for electrocutions;
- (5)the physician examination and pronouncement of death;
- (6)any portions of the proceeding after the blinds are closed for the physician examination; and
- (7)any immediate post-execution procedures in the execution chamber.

App'x at 39–40. Defendants opposed the motion. App'x at 84–114. The Chancery Court held a hearing on the Press Coalition's temporary injunction motion on December 3, 2025. App'x at 256–348.

On January 16, 2026, “[a]fter studying the record, the law, the affidavits, and considering the argument of Counsel, and all evidence presented,” the trial court granted Plaintiffs’ motion, finding that “the Plaintiffs stand to suffer immediate and irreparable harm should this relief fail to be granted.” App'x at 350. The Court also found that the Press Coalition was likely to succeed on the merits of its First Amendment and statutory claims and that the remaining injunctive relief factors favored temporary relief. App'x at 352–73. Citing constitutional avoidance principles, the court did not reach the Press Coalition's state constitutional claim. App'x at 362 n.5.

Having found that TDOC's current Execution Protocols likely violate the First Amendment and Tennessee law, the court ordered Defendants (1) to provide each execution team member “a disposable coverall PPE suit which shall fully cover the team member's regular work uniform and name/identification badge and hair,” as well as “a mask to further conceal his or her identity should they so choose to wear one,” and (2) to amend the Execution Protocols to provide that curtains to the official witness room shall be opened when the condemned is escorted into the execution chamber “and shall remain open until the pronouncement of the death of the condemned individual, at which time the curtains shall be closed.” App'x at 373–76. The trial court did not hold that the Execution Protocols need to be revised with regard to the

other aspects of access sought by the Press Coalition, like the preparation of the syringes.

Defendants' disagreement with the court's analysis and application on both the First Amendment and statutory issues is far from sufficient to justify granting Defendants' Rule 10 Application. Similarly, the State argues that the trial court was without authority to issue its ruling based on a recent revision to Tenn. Sup. Ct. R. 12(4)(E) and a decision in a case involving a person on death row who was about to be executed. Neither precedent, however, divested the trial court of its authority to rule on the matter before it. Accordingly, there is no need for appellate review at this stage as the grounds for a Rule 10 extraordinary appeal have not been met by the Defendants.

REASONS TO NOT GRANT EXTRAORDINARY REVIEW

I. The State has failed to show that it is entitled to an extraordinary appeal under Rule 10.

An appellate court may grant an application for an extraordinary appeal pursuant to Rule 10 only (1) "if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review" or (2) "if necessary for complete determination of the action on appeal as otherwise provided in [the Rules of Appellate Procedure]." Tenn. R. App. P. 10(a). In other words, appeals under Rule 10(a) "are reserved only for *extraordinary* departures from the accepted and usual course of judicial proceedings." *Gilbert*, 458 S.W.3d at 898 (emphasis in original). Accordingly, "[i]t is important for appellate courts to exercise restraint in granting Rule 10 appeals." *Id.*

In practice, extraordinary appeals are granted *only* where an applicant has established that “the court’s ruling represents a fundamental illegality, the ruling fails to proceed according to the essential requirements of the law, the ruling is tantamount to the denial of a party’s day in court, the trial court’s action is without legal authority, the action of the trial court constitutes a plain and palpable abuse of discretion, or either party has lost a right or interest that may never be recaptured.” *State v. McKim*, 215 S.W.3d 781, 791 (Tenn. 2007). Defendants have wholly failed to show that any of these circumstances is present.

Indeed, far from establishing the type of “plain and palpable abuse of discretion” that might justify Rule 10 review, Defendants could not even make the requisite showing under the more forgiving, but still stringent, standard for reviewing a trial court’s decision to grant a temporary injunction in general: abuse of discretion. *See Fisher v. Hargett*, 604 S.W.3d 381, 395 (Tenn. 2020) (trial court “abuses its discretion” only when “it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence” (citation omitted)). This standard “does not permit reviewing courts to second-guess the court below, or to substitute their discretion for the lower court’s.” *Harmon v. Hickman Cmty. Healthcare Servs., Inc.*, 594 S.W.3d 297, 305 (Tenn. 2020) (citation omitted). However, that is exactly what Defendants ask this Court to do.

In bringing this appeal, the State takes issue with the trial court’s ability to decide this case and its analysis of the merits of the

constitutional and statutory claims because it believes the merits should have come out in its favor. But the trial court had the authority to address the claims and motion brought by Plaintiffs and issued a thorough and well-reasoned opinion that correctly applied bedrock principles of constitutional law and statutory interpretation. There was accordingly no lack of legal authority and no abuse of discretion at all—let alone a “plain and palpable” one—so as to warrant this extraordinary appeal. Therefore, the State’s Rule 10 Application should be denied.

II. The trial court had the authority to issue the temporary injunction.

A. Black is entirely inapplicable.

Defendants rely heavily on the premise that the Tennessee Supreme Court’s decision in *Black v. Strada*, 721 S.W.3d 223 (Tenn. 2025), divests the trial court of its authority to decide the temporary injunction motion or this case writ large. A reading of what *Black* actually holds confirms that this reliance is entirely misplaced; the narrow holding of *Black* has no effect on the issues the trial court decided here. The trial court acted well within its authority and, as such, extraordinary appeal is not warranted.

