

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

ASSOCIATED PRESS, et al.,

Plaintiffs/Appellees,

v.

KENNETH NELSEN, et al.,

Defendants/Appellants.

**DAVIDSON COUNTY
No. M2026-00150-SC-R10-CV**

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

**BRIEF OF *AMICI CURIAE* AMERICAN
CIVIL LIBERTIES UNION AND AMERICAN CIVIL
LIBERTIES UNION OF TENNESSEE**

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INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than six million members and supporters dedicated to protecting the principles embodied in the state and federal constitutions and our nation's civil rights laws. The ACLU of Tennessee is a statewide affiliate of the national ACLU and is dedicated to the same principles.

Consistent with that mission, the ACLU and the ACLU of Tennessee often appear as counsel or *amici curiae* in this Court and other courts to protect and defend constitutional rights. *See, e.g., State v. Bishop*, No. W2023-00713-SC-R11-CD (Tenn. May 22, 2025); *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022). And they regularly argue for the independent vitality of state constitutional protections. *See, e.g., Smith v. BlueCross BlueShield of Tenn.*, 710 S.W.3d 686 (Tenn. 2025); *People v. Jennings*, 2026 Mich. LEXIS 1470 * 32; 2026 LX 373532. This case squarely implicates their efforts to advance freedom of the press and government transparency. *See, e.g., Rodríguez-Cotto v. Pierluisi-Urrutia*, 668 F.Supp.3d 77 (D.P.R. 2023); *Am. C.L. Union & Ctr. for Const. Rts. v. Rankin Cnty. Dist. Att'y's Off.*, No. 26-93(M) (Miss. Ch. Jan. 22, 2026).

INTRODUCTION AND SUMMARY OF ARGUMENT

Tennessee’s execution protocols bar the press from witnessing all but the culmination of the execution process. Under the State’s policies, members of the media may observe execution procedures only for a short time after the person being executed has been strapped to the gurney or the electric chair. Yet the stages before and after that period—when staff lift the prisoner and strap him onto the gurney, prepare materials, insert IV lines or attach ankle sponges, and later inspect the body—are critical. The public needs to know how they work, or don’t work,¹ to participate in informed debate about such a momentous exercise of state power.

The State’s limitations on press access to executions cannot stand under Article I, Section 19 of the Tennessee Constitution, which guarantees the freedom of the press “to examine the proceedings” of “any branch or officer of the government.” In issuing a temporary injunction on First Amendment and state statutory grounds, the trial court deemed it unnecessary to address the plaintiffs’ Article I, Section 19 claim. Ch.

¹ Lucas Finton, Evan Mealins & Molly Davis, *Gov. Lee grants Carruthers yearlong execution reprieve after failure to set IV*, Tennessean (May 21, 2026), <https://www.tennessean.com/story/news/crime/2026/05/21/tony-carruthers-execution-stay/90101223007>.

Ct. Op. 14 n.5. *Amici* submit this brief to explain why Article I, Section 19 provides an additional ground for affirmance.

First, Article I, Section 19's opening clause guarantees the press an affirmative right to access government proceedings. Based on the text's original public meaning, the press's freedom to "examine" a proceeding necessarily entails a right of access. What's more, if the clause prohibited only censorship or otherwise protected expression without providing a right of access, it would be superfluous in light of the broad protections housed in Article I, Section 19's second sentence, which states that "every citizen may freely speak, write, and print on any subject." Constitutional text, history, and values also support recognition of a robust right of press access to government proceedings that sweeps more broadly than First Amendment access rights and warrants a rigorous standard of review.

Second, executions in their entirety constitute "proceedings" within the meaning of Article I, Section 19. The ordinary, contemporaneous meaning of "proceedings" is capacious; as used in the press clause, the word means any formal process by which government business is authorized to be conducted. Further, text and usage confirm that such processes fall within Article I, Section 19's scope when carried out by any

branch of government, including the executive branch. And since executions were open to the public when the Tennessee Constitution was adopted, their inclusion as Article I, Section 19 proceedings makes sense. It is also consistent with Tennessee's constitutional commitment to press freedom and open government.

Third, the State's protocols limiting press access to executions violate Article I, Section 19. The State's asserted interests in security and safety could in principle carry weight but are far too amorphous in this case to satisfy the Court's exacting standard for infringements on press freedom. In any event, as the trial court determined, Ch. Ct. Op. 23–24, the State's protocols are not narrowly tailored to serve its asserted interests.

This analysis should inform the Court's review in two ways. To the extent the Court addresses the plaintiffs' statutory claim, it should avoid raising serious constitutional questions under Article I, Section 19 by interpreting any ambiguity in Tenn. Code. Ann. § 40-23-116 to promote, not restrict, press access. Further, the Court should affirm the trial court's order on the additional or alternative ground that the plaintiffs are likely to succeed on their state constitutional claim.

