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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. 25-1513-III

PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

Plaintiffs the Associated Press ("AP"), Gannett Co., Inc. ("Gannett"), Nashville Public Media, Inc. (the "Banner"), Nashville Public Radio, Scripps Media, Inc. ("Scripps"), Six Rivers Media, LLC ("Six Rivers"), and TEGNA Inc. (collectively, the "Press Coalition") file this Motion for Temporary Injunction. In support of this Motion, the Press Coalition concurrently submits and relies upon its Complaint, Memorandum of Law in Support of Motion for Temporary Injunction, and the attached declarations. For the reasons detailed below and in the accompanying Memorandum, this Court should grant the Press Coalition a temporary injunction barring Defendants from enforcing the limitations on access imposed by the Tennessee Department of Correction's protocols for executions, and requiring

Defendants to permit the public and the press to observe the totality of executions, including those pre- and post-execution procedures inextricably intertwined with the execution process:

1. Plaintiffs are news organizations who gather and publish the news in Tennessee and who employ journalists who routinely attend, observe, and report on execution proceedings in Tennessee. Compl. ¶¶ 43–54 (describing Plaintiffs' reporting on recent Tennessee executions).

2. Plaintiffs intend to send their journalists to attend, observe, and report on execution proceedings in Tennessee in the future and to publish their observations and reporting. Compl. ¶¶ 59, 63, 70, 94; Loller Decl. ¶ 12; Sweeney Decl. ¶ 29; Cavendish Decl. ¶ 34; Lamb Decl. ¶ 26; Fiscus Decl. ¶ 24; Farmer Decl. ¶ 20; Walters Decl. ¶ 28; North Decl. ¶ 32.

3. The Tennessee Department of Correction ("TDOC") has promulgated a Lethal Injection Protocol (Compl. Ex. 1), and Electrocution Protocol (Compl. Ex. 2) (collectively, the "Execution Protocols"), each of which provide for members of the public and members of the press to witness only limited portions of execution proceedings in Tennessee while preventing observation of other significant portions of execution proceedings.

4. Specifically, the Lethal Injection Protocol precludes members of the public and of the press 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.

5. Similarly, the Electrocution Protocol precludes members of the public and of the press 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.

6. As detailed in Plaintiffs' Complaint ¶¶ 41–60, Plaintiffs' Memorandum at 3–12, and by the declarations of Plaintiffs' journalists, *e.g.*, Loller Decl. ¶ 31; Sweeney Decl. ¶¶ 22–25; Cavendish Decl. ¶¶ 19–20, 30–31; Lamb Decl. ¶ 21; Fiscus Decl. ¶¶ 15, 20; Farmer Decl. ¶¶ 10–17; Kruesi Decl. ¶¶ 29–32; Walters Decl. ¶ 20; North Decl. ¶ 23, the limitations on access imposed by the Execution Protocols have hindered and will continue to hinder Plaintiffs' reporters' ability to observe and report on execution proceedings.

7. A court may grant a temporary injunction if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and that the movant will suffer an immediate

and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual. Tenn. R. Civ. P. 65.04(2).

8. "Like the federal courts, Tennessee trial courts consider four factors in determining whether to issue a temporary injunction: '(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.'" *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020) (citation omitted).

9. "Where, as here, the temporary injunction is sought on the basis of an alleged constitutional violation, the third factor—likelihood of success on the merits—often is the determinative factor." *Id.*

10. The Press Coalition is likely to succeed on the merits of its claims that the Lethal Injection and Electrocution Protocols violate Tenn. Code Ann. § 40-23-116(a), the First and Fourteenth Amendments of the U.S. Constitution, and Article I, Section 19 of the Tennessee Constitution.

11. 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).

12. In adopting Tenn. Code Ann. § 40-23-116(a), the Tennessee General Assembly recognized that "it's imperative that we have the media there to witness [capital punishment], 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), at Tr. 4:21–5:4 (Compl. Ex. 12).

13. The statute confirms the press's right of access to "the execution, not just the dying," which includes "those actions that are linked inextricably" with the execution proceeding. *Or. Newspaper Publishers Ass'n v. Or. Dep't of Corr.*, 988 P.2d 359, 363–64 (Or. 1999).

14. The Execution Protocols violate Tenn. Code Ann. § 40-23-116(a)(6) by barring media witnesses from being "present" for critical stages of the "carrying out" of the execution. *See supra* paras. 4–5.

15. 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. *Press-Enter. Co. v. Superior Court*, 478 U.S. 1 (1986) ("*Press-Enterprise II*").

16. A qualified First Amendment right of access 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.

17. The *Press-Enterprise II* framework applies to execution proceedings. *See Detroit Free Press v. Ashcroft*, 303 F.3d 681, 700 (6th Cir. 2002) (characterizing framework as a "test of general applicability"); *see also Cal. First Amend. Coal. v. Woodford*, 299 F.3d 868, 877 (9th Cir. 2002) (applying test to execution proceedings and finding a First Amendment right of access); *Phila. Inquirer v. Wetzel*, 906 F. Supp. 2d 362, 368 (M.D. Pa. 2012) (same).

