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By Mike Hammond, Clerk

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

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**MOTION AND MEMORANDUM OF LAW**
**FOR PROTECTIVE ORDER**

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## INTRODUCTION

Movant Christa Pike may not discover information about the identities of execution participants or suppliers that is privileged, irrelevant, and unduly burdensome under binding precedent, state law, and common-law privilege. Because Pike seeks information that is both privileged and protected against discovery, the Court should enter a protective order to prevent that discovery and to avoid disclosure of protected information before or during the evidentiary hearing scheduled for August 11-14. Proposed Protective Order, attached as Exhibit 1; Tenn. R. Civ. P. 26.02(1), 26.03.

## BACKGROUND

### I. Execution Protocol Litigation Has Often Involved Attempts to Unmask Execution Participants and Suppliers.

Even with the best-intentioned counsel and carefully written protective orders, the disclosure of information about execution participants and suppliers has repeatedly impeded executions across the country. It is "humanly impossible to control [the] inadvertent disclosure" of such "extremely potent" information. *Va. Dept. of Corr. v. Jordan*, 921 F.3d 180, 193 (4th Cir.

2019). Anti-death-penalty activists across the country long ago learned that shutting down sources of lethal injection chemicals ("LIC") was a "dramatically successful" way to stop executions—certainly better than testing their theories in court. Mary D. Fan, *The Supply-Side Attack on Lethal Injection and the Rise of Execution Secrecy* ("*Supply-Side Attack*"), 95 B.U. L. Rev. 427, 439 (2015). Today, it is a "well-known phenomenon" that "pressure from activists" who discover identifying information shared in litigation leads to suppliers "refus[ing] to supply drugs to state corrections departments." *Jordan*, 921 F.3d at 184.

Tennessee has suffered the fallout of these pressure campaigns. Before 2013, TDOC used three chemicals, including sodium thiopental, to carry out executions. *Workman v. Bredesen*, 486 F.3d 896, 902 (6th Cir. 2007). When sodium thiopental was no longer available, TDOC switched to using solely pentobarbital. *West v. Schofield*, 519 S.W.3d 550, 552 (Tenn. 2017) (*West II*). Tennessee was never able to carry out an execution using pentobarbital. And when it lost access to that drug, TDOC moved back to three chemicals. *Abdur'Rahman v. Parker*, 558 S.W.3d 606, 611 (Tenn. 2018). Now again able to acquire pentobarbital, TDOC uses it alone.

Recently, execution participants' identities have been revealed during protocol-related litigation. Now pending before the Tennessee Supreme Court is a Rule 12(4)(E) motion filed by convicted murderer Anthony Hines, who seeks a stay of his execution based on the qualifications of the physician he believes will potentially place a central IV line during his execution. *See State v. Hines*, No. M2025-00221-SC-DPE-DD. Hines could make this assumption because the identity of a past execution physician was revealed in the summer of 2025 in a document from the Davidson

County Medical Examiner that was reported in the media in September 2025.[1] Later media accounts attributed the unmasking to court filings by the Federal Public Defender's office.[2]

But these multifaceted attempts to unmask execution participants do not change the fact that information about execution suppliers and participants is privileged and confidential under three sources: The Tennessee Supreme Court's opinion in *West v. Schofield*, 460 S.W.3d 113, 121 (Tenn. 2015) (*West I*), Tenn. Code Ann. § 10-7-504(h)(1), and the common-law privilege the Tennessee Supreme Court described in *West I*. To prevent inadvertent disclosure of such information in these proceedings, the State asks this Court to enter a protective order forbidding discovery or testimony about any privileged, confidential, or irrelevant information that would jeopardize Tennessee's access to pentobarbital and to competent staff to carry out executions.

## II. The Risk of Unmasking Execution Participants and Suppliers Is Present Here.

### A. The proceedings before this Court are limited to the issues referred by the Tennessee Supreme Court.

In a July 10 order, the Supreme Court granted Pike's request for a special master under Tenn. Sup. Ct. 12(4)(E). In its order, the Supreme Court appointed a special master "to conduct an evidentiary hearing and any other additional hearings the Special Master deems appropriate on the matters specifically referred by this order." Sup. Ct. Order at 2. Those matters are:

> (1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));
>
> (2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make

[1] https://wpln.org/post/autopsy-sheds-light-on-byron-blacks-painful-execution/.
[2] https://nashvillebanner.com/2026/05/22/tony-carruthers-lethal-injection-doctor-qualifications/

it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;

(3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;

(4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id.* at 52; and

(5) Whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

*Id.* at 2-3.

Any "[i]ssues not specifically referred to the Special Master" are not before this Court because the Supreme Court ordered that they are "held in abeyance." *Id.* at 3. In addition, the Supreme Court's order and this Court's scheduling order contemplate an evidentiary hearing wherein the special master will receive evidence and testimony. *Id.* Neither order mentions pre-hearing discovery. The evidentiary hearing will be August 11-14 in Knoxville. Scheduling Order at 1.

**B. Pike's subpoenas and discovery requests improperly seek information about execution participants and lethal injection chemicals.**

On July 22, 2026, Pike served three subpoenas issued by the Criminal Court for Knox County, Tennessee on the Tennessee Department of Correction. Subpoenas, Ex. 1 to State's Mot. to Quash. Those subpoenas identified 17 topics for testimony at the upcoming hearing. The topics covered a wide range of information, from Pike's small veins to testing and expiration dates of the pentobarbital to be used in her execution to professional and demographic information about execution participants. *Id.* Just five days later, Pike served 13 interrogatories and 11 requests for admission, seeking similar information, including detailed information about the physician designated for her upcoming execution, the members of the team who will place IV lines, and specific test results for the pentobarbital that will be used. Pl.'s Disc. Requests, Ex. 2 to State's Mot. to Quash. Pike demanded responses within seven days of service of the requests. *Id.*

The parties conferred about the subpoenas and discovery requests over email and phone but failed to reach agreement on the issues presented below.

## LEGAL STANDARD

**Special masters**. Rule 12(4)(E), the vehicle giving rise to these proceedings, does not contemplate written discovery between parties. It provides only for appointment of a special master to engage in "fact-finding" in furtherance of "state court collateral litigation that would potentially affect the method or timing of execution." Tenn. Sup. Ct. Rule 12(4)(E). The Rule references Tenn. R. Civ. P. 53, which governs special masters. Rule 53 provides that an order referring matters to a special master "may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only." In this case, the Tennessee Supreme Court's order of July 10 did precisely that. Thus, this Court's powers "ultimately are limited to the boundaries set forth in the order of reference." *Pennington*, 2008 WL 1923110, at *9.

As for evidence, Rule 53 provides that a special master "may require the production before him or her" of evidence, but it does not provide for discovery *between the parties* as contemplated by Tenn. R. Civ. P. 26 and related discovery rules. Notably, the corresponding federal rule affords a special master the authority to impose discovery sanctions under Fed. R. Civ. P. 37 or 45, which shows that rule contemplates discovery between parties in proceedings before special masters. Fed. R. Civ. P. 53(c)(2). But the Tennessee rule grants no such authority.

**Scope of discovery and protective orders**. Parties have no right to discover privileged or irrelevant information. Tenn. R. Civ. P. 26.02(1); *West*, 460 S.W.3d at 121. And even the discovery of relevant information "shall" be limited if it is unduly burdensome. Tenn. R. Civ. P. 26.02(1). A

plaintiff may not "go fishing," and courts have "discretion" to limit discovery. *In re Ohio Execution Protocol Litigation*, 845 F.3d 231, 236 (2016).[3]

A party may also proactively ask the Court to protect it from discovery that involves annoyance, embarrassment, oppression, or undue burden or expense. Tenn. R. Civ. P. 26.03. Good cause exists for a protective order if "specific prejudice or harm will result" in its absence. *In re Ohio Execution Protocol Litigation*, 845 F.3d at 236; *Ballard v. Herzke*, 924 S.W.2d 652, 658 (Tenn. 1996).

## ARGUMENT

### I. The Court Should Not Allow Discovery of Information About Execution Participants or Suppliers.

#### A. *West I* does not allow disclosure of participant or supplier identities.

When the General Assembly amended § 10-7-504(h)(1) in 2014, it "intended . . . to protect the identities of all persons and entities participating in the execution of a convicted murderer sentenced to death." *West I*, 460 S.W.3d at 122. Those identities must be protected because Pike seeks information that could unmask both execution participants and suppliers in her subpoenas and discovery requests, namely demographic and professional information about execution participants, as well as expiration dates, chain-of-custody information, and testing results related to the State's pentobarbital.

*West I* allows no other outcome. There, the Tennessee Supreme Court held that a trial court committed "reversible error" when it granted a motion to compel production of execution participants' identities. *West I*, 460 S.W.3d at 132. The holding was rooted in a relevance analysis, but the court went out of its way to note that "our legislature declared the public policy of Tennessee to favor the

[3] Federal courts' interpretations of parallel federal rules are "persuasive authority" for Tennessee courts. *Downing v. Bowater, Inc.*, 846 S.W.2d 265, 268 (Tenn. Ct. App. 1992).

anonymity of those involved in carrying out capital punishment," sending a strong signal that participants' identities are privileged and not subject to discovery. *Id.* at 124–25.

That anonymity is what the State asks the Court to protect in light of Pike's discovery requests. Information about the demographics, qualifications, training, certifications, and occupations of execution participants can be used to identify them. And when that happens, it becomes more likely that they, or their families, will be subject to "retaliation and harassment." *Workman v. Campbell*, No. M2001-01445-COA-R3CV, 2002 WL 869963, at *6 (Tenn. Ct. App. May 7, 2002); *see also West*, 460 S.W.3d at 123 (quoting the same). So too with questions about the provenance and testing of Tennessee's lethal injection chemicals, which can yield identifying information about the source of those chemicals. *See Kerrigan v. Newport* Brief, Ex. 5 to State's Mot. to Quash. *West I* declared that the identities of execution participants and suppliers are off-limits, 460 S.W.3d at 132, and this Court should honor that rule with a protective order.

