

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

ASSOCIATED PRESS, GANNETT CO.,  
INC., NASHVILLE PUBLIC MEDIA,  
INC., NASHVILLE PUBLIC RADIO,  
SCRIPPS MEDIA, INC., SIX RIVERS  
MEDIA, LLC, and TEGNA INC.,

*Plaintiffs,*

v.

KENNETH NELSEN, *in his official  
capacity as Warden of Riverbend  
Maximum Security Institution*, FRANK  
STRADA, *in his official capacity as  
Commissioner of the Tennessee  
Department of Correction*,

*Defendants.*

CASE NO. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs The Associated Press; Gannett Co., Inc.; Nashville Public Media, Inc.; Nashville Public Radio; Scripps Media, Inc.; Six Rivers Media, LLC; and TEGNA Inc. (together, the “Press Coalition”), through their undersigned counsel, and for their Complaint against Kenneth Nelsen, in his official capacity as Warden of Riverbend Maximum Security Institution, and Frank Strada, in his official capacity as Commissioner of the Tennessee Department of Correction, state as follows:

**INTRODUCTION**

1. Plaintiffs are news organizations that bring this action pursuant to Tenn. Code Ann. § 1-3-121 and 42 U.S.C. § 1983 to vindicate the public and press’s statutory and constitutional rights to witness the entirety of executions conducted by

the Tennessee Department of Correction, from the time the condemned enters the execution chamber until after the condemned is declared dead, including the initial procedures that are inextricably intertwined with the process of putting the condemned to death.

2. The First Amendment to the Constitution of the United States, applicable to the states through the Fourteenth Amendment, guarantees the public, including the press, a qualified right of access to government proceedings, including criminal justice proceedings. *Press-Enter. Co. v. Superior Court*, 478 U.S. 1 (1986) (“*Press-Enterprise II*”) (applying right to preliminary hearing in criminal case). That right attaches to proceedings (i) which have historically been open to the public, and (ii) where access would serve a significant role in the functioning of the proceeding. *Id.* at 8–9.

3. Similarly, Article I, Section 19 of the Tennessee Constitution provides, in pertinent part, “That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof.”

4. Both the First Amendment and Article I, Section 19 of the Tennessee Constitution guarantee a public right of access to witness the entirety of executions carried out by the government.

5. Tenn. Code Ann. § 40-23-116(a) enumerates specific categories of “witnesses entitled to be present at the *carrying out of the death sentence*,” including seven members of the news media “selected in accordance with the rules and

regulations promulgated by the department of correction.” Tenn. Code Ann. § 40-23-116(a)(6) (emphasis added).

6. The Lethal Injection Protocol adopted by the Tennessee Department of Correction (“TDOC”) on January 8, 2025 (attached as **Exhibit 1**), and Electrocution Protocol, adopted March 13, 2017 (attached as **Exhibit 2**), each unlawfully prevent the public and members of the press from witnessing significant portions of execution proceedings.

7. Because TDOC’s protocols impose significant limitations on the ability of official witnesses to observe critical steps in the execution process, this Court should declare those protocols violative of Tenn. Code Ann. § 40-23-116(a) and unconstitutional under the First Amendment of the United States Constitution and Article I, Section 19 of the Tennessee Constitution, and enjoin their enforcement.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the Press Coalition’s claims pursuant to Tenn. Code Ann. §§ 1-3-121, 16-11-101 and 16-11-102.

9. As the county where the cause of action giving rise to the Press Coalition’s Complaint occurred, where all or a substantial part of the events or omissions giving rise to the cause of action accrued, and the county where Defendants maintain their principal office, venue is proper in Davidson County pursuant to Tenn. Code Ann. §§ 20-4-101 and 20-4-104.

### **PARTIES**

10. The Associated Press (“AP”) is an independent not-for-profit global news organization. AP is one of the world’s most trusted news sources, reaching four billion

people per day, including with its coverage of executions carried out across the United States. AP is incorporated under the laws of New York with its headquarters and principal place of business in New York. AP employs reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

11. Gannett Co., Inc. (“Gannett”) is the largest local newspaper company in the United States. It has more than 200 local daily brands in 43 states. In Tennessee, Gannett owns and operates through its subsidiaries the *Tennessean* in Nashville, the *Commercial Appeal* in Memphis, the *Knoxville News-Sentinel* in Knoxville, the *Leaf-Chronicle* in Clarksville, the *Daily Herald* in Columbia, the *Oak Ridger* in Oak Ridge, the *Daily News Journal* in Murfreesboro, and the *Jackson Sun* in Jackson. These publications employ reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

12. Nashville Public Media, Inc. is a non-profit newsroom in Nashville, doing business as the Nashville Banner (the “Banner”). The Banner employs reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

13. Nashville Public Radio is a non-profit newsroom that operates, among other stations, WPLN News in Nashville, a National Public Radio affiliate. Nashville Public Radio employs reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

14. Scripps Media, Inc. (“Scripps”) is the nation’s fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets. In Tennessee, Scripps

owns and operates WTVF in Nashville. Scripps employs reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

15. Six Rivers Media, LLC (“Six Rivers”) is a multi-media company which operates five local media platforms in Northeast Tennessee: *Kingsport Times News*, *Johnson City Press*, *Six Rivers Digital*, *Erwin Record*, and *Mountain City Tomahawk*. These publications employ reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

16. TEGNA Inc. (“TEGNA”) owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets. In Tennessee, TEGNA owns and operates WATN and WLMT in Memphis, and WBIR in Knoxville. These stations employ reporters who gather news on matters of public concern, including news about executions taking place in Tennessee.