ARGUMENT

I. Article I, Section 19 establishes a right of press access to government proceedings.

The text is this Court’s “primary guide” to the meaning of the Tennessee Constitution. *Smith v. BlueCross BlueShield of Tenn.*, 710 S.W.3d 686, 694 (Tenn. 2025). The first sentence of Article I, Section 19 (hereinafter the “press clause”) provides that “the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof.” Tenn. Const. art. I, § 19. The second sentence (hereinafter the “speech clause”) continues: “The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.” *Id.*

In construing the text of a state constitutional provision, this Court “seeks to determine the original public meaning.” *McNabb v. Harrison*, 710 S.W.3d 653, 658 (Tenn. 2025). In doing so, the Court does not confine itself to the “hyperliteral meaning of each word,” but instead asks “how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Id.* (internal quotation

marks omitted). It consults contemporaneous dictionaries and usages and applies well-established canons of construction, *id.*, all while considering the “history, structure, and underlying values of the document,” *Smith*, 710 S.W.3d at 694.

All these indicia of meaning support reading the press clause to provide a robust right of press access to government proceedings.

A. The freedom of the press to “examine” government proceedings entails a right of access.

The original public meaning of “examine” in Article I, Section 19—which was adopted first in 1796 and again in 1834 and 1870²—is “to inspect carefully, with a view to discover truth or the real state of a thing.” Noah Webster, *An American Dictionary of the English Language* (New York, S. Converse, 4th ed. 1830); *see also, e.g.*, Joseph E. Worcester, *A Dictionary of the English Language* (Boston, Swan, Brewer & Tileston 1860) (defining “examine,” in part, as “to inspect or observe carefully”).

² See Tenn. Const. of 1796, art. XI, § 19; Tenn. Const. of 1834, art. I, § 19; Tenn. Const. of 1870, art. I, § 19. Available at: <https://sos.tn.gov/civics/guides/tennessee-state-constitution>. The press clause has stayed substantially the same over time. Aside from minor alterations to punctuation and capitalization, the only change to the original text was the deletion of “who undertakes” from the Constitution of 1870. The first two versions included the phrase “every person who undertakes to examine.”

Put differently, “examine” means “to search; to scrutinize; to explore; with a view to discover truth.” Webster, *supra*; see also, e.g., Samuel Johnson, *A Dictionary of the English Language* (Beth Rapp Young et al. eds., Johnson’s Dictionary Online 2021) (1733) (defining “examine,” in part, as “[t]o try by experiment, or observation; narrowly sift; scan,” and “[t]o make enquiry into; to search into; to scrutinise”);³ Thomas Sheridan, *A General Dictionary of the English Language* (Phila., W. Young, 3d ed. 1789) (defining “examine,” in part, as “to try by experiment, to [s]ift, to [s]can; to make enquiry into, to [s]earch into, to [s]crutini[z]e”).⁴

Contemporaneous usage supports this gloss. See, e.g., William Dickson, *Fayetteville Tennessee Bank, July 10th, 1819*, Nashville Republican, July 10, 1819 (noting impartial parties were asked to “inspect and examine” a bank’s “true situation and report”). And “examine” was used this way in legislative enactments from the period, too. See, e.g., Act of Apr. 23, 1796, ch. XX, 1796 Tenn. Pub. Acts. 89

³ Available at: <https://johnsonsdictionaryonline.com>.

⁴ Alternate definitions related to interrogating “the accused” or “a witness,” or testing the truth of a “proposition,” do not bear on what it means to examine a “proceeding.” Cf. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 29 (2012) (“Context is a primary determinant of meaning.”).

(providing for the appointment of disinterested individuals “to examine and [s]urvey di[s]puted lands, to a[s]ertain the lines, and to make return thereof to the [s]aid court, on oath”); Act of Oct. 26, 1799, ch. XLV, 1799 Tenn. Pub. Acts. 209 (providing for tobacco to be “viewed, in[s]pected and examined” by two appointed persons); Act of July 20, 1790, ch. 29, 1 Stat. 132 (providing that a person “skilful in maritime affairs” should “examine” a leaky vessel for “defects and insufficiencies” and make a report to the local judge);⁵ Act of Aug. 7, 1789, ch. 7, 1 Stat. 49 n.(b) (stating the Secretary of War shall “examine into the present state of the war department . . . and report the same to Congress”).⁶

The freedom to “examine” proceedings therefore entails a right of access. “To *examine* an article one is about to purchase,” Worcester, *supra*, one must be able to access it. Likewise for government proceedings. It would be impossible for the press to “inspect or observe” a government proceeding “carefully” while barred from accessing it. *Id.*

⁵ Available at: <https://www.govinfo.gov/content/pkg/STATUTE-1/pdf/STATUTE-1-Pg131.pdf>.

