

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

ASSOCIATED PRESS, et al.,	)	
	)	
Appellees,	)	
	)	DAVIDSON COUNTY
v.	)	No. M2026-____-SC-R10-CV
	)	
KENNETH NELSEN, et al.,	)	
	)	
Appellants.	)	

**APPELLANTS' APPLICATION FOR EXTRAORDINARY APPEAL
PURSUANT TO TENN. R. APP. P. 10**

JONATHAN SKRMETTI
Attorney General & Reporter

J. MATTHEW RICE
Solicitor General

EDWIN ALAN GROVES, JR.
Assistant Solicitor General
Office of Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-2850
Alan.Groves@ag.tn.gov
B.P.R. No. 036813

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QUESTIONS PRESENTED

- I. Does the First Amendment require Tennessee to allow media witnesses to see preparatory and post-execution procedures?
- II. Do TDOC execution protocols comply with Tenn. Code Ann. § 40-23-116(a), which gives media witnesses the right to be “present at the carrying out of the death sentence”?
- III. Can media plaintiffs interfere with this Court’s unconditional execution orders by asking trial courts to condition executions on expanded media viewing access?

INTRODUCTION

The Davidson County Chancery Court has issued another injunction rewriting the State’s execution protocols. This time, the court erased important anonymity protections for execution participants at the behest of media plaintiffs who claim a First Amendment and statutory right to view every aspect of an execution. Absent Rule 10 review, Defendants will have *no opportunity to appeal this unprecedented decision before the next execution* on May 21, 2026. That cannot be how the system is supposed to work. The State’s strong interest in maintaining the anonymity of execution participants—and the need to ensure appellate review before a judicial rewrite of the State’s carefully adopted execution protocol—warrants this Court’s immediate intervention.

“[T]he public policy of Tennessee . . . favor[s] the anonymity of those involved in carrying out capital punishment.” *West v. Schofield*, 460 S.W.3d 113, 124-25 (Tenn. 2015). And yet, the trial court’s injunction requires the blinds to the execution chamber to remain open from before the inmate enters the chamber until the pronouncement of death, exposing execution participants to witnesses who will try to identify them.¹ Foreseeing the exposure risk, the court attempted a judicial solution: execution participants, under the injunction, must wear “PPE suits” and “masks” to shield their identities. But no record evidence

¹ See WVLT News, *Officials Hold a News Conference After the Execution of Harold Nichols* (26:30-27:14) (Dec. 11, 2025) (reporter attempting to identify execution participants before the blinds were closed), <https://perma.cc/5MDJ-VWJ4>.

supports the efficacy of these watered-down privacy protections. And if these untested procedures expose the identities of execution participants, those individuals risk “harassment” and “retaliation” by anti-death penalty activists, and they may “become unwilling to participate.” *West*, 460 S.W.3d at 124.

Given the high stakes, Defendants should have the opportunity to seek review before the next execution. Immediate review is available when “necessary for a complete determination of the action on appeal,” Tenn. R. App. P. 10(a), including “where a [party] may otherwise lose a right or interest that may never be recaptured.” *State v. McKim*, 215 S.W.3d 781, 791-92 (Tenn. 2007). This case qualifies. If Defendants must wait until after the next execution to appeal, execution participants may be exposed, or they may decline to participate altogether. Not to mention, the State will be forced to alter its practiced protocol according to the dictates of a single chancery court judge. If the law required as much, that’d be one thing. But it doesn’t. The State should at least have “the opportunity of prompt appellate review.” *State v. Drake*, 701 S.W.2d 604, 608-09 (Tenn. 1985).

Furthermore, the injunction reflects a “plain and palpable abuse of discretion.” *McKim*, 215 S.W.3d at 791. First, the trial court applied an incorrect legal standard to identify a non-existent First Amendment right to access executions. This contradicts a mountain of precedent from other courts, *see infra* 8-9, including the Sixth Circuit’s recent ruling in favor of the Tennessee Judicial Advisory Commission, which properly held that the right to access only attaches to certain “adjudicatory proceedings.” *McCaleb v. Long*, 152 F.4th 728, 733 (6th Cir. 2025). Second, the trial

court misconstrued witnesses’ statutory right to be “present at the carrying out of the death sentence,” Tenn. Code Ann. § 40-23-116(a), as requiring unlimited viewing access, even for preparatory and post-execution procedures. The trial court plainly and “necessarily abuse[d] its discretion when it commit[ted] [these] errors of law.” *State v. Deberry*, 651 S.W.3d 918, 924 (Tenn. 2022).

Even worse, the trial court lacked authority to “plac[e] condition[s]” on this Court’s “unconditional execution order[s].” *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn. 2025) (order). To the extent *Black* leaves any ambiguity about the scope of a trial court’s authority, this Court should make clear that there is no media-plaintiff loophole that permits trial courts to micromanage the State’s execution protocols after the entry of an “unconditional execution order.” *Id.*

The Court should grant Defendants’ application and stay the trial court’s injunction pending appeal.

STATEMENT OF THE CASE AND FACTS

A. Legal Background

1. As a general rule, “[n]either the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government’s control.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978) (plurality). Although the First Amendment protects the “right to gather news,” it does not “compel others,” including the government, “to supply information.” *Id.* at 11. Nor does “[t]he First Amendment . . . guarantee the press a constitutional right of special access to information not available to the public generally.” *Branzburg v. Hayes*, 408 U.S. 665, 684 (1972).

Prisons are no exception. “[N]ewsmen have no constitutional right of access to prisons or their inmates beyond that afforded to the general public.” *Pell v. Procunier*, 417 U.S. 817, 834 (1974). Although the “conditions in jails and prisons are clearly matters ‘of great public importance,’” *Houchins*, 438 U.S. at 8 (plurality) (citation omitted), that alone is not a “basis for reading into the Constitution a right of the public or the media to enter these institutions” with unlimited access to inmates and prison facilities. *Id.* at 9. Ultimately, the extent to which “the government should open penal institutions” to the press and public “is a question of policy which a legislative body might appropriately resolve one way or the other.” *Id.* at 12.

2. In *Richmond Newspapers, Inc. v. Virginia*, the U.S. Supreme Court recognized a limited exception to this general rule: the public and press have a First Amendment right to attend criminal *trials*. 448 U.S. 555, 558, 580-81 (1980) (plurality); *cf. Globe Newspaper Co. v. Superior*

Ct. for Norfolk Cnty., 457 U.S. 596, 603 (1982). The Court later extended this right to other pre-trial proceedings, such as jury voir dire, *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510-13 (1984) (*Press-Enterprise I*), and preliminary hearings, *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986) (*Press-Enterprise II*).

“In cases dealing with the claim of a First Amendment right of access to criminal proceedings,” the Court considers two factors: (1) “whether the place and process have been open to the press and general public” as a historical matter, and (2) “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise II*, 478 U.S. at 8. This is known as the “experience and logic” test, *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 175 (5th Cir. 2011), or, simply, the “*Press-Enterprise II* test.”