17. Defendant Kenneth Nelsen is the Warden of Riverbend Maximum Security Institution (“Riverbend”), which houses Tennessee’s execution chamber. As Warden, Defendant Nelsen is required to administer capital punishment in the state, pursuant to Tenn. Code Ann. § 40-23-116. Riverbend is located in Davidson County. Mr. Nelsen is sued in his official capacity.

18. Defendant Frank Strada is the Commissioner of the Tennessee Department of Correction (“TDOC”), which is headquartered in Davidson County. Under Defendant Strada’s direction and control, TDOC is required to promulgate rules and regulations for implementing the death penalty pursuant to Tenn. Code

Ann. § 40-23-114(c), and the media access to execution provisions of Tenn. Code Ann. § 40-23-116. TDOC, under the Commissioner's direction, also promulgates the execution protocols used in carrying out the death penalty in Tennessee. Mr. Strada is sued in his official capacity.

### **FACTUAL ALLEGATIONS**

#### *History of Public and Press Access to Executions*

19. “In early America, as in England, public hangings were the most common method of execution. Public hangings both served as deterrents and symbols of municipal or societal power.” Sheherezade C. Malik & D. Paul Holdsworth, *A Survey of the History of the Death Penalty in the United States*, 49 U. Rich. L. Rev. 693, 696 (2015); *see also* Stuart Banner, *The Death Penalty: An American History* 24 (2002) (explaining “[u]ntil the nineteenth century, hangings were conducted outdoors, often before thousands of spectators” in a ceremony that was “as conspicuous as any event could possibly be”).

20. The ceremony surrounding a hanging could take several hours, and the entirety of it was open to the public, from start to finish. *See* Banner, *supra*, at 24. The event began with a procession from the jail to the gallows. *Id.* The time and route of the procession were public knowledge, and a condemned person could expect to see large crowds along the entirety of the route. *Id.* At the gallows, the condemned prisoner typically delivered a speech. *Id.* Then a cap was pulled over the prisoner's face, the rope was adjusted, and the prisoner dropped. *Id.* The whole ceremony was public, outdoors, and conspicuous. *Id.*

21. Tennessee executed condemned prisoners by public hanging until well into the nineteenth century. *See, e.g., The Death Penalty: Execution of Knox Martin, the Bell's Bend Murderer*, *The Nashville Tennessean* (Mar. 29, 1879) (attached as **Exhibit 3**) (estimating that “ten to twelve thousand people were present” at 1879 hanging of Knox Martin in Nashville).

22. Throughout the nineteenth century, states began shifting executions from public gallows to jail yards. In northern states, this occurred “[b]etween 1830 and 1860,” while in southern states “most kept the ceremony open to the public until the later nineteenth and early twentieth centuries.” Banner, *supra*, at 146.

23. Tennessee made this shift in 1883, when it passed a law requiring executions to be held in jail yards. 1883 Tenn. Acts 139–40, Ch. CXII, § 1 (attached as **Exhibit 4**).

24. During this shift, however, many states adopted statutes entitling certain members of the press and public to continue attending executions as surrogates for the wider public.

25. Many states adopted statutes which provided for access by witnesses selected by prison officials. For example, the Kansas Territory adopted a statute in 1858 requiring sheriffs to select “twelve reputable citizens” to witness executions. 1858 Kan. Terr. Laws 190, Ch. 12, Art. XII, § 13 (attached as **Exhibit 5**); *see also* 1887 Mo. Laws 169, § 1 (attached as **Exhibit 6**) (Missouri statute providing for officer executing sentence to select “twelve reputable citizens of the county” to witness the execution).

26. While Tennessee’s 1883 law allowed the Sheriff to designate up to six “other persons” to be present at executions, 1883 Tenn. Acts 140, Ch. CXII, § 3, the legislature removed that provision in 1909, 1909 Tenn. Acts 1810–11, Ch. 500, § 1 (attached as **Exhibit 7**).

27. Other states enacted statutes that specifically provided for *press* access to executions. Ohio, for example, adopted a statute entitling members of the media to be present at executions as early as 1885. 1885 Ohio Laws 170, S.B. 409, § 7341 (attached as **Exhibit 8**) (permitting “a reporter for each one of the two leading newspapers of opposite politics published in said county that the sheriff may designate” to be present at the execution).

28. Kentucky enacted a similar statute in 1910. 1910 Ky. Acts 112, Ch. 38, § 4 (attached as **Exhibit 9**) (permitting “one representative of every newspaper published in the county in which the condemned was convicted, and one representative of every daily newspaper published in the State” to be present at the execution).

29. When states began shifting from hanging to other execution methods such as electrocution and poisonous gas, members of the press and public continued to be permitted to attend. At the nation’s first execution by electric chair, for example, witnesses, including a media witness from AP, observed William Kemmler as he was led from his cell into the execution chamber, strapped to the chair, and electrocuted. *Far Worse than Hanging*, N.Y. Times (Aug. 7, 1890) (attached as **Exhibit 10**).