⁶ Available at: <https://www.govinfo.gov/content/pkg/STATUTE-1/pdf/STATUTE-1-Pg49-2.pdf>.

B. The press clause provides a right of access that is distinct from the speech clause’s protections for expression.

Constitutional structure confirms that the press clause provides an affirmative right of access. This Court treats the state constitution as a “single, unified document.” *McNabb*, 710 S.W.3d at 659 (citing *Patterson v. Washington Cnty.*, 188 S.W. 613, 614 (Tenn. 1916)). The Court thus avoids interpretations that would render words “inconsistent, meaningless, superfluous, or redundant.” *Id.* at 661 (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012)). And it presumes that different terms “mean different things.” *Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 63 (Tenn. 2023).

Given these principles, the State’s position that the press clause “only prohibits ‘prior restraints on the publication and dissemination of materials critical of government actions’” cannot be correct. Defs.’ MTD MOL 20–21 (quoting *Mayhew v. Wilder*, 46 S.W.3d 760, 772 (Tenn. Ct. App. 2001)).⁷ The press clause must provide a right of access consistent with its text; otherwise, it would offer no greater protection than what

⁷ The Court of Appeals’ holding in *Mayhew* pertained only to meetings of the legislature, see *Mayhew*, 46 S.W.3d at 772, which raise distinct constitutional considerations, see Tenn. Const. art. II, § 22.

the speech clause already provides in the second sentence of Article I, Section 19.

That is because the speech clause plainly protects against the kind of censorship the State describes, in addition to providing affirmative rights to free expression. No one here disputes its broad sweep, nor could they: The speech clause expressly protects “free communication of thoughts and *opinions*” and guarantees every citizen the right to “freely speak, write, and print on *any subject*.” Tenn. Const. art. I, § 19 (emphases added). What’s more, its protections are “at least as broad” as those of the First Amendment, which itself safeguards speech critical of the government. *Leech v. Am. Booksellers Ass’n, Inc.*, 582 S.W.2d 738, 745 (Tenn. 1979); *see Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional”); *Rudd v. City of Norton Shores*, 977 F.3d 503, 513–14 (6th Cir. 2020) (“The freedom of speech . . . protects the right of an ordinary citizen to criticize public officials”).

In light of the well-established scope of Tennessee’s speech clause, interpreting Tennessee’s press clause to merely protect the press from

blatant government censorship would conflate “examine” with “speak,” “write,” or “print,” and reduce the press clause to a redundancy. That would be a sorry and surprising fate for the opening clause of a provision so foundational to Tennessee democracy.

C. Constitutional values support a robust right of press access.

The “underlying values” of Article I, Section 19—and those animating the Tennessee Constitution as a whole—also support a robust right of access rooted in the press clause. *Smith*, 710 S.W.3d at 694.

Press freedom is “one of the most cherished of all the freedoms specified in our bill of rights,” *Press v. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978), which itself “shall forever remain inviolate,” Tenn. Const. art. XI, § 16. Accordingly, “any stumbling block to the complete freedom of the press ‘to examine (and publish) the proceedings . . . of any branch or officer of the government’ is regarded as constitutionally suspect, and at the very threshold there is a presumption against the validity of any such impediment.” *Verran*, 569 S.W.2d at 442. This Court has thus set a high bar for interference with press freedom, including the freedom to “examine”—not just “publish”—government proceedings. It has stressed, too, that the press has the right and duty “to make a searching inquiry

into all phases of official conduct.” *Id.* And courts should not stand in the way of the press’s “investigative efforts and reporting” except in “the most compelling circumstances,” because in the end, “we profit by the very freedom that sometimes causes us to squirm.” *Id.* In addition, this Court has cast access rights as an essential ingredient not only of press freedom, but of “open government” and Tennessee democracy. *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976) (stating that Tennessee’s Open Meetings Act “implements the constitutional requirement of open government” rooted in Article I, Section 19).

The values underlying the Tennessee Constitution as a whole lend this reading further support. Myriad provisions promote public access to government by, for example, providing that “all courts shall be open,” Tenn. Const. art. I, § 17; ensuring criminal defendants a “speedy public trial,” *id.* art. I, § 9; and guaranteeing the right to “apply to those invested with the powers of government for redress of grievances,” *id.* art. I, § 23. And these are far from constitutional anomalies. See Christina Koningisor, *The Other Press Clauses*, Knight First Amend. Inst. (July 16, 2024) (describing a range of state constitutional access rights, including

some specific to the press).⁸ Together with the press clause, they embody a constitutional commitment to openness and accountability.

