Nos. 25-5261; 25A136

In the Supreme Court of the United States

BYRON LEWIS BLACK,
PETITIONER

v.

FRANK STRADA AND KENNETH NELSEN,
RESPONDENTS

ON APPLICATION FOR STAY OF EXECUTION AND ON
PETITION FOR WRIT OF CERTIORARI
TO THE TENNESSEE SUPREME COURT

APPENDIX TO BRIEF IN OPPOSITION

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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BYRON LEWIS BLACK v. STATE OF TENNESSEE

Criminal Court for Davidson County
No. 88-S-1479

No. M2000-00641-SC-DPE-CD

ORDER

More than three decades ago, Byron Lewis Black was convicted of murdering his former girlfriend, Angela Clay, and her six-year-old and nine-year-old daughters, Lakeisha and Latoya. *See State v. Black*, 815 S.W.2d 166, 170 (Tenn. 1991). He was sentenced to death for Lakeisha's murder, and his execution is scheduled for August 5, 2025. For the third time, Mr. Black asks this Court to stay his execution. This most recent stay request is based on a pending as-applied constitutional challenge to Tennessee's lethal injection protocol. Because we conclude that Mr. Black is unlikely to succeed on the merits of that challenge, we deny his stay application.

I. PROCEDURAL BACKGROUND

On August 1, 2025, Mr. Black filed his third application for a stay of his execution in this Court.[1] The first application was filed during the pendency of his appeal in an unsuccessful state collateral proceeding related to his competency to be executed. *See Black v. State*, No. M2000-00641-SC-DPE-CD, 2025 WL 1927568 (Tenn. July 8, 2025) (Order) (affirming the judgment of the trial court and denying the application for a stay), *petition for cert. filed*, ___ U.S. __ (July 16, 2025). A second application sought a stay based on a pending federal collateral challenge concerning Mr. Black's efforts to recall the mandate in a 2006 decision denying his intellectual disability claim. We denied both the first and second stay application. In this third application, Mr. Black asks the Court to stay his execution based on his latest pending challenge to the State's lethal injection protocol.

[1] Mr. Black initially filed the application on July 31, 2025, but filed it under the incorrect docket number. He refiled the application under the correct docket number on August 1, 2025. The State filed a response to the stay application the same day.

Mr. Black's decades-long litigation history is well documented in our previous orders. *See, e.g.*, *Black*, 2025 WL 1927568, at *1–3. Suffice it to say, Mr. Black has exhaustively, albeit unsuccessfully, challenged his convictions and death sentence. Upon the State's motion, the Court initially set Mr. Black's execution for October 8, 2020; however, for multiple reasons, including COVID-19 and a pause in executions by the executive branch, Mr. Black's execution was delayed. When the pause was lifted in January 2025, the Tennessee Department of Correction ("TDOC") adopted a revised single-drug protocol that uses a single dose of pentobarbital (the "2025 protocol"). On March 3, 2025, this Court reset Mr. Black's execution date for August 5, 2025. Eleven days later, Mr. Black joined eight other death-row inmates in a declaratory judgment action in Davidson County Chancery Court challenging the constitutionality of the 2025 protocol. Complaint, *Burns v. Strada,* No. 25-0414-IV (Davidson Ch. Ct. March 14, 2025). In his latest stay application, Mr. Black asks the Court to stay his execution pending the outcome of that litigation.

In the chancery court action, the inmates collectively raised, among other claims, facial and as-applied challenges to the 2025 protocol. Each inmate, including Mr. Black, also raised individual challenges to the protocol. The litigation is in the discovery stage, and a trial is currently scheduled for January 2026. With his execution date approaching, Mr. Black sought a temporary injunction in connection with his as-applied challenge to the protocol. That challenge is based on Mr. Black's individualized health condition—namely, a heart condition that required an implantable cardioverter-defibrillator ("ICD"). He asserts that, unless the ICD is deactivated before injection of the lethal dose of pentobarbital, he will experience extreme pain and his execution will be prolonged in violation of the Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 16 and 32 of the Tennessee Constitution. He argues the deactivation of the ICD must be performed *by qualified medical personnel via a particular method* immediately before, or simultaneously with, the execution.