The U.S. Supreme Court has never applied the *Press-Enterprise II* test outside the context of criminal judicial proceedings. *See McCaleb*, 152 F.4th at 731. Although some lower courts have applied the test in civil contexts, those courts have generally limited its application to proceedings that are “adjudicatory” in nature. *See, e.g., id.* at 733. And nearly every court to address the issue has declined to apply the *Press-Enterprise II* test to executions. *See Zink v. Lombardi*, 783 F.3d 1089, 1111-12 (8th Cir. 2015); *Associated Press v. Neal*, 788 F. Supp. 3d 959, 964-66 (S.D. Ind. 2025); *BH Media Grp., Inc. v. Clarke*, 466 F. Supp. 3d 653, 662 (E.D. Va. 2020), *vacated on other grounds and remanded*, 851 F. App’x 368 (4th Cir. 2021); *Oklahoma Observer v. Patton*, 73 F. Supp. 3d

1318, 1324 (W.D. Okla. 2014). *But see California First Amend. Coal. v. Woodford*, 299 F.3d 868, 873-77 (9th Cir. 2002).

3. The American tradition of public executions was relatively short lived. As public executions across the Nation degenerated into disorderly drunken riots, private execution statutes restored social order, administrative efficiency, and privacy for the condemned. Tennessee, for its part, has held private executions, attended by a select group of official witnesses, for more than 140 years.

At the time of the Founding, all executions were public. Nicholas Levi, *Veil of Secrecy: Public Executions, Limitations on Reporting Capital Punishment, and the Content-Based Nature of Private Execution Laws*, 55 Fed. Comm. L.J. 131, 139 (2002). Hanging was the preferred method. *Id.* In theory, public executions served important policy goals: “to buttress order, celebrate justice, and deter wrongdoing.” Michael Madow, *Forbidden Spectacle: Executions, the Public and the Press in Nineteenth Century New York*, 43 Buff. L. Rev. 461, 465 (1995) (*Forbidden Spectacle*). But public executions proved disastrous.

By the late 1820s, public executions had become “festivals of disorder” that “subverted morals, increased crimes, excited sympathy with the criminal, and wasted time.” Margaret Vandiver & Michel Coconis, “*Sentenced to the Punishment of Death*”: *Pre-Furman Capital Crimes and Executions in Shelby County, Tennessee*, 31 U. Mem. L. Rev. 861, 875 (2001) (*Executions in Shelby County*). “The crowds that gathered to witness public executions were large and often unruly, disrespectful, drunken, and dangerous.” *Id.* Thus, “fears of social unrest

and disorder” prompted a national reaction against public executions. Madow, *Forbidden Spectacle*, 43 Buff. L. Rev. at 500.

In the 1830s, States began adopting private execution laws, moving executions from the public gallows to the confines of local jails and, later, state prisons. Vandiver & Coconis, *Executions in Shelby County*, 31 U. Mem. L. Rev. at 875-76. Many of those statutes provided for the attendance of “selected official witnesses.” *Id.* Although some statutes designated members of the press as official witnesses, Appx., 8-9, that practice was not uniform. In 1889, Minnesota *prohibited* members of the press from witnessing an execution, a law which, the Supreme Court said, “the legislature, in its wisdom, and for the public good, could legally prescribe.” *Holden v. Minnesota*, 137 U.S. 483, 491 (1890) (rejecting ex post facto challenge).

Tennessee, for its part, abolished public executions in 1883, requiring executions to take place within a prison, an enclosed prison yard, or an outdoor enclosure adjacent to the prison “constructed as to exclude the view of persons outside thereof.” See 1883 Tenn. Pub. Acts ch. 112, §§ 1-2. This law limited official witnesses to: (1) “the Sheriff and his assistants,” (2) a member of the clergy, (3) “the immediate family of the prisoner,” (4) three “other persons” designated by the prisoner, and (5) six “other persons” designated by the Sheriff. 1883 Tenn. Pub. Acts ch. 112, § 3. Media had no special right to access.

In 1909, the General Assembly passed a law moving executions from the county of conviction to the state prison, “in strict seclusion and privacy.” 1909 Tenn. Pub. Acts ch. 500, § 1. This law also changed the number official witnesses “entitled to be present at the carrying out of [a]

death sentence” to include: (1) “the Warden of the State penitentiary or his duly authorized deputy,” (2) “the Sheriff of the county in which the crime was committed,” (3) “a priest or minister of the gospel who has been preparing the condemned person for death,” (4) “the prison physician,” (5) “such attendants chosen and selected by the Warden . . . as may be necessary to properly carry out the execution of the death sentence,” and (6) “members of the family of the condemned prisoner.” *Id.* It was a misdemeanor for anyone other than an official witness to be present at an execution. *Id.*

For more than 100 years, that law has remained the basic statutory framework governing official witnesses at Tennessee executions. *See* Tenn. Code Ann. § 40-23-116(a). To this day, executions are carried out “in strict seclusion and privacy” at the state penitentiary, Riverbend Maximum Security Institution (RMSI) in Nashville. *Id.* And only designated official witnesses are “entitled to be present at the carrying out of the death sentence.” *Id.*

In 1994, Tennessee added members of the press as official witnesses. 1994 Tenn. Pub. Acts, ch. 675, § 1 (codified at Tenn. Code Ann. § 40-23-116(a)(6)). That amendment provided for the attendance of “[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.” *Id.*; *see also* Tenn. Comp. R. & Regs. 0420-03-04-.04. Additionally, media members who attend an execution “shall make available coverage of the execution to other news media members not selected to attend.” Tenn. Code Ann. § 40-23-116(a)(6).

Later amendments permitted attendance by the victim's immediate family members, 1997 Tenn. Pub. Acts, ch. 133, §§ 1, 2, defense counsel and the Attorney General and Reporter (or his designee), 2000 Tenn. Pub. Acts, ch. 744, § 1, and the victim's relatives/personal friends when there are no surviving immediate family members. 2012 Tenn. Pub. Acts, ch. 549, § 1.

4. In Tennessee, lethal injection by pentobarbital is the default method of execution, but prisoners sentenced to death for crimes committed before 1999 may choose electrocution as the method of execution. Tenn. Code Ann. § 40-23-114. The Tennessee Department of Correction (TDOC) has established protocols for both methods of execution. Appx., 126-239.

Lethal Injection Protocol. Under the Lethal Injection Protocol, the Special Operations Team Leader prepares syringes of saline and pentobarbital the morning of the execution. Appx., 213. At 10:00 a.m., the Restraint Team removes the condemned inmate from the holding cell, secures the inmate to a gurney with restraints, and moves the inmate to the execution chamber. Appx., 214. The Warden, Attorney General or designee, defense counsel witness, and clergy enter the execution chamber with the inmate. Appx., 214. Once in the execution chamber, the gurney is secured, and the inmate's arms are secured to arm extensions on the gurney. Appx., 214.