30. At the first execution by lethal gas, media witnesses were permitted to watch at a window. *Gas Kills Convict Almost Instantly*, N.Y. Times (Feb. 9, 1924) (attached as **Exhibit 11**).

31. Since 1994, Tennessee law has specifically provided that seven members of the press are “entitled to be present at the carrying out of the death sentence.” Tenn. Code Ann. § 40-23-116(a)(6).

32. The logic behind this statutory requirement is simple and was well summarized by one of the bill’s sponsors:

Whether you’re for capital punishment or not, when the State exercises that very awesome power . . . it’s imperative that we have the media there to witness it, not just to promulgate and to spread the news that it’s being done as a deterrent, but to also make sure that the State exercises that awesome power with the highest level of decorum and that it’s carried out appropriately.

Statement of Sen. C. Coulter Gilbert on S.B. 2287, 98th Gen. Assemb. (Tenn. Mar. 9, 1994) (attached as **Exhibit 12**), at Tr. 4:21–5:4.

33. Consistent with Tennessee’s now decades-old mandate, media witnesses were present at the first Tennessee execution conducted by lethal injection in 2000, Jay Hamburg, Kirk Loggins & John Shiffman, *Coe Executed*, Tennessean (Apr. 19, 2000) (attached as **Exhibit 13**), and for those executions by both lethal injection and electrocution that have taken place in the past decades, *see, e.g.*, Brad Schrade, Travis Loller & Rose French, *Execution came after late-night judicial drama*, Tennessean (June 29, 2006) (attached as **Exhibit 14**); Chas Sisk, *Donnie Johnson Executed For 1984 Murder Of His Wife*, WPLN (May 17, 2019) (attached as **Exhibit 15**); Kimberlee

Kruesi, *Man smiles, says ‘Let’s rock’ before dying in electric chair*, AP (Nov. 1, 2018) (attached as **Exhibit 16**); Matthew Torres, *‘We stood there silently looking at his lifeless body’: A reporter’s assignment to watch someone die*, WTVF (Feb. 21, 2020) (attached as **Exhibit 17**).

### *Tennessee’s Current Execution Protocols*

34. TDOC’s current lethal injection protocol, adopted on January 8, 2025 and attached as Exhibit 1 (the “Lethal Injection Protocol”), provides that the camera and audio systems shall not be turned on—and the blinds to the witness rooms not opened—until after the syringes have been prepared, the condemned has entered the death chamber and been strapped to the gurney, the electrocardiograph leads have been attached to the condemned, and the intravenous lines have been inserted into the condemned. Ex. 1 at 20.

35. The Lethal Injection Protocol further provides that after a five-minute waiting period following the administration of the syringes, the witness blinds are closed and the camera disengaged. *Id.* at 21. Accordingly, witnesses have no access to the portion of the execution proceeding during which the physician enters the room to examine the condemned and determine if he is deceased. *Id.* at 21.

36. The Lethal Injection Protocol does not provide for any witness access to the portion of the execution proceeding during which the drugs used to sedate and end the inmate’s life are prepared. *See id.* at 18–19 (providing for preparation of syringes).

37. TDOC's electrocution protocol, adopted on March 13, 2017 and attached as Exhibit 2 (the "Electrocution Protocol"), similarly provides that the camera and audio systems are not activated—and the blinds to the witness room are not opened—until after the condemned has been secured to the electric chair with the ankle sponges placed and other necessary preparations already complete. Ex. 2 at 64–65.

38. The Electrocution Protocol also provides that after a five-minute waiting period following the electrocution process, the witness blinds are closed and the camera disengaged. *Id.* at 65. Accordingly, witnesses have no access to the portion of the execution proceeding during which the physician enters the room to examine the condemned and determine if he is deceased. *Id.*

39. The Electrocution Protocol does not provide for any witness access to any of the pre-execution preparation of the execution chamber, including the preparation of the sponge solution of sodium chloride and tap water or the connection of the voltage cables. *See id.* at 39 (providing preparation procedures).

40. The Electrocution Protocol does not provide for any witness access to view precisely what occurs in the execution room during the proceeding, including when the executioner switches on the electrical current following the Warden's signal. *See id.* at 42 (providing procedure for use of electric chair from executioner's room).

#### *Effect of Tennessee's Protocols*

41. Plaintiffs are organizations that gather and publish the news in Tennessee.

42. Plaintiffs employ journalists who routinely document the manner in which law enforcement officers, the criminal justice system, and correctional institutions perform official duties, including by directly observing the operations of those institutions and reporting on their proceedings, including executions.

43. Plaintiff AP regularly covers executions throughout the United States by sending reporters to observe the proceedings in person, including in Tennessee. For instance, on May 22, 2025, AP published a report on the execution of Oscar Smith by lethal injection. Travis Loller, *Tennessee man is executed for killing his wife and her 2 sons, 3 years after last-minute reprieve*, AP (May 22, 2025) (attached as **Exhibit 18**).

44. AP reporter Travis Loller, who attended the Oscar Smith execution, reported that “Witnesses heard him say, ‘I didn’t kill her.’” *Id.* AP also covered the events leading up to Smith’s execution, *see, e.g.*, Travis Loller, *Tennessee prepares to execute Oscar Smith, 3 years after last-minute reprieve*, AP (May 21, 2025) (attached as **Exhibit 19**), including the initial scheduling and eventual cancellation of Smith’s execution in April 2022, *see, e.g.*, Jonathan Mattise, *Tenn governor calls off execution, citing oversight in plan*, AP (Apr. 21, 2022) (attached as **Exhibit 20**).