Mr. Black's motion for a temporary injunction in the trial court sought to require Defendants—TDOC Commissioner Frank Strada and Riverbend Maximum Security Institution Warden Kenneth Nelsen—to use this proposed alternative method of execution in his impending execution. The trial court heard expert testimony from both sides and evaluated Mr. Black's as-applied protocol challenge under the two-prong test set forth in *Baze v. Rees*, 553 U.S. 35 (2008), *Glossip v. Gross*, 576 U.S. 863 (2015), and *Bucklew v. Precythe*, 587 U.S. 119 (2019), and the similar test adopted by this Court for method-of-execution challenges brought under the Tennessee Constitution in *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017). The court concluded that Mr. Black had preliminarily shown a likelihood of success on the merits of his as-applied challenge and enjoined Defendants "to deactivate Mr. Black's [ICD] by deprogramming the device moments before administering the lethal injection to him on August 5, 2025." The court further directed Defendants "to

arrange to have the necessary medical or certified technical professional present, along with any necessary equipment, at the execution to deprogram and deactivate Mr. Black's [ICD] device."

Defendants then filed a motion to dissolve or modify the injunction. Defendants argued the court should dissolve the injunction because the court's directive to implement an alternative method of execution effectively stayed this Court's execution order and therefore the injunction exceeded the trial court's authority. In the alternative, they asked the court to modify the injunction to permit Defendants to transport Mr. Black to Nashville General Hospital on August 4, 2025—the day before the execution—for deactivation of the ICD by medical personnel. To support the modification request, Defendants filed a declaration from the Assistant Commissioner of TDOC indicating that the procedure could be performed on that date. Mr. Black opposed any modification of the injunction. The trial court denied the request to dissolve the injunction or to modify it by allowing the procedure to be performed on August 4. However, the court modified the timing and location of the deactivation, requiring that deactivation "be done as early as possible on the morning of August 5, 2025, at Nashville General Hospital." After this ruling, Defendants filed a second declaration from the Assistant Commissioner of TDOC in this Court stating that Nashville General Hospital is now "unwilling to be associated in any way with Mr. Black's execution" and will not participate in the deactivation procedure.

On July 23, 2025, Defendants filed an application for extraordinary appeal under Rule 10 of the Tennessee Rules of Appellate Procedure. Defendants argued that the trial court lacked authority to issue the injunction because it effectively modified or stayed this Court's order setting Mr. Black's execution. Defendants also argued that the trial court erred in holding that Mr. Black had established a likelihood of success on the merits of his as-applied challenge to the 2025 protocol. This Court assumed jurisdiction of Defendants' appeal under Tennessee Code Annotated section 16-3-201(d)(3) and granted the application. On July 31, 2025, this Court issued its opinion in the Rule 10 appeal. We held that the trial court exceeded its authority by granting injunctive relief that amounted to a stay of this Court's March 3, 2025 execution order, and we vacated the temporary injunction. *Black v. Strada*, No. M2025-01095-SC-RDO-CV, 2025 WL 2166576 (Tenn. July 31, 2025).[2] This application for a stay followed.

[2] In our order on the Rule 10 appeal, we did not reach the second issue related to Mr. Black's likelihood of success on the merits of his as-applied protocol challenge because the issue was pretermitted by our conclusion that the injunction exceeded the trial court's authority.

