

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

ASSOCIATED PRESS, et al.,	)	
	)	
Appellees,	)	
	)	DAVIDSON COUNTY
v.	)	No. M2026-00150-SC-R10-CV
	)	
KENNETH NELSEN, et al.,	)	
	)	
Appellants.	)	

**ON APPEAL BY PERMISSION FROM THE JUDGMENT
OF THE DAVIDSON COUNTY CHANCERY COURT**

BRIEF OF THE APPELLANTS

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ORAL ARGUMENT REQUESTED

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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 media has no First Amendment or statutory right to observe the State's pre- and post-execution procedures. The media has only the ability, granted by statute, "to be present at the carrying out of the death sentence," whether by lethal injection or electrocution, and no more. Tenn. Code Ann. § 40-23-116(a); *id.* at (a)(6). Tennessee's execution protocols allow just that. Seven members of the press may view the administration of lethal injection drugs or electric shocks as the State implements the jury's sentence of death. But the blinds to the execution chamber remain closed during pre- and post-execution procedures, consistent with Tennessee's "public policy . . . favor[ing] the anonymity of those involved in carrying out capital punishment." *West v. Schofield*, 460 S.W.3d 113, 124-25 (Tenn. 2015).

That wasn't enough for the trial court. Based on a fringe First Amendment theory and misguided statutory interpretation, the court issued an injunction that rewrote the State's execution protocols. The 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 that risk, the trial court ordered execution participants to wear "PPE suits" and "masks" to shield their identities. But no evidence supports the efficacy of these watered-down privacy

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>.

protections. And if these untested procedures expose anyone involved, they may “become unwilling to participate” due to the risk of “harassment” and “retaliation” by anti-death penalty activists. *West*, 460 S.W.3d at 123-24.

The law requires none of this. The trial court’s injunction reflects an abuse of discretion for two reasons. *First*, the trial court applied an incorrect legal standard to identify a non-existent First Amendment right to access executions. The court’s holding contradicts a mountain of precedent from other courts, 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 Plaintiffs’ 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 pre- and post-execution procedures. The “trial court necessarily abuse[d] its discretion when it commit[ted] [these] error[s] of law.” *State v. Deberry*, 651 S.W.3d 918, 924 (Tenn. 2022).

Worse still, the trial court lacked the authority to “plac[e] conditions” on “this Court’s unconditional execution order[s]” in the first place. *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn. 2025) (per curiam). There is no media-plaintiff loophole that permits trial courts to micromanage the State’s execution protocols after this Court has entered an “unconditional execution order.” *Id.*

The Court should reverse.

STATEMENT OF THE CASE AND FACTS

A. Legal Background

1. The First Amendment, as incorporated by the Fourteenth Amendment, prohibits States from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I. Implicitly, the First Amendment also protects the corollary “right to gather news.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978) (plurality opinion). But this right “does not carry with it the unrestrained right to gather information” from any source, by any means, on demand. *Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965).

“Neither 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*, 438 U.S. at 15 (plurality opinion). 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 “the 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); *see also Saxbe v. Washington Post Co.*, 417 U.S. 843, 850 (1974). Although the “conditions in jails and prisons are clearly matters ‘of great public importance,’” *Houchins*, 438 U.S. at 8 (plurality opinion) (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.

The public and the press do, however, have a First Amendment right “to attend criminal *trials*.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 558, 580-81 (1980) (plurality opinion) (emphasis added); *cf. Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 603 (1982). In recognizing this right, the U.S. Supreme Court looked to an “unbroken, uncontradicted history” of public access to criminal trials. *Richmond Newspapers*, 448 U.S. at 573. The Court later extended the right, but only to other *pre-trial* adjudicatory proceedings. *See Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510-13 (1984) (*Press-Enterprise I*) (voir dire); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986) (*Press-Enterprise II*) (preliminary hearings).

In *Press-Enterprise II*, the Court established a two-factor test for courts to follow “[i]n cases dealing with the claim of a First Amendment right of access to criminal proceedings”: (1) “whether the place and process have historically been open to the press and general public,” and (2) “whether public access plays a significant positive role in the functioning of the particular process in question.” 478 U.S. at 8. This is known as the “experience and logic” test, *In re Search of Fair Fin.*, 692

F.3d 424, 429 (6th Cir. 2012), or, simply, “the *Press-Enterprise II* test,” *In re Grand Jury Subpoena*, 103 F.3d 234, 243 (2d Cir. 1996).

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 732-33. And nearly every court to address the issue has declined to apply the *Press-Enterprise II* test to executions.²

2. Public executions in America were relatively short lived. As public executions across the country 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. That is significantly longer than the State held public executions.

At the time of the Founding, all executions were public. Nicholas Levi, Note, *Veil of Secrecy: Public Executions, Limitations on Reporting Capital Punishment, and the Content-Based Nature of Private Execution Laws*, 55 Fed. Commc’ns. L.J. 131, 134-35 (2002) (*Veil of Secrecy*).

