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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III
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.	)	**Case No. 25-1513-III**
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.	)	

CHANCELLOR'S ORDER GRANTING TEMPORARY INJUNCTION

Before the Court is Plaintiffs Associated Press, Gannett Co., Inc., Nashville Public Media, Inc., Nashville Public Radio, Scripps Media, Inc., Six Rivers Media, LLC, and Tegna, Inc.'s (hereinafter, the "Press Coalition" or "Plaintiffs") Motion for Temporary Injunction (hereinafter known as "Motion"), brought pursuant to Tennessee Rule of Civil Procedure 65.04. Defendants 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 (hereinafter known as the "Department" or "Defendants"), filed a Response, and the Press Coalition filed a Reply. The Court heard oral argument from Plaintiffs and the Department (together, the "Parties") at a temporary injunction hearing held on December 3, 2025 and took the matter under advisement.

After studying the record, the law, the affidavits, and considering the argument of Counsel, and all evidence presented, the Plaintiffs stand to suffer immediate and irreparable harm should this relief fail to be granted. As such, Plaintiffs' request for a mandatory temporary injunction is **GRANTED** for the reasons that follow.

FINDINGS OF FACTS

The Plaintiffs here consist of several media groups, namely, The Associated Press, Gannett Co., Inc., Nashville Public Media, Inc., Nashville Public Radio, Scripps Media, Inc., Six Rivers Media, LLC, and Tenga, Inc. Defendant Kenneth Nelsen is Warden of Riverbend Maximum Security Institution. Defendant Frank Strada is the Commissioner of the Tennessee Department of Corrections ("TDOC"). Pursuant to statute, all executions are carried out at Riverbend Maximum Security Institution in Nashville, Tennessee, the state penitentiary in which the Capital Punishment Unit is located. *Tennessee Code Annotated* § 40-23-116(a). Under Tennessee law, lethal injection is currently "the method for carrying out" the death penalty. *Tennessee Code Annotated* § 40-23-114(a). However, if the offense for which the condemned incarcerated person was sentenced to death occurred before January 1, 1999, the condemned person may choose to die by electrocution. *Tennessee Code Annotated* § 40-23-114(b). As a result, the TDOC has issued two different execution protocols, one for each method of dying. (collectively, the "Execution Protocols"). Under the Lethal Injection Execution Protocol and the Execution Procedures for Electrocution, witnesses, including press witnesses, are unable to observe the full event of the execution proceeding and are limited to witnessing certain events as determined by the TDOC.

LAW & ANALYSIS

A trial court's decision to grant the plaintiffs' request for a temporary injunction is discretionary. *Fisher v. Hargett*, 604 S.W.3d 381, 395 (Tenn. 2020). Injunctions are a matter of

discretion with the courts of equity; and as Justice Story penned, "'courts of equity,' 'have constantly declined to lay down any rule which shall limit their power and discretion as to the particular cases in which injunctions shall be granted or withheld.'" *Mabry v. Ross*, 48 Tenn. 769, 773–74 (1870). "[T]here is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid to protect rights or redress wrongs." *Id.* at 774. "[T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or is more dangerous in a doubtful case than the discretion of granting an injunction." *Id. "*A mandatory injunction is one which alters the status quo and orders the defendant to take action to remedy the alleged wrong." *Fisher,* 604 S.W.3d at 394-395. A mandatory injunction is such extraordinary relief that it is to be granted only "in exceptional circumstances." *Id*. at 395.

The request for a temporary injunction is governed by the provisions of Rule 65.04(2) of the Tennessee Rules of Civil Procedure which states in pertinent part:

> [a] temporary injunction may be granted during the pendency of an action 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 the movant will suffer 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. Pro. 65.04(2). 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." *Moody v. Hutchison*, 247 S.W.3d 187, 199–200 (Tenn. Ct. App. 2007) (citing *Mosby v. Colson*, No. W2006-00490-COA-R3-CV, 2006 WL 2354763 (Tenn.

Ct. App. Aug. 14, 2006)), *perm. app. denied* (Tenn. Mar. 3, 2008); *Obama for America v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012).

I. LIKELIHOOD OF SUCCESS ON THE MERITS

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. *Obama for America*, 697 F.3d at 436 (citing *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). A plaintiff's failure to show likelihood of success on the merits is usually fatal. *Fisher*, 604 S.W.3d at 394.

A. THE PRESS COALITION'S CHALLENGE IS A HYBRID CONSTITUTIONAL CHALLENGE

A constitutional challenge to a statute may be either a facial challenge or an as-applied challenge. In a facial challenge, the plaintiff argues that there are no circumstances under which the statute, as written, may be found valid. *City of Memphis*, 414 S.W.3d at 103 (citing *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 525 (Tenn. 1993)). This means that the statute is claimed to be unconstitutional in all its applications. "A facial challenge to a law's constitutionality is an effort to invalidate the law in each of its applications, to take the law off the books completely." *Green Party of Tennessee v. Hargett*, 791 F.3d 684, 691 (6th Cir. 2015)(quoting *Speet v. Schuette*, 726 F.3d 867, 871 (6th Cir.2013) (internal quotation marks omitted)). In an as-applied challenge, however, the plaintiff contends that the statute is unconstitutional as it is construed and applied in actual practice against the plaintiff under the specific facts and circumstances of the particular case before the court, rather than under some set of hypothetical circumstances. *Id. at* 691-692; *See also City of Memphis*, 414 S.W.3d at 107. "[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving

a constitutional challenge." *Id. (*quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010)). In fact, a claim can have characteristics of as-applied and facial challenges: it can challenge more than just the plaintiff's particular case without seeking to strike the law in all its applications. *Id.* In constitutional challenges reaching beyond the plaintiff's circumstances, the plaintiff must satisfy the "standards for a facial challenge to the extent of that reach." *Id.*

Neither Party argued to the Court regarding whether or not this constitutional challenge was facial, as applied, or a hybrid of the two. The Press Coalition, however, asked in its operative Complaint for a declaration by this Court that this challenge is a hybrid challenge, as the Protocol at issue is unconstitutional for this particular execution and for executions to come. This was not controverted by the Defendants at this stage.