45. Reporters for the *Tennessean*, the Banner, Six Rivers, and Nashville Public Radio also attended and covered Smith’s execution. Selection of Official Media Witnesses, Tenn. Dep’t of Corr. (May 6, 2025) (attached as **Exhibit 21**); Kirsten Fiscus, *Prayers, song and prolonged silence: The soundtrack to Oscar Franklin Smith’s last moments*, *Tennessean* (May 22, 2025) (attached as **Exhibit 22**); Steven

Hale, Steve Cavendish & Shauna Reynolds, *Tennessee Carries out First Execution Since 2020, Killing Oscar Smith by Lethal Injection*, Nashville Banner (May 22, 2025) (attached as **Exhibit 23**); Rob Walters, *Convicted murderer executed in Tennessee*, Kingsport Times News (May 22, 2025) (attached as **Exhibit 24**); Paige Pflieger, Tasha A.F. Lemley & Catherine Sweeney, *Tennessee executes Oscar Smith, ending pause on lethal injections*, WPLN (May 22, 2025) (attached as **Exhibit 25**).

46. TDOC's official time log for Smith's execution below shows that the curtains in the witness room were only open for 13 minutes. The highlighted portions are the only parts of the proceeding visible to the news media witnesses:

DAY OF EXECUTION - LETHAL INJECTION EXECUTION RECORDER CHECKLIST	
Inmate Name	<u>Oscar Smith</u>
Inmate #	<u>136424</u>
Date	<u>5/22/2025</u>
TIME	
<u>0908</u>	Report to designated area for final briefing
<u>0930</u>	Restraint Team and Special Operations Team report to Execution Chamber for final briefing. Special Operations Team sets up IV system
<u>0947</u>	Physician in place
<u>0947</u>	IV Team in place (EMTs)
<u>0947</u>	[REDACTED] in place
<u>0947</u>	Warden in place
<u>0900</u>	Check blinds and curtains
<u>0936</u>	Advise Escort Team to transport Official Witnesses to Parole Room
<u>0939</u>	Advise by Escort Team that Official Witnesses are in Parole Room
<u>0910</u>	Advise Escort Team to escort Victim's Witnesses to Viewing Room
<u>0913</u>	Advise by Escort Team that Victim's Witnesses are in place
<u>1000</u>	Warden or designee checks to ensure execution is to proceed
<u>1001</u>	Gurney positioned in Death Watch Area
<u>1006</u>	Restraint Team enters cell and secures condemned inmate to gurney
<u>1015</u>	Advise Escort Team to transport Official Witnesses to Death Watch vestibule
<u>1017</u>	Advise by Escort Team that Official Witnesses are in the vestibule
<u>1015</u>	IV Team enters the Execution Chamber
<u>1030</u>	IV Team exits the Execution Chamber
<u>1035</u>	Advise Escort Team to "Transport Official Witnesses in place"
Recorder's Initials [REDACTED]	
PRIVILEGED & CONFIDENTIAL	

DAY OF EXECUTION - LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)	
Inmate Name	<u>Oscar Smith</u>
Inmate #	<u>136424</u>
Date	<u>5/22/2025</u>
TIME	
<u>1027</u>	Advised by Escort Team that "Witnesses are in place"
<u>1033</u>	Warden checks with Commissioner to proceed
<u>1032</u>	Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms
<u>1033</u>	Warden asks inmate for any last comments
<u>1033</u>	Warden orders Special Operations Team to proceed
<u>1047</u>	Lethal Injection process completed
<u>1045</u>	Blinds and curtains closed and closed-circuit TV deactivated
<u>1046</u>	Physician enters the Execution Chamber
<u>1047</u>	Physician pronounces death - exact time
<u>1049</u>	Audio deactivated to witness rooms
<u>1050</u>	Advise Escort Team to remove Victim's Witnesses
<u>1048</u>	Advise Commissioner or designee that execution is completed
<u>1130</u>	Physician and EMTs depart
<u>1054</u>	[REDACTED] escorted to chamber to take possession of body. Pictures will be taken of body and Execution Chamber before removal of body
<u>1058</u>	Advise by Escort Team Victim's Witnesses are at Checkpoint
<u>1058</u>	Advise Escort Team to remove Official Witnesses
<u>1106</u>	Advise by Escort Team that Official Witnesses are at Checkpoint
<u>1107</u>	The body removed from the institution
Recorder's Initials [REDACTED]	
PRIVILEGED & CONFIDENTIAL	

47. Similarly, reporters for AP, the *Tennessean*, the Banner, WTVF, and WPLN attended and covered the August 2025 execution of Byron Lewis Black. Selection of Official Media Witnesses, Tenn. Dep't of Corr. (July 15, 2025) (attached

as **Exhibit 26**); Jonathan Mattise, *Tennessee man noted intense pain during lethal injection without deactivating defibrillator*, AP (Aug. 5, 2025) (attached as **Exhibit 27**); Kelly Puente & Evan Mealins, *Byron Black showed signs of distress, said he was in pain, witnesses of execution report*, Tennessean (Aug. 5, 2025) (attached as **Exhibit 28**); Steven Hale et al., *In Painful Execution, Attorney Says Byron Black was 'Tortured' by the State of Tennessee*, Nashville Banner (Aug. 5, 2025) (attached as **Exhibit 29**); Nikki Hauser, *Signs of discomfort, distress: What we know about Byron Black's controversial execution*, WTVF (Aug. 5, 2025) (attached as **Exhibit 30**); Catherine Sweeney & Paige Pflieger, *Tennessee executes Byron Black despite worries about his heart implant*, WPLN (Aug. 5, 2025) (attached as **Exhibit 31**).