² See, e.g., *Associated Press v. Neal*, 177 F.4th 862, 865-66 (7th Cir. 2026); *Zink v. Lombardi*, 783 F.3d 1089, 1111-12 (8th Cir. 2015) (en banc) (per curiam); *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) (per curiam); *Okla. Observer v. Patton*, 73 F. Supp. 3d 1318, 1324 (W.D. Okla. 2014). But see *Cal. First Amend. Coal. v. Woodford*, 299 F.3d 868, 873-77 (9th Cir. 2002).

Hanging was the most common method. *Id.* at 134. 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. *Forbidden Spectacle, supra*, 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. *Executions in Shelby County, supra*, at 875-77. By 1849, half the States (15 out of 30) had enacted private execution laws. *Veil of Secrecy, supra*, at 140. Many of those statutes provided for the attendance of “selected official witnesses.” *Executions in Shelby County, supra*, at 875. Although some statutes designated members of the press as official witnesses, see e.g., 1885 Ohio Laws 170, S.B. 409, § 7341 (authorizing attendance by “a reporter for each one of the two leading

newspapers of opposite politics published in said county that the sheriff may designate”), that practice was not uniform. In 1889, Minnesota *prohibited* members of the press from witnessing executions—an outcome which, the U.S. 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 abolished public executions in 1883. *See* 1883 Tenn. Pub. Acts ch. 112, §§ 1-2. The State required executions to be carried out 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.” *Id.* This law excluded the public and 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 . . . designate[d]” by the prisoner, and (5) six “other persons . . . designate[d]” by the Sheriff. *Id.* § 3. Members of the media had no statutory right to witness executions.

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 amended the number of 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.* Members of the media continued to be statutorily excluded.

For more than a century, 1909 Tenn. Pub. Acts, ch. 500, has remained the State’s basic statutory framework governing official witnesses at 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, more than a century after Tennessee abolished public executions, the State 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.” *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 authorized 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 or personal

friends when there are no surviving immediate family members. 2012 Tenn. Pub. Acts, ch. 549, § 1.

3. In Tennessee, the default method of execution is lethal injection by pentobarbital, but prisoners sentenced to death for crimes committed before 1999 may choose execution by electrocution. Tenn. Code Ann. § 40-23-114(a)-(b). The Tennessee Department of Correction (TDOC) has established protocols for both methods of execution. R. I, 30-74 (lethal injection); R. II, 75-163 (electrocution).

Lethal Injection Protocol. Under the Lethal Injection Protocol, syringes of saline and pentobarbital are prepared the morning of the execution. R. I, 48. At 10:00 a.m., the Restraint Team moves the condemned inmate from a holding cell to the execution chamber. *Id.* at 49. The Warden, Attorney General or designee, defense counsel witness, and clergy enter the execution chamber with the inmate. *Id.* Once in the execution chamber, the gurney is secured, and the inmate's arms are secured to arm extensions on the gurney. *Id.*

Next, the IV Team enters and attaches the leads from an 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. *Id.* at 50. 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 or she opens the IV line to start a flow of sterile saline solution to keep the lines open. *Id.* Any failure of the IV lines is reported to the Commissioner and, if necessary, the Physician will insert a central line. *Id.* Meanwhile, the Escort Team

secures official witnesses and victim witnesses to the appropriate witness rooms. *Id.*

After the IV lines are in place, the Attorney General or designee, defense counsel witness, and clergy member leave the execution chamber and join official witnesses in the official witness room.³ R. I, 50. Camera and audio systems are activated, and the blinds in the execution chamber are opened to the witness rooms. *Id.* Once the Commissioner confirms that the inmate has not received a last-minute stay or reprieve, the inmate is given the opportunity to make a final statement, and then the Warden gives the signal to proceed. *Id.* The Special Operations Team Leader administers the syringes of saline and pentobarbital and, upon completion, the Special Operations Team Leader signals to the Warden. *Id.* at 50-51.

After a five-minute waiting period, the witness blinds are closed, the camera is disengaged, the privacy curtains are closed, and then the Physician enters the execution chamber to examine the inmate. *Id.* at 51. Once the Physician determines the inmate is deceased, the Physician reports that finding to the Warden, who announces that the sentence has been carried out and directs the witnesses to exit. *Id.*

Electrocution Protocol. The procedures under the Electrocution Protocol are substantially similar. Before the execution, a sodium

³ Although the protocol provides that the clergy member leaves the room, as a matter of custom, the Warden generally allows spiritual advisors to remain in the room. See, e.g., WVLT News, *Officials Hold a News Conference After the Execution of Harold Nichols* (5:18-23) (Dec. 11, 2025), <https://perma.cc/5MDJ-VWJ4>.