The Plaintiffs in this action challenge the Defendants' construction and application of the protocols and rules regarding executions and they assert that the current protocols, which limit their observation of full lethal injection and electrocution executions in the State violate their rights under (1) *Tennessee Code Annotated* § 40-23-116(a), (2) the qualified right to access judicial proceedings under the First Amendment of the United States Constitution, and (3) the freedom of the press to examine government proceedings pursuant to Article I, Section 19 of the Tennessee Constitution. They further assert that executions are government proceedings under Article I, section 19 of the Tennessee Constitution as applied to them in their capacity as official witnesses to executions carried out in the State of Tennessee. The protocols and rules promulgated by the Defendants apply to each execution, whether by electrocution or lethal injection.

The Plaintiffs' constitutional claims are nuanced in that the Press Coalition does not contend that the statute, as written by the Legislature, is unconstitutional; however, the protocols

and rules as promulgated by the Defendants in interpreting and applying the statute are unconstitutional. The Press Coalition specifically contests the Defendants' interpretation and application of the statutory requirement for official witnesses to "be present" at the carrying out of a death sentence. The Plaintiffs do not argue that they are not "present" in the general sense of the term. Rather, the Plaintiffs assert that they are prevented from being fully present at executions in Tennessee because the rules promulgated by the Defendants obstruct their view and impede their ability to fully observe the proceedings by only granting them a ten to fifteen (10-15) minute window wherein they may, through raised blinds, observe the dying of the condemned person. They contend that the limitations imposed by the Defendants, which set forth when they open the blinds for viewing of the executions, violate their First and Fourteenth Amendment rights to freedom of the press and their right to gather news without governmental interference.

Based on the claims of the Press Coalition and no objection from the Defendants at this stage, this Court finds Plaintiffs' challenge to be a hybrid challenge. The hybrid nature of the Plaintiffs' constitutional challenge does not limit the scope of the available injunctive relief to only the named plaintiffs. As a hybrid challenge to the extent that the Plaintiffs' claims extend beyond their circumstances, they must satisfy the standards for a facial challenge. *Fisher*, 604 S.W.3d at 397 (Tenn. 2020).

B. THE PLAINTIFFS WILL LIKELY SUCCEED ON THE MERITS OF THEIR FIRST AMENDMENT CHALLENGE

Petitioners lead with the contention that the protocols as set forth by the Defendants violate their rights under the First Amendment of the United States Constitution. They contend that executions are part of the criminal process and are a criminal proceeding. Therefore, any restrictions on their access must conform to the jurisprudence as set forth in the seminal cases of

Richmond Newspapers, Inc. v. Virginia[1] and *Press Enterprise I and II*[2], and be narrowly tailored. Defendants, on the other hand, assert that executions are not judicial proceedings and thus the First Amendment protections are outweighed by penological interests and concerns which override First Amendment protections. This Court agrees with the Press Coalition.

Jurisprudence on the right of the press to access capital punishment executions is ever-evolving. The United States Supreme Court has never squarely decided whether executions are subject to First Amendment access rights, leaving a current split amongst the circuit courts in our federal system, and there are no Tennessee cases addressing this issue. The threshold questions for this Court are: which line of First Amendment access precedent governs press access to executions, and what constitutes an execution. The Supreme Court has recognized a qualified right of access for the press in certain contexts within our criminal systems. They have held that the First Amendment secures a qualified right of access to government proceedings that have "historically been open to the press and general public" and for which "public access plays a significant positive role in the functioning of the particular process." *Press-Enterprise* at 8–9, (1986); *see also Richmond Newspapers, Inc.* They have also held that "newsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." *Saxbe v. Washington Post Co.,* 417 U.S. 843, 850 (1974).

Executions are creatures unto themselves. They do not fall squarely within the criminal judicial system, nor are they like a routine prison visit or interview with an incarcerated individual. They are unique. Executions represent the final and most consequential stage of the criminal judicial process**,** effectuating the judgment imposed by the courts. Executions occur after the

[1] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980).
[2] *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 505-10 (1984) *("Press-Enterprise I") and Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 10 (1986) ("*Press Enterprise II"*).

conclusion of the adjudicative process, are carried out by correctional officials, and take place within the confines of a prison.

The Press Coalition relies on *Richmond Newspapers, Inc.* and *Press Enterprise I and II* for the proposition that, based on the historical nature of executions in the United States, they have a First Amendment right of access which allows them to be fully present to observe the entire execution process. They argue that historically, executions in this country, and specifically in Tennessee, were done openly and in public for years and perhaps even centuries before being moved behind prison walls. They contend that the Supreme Court in *Richmond Newspapers, Inc.* held that the First Amendment's guarantee of freedom of speech and press includes a *qualified right of access* to criminal trials, grounded in the historical tradition of open proceedings and the public's interest in transparent judicial processes. *Id.* The Press Coalition further argues that executions are the culmination of the judicial process in that it is the carrying out of the sentence of death, which, in turn, means that it should also be fully open to them.