Next, the IV team enters and attaches the leads from the electrocardiograph (ECG) to the inmate's chest, confirms that the ECG is functioning properly, determines the IV sites, and inserts primary and backup IV catheters. Appx., 215. 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. Appx., 215. Any failure of the IV lines is reported to the Commissioner and, if necessary, the Physician will insert a central line. Appx., 215.

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 member² leave the execution chamber and enter the official witness room. Appx., 215. A camera and audio system are activated, and the blinds in the execution chamber open to the witness rooms. Appx., 215. 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. Appx., 215. The syringes of saline and pentobarbital are administered and, upon completion, the Special Operations Team Leader signals to the Warden. Appx., 215-16.

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. Appx., 216. Once the Physician determines the inmate is deceased, the

² As a matter of custom, the Warden generally allows spiritual advisors to remain in the room, as reflected by media coverage of recent executions. WVLT News, *Officials Hold a News Conference After the Execution of Harold Nichols* (5:18) (Dec. 11, 2025), <https://perma.cc/5MDJ-VWJ4>.

Physician reports that finding to the Warden, who announces that the sentence has been carried out and directs the witnesses to exit. Appx., 216.

Electrocution Protocol. The procedures under the Electrocution Protocol are substantially similar. Before the execution, a sodium chloride solution is prepared, sponges are saturated with the solution, and the condemned inmate is dressed in appropriate clothing without any metal. Appx., 189. The execution chamber and equipment are prepared, and the inmate's head and legs are shaved. Appx., 189-90. At 7:00 p.m., the inmate is removed from the holding cell and escorted to the execution chamber, where the inmate is secured in the electric chair and saturated sponges are secured on the front and rear of the inmate's ankles. Appx., 190.

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. Appx., 190. The camera and audio system are activated and the blinds to the witness rooms are opened. Appx., 191. Once the Commissioner confirms that no last-minute stay or reprieve has been granted and the inmate makes any last statements, the electrocution begins. Appx., 191.

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 curtains are drawn. Appx., 191. The chair is disconnected, and the Physician enters the execution chamber to examine the inmate. Appx., 191. Once the Physician determines the

inmate is deceased, the Physician reports the finding to the Warden, who announces that the sentence has been carried out and directs the witnesses to exit. Appx., 191.

B. Factual and Procedural History

On October 28, 2025, a group of news organizations (“the Press Coalition” or “Plaintiffs”) filed suit in Davidson County Chancery Court alleging that TDOC’s execution protocols violate (1) media 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 to the U.S. Constitution, and (3) the freedom of the press to examine government proceedings under Article I, section 19 of the Tennessee Constitution. Appx., 2-30.

Plaintiffs also moved for a temporary injunction requiring Defendants to permit media witnesses to observe, among other things, the “entry of the condemned into the execution chamber,” “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,” and “the physician examination and pronouncement of death.” Appx., 40.

Defendants opposed the motion, arguing, in part, that Plaintiffs were unlikely to succeed on the merits of their claims and that the trial court lacked authority to condition enforcement of this Court’s unconditional execution orders. Appx., 84-115. Defendants also attached a declaration by RMSI Warden Kenneth Nelsen, who explained that

TDOC's execution protocols protect the anonymity of execution participants, and that "without such assurances, execution team members and the source(s) of the [lethal injection chemical] used in executions would likely be unwilling to participate." Appx., 119.

Chancellor I'Ashea Myles held a hearing on the injunction motion on December 3, 2025. Appx., 256-348. On January 16, 2026, she granted the motion, in part, and issued an injunction requiring Defendants to implement her blue-penciled version of TDOC's execution protocols. Appx., 349-77. Specifically, the injunction requires that the blinds to the official witness room and victim witness room "shall remain open until the pronouncement of the death of the condemned individual." Appx., 374-76. Purporting to soften the blow, the injunction also requires execution participants to don "PPE suits" and "masks" one hour before the entry of official witnesses. Appx., 374-75.

The trial court's order focused on Plaintiffs' likelihood of success on the merits of their First Amendment and statutory state-law claims, pretermittting the state constitutional claim. Appx., 354-71. On the First Amendment claim, the court applied the *Press-Enterprise II* test, concluding that Plaintiffs have a right to access executions and that TDOC's protocols are not narrowly tailored to address anonymity concerns. Appx., 358-62, 371-72. On the statutory claim, the court deemed the statutory text "ambiguous" because the parties "present[ed] differing interpretations" of what it means to be "present" during an execution. Appx., 366. Ultimately, the court ruled that TDOC's execution protocols violated the statute because they limit witnesses to

seeing “a mere ten to fifteen (10-15) minutes, arbitrarily decided by the warden.” Appx., 370.

Defendants applied to the Court of Appeals for an extraordinary appeal under Tenn. R. App. P. 10. Appx., 378. But the Court of Appeals denied review. Appx., 425, 470. Defendants now timely appeal to this Court. Tenn. R. App. P. 10(b). They have contemporaneously moved for a stay pending appeal.

STANDARD OF REVIEW

This Court may grant an extraordinary appeal when the trial court has “so far departed from the accepted and usual course of judicial proceedings as to require immediate review,” or “if necessary for complete determination of the action on appeal.” Tenn. R. App. P. 10(a). An extraordinary appeal is appropriate when the trial court’s ruling “results in either party losing a right or interest that may never be recaptured” or reflects “a plain and palpable abuse of discretion.” *Gilbert v. Wessels*, 458 S.W.3d 895, 898 (Tenn. 2014). “The appellate court may issue whatever order is necessary to implement review under this rule,” Tenn. R. App. P. 10(a), including summary reversal, *Black*, 721 S.W.3d at 228, or a stay pending appeal. *See, e.g., State v. Jones*, No. W2020-01347-CCA-R10-PD (Tenn. Crim. App. Nov. 6, 2020) (order); *State ex rel. Dep’t of Transp. v. Thomas*, No. W2018-01541-COA-R10-CV (Tenn. Ct. App. Oct. 15, 2018) (same) (order).

This Court reviews a trial court’s decision to grant a temporary injunction for abuse of discretion. *Black*, 721 S.W.3d at 226. But that standard of review “does not . . . immunize a lower court’s decision from

any meaningful appellate scrutiny.” *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). “[A] trial court necessarily abuses its discretion when it commits an error of law.” *Deberry*, 651 S.W.3d at 924 (citing *Koon v. United States*, 518 U.S. 81, 100 (1996)). Thus, when a trial court issues an injunction based on the application of “an incorrect legal standard,” the appellate court should reverse. *See Lee Medical, Inc.*, 312 S.W.3d at 524.