As Justice Brandeis put it, “sunlight is the most powerful of all disinfectants.” *Verran*, 569 S.W.2d at 443 (citing Paul A. Freund, *The Supreme Court of the United States: Its Business, Purposes, and Performance* 61 (1961)). Surely Article I, Section 19 does not let the government leave the press entirely in the dark.

D. The press clause provides even greater protection for press access than does the First Amendment.

This Court has not yet had occasion to define the outer bounds of the press clause’s protections. But a comparison to the U.S. Constitution’s text indicates the press clause provides a broader right of access than exists under the First Amendment, at least with respect to access to government proceedings. Infringements on that right should, in turn, be subject to the same stringent standard of review that applies to other “cherished” rights under the Tennessee Constitution. *Id.* at 442.

As an initial matter, this Court “may expand constitutional protections” beyond the floor set by federal constitutional law, even when

⁸ Available at: <https://knightcolumbia.org/content/the-other-press-clauses>.

the state constitutional text resembles a federal provision. *Leech*, 582 S.W.2d at 745; *see also* Jeffrey S. Sutton, *Foreword: The Enduring Salience of State Constitutional Law*, 70 Rutgers L. Rev. 791, 794 (2018) (“[S]tate courts owe no allegiance to the U.S. Supreme Court in construing similar, even identical, language in their own constitutions.”). Article I, Section 19 is “at least as broad” as the First Amendment, *Leech*, 582 S.W.2d at 745, and in the defamation context has been construed as a “substantially stronger provision,” *Verran*, 569 S.W.2d at 442.

The fact that Tennessee’s press clause affirmatively states “the printing press shall be free to every person to examine the proceedings of the Legislature,” Tenn. Const. art. I, § 19, is strong evidence that it provides distinctive—and greater—protection relative to the U.S. Constitution, *cf. State ex rel. Cincinnati Enquirer v. Bloom*, 251 N.E.3d 79, 88–89 (Ohio 2024) (explaining that automatically following federal precedent despite significant textual differences is “lockstepping at its most ill-considered”). The text of the press clause was adopted as part of the original Tennessee Constitution five years after the ratification of the First Amendment. *See supra* note 2. While the First Amendment protects “freedom . . . of the press” in general terms, U.S. Const. amend. I,

Tennessee’s press clause articulates a specific right to “examine the proceedings of the Legislature; or of any branch or officer of the government,” Tenn. Const. art. I, § 19. It does so in “clear and certain” terms. *Verran*, 569 S.W.2d at 442; *cf. Mitchell v. Moore*, 786 So.2d 521, 527 (Fla. 2001) (reasoning that the right to court access is “specifically mentioned in Florida’s Constitution” and therefore “deserves more protection than those rights found only by implication”). And those terms are sweeping. *See* Tenn. Const. art. I, § 19 (referring to “*any* branch or officer of the government,” and stating “no law shall *ever* be made to restrain the right thereof” (emphases added)); *cf. United States v. Gonzales*, 520 U.S. 1, 5 (1997) (“[T]he word ‘any’ has an expansive meaning.”). Tennessee’s press clause should therefore be construed to supplement, not just replicate, First Amendment protections. *Cf. People v. Ellis*, 311 N.E.2d 98, 132–33 (Ill. 1974) (noting Illinois’ Equal Rights Amendment has no federal counterpart and finding “inescapable the conclusion that it was intended to supplement and expand the guaranties” of equal protection); *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 889–91 (Pa. 2024) (collecting similar cases).

To that end, this Court should subject policies that burden press access rights under Article I, Section 19 to a rigorous standard of review consistent with Tennessee jurisprudence on fundamental state constitutional rights. As it stands, this Court’s test for infringements on press freedom is stringent: Only the “most compelling circumstances” can justify interference, and “at the very threshold there is a presumption against the validity of any such impediment.” *Verran*, 569 S.W.2d at 442. That standard resembles this Court’s test for infringements of other fundamental state constitutional rights, too, which requires the government to show that the law at issue is narrowly tailored to serve a compelling state interest. *See, e.g., Hawk v. Hawk*, 855 S.W.2d 573, 579 n.9 (Tenn. 1993) (noting that the state interest must be “sufficiently compelling” to justify infringement on state constitutional parental rights); *State v. Smoky Mountain Secrets, Inc.*, 937 S.W.2d 905, 912 (Tenn. 1996) (noting that a law discriminating based on the speaker must be “narrowly tailored” to serve a compelling state interest).