In *Black*, the Tennessee Supreme Court plainly explained that “[t]he narrow issue we address here is whether, in the context of an impending execution, the trial court had the authority to grant mandatory injunctive relief to the moving party *that effectively modifies this Court’s unconditional execution order.*” *Id.* at 228 (emphasis added). The trial court’s order in this case was neither “in the context of an

impending execution” nor did it effectively modify the Tennessee Supreme Court’s execution orders.

In arguing otherwise, Defendants urge this Court to adopt a grossly inflated reading of *Black*—one that is not supported by the text of the opinion and, moreover, would prevent lower courts from hearing *any* challenge to *any* aspect of the state’s execution protocols any time an order for an execution has been issued.

In fact, *Black* stands for a proposition far narrower and less extreme: *condemned prisoners* cannot seek to stay their execution orders by asking lower courts to issue injunctions that alter the method or timing of their executions once the Supreme Court has entered an “unconditional execution order” as to that prisoner. *Id.* Because the temporary injunction here was not brought by a condemned prisoner, and has no bearing on the method or timing of any future executions or “unconditional execution order[s],” *Black* is not applicable.

The facts of *Black* confirm that its holding is narrow. There, condemned prisoner Byron Black was a plaintiff in a pending lawsuit challenging the constitutionality of Tennessee’s “single-drug lethal injection protocol.” With the trial in that case set for months after his already-scheduled execution date, Mr. Black brought a separate challenge just weeks before his scheduled execution seeking a temporary injunction that would require the State to deactivate his cardioverter-defibrillator (“ICD”) “via a particular method immediately before, or simultaneously with, the execution.” *Id.* at 225. Although the defendants “informed the trial court that they were unable to deactivate the ICD on

the day of the execution,” the chancery court nonetheless granted an injunction directing the State to transport Mr. Black to the hospital for deactivation of the ICD the morning of the execution. *Id.* at 228.

The Tennessee Supreme Court concluded that this particular injunction “effectively modifie[d]” Mr. Black’s unconditional execution order for two reasons. First, the Court noted that the injunction required the State to adopt an “alternative *method* of execution—injection of a single lethal dose of pentobarbital only after deactivation of the [condemned’s] ICD by a qualified medical professional on his scheduled execution date.” *Id.* (emphasis added). Second, the Court found that this alternative method “effectively and practically operated as a stay” of Mr. Black’s execution order because defendants had presented credible evidence that they would be unable to deactivate the ICD on the day of the execution, as the trial court had ordered. *Id.*

The injunction in the present case does not operate as a stay in any way and does not “modif[y]” any outstanding execution orders. Unlike in *Black*, where the injunction required the State to adopt an “alternative method of execution” for a prisoner already subject to an execution order from the Supreme Court, *id.*, the injunction here has no bearing on the way in which the State chooses to effectuate any scheduled execution. The injunction does not require the State to adopt additional or different medical procedures on the day of the execution; it simply requires the execution team to wear specific attire and requires the State to keep the witness-room blinds open longer while conducting the final stages of the execution—by whatever method it chooses. App’x at 373–76. Nor does the injunction threaten to stay any future execution orders by imposing

conditions the State is incapable of meeting. Defendants here have not argued—and cannot argue—that they are unable to comply with the trial court’s eminently straightforward and feasible order by the next-scheduled execution.

The fact of the matter is the trial court’s order only does three things: (1) requires the execution team to wear different attire, (2) requires that the curtains between the execution chamber and the witness rooms be open longer, and (3) requires different time frames for the arrival of witnesses. App’x at 373–76. The temporary injunction in this case does not act as a stay, does not modify the method of execution, and does not modify any Tennessee Supreme Court execution orders. As such, the notion that *Black* precluded the trial court from granting this relief falls flat. The trial court was well within its authority to issue the temporary injunction and extraordinary review is far from warranted.

B. The Tennessee Supreme Court’s recent amendment of Rule 12(4)(E) confirms that *Black* is inapplicable.

Less than five months after the Court issued its opinion in *Black*, the Court amended Rule 12(4)(E), which governs execution dates, stays, and reprieves. The Court clarified that “collateral litigation that would potentially affect *the method or timing of execution* must commence with the filing of a motion in this Court.” In re: Amendment of Tenn. Sup. Ct. R. 12(4)(E), No. ADM2025-01930 (Tenn. Dec. 5, 2025) (emphasis added). As an initial matter, the incorporation of *Black*’s holding into Rule 12 indicates that *Black* is principally concerned with challenges brought by the *condemned*, not by third parties like the Press Coalition, because the Rule governs the process by which *a prisoner* may seek to stay or delay

an execution. Tenn. Sup. Ct. R. 12(4)(E) (providing that “the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless *the prisoner* can prove a likelihood of success on the merits in that litigation” (emphasis added)).

Crucially, the amendment makes clear that *Black* bars only those claims that would alter the “method” or “timing” of an execution and not, as Defendants appear to argue, *any* challenge to any aspect of the State’s Execution Protocols. Neither what the execution team wears nor when the curtains to the execution chamber are opened and closed has anything to do with the method or timing of an execution. But that is all the trial court’s order requires—specific garb for the execution team, opening of the curtains to the execution chamber earlier, and closing of the curtains to the execution chamber later. App’x at 373–76. TDOC can still execute the condemned on the date required by the Tennessee Supreme Court at the time of TDOC’s choosing using lethal injection or electrocution as the method. Nothing in the trial court’s order affects those aspects of the execution.