chloride solution is prepared, sponges are saturated with the solution, and the condemned inmate is dressed in clothing that does not contain any metal. R. II, 138. The execution chamber and equipment are prepared, and the inmate's head and legs are shaved. *Id.* at 138-39. 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. *Id.* at 139. The Attorney General or designee and defense counsel witness enter the execution chamber with the inmate. *Id.* Meanwhile, official witnesses and victim witnesses are escorted to the appropriate witness rooms. *Id.*

After the inmate is secured in the electric chair, the Attorney General or designee and defense counsel witness exit the execution chamber to the official witness room. *Id.* The camera and audio system are activated, and the blinds to the witness rooms are opened. *Id.* at 140. After the Commissioner confirms that no last-minute stay or reprieve has been granted and the inmate makes any last statement, the electrocution begins. *Id.*

When the cycle runs its course and the current is off, a five-minute waiting period begins. *Id.* At the end of the five-minute waiting period, all blinds are closed, the camera is disengaged, and the privacy curtains are drawn. *Id.* The chair is disconnected, and the Physician enters the execution chamber to examine the inmate. *Id.* Once the Physician determines the inmate is deceased, the Physician reports the finding to

the Warden, who announces that the sentence has been carried out and directs the witnesses to exit. *Id.*

B. Factual and Procedural Background

In October 2025, a group of news organizations (“the Press Coalition” or “Plaintiffs”) sued RMSI Warden Kenneth Nelsen, and Frank Strada, Commissioner of the Tennessee Department of Correction, both in their official capacities, in Davidson County Chancery Court under Tenn. Code Ann. § 1-3-121. R. I, 1. Plaintiffs alleged 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. *Id.* at 18-28.

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.” R. III, 348.

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. R. X, 1244-75. Defendants also attached

a declaration by Warden Nelsen, who explained that TDOC’s execution protocols protect the anonymity of execution participants, and that “[w]ithout such assurances, execution team members and the source(s) of the [lethal injection chemical] used in executions would likely be unwilling to participate.” *Id.* at 1279.

After a hearing, Chancellor I’Ashea Myles granted Plaintiffs’ motion, in part, and issued an injunction requiring Defendants to implement her revisions to TDOC’s execution protocols. R. XIX, 2432-60. 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.” *Id.* at 2457. 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. *Id.* at 2458.

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. *Id.* at 2437-54 & n.5. 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. *Id.* at 2441-45, 2454-55. 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. *Id.* at 2449. 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.” *Id.* at 2453.

Defendants applied to the Court of Appeals, and later this Court, for an extraordinary appeal under Tenn. R. App. P. 10.⁴ Although the Court of Appeals denied review, this Court granted Defendants’ application and stayed the trial court’s judgment pending appeal. Order, *Associated Press v. Nelsen*, No. M2026-00150-SC-R10-CV, 2026 WL 982288, at *1 (Tenn. Apr. 8, 2026) (per curiam).

STANDARD OF REVIEW

This Court reviews a trial court’s grant of a temporary injunction for abuse of discretion. *See Newsom v. Tenn. Republican Party*, 647 S.W.3d 382, 385 (Tenn. 2022). “A court abuses its discretion 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.” *Id.* “Whether the trial court applied an incorrect legal

⁴ After the State filed its Rule 10 application, the General Assembly repealed Tenn. Code Ann. § 1-3-121, which Plaintiffs cited as a basis for the trial court’s jurisdiction. R. I, 1; 2026 Tenn. Pub. Acts, ch. 664, § 1. In light of the procedural posture of this case, this Court need not determine whether sovereign immunity now bars Plaintiffs’ suit. After all, “a court with appellate jurisdiction may reverse on either jurisdictional or merits grounds a lower court order that granted interim relief,” such as a temporary injunction. *Mullin v. Doe*, Nos. 25-1083, 1084, 2026 WL 1825840, at *11 (U.S. June 25, 2026) (plurality opinion); *see also Arizona v. Biden*, 31 F.4th 469, 479 (6th Cir. 2022) (Sutton, C. J.); *cf. Moore v. Lee*, 644 S.W.3d 59, 64 & n.6 (Tenn. 2022) (vacating temporary injunction without addressing standing).

standard is a question of law and is reviewed *de novo* with no presumption of correctness.” *Id.* at 385-86.

On Rule 10 review, this Court may also vacate a lower court’s ruling that “is without legal authority.” *Gilbert v. Wessels*, 458 S.W.3d 895, 898 (Tenn. 2014). A lower court’s actions are “without legal authority” when they are “contrary to the law.” *State v. Adler*, 92 S.W.3d 397, 401 (Tenn. 2002), *superseded by statute as stated in State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017).