Applying that general standard here would promote consistency in Tennessee constitutional law and do justice to the rights at stake. It would also be workable: Just as First Amendment access rights “may give

way in certain cases to other rights or interests,” *State v. Drake*, 701 S.W.2d 604, 607 (Tenn. 1985), press access rights under Article I, Section 19 may give way to policies that advance a sufficiently compelling state interest and are narrowly tailored to that interest. But “[s]uch circumstances will be rare,” and “the balance of interests must be struck with special care.” *Id.*

By contrast, the U.S. Supreme Court’s test for First Amendment access rights is insufficiently protective for purposes of Article I, Section 19. The federal test asks (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.” *Press-Enter. Co. v. Superior Ct. of Cal. for Riverside Cnty. (Press-Enterprise II)*, 478 U.S. 1, 8 (1986). Only if those conditions are met does a qualified right of access attach. *Id.* at 10.

Although *amici* agree with the plaintiffs that they should prevail even under this test, *amici* urge this Court not to reflexively lock-step with federal doctrine for two reasons in addition to the textual argument presented above. First, while historical practices can inform state constitutional analysis, see *Smith*, 710 S.W.3d at 694, and in fact support

the plaintiffs’ claims here, *see infra* Section II.B, they should not be uniquely determinative in this context. The sweeping text of the press clause (“any,” “ever”) incorporates no terms tethering its protections to a particular point in time, as it unquestionably could have done. *Cf., e.g.,* Tenn. Const. art. XI, § 1 (“All laws and ordinances *now* in force and use in this State, not inconsistent with this Constitution, shall continue in force and use until they shall expire, be altered or repealed by the Legislature” (emphasis added)). Second, whether press access stands to benefit the functioning of a particular process should not be dispositive: Press freedom and open government are constitutional values separate and apart from the prudential value of a particular proceeding, as this Court’s case law makes clear.

II. Executions are “proceedings” within the meaning of Article I, Section 19.

The word “proceedings” in Article I, Section 19 encompasses executions in their entirety. Executions are the culmination of criminal judicial cases, and no one disputes that those constitute proceedings within the meaning of the press clause. *See* Defs.’ MTD MOL 22–23. The press therefore has a constitutional right to access executions even under

the State’s narrow reading of “proceedings” as “things of a judicial or legislative nature, not a penal nature.” *Id.* at 23.

Still, the State’s interpretation belies the text. The press access rights enshrined in Article I, Section 19 apply to “the proceedings . . . of any branch or officer of the government.” Tenn. Const. art. I, § 19. Even assuming executions are wholly separate “post-judgment procedure[s],” Defs.’ MTD MOL 23, they fall squarely within the ambit of Article I, Section 19 based on the plain meaning of “proceedings” as the term is used in the press clause. So, the plaintiffs should prevail regardless of whether executions are “things of a judicial . . . nature.” *Id.*

A. The ordinary meaning of “proceedings” in the press clause entails execution procedures.

This Court begins its analysis by “reading the plain language and giving terms ‘their ordinary and inherent meaning.’” *McNabb*, 710 S.W.3d at 658. That “does not require an overly narrow construction,” *id.* (citing Scalia & Garner, *supra*, at 355–58), particularly given that state constitutional provisions “embody fundamental values and articulate the *citizens’* common aspirations for constitutional governance and the rule of law,” *Smith*, 710 S.W.3d at 694 (emphasis added). This Court has long favored the “sense most obvious to the common understanding” rather

than some “dark or abstruse meaning.” *McCulley v. State*, 53 S.W. 134, 136 (Tenn. 1899); *cf.* Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2195 (2017) (“Textualists consider themselves bound to adhere to the most natural meaning of the words at issue because that is the way their principal—the people—would understand them.”).

This Court should construe “proceedings” accordingly. Instead of treating it as a “constitutional term of art,” as the State urged below, Defs.’ MTD MOL 22–23, the Court should assume the press clause was “written to be understood by the voters” and “its words and phrases were used in their normal and ordinary as distinguished from technical meaning,” *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008); *cf.* *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546, 1555 (2026) (citing English language dictionaries for “ordinary meaning” and legal dictionaries for “legal meaning”).

The ordinary, contemporaneous meaning of “proceeding” is capacious. The term has long meant a “process or movement from one thing to another; transaction; measure; procedure; progress; course; action; set.” Worcester, *supra*. Not only did “proceeding” in 1733 refer to

a “[l]egal procedure: as, *such are the proceedings at law*,” Defs.’ MTD MOL 22 (quoting Johnson, *supra*), but it also meant—first and foremost— “[p]rogress from one thing to another; series of conduct; transaction,” Johnson, *supra*; *see also, e.g.,* Sheridan, *supra* (defining “proceeding” as “progre[s]s from one thing to another, [s]eries of conduct, tran[s]action”). And common usage confirms it could refer to punishment procedures specifically. *See, e.g., Penitentiary*, Knoxville Register, Oct. 7, 1825, at 1 (opining that “there are few departments of civil government that are more firmly established in a certain course of *proceedings*” than the “system of punishment,” which included “imprisonment and compulsory labor,” as well as “death for very atrocious crimes” (emphasis added)).⁹ Moreover, this broad understanding comports with the rest of the press clause’s text, which makes clear that Article I, Section 19 “proceedings” can be conducted by “any branch or officer of the government.” Tenn. Const. art. I, § 19.