Further, because the language makes clear that Rule 12 applies only to condemned prisoners, the Press Coalition would lack standing to bring a Rule 12(4)(E) motion in the Supreme Court. But if Rule 12(4)(E) were construed as governing any challenge to any aspect of the State’s Execution Protocols, as Defendants appear to argue, that would effectively preclude the Press Coalition from seeking any relief in any

forum.³ By its plain language, Rule 12(4)(E) does not divest the trial court of the authority to decide a case like this one, where the relief sought has nothing to do with “the method or timing of execution.” Tenn. Sup. Ct. R. 12(4)(E).

Defendants contend that lower courts are powerless to order the State to make any changes to its Execution Protocols, but this is not what Rule 12(4)(E) says, and this Court should decline Defendants’ invitation to shield such a critical government proceeding from any form of judicial scrutiny. Because the temporary injunction here was entirely within the trial court’s power to grant, the Court should reject Defendants’ Application for Extraordinary Appeal.

C. Neither *Black* nor Rule 12(4)(E) has any effect on executions that have not been set.

Even if *Black* or Rule 12(4)(E) did actually prohibit the trial court from requiring different attire for the execution team and different timing for the opening and closing of the witness room curtains for executions that have already been set, which they do not, neither authority prohibits trial courts from deciding issues for executions that have *not* been set, and are not subject to any “unconditional execution order” from the Supreme Court. *Contra Black*, 721 S.W.3d at 228.

Rule 12(4)(E) specifically states that its limitation on commencement of state court collateral litigation affecting the method or

³ Such a holding would likely violate the Tennessee Constitution. Tenn. Const. art. I, § 17 (“That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.”).

timing of an execution only applies “[a]fter a date of execution is set.” The Tennessee Supreme Court has only set four future executions. As such, even if the trial court were somehow precluded from entering the injunction for executions that have already been set (which, again, is not the case), the trial court has authority to issue the temporary injunction for executions that have yet to be set by the Tennessee Supreme Court.

The same logic applies to the State’s invocation of *Black*. The “narrow issue” in *Black* was a trial court’s authority to grant mandatory injunctive relief that would modify an “unconditional execution order” from the Supreme Court “in the context of an impending execution.” 721 S.W.3d at 228. Again, even if this meant that the trial court could not enter the injunction here for an already scheduled execution (and it does not), the trial court would still have the authority to issue the temporary injunction for *unset* executions. Nothing in *Black* indicates otherwise.

Applying the State’s logic to TDOC, under Rule 12(4)(E) and *Black*, TDOC would not have the authority to change its *own* Execution Protocols if there were pending execution orders from the Tennessee Supreme Court, because surely TDOC would not have the power to do something the trial court could not do. And deviations from those protocols, like Defendants’ admission in their Application that the spiritual advisor of the condemned is generally allowed to remain in the execution chamber despite the protocols indicating otherwise, Appellants’ Appl. at 42 n.4, could be considered violations of *Black* and Rule 12(4)(E) and beyond the powers of TDOC. Such a rule would be just

as absurd as the State’s argument that *Black* and Rule 12(4)(E) divest trial courts of any power to review TDOC’s Execution Protocols.

III. The trial court did not so far depart from the accepted and usual course of judicial proceedings in correctly holding that Plaintiffs were likely to succeed on the merits of their statutory claim.

The trial court’s ruling that the Execution Protocols are contrary to the requirements in Tenn. Code Ann. § 40-23-116(a) was not an abuse of discretion, let alone a plain and palpable one. Rather, the trial court applied the well-established rules of statutory construction and found that the Execution Protocols violated Tenn. Code Ann. § 40-23-116(a). App’x at 362–71. Extraordinary review is thus not warranted.

Tenn. Code Ann. § 40-23-116(a) provides that specified witnesses are “entitled to be present at the carrying out of the death sentence,” including “[a] total of seven (7) members of the print, radio and television news media selected in accordance with the rules and regulations promulgated by the department of correction.” The trial court properly held that with the word “present” in the statute, “[t]he Legislature did not differentiate between the events that the official witnesses were to be present for and those which were to be shrouded by a veil of secrecy at the department’s choosing.” App’x at 367. “Instead, when drafting this statute, they granted the official witnesses the statutory right to be present, not for a portion of the carrying out of the death sentence, but for the entire event.” *Id.* Moreover, “[t]he statute lacks any qualifying language regarding what it means to be present. Time constraints do not exist in the statute, nor is there any limiting language on what can and cannot be seen.” App’x at 367–68. The State may disagree with these

conclusions based on its preferred interpretation, but that does not make the trial court's ruling an abuse of discretion, let alone a plain and palpable one.

The State also argues that review is proper because Tenn. Code Ann. § 40-23-116(a) confers only a right to view “the inmate’s death” itself. Appellants’ Appl. at 38. But that interpretation finds no support in the law or in common sense, and the trial court rightly rejected it. App’x at 367. In construing statutes, Tennessee courts “seek to ascertain the intention of the Legislature as it is expressed in the words of the statute and should look to the entire Act and give consideration to the purpose, objective and spirit behind the legislation.” *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976).