REASONS SUPPORTING EXTRAORDINARY REVIEW

Rule 10 review is available when “necessary for a complete determination of the action on appeal,” Tenn. R. App. P. 10(a), including when a party risks “losing a right or interest that may never be recaptured.” *Gilbert*, 458 S.W.3d at 898. Absent immediate review, Defendants will have no opportunity to appeal the judicial rewrite of the State’s carefully adopted execution protocols before the next execution. Meanwhile, the injunction’s half-baked privacy measures threaten to expose the identities of execution participants. Rule 10 review is amply justified for these reasons alone.

The trial court also “so far departed from the accepted and usual course of judicial proceedings as to require immediate review.” Tenn. R. App. P. 10(a). *First*, the injunction reflects a plain and palpable abuse of discretion because it rests on the application of incorrect legal standards. *Second*, the trial court disregarded this Court’s recent admonition against “placing conditions” on its “unconditional execution order[s].” *Black*, 721 S.W.3d at 228. These plain legal errors reinforce the need for immediate review.

I. Defendants Risk Losing Anonymity Protections for Execution Participants Without Appellate Review.

First and foremost, this Court should grant immediate review because Defendants risk “losing a right or interest that may never be recaptured”—the anonymity of execution participants. A single chancery court judge rewrote the State’s carefully crafted execution protocols, subjecting those participants to a substantial risk of exposure. Defendants should have the opportunity to appeal this unlawful decision before the next execution on May 21, 2026. *See State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2025) (order).

As the trial court recognized, “[e]ach execution is a single event that will not occur again.” Appx., 372. So, when the State executes Tony Carruthers on May 21, 2026, Defendants cannot undo whatever harm comes from the trial court’s injunction. And the risk of harm is significant. There is no record evidence to suggest that the trial court’s judicially crafted procedures will be sufficient to conceal the identities of execution participants.³ Plaintiffs put on no such proof. In fact, their temporary injunction motion did not even *request* these remedies. Appx., 40. Masking was only an afterthought. Appx., 251.

³ Indeed, studies suggest the opposite. *See, e.g.,* Yi-Lang Chen & Shu-Yu Wang, *Challenges of Face Identification with Varied Mask Coverage in the Post COVID-19 Era*, *Frontiers in Psychology* (Feb. 27, 2025), <https://perma.cc/2DF9-GLA5> (finding “a notable shift in face identification processes in the aftermath of the pandemic, with [full coverage masking] now leading to quicker and more accurate recognitions”).

Despite the chancellor’s casual approach to rewriting the State’s execution protocols, this Court knows well the dangers of insufficient anonymity protections for execution participants. *West*, 460 S.W.3d at 123-25. Anonymity protects execution participants and their families from “harassment” and “retaliation” by the prisoner’s supporters and anti-death penalty activists. *West*, 460 S.W.3d at 123. Without assurances of anonymity, execution team members may become “unwilling to participate.” *Id.* at 124; Appx., 119. Put simply, the court’s judicial rewrite of the protocol not only alters the State’s carefully crafted (and practiced) protocols, it also risks that the State will need to swap out experienced members of the protocol team who are unwilling to face identification. Therefore, if Defendants lose the opportunity to challenge the trial court’s injunction before the next execution, the State may suffer irreparable injury.

Rule 10 review exists for this very reason. In *Drake*, for example, this Court authorized extraordinary appeals by media intervenors who seek immediate review of trial court orders closing pre-trial and trial proceedings in criminal cases to the media. 701 S.W.2d at 608. “Such review is appropriate,” the Court explained, “because if the trial judge is in error in issuing the closure order the intervening party will lose a right or interest that may never be recaptured.” *Id.* at 609. In that scenario, Rule 10 ensures that “parties may not be denied the opportunity of prompt appellate review.” *Id.* at 608.

If Rule 10 authorizes immediate review of *closure* orders, then it should also authorize review when trial courts require executions to be

held *in the open*. In either case, the challenged order “results in [one] party losing a right or interest that may never be recaptured.” *Gilbert*, 458 S.W.3d at 898. On the one hand, media entities risk losing their constitutional right to attend a criminal trial; on the other hand, the State risks losing its interest in maintaining the anonymity of execution participants. The reasoning goes both ways. And because immediate review is “necessary for complete determination of the action on appeal,” Tenn. R. App. P. 10(a), both sides deserve “the opportunity of prompt appellate review.” *Drake*, 701 S.W.2d at 608.

To be sure, Defendants will have the opportunity to appeal after a final judgment. Appx., 464. But the availability of a later appeal is not dispositive when a party would suffer irreparable injury without immediate review. This Court has held, for example, that “the Court of Criminal Appeals should not deny a Rule 9 or 10 application from a denial of pretrial diversion simply on the basis that the defendant may pursue a direct appeal upon conviction.” *McKim*, 215 S.W.3d at 792-93. “Once tried,” the Court explained, “a defendant can never recapture his or her interest in being spared the attendant stigma, embarrassment and expense.” *Id.* at 792 (cleaned up). Likewise, although Defendants will have the opportunity to appeal after final judgment, their interest in maintaining anonymity “may never be recaptured” if execution participants are exposed due to the trial court’s unlawful injunction. *Gilbert*, 458 S.W.3d at 898.

In short, Rule 10 review is “necessary for a complete determination of the action on appeal.” Tenn. R. App. P. 10(a). Without immediate review, the trial court’s injunction threatens to irreparably harm the

State’s interest in maintaining the anonymity of execution participants. The application for extraordinary appeal should be granted on this basis alone.

II. The Injunction Reflects a Plain and Palpable Abuse of Discretion.

The trial court’s ruling also reflects a “plain and palpable abuse of discretion” that independently warrants extraordinary review.⁴ *Gilbert*, 458 S.W.3d at 898. The trial court “necessarily abuse[d] its discretion” by erroneously concluding, as a matter of law, that Plaintiffs are likely to succeed on the merits of their First Amendment and statutory state-law claims. *Deberry*, 651 S.W.3d at 924. Relying on inapplicable legal standards and disregarding settled principles of statutory interpretation, the court transformed the press’s statutory right to be “present” at an execution into a sweeping constitutional entitlement to unlimited viewing access. But that is not the law.

A. There is no First Amendment right to access executions.

The United States Supreme Court has never recognized a First Amendment right to access non-judicial governmental proceedings, particularly those inside a prison. To the contrary, overwhelming authority points in the opposite direction: the public-trial right recognized in *Richmond Newspapers* does not extend beyond the judicial context.

⁴ To be clear, if the Court grants the Rule 10 application, the Court may review the merits of the trial court’s decision under the traditional abuse-of-discretion standard.

1. The United States Supreme Court has repeatedly declined to hold that the press has a First Amendment right to access prison inmates and facilities beyond that of the general public. *See Pell*, 417 U.S. at 834; *Houchins*, 438 U.S. at 9 (plurality); *see also id.* at 26 (Stewart, J., concurring). On the contrary, the Court has made clear that the “right to publish information which has been obtained”—which is protected by the First Amendment—is very different from “a privilege of *access* to information”—which is not. *Id.* at 10 (plurality opinion).