⁹ The State suggested below, based on a corpus linguistics analysis, that “proceedings’ strongly correlates with terms linked to judicial or legislative proceedings.” Defs.’ MTD MOL 22–23. Even if that’s so, it does not follow that the word has no other applications.

Court usage across time also evidences the term’s breadth. For example, the Connecticut Supreme Court recently rejected the idea that “hearing or other proceeding” in the state open-records statute connotes “adjudicative activities.” *City of Meriden v. Freedom of Info. Comm’n*, 258 A.3d 1, 11 (Conn. 2021). Instead, the court defined the statutory term as “a formal process by which official business is authorized to be conducted.” *Id.*; see also, e.g., *Respublica v. Dennie*, 1805 WL 911, at *3 (Pa. 1805) (glossing “proceedings” as “acts” of government); *Appeal of S.O. Houghton*, 42 Cal. 35, 66 (1871) (Temple, J., concurring specially) (referring to levying a tax as a “mere executive proceeding”). That definition, though broad, provides a limiting principle here: Because the press clause expressly confines “proceedings” to those “of the government,” an Article I, Section 19 proceeding plausibly must be a *formal process for official business*. Though not all activities will qualify, including many that take place within prisons, execution procedures in their entirety plainly do. *Cf.* Tenn. Code Ann. § 40-23-116(a) (prescribing the process); Pls.’ MTD MOL 39–40 (listing rules and procedures involved).

Nor do federal courts take a pinched view of “proceeding.” *See, e.g., Ex parte Garland*, 71 U.S. 333, 390–92 (1866) (describing taking an oath of office as a “civil proceeding,” as distinct from “penal and criminal proceedings”); *Marinello v. United States*, 584 U.S. 1, 4 (2018) (describing an IRS investigation or audit as a “targeted governmental tax-related proceeding”); *United States v. Von Neumann*, 474 U.S. 242, 244 n.4 (1986) (noting a “customs officer could have institute nonjudicial, summary forfeiture proceedings” in certain contexts pursuant to federal statute). Courts applying the federal *Press-Enterprise II* test often use “process” and “proceeding” interchangeably, including in execution-related matters. *See, e.g., Wellons v. Commissioner*, 754 F.3d 1260, 1266 (11th Cir. 2014); *Owens v. Hill*, 758 S.E.2d 794, 805 (Ga. 2014). And the Georgia Supreme Court even used the phrase “execution proceedings” in acknowledging a tradition of public access. *Owens*, 758 S.E.2d at 805. This case law dispels any notion that the term “proceedings” inherently excludes the legally prescribed process that is an execution.

Use of the term elsewhere in the Tennessee Constitution confirms that the press clause covers formal processes carried out by executive officers. *Cf. McNabb*, 710 S.W.3d at 662 (“In interpreting legal texts, the

Court also must consider the entire text, known as the ‘whole text canon.’” (quoting Scalia & Garner, *supra*, at 167)). Indeed, the word “proceedings” appears not only in provisions concerning the legislature and the courts, *see, e.g.*, Tenn. Const. art. II, §§ 12, 21; *id.* art. XI, § 2, but also in Article III, concerning the executive branch.

For example, Article III, Section 17 provides that the Secretary of State “shall keep a fair register of all the official acts and proceedings of the Governor.” Tenn. Const. art. III, § 17. According to the canon of *noscitur a sociis*, the meaning of a word “may be ascertained by reference to the meaning of other words or phrases associated with it.” *Sallee v. Barrett*, 171 S.W.3d 822, 828 (Tenn. 2005) (quoting *Black’s Law Dictionary* 1060 (6th ed. 1990)). Here, the word “proceedings” appears alongside “acts,” suggesting its sweep is similarly broad. And its association with the Governor belies the idea that it connotes only adjudicative or legislative processes. *Cf.* Tenn. Const. art. III, § 1 (“The Supreme Executive power of this State shall be vested in a Governor.”).