ARGUMENT

I. The Trial Court Abused Its Discretion.

The Court should vacate the temporary injunction rewriting the State’s execution protocols because the trial court abused its discretion in finding that Plaintiffs are likely to succeed on the merits of their claims. The trial court relied on inapplicable legal standards and disregarded settled principles of statutory interpretation to transform the press’s statutory right to be “present” at an execution into a sweeping constitutional entitlement to unlimited viewing access. That is not the law.

A. There is no First Amendment right to view pre- or post-execution procedures.

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

1. There is no First Amendment right to witness executions, much less pre- and post-execution procedures. As the U.S. Supreme Court declared in *Houchins*, while the “right to publish information which has been obtained” is protected by the First Amendment, a “privilege of *access* to information” is not. 438 U.S. at 10 (plurality opinion); *Zemel*, 381 U.S. at 16-17.

The U.S. Supreme Court has only identified one narrow exception to that general rule: criminal judicial proceedings. In *Richmond Newspapers*, the Court held that the press has an implicit First Amendment right to attend criminal trials because of an “unbroken, uncontradicted history” of public access and an “openness [that] inheres in the very nature of a criminal trial under our system of justice.” 448 U.S. at 573. The Court was careful, though, to distinguish criminal trials from prisons, noting that “penal institutions . . . are not ‘open’ or public places” and “do not share the long tradition of openness.” *Id.* at 576 n.11.

In the 1980s, the U.S. Supreme Court extended the First Amendment right of access to other criminal pretrial judicial proceedings. See *Press-Enterprise I*, 464 U.S. at 510-13 (voir dire); *Press-Enterprise II*, 478 U.S. at 13 (preliminary hearings). And it established the “experience and logic” test for courts to use when evaluating claims of a First Amendment right of access to criminal adjudicatory proceedings. *Press-Enterprise II*, 478 U.S. at 8-9.

Yet the U.S. Supreme Court has never expanded the First Amendment right of access beyond the specific context of criminal court proceedings. See, e.g., *Globe Newspaper Co.*, 457 U.S. at 611 (O’Connor,

J., concurring in the judgment) (“I interpret neither *Richmond Newspapers* nor the Court’s decision today to carry any implications outside the context of criminal trials.”); *McCaleb*, 152 F.4th at 731; *Dhiab v. Trump*, 852 F.3d 1087, 1092 n.10 (D.C. Cir. 2017); *Smith v. Plati*, 258, F.3d 1167, 1178 n.10 (10th Cir. 2001). Instead, “to the extent the Supreme Court has addressed the constitutional right of access to information outside the criminal trial context,” it “has applied the general rule of *Houchins*, not *Richmond Newspapers*.” *Ctr. for Nat’l Sec. Stud. v. U.S. Dep’t of Just.*, 331 F.3d 918, 935 (D.C. Cir. 2003).

In *Houchins*, a news agency claimed that, given the importance of a free press, the First Amendment protected its right of access to government-held information. 438 U.S. at 7-8 (plurality opinion). Specifically, the news agency sought access to information that was off-limits to the public. *Id.* at 4-5. The Court agreed that “jails and prisons are clearly matters ‘of great public importance,’” and that the media played an important role in providing information to the public. *Id.* at 8-9 (quotations omitted). Yet it held that there was no constitutional “right of access to government information or sources of information within the government’s control” because “[t]he right to speak and publish does not carry with it the unrestrained right to gather information.” *Id.* at 12, 16. For example, “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. Ultimately, the Court held that the right of media access to penal institutions is a policy question best left to the legislature. *See id.* at 12.

Houchins, not *Press-Enterprise II*, controls here. *See Ctr. for Nat’l Sec. Stud.*, 331 F.3d at 935. “An execution does not resemble a court proceeding. It occurs outside the adjudicative process, after the factfinder has determined guilt and the trial court has imposed a sentence and terminated the case.” *Associated Press*, 177 F.4th at 865; *see also BH Media Grp.*, 466 F. Supp. 3d at 663; *Black’s Law Dictionary* (12th ed. 2024) (defining “judicial proceeding” as “[a]ny court proceeding” (emphasis added)). And, like *Houchins*, this case implicates “access issues in the prison context, where the implementation of criminal sentences normally occurs.” *Okla. Observer*, 73 F. Supp. 3d at 1324; *see also Richmond Newspapers*, 448 U.S. at 576 n.11 (distinguishing access to prisons and criminal judicial proceedings). Accordingly, the narrow exception recognized in *Richmond Newspapers* and its progeny does not apply.

Time and again in the prison context, the U.S. Supreme Court has held that the press does not have a First Amendment right to access prison inmates and facilities beyond that of the general public. *See Houchins*, 438 U.S. at 9 (plurality opinion); *see also id.* at 16 (Stewart, J., concurring); *Pell*, 417 U.S. at 834; *Saxbe*, 417 U.S. at 850. And for nearly a century and a half, executions in Tennessee have taken place “within [a] prison,” an enclosed prison yard, or an enclosure adjacent to the prison “constructed as to exclude the view of persons outside thereof.” *See* 1883 Tenn. Pub. Acts, ch. 112, §§ 1-2.