II. METHOD-OF-EXECUTION CHALLENGE

This Court will not grant a stay of an execution date pending resolution of state collateral litigation "unless the prisoner can prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E). Therefore, the dispositive issue in resolving Mr. Black's stay motion is whether he has established a likelihood of success on the merits in his pending constitutional challenge to the 2025 protocol. As noted, Mr. Black presses an as-applied challenge to the 2025 protocol based on his ICD. He alleges that the injection of pentobarbital will cause the ICD to shock his heart, resulting in severe pain that would violate the Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 16 and 32 of the Tennessee Constitution.[3] Mr. Black proposes as an alternative method of execution that Defendants arrange for the deactivation of the ICD by qualified medical professionals either immediately before or simultaneously with the injection of pentobarbital.

"[I]t is settled that capital punishment is constitutional." *Glossip*, 576 U.S. at 869. And because capital punishment is constitutional, "there must be a [constitutional] means of carrying it out." *Id.* (alteration in original) (quoting *Baze*, 553 U.S. at 47). "[T]he Eighth Amendment 'does not demand the avoidance of all risk of pain in carrying out executions.'" *Bucklew*, 587 U.S. at 134 (quoting *Baze*, 553 U.S. at 47). "To the contrary, the Constitution affords a 'measure of deference to a State's choice of execution procedures' and does not authorize courts to serve as 'boards of inquiry charged with determining best practices for executions.'" *Bucklew*, 587 U.S. at 134 (quoting *Baze*, 553 U.S. at 51–52 nn.2–3). "[W]hen it comes to determining whether a punishment is unconstitutionally cruel because of the pain involved, the law has always asked whether the punishment 'superadds' pain well beyond what's needed to effectuate a death sentence." *Bucklew*, 587 U.S. at 136–37. "And answering that question has always involved a comparison with available alternatives, not some abstract exercise in 'categorical' classification.'" *Id.* at 137.

To bring an Eighth Amendment method-of-execution challenge, a death-row inmate is required to: (1) establish that the method of execution "presents a risk that is 'sure or very likely to cause serious illness and needless suffering,' and give[s] rise to 'sufficiently *imminent* dangers,'" *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 50); and (2) "identify an alternative [method of execution] that is 'feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain,'" *id.* (second alteration in original) (quoting *Baze*, 553 U.S. at 52). These same two prongs apply in both facial and

[3] Article I, section 16 of the Tennessee Constitution provides "[t]hat excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Article I, section 32 of the Tennessee Constitution provides "[t]hat the erection of safe prisons, the inspection of prisons, and the humane treatment of prisoners, shall be provided for."

as-applied method-of-execution challenges. *Bucklew*, 587 U.S. at 134. This Court applies a similar two-prong test to assess method-of-execution challenges brought under article I, sections 16 and 32 of the Tennessee Constitution. *West*, 519 S.W.3d at 567–68 (citing *Glossip*, 576 U.S. at 877; *Baze*, 553 U.S. at 50, 52); *see State v. Brimmer*, 876 S.W.2d 75, 88 (Tenn. 1994).

At the injunction hearing held in the trial court on July 14 and 16, 2025, Mr. Black presented expert testimony from Dr. Daniel Martell, a forensic neuropsychologist,[4] and Dr. Gail A. Van Norman, a cardiothoracic anesthesiologist. Defendants presented expert testimony from Dr. Joseph Antognini, an anesthesiologist, and Dr. Litsa Lambrakos, a cardiac electrophysiologist. The experts agreed that Mr. Black's ICD has both a "pacemaker function" and a "defibrillator function." The device senses electrical activity in the heart and responds by pacing when it determines a pacing function is needed and by shocking when it determines that a shocking arrhythmia has occurred. Mr. Black's ICD is set to pace his heart if the rate drops below 60 beats per minute and to deliver a shock when he experiences ventricular fibrillation with a heart rate exceeding 220 beats per minute.