By contrast, Article XI, Section 2 refers to “any suits, actions, rights of action or other proceedings in Courts of Justice,” plainly associating the word “proceedings” with litigation. Tenn. Const. art. XI, § 2; *cf. Sallee*,

171 S.W.3d at 829 (explaining that under the *ejusdem generis* canon, general words following a list of particulars “will be construed as applying only to things of the same general class”). This use of “proceedings” stands in sharp contrast with Article III, Section 17’s reference to “acts and proceedings of the Governor.” Tenn. Const. art. III, § 17. The framers knew how to cabin the scope of “proceedings” when they wished, and how to distinguish between the three branches of government. *See, e.g., id.* art. II, § 1 (dividing the powers of government into “three distinct departments: Legislative, Executive, and Judicial”). In establishing the press’s freedom to “examine the proceedings of the Legislature; or of any branch or officer of the government,” they chose not to do so. *Id.* art. I, § 19.

Finally, the Tennessee Constitution’s Victim’s Bill of Rights, though adopted more recently, also makes clear the breadth of “proceedings” absent limiting language. It provides, in part, that victims have the “right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person.” *Id.* art. I, § 35. It would be odd if this clause guaranteed victims notice of developments like a transfer, but not events as momentous as an execution.

The constitutional text thus confirms that Article I, Section 19 “proceedings” entail executions in their entirety. Executions are formal processes by which the official business of the state is authorized to be conducted and therefore fall within the press clause’s coverage.

B. Access to executions is consistent with Tennessee history and the values animating Article I, Section 19.

Recognizing the press’s right to access execution proceedings would also be consistent with Article I, Section 19’s historical context and underlying values.

In examining the historical context of a provision present in the first Tennessee Constitution, this Court looks, at least in part, to English and American law before 1796. *See, e.g., Smith*, 710 S.W.3d at 694–97. As the plaintiffs have explained, in pre-1800 England and America, executions were generally “open to all comers.” Pls.’ TI MOL 23 (quoting *Cal. First Amend. Coal. v. Woodford*, 299 F.3d 868, 877 (9th Cir. 2002)); *see also* Defs.’ Opening Br. 14 (“At the time of the Founding, all executions were public.”). Only in 1883—thirteen years after the adoption of the current Tennessee Constitution—did Tennessee abolish public executions. *See* Defs.’ Opening Br. 16 (citing 1883 Tenn. Pub. Acts ch. 112, §§ 1–2).

While not dispositive, this history suggests the ratifiers of all three Tennessee Constitutions would have considered executions public affairs. The fact that executions today look different, *see* Defs.’ Opening Br. 16 is inapposite. The press clause refers broadly to proceedings of any government branch or officer. *Cf. Bloom*, 251 N.E.3d at 93 (reasoning that the open courts provision “does not apply only to courts that were in existence at the time of its enactment” because it speaks to “all courts”). And nothing in the text ties the press clause’s protections to particular historical practices, as some other state constitutional provisions appear to do. *See, e.g.,* Ky. Const. § 7 (“The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.”); Mo. Const. art. I, § 22(a) (“That the right of trial by jury as heretofore enjoyed shall remain inviolate . . .”).

Underlying values bolster this historical presumption of access. *See supra* Section I.C. The Court in *Verran* emphasized the importance of not just a “searching inquiry” by the press, but a searching inquiry into “all phases of official conduct.” 569 S.W.2d at 442. Consistent with that

commitment to openness and oversight, Article I, Section 19 entitles the press to witness “all phases” of the execution proceeding.

III. The State’s execution protocols violate Article I, Section 19.

The State’s policies excluding the press from critical phases of the execution process cannot withstand constitutional scrutiny under Article I, Section 19.¹⁰ They do not advance a compelling government interest and, in any event, are not narrowly tailored to serve such an interest. *See supra* Section I.D (explaining proper test).

First, while government interests in institutional security and individual safety could carry weight in another case, *see* Defs.’ Opening Br. 38 (citing *West v. Schofield*, 460 S.W.3d 113, 129 (Tenn. 2015)), the State does nothing to substantiate them here or even argue they constitute compelling interests.¹¹ Indeed, it is far from clear exactly what

¹⁰ For the reasons stated by the plaintiffs, the State’s execution protocols also violate the First Amendment. *See generally* Pls.’-Appellees’ Br. 30–58.

¹¹ Instead, the State posits that, for purposes of the First Amendment, the press exclusions are “akin” to reasonable time, place, and manner restrictions that must merely advance a “substantial” government interest without unreasonably limiting alternative avenues of communication. Defs.’ Opening Br. 37–38. For the reasons stated by plaintiffs, however, that cannot be correct as a matter of federal law. Pls.’-Appellees’ Br. 54–55. And under Article I, Section 19, that test has no

dangers the execution protocols purport to prevent. *See id.* 37–38 (offering little explanation and marshaling no pertinent record evidence). What’s more, the State’s “blanket burden” on press access to critical execution procedures arguably requires an even “stronger justification” than, for example, a restriction on a particular person’s access to a particular execution might require. *See United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 474 (1995) (addressing categorical restriction); *see also Doe v. Doe*, 127 S.W.3d 728, 736 (Tenn. 2004) (deeming the state’s asserted interests “not sufficiently compelling to justify the restriction on free speech . . . , particularly considering the broad scope” of the restriction). The stated interests here are too amorphous to satisfy any such requirement.