The “natural and ordinary meaning,” *Ellithorpe v. Weismark*, 479 S.W.3d 818, 827 (Tenn. 2015) (citation omitted), of being “present” at the “carrying out of the death sentence” is exactly the meaning that the trial court applied: “to be present, not for a portion of the carrying out of the death sentence, but for the entire event,” App’x at 367. In opposition, the State cites the third definition of the term “carry out” in the American Heritage Dictionary (“[t]o bring to a conclusion”), *see* Appellants’ Appl. at 38, along with the first definition of the term from the Merriam-Webster Online Dictionary (“to bring to a successful issue: complete, accomplish”), *see id.* at 38–39. In so doing, the State not only arbitrarily emphasizes the latter part of the definitions on which it relies to suggest that “carrying out” somehow includes only the “conclusion” and the “accomplish[ment]” of the sentence while excluding anything that “bring[s]” that result about, but also ignores other definitions from the

same dictionaries, such as “[t]o put into practice or effect,” *Carry Out*, Am. Heritage Dictionary (5th ed. 2022), <https://ahdictionary.com/word/search.html?q=carry>, and “to put into execution” or “to continue to an end or stopping point,” *Carry Out*, Merriam-Webster (updated Nov. 14, 2025), <https://www.merriam-webster.com/dictionary/carrying%20out>. It was not an abuse of discretion, let alone a palpable one, for the trial court to examine these competing definitions and reach the conclusion that it did.⁴

The State also argues that the use of the phrase “carried out within an enclosure to be prepared for that purpose in strict seclusion and privacy” changes the analysis, Tenn. Code Ann. § 40-23-116(a); *see* Appellants’ Appl. at 39, but it does not. As the trial court correctly noted, “[t]he entire execution process is to be conducted in strict seclusion inside

⁴ It is also worth noting that Tenn. Code Ann. § 40-23-116(a)(6) is a remedial provision designed to ensure public scrutiny of execution proceedings. *See Chattanooga-Hamilton Cnty. Hosp. Auth. v. Bradley Cnty.*, 249 S.W.3d 361, 366 (Tenn. 2008) (“Many legislative enactments are remedial in nature, that is, designed to address a particular objective or purpose or to provide a degree of protection.”); *Voss v. Shelter Mut. Ins. Co.*, 958 S.W.2d 342, 345 (Tenn. Ct. App. 1997) (finding Tennessee’s whistleblower protection statute to be remedial “in that it introduces regulations conducive to the public good”); *Loftin v. Langsdon*, 813 S.W.2d 475, 479 (Tenn. Ct. App. 1991) (“Statutes which introduce regulations conducive to the public good are remedial statutes.”). Accordingly, Tenn. Code Ann. § 40-23-116(a) must be “liberally construed in furtherance of [this] purpose.” *Dailey v. State*, 470 S.W.2d 608, 610 (Tenn. 1971); *see also Metro. Air Rsch. Testing Auth., Inc. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 842 S.W.2d 611, 616 (Tenn. Ct. App. 1992) (explaining that because Tennessee’s Open Meetings Act is remedial it should “be construed broadly to promote openness and accountability in government”).

of the jail, but for the presence of the official witnesses.” App’x at 368. When the blinds are opened and what the execution team is wearing have no bearing on the fact that the execution takes place in a special room on the grounds of Riverbend and is not viewable by the general public. The trial court committed no error in reaching this conclusion, much less a plain and palpable abuse of discretion so as to justify this extraordinary appeal.

The State also tries to wave away the trial court’s discussion of *Oregon Newspaper Publishers Association v. Oregon Department of Corrections*, 988 P.2d 359, 360–63 (Or. 1999), even though that decision addressed a strikingly similar statute. Appellants’ Appl. at 40; App’x at 370 (discussing Oregon Supreme Court’s interpretation of Or. Rev. Stat. § 137.473). There, as here, the Oregon legislature passed a statute permitting witnesses to “be present at the execution,” but an Oregon Department of Corrections rule improperly restricted witnesses to viewing only “the moments during which the lethal injection is administered and causes death.” 988 P.2d at 363. The Oregon Supreme Court sensibly held that “[t]he execution is the process of putting the prisoner to death” and that “those actions that are linked inextricably with the administration of the fatal drugs are part of the execution.” *Id.* at 363–64. This statutory language “requires that the execution, not just the dying, be observed by the witnesses.” *Id.* The State expresses doubt about “how a court might discern which actions are ‘linked inextricably’ with the execution and which are ‘remote activities that precede that process.’” Appellants’ Appl. at 40 (quoting *Or. Newspaper Publishers Ass’n*, 988 P.2d at 363–64). Whether or not those questions may be

difficult to resolve in a hypothetical case, they are not difficult to resolve here. The State does not meaningfully dispute that the portions of the execution addressed by the trial court's injunction—the condemned entering the execution chamber, the insertion of the intravenous lines or the preparation of the condemned for electrocution, and the examination and pronouncement of death by the physician—are among those actions that are linked inextricably with the execution. The State's hypothetical confusion about matters which the injunction does not address is not a basis for extraordinary appeal.

The State also takes issue with the trial court's consideration of the legislative history, but the court did not consider the legislative history dispositive, as the State claims; it clearly states that this history "further confirms the importance of an open process to the official witnesses," consistent with its interpretation of the plain language of the statute, App'x at 368, which is entirely proper. *See Waters v. Farr*, 291 S.W.3d 873, 895 (Tenn. 2009) ("Finally, the legislative history buttresses the plain language of the statute by indicating that the General Assembly intended to create a civil sanction.").

The State's theory on this appeal is that the trial court should have disregarded the plain meaning of the statute, along with relevant precedent from another state's highest court, and the legislative history of the statute at issue, in favor of TDOC's proffered reading of the law. *See* Appellants' Appl. at 41 (arguing "TDOC's interpretation" was entitled to "appropriate weight" (citation omitted)). But as the trial court rightly concluded, the statutes allowing TDOC to promulgate rules to facilitate lethal injection or electrocution, and to promulgate rules to

facilitate the selection of official press witnesses, are “void of any language granting the Department of Corrections the authority to delineate what portions of the execution event are to be closed or opened to the official witnesses.” App’x at 369. TDOC’s unsupported and untenable reading of the statute is not entitled to any special weight in these circumstances, and is certainly not, standing alone, a basis for granting an extraordinary appeal.