### B. Tenn. Code Ann. § 10-7-504(h)(1) does not allow disclosure of participants or supplier identities.

Tennessee's public records statute also justifies a protective order. The execution exception to the statute protects the identity of anyone "who [is] or that has been or may in the future be directly involved in the process of executing a sentence of death." Tenn. Code Ann. § 10-7-504(h)(1).

The statute's chronological sweep is unbounded: it covers past, current, and future execution participants and suppliers. Tenn. Code Ann. § 10-7-504(h)(1). The legislature intended to prevent activists and litigants from chipping away at those identities when it amended Tenn. Code Ann. § 10-7-504(h)(1). *See West I*, 460 S.W.3d at 121-25 (recounting the statute's legislative history and noting the intent "to protect the identities of all persons and entities participating in the execution of a convicted murderer sentenced to death").

Given the tactics deployed by anti-death penalty activists, such as globe-spanning pressure campaigns, public shaming, and doxxing, this Court should employ a protective order to honor the legislature's express directive to protect the identities of execution participants and suppliers. *See Glossip v. Gross*, 576 U.S. 863, 869 (2015) (recounting efforts to disrupt pharmaceutical supply chains); Mary D. Fan, *The Supply-Side Attack on Lethal Injection and the Rise of Execution Secrecy*, 95 B.U. L. Rev. 427, 439 (2015) (same). That need is all the more apparent given Anthony Hines' currently pending attempt to unmask the physician appointed for his execution.

### C. The common-law privilege contemplated in *West I* provides another reason why disclosure of participant and supplier information is not appropriate.

"[T]here is neither a statutory nor a constitutional barrier to the adoption of a common-law privilege that would prohibit the disclosure in civil litigation of the identities of those persons involved in the execution of condemned inmates." *West I*, 460 S.W.3d at 125. Because that is the "clear . . . public policy of Tennessee," *id.* at 124, the Court should apply that privilege here.

States have long recognized the need to protect the identities of those who participate in delivering ultimate justice. The privilege is justified both to protect individuals from retaliation and to ensure competent professionals may serve the State in its solemn duty. This Court should enforce the privilege as a complete barrier to discovery of information that could be used to identify any future execution participant or supplier.

When considering adoption of a common-law privilege, Tennessee courts give substantial weight to the public policy declared by the General Assembly. *West I*, 460 S.W.3d at 121-23. They also consider the rationale for the privilege and the policy judgments of other jurisdictions. *Hyter v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 671 S.W.3d 476, 484-85 (Tenn. 2023) (noting the Court was "particularly persuaded" by Wisconsin's adoption of privilege and concluding that recognizing privilege "is good public policy"); *West I*, 460 S.W.3d at 123-24 (recounting history of litigation that

justified privilege and considering other jurisdictions' approach); *McCormick v. State*, 135 Tenn. 218, 186 S.W. 95, 97 (1916) (articulating rationale for marital communications privilege). Each of those considerations strongly favors application of the participant privilege here.

"[O]ur legislature [has] declared the public policy of Tennessee to favor the anonymity of those involved in carrying out capital punishment." *West I*, 460 S.W.3d at 124-25. That declaration is explicit in the Tennessee Public Records Act, which makes confidential any record that would identify an individual who "has been or may in the future be" involved in an execution. Tenn. Code Ann. § 10-7-504(h)(1). That expressly includes state employees, contractors, volunteers, and anyone "involved in the procurement or provision of chemicals, equipment, supplies and other items." *Id.*

Endorsement of that broad protection came not in a vacuum, but in response to a real threat that Tennessee would be unable to carry out executions. Before the General Assembly updated the statute, the Court of Appeals had held that the identities of those who supplied lethal injection chemicals were not confidential. *Bottei v. Ray*, No. M2011-00087-COA-R3-CV, 2011 WL 4342652, at *1 (Tenn. Ct. App. Sep. 15, 2011). The General Assembly "clearly . . . disagreed" and "intended . . . to protect the identities of all persons and entities participating in the execution of a convicted murderer sentenced to death." *West I*, 460 S.W.3d at 122. Thus, public policy, expressed by the General Assembly, favors "a common-law privilege that would prohibit the disclosure in civil litigation of the identities of those persons involved in the execution of condemned inmates." *Id.* at 125.

## II. Discovery of Information About TDOC's Execution Team and LIC Is Irrelevant and Unduly Burdensome.

This Court can also enter the proposed protective order under Tenn. R. Civ. P. 26.03 without applying the execution participant-supplier privilege discussed in *West I*. Binding precedent and the collective wisdom of appellate courts across the country support that alternative approach.

A party is only entitled to discover information that is "nonprivileged" and "relevant." Tenn. R. Civ. P. 26.02(1). And even if those thresholds are met, discovery "shall be limited" if it "is unduly burdensome." Tenn. R. Civ. P. 26.02(1). Thus, on a showing of "good cause," a court may fashion any variety of order to protect a party from undue burden, including ordering "that the discovery not be had." Tenn. R. Civ. P. 26.03. Such an order should enter here.

**A. The identities of execution team members or LIC sources are irrelevant.**

To be relevant, information "must have some logical connection to proving [the] case and/or obtaining [the] prayed-for relief." *West I*, 460 S.W.3d at 125.

The case to be proved consists of the five topics referred to this Court by the Supreme Court, which have to do with the State's lethal injection protocol as written and applied to Pike. In this sort of case, discovery about the execution team members or the LIC source is "not relevant." *West I*, 460 S.W.3d at 126. "[T]he subject matter is whether the Protocol violates the Plaintiffs' federal and state constitutional rights." *Id.* at 125-26. It is thus "clear and indisputable" that discovery of information about the LIC supply chain "is not relevant to any claim." *In re Lombardi*, 741 F.3d 888, 889-90 (8th Cir. 2014); *In re Mo. Dep't of Corr.*, 839 F.3d 732, 736 (8th Cir. 2016). That is especially true when "it is quite predictable that the supplier will stop providing the drug . . . once its identity is disclosed." *Jordan v. Comm'r, Mississippi Dep't of Corr.*, 947 F.3d 1322, 1328-30 (11th Cir. 2020). At the end of the day, Pike is "not entitled to the disclosure" of identifying information about execution team members or LIC sources because that information is irrelevant. *West I*, 460 S.W.3d at 127.

**B. Disclosure of identifying information is unduly burdensome.**

There is another reason to prohibit discovery here. "Even if a trial court determines that information . . . is not privileged and is relevant . . ., the trial court should further balance the specific need for the information against the harm that could result from disclosure." *West I*, 460

S.W.3d at 127-28. For sensitive information, a court must consider the protection of secret matters and protection of parties from undue burden. *Id.* at 128. In cases like this, the Court must start with two premises: "that the United States Constitution and the Tennessee Constitution both permit the execution of those" sentenced to death and that "[t]he State must have a means of carrying out these constitutional sentences." *Id.* That "requires the participation of numerous individuals." *Id.* And revealing those individuals' identities could "deter [them] from performing their lawful duties." *Id.*

Numerous appellate courts have found the balance favors prohibiting discovery of any information "that identifies or reasonably would lead to the identification of any person or entity who participates in" executions. *In re Ohio Execution Protocol Litigation*, 845 F.3d at 234; *see, e.g., Ryan v. Wood*, 573 U.S. 976 (Mem.) (2014); *Jones v. Comm'r, Ga. Dep't of Corr.*, 811 F.3d 1288, 1292-96 (11th Cir. 2016); *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014); *Sepulvado v. Jindal*, 729 F.3d 413, 420 (5th Cir. 2013) (holding no due process right to know details of an execution protocol); *Owens*, 758 S.E.2d at 805; *Bryan v. State*, 753 So.2d 1244, 1251 (Fla. 2000); *McGehee v. Texas Dep't of Criminal Justice*, No. MCH-18-1546, 2018 WL 3996956, at *8 (S.D. Tex. Aug. 21, 2018) (collecting cases); *id.* at *10-11. As here, because the "logical consequence" of permitting discovery into sensitive information is an end to the supply of chemicals or capable execution participants, "Defendants will suffer an undue burden and prejudice in effectuating" executions. *In re Ohio Execution Protocol Litigation*, 845 F.3d at 238-39. Moreover, "disclosing [an LIC] source's identity would create a substantial threat of physical harm to the source's employees and others." *Tex. Dep't of Crim. Just. v. Levin*, 572 S.W.3d 671, 673, 681 (Tex. 2019). "[T]he harm presented by identification of those intimately

involved in an execution outweighs the speculative benefit of complete understanding of an industry already heavily regulated." *In re Ohio Execution Protocol Litigation*, 845 F.3d at 239.

Yet discovery of this sensitive under a protective order is not enough to protect the State's interests. *In re Ohio Execution Protocol Litigation*, 845 F.3d at 239. For "extremely potent confidential information" like the identity of execution participants or information leading to the unmasking of LIC suppliers such as expiration dates, "it would be humanly impossible to control its inadvertent disclosure." *Jordan*, 921 F.3d at 193. "[I]t is likely that active investigation" of TDOC's execution team members and drug source "will lead to further disclosure of the[ir] identities." *In re Lombardi*, 741 F.3d at 894. "[T]he sheer number of parties involved in this case . . . and the number of experts . . . create legitimate concerns that [identifying information], even inadvertently, eventually will become public." *West I*, 460 S.W.3d at 128 n.8. If identifying information is revealed about the sources of the State's pentobarbital, access will likely be cut off. *See In re Ohio Execution Protocol Litigation*, 845 F.3d at 238. Anything less than a complete bar to discovery of this information creates an unwarranted risk of disclosure. *Tex. Dep't of Crim. Just.*, 572 S.W.3d at 681; *West I*, 460 S.W.3d at 128 n.8.

