

CAPITAL CASE
EXECUTION SCHEDULED August 13, 2026, AT 10:00 A.M. C.D.T.

No. 26-5264; 26A175

IN THE
Supreme Court of the United States

ANTHONY DARRELL DUGARD HINES,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENNESSEE SUPREME COURT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI
AND APPLICATION FOR A STAY OF EXECUTION

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Mr. Hines files the following Reply to address issues of law and fact raised in Respondent's Brief in Opposition to his Petition for Writ of Certiorari.

I. THIS COURT HAS JURISDICTION BECAUSE PETITIONER HAS APPEALED THE FINAL JUDGMENT OR DECREE FROM THE STANDALONE TENNESSEE SUPREME COURT PROCEEDING THAT PROVIDED HIS ONLY AVENUE FOR SUBSTANTIVE RELIEF.

This Court has the power to exercise its statutory and constitutional jurisdiction in this matter for two reasons. First, as a formal matter, the order Petitioner seeks to appeal is, as a matter of black letter law, not an appeal from any lower litigation, but rather the final and complete resolution of a standalone proceeding created by the Tennessee Supreme Court. Second, even if one disregards those independently determinative formal details and construes this appeal in the manner urged by Respondent, it falls well within established doctrine permitting appeals of fully resolved federal questions in cases despite the continued possibility of some ongoing state-court proceedings.

The Tennessee Supreme Court's denial of relief under the Trial Court Divestment framework is unambiguously a final judgment or decree pursuant to 28 U.S.C. § 1257(a). Tennessee law has been made exceedingly clear: Petitioner has no right to seek any relief bearing on his execution other than through a process "solely within the purview of" the Tennessee Supreme Court and "subject only to review in appropriate cases by the United States Supreme Court." *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn. 2025).

As the Tennessee Supreme Court itself acknowledged, Petitioner has asserted no interlocutory appeal in *Burns v. Strada*, and he sought no interlocutory equitable relief in that case because none was available to him. *See* Order, Appx. A, p. A-1, at

A-4. Respondent suggests that, while this petition is pending, Petitioner’s “underlying litigation . . . remains pending in the state trial court.” Brief in Opposition at 12 (cleaned up). But that is simply untrue as a matter of straightforward Tennessee law to which Respondent raised no objection.

This case, *Hines v. State*, is a different proceeding, filed—as the Tennessee Supreme Court required it to be filed—under a docket number associated with the Tennessee Supreme Court’s order setting Petitioner’s execution date, not *Burns v. Strada*. See Motion, Appx. B, p. A-8 (noting Case No. M2025-00221-SC-DPE-DD, the case number assigned upon the State’s Motion to Set Execution Date filed February 14, 2025). The current litigation in *Burns v. Strada* did not—and could not—prevent the immediate constitutional violations Petitioner seeks to avoid because the Trial Court Divestiture framework precludes the trial court from granting the necessary relief. See *Black*, 721 S.W.3d at 228. Pursuant to the framework adopted by the Tennessee Supreme Court, once an execution date is set, an application to that court is the exclusive mechanism for seeking that relief. Moreover, under that framework, a motion for a stay of execution is the only vehicle available for presenting a petitioner’s constitutional claims. The separate proceedings initiated by that motion are now wholly concluded and appealable. See, e.g., *Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75, 81 (1997) (explaining that a decree is final and appealable when it is “the final word of a final court”) (quoting *Market Street R. Co. v. Railroad Comm’n of Cal.*, 324 U.S. 548, 551 (1945)).

Petitioner can easily satisfy both of the “two senses” in which Respondent asserts finality is at issue under the *Market Street* framework. Brief in Opposition at

13. First, the Tennessee Supreme Court’s ruling is unambiguously “subject to no further review or correction in any other state tribunal.” *Id.* As Respondent’s own briefing acknowledges, the Tennessee Supreme Court has granted itself exclusive power over Petitioner’s request for relief. The fact that Petitioner is also a party to *other* litigation in which that relief is *not* available has no bearing on whether *these* proceedings are final. Second, the decree from which Petitioner is appealing is not “merely interlocutory or intermediary.” One can see that from the face of the Tennessee Supreme Court’s Order, which included no remand and no instruction to a lower court—simply a decree that “[t]his order is not subject to rehearing under Rule 39 of the Tennessee Rules of Appellate Procedure, and the Clerk is directed to certify this order as *final* and to immediately issue the mandate.” Order, Appx. A at A-7 (emphasis added). *See Jefferson*, 522 U.S. at 81 (finding a matter to have been interlocutory because the state appellate court “remanded the case for further proceedings”).