48. TDOC's official time log for Black's execution below shows that the curtains in the witness room were only open for 10 minutes. The highlighted portions are the only parts of the proceeding visible to the news media witnesses:

DAY OF EXECUTION - LETHAL INJECTION EXECUTION RECORDER CHECKLIST	
Inmate Name	Byron Black Inmate # 136230
Date	8/5/2025
TIME	
0900	Report to designated area for final briefing
0900	Restraint Team and Special Operations Team report to Execution Chamber for final briefing. Special Operations Team sets up IV system.
0945	Physician in place
0945	IV Team in place (EMTs)
0945	█ in place
0951	Warden in place
0948	Check blinds and curtains
0936	Advise Escort Team to transport Official Witnesses to Parole Room
0941	Advise by Escort Team that Official Witnesses are in Parole Room
0918	Advise Escort Team to escort Victim's Witnesses to Viewing Room
0932	Advise by Escort Team that Victim's Witnesses are in place
0959	Warden or designee checks to ensure execution is to proceed
1000	Gurney positioned in Death Watch Area
1004	Restraint Team enters cell and secures condemned inmate to gurney
1012	Advise Escort Team to transport Official Witnesses to Death Watch vestibule
1014	Advise by Escort Team that Official Witnesses are in the vestibule
1015	IV Team enters the Execution Chamber
1026	IV Team exits the Execution Chamber
1016	Advise Escort Team to "Transport Official Witnesses in place"
Recorder's Initials █	
PRIVILEGED & CONFIDENTIAL	
31	

DAY OF EXECUTION - LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)	
Inmate Name	Byron Black Inmate # 136230
Date	8/5/2025
TIME	
1021	Advised by Escort Team that "Witnesses are in place"
1031	Warden checks with Commissioner to proceed
1031	Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.
1031	Warden asks inmate for any last comments
1033	Warden orders Special Operations Team to proceed
1041	Lethal injection process completed
1041	Blinds and curtains closed and closed-circuit TV deactivated
1043	Physician enters the Execution Chamber
1043	Physician pronounces death - exact time
1044	Audio deactivated to witness rooms
1044	Advise Escort Team to remove Victim's Witnesses
1045	Advise Commissioner or designee that execution is completed
1110	Physician and EMTs depart
1045	█ escorted to chamber to take possession of body. Pictures will be taken of body and Execution Chamber before removal of body
1049	Advise by Escort Team: Victim's Witnesses are at Checkpoint
1049	Advise Escort Team to remove Official Witnesses
1054	Advise by Escort Team that Official Witnesses are at Checkpoint
1103	The body removed from the institution
Recorder's Initials █	
PRIVILEGED & CONFIDENTIAL	
32	

49. Because TDOC's Lethal Injection Protocol arbitrarily limits access to critical portions of the execution proceeding, reporters are unable to observe the preparation of the syringes for use in the execution; entry of the condemned into the execution chamber; the preparation of the condemned in the execution chamber; insertion of intravenous lines into the condemned; TDOC's administration of syringes of lethal injection drugs; the physician examination and pronouncement of death; any of the process after the blinds are closed for the physician examination; or any immediate post-execution procedures in the execution chamber.

50. This lack of access has limited the public's ability to obtain information from independent observers about execution proceedings in Tennessee. For example, the Banner's reporting on the execution of Mr. Black stated that according to Mr. Black's attorney, "medical personnel had trouble finding the veins in both of his arms, leading to a puddle of blood on his right side. She said it took 10 minutes for the tubes to be attached, which first brought saline and then pentobarbital." Ex. 29. But the media witnesses had no access to that stage of the proceeding to independently report on it, leaving the public with no account from a neutral observer.

51. Reporting by the *Tennessean* on Mr. Black's execution further stated: "Black groaned on the gurney and attempted to lift his head multiple times as the lethal injection drugs flowed through him." Ex. 28. The same article reported that "Black's attorneys and those who opposed his execution" had "warned his implantable cardioverter-defibrillator (ICD) for congestive heart failure, which works like a pacemaker, would shock him repeatedly as his heart stopped beating." *Id.* However,

it was “unclear if that was the case” to media witnesses who were given access to only a portion of the execution proceeding. *Id.*

52. Plaintiffs have also reported on recent executions in Tennessee by electrocution. For example, reporting by AP on the execution of Leroy Hall by electric chair in December 2019 indicated that “a small plume of white smoke appeared above the right side of his head” while Hall received jolts of electricity. Kimberlee Kruesi, *Blind inmate executed in Tennessee for woman’s 1991 killing*, AP (Dec. 5, 2019) (attached as **Exhibit 32**). The same article reported that a “spokeswoman for Tennessee Department of Correction later told The Associated Press that it ‘was steam and not smoke as a result of the liquid and heat.’” *Id.*

53. Reporters for the *Tennessean* and WPLN likewise attended and covered Hall’s execution. See Mariah Timms & Adam Tamburin, *Tennessee executes Lee Hall by electric chair*, *Tennessean* (Dec. 5, 2019) (attached as **Exhibit 33**); Samantha Max, *Lee Hall Executed In The Electric Chair For 1991 Murder In East Tennessee*, WPLN (Dec. 6, 2019) (attached as **Exhibit 34**).