The Defendants take the contrary position when they argue that the First Amendment does not grant the press a constitutional right of special access to information not regularly available to the public. *Branzburg v. Hayes*, 408 U.S. 665, 684 (1972). (internal citations omitted). They rely on the trilogy of *Branzburg, Pell*[3]*, and Saxbe*[4] to support this contention. *Branzburg v. Hayes*, a seminal case by our United States Supreme Court, stands for the proposition that the press generally does not have an unrestrained right to gather information, and that they are regularly excluded from grand jury proceedings, judicial conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. *Id.* Though *Branzburg*

[3] *Pell v. Procunier*, 417 U.S. 817 (1974).
[4] *Saxbe v. Washington Post Co*., 417 U.S. 843 (1974).

rejects an absolute constitutional privilege, it has led to a collage of federal and state protections, including shield laws and qualified privileges recognized by lower state and federal courts.

In *Pell*, the Supreme Court addressed the issue of the right of the press to face-to-face interviews with incarcerated individuals in California state prisons. There, the Court held that the press has no constitutional right of access to prisons or inmates beyond that afforded to the general public, and reasonable, content-neutral restrictions justified by legitimate penological interests do not violate the First Amendment. *Id.*

In *Saxbe*, the Supreme Court again addressed the issue of face-to-face interviews with incarcerated individuals by the press in California federal prisons. The Court again found that the press had no constitutional special right to access to incarcerated individuals beyond what is available to the public generally. *Id*. The Defendants contend that, based upon these cases, the Press Coalition in this case does not and should not have access to view the full execution, as this would be special access which is not available to the public generally. *See Defendants' Resp. in Opp. to Plaintiffs' Motion For Temp. Injunction*.

As a primary matter, this Court finds that the cases which regard the press's ability to conduct face-to-face interviews with incarcerated individuals to be distinguishable from the facts of the present case and the execution of an accused. The Press Coalition is not asking to interview the condemned person before dying. Instead, they are asking to be able to fully view the execution as provided by the statute as an official witness. *See Tennessee Code Annotated* § 40-23-116(a). By its own terms, an official witness is distinguishable from the public generally, as official witnesses are created by statute. *See Id*.

The constitutional guarantee of a free press "assures the maintenance of our political system and an open society," *Time, Inc. v. Hill*, 385 U.S. 374, 389, (1967), and secures "the

paramount public interest in a free flow of information to the people concerning public officials." *Garrison v. Louisiana*, 379 U.S. 64, 77(1964), *Pell*, 417 U.S. at 832; *See also New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). By the same token, "(a)ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Pell*, 417 U.S. 817, 832 (*citing New York Times Co. v. United States*, 403 U.S. 713, 714 (1971); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 91 (1971); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, (1963); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 51 (1931). Further the First and Fourteenth Amendments also protect the right of the public to receive such information and ideas as are published. *Id. (Kleindienst v. Mandel*, 408 U.S., at 762—763; *Stanley v. Georgia*, 394 U.S. 557, 564, (1969)). While the Supreme Court in *Branzburg* did not give the press special access, it did affirm that news gathering does have its First Amendment protections, and cautioned that without some protections, the freedom of the press could be eviscerated. *Branzburg*, 408 U.S. at 833. The *Branzburg* Court further barred the government from interfering in any way with a free press. *Id. at* 834. While there are some parts of government operations which must be shrouded from the view of the public in order to fully accomplish their intended purpose, this Court finds that executions in Tennessee do not fall into that category. *See Press Enterprise*, 478 U.S. at 8-9.

In applying the *Press Enterprise II* test, this Court applies experience and logic. The first prong of the test looks to "whether the place and process have historically been open to the press and general public because "a tradition of accessibility implies the favorable judgment of experience." 478 U.S. at 8 (quoting *Richmond Newspapers*, 448 U.S. at 589 (Brennan, J., concurring)). The second prong requires the court to consider whether public access plays a significant, positive role in the functioning of the particular process at issue. *Press Enterprise.* 478

U.S. at 8. The "experience test ... does not look to the particular practice of any one jurisdiction, but instead to the experience in that *type* or *kind* of hearing throughout the United States. *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 150 (1993) (quoting *Rivera-Puig v. Garcia-Rosario*, 983 F.2d 311, 323 (1st Cir. 1992)).

In analyzing the first prong of the test, executions were historically open to the public. It appears that "there is little record, if any, of secret proceedings, criminal or civil, having occurred at any time in known English history." *Richmond Newspapers, Inc.*, 448 U.S. at 590, (BLACKMUN, J., concurring and dissenting); *see also In re Oliver*, *supra*, 333 U.S., at 269, n. 22, 68 S.Ct., at 505, n. 22; Radin, *supra*, at 386–387. This legacy of open justice was inherited by the English settlers in America. *Id.*

Prior to the American Revolution, the colonies applied the death sentence in open forums that invited and encouraged public audiences, and generally used hanging as the method. Nicholas Levi, *Veil of Secrecy: Public Executions, Limitations on Reporting Capital Punishment, and the Content-Based Nature of Private Execution Laws*, 55 Fed. Comm. L.J. 131, 134–35 (2002). Philip English Mackey described a common spectacle surrounding an eighteenth-century execution:

> Felons were either hanged, often so clumsily that they died in slow agony, or burned at the stake (a method usually reserved for blacks and Indians). In either event, the execution took place in public, with rowdy onlookers jockeying for the best view. In some cases, the publicity of the punishment did not end with the criminal's death. The authorities sometimes ordered the corpse exhibited in a public place--in rare instances for periods exceeding a year--for the edification of potential wrongdoers.