Moreover, even if this Court were to take a more functional approach and treat this appeal as presenting an interlocutory matter arising out of *Burns v. Strada*, the Tennessee Supreme Court’s ruling would be reviewable pursuant to the principles acknowledged in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). The Tennessee Supreme Court fully decided the federal-law issues presented by the Petitioner, and later review of those federal issues will be impossible if this Court does not exercise its jurisdiction. *See Kansas v. Marsh*, 548 U.S. 163, 168 (2006). The fact that there may be “further proceedings on the merits in the state courts to come” does not deprive this Court of its jurisdiction if “later review of the federal issue cannot be

had” *Cox*, 420 U.S. at 481; *see also Radio Station WOW v. Johnson*, 326 U.S. 120, 126 (1945) (finding a final order or decree, despite the prospect of future state-court litigation, because the ruling challenged was “independent of, and unaffected by, another litigation with which it happens to be entangled”). Barring intervention by this Court, the federal issues regarding the constitutionality of Petitioner’s imminent execution and the Tennessee Supreme Court’s unconstitutional structure for raising those issues here will be mooted by Petitioner’s execution.

Petitioner has done everything in his power to raise his legitimate federal constitutional concerns through the ever-shifting procedures available to him. After Petitioner and his co-plaintiffs initiated litigation in *Burns v. Strada*, the Tennessee Supreme Court revised both the state’s general procedural law and Petitioner’s own individual status under that law by (1) adopting Trial Court Divestiture and (2) setting Petitioner’s execution date. The Tennessee Supreme Court’s actions rendered proceedings under that Court’s Rule 12(4) authority Petitioner’s sole and exclusive avenue for receiving appropriate relief. To foreclose consideration of Petitioner’s claim in this instance would be in direct contravention of the Tennessee Supreme Court’s stated expectation that when it denies relief pursuant to its 12.4 authority, that denial is subject “to review in appropriate cases by the United States Supreme Court.” *Black*, 721 S.W.3d at 228. Petitioner has fully exhausted his available state court avenue, and, “if this Court does not consider the constitutional claims now,” there will “be no opportunity to do so in the future.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 48 (1987).

It bears noting that Respondent’s position would inherently disincentivize individuals in Petitioner’s position from raising their claims in an expeditious manner. If Petitioner had not filed a civil suit over a year ago, he would have been able to raise his concerns in connection with a motion to or complaint seeking to “commence” his litigation directly in the Tennessee Supreme Court pursuant to Tenn. Sup. Ct. R. 12(4)(E). A denial of that request would unambiguously be final. Respondent, in other words, is arguing that Petitioner should have fewer rights because he was diligent—a striking contrast to Respondent’s professed concerns about efficient administration of justice.

A timeline of the Tennessee Supreme Court’s actions bearing on Petitioner’s state-court rights establishes both the distinction between the proceedings and the constitutional infirmities of the Tennessee Supreme Court’s approach.

- On **January 8, 2025**, Tennessee finalized its current Lethal Injection Execution Protocol. Mr. Hines promptly filed an administrative grievance, which, depending on the discretion of the trial court, is a potentially fatal precondition for relief on a prisoner suit in Tennessee. *See Wilson v. Sentence Info. Servs.*, No. M1998-00939-COA-R3CV, 2001 WL 422966, at *3 (Tenn. Ct. App. Apr. 26, 2001).
- On **March 14, 2025**—the day after the conclusion of the administrative grievance process—Petitioner and his co-plaintiffs filed their Complaint in *Burns v. Strada*. At this point, each plaintiff, including Petitioner, possessed a right to seek preliminary and/or final injunctive relief pursuant to Tenn. R. Civ. P. 65, which mirrors its federal counterpart.
- On **July 31, 2025**, the Tennessee Supreme Court decided an interlocutory appeal in that litigation in *Black v. Strada*, 721 S.W.3d 223, 229 (Tenn. 2025), holding that, once an individual’s execution date is set, that individual may not seek injunctive relief bearing in any way on the execution from a trial court. 721 S.W.3d at 228. At the time, the only plaintiff in *Burns v. Strada* with an execution date was Mr. Byron Black

himself, whose rights were at issue in the appeal and who was executed shortly thereafter.