54. Because TDOC’s Electrocution Protocol arbitrarily limits access to critical portions of the execution proceeding, reporters were unable to observe the preparation and saturation of sponges for use in the execution; the entry of the condemned into the execution chamber; the preparation of the condemned in the execution chamber including the placement of saturated ankle sponges onto Hall; the physician examination and pronouncement of death; any of the process after the

blinds were closed for the physician examination; or any immediate post-execution procedures in the execution chamber.

55. On August 15, 2025, Plaintiffs sent a letter to TDOC Commissioner Frank Strada outlining how the Lethal Injection and Electrocution Protocols were violative of their constitutional and statutory rights of access to witness execution proceedings (attached as **Exhibit 35**). As of the date of this Complaint, Plaintiffs have not received a response to their letter.

56. The Tennessee Supreme Court has scheduled the execution of Harold Wayne Nichols for December 11, 2025. *See* Order, *State v. Nichols*, No. E1998-00562-SC-R11-PD (Tenn. Mar. 3, 2025) (attached as **Exhibit 36**). The Plaintiffs intend to gather information and report on Nichols's execution to the fullest extent possible.

57. As of the date of this Complaint, Mr. Nichols has not yet announced whether he will choose to have his sentence carried out by lethal injection or electrocution.

58. On September 30, 2025, the Tennessee Supreme Court issued orders setting four additional executions next year with the first set for May 21, 2026. *See* Order, *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 30, 2025) (attached as **Exhibit 37**) (setting execution of Tony Carruthers for May 21, 2026); Order, *State v. Hines*, No. M2025-00221-SC-DPE-DD (Tenn. Sept. 30, 2025) (attached as **Exhibit 38**) (setting execution of Anthony Darrell Dugard Hines for August 13, 2026); Order, *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 30, 2025) (attached as **Exhibit 39**) (setting execution of Christa Gail Pike for September 30,

2026); Order, *State v. Sutton*, No. E1997-00196-SC-DDT-DD (Tenn. Sept. 30, 2025) (attached as **Exhibit 40**) (setting execution of Gary Wayne Sutton for December 3, 2026).

59. Plaintiffs intend to cover future executions in Tennessee.

60. Tennessee’s Lethal Injection and Electrocution Protocols will limit Plaintiffs’ access to critical portions of Mr. Nichols’s execution and other future execution proceedings and hamper Plaintiffs’ ability to provide thorough, accurate, and independent reporting on those proceedings to the public.

### **COUNT I**

#### **Violation of Tenn. Code Ann. § 40-23-116(a)**

*Tenn. Code Ann. § 1-3-121*

61. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of the Complaint.

62. Tenn. Code Ann. § 40-23-116(a) requires that witnesses, including press witnesses, to executions are “entitled to be present at the carrying out of the death sentence.”

63. Plaintiffs each intend to cover future executions in Tennessee, including by directing their employees to apply to become official media witnesses pursuant to Tenn. Code Ann. § 40-23-116(a)(6) and Tenn. Comp. R. & Regs. 0420-03-04-.01 *et seq.* (“Under the authority of T.C.A. §40-23-116, the Department of Correction is authorized to promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a sentence of death.”). Plaintiffs intend to publish the observations of their reporters who witness those proceedings in person.

64. Defendants' execution protocols violate the statutory requirement that witnesses, including press witnesses, "be present at the carrying out of the death sentence." Tenn. Code Ann. § 40-23-116(a).

65. Specifically, the Lethal Injection Protocol violates this statute by precluding Plaintiffs' journalists from being "present" to observe critical stages of the "carrying out of the death sentence," including: (i) the preparation of the syringes for use in the execution; (ii) entry of the condemned into the execution chamber; (iii) the preparation of the condemned in the execution chamber; (iv) the insertion of intravenous lines into the condemned; (v) TDOC's administration of syringes of lethal injection drugs; (vi) the physician examination and pronouncement of death; (vii) any of the process after the blinds are closed for the physician examination; and/or (viii) any immediate post-execution procedures in the execution chamber.

66. Similarly, the Electrocution Protocol violates this statute by precluding Plaintiffs' journalists from being "present" to observe critical stages of the "carrying out of the death sentence," including: (i) the preparation and saturation of sponges for use in the execution; (ii) the condemned as he enters the room and is secured to the chair; (iii) the preparation of the condemned in the execution chamber including the placement of the saturated ankle sponges; (iv) TDOC's activation of the electrical current; (v) the physician examination and pronouncement of death; (vi) any of the process after the blinds are closed for the physician examination; and/or (vii) any immediate post-execution procedures in the execution chamber.

67. Defendants' violations of Tenn. Code Ann. § 40-23-116(a) prohibit Plaintiffs' reporters from observing "the carrying out of the death sentence" and thereby limit Plaintiffs' ability to publish complete reporting on execution proceedings to the public.