Id. Historically, executions were open to all persons. In England, from whence the founding fathers of this country came, executions were a regular occurrence in society. From 1196 to 1783, the English city of Tyburn hosted up to fifty thousand (50,000) public executions. *California First Amend. Coal. v. Woodford*, 299 F.3d 868, 875 (9th Cir. 2002). *See* John Laurence, *A History of*

Capital Punishment 177–178, 179 (1960). The Old Bailey criminal court, opposite the Newgate prison, was the site of public executions from 1783 to 1868. *See Id.*. at 179–180. The execution sites of Tyburn and Newgate both drew "large and disorderly" crowds; in 1807, a crowd as large as forty-thousand (40,000) came to Newgate. *See Id.* at 180; *see also* David D. Cooper, *The Lesson of the Scaffold* 1–26 (1974). Bringing their history with them, executions were fully open events in the United States as well. *See* John D. Bessler, *Televised Executions and the Constitution: Recognizing a First Amendment Right of Access to State Executions*, 45 Fed. Comm. L.J. 355, 359–64 (1993); Neil E. Nussbaum, "*Film at Eleven ..."—Does the Press Have a Right to Attend and Videotape Executions?* 20 N.C. Cent. L.J. 121, 122–23 (1992); Roderick C. Patrick, *Hiding Death*, 18 New Eng. J. on Crim. & Civ. Confinement 117, 118 (1992).

Even when public executions were first abolished in America, the press was still allowed to attend. *California First Amend. Coal.* 299 F.3d 868 at 876; *Id. See* Louis P. Massur, *Rites of Execution* 114–16 (Oxford University Press 1989). Tennessee, for its part, continued to execute condemned prisoners by public hanging 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) (*Compl. Ex*. 3) (reporting that an estimated "ten to twelve thousand people were present" at the 1879 public hanging of Knox Martin in Nashville). In 1883, Tennessee enacted legislation mandating that executions be carried out within jail yards rather than on public gallows, thereby restricting the number of individuals permitted to witness the executions. 1883 Tenn. Acts 139–40, ch. CXII, § 1 (Compl. Ex. 4). However, even when moved to jail yards, members of the press were still allowed to be fully present for those executions. (*Phila. Inquirer,* 906 F. Supp. 2d at 370 (explaining that while public executions in Pennsylvania were abolished in 1834, "the state still required the presence of twelve reputable witnesses to attend the executions"); *see also* Banner,

supra, at 157-58 (noting that "[j]ail-yard hangings were thus still conducted before a crowd, but a smaller and more elite crowd than before" and that "[s]paces were normally reserved for journalists").

In our present-day setting, executions now occur within the confines of correctional facilities and are carried out by executive officials, they, however, are not merely routine prison operations. Rather, executions represent the final and most consequential stage of the criminal justice process. The historic nature of fully public executions in the United States reflects a longstanding understanding that the exercise of the state's ultimate power over life must be subject to public scrutiny. Based on the foregoing historical context, this Court finds the first prong of the test satisfied. Even when executions were moved into prison yards and to the inside of prison walls, official press witnesses and other witnesses were still allowed in to be present to observe the proceedings.

Secondly, this Court must determine whether public access plays a significant positive role in the functioning of the particular process at issue. Ultimately, when deciding the logic prong of the *Press Enterprise II* test, "what is crucial in an individual case is whether access to a particular government process is important in terms of that very process." *Richmond Newspapers,* 448 U.S. at 589. The idea of capital punishment in this country, whether one is for or against the process:

> ... is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs. quoting *Gregg v. Georgia,* 428 U.S. at 183, 96 S.Ct. at 2930. Channeling man's natural instinct for retribution "serves an important purpose in promoting the stability of a society governed by law" for "the seeds of anarchy are sown" when "people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they 'deserve.'" *Furman v. Georgia,* 408 U.S. 238 at 308, (1972).

State v. Black, 815 S.W.2d 166, 190 (Tenn. 1991). Thus, this Court finds that the "logic" prong is likewise met. Public access to executions plays a significant role in promoting transparency, accountability, and public confidence in the administration of capital punishment in the United States. This Court finds that a meaningful and full observation of executions allows the public to assess whether the state carries out death sentences in a lawful and humane manner and ensures that the execution process remains subject to democratic oversight. *See,* e.g., *California First Amendment Coalition*, 299 F.3d at 876–77.

Based on the foregoing, this Court finds that the Press Coalition has a likelihood of success on the merits to its First Amendment right to observe the fulsome execution.[5]

C. THE PRESS COALITION HAS A LIKELIHOOD OF SUCCESS ON THE MERITS FOR ITS STATE LAW CLAIMS

This Court further finds that the Press Coalition will likely succeed on the merits of its proffered violations of state law claims. Tennessee, like other states, has a statute that invites the members of the press to serve as official witnesses to observe actual executions. Thus, the Press Coalition's state law claim is nuanced. Pursuant to *Tennessee Code Annotated* § 40-23-116(a), the press, along with the members of a victim's family, if they so choose to attend, and seven (7) other witnesses, are the official witnesses to the carrying out of the death sentence. This is a nuanced question in that this statutory access is different from that granted to the public generally, as these official witnesses are there by statute and not generally. The rights conferred upon them are enacted by the General Assembly of the State of Tennessee. Therefore, the access that the press is normally given in cases challenging the First Amendment is a bit different.

[5] The Press has also raised a violation of Tennessee Constitution Article I Section 9. However, the Tennessee Supreme Court has previously held that "courts do not decide constitutional questions unless resolution is absolutely necessary for determination of the case and the rights of the parties." *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). Having already decided the merits of the Press Coalition's First Amendment challenge, this Court does not need to reach the Tennessee constitutional issues at this juncture for the temporary injunction. *See State v. Thompson,* 151 S.W.3d 434, 442 (Tenn. 2004).