Although “the government cannot restrain communication of whatever information the media acquire,” the Court has never “remotely impl[ie]d a constitutional right guaranteeing anyone access to government information beyond that open to the public generally.” *Id.* For instance, “the prohibition of unauthorized entry into the White House diminishes the citizen’s opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right.” *Id.* at 12. The reason is simple: “The right to speak and publish does not carry with it the unrestrained right to gather information.” *Id.*

Plaintiffs’ First Amendment claim is essentially the same one the Supreme Court rejected in *Houchins*. Here, as in that case, Plaintiffs claim that, given the importance of a free press, the Constitution protects their right of access to government-held information. *Compare id.* at 7-8 *with* Appx., 43-44. In *Houchins*, the sought-after information included portions of the jail off-limits to the general public, 417 U.S. at 4-5 (plurality opinion); here, it is portions of the execution process that are

shielded from observers' view. Appx., 43-44. Plaintiffs have no more right of access than did the plaintiffs in *Houchins*. As the U.S. Supreme Court held, there is no constitutional "right of access to government information or sources of information within the government's control." *Houchins*, 438 U.S. at 16 (plurality opinion).

2. The trial court's contrary conclusion doesn't hold up. First, the court found *Houchins* and *Pell* "distinguishable" because those cases involved requests to interview inmates, and Plaintiffs are "not asking to interview the condemned person before dying." Appx., 357. It also noted that "an official witness is distinguishable from the public generally, as official witnesses are created by statute." Appx., 357. But those factual distinctions make no constitutional difference. Neither the public nor the press have a First Amendment right to access prison inmates and facilities on demand. *Houchins*, 438 U.S. at 15-16; *Pell*, 417 U.S. at 834. Although Tennessee has granted the press a statutory *privilege* to attend executions, that privilege does not create a First Amendment right of access. Indeed, for more than 100 years, the press had *no* statutory right to attend private executions in Tennessee.

After sidestepping this controlling precedent, the trial court applied the *Press-Enterprise II* test, without addressing the overwhelming persuasive authorities holding that this test only applies when a party claims a First Amendment right of access to a particular *judicial* proceeding. Appx., 358. The trial court abused its discretion by "applying an incorrect legal standard." *Lee Med., Inc.*, 312 S.W.3d at 524.

As discussed, the *Press-Enterprise II* test derives from the Supreme Court’s decision in *Richmond Newspapers*, which involved the “narrow question” of whether the public had a constitutional right “to attend criminal trials.” 448 U.S. at 558 (plurality opinion). *Richmond Newspapers* did not speak to other government proceedings, much less those that do not occur in “places traditionally open to the public, as criminal trials have long been.” *Id.* at 577 (plurality opinion). Indeed, the plurality specifically contrasted courtrooms with “penal institutions which, by definition, are not ‘open’ or public places” and “do not share the long tradition of openness” that exists in courtrooms. *Id.* at 576 n.11 (plurality opinion).

Even as the Supreme Court extended this “narrow” public-trial right to other types of judicial proceedings, it did so in the limited context of criminal prosecutions, such jury voir dire, *Press-Enterprise I*, 464 U.S. at 51-13, and preliminary hearings, *Press-Enterprise II*, 478 U.S. at 13. Thus, when the Court articulated the “experience and logic” test in *Press-Enterprise II*, it naturally described the legal framework as applying to “cases dealing with the claim of a First Amendment right of access to criminal proceedings.” 478 U.S. at 8 (emphasis added). The Court has never suggested there is a freestanding “right of access” to all government proceedings as long as the “experience and logic” test is satisfied.

Resisting this conclusion, Plaintiffs—and the trial court—relied on the Ninth Circuit’s outlier decision in *Woodford*, 299 F.3d 868, which applied the *Press-Enterprise II* test in determining whether there is a

First Amendment right to access executions. Appx., 36, 60, 359-62. But *Woodford* started its analysis from a faulty premise: that “it is well-settled that the First Amendment guarantees the public—and the press—a qualified right of access to *government proceedings*.” 299 F.3d at 873 (emphasis added). As discussed, nothing in the Supreme Court’s precedents confer a freestanding right to access “government proceedings.” Rather, they confer a right to access adjudicatory criminal proceedings. Moreover, *Woodford* failed to properly account for the Supreme Court’s observation in *Richmond Newspapers* that “penal institutions . . . are not ‘open’ or public places,” and therefore “do not “share the long tradition of openness” that exists in courtrooms. 448 U.S. at 576 n.11.

No other federal appellate court has adopted *Woodford*’s outlier approach of applying the *Press-Enterprise II* test to all government proceedings. To the contrary, the Eighth Circuit has rejected the notion that “an execution constitutes the kind of criminal proceeding to which the public enjoys a qualified right of access under the First Amendment.” *Zink*, 783 F.3d at 1113. Accordingly, that court has rejected prisoners’ claims that the First Amendment entitled them to information regarding the source of the drug to be used in their executions. *Zink*, 783 F.3d at 1111-12.

Similarly, the Sixth Circuit has held that the *Press-Enterprise II* framework does not apply to requests by death row inmates for information related to executions because such information is neither “the type filed in a government proceeding nor its functional equivalent.”

Phillips, 841 F.3d at 419. Just last year, the Sixth Circuit also declined to “extend application of the [*Press-Enterprise II*] test beyond the adjudicatory context” to meetings of the Tennessee Judicial Advisory Commission. *McCaleb*, 152 F.4th at 731. The court expressly rejected the Plaintiffs’ argument (at Appx., 58-59) that the *Press-Enterprise II* 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. As the court explained, “general” meant “both judicial and administrative adjudicatory proceedings,” not “that the test applies to any request for government information.”

District courts in Oklahoma, Virginia, and Indiana have similarly refused to follow *Woodford*. The U.S. District Court for the Western District of Oklahoma, for example, declined to find a First Amendment right to access to an execution, expressing “considerable doubt” that the *Press-Enterprise II* test “even potentially applies” to executions. *Patton*, 73 F. Supp. 3d at 1324. Before Virginia abolished the death penalty, rendering the case moot, the Eastern District of Virginia also 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.*, 466 F. Supp. 3d at 662. And, more recently, the Southern District of Indiana declined to apply the *Press-Enterprise II* framework to executions. *Associated Press*, 788 F. Supp. 3d at 964-65.

The trial court failed to grapple with any of these persuasive authorities, which confirm that Supreme Court precedent only requires application of the *Press-Enterprise II* test to “cases dealing with the claim of a First Amendment right of access *to criminal proceedings*.” 478 U.S. at 8 (emphasis added). By following the outlier Ninth Circuit decision, the trial court applied an “incorrect legal standard” and plainly abused its discretion in granting the injunction. *Lee Med., Inc.*, 312 S.W.3d at 524.