18. As described in Plaintiffs' Complaint ¶¶ 19–33 and in the accompanying Memorandum at 22–29, execution proceedings have been historically open to the public. *Woodford*, 299 F.3d at 875; *Phila. Inquirer*, 906 F. Supp. 2d at 370.

19. As described in Plaintiffs' Complaint ¶¶ 74–78 and the accompanying Memorandum at 30–35, access to execution proceedings serves a significant role in the functioning of the execution proceeding. *Woodford*, 299 F.3d at 876; *Phila. Inquirer*, 906 F. Supp. 2d at 371.

20. Because both prongs of the *Press-Enterprise II* framework are met, the First Amendment right to access government proceedings accordingly guarantees the "right to view executions from the moment the condemned is escorted into the execution chamber, including those 'initial procedures' that are inextricably intertwined with the process of putting the condemned inmate to death." *Woodford*, 299 F.3d at 877.

21. And since the *Press-Enterprise II* framework applies and its factors both weigh in favor of a First Amendment right of access to execution proceedings, Defendants bear the heavy burden of overcoming that presumption to justify

restrictions on access promulgated in the Execution Protocols. *Detroit Free Press*, 303 F.3d at 705.

22. To overcome the presumption, Defendants will need to demonstrate "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984) ("*Press-Enterprise I*").

23. The Court must also consider reasonable alternatives to the restrictions in the Execution Protocols. *Id.* at 511 (requiring "consideration of alternatives to closure").

24. Defendants have not met their burden to justify the restrictions on access imposed by the Execution Protocols, nor can they. *See supra* paras. 4–5.

25. By precluding Plaintiffs from observing these critical portions of execution proceedings in Tennessee, which are "inextricably intertwined with the process of putting the condemned inmate to death," *see Woodford*, 299 F.3d at 877, the Execution Protocols violate the First Amendment to the Constitution of the United States.

26. 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."

27. Executions 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."

28. The Tennessee Supreme Court has explained that this provision "is a substantially stronger provision than that contained in the First Amendment" and that "[t]his mandate of Tennessee's Constitution requires that any infringement upon the 'free communication of thoughts' and 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." *Press, Inc. v. Verran*, 569 S.W.2d 435, 441–42 (Tenn. 1978).

29. Given the prohibitory language in Article I, Section 19, any infringement upon the right to "examine" a government proceeding should, at a minimum, be analyzed under the *Press-Enterprise II* standard, which requires that "the presumption [of access] may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise II*, 478 U.S. at 9 (quoting *Press-Enterprise I*, 464 U.S. at 510); *see also State v. Drake*, 701 S.W.2d 604, 607–08 (Tenn. 1985).

30. Additionally, "the trial court must consider reasonable alternatives to closing the proceeding." *Drake*, 701 S.W.2d at 608 (quoting *Waller v. Georgia*, 467 U.S. 39, 48 (1984)); *see also Press-Enterprise I*, 464 U.S. at 510.

31. Defendants have not met their burden to justify the restrictions on access imposed by the Execution Protocols, nor can they. *See supra* paras. 4–5.

32. By precluding Plaintiffs from observing these critical portions of execution proceedings, the Execution Protocols violate Article I, Section 19 of the Tennessee Constitution.

33. While the fact that Plaintiffs are likely to succeed on the merits of all three of their claims is likely determinative, *Hargett*, 604 S.W.3d at 394, the other three temporary injunction factors also favor Plaintiffs.

34. Plaintiffs will suffer irreparable harm absent a temporary injunction because there is no way to calculate or compensate Plaintiffs for the damage that the Execution Protocols impose on their ability to attend and report on execution proceedings.

35. The balance of equities and the public interest also favor granting temporary relief because injunctions protecting First Amendment rights are always in the public's interest. *See, e.g.*, *Jones v. Caruso*, 569 F.3d 258, 278 (6th Cir. 2009) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (citation omitted)); *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) ("[T]he public as a whole has a significant interest in ... protection of First Amendment liberties.").

WHEREFORE, pursuant to Tenn. R. Civ. P. 65.04(2), Plaintiffs respectfully request that this Court issue a temporary injunction that:

(1) Bars Defendants from enforcing the portions of the Execution Protocols that limit Plaintiffs' access to critical portions of execution proceedings; and

(2) Requires Defendants to permit Plaintiffs, and other similarly situated members of the press, to observe the entirety of execution proceedings, either through direct observational or closed circuit audio and video access, inclusive of the following steps in the execution process, which are inextricably intertwined with the execution of the condemned:

a. the preparation of the syringes for use in lethal injections and of sponges for use in electrocutions;

b. the entry of the condemned into the execution chamber;

c. the preparation of the condemned in the execution chamber, including the insertion of intravenous lines into the condemned for lethal injections and the placement of saturated ankle sponges and the securing of the condemned to the electric chair for electrocutions;

d. the administration of syringes of lethal injection drugs for lethal injections and the activation of the electrical current for electrocutions;

e. the physician examination and pronouncement of death;

f. any portions of the proceeding after the blinds are closed for the physician examination; and

g. any immediate post-execution procedures in the execution chamber.

Dated: October 29, 2025

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* *Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing will be served with the Petition and Summons upon the Defendants.

/s/ Paul R. McAdoo
Counsel for Plaintiffs