68. Pursuant to Tenn. Code Ann. § 1-3-121, Plaintiffs are entitled to a declaration that the Lethal Injection and Electrocution Protocols violate state law and an order enjoining their enforcement.

## **COUNT II**

### **Violation of the Qualified First Amendment Right to Attend and Observe Executions**

*Tenn. Code Ann. § 1-3-121 & 42 U.S.C. § 1983*

69. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of the Complaint.

70. Plaintiffs each intend to cover future executions in Tennessee, including by directing their employees to apply to become official media witnesses pursuant to Tenn. Code Ann. § 40-23-116(a)(6) and Tenn. Comp. R. & Regs. 0420-03-04-.01 *et seq.* ("Under the authority of T.C.A. §40-23-116, the Department of Correction is authorized to promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a sentence of death."). Plaintiffs intend to publish the observations of their reporters who witness those proceedings in person.

71. Plaintiffs have a qualified First Amendment right of access, applicable to the states through the Fourteenth Amendment, to execution proceedings because (i) execution proceedings have been historically open to the public, and (ii) access

serves a significant role in the functioning of the execution proceeding. *Press-Enterprise II*, 478 U.S. at 8–9.

72. This qualified constitutional right of access applies to the entirety of Tennessee’s execution procedures, from the moment the government initiates the execution process until death, and including the pre- and post-execution procedures that are an essential part of the execution process.

73. Execution proceedings have historically been open to the public throughout the United States, though the form of access has shifted over time as executions have moved from the public square to inside prison walls. *Cf. Cal. First Amend. Coal. v. Woodford*, 299 F.3d 868, 875 (9th Cir. 2002) (noting that “[h]istorically, executions were open to all comers” and that “[w]hen executions were moved out of public fora and into prisons, the states implemented procedures that ensured executions would remain open to some public scrutiny”).

74. Providing press access to the entirety of executions plays a significant positive role in the functioning of execution proceedings because insofar as members of the press are “surrogates for the public,” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), their reporting on execution proceedings “contribute[s] to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system,” *id.* (quoting *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 587 (1976) (Brennan, J., concurring in judgment)).

75. In this role, media witnesses provide the public with accurate information about whether executions are competently and humanely administered

consistent with the Eighth Amendment. *See Woodford*, 299 F.3d at 876 (“An informed public debate is critical in determining whether execution by lethal injection comports with the evolving standards of decency which mark the progress of a maturing society.” (citation and internal quotation marks omitted)); *see also Phila. Inquirer v. Wetzel*, 906 F. Supp. 2d 362, 371 (M.D. Pa. 2012) (holding that “full access to Pennsylvania’s process and experience will allow for a more thorough evaluation of how the Commonwealth’s procedures comport with evolving constitutional standards”).

76. Press access to executions also enables the public to exercise meaningful democratic oversight over executions by ensuring that a state’s conduct comports with its constituents’ evolving standards of decency and efficacy.

77. In addition, “public observation of executions fosters the same sense of catharsis that public observation of criminal trials fosters. Although this may reflect the dark side of human nature, the Supreme Court has recognized that the public must be permitted to see justice done, lest it vent its frustration in extralegal ways.” *Woodford*, 299 F.3d at 877 (citing *Richmond Newspapers*, 448 U.S. at 571–72).

78. Permitting press to observe the entirety of an execution proceeding may also promote the intended deterrent effect of that punishment. *See, e.g., Gregg v. Georgia*, 428 U.S. 153, 183 (1976) (plurality opinion) (recognizing the death penalty “serve[s] two principal social purposes: retribution and deterrence of capital crimes by prospective offenders”); *Kennedy v. Louisiana*, 554 U.S. 407, 420, *as modified* (Oct.

1, 2008) (“[P]unishment is justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution.”).

79. The public’s First Amendment right of access to executions may only be overcome where a state demonstrates that denying access “is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982).

80. By promulgating and enforcing execution protocols that deny Plaintiffs access to those portions of execution proceedings that are an integral part of those proceedings, Defendants, acting under color of state law, have violated and continue to violate Plaintiffs’ qualified First Amendment right of access to Tennessee’s execution proceedings.

81. Specifically, the Lethal Injection Protocol violates Plaintiffs’ qualified First Amendment right to attend execution proceedings because it prohibits media witnesses from observing (i) the preparation of the syringes for use in the execution; (ii) entry of the condemned into the execution chamber; (iii) the preparation of the condemned in the execution chamber; (iv) the insertion of intravenous lines into the condemned; (v) TDOC’s administration of syringes of lethal injection drugs; (vi) the physician examination and pronouncement of death; (vii) any of the process after the blinds are closed for the physician examination; and/or (viii) any immediate post-execution procedures in the execution chamber.

82. Similarly, the Electrocution Protocol violates Plaintiffs’ qualified First Amendment right to attend execution proceedings because it prohibits media

witnesses from observing (i) the preparation and saturation of sponges for use in the execution; (ii) the condemned as he enters the room and is secured to the chair; (iii) the preparation of the condemned in the execution chamber including the placement of the saturated ankle sponges; (iv) TDOC's activation of the electrical current; (v) the physician examination and pronouncement of death; (vi) any of the process after the blinds are closed for the physician examination; and/or (vii) any immediate post-execution procedures in the execution chamber.