The extent to which “the government should open penal institutions” is a policy question, not a constitutional one. *Houchins*, 438 U.S. at 12 (plurality opinion). Accordingly, the U.S. Supreme Court explained more than 130 years ago in the context of an ex post facto challenge that “the legislature, in its wisdom, and for the public good, could legally prescribe” the “number and character” of execution witnesses, and even “exclu[de] altogether” the media. *Holden*, 137 U.S. at 491. If Tennessee could exclude the media altogether, then modest anonymity protections for execution participants certainly do not violate the First Amendment. Tennessee’s execution protocols simply reflect the State’s “public policy . . . favor[ing] the anonymity of those involved in carrying out capital punishment.” *West*, 460 S.W.3d at 124-25.

2. The trial court’s contrary conclusion doesn’t hold up. The court found *Saxbe* and *Pell* “distinguishable” because those cases involved requests to interview inmates, and Plaintiffs are “not asking to interview the condemned person before dying.” R. XIX, 2440. But that factual distinction makes no constitutional difference. After all, the U.S. Supreme Court has applied *Houchins* to “constitutional right of access” cases “outside the criminal trial context”—without regard to the particulars of state law or whether the case involved an interview request. *Ctr. for Nat’l Sec. Studies*, 331 F.3d at 935 (citing *LAPD v. United Reporting Publ’g Corp.*, 528 U.S. 32, 40 (1999) (holding that there is no First Amendment right to receive addresses of arrestees)). So it doesn’t matter that this case is about executions rather than inmate interviews.

The trial court also attempted to distinguish *Saxbe* and *Pell* by noting that “an official witness is distinguishable from the public generally, as official witnesses are created by statute.” R. XIX, 2440. But that doesn’t matter either. *Houchins* expressly recognized that whether *either* the public or the press has a First Amendment right to access prison inmates and facilities is a policy determination to be made by the legislature. 438 U.S. at 12 (plurality opinion). Although Tennessee has granted the press a statutory privilege to attend executions, *see* 1994 Tenn. Pub. Acts, ch. 675, § 1, that statutory *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. *Houchins* and *Pell* control, and the trial court erred in concluding otherwise.

Sidestepping this controlling precedent, the trial court relied on the Ninth Circuit’s outlier decision in *California First Amendment Coal. v. Woodford*, 299 F.3d 868 (9th Cir. 2002), which applied the *Press-Enterprise II* test in determining whether there is a First Amendment right to access executions. R. XIX, 2442-45. 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 *governmental proceedings*.” 299 F.3d at 873 (emphasis added). The Supreme Court has held no such thing. *See, e.g., Globe Newspaper Co.*, 457 U.S. at 611 (O’Connor, J., concurring in the judgment); *McCaleb*, 152 F.4th at 731; *Dhiab*, 852 F.3d at 1092 n.10; *Calder*, 890 F.2d at 783.

Nothing in the Supreme Court’s precedents confer a freestanding right to access “governmental proceedings.” *Woodford*, 299 F.3d at 873; *see Globe Newspaper Co.*, 457 U.S. at 611 (O’Connor, J., concurring in the judgment); *Dhiab*, 852 F.3d at 1092 n.10. Rather, they confer a right to access adjudicatory criminal proceedings. *See Dhiab*, 852 F.3d at 1092 n.10. 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. *Richmond Newspapers*, 448 U.S. at 576 n.11.

Unsurprisingly, no other federal appellate court has adopted *Woodford*’s outlier approach of applying the *Press-Enterprise II* test to all government proceedings. For example, during the pendency of this appeal, the Seventh Circuit declined to extend its own precedent limiting the *Press-Enterprise II* framework to “‘court proceedings’ and related ‘documents.’” *Associated Press*, 2026 WL 1616000, at *2 (quoting *Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1069 (7th Cir. 2018)). The Court “doubt[ed]” that the *Press-Enterprise II* framework applies to executions because “[t]he Supreme Court has only ever used it to assess whether the public has a right of access to traditional aspects of criminal proceedings.” *Id.* And “an execution does not resemble a court proceeding” because “[i]t occurs outside the adjudicative process.” *Id.*

Likewise, 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 1112. 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. *Id.* at 1111-12.

The Sixth Circuit has similarly 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 v. DeWine*, 841 F.3d 405, 419 (6th Cir. 2016). And just last year, the Sixth Circuit 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 R. IV, 455-56) 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." *McCaleb*, 152 F.4th at 732. As the court explained, "'general' meant 'both judicial and administrative adjudicatory proceedings,' not 'that the test applies to any request for government information.'" *Id.* at 733.

District courts in Oklahoma and Virginia 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 of 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.