These limitations on discovery are proportional given that the information is irrelevant to Pike's claims. The proposed protective order "does not prevent Plaintiff[] from prosecuting [her] claims." *In re Ohio Execution Protocol Litigation*, 845 F.3d at 239. Even without "knowing technician and execution team's qualifications, the means by which [TDOC] obtained the lethal-injection drugs, and whether [TDOC] has complied with the manufacturing process," Pike knows enough to litigate her challenge to TDOC's protocol. *Id.* "The identities of the persons who may facilitate or carry out the Protocol are not relevant to a determination of whether the Protocol passes constitutional muster." *West I*, 460 S.W.3d at 126; *In re Lombardi*, 741 F.3d at 897.

Because disclosure of the information covered by the protective order would impose an undue burden on Defendants, Pike has no right to discover it. Tenn. R. Civ. P. 26.03. That is an additional reason to enter the proposed order.

## CONCLUSION

Disclosure of information that can be used to identify lethal injection drug sources and execution team members has undeniably led to the unmasking of those sources and individuals, harassment and threats, and ultimately the denial of access to humane chemicals and competent professionals. Tennessee has more than once suffered the fallout of activist campaigns that cut off its access to humane chemicals, forcing delays of executions while it prepared new protocols. TDOC has good cause to believe that discovery of information about its source will cause that source to disappear. The Court should prevent that significant harm, and yet another delay of justice, by entering the proposed protective order.

Respectfully submitted,

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Attorney General and Reporter

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was filed and served on this the 31st day of July 2026, upon:

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*/s/ John W. Ayers*
JOHN W. AYERS

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

## [PROPOSED] PROTECTIVE ORDER

To preserve the confidentiality of individuals and entities involved in the process of executing a sentence of death, as well as facilitating efficient testimony and exchange of information related to this litigation, the Court hereby orders:

**Privileged and Confidential Information**

1. The Parties are forbidden from discovering or eliciting testimony about any information that could reasonably lead to the discovery of any individual or entity who has been or may in the future be involved in the process of executing a sentence of death. This information shall be considered Privileged and Confidential.

2. Information need not be explicitly identifying to be Privileged and Confidential, and includes, but is not limited to, any information that could reasonably lead to the disclosure of the identity of:

   a. Any physician, pharmacist, pharmacy, manufacturer, compounder, wholesaler, distributor, or other person or entity involved in the execution process or acquisition, production, or testing of execution chemicals. This includes information, such as the manner or location of production and testing, that would

shrink the pool of potential sources and could reasonably lead to disclosure when combined with other information.

b. Any laboratory that provides testing on execution chemicals.

c. Any employee of the State who participates in the process of executing a sentence of death, except for those employees who are directly identified by the Lethal Injection Protocol.

d. Any contractor or employee of a contractor who participates in the process of executing a sentence of death.

e. Any volunteer who participates in the process of executing a sentence of death.

f. Any person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death.

Entered this ___ day of _____, 2026.

**IT IS SO ORDERED.**

_____

SPECIAL MASTER W. MARK WARD

SUBMITTED FOR ENTRY:

*/s/ John W. Ayers*
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## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed and served by email on this the 31st day of July 2026, upon:

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*/s/ John W. Ayers*
JOHN W. AYERS

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**MOTION AND MEMORANDUM OF LAW TO QUASH OR MODIFY SUBPOENAS AND TO LIMIT DISCOVERY**

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## INTRODUCTION

The Tennessee Supreme Court has referred five issues to this Court for an evidentiary hearing, the results of which will inform whether to grant Christa Pike a stay of execution under Tenn. Sup. Ct. R. 12(4)(E). The Supreme Court's order referring these issues to this Court expressly held in abeyance all other issues. And this Court's scheduling order contemplates testimony and evidence to be heard at an evidentiary hearing, not pre-hearing written discovery.

Yet Pike has served interrogatories, requests for admission, and subpoenas seeking information that is irrelevant to the five issues before this Court. Earlier today, she moved to expedite responses to this discovery, ignoring the State's request to confer or to seek the Court's guidance. Some of the information she seeks is privileged and confidential because it would unmask persons or entities who participate in executions. And much of it has no logical connection to any issue before this Court.

The State intends to make witnesses available to address the relevant topics Pike has identified. The State therefore requests that the Court quash or modify Pike's subpoenas and enter an order barring written discovery in this matter.

## BACKGROUND

### I. Legal Background

**The test for method-of-execution challenges**

The Eighth Amendment bars the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. Similarly, "the Tennessee Constitution provides that 'excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.'" *West v. Schofield*, 519 S.W.3d 550, 567 (Tenn. 2017) (quoting Tenn. Const. art. I, § 16). Because there is "no difference in language" that would warrant "application of a different standard," the Tennessee Supreme Court analyzes the two constitutional provisions using the U.S. Supreme Court's Eighth Amendment framework. *Id*. at 568 n.16; *accord Abdur'Rahman v. Parker*, 558 S.W.3d 606, 616 (Tenn. 2018).

Under that framework, it is well-established that "the Eighth Amendment does not guarantee a prisoner a painless death—something that, of course, isn't guaranteed to many people, including most victims of capital crimes." *Bucklew v. Precythe*, 587 U.S. 119, 132-33 (2019) (citing *Glossip v. Gross*, 576 U.S. 863, 869-70 (2015)). After all, "[s]ome risk of pain is inherent in any method of execution—no matter how humane—if only from the prospect of error in following the required procedure." *Baze v. Rees*, 553 U.S. 35, 47 (2008) (plurality op.). If the Eighth Amendment "demand[ed] the elimination of essentially all risk of pain," that "would effectively outlaw the death penalty altogether." *Glossip v. Gross*, 576 U.S. 863 at 869 (2015). So the mere fact that "an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of

harm' that qualifies as cruel and unusual." *Baze*, 553 U.S. at 50 (plurality op.) (quoting *Farmer v. Brennan*, 511 U.S. 825, 842, 846, and n.9 (1994)).

Instead, the cruel-and-unusual-punishment provision prohibits only "long disused (unusual) forms of punishment that intensified the sentence of death with a (cruel) superaddition of terror, pain, or disgrace." *Bucklew*, 587 U.S. at 133 (cleaned up). That emphasis on the State's "malevolence," *Baze*, 553 U.S. at 50, in imposing a "wanton infliction of pain" reflects Founding-era history. *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 306 (Tenn. 2005). As ratified, the cruel-and-unusual-punishment provision draws from the English Bill of Rights "to ensure that the new Nation would never resort" to "certain barbaric punishments" previously practiced. *City of Grants Pass v. Johnson*, 603 U.S. 520, 542 (2024). Among them: "disemboweling, quartering, public dissection, and burning alive," *id.*, as well as "the use of the rack or the stake," "breaking on the wheel, flaying alive, rending asunder with horses, maiming, mutilating and scourging to death," *Bucklew*, 587 U.S. at 131 (cleaned up). Uniting these off-limits methods is their "unnecessary cruelty"—meaning the method chosen "savored of torture" and reflected the executioners' being "pleased with hurting others." *Id.* at 130-31 (cleaned up).

To help draw the line, courts look to the modes of execution the Eighth Amendment was understood to forbid with those it was understood to permit. Hanging was the predominant method of execution at the Founding and for decades thereafter. *Glossip*, 576 U.S. at 867. Yet "[m]any and perhaps most hangings were evidently painful for the condemned person because they caused death slowly." *Bucklew*, 587 U.S. at 132 (quoting S. Banner, *The Death Penalty: An American History* 48 (2002) (Banner)). But hanging's use was "virtually never questioned" under the Eighth Amendment. *Id.* (quoting Banner, *supra*, at 170). As the U.S. Supreme Court observed, hanging's lawful status presumably reflects that it was not "*intended* to be painful"; instead, the risk of pain

involved was considered "unfortunate but inevitable." *Id.* at 131 (quoting Banner, *supra*, at 170). The U.S. Supreme Court has employed similar reasoning to uphold death by firing squad, *Wilkerson v. Utah*, 99 U.S. 130, 134-135 (1879), the electric chair, *In re Kemmler*, 136 U.S. 436 (1890); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463-64 (1947) (plurality opinion) (upholding electrocution of prisoner despite initial failed attempt), and lethal injection, *Bucklew*, 587 U.S. 119; *Glossip*, 576 U.S. 863; *Baze*, 553 U.S. 35.

To sum up: the U.S. and Tennessee Constitutions do not "demand the avoidance of all risk of pain in carrying out executions," meaning a method is permissible even if pain occurs by "accident or as an inescapable consequence of death[.]" *Bucklew*, 587 U.S. at 130, 134 (citation removed). Instead, punishments are constitutionally suspect only when the method "superadds pain well beyond what's needed to effectuate a death sentence." *Id.* at 137. Any other rule would impermissibly coopt "courts to serve as boards of inquiry charged with determining best practices for executions," "with each ruling supplanted by another round of litigation touting a new and improved methodology." *Id.* at 134 (citation omitted); *Baze*, 553 U.S. at 51.

The U.S. Supreme Court "has yet to hold that a State's method of execution qualifies as cruel and unusual." *Barr v. Lee*, 591 U.S. 979, 980 (2020) (quoting *Bucklew*, 587 U.S. at 133). "[U]nderstandably so." *Bucklew*, 587 U.S. at 133. Tennessee and other States, working "through the initiative of the people and their representatives," have historically endeavored to adopt "less painful modes of execution." *Id.* Courts deciding method-of-execution claims apply a "two-prong test" under both the U.S. and Tennessee Constitutions. *West*, 519 S.W.3d at 567-68; *see Bucklew*, 587 U.S. at 133-34. Challengers face an "exceedingly high bar" to obtaining relief. *Barr*, 591 U.S. at 980. The demanding two-step standard reflects that "the Constitution affords a measure of deference to a State's choice of execution procedures." *Bucklew*, 587 U.S. at 134 (quotation

omitted). It also helps prevent "method-of-execution claims from becoming a 'backdoor means to abolish' the death penalty." *Id.* at 137 (citation omitted).