83. Upon information and belief, Defendants cannot make the showing necessary to overcome Plaintiffs' qualified right of access to future executions.

84. Tennessee has no compelling or even substantial governmental interest in restricting the public's or the press's right to view the entirety of executions by closing the blinds during critical stages of lethal injections and electrocutions, including the arrival and preparation of the condemned; or those portions of the lethal injection and electrocution procedures that are carried out in the executioner's room, including the preparation of lethal injection drugs and the administration of electrical currents to the condemned.

85. Even if Tennessee had any identifiable compelling interest in restricting access, the limitations on the press and the public's right of access imposed by Tennessee's Lethal Injection and Electrocution Protocols are not a narrowly tailored or effective means to achieve that interest, and less restrictive alternatives exist to closure.

86. As a result of Defendants’ promulgation and enforcement of Tennessee’s unconstitutional execution protocols, Plaintiffs and the public at large have suffered and will continue to suffer irreparable injury from the denial of their constitutional right to fully observe the entirety of executions in Tennessee. Such access is essential to Plaintiffs’ ability to provide informed reporting on executions carried out in Tennessee.

87. Pursuant to Tenn. Code Ann. § 1-3-121, 42 U.S.C. § 1983, and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the Lethal Injection and Electrocution Protocols violate the First Amendment and an order enjoining their enforcement.

### **COUNT III**

#### **Violation of Art. I, Sec. 19 of the Tennessee Constitution** *Tenn. Code Ann. § 1-3-121*

88. Plaintiffs re-allege and incorporate by reference the preceding paragraphs of the Complaint.

89. Article I, Section 19 of the Tennessee Constitution provides, in pertinent part, “That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof.”

90. Executions conducted by Defendants are “proceedings” subject to Article I, Section 19’s requirement that “no law shall ever be made to restrain the right” to “examine the proceedings of ... any branch or officer of the government.”

91. Defendants' execution protocols violate Article I, Section 19 because they restrain the right of the Press Coalition to observe and examine the portions of execution proceedings that the protocols limit access to.

92. Specifically, the Lethal Injection Protocol violates Plaintiffs' right of access to examine government proceedings under Article I, Section 19, because it prohibits media witnesses from observing critical components of execution proceedings, including: (i) the preparation of the syringes for use in the execution; (ii) entry of the condemned into the execution chamber; (iii) the preparation of the condemned in the execution chamber; (iv) the insertion of intravenous lines into the condemned; (v) TDOC's administration of syringes of lethal injection drugs; (vi) the physician examination and pronouncement of death; (vii) any of the process after the blinds are closed for the physician examination; and/or (viii) any immediate post-execution procedures in the execution chamber.

93. Similarly, the Electrocution Protocol violates Plaintiffs' right to examine government proceedings under Article I, Section 19, because it prohibits media witnesses from observing critical components of execution proceedings, including: (i) the preparation and saturation of sponges for use in the execution; (ii) the condemned as he enters the room and is secured to the chair; (iii) the preparation of the condemned in the execution chamber including the placement of the saturated ankle sponges; (iv) TDOC's activation of the electrical current; (v) the physician examination and pronouncement of death; (vi) any of the process after the blinds are

closed for the physician examination; and/or (vii) any immediate post-execution procedures in the execution chamber.

94. Plaintiffs each intend to cover future executions in Tennessee, including by directing their employees to apply to become official media witnesses pursuant to Tenn. Code Ann. § 40-23-116(a)(6) and Tenn. Comp. R. & Regs. 0420-03-04-.01 *et seq.* (“Under the authority of T.C.A. §40-23-116, the Department of Correction is authorized to promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a sentence of death.”). Plaintiffs intend to publish the observations of their reporters who witness those proceedings in person.

95. TDOC execution protocols violate Article I, Section 19 of the Tennessee Constitution and affect the Press Coalition’s ability to observe those portions of the execution proceedings that it is prohibited from examining and, thus, affect its ability to report on what it is prohibited from observing.

96. Pursuant to Tenn. Code Ann. § 1-3-121, Plaintiffs are entitled to a declaration that the Lethal Injection and Electrocuting Protocols violate Article I, Section 19 of the Tennessee Constitution and an order enjoining their enforcement.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request from this Court:

1) A declaratory judgment that the Lethal Injection Protocol violates Tenn. Code Ann. § 40-23-116(a), the First Amendment of the U.S. Constitution, on its face and as applied to Plaintiffs and other, similarly situated members of the press, and

Article I, Section 19 of the Tennessee Constitution, on its face and as applied to Plaintiffs and other, similarly situated members of the press;

2) A declaratory judgment that the Electrocutation Protocol violates Tenn. Code Ann. § 40-23-116(a), the First Amendment of the U.S. Constitution, on its face and as applied to Plaintiffs and other, similarly situated members of the press, and Article I, Section 19 of the Tennessee Constitution, on its face and as applied to Plaintiffs and other, similarly situated members of the press;

3) An injunction requiring Defendants, including their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants, to permit the public and the press to observe the totality of executions, including those pre- and post-execution procedures inextricably intertwined with the execution process;

4) An award of attorney's fees pursuant to 42 U.S.C. § 1988;

5) An award of court costs and discretionary costs;

6) Such other and further relief as the Court may deem just and proper.

Dated: October 28, 2025

/s/ Paul R. McAdoo

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