Second, even if the State’s interests were sufficiently compelling on this record, its execution protocols are not narrowly tailored to serve them. The State itself has outlined various ways it could revise its execution process to allow access and protect confidentiality. *See Ch. Ct.*

bearing at all, given the press clause’s independent protections and this Court’s strong presumption against “any stumbling block” to the press’s freedom to “examine” government proceedings. *Verran*, 569 S.W.2d at 442.

Op. 23; Defs.’ Opening Br. 38. And as the trial court noted, those revisions far exceed the “minimal changes” needed to provide relief. Ch. Ct. Op. 23. For the same reasons the protocols are not narrowly tailored for First Amendment purposes, *see id.*; Pls.’-Appellees’ Br. 51–52; 55–56, they cannot survive scrutiny under Article I, Section 19, *cf. Doe*, 127 S.W.3d at 736 (holding that a rule burdening speech “does not pass constitutional muster” despite the state’s asserted interests in protecting anonymity and maintaining the integrity of pending investigations).

This constitutional conflict should, at a minimum, bear on the Court’s construction of Tenn. Code Ann. § 40-23-116(a)(6), since the State’s interpretation of statutory ambiguity raises serious questions under the press clause. *See* Defs.’ Opening Br. 40 (reasoning, in part, that the statute’s purpose is to “ensur[e] that death sentences are carried out privately”); *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 529 (Tenn. 1993) (describing this Court’s “duty to adopt a [reasonable] construction which will . . . avoid constitutional conflict”); *see also Premier Health Care Invs., LLC v. UHS of Anchor, L.P.*, 849 S.E.2d 441, 454 (Ga. 2020) (noting the canon of constitutional avoidance “militates

against” constructions that would “even raise serious questions of constitutionality” (quoting Scalia & Garner, *supra*, at 247–48)).

Further, to the extent this Court deems the plaintiffs’ Article I, Section 19 claim a strong one, it should affirm the trial court’s order on that additional, or alternative, basis. *Cf.* Ch. Ct. Op. 6–22 & n.5 (ruling on the plaintiffs’ First Amendment and statutory claims, but not their Article I, Section 19 claim); *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986) (“[T]his Court will affirm a decree correct in result, but rendered upon different . . . grounds.”). Clarifying the claim’s strength would shore up Tennessee’s independent press protections, consistent with the “double security” state constitutions provide in our federal system, *Bloom*, 251 N.E.3d at 88 (quoting The Federalist No. 51, at 323 (James Madison) (Clinton Rossiter ed., 1961)), and the “power which knowledge gives” the people in our democracy, *Prior Lake Am. v. Mader*, 642 N.W.2d 729, 735 n.5 (Minn. 2002) (quoting Letter from James Madison to W.T. Barry (Aug. 4, 1822), in 3 Letters and Other Writings of James Madison 276, 276 (Philadelphia, J.B. Lippincott & Co. 1865)).

CONCLUSION

This Court should affirm the trial court's order granting a temporary injunction.

August 12th, 2026

Respectfully submitted,

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CERTIFICATE OF TYPEFACE COMPLIANCE

The undersigned hereby certifies that this Brief of *Amici Curiae* in support of Plaintiffs/Appellees Associated Press, et al., complies with the requirements set forth in Tenn. Sup. Ct. R. 46 § 3.02. The Brief is proportionately spaced, has a typeface of 14 points, and contains 6,717 words exclusive of the Cover page, Table of Contents, Table of Authorities, Certificates of Compliance, Attorney Signature Block, and Certificate of Service.

August 12th, 2026

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CERTIFICATE OF REDACTION COMPLIANCE

The undersigned hereby certifies that this Brief of *Amici Curiae* in support of Plaintiffs/Appellees Associated Press, et al., submitted to *Associated Press, et al., v. Kenneth Nelsen, et al.*, No. M2026-00150-SC-R10-CV, complies with the omission and redaction requirements set forth in Tenn. R. App. P. 20B. The certification is confirmed based on a review conducted on August 12th, 2026.

August 12th, 2026

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I certify that true and exact copies of the foregoing document were served electronically or mailed via U.S. first class mail, postage prepaid, this 12th day of August 2026, to:

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