First, an inmate must establish that a given method "presents a risk that is sure or very likely to cause serious illness and needless suffering and give rise to sufficiently imminent dangers." *West*, 519 S.W.3d at 563 (cleaned up) (quoting *Glossip*, 576 U.S. at 877) (emphasis in original). The method must "present[] a 'substantial risk of serious harm'—severe pain over and above death itself." *Nance v. Ward*, 597 U.S. 159, 164 (2022) (quoting *Glossip*, 576 U.S. at 877). "[M]ere possibilities" or "hypothetical[s]"—like allegations of the "risk[] of maladministration" or "improper" handling of chemicals—"are not sufficient to satisfy the Plaintiffs' burden to establish a substantial risk of severe pain." *West*, 519 S.W.3d at 564-65 (quoting *Baze*, 553 U.S. at 62) (collecting cases).

Second, the inmate must "show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew*, 587 U.S. at 134 (citations omitted). "A minor reduction in risk is insufficient; the difference must be clear and considerable." *Id*. at 143. Further, a challenger must establish that the State "could carry . . . out" the alternative method "relatively easily and reasonably quickly." *Id*. at 141 (citation omitted). The fact that "other states have or can" use the alternative method does not suffice to show that Tennessee likewise "can do so." *Abdur'Rahman*, 558 S.W.3d at 623.

## II. Procedural Background

### A. The proceedings before this Court

In a July 10 order, the Supreme Court granted Pike's request for a special master under Tenn. Sup. Ct. 12(4)(E). In its order, the Supreme Court appointed a special master "to conduct an

evidentiary hearing and any other additional hearings the Special Master deems appropriate on the matters specifically referred by this order." Sup. Ct. Order at 2. Those specific matters are:

> (1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));
>
> (2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;
>
> (3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;
>
> (4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id.* at 52; and
>
> (5) Whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

*Id*. at 2-3.

Any "[i]ssues not specifically referred to the Special Master" are not before this Court because they are "held in abeyance" by the Supreme Court. *Id.* at 3. In addition, the Supreme Court's order and this Court's scheduling order contemplate an evidentiary hearing wherein the special master will receive evidence and testimony. *Id.* Neither order mentions pre-hearing discovery. *Id.*; Scheduling Order at 1.

**B. Pike's subpoenas and discovery requests**

On July 22, 2026, Pike served three subpoenas issued by the Criminal Court for Knox County, Tennessee on the Tennessee Department of Correction. Subpoenas, attached as Exhibit 1. Those subpoenas identified 17 topics for testimony at the upcoming hearing. The topics covered a

wide range of information, from Pike's small veins to testing of the pentobarbital to be used in her execution to counsel's access to a telephone in the execution chamber. Then, five days later, Pike served 13 interrogatories and 11 requests for admission, seeking largely the same information. Pl.'s Disc. Requests, attached as Exhibit 2.

The parties conferred about the subpoenas over email and phone. They failed to reach agreement on the issues presented below after counsel for Pike declined to engage in another meet-and-confer by telephone or to collectively approach the Court for guidance. Email Chain, attached as Exhibit 3. Counsel for Pike has suggested that certain of the subpoena topics may be withdrawn, but in the interest of completeness, all topics in the subpoenas are addressed in this motion.

Nevertheless, the State anticipates reaching agreement concerning Pike's transportation and observation as well as her spiritual advisor request, which would moot issues (2) and (5) in the Supreme Court's order, leaving issues 1, 3, and 4 for this Court's consideration. Any agreement will be outlined in future filings.

## LEGAL STANDARD

**Special Masters**. Rule 12(4)(E), the vehicle giving rise to these proceedings, does not contemplate written discovery between parties. It provides only for appointment of a special master to engage in "fact-finding" in furtherance of "state court collateral litigation that would potentially affect the method or timing of execution." Tenn. Sup. Ct. Rule 12(4)(E). The Rule references Tenn. R. Civ. P. 53, which governs special masters. Rule 53 provides that an order referring matters to a special master "may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only." In this case, the Tennessee Supreme Court's order of July 10 did precisely that. Thus, this Court's powers "ultimately are limited to the boundaries set forth in the order of

reference." *Pennington v. Boundry, Inc.*, No. M200602650COAR3CV, 2008 WL 1923110, at *9 (Tenn. Ct. App. May 1, 2008).

As for evidence, Rule 53 provides that a special master "may require the production before him or her" of evidence, but it does not provide for discovery *between the parties* as contemplated by Tenn. R. Civ. P. 26 and related discovery rules. Notably, the corresponding federal rule affords a special master the authority to impose discovery sanctions under Fed. R. Civ. P. 37 or 45, which shows that rule contemplates discovery between parties in proceedings before special masters. Fed. R. Civ. P. 53(c)(2). But the Tennessee rule grants no such authority.

**Relevance**. As for evidence generally, to be relevant, it "must have some logical connection to proving [Plaintiff's] case and/or obtaining his prayed-for relief." *West v. Schofield*, 460 S.W.3d 113, 125 (Tenn. 2015).

**Protective Orders**. A Court may issue a protective order forbidding or limiting the scope of discovery "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Tenn. R. Civ. P. 26.03.

## ARGUMENT

### I. The Subpoenas Should Be Quashed or Modified.

The Court should quash or modify Plaintiffs' subpoenas because they are unenforceable, overbroad, and aimed at confidential and irrelevant information.

#### A. The Criminal Court for Knox County lacked jurisdiction to issue Pike's subpoenas, which are unenforceable and should be quashed.

The Court should quash the subpoenas issued by the Knox County Criminal Court because that court has no jurisdiction over this action, which is a civil fact-finding proceeding.

Subpoenas must be issued by the clerk of the court "in which the action is pending." Tenn. R. Civ. P. 45.05. No other court can issue a subpoena to a witness because "a court has no

jurisdiction of any matter not brought before it by proper process and pleadings," and consequently, "any order or decree attempted to be entered by a court in any matter which has not been so brought before it, is *coram non judice*, and absolutely void." *In re Kelley*, 352 S.W.2d 709, 711 (Tenn. 1961) (citation and quotation marks omitted).

The court in which this action is pending is not the Criminal Court of Knox County. True, that may be where the evidentiary hearing will take place (*see* Scheduling Order), but that is not the same thing as the court that has subject matter jurisdiction to issue subpoenas. That would be the Davidson County Chancery Court or the Tennessee Supreme Court.

The Supreme Court's recent orders regarding Rule 12(4)(E) explain why. To begin, the Rule states that "any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court." Tenn. Sup. Ct. Rule 12(4)(E). The only relief the Rule can give is a temporary stay of execution to "facilitate[] existing state collateral proceedings." Order, *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Feb. 17, 2026). A movant can secure a stay only if she "can prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E).

Pike's collateral litigation began in Davidson County Chancery Court, and that case has not yet been dismissed. *See Pike v. State*, No. M2026-00667-SC-UNK-CV. Therefore, that is the Court with subject matter jurisdiction to issue subpoenas because it is the source of the "collateral litigation" contemplated in Rule 12(4)(E). Alternatively, the clerk of the Supreme Court could arguably issue subpoenas in this action, since the Supreme Court's order invoked Tenn. R. Civ. P. 53 to refer specific issues to a special master in order to inform its decision on whether to grant a stay of execution. Sup. Ct. Order at 1.

Either way, "[t]here was no suit or matter pending before the [Knox County Criminal] Court, no process had been issued, no pleadings filed, and there was nothing pending before the Court to invoke its jurisdiction." *In re Kelley*, 352 S.W.2d at 711. The mere fact that the evidentiary hearing will be held in that court's facilities does not establish jurisdiction to issue a subpoena in this civil action. The Court should therefore quash the subpoenas.

### B. The subpoenas must otherwise be narrowed to the topics relevant to the issues before this Court.

Even if the Court finds the subpoenas to be properly issued, it should narrow them because they seek testimony on privileged, confidential, and irrelevant information.

Discovery is limited to relevant and non-privileged information. Tenn. R. Civ. P. 26.02. To be relevant, information "must have some logical connection to proving [the] case and/or obtaining [the] prayed-for relief." *West*, 460 S.W.3d at 125. In harmony with that principle, courts may modify subpoenas that are "unreasonable and oppressive." Tenn. R. Civ. P. 45.07.

Taking the parties' anticipated agreements into account, the case to be proved consists of three remaining topics referred to this Court by the Supreme Court:

> (1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));
>
> (3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;
>
> (4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id.* at 52; and
>
> Sup. Ct. Order at 2-3.

And the relief sought is a stay of execution, which can only be attained if Pike proves a likelihood of success on one or more of these three issues. *Carruthers*, No. W1997-00097-SC-DDT-DD (Order); Tenn. Sup Ct. R. 12(4)(E). So, any topic that is not logically connected to these three issues is not relevant and should not be discoverable. *West*, 460 S.W.3d at 125.

To be sure, five of the subpoena topics are directly related to these three issues, and therefore relevant. **Topic 2** concerns qualifications and training of the members of the IV team, who are responsible for securing IV access under the Protocol. This information is relevant to issues (1) and (3) in the Supreme Court's order, which deal with IV access under the Protocol. **Topic 8** concerns Pike's platelet condition and its impact on IV access, which is relevant to issue (1). **Topic 9** concerns Pike's supposedly small veins, which is relevant to issue (3). **Topic 14** concerns Pike's alternative methods of execution, which is relevant to issue (4). And **Topic 17** concerns any execution planning specific to Pike, which is potentially relevant to any of the three issues before the Court. The State therefore intends to present witnesses who can testify about these topics at the evidentiary hearing.