Dr. Van Norman opined that, although the administration of pentobarbital during Mr. Black's execution was likely to cause his heart rate to decrease initially, it would eventually cause arrythmias after his oxygen levels fell. She testified that those arrythmias could trigger Mr. Black's ICD to shock his heart. This opinion was based largely on a study indicating that one third of one hundred patients with an ICD who died in a hospital experienced a shock from the ICD within twenty-four hours of death. That study did not distinguish, however, between shocks necessitated by ventricular fibrillation and those necessitated by a different arrythmia—ventricular tachycardia. Dr. Van Norman further opined that an individual receiving a shock from an ICD would experience severe pain. She testified that an execution dose of 5000mg of pentobarbital would not render Mr. Black unconscious or unresponsive to stimuli and that therefore he would experience this pain if he received a shock from his ICD. But this opinion was based on studies of patients who received significantly lower doses of pentobarbital than the 5000mg dose used in the 2025 protocol. Dr. Van Norman testified that deactivating the ICD before pentobarbital is administered would eliminate the risk that the ICD would shock Mr. Black's heart during the execution. She opined that deactivating an ICD is a common procedure but that it must be performed by qualified medical professionals using the appropriate equipment.

Dr. Lambrakos testified that the administration of pentobarbital during Mr. Black's execution was unlikely to lead to an arrhythmia that would trigger his ICD to deliver a shock. And Dr. Antognini, Defendants' anesthesiology expert, opined that an execution

[4] Dr. Martell's testimony focused on Mr. Black's competency and was not relevant to the merits of his method-of-execution challenge.

dose of pentobarbital would render Mr. Black "deeply and profoundly unconscious." As a result, even if his ICD delivered a shock during his execution, he would not experience any pain.

In its original memorandum and order filed on July 18, 2025, the trial court concluded that Mr. Black had preliminarily shown a likelihood of success on the merits of his as-applied challenge. As to the first *Glossip* prong, the court accredited Dr. Van Norman's testimony and concluded that, if the ICD were not deactivated shortly before administration of the pentobarbital, the 2025 protocol would present an unacceptable risk of pain and suffering in violation of the Eighth Amendment. The order was less clear regarding the trial court's findings on the second *Glossip* prong. The trial court seemed to conclude that Mr. Black had preliminarily met his burden of identifying an alternative method of execution that is feasible, readily implemented, and that will significantly reduce the substantial risk of severe pain. However, the court effectively shifted the burden to Defendants to show that arranging for deactivation of the ICD would present an undue administrative or logistical burden and then found that Defendants had failed to meet this burden. The trial court's order adopted Mr. Black's proposed alternative method and ordered Defendants to arrange for Mr. Black's ICD to be deactivated in the execution chambers immediately before, or simultaneously with, his execution. As noted, the trial court subsequently entered an amended memorandum and order allowing Defendants to have the ICD deactivated at Nashville General Hospital early in the morning on the day of Mr. Black's execution.

III. ANALYSIS

Defendants contend Mr. Black failed to establish either of the *Glossip* prongs and therefore failed to prove a likelihood of success on the merits. As to the first prong, Defendants argue that the evidence preponderates against the trial court's findings of fact and the court's wholesale acceptance of Dr. Van Norman's testimony. In Defendants' view, the court largely ignored their competing expert proof indicating that the lethal dose of pentobarbital required by the 2025 protocol would render Mr. Black unconscious and incapable of feeling any pain. On this point, we find a series of federal cases instructive.

In 2020, death-row inmates with impending executions sought injunctive relief while they litigated Eighth Amendment challenges to the federal government's single-drug pentobarbital lethal injection protocol. *In re Fed. Bureau of Prisons Execution Protocol Cases*, 471 F. Supp. 3d 209 (D.D.C. 2020). The D.C. District Court considered expert proof from two of the same experts who testified in this case: Dr. Van Norman and Dr. Antognini. Testifying on behalf of the inmates, Dr. Van Norman opined that the protocol would "render patients 'unresponsive' but still conscious and capable of experiencing the severe pain associated with flash pulmonary edema." *Id.* at 219. The defendants' expert, Dr.