- On **September 30, 2025**, the Tennessee Supreme Court, with full knowledge of Petitioner’s pending lawsuit through Mr. Black’s own appeal therein, set Petitioner’s execution date, wholly divesting the trial court of its preexisting power to grant him injunctive relief.
- On **December 5, 2025**, the Tennessee Supreme Court adopted the most recent amendment to its Rule 12(4), further restricting Petitioner’s rights by dictating that an individual with a pending execution date cannot bring a new claim in trial court, but instead must “commence” any lawsuit in the Tennessee Supreme Court.¹ See Tennessee Supreme Court Rule Order, Appx. K, p. A-226.

Petitioner did exactly what every civil plaintiff in Tennessee would be expected to do in his situation. While he was litigating in good faith, however, the Tennessee Supreme Court repeatedly narrowed his rights until, finally, it brought him to where he stands today: forced to pursue relief based on his legitimate claims through an inscrutable, *sui generis* structure left to the ad hoc discretion of the Tennessee Supreme Court.

Convoluting though these events may be, they are, ultimately, proof of why certiorari is warranted. The fundamental guarantee of due process is incompatible with what some have come to call “Calvinball jurisprudence”—that is, jurisprudence that, like the game from the famous comic strip *Calvin and Hobbes*, has “only one

¹ Tennessee’s approach, it bears noting, is more aggressive than the approach, utilized in some settings, of requiring a litigant merely to ask a higher court to “authorize” the filing of a claim at the trial court level. See, e.g., 28 U.S.C. § 2244(b)(3)(A). Under such a system, the higher court merely grants permission but does not intrude upon the core functions of the trial court. The Tennessee Supreme Court instead requires a plaintiff to actually “commence” his lawsuit in the Tennessee Supreme Court, with no acknowledged role for the trial courts at all.

rule: There are no fixed rules.” *Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2675 (2025) (Jackson, J., concurring in part & dissenting in part). By unilaterally adopting Trial Court Divestiture for death penalty-related litigation and replacing the well-defined framework of Tennessee’s mainstream Rules of Civil Procedure with the Tennessee Supreme Court’s absolute discretion (*only* in capital cases), the Tennessee Supreme Court has asserted a right to play Calvinball with human lives.

It is unsurprising that the State wishes to use that decision to shield Petitioner’s federal rights from review. Allowing that effort to succeed, however, will merely be an invitation to every high court in every state to hide its decisions behind inscrutable black-box structures in an attempt to evade this Court’s rightful appellate jurisdiction over federal questions. Because of the wide-ranging ill effects that such a trend would sow, this Court should grant certiorari and make clear that the Constitution, and our federal structure, will not tolerate Tennessee’s approach.

II. PETITIONER PRESERVED HIS OBJECTIONS TO THE APPLICATION OF THE TRIAL COURT DIVESTITURE FRAMEWORK.

Respondent’s argument that Petitioner’s objections to the Tennessee Supreme Court’s framework were not preserved cannot be squared with the record.² When

² It bears noting that Respondent’s argument that Petitioner did not preserve his objections to Trial Court Divestiture is fundamentally inconsistent with Respondent’s position that this Court lacks jurisdiction because this is an interlocutory appeal arising out of the ongoing litigation in *Burns v. Strada*. The opinion through which the Tennessee Supreme Court announced the Trial Court Divestiture framework was issued in connection with an interlocutory appeal from that very case. These concerns were not simply preserved but actually litigated therein. By asserting that Petitioner needed to raise the concerns again, Respondent concedes that this is a distinct matter, contradicting Respondent’s argument that this appeal is somehow interlocutory.