But the other 12 topics do not bear on the issues before the Court, which renders these subpoenas "unreasonable and oppressive" and therefore subject to modification. Tenn. R. Civ. P. 45.07. These topics fall into four categories:

**1. Topics potentially mooted by agreement**. As discussed, the parties may yet resolve the issues of Pike's transportation and observation, as well as her request to have a spiritual advisor in the execution chamber during the execution. That would moot all topics having to do with Pike's mental health conditions as implicated by issue (2) in the Supreme Court's order, namely subpoena topics 10-12. It would also moot topic 15, which deals with religious accommodations.

**2. Qualifications of the special operations team and physician (Topics 1 and 3)**. None of the issues referred by the Supreme Court names central IV access or the qualifications of the physician named in the protocol who can set a central IV line, if necessary. Nor do they mention the special operations team, which is not responsible for securing IV access under the protocol. These topics therefore have no bearing on any issue before the Court.

Pike may argue that she has pleaded an alternative method of execution of lethal injection via central IV line set by a qualified physician, but the qualifications of any past or future physician who may potentially set a central IV line are not relevant for two reasons.

1. Under the governing *Baze/Glossip* test established by the United States Supreme Court, Pike's burden is to plead an alternative *method* of execution. *Bucklew*, 587 U.S. at 134. A method of execution is a distinct way of causing death. Tennessee's legislature has approved two: lethal injection and electrocution. Tenn. Code Ann. § 40-23-114. Likewise, federal and state precedent equates a method of execution with a distinct way to cause death, such as nitrogen hypoxia (*Bucklew*, 587 U.S. at 141–42), firing squad (*Nichols v. Skrmetti*, No. 3:25-CV-442, 2025 WL 3299727, at *21–23 (M.D. Tenn. Nov. 26, 2025)), a single bullet to the back of the head (*id*.), or lethal injection with a different chemical or combination of chemicals (*Abdur'Rahman*, 558 S.W.3d at 623–25); *see also Bucklew*, 587 U.S. at 134 (listing "hanging, the firing squad, electrocution, and lethal injection" as "traditionally accepted methods of execution"). A mere personnel swap to a physician whom Pike considers to be qualified is not a method of execution; at best, it is a "slightly or marginally safer alternative" that does not implicate judicial review. *Abdur'Rahman*, 558 S.W.3d at 615. The same is true of Pike's supposed alternative of lethal injection with a 23-gauge butterfly needle. Thus, the only valid alternative Pike has named is execution by hanging.

2. Even if the Court considers this a validly pleaded alternative method of execution, the qualifications of any past or future physician have nothing to do with the referred issue of whether this alternative would "significantly reduce a substantial risk of severe pain" compared to the protocol as written. *Baze*, 553 U.S. at 52. That is because the Court must assume, at the pleading stage, that the alternative physician who places the central line would be qualified as Pike states. That alternative is compared to the peripheral IV that the protocol requires, because as written, a central IV line is only used "if necessary." Protocol at 20, attached as Exhibit 4. It is therefore irrelevant and a waste of the Court's resources to delve into the qualifications of any past or future physician based on speculation about whether a central IV line will be necessary.

**3. Information about pentobarbital (Topics 4-5)**. The Supreme Court's referred issues say nothing about pentobarbital. The issues before this Court concern IV access, not the chemicals used in the execution process. These topics are plainly irrelevant.

Moreover, these topics seek identifying information about Tennessee's pentobarbital that is privileged and confidential under binding precedent, state law, and common-law privilege: expiration and beyond-use dates, concentration, chain of custody information, quantities available to the State, and testing results. This information is confidential and not subject to discovery for the reasons discussed in the State's recent briefing before the Tennessee Court of Appeals in *Kerrigan v. Newport*, No. E2025-01974-COA-R10-CV at 21-31, attached as Exhibit 5.

**4. Unrelated and irrelevant protocol procedures (Topics 6-7, 13, 16).** Again, the issues referred to this Court have nothing to do with the information sought in these topics. Topic 6 seeks to know how the State intends to prevent Pike from experiencing *any* pain and suffering during her execution. That question is foreclosed by precedent. Nothing in the U.S. or Tennessee Constitutions requires a painless execution. *Glossip*, 576 U.S. at 869 ("[T]he Constitution does not

require the avoidance of all risk of pain."). Topic 7 is simply a series of questions about what the Protocol says on its face about how it applies to any unique characteristics of any inmate. The answers to these questions are apparent from reading the Protocol, which speaks for itself. There is no need for testimony on this topic. Topic 13 deals with resuscitation and emergency medical care in the course of an unsuccessful execution. This too is foreclosed by precedent; the Tennessee Supreme Court has rejected the notion that the State is obligated to attempt resuscitation during or after an execution. *West,* 519 S.W.3d at 567 ("The intended result of an execution is to render the inmate dead. Therefore, as a result, the State is under no obligation to attempt revival efforts.") And finally, Topic 16 deals with Pike's counsel's access to a phone during her execution. This topic has no bearing on any issue referred to this Court.

## II. Pre-Hearing Discovery Is Not Contemplated In the Supreme Court's Order and Is Unduly Burdensome.

Pike's interrogatories and requests for admission are procedurally improper and unduly burdensome. The Court should rule that the State is not obligated to respond. The Parties and the Court will be best served if the Parties are free to focus on preparing evidence and experts for testimony in less than two weeks' time.

The Supreme Court placed several conditions on how this Court can dispose of the issues referred to it. One of those conditions is that this Court will "conduct an evidentiary hearing and any other additional hearings" on "the matters specifically referred" in the Supreme Court's order. Sup. Ct. Order at 1-2. That order contemplates that this Court will "receive evidence" and schedule the hearings on an expedited basis, such that the Court can submit findings of fact and conclusions of law to the Supreme Court no later than August 21, 2026. *Id*. at 2. Nowhere does the order contemplate expedited pre-hearing discovery.

For that reason alone, the Court should deem Pike's discovery requests improper. What is more, those same requests include many of the irrelevant topics from Pike's subpoenas, which are improper for the reasons outlined above. To streamline these proceedings and avoid last-minute wrangling over discovery issues that could require Supreme Court review, this Court should put a stop to Pike's discovery maneuvers and direct the Parties to focus on preparing for the hearing.

Finally, if the Court finds that discovery is not foreclosed, then it must consider the "needs of the case" and "limitations on the parties' resources." Tenn. R. Civ. P. 26.02. While the proceedings before this Court implicate important issues, there is no need to issue rushed decisions on discovery orders in a brand-new proceeding created just months ago by the Supreme Court. The evidentiary hearing in this Court will begin in less than two weeks; forcing any Party to engage in written discovery while preparing witnesses for the hearing will be unduly burdensome.

## CONCLUSION

The Court should quash Pike's Notice of Depositions or modify them to exclude irrelevant topics, namely all topics except for numbers 2, 8-9, 14, and 17. The Court should also deem Pike's discovery requests to be improper and order that no response is required.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was filed and served on this the 31st day of July 2026, upon:

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# CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
## SUBPOENA

STATE OF
TENNESSEE Vs.
CHRISTA GAIL PIKE

Case Number: 58183
Subpoena Number: 7130309
Issue Date: 07/22/2026

Mike Hammond
Mike Hammond, Clerk

To: TN DEPT OF CORRECTIONS
C/O JONATHAN SKRMETTI AG AND REP ATTN: WILL Ayers
500 CHARLOTTE AVE
NASHVILLE, TN 37219

**WITNESS PLEASE NOTE**
**You must be present in the Court named above, on the day and the time stated. Failure to appear may result in Court action against you by the Court before whom you are to appear.**

**YOU ARE HEREBY REQUIRED TO APPEAR BEFORE THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**

**ON: 08/12/2026 09:00 AM**

**AT:** KNOX COUNTY CRIMINAL COURT DIVISION 3
CITY-COUNTY BUILDING
400 MAIN STREET 149
KNOXVILLE, TN 37902

To testify on behalf of the [ ] State of Tennessee [ ✘ ] Defendant(s) as a Witness in the above noted case.

**BRING WITH YOU THE FOLLOWING:**
SEE ATTACHED

**Questions? - Call (865) 215-2515** if you are a state witness with questions about your court appearance.

For **Americans with Disabilities Act** assistance, please contact Allison Major, J.D. at ada.judicial@knoxcounty.org or (865) 215-4437. TTY (865) 215-2497

**Return of Service:** Came hand this date and executed by:

> Delivering the within subpoena to the Witness named herein: [ ] By Mail [ ] In Person

> Unable to serve: [ ] Insufficient Address [ ] Other Reason: _____

Date: _____ By (Name and Title): _____

**CAPITAL CASE**
**(Execution Date: September 30, 2026)**
**Case No. M2020-01156-SC-DPE-DD**

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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILE**

Christa Gail Pike,
Movant,

v.

State of Tennessee,
Respondent.

Criminal Court for Knox County
No. 58183A

---

**Exhibit A**

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**Topic 1: Composition, Selection, Qualifications, and Training of the Execution Team.** The selection, qualifications, certifications, licenses, training, and gender of all members of the Execution Team, including the Special Operations Team, Restraint Team, and Escort Team; the qualifications of the "qualified third party" providing vascular access/IV therapy training; and each team member's experience performing, participating in, or assisting with executions.

**Topic 2: IV Team Qualifications and Training in Venous Access on Patients with Difficult Veins.** The qualifications, certifications, and training of the IV Team, including any training on IV insertion on patients with small, compromised, or difficult-to-access veins; training on the use of 23-gauge butterfly needles; and any prior experience by IV Team members or the Physician in drawing blood from or inserting an IV into Christa Pike.