As stated by the Tennessee Supreme Court,

> In evaluating the constitutionality of a statute, we begin with the presumption that an act of the General Assembly is constitutional. [I]n reviewing [a] statute for a possible constitutional infirmity, we are required to indulge every presumption and resolve every doubt in favor of the constitutionality of the statute. The Court must uphold the constitutionality of a statute wherever possible[.] [T]he Court must be controlled by the fact that our Legislature may enact any law which our Constitution does not prohibit, and the Courts of this State cannot strike down one of its statutes unless it clearly appears that such statute does contravene some provision of the Constitution.

Willeford v. Klepper, 597 S.W.3d 454, 465 (Tenn. 2020)(internal citations omitted).

The burden is even greater when the challenge is facial. *Fisher*, 604 S.W.3d at 397–98. (internal citations omitted). A facial challenge to a statute is "the most difficult challenge to mount successfully since the challenger must establish that no set of circumstances exist under which the Act would be valid." *Id. (*quoting *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006) (citations omitted)). Plaintiffs asserting a facial challenge, therefore, undertake an especially heavy legal burden. *Id.* Hybrid challenges must meet the standard of facial challenges.

When engaging in statutory interpretation, "well-defined precepts" apply. *State v. Welch*, 595 S.W.3d 615, 621 (Tenn. 2020); *See State v. Frazier*, 558 S.W.3d 145, 152 (Tenn. 2018) (quoting *Tenn. Dep't of Corr. v. Pressley*, 528 S.W.3d 506, 512 (Tenn. 2017)); *State v. Howard*, 504 S.W.3d 260, 269 (Tenn. 2016); *State v. McNack*, 356 S.W.3d 906, 908 (Tenn. 2011). "The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Id.* (*quoting Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)); *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009) (citing *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008)). In construing statutes, Tennessee law provides that courts are to avoid a construction that leads to absurd results.

Tennessean v. Metro. Gov't of Nashville, 485 S.W.3d 857, 872 (Tenn. 2016) (*citing Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010)).

Our Tennessee Supreme Court has given guidance with regard to the interpretation of statutes, stating:

> The overriding purpose of a court in construing a statute is to ascertain and effectuate the legislative intent, without either expanding or contracting the statute's intended scope. Legislative intent is first and foremost reflected in the language of the statute. We presume that the [l]egislature intended each word in a statute to have a specific purpose and meaning. The words used in a statute are to be given their natural and ordinary meaning, and, because words are known by the company they keep, we construe them in the context in which they appear and in light of the general purpose of the statute. We endeavor to construe statutes in a reasonable manner which avoids statutory conflict and provides for harmonious operation of the laws. When a statute's text is clear and unambiguous, we need look no further than the language of the statute itself. We simply apply the plain meaning without complicating the task.

Wallace v. Metro. Gov't of Nashville, 546 S.W.3d 47, 52-53 (Tenn. 2018) (quotation marks and citations omitted). "When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language..." *Welch*, 595 S.W.3d at 622. A statute is ambiguous when "the parties derive different interpretations from the statutory language." *Id.* (quoting *Owens*, 908 S.W.2d at 926). However, this proposition does not mean that an ambiguity exists merely because the parties proffer different interpretations of a statute. *Id.* A party cannot create an ambiguity by presenting a nonsensical or clearly erroneous interpretation of a statute. *Id.* In other words, both interpretations must be reasonable in order for an ambiguity to exist. *Id.*

If a statute is ambiguous, the Court "may reference the broader statutory scheme, the history of the legislation, or other sources to determine the statute's meaning." *Id.* Turning as we must now to the statute at hand, the plain language states in pertinent part:

> (a) In all cases in which the sentence of death has been passed upon any person by the courts of this state, it is the duty of the sheriff of the county in which the sentence of death has been passed to remove the person so sentenced to death from that county to the state penitentiary in which the death chamber is located, within a reasonable time before the date fixed for the execution of the death sentence in the judgment and mandate of the court pronouncing the death sentence. On the date fixed for the execution in the judgment and mandate of the court, the warden of the state penitentiary in which the death chamber is located shall cause the death sentence to be carried out within an enclosure to be prepared for that purpose in strict seclusion and privacy. The only witnesses entitled to be present at the carrying out of the death sentence are:
>
> (1) The warden of the state penitentiary or the warden's duly authorized deputy;
>
> (2) The sheriff of the county in which the crime was committed;
>
> (3) A member of the clergy who has been preparing the condemned person for death;
>
> (4) The prison physician;
>
> (5) Attendants chosen and selected by the warden of the state penitentiary as may be necessary to properly carry out the execution of the death sentence;
>
> (6) A total of seven (7) members of the print, radio and television news media selected in accordance with the rules and regulations promulgated by the department of correction. Those news media members allowed to attend any execution of a sentence of death shall make available coverage of the execution to other news media members not selected to attend;
>
> (7)(A) Immediate family members of the victim who are eighteen (18) years of age or older. Immediate family members shall include the spouse, child by birth or adoption, stepchild, stepparent, parent, grandparent or sibling of the victim; provided, that members of the family of the condemned prisoner may be present and witness the execution;
>
> (B) Where there are no surviving immediate family members of the victim who are eighteen (18) years of age or older, the warden shall permit up to three (3) previously identified relatives or personal friends of the victim to be present and witness the execution;
>
> (8) One (1) defense counsel chosen by the condemned person; and
>
> (9) The attorney general and reporter, or the attorney general and reporter's designee.

Tennessee Code Annotated § 40-23-116(a). The Defendants argue that this Court should construe the right to be present at the carrying out of the death sentence differently from the right to be present at an execution. *See Defendants' Resp. in Opp. to Plaintiffs' Motion For Temp. Injunction*

at p. 12. They argue that the right to be present at an execution would allow witnesses to observe the entire process from start to finish, while the right to be present at the carrying out of the death sentence restrains the witness's view to only observe the dying of the incarcerated individual, as set forth in their rules. *Id*. The Defendants further contend that the rules and protocols as promulgated by the TDOC for executions by electric chair and lethal injection, enable official witnesses to observe, and thus be present, for the ten to fifteen (10-15) minutes which they contend is the actual carrying out of the death sentence, and anything more access is not required by the statute. *Id*. They further argue that the current restrictions are necessary because allowing the Press Coalition to be present for the full execution would endanger prison security and the persons involved in the process.