Petitioner initiated these proceedings under the Trial Court Divestiture framework, he objected repeatedly to that framework before the Tennessee Supreme Court. He objected that he was forced to funnel his claim into an ostensible request for a “stay.” Motion, Appx. B at p. A-28. He objected to the fact that, under *Black v. Strada*, his legitimate claims would be treated as last-minute requests for delay, regardless of the underlying facts and prior litigation. *Id.* at A-34. He stated eight separate grounds why the December 2025 expansion of Trial Court Divestiture was unlawful, several of which included federal issues raised before this Court. *Id.* at A-35 n.7. Finally, Petitioner specifically requested a special master through which he could pursue his claims by appropriate procedures—a request that the Tennessee Supreme Court expressly considered and denied. *See* Order, Appx. A at A-7.

Respondent’s assertion that Petitioner did not object with more specificity ignores perhaps the most problematic feature of Tennessee’s Trial Court Divestiture framework: the fact that an individual seeking relief cannot know what procedures will govern his claim until *after* the claim has been rejected. There was no actually existing procedural structure at which Petitioner could raise any more detailed objection, because he had no idea how his claim would be considered.

Respondent, likely recognizing that no waiver or forfeiture has occurred under this Court’s ordinary approach, suggests that petitioner waived his arguments under Tennessee law, which Respondent reads to take an unusually harsh view of objections raised and preserved via footnotes. Brief in Opposition at 16. Respondent is asserting a state court finding of waiver that never happened. This Court’s caselaw is unambiguous that an independent state procedural bar is only an obstacle to this

Court’s jurisdiction if the relevant state court established, by a plain statement, that it actually relied on the bar at issue. *See, e.g., Harris v. Reed*, 489 U.S. 255, 265 (1989). Respondent points to no such clear statement because the Tennessee Supreme Court made none.

III. RESPONDENT CONCEDES THAT THE TENNESSEE SUPREME COURT BASED ITS RULING ON CASELAW FOUNDED ON THE PRESUMPTION OF REGULARITY.

Respondent argues next that this Court cannot consider Petitioner’s second Question Presented because the Tennessee Supreme Court’s ruling ostensibly did not rest on the presumption of regularity. Respondent’s own briefing, however, says otherwise. Respondent concedes that the Tennessee Supreme Court relied on its “decade-old decision in *West [v. Schofield]*” for its conclusion that “hypothetical allegations about the ‘risks of maladministration,’ are not sufficient to establish a substantial risk of severe pain.” Brief in Opposition at 19. A straightforward reading of *West*, in turn, establishes that the presumption of regularity was foundational to that aspect of its holding:

We are mindful that public officials in Tennessee are presumed to discharge their duties in good faith and in accordance with the law. *See, e.g., Reeder v. Holt*, 220 Tenn. 428, 418 S.W.2d 249, 252 (1967); *Mayes v. Bailey*, 209 Tenn. 186, 352 S.W.2d 220, 223 (1961) (“There is a presumption of good faith ordinarily accorded to public officials and quasi public officials.”); *Jackson v. Aldridge*, 6 S.W.3d 501, 503 (Tenn. Ct. App. 1999) (recognizing the presumption that “public officials perform their duties in the manner prescribed by law”); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 576 (Tenn. Ct. App. 1994) (“Public officials . . . are presumed to perform their duties in good faith and are also presumed to know and act in accordance with the law.”) (internal citations omitted).

Even assuming, *arguendo*, that the Plaintiffs sufficiently have alleged that the Protocol is somehow unconstitutional as applied to one or more of them, or that one or more individuals may cause the Protocol to be carried out in an unconstitutional manner in the future, these claims

are hypothetical and speculative and do not constitute a justiciable controversy under the Declaratory Judgments Act.

West v. Schofield, 460 S.W.3d 113, 131 (Tenn. 2015). The entirety of Respondent’s argument appears to be that the Tennessee Supreme Court did not explicitly mention the presumption of regularity in this case. That is immaterial, however, because it was applying caselaw unambiguously based on that principle.

IV. RESPONDENT’S ARGUMENT THAT THE TENNESSEE SUPREME COURT DID NOT TREAT RISKS OF ERROR AS CONSTITUTIONALLY INSIGNIFICANT IS INCONSISTENT WITH THE TENNESSEE SUPREME COURT’S OPINION.