**Topic 3: Central Line Capability and the Physician's Qualifications.** The qualifications, training, and certification of the Physician designated for Pike's execution, including whether the Physician is qualified and certified to place a central venous line; the qualifications of the physician who attempted to place a central line during the Carruthers attempted execution; and whether that physician is still employed or engaged by TDOC.

**Topic 4: Chemicals Used in Lethal Injection — Pentobarbital.** The specific chemicals to be used under the current protocol, including the drug name, dosage, concentration, volume, and expiration; TDOC's knowledge of the primary and secondary effects of the specific chemicals to be used; and any assessment of whether the risk of pulmonary edema is heightened for Pike given her thrombocytosis.

**Topic 5: Testing, Quality Assurance, and Chain of Custody of Execution Drugs.** All testing performed on the pentobarbital to be used in Pike's execution, including testing for potency, sterility, and endotoxins; the chain of custody of execution drugs from point of receipt to administration; quality assurance and quality control measures; "recommended guidelines" for safe transportation and storage; expiration and beyond-use dates; and whether TDOC has procured sufficient quantities to account for the risk that Pike's thrombocytosis may require higher or multiple doses.

**Topic 6: Procedures for Assessing and Preventing Pain and Suffering During Execution.** All procedures, processes, or measures used or taken by TDOC to determine whether an inmate experiences pain and suffering during an execution, and all procedures, processes, or measures used or taken to ensure that an inmate does not experience pain and suffering, including assessments of consciousness.

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# CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
## SUBPOENA

STATE OF
TENNESSEE Vs.
CHRISTA GAIL PIKE

Case Number: 58183
Subpoena Number: 7130310
Issue Date: 07/22/2026

Mike Hammond
Mike Hammond, Clerk

To: TN DEPT OF CORRECTIONS
C/O JONATHAN SKRMETTI AG AND REP ATTN: WILL
500 CHARLOTTE AVE
NASHVILLE, TN 37219

**WITNESS PLEASE NOTE**
**You must be present in the Court named above, on the day and the time stated. Failure to appear may result in Court action against you by the Court before whom you are to appear.**

**YOU ARE HEREBY REQUIRED TO APPEAR BEFORE THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**

**ON: 08/13/2026 09:00 AM**

**AT:** KNOX COUNTY CRIMINAL COURT DIVISION 3
CITY-COUNTY BUILDING
400 MAIN STREET 149
KNOXVILLE, TN 37902

To testify on behalf of the [ ] State of Tennessee [ ✘ ] Defendant(s) as a Witness in the above noted case.

**BRING WITH YOU THE FOLLOWING:**
SEE ATTACHED

**Questions? - Call (865) 215-2515** if you are a state witness with questions about your court appearance.

For **Americans with Disabilities Act** assistance, please contact Allison Major, J.D. at ada.judicial@knoxcounty.org or (865) 215-4437. TTY (865) 215-2497

**Return of Service:** Came hand this date and executed by:

> Delivering the within subpoena to the Witness named herein: [ ] By Mail [ ] In Person

> Unable to serve: [ ] Insufficient Address [ ] Other Reason: _____

Date: _____ By (Name and Title): _____

**CAPITAL CASE**
**(Execution Date: September 30, 2026)**
**Case No. M2020-01156-SC-DPE-DD**

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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILE**

Christa Gail Pike,
Movant,

v.

State of Tennessee,
Respondent.

Criminal Court for Knox County
No. 58183A

---

**Exhibit A**

---

**Topic 1: Composition, Selection, Qualifications, and Training of the Execution Team.** The selection, qualifications, certifications, licenses, training, and gender of all members of the Execution Team, including the Special Operations Team, Restraint Team, and Escort Team; the qualifications of the "qualified third party" providing vascular access/IV therapy training; and each team member's experience performing, participating in, or assisting with executions.

**Topic 2: IV Team Qualifications and Training in Venous Access on Patients with Difficult Veins.** The qualifications, certifications, and training of the IV Team, including any training on IV insertion on patients with small, compromised, or difficult-to-access veins; training on the use of 23-gauge butterfly needles; and any prior experience by IV Team members or the Physician in drawing blood from or inserting an IV into Christa Pike.

**Topic 3: Central Line Capability and the Physician's Qualifications.** The qualifications, training, and certification of the Physician designated for Pike's execution, including whether the Physician is qualified and certified to place a central venous line; the qualifications of the physician who attempted to place a central line during the Carruthers attempted execution; and whether that physician is still employed or engaged by TDOC.

**Topic 4: Chemicals Used in Lethal Injection — Pentobarbital.** The specific chemicals to be used under the current protocol, including the drug name, dosage, concentration, volume, and expiration; TDOC's knowledge of the primary and secondary effects of the specific chemicals to be used; and any assessment of whether the risk of pulmonary edema is heightened for Pike given her thrombocytosis.

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# CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
## SUBPOENA

STATE OF
TENNESSEE Vs.
CHRISTA GAIL PIKE

Case Number: 58183
Subpoena Number: 7130311
Issue Date: 07/22/2026

Mike Hammond
Mike Hammond, Clerk

To: TN DEPT OF CORRECTIONS
C/O JONATHAN SKRMETTI AG AND REP ATTN: WILL Ayers
500 CHARLOTTE AVE
NASHVILLE, TN 37219

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Date: _____ By (Name and Title): _____

**CAPITAL CASE**
**(Execution Date: September 30, 2026)**
**Case No. M2020-01156-SC-DPE-DD**

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**TENNESSEE SUPREME COURT**

| | | |
|---|---|---|
| **STATE OF TENNESSEE** | ) | **Criminal Court for Knox County No. 58183A** |
| **v.** | ) | |
| **CHRISTA GAIL PIKE** | ) | **No. M2020-01156-SC-DPE-DD** |
| | ) | **Special Master Judge Mark Ward** |

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**PIKE'S EXPEDITED INTERROGATORIES AND REQUESTS FOR ADMISSION TO THE TENNESSEE DEPARTMENT OF CORRECTION**

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Pursuant to the Supreme Court's Order appointing a special master on July 10, 2026, Rules 26, 33, 36, and 53 of the Tennessee Rules of Civil Procedure, Christa Pike respectfully requests that the Tennessee Department of Corrections serve responses to Expedited Interrogatories and Requests for Admission within seven (7) days on the undersigned counsel.

## DEFINITIONS AND INSTRUCTIONS

1. Each Interrogatory shall be answered separately and fully in writing under oath.
2. If you object to any Interrogatory in whole or in part, state in complete detail the nature of your objection and answer any portion of the Interrogatory to which you do not object. An objection to part of an Interrogatory does not excuse a failure to answer the remainder.
3. If you cannot fully answer any particular Interrogatory after exercising due diligence to make inquiry and to secure the necessary information, state whatever information or knowledge you have concerning the unanswered portion, explain your inability to answer more fully, and identify all persons who may possess additional responsive information.
4. If you claim that any information responsive to an Interrogatory is privileged, protected by work product, or otherwise exempt from disclosure, provide for each such item: (a) the nature of the privilege or protection asserted; (b) the factual basis supporting the claim of privilege or protection; (c) the date of the communication or document; (d) the identity of all persons who authored, sent, received, or were present for the communication; and (e) the general subject matter of the withheld information, described in sufficient detail to enable the Court to assess the claim of privilege without revealing the protected information.

5. These Interrogatories are continuing in nature. If you obtain or become aware of additional information responsive to any Interrogatory after serving your initial answers, you are obligated to supplement your responses promptly in accordance with the Tennessee Rules of Civil Procedure.

6. Each Interrogatory shall be construed to request all information within your possession, custody, or control, or within the possession, custody, or control of your agents, employees, representatives, attorneys, or any other person or entity acting on your behalf.

7. Where the answer to an Interrogatory may be derived or ascertained form the records of the party, the responding party may specify and produce business records (including electronically stored information) in lieu of or in addition to providing a response, if the response may be sufficiently derived from the produced records and the burden of identifying the answer is substantially the same for both parties.

**DEFINITIONS**

1. As used in these Interrogatories and Requests for Admission, the following terms have the meanings set forth below:

2. "TDOC" or "the Department" means the Tennessee Department of Correction, including all of its divisions, offices, units, facilities, predecessors, successors, and any agent, employee, representative, contractor, or other person acting on its behalf.

3. "RMSI" means Riverbend Maximum Security Institution, including all of its personnel, predecessors, successors, and any agent, employee, representative, or other person acting on its behalf.

4. "DJRC" means the Debra K. Johnson Rehabilitation Center in Nashville, Tennessee, including all of its personnel, predecessors, successors, and any agent, employee, representative, or other person acting on its behalf.

5. "Commissioner" means Frank Strada, Commissioner of TDOC, as well as any predecessor or successor, and any agent, representative, or designee acting on his behalf.

6. "Warden" means Kenneth Nelsen, Warden of RMSI, and Jordan Clark, Warden of DJRC, as applicable, as well as any predecessor or successor to either, and any agent, representative, or designee acting on their behalf.

7. "Protocol" or "current protocol" means the Tennessee Department of Correction Lethal Injection Execution Protocol signed by the Commissioner on or about January 8, 2025, attached hereto as Exhibit A, including all appendices, forms, post orders, and any amendments, revisions, modifications, or deviations thereto.

8. "Execution Team" means each and every individual who has previously served or may serve in a role identified as part of the Execution Team under the Protocol, including but not limited to the Commissioner's designee, the Warden, the Special Operations Team, the Restraint Team, the Escort Team, the IV Team, and the Physician, as those terms are used in Exhibit A.

9. "IV Team" means the specially trained non-department personnel selected to establish IV lines for the administration of lethal injection chemicals, as described in Exhibit A, Section II, p. 8, and Section III, pp. 11–12.