The Press Coalition, to the contrary, argues that pursuant to *Tennessee Code Annotated* § 40-23-116, they are allowed to be present in all respects to fully witness the execution, not simply the ten to fifteen (10-15) minutes in which a condemned incarcerated individual draws his or her last breath. While the Press Coalition concedes that they are "present" in a sense, they are not able to be fully present as the statute contemplates, in that there are certain aspects of the execution event that they are precluded from observing, such as the insertion of the needle into the veins in a lethal injection execution.

Both the Press Coalition and the Defendants present differing interpretations of the statute regarding what it means to be "present" at the carrying out of the death sentence. Therefore, this Court thus finds the statute to be ambiguous and shall therefore rely upon the tested principles of statutory construction to determine how the legislature intended for official witnesses to be present for executions in Tennessee.

In *Tennessee Code Annotated* § 40-23-116, the word "present" is not defined in the statutory scheme governing executions. When the legislature does not provide a specific definition for a statutory term, this court may look to other sources, including Black's Law Dictionary, for guidance. *State v. Edmondson*, 231 S.W.3d 925, 928 (Tenn. 2007). *Black's Law Dictionary* defines present as an adjective. It means, (1) Now existing; at hand; (2) Being considered; now under discussion; (3) In attendance; not elsewhere. *Black's Law Dictionary* (12th ed. 2024). In order to be a witness as the statute contemplates, one would have to be able to see, know or vouch for something.

The Legislature did not differentiate between the events that the official witnesses were to be present for and those which were to be shrouded by a veil of secrecy at the department's choosing. The Legislature did not designate a difference between the time of the dying of the condemned as opposed to other events that transpire on the day of the execution. Instead, when drafting this statute, they granted the official witnesses the statutory right to be present, not for a portion of the carrying out of the death sentence, but for the entire event. The Legislature was well within its right when drafting the statute to hide certain parts of the process from official witnesses if they wanted to, however, they placed all official witnesses on equal footing, allowing them all to be present for the implementation of the sentence of death. The Legislature of the state has the right to determine what measures are appropriate or needful for the protection of the public morals, health, and safety; it is empowered to enact any law which our Constitution does not prohibit, and the Defendants do not have the authority to contravene what the Legislature has intended. *See Motlow v. State*, 145 S.W. 177, 185 (1912); *Fisher* 604 S.W.3d at 397.

The Press Coalition and other named official witnesses are a part of an official class of persons designated by statute to be present at executions in Tennessee. The statute lacks any

qualifying language regarding what it means to be present. Time constraints do not exist in the statute, nor is there any limiting language on what can and cannot be seen. The Defendants argue and thus apply the statutory language of "strict seclusion" to certain portions of the statute in question and not others. This interpretation by the Defendants leads to an illogical result. Certain aspects of the carrying out of the death sentence cannot be done in strict seclusion, while others are not. That is simply not how the statue is to be read. The entire execution process is to be conducted in strict seclusion inside of the jail, but for the presence of the official witnesses.

This Court finds it noteworthy to look to the Legislative history, which further confirms the importance of an open process to the official witnesses. Senator C. Coulter Gilbert's comments clearly indicate the importance of the presence of the media witnesses when he said,

> [w]hether 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), at Tr. 4:21-5:4. *See In re Baby,* 447 S.W.3d 807, 823 (Tenn. 2014) (referring to legislative history in order to determine Tennessee's public policy concerning traditional surrogacy contracts); *see also Bunarith Tep v. Southcoast Hosp. Grp., Inc.,* No. 13–11887–LTS, 2014 WL 6873137, at *5 (D.Mass. Dec. 4, 2014) (recognizing other federal court's reliance on congressional legislative history as indicative of public policy favoring "broad protection for peer review work product in an effort to improve patient safety and quality of care"); *Rosengarten v. Downes,* 71 Conn.App. 372, 802 A.2d 170, 179–82 (2002) (relying on legislative history to determine that Connecticut's public policy was contrary to plaintiff's claim that the trial court had subject matter jurisdiction to dissolve plaintiff's foreign same-sex civil union).

Tennessee Code Annotated § 40-23-114(c) grants the Department of Corrections the authority to promulgate rules to facilitate the lethal injection or electrocution of an incarcerated individual who is to be put to death. *Tennessee Code Annotated* § 40-23-116(c)(3) grants the Department of Corrections the authority to promulgate rules to facilitate the selection of the press official witnesses. These statutes are void of any language granting the Department of Corrections the authority to delineate what portions of the execution event are to be closed or opened to the official witnesses. The Department has not been granted the authority to define or interpret what it means for the official witnesses to "present" in terms of executions in this state. A department or agency of the State created by the legislature cannot, by the adoption of rules, be permitted to thwart the will of the legislature. *Tennessee Dep't of Mental Health & Mental Retardation v. Allison,* 833 S.W.2d 82, 85 (Tenn. Ct. App. 1992). The legislature is elected by the citizens of Tennessee, it speaks for the people on matters of public policy of the state. *Id.* Unelected officers of a department or agency cannot adopt rules to circumvent statutes passed by the legislature. *Id.* The powers to make the laws of the state are vested in the general assembly and not in administrative agencies of the state, even when the administrative agency properly promulgates rules and regulations. *Id.* Although this Court recognizes that administrative agencies and departments *may, in some instances*, be delegated authority to define terms utilized in a statute by promulgating a rule, without exceeding its authority, *Deweese v. Bd. of Funeral Directors & Embalmers of State*, No. 01A01-9310-CH-00433, 1994 WL 137873, at *3 (Tenn. Ct. App. Apr. 20, 1994)*; See Kopsombut-Myint Buddhist Center v. State Bd. of Equalization*, 728 S.W.2d 327, 331 (Tenn.Ct.App.1986), this is not one of those cases. *(emphasis added) See Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 394–95 (2024), (For example, some statutes "expressly delegate[ ]" to an agency the authority to give meaning to a particular statutory term. *Batterton v. Francis*, 432