The State simply disagrees with the trial court’s conclusion on the meaning and application of Tenn. Code Ann. § 40-23-116(a). That is not a basis for extraordinary appeal, and this Court should accordingly decline the instant application.

IV. The trial court also correctly concluded that Plaintiffs were likely to succeed on the merits of their First Amendment challenge.

In their Rule 10 Application, Defendants attempt—improperly—to relitigate the merits of this matter and introduce novel arguments to reach a different result. However, the trial court rightly concluded that Plaintiffs were likely to succeed in establishing that the experience and logic factors are met with respect to executions. In arguing otherwise, Tennessee abandons all pretense of attempting to justify its extraordinary appeal with reference to Rule 10’s standard. Rather than identifying any “fundamental illegality” in the trial court’s analysis, *see Gilbert*, 458 S.W.3d at 898, the State simply argues that the analysis should have come out in its favor. Because that is not a basis for extraordinary review and the trial court properly concluded that Plaintiffs are likely to succeed on the merits of their First Amendment

challenge, the Court should reject the State’s inappropriate appeal accordingly.

A. The trial court applied the appropriate legal framework.

The trial court undertook a First Amendment analysis governed by the well-established “experience and logic” test of *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (“*Press-Enterprise II*”), consistent with precedent from the only federal Court of Appeals to have considered the question. *Cal. First Amend. Coal. v. Woodford*, 299 F.3d 868, 877 (9th Cir. 2002) (applying the *Press-Enterprise II* test to find a First Amendment right of access to executions). The *Press-Enterprise II* framework—comprised of two “complementary considerations”: (i) “whether the place and process have historically been open to the press and general public,” and (ii) “whether public access plays a significant positive role in the functioning of the particular process in question,” 478 U.S. at 8—properly governs Plaintiffs’ First Amendment claim.

To argue otherwise, the State now irrelevantly insists that the press has no “First Amendment right to access prison inmates and facilities beyond that of the general public.” Appellants’ Appl. at 24. The State makes much of language in *Richmond Newspapers, Inc. v. Virginia*, which noted that “penal institutions . . . are not ‘open’ or public places,” 448 U.S. 555, 576 n.11 (1980) (plurality opinion), but restrictions on access to prisons or to inmates simply cannot be evaluated in the same way as restrictions on access to *proceedings* held within prisons. See *Tex. Trib. v. Caldwell Cnty.*, 121 F.4th 520, 528–29 (5th Cir. 2024) (applying *Press-Enterprise II* framework to hybrid bail proceedings held partly

within a jail). By way of analogy, courthouses—where everyone must agree that *Press-Enterprise II* generally applies, see Appellants’ Appl. at 27 (agreeing the test applies to “criminal proceedings”)—are also not open to the public at all times or for all purposes; access to a courthouse hallway or lobby would be evaluated differently than access to a proceeding or chambers.

Further, the fact that Plaintiffs happen to be media organizations does not make *Pell* or *Houchins* any more applicable here than *Press-Enterprise II*. As the trial court rightly acknowledged, in the execution context, “an official witness is distinguishable from the public generally, as official witnesses are created by statute.” App’x at 357; Tenn. Code Ann. § 40-23-116(a)(6). Just as *Press-Enterprise II* applies to criminal trials even though “preferential seating for media representatives” has long been a feature of those proceedings, *Richmond Newspapers*, 448 U.S. at 581 n.18 (plurality opinion), it applies to execution proceedings where the State has selected those who will take up a limited number of seats. The State’s alternative argument that because the *Press-Enterprise II* test arose in the context of judicial proceedings it applies *only* to judicial proceedings, Appellants’ Appl. at 26, is as practically untenable as it is legally unsound, e.g., *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 695–96 (6th Cir. 2002) (rejecting argument that *Richmond Newspapers* only applies to judicial branch).

In making its arguments, the State asks this Court to ignore that the Ninth Circuit Court of Appeals—the only federal Court of Appeals to consider this issue—has *thrice* applied the *Press-Enterprise II* framework

to find a qualified right of access to execution proceedings. *Woodford*, 299 F.3d at 877 (“[T]he public enjoys 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[.]”); *Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) (applying the same analysis to the execution process in Idaho and reversing the denial of a preliminary injunction challenging the state’s protocols that limited access); *First Amend. Coal. of Ariz., Inc. v. Ryan*, 938 F.3d 1069, 1075 (9th Cir. 2019) (the public has a constitutional right to hear the entire execution process). Similarly, in *Philadelphia Inquirer v. Wetzel*, a federal trial court in Pennsylvania applied the experience and logic framework to find a qualified right of access to portions of executions that Pennsylvania corrections department protocol instructed its employees to obstruct. 906 F. Supp. 2d 362, 368 (M.D. Pa. 2012).