3. Even applying the *Press-Enterprise II* test, however, Plaintiffs failed to show a likelihood of success on the merits of their First Amendment claim. Neither “experience” nor “logic” require a constitutional right to access executions. *Press-Enterprise II*, 478 U.S. at 9.

a. First, executions have not been historically “open to the press and general public” in any meaningful sense. *Press-Enterprise II*, 478 U.S. at 8. 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. Tennessee, like most States, relied on public hangings. But as early as the 1830s, executions “became private events and moved from the public square to inside prison walls.” *Arkansas Times, Inc.*, 2008 WL 110853, at *4. Tennessee, for its part, has held private executions for the last 143 years—most of its history. See 1883 Tenn. Pub. Acts ch. 112, §§ 1-2. And select members of *the press* have only had a statutory right to be present at Tennessee executions for the last 32 years. 1994 Tenn. Pub. Acts, ch. 675, § 1. This is a far cry

from the “unbroken, uncontradicted history” of public criminal trials. 448 U.S. at 573.

The trial court erred by finding the early history of public hangings dispositive. Appx., 359-60. Courts should not “assume[] that founding-era legislatures maximally exercised their power to regulate.” *United States v. Rahimi*, 602 U.S. 680, 739-40 (2024) (Barrett, J., concurring). In other words, courts should not assume that an absence of a restriction suggests the restriction is unlawful. That sort of “use it or lose it” approach would result in “a law trapped in amber,” preventing subsequent legislatures from making different policy choices. *Id.* at 740. And ultimately, “[w]hether the government should open penal institutions”—or executions—to the press or public “is a question of policy which a legislative body might appropriately resolve one way or the other.” *Houchins*, 438 U.S. at 12 (plurality). Tennessee has taken different approaches to executions over the years, but the trial court wrongly elevated earlier policy preferences into an inflexible constitutional mandate.

The trial court also erred by inferring that historical statutes designating media members as official witnesses reflect an unbroken tradition of public access. Appx., 360-61. These statutes undermine, rather than support, Plaintiffs’ claim. For one, the statutes authorizing media witnesses were not uniform. Tennessee, for example, did not formally designate media witnesses until 1994. 1994 Tenn. Pub. Acts, ch. 675, § 1. And an 1889 Minnesota law *banned* members of the press from attending executions, which prompted no First Amendment challenge. *Holden*, 137 U.S. at 491. For two, the trial court’s reasoning

gets things backward. The public's right to access is not measured by looking at special privileges granted to the press; on the contrary, media access directly correlates with *the public's* right to access. *Pell*, 417 U.S. at 834. And the fact is: private execution statutes removed executions from public view. The limited statutory exceptions allowing official witnesses do not prove a general constitutional rule requiring public access.

Put simply, executions—like the prisons in which they take place—“do not share the long tradition of openness associated with courtrooms[.]” *Richmond Newspapers*, 448 U.S. at 577 n.11.

b. Second, public access does not “play[] a significant positive role in the functioning of” executions—especially not the preparatory acts and pronouncement of death to which the trial court’s injunction narrowly applies. *Press-Enterprise II*, 478 U.S. at 8.

Generally, 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 longstanding historical practice of excluding the public from executions demonstrates that public attendance is neither integral nor beneficial to the process.

In fact, history demonstrates the opposite: unlimited public access played a *negative* effect on the functioning of executions. By the late 1820s, public executions had become “festivals of disorder” that “subverted morals, increased crimes, excited sympathy with the criminal, and wasted time.” Vandiver & Coconis, *Executions in Shelby County*, 31

U. Mem. L. Rev. at 875. “The crowds that gathered to witness public executions were large and often unruly, disrespectful, drunken, and dangerous.” *Id.*; see also K.B. Turner & Yolanda Y. Harper, *An Overview of Capital Punishment in Tennessee: Patterns of Legal Executions, 1782-2010*, 49 Crim. Law Bulletin 4 (2013) (describing nineteenth century public hangings in Jackson, Tennessee, as “a cross between a religious revival meeting and a carnival sideshow”). States adopted private execution statutes, in part, to *avoid* the negative consequences of unlimited public access. See Madow, *Forbidden Spectacle*, 43 Buff. L. Rev. at 500.

To be sure, the General Assembly has determined that allowing limited media access, and requiring a press conference after each execution, has social value—by promoting transparency, public confidence in the administration of capital punishment, and deterrence. But “[w]e must not confuse what is ‘good,’ ‘desirable,’ or ‘expedient’ with what is constitutionally commanded by the First Amendment.” *Houchins*, 438 U.S. at 13 (plurality). Ultimately, executions function to implement a final judgment of a court, not to serve as public commentary or to generate a record for advocacy.

Moreover, it is unclear how the trial court’s injunction—which enables witnesses to view preparatory acts and the pronouncement of death—will enhance the “functioning” of executions themselves. *Press-Enterprise II*, 478 U.S. at 8. Witnesses can already view the administration of the lethal injection or electric shocks. How will watching the condemned inmate walk into the execution chamber

enhance public accountability? What is the public benefit of witnesses seeing—as opposed to hearing—the physician’s pronouncement of death? The trial court erred by concluding that media access to *every aspect* of an execution enhances the “functioning” of the procedure itself.

Even advocates of the most expansive theories of the First Amendment have warned that the public’s desire for more information could be stretched too far and “must be invoked with discrimination and temperance.” *Richmond Newspapers*, 448 U.S. at 588 (Brennan, J., concurring). “For so far as the participating citizens need for information is concerned, there are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow.” *Id.* “Without an enduring tradition of public executions,” vague notions of public benefit “cannot serve as a basis for reading a right of public access into the First Amendment.” *Arkansas Times, Inc.*, 2008 WL 110853, at *5.

4. Finally, even if the First Amendment requires States to allow media members to view executions, the trial court erred by applying strict scrutiny. Appx., 355, 372. Because TDOC’s protocols’ anonymity protections are akin to time, place, and manner restrictions—not outright bans—they are subject to a lower level of scrutiny.⁵

⁵ Contrary to Plaintiffs’ claims, Appx., 461, Defendants have never argued that strict scrutiny is the proper level of scrutiny; in the trial court, they merely argued that TDOC’s protocols *survive* strict scrutiny. Appx., 104-06. Naturally, they *also* survive when evaluated (correctly) as time, place, and manner restrictions. And courts have a “responsibility to apply the controlling law.” *State v. Eady*, 685 S.W.3d 689, 705 (Tenn. 2024).