U.S. 416, 425, 97 S.Ct. 2399, 53 L.Ed.2d 448 (1977) (emphasis deleted). Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman v. Southard*, 10 Wheat. 1, 43, 6 L.Ed. 253 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan v. EPA*, 576 U.S. 743, 752, 135 S.Ct. 2699, 192 L.Ed.2d 674 (2015), such as "appropriate" or "reasonable.")

The statutory language used by our Legislature to define the rights of the official witnesses to be present at the carrying out of the death sentence is much like the statutory language at issue in *Or. Newspaper Publishers Ass'n v. Or. Dep't of Corr.*, 988 P.2d 359, 360-61 (Or. 1999). There, the Oregon legislature passed a statute which allowed witnesses to "be present at the execution," but the Department of Corrections drafted a rule which restricted witnesses to view only "the moments during which the lethal injection is administered and causes death." *Id.* at 363. This Court finds the Oregon Supreme Court's ruling instructive in interpreting this Tennessee statute. There, the court held that the ability to be present at the execution "requires that the execution, not just the dying, be observed by the witnesses." *Id.*

This Court finds that the Department's attempt to define what it means to be "present at the carrying out of the death sentence" has thwarted the direct will of the legislature when it invited official witnesses into the executions in Tennessee. The Department's constriction of the right to be present in the fullest sense of the word by diminishing that right to a mere ten to fifteen (10-15) minutes, arbitrarily decided by the warden, is a limitation on the official witness's right to be present at the execution event, which this Court finds to be an impermissible alteration or diminution of the legislature's enactment. Such a rule, if allowed to stand, affects the substantive rights of all official witnesses to be present at the execution event. Thus, this Court finds that the

Press Coalition is likely to succeed on the merits of its claim of a violation of *Tennessee Code Annotated* § 40-23-116(a).

D. Safety Concerns Regarding the Anonymity of the Execution Team Can Be Addressed While Allowing the Press to Be Fully Present, With Narrow Tailoring of the Protocol.

The Defendants rely on safety concerns for the execution team as their reasoning for why the Plaintiffs should not be successful at this juncture. They assert that the TDOC's interest in maintaining the confidentiality of the execution team members' identities overrides the rights granted pursuant to the First Amendment and *Tennessee Code Annotated* § 40-23-116. They contend that the relief requested by the Press Coalition would require numerous changes to TDOC's facilities, operating procedures, and training. *Nelsen Decl*. ¶¶ 35, 40, 51. They cite examples such as the need to reconfigure and redesign the current layout of the Capital Punishment Unit to allow media witnesses a direct view of pre-execution procedures performed in private rooms connected to the execution chamber. *Id.* They further assert as an impediment to press access is that in order to transmit video feed of the private rooms' pre-execution preparation rooms, the TDOC would have to procure, install, test, and integrate cameras. *Id.* at ¶¶ 39, 40. They argue the Protocols would have to be revised to incorporate any changes to the facility, and staff would need to be retrained in the changed aspects of the Protocols. *Id.* at ¶¶ 40, 51. Additionally, Defendants cite that the Protocols would have to be revised to protect the identities of the execution team members and the source(s) of the lethal injection chemicals. *Id.* at 1. At the time of this hearing, the Defendants further argued that their proposed changes could not be implemented prior to the execution of Mr. Nicholas. This Court does not understand why such dramatic changes and training would have to be implemented to allow the Press to be fully present and thus finds this argument without merit, especially in light of the minimal changes this Court may implement through injunctive relief. *See,*

e.g., Associated Press v. Otter, 682 F.3d 821, 826 (9th Cir. 2012). The impending execution of Mr. Nicholas is no longer a factor as it has been carried out, thus that argument is moot. Therefore, the Court will address the remaining contentions argued by the Defendants.

It is the public policy of Tennessee to favor the anonymity of those involved in carrying out capital punishment. *West v. Schofield*, 460 S.W.3d 113, 124–25 (Tenn. 2015). The protection of the identities of those involved in the implementation of the death sentence and the statutory right of the Press Coalition to be present can co-exist with one another without eroding the rights of the press and without compromising the identities of the members of the execution team. This Court finds that the protocols can be tailored more narrowly to allow the Press Coalition to be fully present while protecting the anonymity concerns of those persons assigned to work the death penalty event.

The Court finds that the remaining three factors also weigh in favor of the Plaintiff and the grant of the requested injunctive relief.

II. THE REMAINING INJUNCTIVE FACTORS WEIGH IN FAVOR OF PLAINTIFF.

With each execution slated to occur in Tennessee, the Press Coalition and other official witnesses are irreparably harmed if they are unable to be fully present at each execution. Each execution is a single event that will not occur again. Once the sentence of death is accomplished, there is no opportunity to revisit that particular event, no other opportunity to report on it, and no other opportunity to witness the decorum that the state used when carrying out its great execution powers. The inability to be fully present to observe each event is a harm without a remedy, one that cannot be compensated by any monetary amount. *See AmeriGas Propane, Inc. v. Crook*, 844 F. Supp. 379, 390 (M.D. Tenn. 1993). Therefore, this Court finds that this factor weighs in favor of the Plaintiff.