The trial court failed to grapple with the persuasive authorities cited by Defendants, which confirm that Supreme Court precedent limits the 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 abused its discretion by applying an “incorrect legal standard” to grant the injunction. *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

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. To refresh, that test requires Plaintiffs to satisfy the “experience and logic” test: (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. But neither “experience” nor “logic” requires a constitutional right to access executions. *Id.* at 9.

a. First, Plaintiffs fail the “experience” prong because “executions have not ‘historically been open to the press and general public’ in many parts of the country for over a century.” *Associated Press*, 2026 WL 1616000, at *3 (quoting *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.” *Okla. Observer*, 73 F. Supp. 3d at 1325. Tennessee, like most States, used public hangings. But as early as the 1830s, executions “became private events and moved from the public square to inside prison walls.” *Ark. Times, Inc. v. Norris*, No. 5:07CV00195, 2008 WL 110853, at *4 (E.D. Ark. Jan. 7, 2008). Tennessee, for its part, has held private executions for more than 140 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 nowhere close to the “unbroken, uncontradicted history” the Supreme Court relied on to find an implicit First Amendment right of access to public criminal trials. *Richmond Newspapers, Inc.*, 448 U.S. at 573.

The trial court erred by finding the early history of public hangings dispositive. R. XIX, 2442-43. 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 the absence of a restriction means that 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. Tennessee’s shift from public to private executions simply reflects changing policy preferences. Indeed, “[w]hether the government should open penal institutions” generally—or executions specifically—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 opinion); *cf. Holden*, 137 U.S. at 491. 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. R. XIX, 2443-44. 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 for executions 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; to the contrary, the media’s right to access directly correlates with *the public’s* right to access. *Pell*, 417 U.S. at 834; *see also Houchins*, 438 U.S. at 16 (Stewart, J., concurring). “Allowing a dozen or so witnesses to view a largely private execution does not signal that public executions enjoy ‘the favorable judgment of experience.’” *Associated Press*, 2026 WL 1616000, at *4 (quoting *Press-Enterprise II*, 478 U.S. at 11).

At bottom, 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 576 n.11. Plaintiffs

fail the first prong of the “experience and logic” test. *Press-Enterprise II*, 478 U.S. at 9.

b. Plaintiffs also fail the logic prong because “public access to executions does not clearly play a ‘significant positive role in the functioning’ of the process.” *Associated Press*, 2026 WL 1616000, at *4 (quoting *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 that 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—presumably, the promotion of 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 opinion). 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 enter 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 pre- and post-execution procedures enhances the “functioning” of the procedure itself. *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.” *Ark. Times, Inc.*, 2008 WL 110853, at *5.

4. Finally, even if the First Amendment requires States to allow media members to view executions—and the accompanying pre- and post-execution procedures dictated in the trial court’s injunction—the trial court abused its discretion by applying strict scrutiny. *See* R. XIX, 2413, 2420-21. Because the TDOC protocols’ anonymity protections are akin to time, place, and manner restrictions—not outright bans—they are subject to a lower level of scrutiny. *Cf. Rice v. Kempker*, 374 F.3d 675, 680-81 (8th Cir. 2004) (considering policy banning videotaping executions to be “a ‘content-neutral time, place, and manner’ restriction”).

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 . . . would not be subjected to such strict scrutiny.” *Id.* n.17 (citations omitted). Instead, “[a] ‘time, place, and manner’ restriction on speech may be upheld if it ‘serves a substantial governmental interest and do[es] not unreasonably limit alternative avenues of communication.’” *Rice*, 374 F.3d at 680-81 (quoting *City of Renton v. Playtime Theatres. Inc.*, 475 U.S. 41, 47 (1986)).

As discussed more fully below (at 39-44), 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—constitute reasonable time, place, and manner restrictions on media access that serve the substantial government interests of “security of the institution and . . . the safety of the staff members and their families.” *West*, 460 S.W.3d at 123; *see also id.* at 124; Tenn. Code Ann. § 10-7-504(h)(1). These procedures do not “deny” access by excluding the press from the witness room, *Globe Newspaper Co.*, 457 U.S. at 606-07; instead, they ensure 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 124-25.

The trial court’s effort to identify the least restrictive means of protecting the confidentiality of execution participants was misguided at best. There is no record evidence supporting the efficacy of requiring execution participants to wear “PPE suit[s]” and “mask[s]” to shield their identities. R. XIX, 2455-58. 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. Even assuming the

press had a First Amendment right of access, TDOC is entitled to place reasonable time, place, and manner restrictions to protect the identities of execution participants. 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 execution protocols comply with Tenn. Code Ann. § 40-23-116(a).

The trial court also abused its discretion by erroneously concluding that Plaintiffs demonstrated 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 can personally observe the inmate’s death. The statute requires nothing more.

A “[c]ourt’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)). A court must give all 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.