The First Amendment right to access a criminal trial is not “absolute.” *Richmond Newspapers*, 448 U.S. at 581 n.18 (plurality). Just as the “government may impose reasonable time, place, and manner restrictions” in other contexts, “so may a trial judge . . . impose reasonable limitations on access to a trial.” *Id.*; *see also id.* at 598 n.23 (Brennan, J., concurring in the judgment); *id.* at 600 (Stewart, J., concurring in the judgment). For example, “when engaging in interchanges at the bench, the trial judge is not required to allow public or press intrusion upon the huddle.” *Id.* at 598 n.23 (Brennan, J., concurring in the judgment). Nor does the First Amendment prohibit “conferences in chambers.” *Id.* Because “every courtroom has a finite physical capacity,” the trial judge may also reasonably limit the number of attendees. *Id.* at 600 (Stewart, J., concurring in the judgment). The list goes on.

Strict scrutiny only applies when “the State attempts to *deny* the right to access,” such as by excluding the press from the courtroom entirely. *Globe Newspaper Co.*, 457 U.S. at 606-07 (emphasis added). In that case, “it must be shown that the *denial* is necessitated by a compelling government interest, and is narrowly tailored to serve that interest.” *Id.* (emphasis added). But “limitations on the right of access that resemble ‘time, place, and manner’ restrictions on protected speech . . . [are] not be subject to such strict scrutiny.” *Id.* n.17 (citations omitted).

As discussed more fully below, Tennessee law grants select members of the press a statutory right to be “present at the carrying out

of the death sentence.” Tenn. Code Ann. § 40-23-116(a)(6). And the law requires a press conference following the execution to “make available coverage of the execution to other news media members not selected to attend.” *Id.* Far from imposing a “prior restraint” on free speech or the press, *Branzburg*, 408 U.S. at 681, Tennessee law facilitates and encourages media coverage about executions.

TDOC’s modest anonymity protections for execution participants—opening the blinds only after the condemned is secured to the gurney or electric chair and closing them before the physician enters the room to pronounce death—are reasonable limitations on media access. These procedures do not “deny” access by excluding the press from the witness room, *Globe Newspaper Co.*, 457 U.S. at 606-07; they are “time, place, and manner” restrictions. Specifically, they ensure that the press can watch the condemned inmate die, while respecting “the public policy of Tennessee to favor the anonymity of those involved in carrying out capital punishment.” *West*, 460 S.W.3d at 123-25.

The trial court’s effort to identify “the least restrictive means” of protecting the confidentiality of execution participants was a misguided effort. Even assuming the press had a First Amendment right of access, TDOC is entitled to place reasonable “time, place, and manner” restrictions on that right. By applying the incorrect level of scrutiny to a non-existent First Amendment right, the trial court abused its discretion twice over. *See Upsolve, Inc. v. James*, 155 F.4th 133, 137 (2d Cir. 2025) (vacating injunction “[b]ecause the district court applied the incorrect level of scrutiny”).

B. TDOC's execution protocols comply with statutory requirements.

The trial court also plainly abused its discretion by erroneously concluding that Plaintiffs showed a likelihood of success on the merits of their claim that TDOC's execution protocols violate their right to be "present at the carrying out of the death sentence." Tenn. Code Ann. § 40-23-116(a). TDOC's execution protocols ensure that media witnesses attend each execution and that they can personally observe the most critical aspects of the execution, including the inmate's death. That is all Tennessee law requires.

A court's role in statutory interpretation is "to determine what a statute means." *Deberry*, 651 S.W.3d at 924. "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); *see also Present*, Black's Law Dictionary (12th ed. 2024) ("In attendance; not elsewhere").

“Carry out,” as used here, means “to bring to a conclusion; accomplish.” *Carry out*, The American Heritage Dictionary of the English Language 294 (3d ed. 1992); *see also Carry Out*, Merriam-Webster Online Dictionary (“to bring to a successful issue: complete, accomplish”), <https://perma.cc/TGG9-A5XG>. 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.⁶

The “statutory context” supports this interpretation. *Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 59 (Tenn. 2023). Tenn. Code Ann. § 40-23-116(a) requires that death sentences be carried out “in strict seclusion and privacy.” 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 view anything and everything that is remotely connected to an execution. That would turn the statute’s focus on “strict seclusion and privacy” on its head.

In this case, the trial court found the statutory text “ambiguous” because “[b]oth the Press Coalition and the Defendants present[ed]

⁶ Plaintiffs “concede[d]” that media members are “present” at an execution “in a sense.” Appx., 366. But they cited other available definitions and non-binding out-of-state authorities to argue that the legislature’s “intent” was to allow media members to have unlimited viewing access. Appx., 245-46 273. The only way to divine the legislature’s “intent,” however, is through statutory text and statutory context, which elucidate original meaning. *See Edwards v. Peoplease, LLC*, --- S.W.3d ---, 2025 WL 3706216, at *9 (Tenn. Dec. 22, 2025).

different interpretations of the statute.” Appx., 366. But this Court has cautioned courts against “summarily concluding that [statutory language] [i]s ambiguous because the parties ha[ve] provided two reasonable statutory interpretations.” *Deberry*, 651 S.W.3d at 929-30 (cleaned up). “A court should deem statutory language ambiguous,” the Court explained, “only *after* employing all of the traditional tools of statutory construction, including consulting dictionary definitions, examining statutory structure and context, and applying well-established canons of statutory construction.” *Id.* at 930 (emphasis added). That “may require some effort,” but “that effort does not make a text ambiguous.” *Id.* (citation omitted).

Furthermore, when a statute is truly ambiguous, an agency’s interpretation “is entitled to consideration and respect and should be awarded appropriate weight,” although it is “not binding on the courts.” *Pickard v. Tenn. Water Quality Bd.*, 424 S.W.3d 511, 523 (Tenn. 2013); *see also Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 385-86, 399 (2024) (overruling *Chevron* “deference” to agency interpretations of federal statutes but clarifying that courts may continue to show “the ‘respect’ historically given to Executive Branch interpretations”). Thus, even if Tenn. Code Ann. § 40-23-116(a) is ambiguous, TDOC’s interpretation is entitled to “consideration and respect and should be awarded appropriate weight.” *Pickard*, 424 S.W.3d at 523.

The trial court also erred by relying on legislative history. Appx., 368. Following Plaintiffs’ lead, the court cited Senator Gilbert’s statement in support of the 1994 amendment adding media members as

official witnesses. Appx., 368. The Senator’s statement, of course, does not address the narrow issue here: whether the press has a right to see every aspect of an execution, including preparatory and post-execution acts. And regardless, the court again put the cart before the horse. “[W]hen the plain meaning of a statute is clear after application of the traditional tools of statutory interpretation, a court should not ‘delve into the legislative history of an unambiguous statute.’” *Deberry*, 651 S.W. at 930 (citation omitted).