Antognini, disputed those findings and offered a contrary opinion. *Id.* The district court accredited Dr. Van Norman's opinion and granted a preliminary injunction based on the inmates' likelihood of success on the merits of their claim that the federal protocol would cause severe pain. *Id.* at 219, 225.

The United States Supreme Court vacated the temporary injunction. *Barr v. Lee*, 591 U.S. 979 (2020). The Court noted that it "ha[d] yet to hold that a State's method of execution qualifies as cruel and unusual." *Id.* at 980 (quoting *Bucklew*, 587 U.S. at 133 (rejecting an as-applied challenge to the federal single-drug protocol based on a unique medical condition)). It explained that the single-dose pentobarbital protocol used by the federal government "ha[d] become a mainstay of state executions," had been adopted in a number of States, had been used in over 100 executions without incident, and "ha[d] been repeatedly invoked by prisoners as a *less* painful and risky alternative to the lethal injection protocols of other jurisdictions." *Id.* at 980. Accordingly, the inmates' Eighth Amendment challenge to the protocol "face[d] an exceedingly high bar." *Id.* Significant here, the inmates cited the new expert declarations of Dr. Van Norman suggesting that pentobarbital causes prisoners to experience "flash pulmonary edema." *Id.* at 981. However, the Court noted that the defendants "ha[d] produced competing expert testimony of [their] own, indicating that any pulmonary edema occurs only *after* the prisoner has died or been rendered fully insensate." *Id.* at 981. The Court therefore concluded the inmates had "not made the showing required to justify last-minute intervention by a Federal Court" and vacated the lower court's preliminary injunction. *Id.* (cautioning that "last-minute stays . . . should be the extreme exception, not the norm").

The following year, a group of federal death-row inmates with impending executions brought as-applied Eighth Amendment challenges to the federal single-drug protocol in the same federal court based on the inmates' individualized health conditions that had worsened due to COVID-19. *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 514 F. Supp. 3d 136, 142 (D.D.C. 2021). The defendants asserted that *Barr v. Lee* was controlling as to these new challenges. The inmates' primary expert, Dr. Van Norman, opined that for "prisoners experiencing COVID-related lung damage at the time of their execution, flash pulmonary edema will occur even earlier in the execution process . . . ." *Id.* at 146. Dr. Joseph Antognini, one of the defendants' experts, criticized Dr. Van Norman's assertions and again offered a competing opinion. *Id.* at 147. Finding Dr. Van Norman "highly credible," the district court determined the inmates were likely to succeed on the merits of both prongs of their as-applied challenges and granted a preliminary injunction. *Id.* at 147, 158. On the defendants' emergency motion, a divided panel of the United States Court of Appeals for the District of Columbia Circuit vacated the preliminary injunction. *In re Fed. Bureau of Prisons' Execution Protocol Cases*, No. 21-5004, 2021 WL 164918 (D.C. Cir. Jan. 13, 2021). A concurring opinion by the two judges comprising the majority concluded that the plaintiffs had failed to make "the showing required to

justify last-minute intervention" because they had "failed to show more than 'competing expert testimony' on the factual issues that undergird[ed] their method-of-execution challenge." *Id.* at *4 (Katsas & Walker, JJ., concurring) (quoting *Lee*, 591 U.S. at 981).

We reach the same conclusion here. Like the inmates in these two challenges to the federal execution protocol, Mr. Black has failed to show more than competing expert testimony as to whether the 2025 protocol is sure or very likely to cause needless suffering that would violate the Eighth Amendment if his ICD is not deactivated before pentobarbital is administered. Although Dr. Van Norman testified that Mr. Black's ICD was likely to shock his heart after the administration of pentobarbital and that Mr. Black would be able to experience pain from the shock, Defendants' experts presented contrary opinions. Dr. Lambrakos testified that Mr. Black was unlikely to experience an arrythmia that would trigger his ICD to deliver a shock, and Dr. Antognini opined that, even if a shock occurred, Mr. Black would be "profoundly unconscious" and therefore would not experience any pain. Because Mr. Black has not established a likelihood of success on the first *Glossip* prong, he is not entitled to a last-minute stay of execution.