The statute provides that “seven (7) members of the print, radio and television news media” have a right to be “present at the carrying out of the death sentence.” Tenn. Code Ann. § 40-23-116(a)(6). “Present” 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 (6th ed. 1990) (“Now existing; at hand”). “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 accomplishment of the death sentence—i.e., the moment of death itself. Tenn. Code Ann. § 40-23-116(a). That’s all the statute requires.

The “statutory context” supports this interpretation. *Lawson v. Hawkins County*, 661 S.W.3d 54, 59 (Tenn. 2023). Section 40-23-116(a) requires that death sentences “be carried out . . . in strict seclusion and privacy.” Tenn. Code Ann. § 40-23-116(a). This text reflects the statute’s purpose of ensuring that death sentences are carried out privately. Given that purpose, the court should not construe the word “present” as a license for official witnesses to 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. *Id.* This interpretation is also supported by the General Assembly’s statutory requirement for

public records that the identity of any “person or entity who . . . has been or may in the future be directly involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to public inspection.” *Id.* § 10-7-504(h)(1).

In this case, the trial court found the statutory text “ambiguous” because “[b]oth the Press Coalition and the Defendants present[ed] differing interpretations of the statute.” R. XIX, 2449. But this Court has cautioned courts against “summarily concluding that” statutory language is “ambiguous because the parties . . . provide[d] two reasonable statutory interpretations.” *Deberry*, 651 S.W.3d at 929-30 (quotations omitted). “A court should deem statutory language ambiguous,” this 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.* (quotations omitted). The trial court failed to properly use the tools at its disposal here.

Furthermore, when a statute is truly ambiguous, an agency’s interpretation, though “not binding on the courts,” is still “entitled to consideration and respect and should be awarded appropriate weight.” *Pickard v. Tenn. Water Quality Bd.*, 424 S.W.3d 511, 523 (Tenn. 2013); *cf. Loper Bright Enters. 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”). This is especially important here, considering “that the legislature has provided the TDOC considerable deference and broad discretionary powers to enable the TDOC to manage its tremendous responsibilities,” including with respect “to the lethal injection protocol.” *Abdur’Rahman v. Bredesen*, 181 S.W.3d 292, 312 (Tenn. 2005). 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 gave TDOC’s interpretation no “consideration and respect” here. *Id.*

The trial court also erred by relying on legislative history. *See* R. XIX, 2451. Following Plaintiffs’ lead, the court cited Senator Gilbert’s statement in support of the 1994 amendment adding media members as official witnesses. *Id.* The Senator’s statement, of course, does not address the narrow issue raised here: whether the press has a statutory right to view pre- and post-execution acts beyond the execution itself. Regardless, the trial 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.3d at 930 (quotations omitted).

The trial court’s reliance on out-of-state authority invalidating a rule based on a differently worded execution statute is also a nonstarter. R. XIX, 2453 (citing *Or. Newspaper Publishers Ass’n v. Or. Dep’t of Corr.*, 988 P.2d 359, 360-61 (Or. 1999)). Under Oregon law, official witnesses

have the right “to be present at *the execution*.” O.R.S. 137.473(1) (emphasis added). The Oregon Supreme Court, focusing on the word “execution,” held that witnesses must be able to view “*the process* of putting the prisoner to death,” including “actions that are linked inextricably with the administration of the fatal drugs.” *Or. Newspaper Publishers Ass’n.*, 988 P.2d at 124 (emphasis added). The trial court found this case “instructive” based on the perceived similarities between Oregon’s and Tennessee’s statutes, R. XIX, 2453, even though Tennessee’s law does not use the word “execution,” opting instead for “carrying out of the death sentence.” Tenn. Code Ann. § 40-23-116(a). More importantly, however, the Oregon court never considered the significance of the word “present,” which simply means “in attendance,” not unlimited viewing access. *Present*, The American Heritage Dictionary of the English Language 1432 (3d ed. 1992); *see also Present*, Black’s Law Dictionary (6th ed. 1990). This lax statutory interpretation is not “instructive” at all. R. XIX, 2453.

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.” *Id.* But death is not *supposed* to be prolonged. Tennessee adopted the method of lethal injection, in part, to promote 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 on either side of the carrying out of the death sentence itself are anything but “arbitrar[y].” *Id.* Under the current protocols, media witnesses see the condemned on the gurney or electric chair; the condemned make his last statement; the condemned’s interactions with a spiritual advisor; and, as statutorily required, the condemned inmate die (i.e., “the carrying out of the death sentence”) as the lethal injection or electric shocks are administered. Tenn. Code Ann. § 40-23-116(a); R. I, 50-51; R. II, 139-40; *see also supra* footnote 3.