The State attempts to brush these precedents aside, arguing that either *Phillips v. DeWine*, 841 F.3d 405 (6th Cir. 2016) or *Zink v. Lombardi*, 783 F.3d 1089 (8th Cir. 2015)—cases that did not involve access to execution proceedings—should control. Appellants’ Appl. at 28. While some federal trial courts have declined to follow *Woodford*, those decisions all committed the same error: they treated the *place* where executions occur—within prison walls—as dispositive. *See, e.g., Okla. Observer v. Patton*, 73 F. Supp. 3d 1318, 1324 (W.D. Okla. 2014) (relying on the “different treatment of access issues in the prison context”); *BH Media Grp., Inc. v. Clarke*, 466 F. Supp. 3d 653, 663 (E.D. Va. 2020),

vacated and remanded, 851 F. App'x 368 (4th Cir. 2021) (same); *Associated Press v. Neal*, 788 F. Supp. 3d 959, 965 (S.D. Ind. 2025) (same). The trial court here did not make that mistake.

Finally, *McCaleb v. Long*, 152 F.4th 728 (6th Cir. 2025), is a red herring; while the Sixth Circuit found that the *Press-Enterprise II* test did not apply to proceedings of the Tennessee Judicial Advisory Commission because those meetings are “advisory, not adjudicatory,” *id.* at 730, executions *are* adversarial, *see Coe v. Bell*, 89 F. Supp. 2d 962, 966 (M.D. Tenn. 2000) (requiring defense counsel “be permitted to witness [their client’s] execution”), and have the extraordinary and non-reversible operative effect of extinguishing a life.

Press-Enterprise II provides a complete and proper framework for answering the question of whether the public has a right of access to particular proceedings; especially those that “are creatures unto themselves,” and are “unique.” App’x at 355. In applying that framework and concluding that Plaintiffs were likely to succeed in establishing that the experience and logic factors are met with respect to executions, the trial court committed no error—and certainly no error that would entitle Defendants to an extraordinary appeal.

B. The trial court correctly concluded that the experience and logic prongs of the *Press-Enterprise II* test were satisfied with respect to executions.

The trial court concluded that both experience and logic confirmed a First Amendment right to access executions, finding that executions “were historically open to the public” and that public access to such proceedings “plays a significant role in promoting transparency,

accountability, and public confidence in the administration of capital punishment in the United States.” App’x at 359, 362.

a. The “experience” prong is satisfied.

The “experience” prong of the *Press-Enterprise II* test looks to “whether the place and process have historically been open to the press and general public.” 478 U.S. at 8. The trial court thoughtfully evaluated the history of access to executions in the United States, giving full force to the various forms that access has taken as execution methods have evolved, and correctly concluded that “executions were historically open to the public,” App’x at 359, considering that “even when moved to jail yards, members of the press were still allowed to be fully present for those executions,” App’x at 360. Ignoring this analysis, the State oddly argues that the trial court “erred by finding the early history of public hangings dispositive.” Appellants’ Appl. at 31. The trial court did no such thing.

Also considered by the trial court was authority confirming the historical and modern-day statutory tradition of permitting official and press witnesses at executions in nearly every jurisdiction. App’x at 66–69 (collecting authorities). But the State insists that these historical and modern-day authorities should not matter at all. In its view, taking that history into account would “wrongly elevate[] earlier policy preferences into an inflexible constitutional mandate.” Appellants’ Appl. at 32. But evaluating the history of access is exactly what the experience prong of the *Press-Enterprise II* analysis requires. While the State may not like the Supreme Court’s test, that does not make it any less binding. *Cf. Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996) (“When an opinion issues for the [Supreme] Court, it is not only the result but also

those portions of the opinion necessary to that result by which [future courts] are bound.”).

Further, a finding that either the experience or the logic prong of *Press-Enterprise II* is satisfied does not create the “inflexible constitutional mandate” boogeyman that the State suggests. Appellants’ Appl. at 32. Rather, it simply means that the public has a *presumptive* right of access to the proceeding at issue. But that right is *qualified*, meaning that the government may overcome it and close a particular proceeding where it demonstrates an “overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise II*, 478 U.S. at 9 (citation omitted).

In short, the trial court did not disregard any portion of the history of access to executions in the United States, nor did it improperly elevate the practice of any one jurisdiction above the overwhelming weight of authorities in others. The court thoughtfully concluded that “[e]ven when executions were moved into prison yards and to the inside of prison walls, official press witnesses and other witnesses were still allowed in to be present to observe the proceedings,” App’x at 361—a conclusion consistent with the Ninth Circuit’s conclusion in *Woodford*. 299 F.3d at 875–76.

b. The “logic” prong is satisfied.

In addressing whether “public access plays a significant positive role in the functioning” of executions, *Press-Enterprise II*, 478 U.S. at 8, the trial court correctly concluded that “[p]ublic access to executions plays a significant role in promoting transparency, accountability, and

public confidence in the administration of capital punishment in the United States,” App’x at 361–62. To resist the trial court’s straightforward conclusion, Tennessee repackages its dissatisfaction with the trial court’s analysis of the historical record before it into the argument that “executions in the United States have functioned without public access for nearly two centuries.” Appellants’ Appl. at 33. But that assertion is counterfactual and contrary to the record; members of the public and press have maintained access to executions throughout the modern era and contributed to their functioning. The State also seeks refuge in the plurality’s decision in *Houchins*, arguing “[w]e must not confuse what is ‘good,’ ‘desirable,’ or ‘expedient’ with what is constitutionally commanded by the First Amendment.” Appellants’ Appl. at 34 (quoting *Houchins v. KQED, Inc.*, 438 U.S. 1, 13 (1978) (plurality opinion)). But the State’s argument is little more than a thinly veiled attack on the utility of the logic prong of *Press-Enterprise II*, which is binding precedent.