Although our analysis could end there, we also conclude that Mr. Black has failed to establish a likelihood of success as to the second *Glossip* prong. To satisfy the second *Glossip* prong, Mr. Black must identify an alternative method of execution that is feasible, readily implemented, and significantly reduces a substantial risk of severe pain. *Glossip*, 576 U.S. at 877. "This means the inmate's proposal must be sufficiently detailed to permit a finding that the State could carry it out 'relatively easily and reasonably quickly.'" *Bucklew*, 587 U.S. at 141 (quoting *McGehee v. Hutchinson*, 854 F.3d 488, 493 (8th Cir. 2017)). "In other words, he must make the case that the State really can put him to death, though in a different way than it plans." *Nance v. Ward*, 597 U.S. 159, 169 (2022). Thus, the inmate must show that the proposed alternative method of execution is "available" to the State. *Abdur'Rahman v. Parker*, 558 S.W.3d 606, 615 (Tenn. 2018) (quoting *Baze*, 553 U.S. at 61).

In *Abdur'Rahman*, we held that a method-of-execution challenge failed because the inmates challenging the State's three-drug protocol failed to carry their burden of showing that the proposed alternative method of execution—a single-drug protocol using pentobarbital—was available to the State. *Id.* at 610. Because the inmates could not show that pentobarbital and the drugs needed to compound pentobarbital were available to TDOC for the purposes of carrying out executions by lethal injection, we concluded that they had failed to plead and prove a known and available alternative method of execution. *Id.* at 617–18.

Similarly, the Florida Supreme Court concluded that an inmate failed to plead a known and available alternative method of execution where the inmate failed to produce

evidence that his requested alternative methods of execution—fentanyl and pentobarbital—were available for purchase by the Florida Department of Corrections. *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019).

Here, Mr. Black's proposed alternative does not require an alternative drug, but rather an additional medical procedure. He requests that Defendants arrange for a medical provider to deactivate his ICD shortly before he receives the lethal injection of pentobarbital. But Mr. Black failed to show that a medical professional willing to perform the procedure shortly before his execution is available to TDOC.

In a concurring opinion in *Baze*, Justice Alito explained that, because lethal injection is presumed to be a constitutional means of execution, this method "must not be blocked by procedural requirements that cannot predictably be satisfied." *Baze*, 553 U.S. at 64 (Alito, J., concurring). "Prominent among the practical constraints that must be taken into account in considering the feasibility and availability of any suggested modification of a lethal injection protocol are the ethical restrictions applicable to medical professionals." *Id.* As Justice Alito observed, the professional associations for physicians, nurses, and emergency medical technicians consider any participation in an execution to constitute a breach of their respective code of ethics. *Id.* at 64–66. Thus, "it follows that a suggested modification of a lethal injection protocol cannot be regarded as 'feasible' or 'readily' available if the modification would require participation—either in carrying out the execution or in training those who carry out the execution—by persons whose professional ethics rules or traditions impede their participation." *Id.* at 66.

We take no position here on whether medical professionals would violate their respective professional ethics rules by deactivating Mr. Black's ICD before he is executed. But recent developments in this case make clear that Defendants face significant practical obstacles in arranging for qualified medical professionals to perform the requested medical procedure. At a hearing before the trial court on their motion to modify the injunction, Defendants indicated that Nashville General Hospital would be able to deactivate Mr. Black's ICD on the day before the execution. But on July 30, 2025, Defendants provided this Court with a declaration from TDOC's Assistant Commissioner stating that the staff from Nashville General Hospital are now declining contact with TDOC personnel concerning Mr. Black's execution and the deactivation of his ICD and are unwilling to perform the procedure.[5] Defendants clearly face significant practical constraints in