After the blinds are closed, the witnesses then hear the physician’s pronouncement of death through the audio system and then the Warden’s declaration that the sentence has been carried out. R. I, 51; R. II, 140. The only actions concealed from view are pre- or post-execution steps, such as the inmate being removed from his cell and brought to the execution chamber and the physician’s pronouncement of death, that involve members of the execution team whose anonymity and cooperation are essential to implementing the sentence of death. Nothing about that process is “arbitrar[y].” R. XIX, 2453.

To sum up, the trial court abused its discretion by relying on a novel and 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 pre- and post-execution procedures. Tenn. Code Ann. § 4-23-116(a). Because the injunction rests on an error of law, this Court should reverse.

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

The injunction is improper for another reason: the trial court acted “without legal authority” by conditioning the State’s ability to comply with this Court’s unconditional execution orders. *Gilbert*, 458 S.W.3d at 898. It is axiomatic that “[o]nce the Tennessee Supreme Court has addressed an issue, its decision regarding that issue is binding on the lower courts.” *O’Dneal v. Baptist Mem’l Hosp.-Tipton*, 556 S.W.3d 759, 773 (Tenn. Ct. App. 2018) (quotations omitted); *see also Barger v. Brock*, 535 S.W.2d 337, 341 (Tenn. 1976).

Just last year, this Court held that trial courts lacked the authority to “place[] a precondition” on the enforcement of “unconditional execution orders.” *Black*, 721 S.W.3d at 228. In that case, the Davidson County Chancery Court had issued an 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 225-26, 229. 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. It explained that “[o]rders for executions are solely within the purview of this Court,” and held that “the trial court . . . exceeded its authority” by “placing conditions upon this Court’s unconditional execution order.” *Id.* at 228.

Here, as in *Black*, the trial court placed a condition on “this Court’s unconditional execution order[s].” *Id.* Last year, this Court entered four unconditional execution orders setting the execution dates of Tony

Carruthers, Anthony Hines, Christa Pike, and Gary Sutton.⁵ The 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.⁶ 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 here issued “mandatory injunctive relief” requiring Defendants “to alter their protocols” regarding an issue that is purportedly “secondary” to “the execution itself.” *Id.*; R. XIX, 2456-59. That injunction “placed . . . preconditions”—opening the blinds and wearing PPE suits—on the enforcement of four scheduled executions. *Id.*; R. XIX, 2456-59. Under the injunction, Defendants cannot enforce this Court’s execution orders without *also* complying with the trial court’s added conditions. R. XIX, 2460 (referring to ordered protocol changes as “mandatory”). To be sure, the conditions added here differ from the additional condition in *Black*, but that is a distinction without any difference. The salient point is that the trial court here has attempted to engage in the same sort of execution micromanaging that *Black* forbids.

⁵ *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).

⁶ *Id.* (emphasis added).

The trial court wrongly concluded that it had the power to condition this Court’s execution orders so long as those conditions were *feasible*.⁷ R. XIX, 2455. But feasibility is not the point: “[I]nferior courts must abide the orders, decrees and precedents of higher courts,” and this Court has the authority to “protect” against “interference” from lower courts. See *Barger*, 535 S.W.2d at 341. Consider, for example, a case in which this Court issued an order enjoining a university against enforcing a policy that would have prohibited a controversial politician from speaking on campus. A lower court couldn’t “condition” enforcement of that order by requiring the politician to agree not to address certain topics. That condition is feasible. But it would be an end-run around the “unconditional” order enjoining the university’s challenged policy.

The holding in *Black* is unambiguous: “[a] trial court does not have the authority to stay, modify, or condition this Court’s execution order[s].” 721 S.W.3d at 228 (emphasis added). Yet that’s exactly what the trial court did here. There is no media-plaintiff exception that allows a trial court to layer on conditions through injunctive relief it otherwise could not grant. Defendants take this Court at its word: trial courts may not “condition” the enforcement of “unconditional execution order[s]”—full stop. *Id.*

⁷ Defendants argued that any modifications to TDOC’s protocols were not feasible before the impending execution of Harold Nichols on December 11, 2025. R. XIX, 2454. Because the trial court delayed issuing its order until after the Nichols execution, the court dismissed this alternative argument as “moot.” *Id.* at 2455.

Because the trial court acted “without legal authority” by placing conditions on this Court’s unconditional execution orders, *Gilbert*, 458 S.W.3d at 898, the Court should vacate the trial court’s unlawful injunction.

CONCLUSION

The judgment of the Chancery Court should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Tenn. Sup. Ct. R. 46 § 3.02, the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Redaction Compliance, and Attorney Signature Block, is 10,035. This word count is based upon the word processing system used to prepare this brief.

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CERTIFICATE OF REDACTION COMPLIANCE

In accordance with Tenn. R. App. P. 20B, undersigned counsel certifies that the filing submitted to *Associated Press, et al. v. Kenneth Nelsen, et al.*, No. M2026-00150-SC-R10-CV, complies with the omission and redaction requirements of Rule 20B. The certification is confirmed based on a review conducted on July 6, 2026.

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