10. "Physician" means the non-department physician selected by the Commissioner to determine that the inmate is deceased and to establish central line IV access if necessary, as described in Exhibit A, Section II, p. 8.

11. "LIC" or "lethal injection chemicals" means pentobarbital and any other drug or chemical that may be or could be used in carrying out an execution by lethal injection under the Protocol.

12. "Execution Drugs" means pentobarbital; any active pharmaceutical ingredient used to produce pentobarbital; sterile saline solution; and any other drug, chemical, or substance that may be or could be used during an execution under the Protocol.

13. "Pike" or "Movant" means Christa Gail Pike, TDOC inmate currently housed at DJRC under sentence of death.

14. "Communication" means any transmission of information by any means, whether oral, written, electronic, graphic, pictorial, or otherwise, including but not limited to telephone conversations or messages, letters, emails, text messages, memoranda, meetings, videoconferences, and personal conversations.

15. "Document" or "documents" means all written, recorded, or graphic matter of any kind, however produced or reproduced, including but not limited to correspondence, letters, emails, text messages, memoranda, notes, reports, studies, analyses, records, policies, manuals, protocols, guidelines, contracts, agreements, invoices, photographs, video and audio recordings, and electronically stored information, including all drafts, originals, and non-conforming copies containing deletions, insertions, handwritten notes, or comments.

16. "Identify" or "identification," when used with respect to a person, means to state the person's full name, title or position, employer, business address, and business telephone number. When used with respect to a document, it means to state the document's title, date, author, addressees, present location, and a brief description of its contents. To the extent an "identity" is protected by the execution secrecy statute, the remainder of the Interrogatory should be answered and the identity of the individual or persons may be omitted.

17. "Describe" means to provide a full, complete, and detailed narrative account.

18. "You," "your," and "yours" refer to the Tennessee Department of Correction, including all persons and entities encompassed within the definition of "TDOC" above.

19. "Relate to," "related to," or "relating to" means constituting, containing, recording, referencing, memorializing, describing, discussing, summarizing, disclosing, concerning, reflecting, or referring to, in whole or in part.

20. The connectives "and" and "or" shall be construed disjunctively or conjunctively, as necessary, to include in the response all information that might otherwise be excluded.

## INTERROGATORIES

**INTERROGATORY NO. 1:** Describe with specificity every assessment, evaluation, or review TDOC has conducted, or caused to be conducted, regarding how Christa Pike's thrombocytosis, myeloproliferative disorder, small and compromised veins, complex PTSD, and bipolar disorder may affect the efficacy of the current lethal injection protocol or the risk of harm to Pike during execution, including the identity of every person who participated in or contributed to each such assessment, the date on which it occurred, and all conclusions reached.

**INTERROGATORY NO. 2:** Describe with specificity every modification, deviation, or accommodation to the current lethal injection protocol that the Commissioner has ordered, reviewed, or declined to order to address Christa Pike's individual medical and psychological conditions, including the date and substance of each such decision and the identity of all persons involved in making it.

**INTERROGATORY NO. 3:** For the Physician designated for Pike's execution, describe with specificity the Physician's qualifications, training, certifications, licensure status, and experience in the placement of IVs and central venous lines, including the number of central lines the Physician has placed, the dates on which they were placed, and whether the Physician has placed a central line within the last ten years.

**INTERROGATORY NO. 4:** For each member of the IV Team designated for Pike's execution, describe with specificity each member's qualifications, certifications, training, licensure status, and experience in achieving and maintaining peripheral IV access on patients with small, compromised, or difficult-to-access veins, including whether any member has received training on the use of 23-gauge butterfly needles and whether any member has ever attempted to draw blood from or insert an IV into Christa Pike.

**INTERROGATORY NO. 5:** Describe with specificity all testing, including testing for potency, sterility, and endotoxins, that has been performed or will be performed on the pentobarbital to be used in Pike's execution, the specific tests conducted, the dates on which testing occurred or will occur, and the results of each test. If endotoxin testing has not been performed, state the reasons why.

**INTERROGATORY NO. 6:** Describe with specificity TDOC's contingency plan if the execution team cannot achieve or maintain peripheral IV access on Pike, including: (a) the maximum number of IV insertion attempts permitted before an alternative method of access is attempted; (b) the procedure for transitioning to central line access; (c) the criteria for determining that an execution should be halted; and (d) all provisions, if any, for the delivery of medical care or resuscitation to Pike in the event of a failed or botched execution.

**INTERROGATORY NO. 7:** State the purpose, justification, and factual basis for imposing a fourteen-day isolation period on inmates who select or default to lethal injection, as compared to the three-day isolation period imposed on inmates who select electrocution, and describe all steps

TDOC has taken or plans to take to address the impact of the fourteen-day isolation period on Pike given her complex PTSD, bipolar disorder, history of sexual assault, and nearly thirty years of prior solitary confinement.

**INTERROGATORY No. 8:** Identify qualifications, certifications, licenses, training, and sex of all members of the Special Operations Team, Restraint Team, Escort Team, and guards who will be responsible for monitoring Pike during the isolation period and 48-hours preceding execution.

**INTERROGATORY NO. 9:** Describe with specificity all procedures, processes, or measures used or taken by TDOC to determine whether an inmate is conscious, experiencing pain, or suffering during an execution under the current protocol, including all assessments of consciousness performed, the training of personnel conducting such assessments, and the medical or scientific basis for TDOC's conclusion, if any, that such measures will accurately determine whether an inmate is experiencing pain.

**INTERROGATORY NO. 10:** State whether TDOC has evaluated how Pike's thrombocytosis will interact with pentobarbital's known propensity to cause pulmonary edema and identify any measures TDOC has taken or plans to take to mitigate the heightened risk of a conscious drowning death for Pike.

**INTERROGATORY NO. 11:** For each alternative method of execution alleged in Pike's motion (a) the use of a 23-gauge butterfly needle inserted by qualified and trained medical staff to achieve and maintain peripheral IV access; (b) the placement of a central venous line by a qualified, trained, and certified medical doctor who has placed a central line within the last decade; and (c) execution by hanging), describe with specificity all facts known to TDOC that tend to render each alternative unavailable, infeasible, or not readily implementable, and whether TDOC contends the alternative would not significantly reduce the substantial risk of serious illness and needless suffering posed by the current protocol as applied to Pike.

**INTERROGATORY NO. 12:** State the name and, if known, the address and telephone number of each individual likely to provide relevant information or testimony—along with the subjects of that information or testimony—that TDOC may use to support its claims or defenses at the evidentiary hearing currently scheduled for August 11–14, 2026, unless the use would be solely for impeachment.

**INTERROGATORY NO. 13:** Provide a description by category and location of all documents, electronically stored information, and tangible things that TDOC may use to support its claims or defenses at the evidentiary hearing currently scheduled for August 11–14, 2026, unless the use would be solely for impeachment.

## REQUESTS FOR ADMISSION

**REQUEST FOR ADMISSION NO. 1:** Admit that the current lethal injection protocol does not require TDOC to evaluate an inmate's medical history, physical condition, or veins prior to execution.

**REQUEST FOR ADMISSION NO. 2:** Admit that the current lethal injection protocol does not account for unique physical, medical, or psychological characteristics of individual inmates that may affect the efficacy of the protocol or the risk of harm during execution.

**REQUEST FOR ADMISSION NO. 3:** Admit that Christa Pike suffers from thrombocytosis, a blood condition characterized by a marked elevation in platelet levels, which is due to a rare form of blood cancer called myeloproliferative disorder, and that TDOC records confirm this diagnosis.

**REQUEST FOR ADMISSION NO. 4:** Admit that pentobarbital has been known to cause acute pulmonary edema.

**REQUEST FOR ADMISSION NO. 5:** Pike's thrombocytosis will very likely produce an even more severe pattern of pulmonary edema than experienced by inmates without that condition

**REQUEST FOR ADMISSION NO. 6:** Admit that medical staff at the Debra K. Johnson Rehabilitation Center currently use a 23-gauge butterfly needle to perform blood draws on Pike because of her small, compromised veins.

**REQUEST FOR ADMISSION NO. 7:** Admit that the current lethal injection protocol does not provide for the provision of medical care, resuscitation, or emergency medical intervention to the inmate in the event of a failed or botched execution, and that the protocol's only contingency if the inmate is not deceased after administration of Primary Set A and a 5-minute waiting period is to prepare and administer a Backup Set B of syringes.

**REQUEST FOR ADMISSION NO. 8:** Admit that during the attempted execution of Tony Carruthers on May 21, 2026, the execution team could not establish a backup IV line as required by the current protocol; the physician hired by TDOC to insert a central line was unable to do so; and the attempted execution was abandoned after approximately one and a half hours.

**REQUEST FOR ADMISSION NO. 9:** Admit that Christa Pike suffers from complex PTSD and bipolar disorder, that TDOC records confirm both diagnoses, and that Pike's complex PTSD results from a history of repeated sexual and physical assault from childhood through age 17.

**REQUEST FOR ADMISSION NO. 10:** Admit that after transfer to Riverbend Maximum Security Institution, a men's facility, 48 hours before her execution, Pike will be isolated and observed constantly by male corrections officers until her execution, and that the current protocol does not provide for female corrections officers to observe female inmates during the death watch period.

**REQUEST FOR ADMISSION NO. 11:** Admit that autopsies of Byron Black, executed on August 5, 2025, and Harold Wayne Nichols, executed on December 11, 2025, each revealed the presence of pulmonary edema.

| | |
|---|---|
| **From:** | Will Ayers |
| **To:** | "Luke Ihnen" |
| **Cc:** | David Wickenheiser; Susanne Bales; Stephen Ferrell; Patricia McIntosh; Catherine Cline; Samantha Morris; Matthew Kubicek |
| **Bcc:** | "Pike_ Christa Gail v_ Skrmetti_ et al_ _ 26000635 Email" |
| **Subject:** | RE: Pike subpoenas |
| **Date:** | Thursday, July 30, 2026 9:58:04 AM |
| **Attachments:** | image001.png |

Thanks, Luke. We appreciate the flexibility on the subpoena topics. There are a couple others we'd like to confer on. We'd also like to speak about the discovery requests before we declare an impasse. We're available this afternoon between 1-3 and after 4 ET.