When deciding the logic prong of the *Press-Enterprise II* test, “what is crucial in individual cases is whether access to a particular government process is important in terms of that very process.” *Richmond Newspapers*, 448 U.S. at 589 (Brennan, J., concurring). Public access to execution proceedings—including not only the isolated moments when death occurs but all of the steps and procedures that are “inextricably intertwined with the process,” *Woodford*, 299 F.3d at 877—is integral. As the trial court rightly concluded, public access to executions contributes to the positive functioning of those proceedings. It ensures

that executions are competently and humanely administered consistent with the Eighth Amendment. *Id.* at 876–77; *Phila. Inquirer*, 906 F. Supp. 2d at 371; *see also* App’x at 71–73 (question whether a lethal injection protocol is “administered as intended” or is performed in a way that creates an “objectively intolerable” risk of pain is a consideration that the Supreme Court has recognized as directly relevant to the Eighth Amendment analysis); *Baze v. Rees*, 553 U.S. 35, 62 (2008) (citation omitted) (rejecting challenge to Kentucky’s lethal injection protocol under objectively intolerable risk framework). Public and press access to executions also contributes to their deterrent effect. *See* Cass R. Sunstein & Adrian Vermeule, *Is Capital Punishment Morally Required? Acts, Omissions, and Life-Life Tradeoffs*, 58 *Stan. L. Rev.* 703, 711–16 (2005) (“If executions are highly salient and cognitively available, some prospective murderers will overestimate their likelihood, and will be deterred as a result.”); *see also* App’x at 368 (recognizing media’s role in “spread[ing] the news that it’s being done as a deterrent” (quoting Statement of Sen. C. Coulter Gilbert on S.B. 2287, 98th Gen. Assemb. (Tenn. Mar. 9, 1994), at Tr. 4:21–5:4)).

In sum, the trial court thoroughly considered both the experience and logic prongs of the *Press-Enterprise II* standard in accordance with established precedent, and there can be no serious argument that the court’s thoughtful opinion “so far departed from the accepted and usual course of judicial proceedings as to require immediate review.” *Tenn. R. App. P.* 10(a).

C. The trial court correctly concluded that TDOC's interest in maintaining confidentiality of execution team members' identities did not override the First Amendment right of access.

Finally, the court found that the access restrictions in the Execution Protocols were not narrowly tailored to Defendants' asserted confidentiality concerns. App'x at 371–72. While acknowledging that Tennessee has a policy of protecting the anonymity of execution team members, the court noted that this policy could readily “co-exist” with the Press Coalition's First Amendment rights “without eroding the rights of the press and without compromising the identities of the members of the execution team.” App'x at 372.

In a last-ditch attempt to resist a straightforward application of the *Press-Enterprise II* framework, the State raises a new theory that it did not raise in the trial court (and which is wholly inappropriate to raise in the context of its Rule 10 Application):⁵ that opening the blinds after the preparatory stages of the execution and closing them before the pronouncement of death do not really “deny” access at all, and that they should accordingly be evaluated as “time, place, and manner” restrictions. Appellants' Appl. at 37 (citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606–07 & n.17 (1982)). The State's position is an about-face from the position it proffered in the court below. Previously, it argued that “preventing witnesses from viewing those portions leading up to and following an execution” was necessary to

⁵ *McNeary v. Baptist Mem'l Hosp.*, 360 S.W.3d 429, 445 (Tenn. Ct. App. 2011) (“It is well-settled that issues not raised at the trial court level cannot be raised for the first time on appeal.”).

ensure TDOC could “recruit and retain employees,” in an effort to satisfy strict scrutiny assuming *Press-Enterprise II* applied. See App’x at 104–05. But the State’s desire to raise a newfound legal theory is not a basis for extraordinary appeal, and this Court should accordingly reject the State’s effort to shoehorn that theory into the scope of Rule 10 review.

To be clear, closing the blinds during portions of the execution *does* deny access to those portions of the proceeding. The portions of the execution where the condemned is entering the execution chamber, being prepared for the execution, and being examined and pronounced dead are not akin to a collateral proceeding such as a “huddle,” or “conference[] in chambers,” *Richmond Newspapers*, 448 U.S. at 598 n.23 (Brennan, J., concurring); they are integral to the very process of the execution and “inextricably intertwined” with that process, *Woodford*, 299 F.3d at 877. And closing the blinds during critical portions of the execution is not akin to reasonably awarding “preferential seating for media representatives.” *Richmond Newspapers*, 448 U.S. at 581 n.18 (plurality opinion). Because the State’s restrictions amount to “deny[ing] the right of access” to critical portions of the execution proceeding, the State must meet strict scrutiny by showing “that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” *Globe Newspaper Co.*, 457 U.S. at 606–07.

In any event, whether viewed from the appropriate lens of strict scrutiny or through the less apt lens of intermediate scrutiny that the State now proposes, Tennessee’s restrictions that entirely shutter access to critical portions of the execution burden the press and the public’s right

of access far more than is necessary to accommodate the State's anonymity concerns. While the government is not required to use the "least restrictive" means on that footing, it still must show that it "seriously undertook to address" the problems it faces "with less intrusive tools readily available to it." *Sisters for Life, Inc. v. Louisville-Jefferson Cnty.*, 56 F.4th 400, 403–04 (6th Cir. 2022) (citation omitted). The State has not attempted to do so. As the trial court rightly found, "[t]he protection of the identities of those involved in the implementation of the death sentence and the statutory right of the Press Coalition to be present can co-exist with one another without eroding the rights of the press and without compromising the identities of the members of the execution team." App'x at 372. Thus, the trial court's injunction readily accommodates anonymity concerns by allowing staff to wear disposable coverall suits to cover their regular work uniform and to wear masks, should they so choose. App'x at 373–76.