[5] A spokesperson for Nashville General Hospital told the media that the hospital was unwilling to participate in the procedure, as were "several other entities" whose cooperation would be required to perform the procedure. Jonathan Mattise, *Hospital Says It Never Agreed to Deactivate Inmate's Heart Device Before the Execution*, Associated Press (July 30, 2025), https://apnews.com/article/execution-byron-black-tennessee-heart-device-5e86194f631d46791ce72b613c66bf52.

arranging for a qualified medical professional to perform a medical procedure in connection with an execution. Given these constraints, Mr. Black had the burden under the second *Glossip* prong to identify a medical professional willing to perform the requested medical procedure. Absent such proof, he cannot establish that his proposed alternative method of execution is feasible or readily available. Contrary to the trial court's order, it is not Defendants' burden to show that Mr. Black's proposed alternative would present an undue administrative or logistical burden. The evidence here overwhelmingly demonstrates that Mr. Black's requested modification to his execution is not feasible or readily available to Defendants.

III. CONCLUSION

For these reasons, the Court concludes that Mr. Black has failed to establish a likelihood of success on the merits of his as-applied challenge to the 2025 protocol based on his ICD. Accordingly, his Application for a Stay of his execution is DENIED.[6]

PER CURIAM

[6] Mr. Black's stay application also contends that our decision vacating the trial court's temporary injunction was a "newly propounded procedural law" that deprived him of a "feasible way" to "present his request to this Court directly." And he asks us to stay his execution at least temporarily while we establish a mechanism for him to raise his claim. No temporary stay is needed. Tennessee Supreme Court Rule 12(4)(E) allows us to "grant a stay or delay of an execution date pending resolution of collateral litigation in state court" if the "prisoner can prove a likelihood of success on the merits in that litigation." Mr. Black already developed an evidentiary record on his claim in his collateral litigation in the trial court, and he has presented his request to the Court directly under Rule 12(4)(E) by filing this stay application.

DEATH PENALTY CASE
EXECUTION DATE: AUGUST 5, 2025
Case No. M2000-00641-SC-DPE-CD

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

BYRON BLACK,
Applicant,

v.

FRANK STRADA, et. al,
Respondents.

Davidson County Chancery Court Case No. 25-0414-IV

MOTION FOR STAY OF EXECUTION

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Over two days of live evidence, Byron Black established that he was entitled to have his ICD deactivated prior to his execution, lest he be subject to the severe pain and suffering of having his heart repeatedly shocked back into rhythm during his execution. On July 31, 2025 (mere days before his execution), this Court vacated the preliminary injunction that granted that relief—not because of any deficiency in Mr. Black's showing but because this Court concluded, on an issue of first impression, that a Tennessee trial court cannot issue a preliminary injunction bearing on the logistical issues surrounding an execution. The result is that Mr. Black faces an imminent execution without his ICD having been deactivated, due entirely to newly propounded procedural law. If Mr. Black has no course for relief in the trial court, then he is entitled to the opportunity to present his request for relief to this Court directly. Because there is no feasible way for him to do so prior to his scheduled execution on August 5, 2025, Mr. Black requests a stay.

The standard governing a stay of execution depends on the nature of the stay under consideration. A movant requesting an indefinite stay "pending resolution of collateral litigation in state court" must show that he "can prove a likelihood of success on the merits in that litigation." Tenn. R. Civ. P. 12.4(E). Because Mr. Black demonstrated a likelihood of success on the merits during the chancery court's evidentiary hearing, he believes that he is entitled to, and would welcome, such a stay. Mr. Black's current procedural predicament, however, can likely be addressed with a more modest, targeted stay.