Respondent, unable to refute any of Petitioner’s reasons why this area of the law is in serious need of clarification, attempts to paint the Tennessee Supreme Court’s conclusion as involving merely a straightforward application of this Court’s established framework for considering risks relating to executions. The Tennessee Supreme Court, however, speaks for itself:

But mere possibilities or hypotheticals, like Mr. Hines’s allegations about the “risks of maladministration,” *are not sufficient to establish a substantial risk of severe pain*. Accordingly, Mr. Hines’s maladministration claim is *all but foreclosed as a matter of law because an alleged potential flaw in administration is too speculative to state an Eighth Amendment claim*. Additionally, Mr. Hines’s assertion that he is not relying on speculation but on the events that occurred at Mr. Carruthers’ execution *does not elevate his claim beyond the speculative risk of maladministration, which is not sufficient as a matter of law*.

Order, Appx. A at A-7 (cleaned up & emphasis added). As Petitioner has detailed in his Petition, this Court’s precedents say no such thing, as other courts have correctly recognized. *See, e.g., Heath v. State*, 426 So. 3d 1253, 1262 (Fla. 2026) (acknowledging that, under *Baze v. Rees*, 553 U.S. 35, 62 (2008), an individual can state an Eighth Amendment claim by “demonstrat[ing] a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering”). Respondent’s need to

provide this Court with intensely rose-tinted reading glasses to elide the discontinuity is, if anything, strong confirmation of the need for this Court's intervention.

If the Tennessee Supreme Court had been considering these risks based on the underlying facts, it presumably would have engaged with at least some of the evidence that Petitioner presented—which included but was not limited to: (1) a declaration attesting to the facts of the failed execution of Mr. Carruthers; (2) an expert declaration concluding that—based on Physician A's deposition testimony and actions on May 21, 2026—Physician A is not qualified to place central IV lines; and (3) an expert declaration concluding that Mr. Hines is likely to require the placement of a central IV line, in light of his individual risk factors (e.g., age, muscular atrophy, and muscle spasticity). The lower court, however, wholly disregarded that uncontroverted evidence, not because it found it unconvincing, but because it wrongly concluded that it was irrelevant “as a matter of law.” Order, Appx. A at A-7.

V. EQUITY WEIGHS HEAVILY IN FAVOR OF GRANTING CERTIORARI

Petitioner does not dispute that the State of Tennessee has an interest in carrying out its sentences, or that a potential delay in that process may bear on this Court's equitable analysis. Ultimately, however, certiorari is about concerns both deeper and wider-ranging in their implications than the government's desire to expedite action in any one case. The confusion that has come to engulf claims involving the risks of significant errors in execution administration affects countless individuals and cases—creating, among other things, risks of delay in connection with all of those proceedings. This case, with its recent and unambiguous evidence of

execution-related error, provides a uniquely appropriate opportunity for this Court to clarify that caselaw in a way that can benefit all parties going forward.

The need to address Tennessee’s handling of Trial Court Divestiture is, if anything, even more pressing. The Tennessee Supreme Court has attempted to appropriate unlimited and effectively unreviewable power over potential federal constitutional claims in a way that threatens not only the administration of justice in Tennessee and in death penalty-related cases, but the fundamental state-federal judicial balance. It is no surprise that it chose to do so in a way that could only be reviewed after an execution date is pending; otherwise, the State would be unable to hide behind the specter of a delayed execution to insulate the State from federal judicial review.

If this Court declines to address Tennessee’s approach now, the ensuing tide of state-court gamesmanship will result in far more delay, inefficiency, and confusion than granting certiorari in this case could possibly occasion. If the Tennessee Supreme Court is free to funnel all Eighth Amendment claims into a process governed by its unfettered discretion during the pendency of an execution date, so too could, for example, the California Supreme Court funnel all free exercise-based claims filed during a public health emergency into a process governed by *its* unfettered discretion. Indeed, every state court of last resort would rightly take Tennessee’s success as an invitation to carve its own pet issues out of the ordinary process of judicial review. The promise that an individual has a right to have his federal rights entertained in state courts would be, in effect, a nullity—offered only at the sufferance of a state’s

highest court, not as a core guarantee of our federal system. To prevent such an outcome, certiorari is warranted.

Dated: August 11, 2026

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