V. Defendants have not shown that immediate review—let alone summary vacatur at the Rule 10 application stage—is necessary or appropriate.

Defendants not only seek "extraordinary" interlocutory review by this Court, which should not be granted, but they also ask this Court to "summarily vacate" the trial court's temporary injunction based only on the parties' Rule 10 filings. Appellants' Appl. at 5, 23. But Defendants have not remotely justified the need for immediate review under Rule 10. And for the same reasons, their even more extreme demand that this Court vacate the trial court's order without any further briefing or full appellate review of the merits must be rejected.

As an initial matter, Defendants never bother to coherently explain why immediate interlocutory review of the trial court's order is necessary at all. Defendants vaguely allude to a desire for "clarity on their legal obligations before the next scheduled execution on May 21, 2026." *Id.* at 43. But Defendants do not identify what is actually unclear about the court's order; indeed, the temporary injunction is perfectly clear on its face in laying out precisely what Defendants are required to do.

Defendants also argue that immediate review is necessary because Defendants "will lose their opportunity to challenge the trial court's unlawful injunction before the next execution." *Id.* But they do not identify what right or interest they need to protect with *immediate* review. If Defendants' arguments ultimately prevail after full litigation and appeals, and the courts determine that the original Execution Protocols satisfy the State's constitutional and statutory obligations after all, then Defendants will be free to revert to those protocols at that point. Defendants never articulate how complying with the temporary injunction in the meantime would cause any harm at all—let alone any irreparable harm.

Defendants' attempt to liken their interests to the First Amendment rights of access to public proceedings held by the press and public falls flat. The fact that, as Defendants correctly point out, "the Tennessee Supreme Court has granted review to media intervenors seeking immediate review of closure orders in a criminal trial," *id.* at 44, is grounded in the firmly established principle that "even a minimal infringement upon First Amendment rights constitutes irreparable injury sufficient to justify injunctive relief," *Detroit Free Press*, 303 F.3d

at 710 (citing *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) (plurality opinion)). Defendants do not—and cannot—point to any similarly weighty *state* interest in adhering to specific protocols regarding the outerwear worn by execution staff or the timing of when to close the curtain between the execution chamber and the witness room. Accordingly, even if Defendants comply with the temporary injunction but ultimately prevail in getting the injunction reversed on appeal, there would have been no harm, even if the amended protocols are used during all of the executions that occur between now and that final result.

For similar reasons, the Court should not even entertain Defendants’ even more extreme request to “summarily vacate” the temporary injunction before even affording the parties a full opportunity to brief and argue the merits of the appeal.

Notably, Defendants do not cite any authority for their request other than the Tennessee Supreme Court’s July 31, 2025 *Black* decision discussed *supra*. See Appellants’ Appl. at 18 (citing *Black* for the proposition that, on a Rule 10 application, this Court can order “summary reversal or a stay pending appeal”). However, although the Supreme Court ultimately assumed jurisdiction over the *Black* case and vacated the trial court’s injunction at the Rule 10 stage, that decision followed *multiple decades* of trial-level, appellate and collateral litigation regarding Mr. Black’s conviction, death sentence and execution in both state and federal courts. See generally *Black v. State*, No. M2000-00641-SC-DPE-CD, 2025 WL 1927568 (Tenn. July 8, 2025), *cert. denied*, 146 S. Ct. 58 (2025). That litigation ultimately resulted in the issuance of the

“unconditional execution order” from the Supreme Court; the Supreme Court’s assumption of jurisdiction to enforce and prevent a stay or modification of that order in the face of the additional challenge is therefore not surprising.

Needless to say, *none* of those extraordinary circumstances are present here. Defendants do not cite any authority for the notion that the Court of Appeals may vacate a trial court’s order based only on a party’s request for extraordinary review under Rule 10, without briefing on the merits of the requested appeal.

In the event the Court determines that appellate review is necessary and appropriate at this stage—which, for all of the reasons discussed herein, Defendants have failed to establish—then the parties must be given the opportunity to fully brief the merits, and, as appropriate, present oral argument. Defendants cannot obtain summary vacatur of the underlying decision before any of those proceedings take place.⁶

⁶ In the event the Court determined that enforcement of the temporary injunction pending appellate review would, in fact, cause any cognizable harm, then the appropriate remedy could be to issue a temporary stay of the injunction. However, given Defendants’ failure to take the steps necessary to request such a stay and their failure to articulate how any harm would come from complying with the temporary injunction, even if it were ultimately vacated after full appellate review, there would be no basis for that relief.

CONCLUSION

For all the reasons set forth herein, the Court should deny Defendants' request for Rule 10 review of the trial court's well-reasoned temporary injunction decision.

Dated: February 23, 2026

Respectfully submitted,

/s/ Paul R. McAdoo

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The undersigned certifies that on February 23, 2026, a true and correct copy of the foregoing was served through the Court's e-filing system on:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this filing complies with the word-count limit set forth in Tenn. R. App. P. 30(e). Based on the word-count function of Microsoft Word, the total word count for all printed text in the body of the brief exclusive of the material omitted under Tenn. R. App. P. 30(e) is 9,411 words. This brief complies with the requirements of Tenn. Sup. Ct. R. 46, § 3.02(a). The text of the brief is 14-point Century Schoolbook font with 1.5 line spacing and 1-inch margins.

Dated: February 23, 2026

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