A delay that is not tied to the resolution of collateral litigation would not require this Court to resolve any issues related to the

likelihood of Mr. Black's success in his pending chancery court litigation. *Cf. State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018) (applying the "likelihood of success on the merits" standard only after holding that the request was based on collateral state court litigation). Nor would such a stay implicate any of the other fixed standards or processes set out in Rule 12—for example, the *Van Tran* process governing competence issues or the *Workman* standard governing commutation requests. *See* Tenn. Sup. Ct. R. 12.4(A) (citing *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999)). Rather, a limited stay to accommodate the need to resolve this issue would fall within this Court's broad power to modify its own previous Order setting the execution date—the same power that this Court cited, in its Opinion, as the exclusive mechanism for addressing Mr. Black's concerns. *Black v. Strada*, Op. of July 31, 2025 at 6–7.

This Court, in its Opinion, noted the possibility that the parties may be able to "reach an agreement" to resolve this issue, despite the Court's vacating of the injunction granting Mr. Black the relief he requested. *Id.* at 7. It is entirely possible that such an agreement could be reached. Based on the history of this case, however, Mr. Black believes that any such agreement is almost certainly impossible in the absence of a stay. As Mr. Black detailed at length in his Answer and his Motion to Strike, TDOC's approach to the issue of Mr. Black's ICD has been one of consistent foot-dragging and obfuscation. *Black v. Strada*, Answer at 4–13, 36–39; Motion to Strike at 2–3. It does not seem likely that the agency

will become more amenable to collaboration now that this Court has freed it from any enforceable obligation to address Mr. Black's concerns.

A stay would, moreover, afford this Court the opportunity to establish a structure for permitting Mr. Black—and other, future individuals facing execution—to raise secondary and collateral concerns related to executions that, due to the Court's ruling, the state's trial courts are now powerless to address. Tennessee's death row has an elderly population, with all of the medical complications attendant to aging. This will not be the last time that an execution in this State raises questions other than when it will be performed or what the method of execution will be. There is now, however, no mechanism for presenting those considerations to this Court short of a full litigation of a claim on the merits, followed by an appeal. While that option might be sufficient in some instances, sometimes it will not be (e.g., due to time constraints). That was the case here, where Mr. Black's execution date was set by this Court while his grievance regarding this issue was pending. Mr. Black has been diligently litigating this case on an expedited basis, but it was simply not plausible for him to have obtained a full, final judgment in the few months he would have had to do so. If Mr. Black is not afforded the opportunity to present his claims to this Court, he will have been deprived of the opportunity to present them to any court with power to help him at all—despite the fact that the one court that considered these issues on the merits found that Mr. Black was entitled to relief.

Although this Court's jurisdiction is appellate only, Tenn. Const. Art. VI, § 2, and the Court therefore cannot entertain an original action on this issue, there are various approaches that this Court could take to

considering Mr. Black's arguments—whether through a special master, *see In re Burson*, 909 S.W.2d 768, 769 (Tenn. 1996) (appointing a special master to develop a factual record and make conclusions of law in a case challenging the constitutionality of a Tennessee statute after determining the case could not be resolved "without an underlying factual foundation"), a special scheduling order, or an amendment to Rule 12.4. It is within this Court's discretion to determine what those procedures will be. Whatever they are, however, Mr. Black should be permitted to avail himself of them.

Mr. Black has been diligent and straightforward in his pursuit of this issue. Despite TDOC's repeated aspersions that he was simply seeking a stay, Mr. Black never requested a stay related to this issue until now—when there is truly no other way for him to assert his rights. That stay should be granted, either for a limited period of time sufficient to allow the parties to confer to resolve the ICD issue or for a sufficient period of time for this Court to consider Mr. Black's request. If no such stay is granted, the result will be that Mr. Black was denied his day in court on this issue—after enforceable injunctive relief had been awarded—based solely on a newly announced, retroactively applied procedural rule. Neither the basic principles of justice nor the constitutional guarantee of due process would countenance such a result.

Respectfully submitted this 1st day of August, 2025.

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CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that on August 1, 2025, a true and correct copy of the foregoing was served via the Court's electronic filing system to opposing counsel, Nicholas Spangler, Associate Solicitor General.

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