The harm to the Defendant by making the small changes to the Lethal Injection Execution Protocol and the Execution Procedures for Electrocution that this Court will order is minuscule compared to the harm and injury to the Plaintiffs if they are not allowed to be fully present as the statute contemplates at executions in the state of Tennessee.

Lastly, the public interest weighs in favor of the Plaintiffs. While the public policy of the State of Tennessee does support the anonymity of the execution teams involved in the implementation of capital punishment in the State, the injunction of this Court will further protect those persons while ensuring that the citizens of this State have the benefit of neutral reporting when the State carries out a sentence of death. Whether you are for or against the death penalty in Tennessee, is not the issue, as Senator Gilbert said, "when the State exercises that very awesome power ... it's imperative that we have the media there to witness it, . . . 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." It is in the public interest to ensure that the death penalty in the State of Tennessee both brings closure to victims and is done in an appropriate fashion. Having an independent media to report fully on the events of executions serves the public interest.

Therefore, this Court **ORDERS:**

The Tennessee Department of Corrections is hereby **ORDERED** to implement the following changes to its protocol for **Lethal Injection Execution Protocol**:

1. One hour prior to the entry of official witnesses to the Capital Punishment Unit during the execution process for a condemned incarcerated individual, all designated team members of the Special Operations Team, Restraint Team, IV Team, and Physician

participating in the execution event shall adorn a disposable coverall PPE suit which shall fully cover the team member's regular work uniform and name/identification badge and hair. Each designated member of the Special Operations Team, Restraint Team, IV Team, and Physician participating in the execution event shall be offered a mask to further conceal his or her identity should they so choose to wear one.

2. Amend the Lethal Injection Protocol on page 19 shall be amended to reflect the following: Official witnesses are to report to the Administrative Building no later than 8:00 A.M. They are greeted by the Escort Team, processed through the checkpoint, and moved to the Administration Building conference room. Official witnesses are moved to the Parole Board Room in Building 8 no later than 9:00 A.M., where they will remain until final movement to the official witness room. Official witnesses shall be placed into the official witness room no later than 9:45 A.M. The curtains to the official witness room shall be opened to the execution chamber at 10:00 A.M. and shall remain open until the pronouncement of the death of the condemned individual, at which time the curtains shall be closed.
3. Amend the Lethal Injection Protocol on page 19 shall be amended to reflect the following: Immediate family members of the victim(s) report to the Administration Building no later than 9:00 A.M. They are greeted by the Escort Team, processed through checkpoint, and

moved to the conference room in Building 8 no later than 9:30 A.M. where they will remain until final movement to the victim witness room. Victim witnesses shall be placed into the victim witness room no later than 9:45 A.M. The curtains to the victim witness room shall be opened to the execution chamber at 10:00 A.M. and shall remain open until the pronouncement of the death of the condemned individual, at which time the curtains shall be closed.

The Tennessee Department of Corrections is hereby further **ORDERED** to implement the following changes to its protocol for **Execution Procedures for Electrocution**:

4. One hour prior to the entry of official witnesses to the Capital Punishment Unit during the execution process for a condemned incarcerated individual, Execution Team members participating in the execution event, with the exception of the Warden and Escort team shall adorn a disposable coverall PPE suit which shall fully cover the team member's regular work uniform and name/identification badge and hair. Each designated member of the Special Operations Team, Restraint Team, IV Team, and Physician participating in the execution event shall be offered a mask to further conceal his or her identity should they so choose to wear one.
5. Amend the Execution Procedures for Electrocution on page 63 shall be amended to reflect the following: Official witnesses are to report to the Administrative Building no later than 5:00 P.M. They are greeted by the Escort Team, processed through checkpoint, and

moved to the Administration Building conference room. Official witnesses are moved to the Parole Board Room in Building 8 no later than 6:00 P.M., where they will remain until final movement to the official witness room. Official witnesses shall be placed into the official witness room no later than 6:45 P.M. The curtains to the official witness room shall be opened to the execution chamber at 7:00 P.M. and shall remain open until the pronouncement of the death of the condemned individual, at which time the curtains shall be closed.

6. Amend the Execution Procedures for Electrocution on page 64 shall be amended to reflect the following: Immediate family members of the victim(s) report to the Administration Building no later than 5:30 P.M. They are greeted by the Escort Team, processed through checkpoint, and moved to the conference room in Building 8 no later than 6:00 P.M. where they will remain until final movement to the victim witness room. Victim witnesses shall be placed into the victim witness room no later than 6:45 P.M. The curtains to the victim witness room shall be opened to the execution chamber at 7:00 P.M. and shall remain open until the pronouncement of the death of the condemned individual, at which time the curtains shall be closed.

All other procedures and protocols in the Lethal Injection Execution Protocol and the Execution Procedures for Electrocution remain in place pending the resolution of this matter. The

Court concludes that this mandatory temporary injunction, which amends the status quo, is necessary to preclude immediate and irreparable harm to the Plaintiff.

Pursuant to *Tennessee Rule of Civil Procedure* 65.05, this Court determines that the Defendant will not be injured in the event that it has been wrongfully restrained or enjoined. Therefore, the requirement that the Plaintiffs – the party seeking the injunction in this case – must post a bond as determined by this Court is hereby waived.

IT IS SO ORDERED.

/s/ I'Ashea L. Myles
I'ASHEA L. MYLES CHANCELLOR,
CHANCERY COURT PART III

THIS ORDER SHALL BE EFFECTIVE AS OF JANUARY 16, 2026 AT 4:00 P.M.

cc: by U.S. Mail, fax, or e-filing as applicable to:

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