Finally, the trial court erred by finding that TDOC’s execution protocols deprive the press of “the right to be present in the fullest sense of the word by diminishing that right to a mere ten to fifteen (10-15) minutes, arbitrarily decided by the warden.” Appx., 370. In effect, the trial court blamed TDOC for the efficiency with which it conducts executions. But death is not *supposed* to be prolonged. Tennessee adopted the method of lethal injection, in part, to ensure the quick and painless death of the condemned. That is a feature, not a bug. The efficiency of an execution does not affect whether a witness is “present” or not.

And the minor limitations on viewing access are anything but “arbitrary.” Under the current protocols, witnesses observe the most critical aspects of the execution. They see the condemned on the gurney or electric chair. They hear the condemned’s last statement. They observe the condemned’s interactions with a spiritual advisor. And they see the condemned die as the lethal injection or electric shocks are administered. After the blinds are closed, the witnesses can also hear the physician’s pronouncement of death through the audio system. The

only portions concealed from view are preparatory or post-execution steps that involve other members of the execution team, whose anonymity and cooperation are essential to implementing the sentence of death. Nothing about that process is “arbitrary.”

To sum up, the trial court abused its discretion by relying on a novel and plainly erroneous construction of a century-old statute. By ignoring settled principles of statutory interpretation, the trial court transformed a limited statutory right to be “present” into a permission slip for unlimited viewing access, even for preparatory and post-execution procedures. Because the injunction rests on an error of law, this Court should reverse.

III. The Trial Court Lacked Authority to Issue the Injunction.

The injunction here is particularly egregious because the trial court acted “without legal authority” by conditioning executions on expanded media viewing access. *Gilbert*, 458 S.W.3d at 898. Just a few months ago, this Court held that trial courts lack authority to “place[] a precondition” on the enforcement of “unconditional execution orders.” *Black*, 721 S.W.3d at 228. Leaving the injunction in place would create a media-plaintiff loophole, allowing third parties to nitpick the details of the State’s execution protocols, while also enabling trial courts to grant injunctive relief that *Black* otherwise forbids.

In *Black*, this Court vacated the Davidson County Chancery Court’s injunction requiring the State defendants to deactivate Byron Black’s implantable cardioverter-defibrillator (ICD) via a particular method immediately before, or simultaneously with, the execution. *Id.* at 226, 229. The Court explained that “[o]rders for executions are solely within

the purview of this Court.” *Id.* at 228. Although the trial court claimed that the “delay of Mr. Black’s execution [wa]s not being countenanced,” and Black characterized the ICD claim as “a secondary issue related to the method of execution, not the execution itself,” this Court nevertheless vacated the injunction. *Id.* at 228-29. In the end, this Court held the trial court “exceeded its authority” by “placing conditions upon this Court’s unconditional execution order.” *Id.* at 228.

Black indicates that lower courts cannot add conditions on execution orders. Last year, this Court entered four unconditional execution orders setting the execution dates of Tony Carruthers, Anthony Hines, Christa Pike, and Gary Sutton.⁷ These orders state that “the Warden of the Riverbend Maximum Security Institution, or his designee, *shall* execute the sentence of death as provided by law” on the ordered execution date.⁸ Under *Black*, any attempt to “place[] a precondition” on those executions “must come from this Court.” 721 S.W.3d at 228.

And yet, just as in *Black*, the trial court issued “mandatory injunctive relief” requiring Defendants “to alter their protocols” regarding an issue that is purportedly “secondary” to “the execution itself.” *Id.* That injunction “placed . . . precondition[s]”—opening the blinds and wearing PPE suits—on the enforcement of four scheduled

⁷ *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2025) (order); *State v. Hines*, No. M2025-00221-SC-DPE-DD (Tenn. Sept. 30, 2025) (order); *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 30, 2025) (order); *see also State v. Sutton*, No. E1997-00196-SC-DDT-DD (Tenn. Sept. 30, 2025) (order) (similar).

⁸ *Id.* (emphasis added).

executions. *Id.* Under the injunction, Defendants cannot enforce this Court’s execution orders unless they *also* comply with the conditions added by the trial court. To be sure, these are different types of conditions than the one at issue in *Black*, but they are conditions nonetheless. And that is exactly the sort of lower court micromanaging that *Black* forbids.

The trial court indicated that it had the power to condition the enforcement of execution orders so long as those conditions are *feasible*.⁹ Appx., 372. But the lower court’s lack of authority to “condition” a Supreme Court order doesn’t always turn on feasibility. Primarily, it turns on this Court’s “power to enforce its judgments,” which “includes the power to protect them from interference.” *Barger*, 535 S.W.2d at 341 (citation omitted). Consider, for example, a case in which this Court issued an order enjoining a university from enforcing a policy limiting students to discussing politics in a designated “free speech zone.” A lower court couldn’t “condition” enforcement of that order by requiring students to sign an anti-harassment policy before engaging in protected speech outside the “free speech zone.” That condition is feasible. But it’d be an end-run around the “unconditional” order enjoining enforcement of the challenged policy.

⁹ Defendants argued that any modifications to TDOC’s protocols were not “feasible” before the impending execution of Harold Nichols on December 11, 2025. (Appx., 371-72.) Because the trial court delayed issuing its order until after the Nichols execution, the court dismissed this alternative argument as “moot.” (Appx., 372.)

Plaintiffs try to evade *Black*'s holding by cabining the case to its facts. They argue, for instance, that *Black* only prohibits trial courts from interfering with this Court's execution orders when "condemned inmates" seek injunctive relief related to their "method of execution." Appx., 441-42. But nothing in *Black* ties the trial court's authority to the identity of the party seeking relief or the nature of the relief sought. The holding is clear: "[a] trial court does not have the authority to stay, modify, *or condition* this Court's execution order." *Black*, 721 S.W.3d at 228 (emphasis added). There is no media-plaintiff exception that allows a trial court to layer on conditions through injunctive relief it otherwise could not grant.

To the extent *Black* leaves any ambiguity about the scope of a trial court's authority, immediate review is necessary for this Court to clarify the holding of *Black* as it applies to media plaintiffs seeking to enjoin the State's enforcement of pending execution orders. As it stands, however, Defendants take this Court at its word: trial courts may not "condition" the enforcement of "unconditional execution orders"—full stop. *Black*, 721 S.W.3d at 228.

Because the trial court acted "without legal authority" by placing conditions on the Supreme Court's unconditional execution orders, *Gilbert*, 458 S.W.3d at 898, this Court should grant Defendants' application for extraordinary appeal and vacate the trial court's unlawful injunction.

CONCLUSION

This Court should swiftly grant review and stay the trial court's order pending appeal.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General & Reporter

J. MATTHEW RICE
Solicitor General

s/ Edwin Alan Groves, Jr.

EDWIN ALAN GROVES, JR.
Assistant Solicitor General
Office of Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-2850
Alan.Groves@ag.tn.gov
B.P.R. No. 036813

CERTIFICATE OF COMPLIANCE

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s/ Edwin Alan Groves, Jr.

EDWIN ALAN GROVES, JR.
Assistant Solicitor General