Can you forward the email from Paul? As for transport, we could discuss filing a joint motion to vacate the transport order. If that's unsuccessful we can forward your requests to TDOC or work out an agreed order.

---

**From:** Luke Ihnen <Luke_Ihnen@fd.org>
**Sent:** Thursday, July 30, 2026 9:11 AM
**To:** Will Ayers <Will.Ayers@ag.tn.gov>
**Cc:** David Wickenheiser <David.Wickenheiser@ag.tn.gov>; Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>; Patricia McIntosh <Patricia_McIntosh@fd.org>; Catherine Cline <Catherine.Cline@ag.tn.gov>; Samantha Morris <Samantha.Morris@ag.tn.gov>; Matthew Kubicek <Matthew.Kubicek@ag.tn.gov>
**Subject:** RE: Pike subpoenas

Hi All:

Sorry for the delay, I know we've all been busy. A few things:

**Subpoena**

- We will agree to withdraw the topics redacted from the attached subpoena. I think that addresses some of your concerns. We believe the rest are relevant to the topics and issues referred to the Special Master. With regard to certifications (or any other topic aside from Topics 3 and 14—see below), we will agree that any identifying information for specific individuals need not be disclosed.
- We will agree to hold Topic 3 and your selected portion of Topic 14 in abeyance pending the TSC decision in the Hines litigation as we believe the physician who is called to place a central line is relevant to the topics and issues referred to the Special Master.

**Protective Order**

- We are happy to agree to a PO but the draft you circulated is overly broad. We believe the physician who is called to place a central line is relevant to the topics and issues referred to the Special Master and if the TSC decides that the Hines team is entitled

that information then we believe we would be too. I think the language in the PO you circulated forbids that. Similarly, we have pending litigation in the COA over TDOCs overly broad interpretation of the secrecy statute and cannot agree to a PO that endorses that reading. I am attaching the PO that we entered in the Nichols litigation, which I believe is similar to the one in the Burns litigation. We would agree to something along these lines.

- We are also happy to discuss measures that can be taken at the hearing, since cameras will be present, to conceal identities if that need arises.

**Discovery**

-

- I think we are at an impasse re: written discovery. We plan to file a motion for expedited discovery today re: our ROGs and RFAs.

**Christa Transport Order**

-

- Paul Bruno responded to my email (the one I circulated) this morning that the hearing **will** be in Knoxville. To that end, Christa has asked that we ensure she is entitled to the hygiene products she was denied the last time she was in Knoxville, or that she be allowed to bring these things with her. We would like to do an agreed order on this so there is no confusion for TDOC. I'm happy to prepare the order. Here is the list:

3-4 white t shirts (med)
3-4 white panties (size 7-8)
1 white sports bra (med-large)
1 set white thermals (med)
4 white socks
Deodorant that works (degree, not the indigent stuff)
Adequate amount of shampoo
Soap or body wash
Toothbrush & toothpaste
Polygrip or Fixodent for teeth
Chapstick
Ponytail holder
Her medication
Caffeine (coffee, coke, energy drinks) to prevent migraine

Sorry for the rapid fire. Let me know your thoughts on these.

Thanks!

Luke P. Ihnen

Assistant Federal Defender

---

**From:** Will Ayers <Will.Ayers@ag.tn.gov>
**Sent:** Wednesday, July 29, 2026 6:05 PM
**To:** Luke Ihnen <Luke_Ihnen@fd.org>
**Cc:** David Wickenheiser <David.Wickenheiser@ag.tn.gov>; Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>; Patricia McIntosh <Patricia_McIntosh@fd.org>; Catherine Cline <Catherine.Cline@ag.tn.gov>; Samantha Morris <Samantha.Morris@ag.tn.gov>; Matthew Kubicek <Matthew.Kubicek@ag.tn.gov>
**Subject:** RE: Pike subpoenas

Luke, just following up to see about conferring on these discovery issues. If y'all have time tomorrow afternoon, we could talk then.

We anticipate having a response to the spiritual accommodation request as well as some proposed agreed language regarding transport and observation soon.

I'm also attaching a proposed protective order that's designed to honor the provisions of Tenn. Code Ann. 10-7-504(h)(1) regarding information about the identities of execution participants and suppliers. Please let us know if y'all would agree to entry of this order or if you have any proposed edits.

---

**From:** Luke Ihnen <Luke_Ihnen@fd.org>
**Sent:** Tuesday, July 28, 2026 1:10 PM
**To:** Will Ayers <Will.Ayers@ag.tn.gov>
**Cc:** Protocol team <Protocolteam@ag.tn.gov>; Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>; Patricia McIntosh <Patricia_McIntosh@fd.org>
**Subject:** RE: Pike subpoenas

Hi Folks:

A couple of things.

First, we would like to get your position either way on the discovery requests we sent.

Second, we received the order from Judge Ward granting media access in Knoxville. I sent Paul an email to clarify whether that meant Ward had denied our request to move the hearing or whether he was still considering it.

Thanks,

Luke P. Ihnen
Assistant Federal Defender

---

**From:** Luke Ihnen
**Sent:** Monday, July 27, 2026 12:50 PM
**To:** 'Will Ayers' <Will.Ayers@ag.tn.gov>
**Cc:** Protocol team <Protocolteam@ag.tn.gov>; Susanne Bales <Susanne_Bales@fd.org>; Stephen

Ferrell <Stephen_Ferrell@fd.org>; Patricia McIntosh <Patricia_McIntosh@fd.org>
**Subject:** RE: Pike subpoenas

Will and Team:

It might be easier if you all tell us who plans to appear subject to the subpoena and then we can raise objections, etc. from there?

I am attaching the limited discovery requests we discussed on Friday.

Thanks,

Luke P. Ihnen
Assistant Federal Defender

---

**From:** Will Ayers <Will.Ayers@ag.tn.gov>
**Sent:** Friday, July 24, 2026 12:44 PM
**To:** Luke Ihnen <Luke_Ihnen@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>
**Cc:** Protocol team <Protocolteam@ag.tn.gov>
**Subject:** Pike subpoenas

Luke and Steve, here's a copy of one of the subpoenas with sections highlighted that we don't believe are relevant to any of the five issues from the TSC order. As I mentioned, some of these we might not be able to agree on, but let us know if you can agree that any of these topics are not really before the special master. This is of course without prejudice to raising these issues later on if the TSC orders further briefing or development.

**Will Ayers**
Assistant Attorney General
Office of the Tennessee Attorney General
Law Enforcement and Special Prosecutions Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 253-3856
will.ayers@ag.tn.gov

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# TENNESSEE DEPARTMENT OF CORRECTION

# LETHAL INJECTION EXECUTION PROTOCOL



APP-000875

# COMMISSIONER'S STATEMENT

The Tennessee Department of Correction ("the Department") is responsible for the incarceration of convicted felons serving sentences ranging from one year to death. Inmates sentenced to death are executed at Riverbend Maximum Security Institution ("RMSI").

As Commissioner of the Department, it is my duty to oversee the humane and constitutional execution of inmates sentenced to death in Tennessee. Tennessee law establishes lethal injection as the primary method for carrying out a death sentence and authorizes the Department to promulgate rules and regulations to facilitate executions by lethal injection. This Protocol will be reviewed as needed by me and/or my designee(s).

Commissioner

1-8-2025
Date



APP-000876

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APP-000878

# I. INTRODUCTION

This Protocol summarizes the most significant events, Department procedures, and personnel responsibilities for carrying out the Tennessee Supreme Court's orders on executions by lethal injection. It will be used to ensure the humane and constitutional execution of inmates sentenced to death in Tennessee. There will be no deviation from this Protocol except by order of the Commissioner, when deemed necessary to effectuate the purpose of this Protocol.



APP-000879

# II. PRIMARY RESPONSIBILITIES OF DEPARTMENT AND NON-DEPARTMENT PERSONNEL

## CENTRAL OFFICE PERSONNEL

### COMMISSIONER

The Commissioner is responsible for overseeing the administration of humane and constitutional executions in Tennessee.

[redacted]

[redacted] is responsible for the planning and overall direction of all pre-execution, execution, and post-execution activities.

[redacted]

[redacted] is responsible for notifying the inmate and the inmate's counsel of the execution date, obtaining a completed Affidavit for Method of Execution from the inmate, and serving as custodian of the Department's records related to executions in Tennessee.

# PERSONNEL AT RMSI

## WARDEN

The Warden is responsible for carrying out the directives of the Assistant Commissioner of Prison Operations to ensure that this Protocol is followed.

## SPECIAL OPERATIONS TEAM

The Special Operations Team is responsible for preparing the lethal injection chemicals ("LIC") for administration.

## RESTRAINT TEAM

The Restraint Team is responsible for inmate management immediately before, during, and after the execution, including the use of appropriate restraint procedures.

## ESCORT TEAM

The Escort Team is responsible for coordinating the movement of all pre-approved witnesses.

[redacted]

# NON-DEPARTMENT PERSONNEL

## IV TEAM

The IV Team is responsible for establishing properly functioning IV lines for administration of the LIC.

## PHYSICIAN

The Physician is responsible for determining that the inmate is deceased using accepted medical standards and establishing central line IV access if necessary.

## CLERGY

Clergy, [redacted], may be approved in accordance with state law and Department policy to deliver chaplaincy services to the inmate and the inmate's family as requested.



APP-000882

# III. COMPOSITION, SELECTION, AND TRAINING OF DEPARTMENT AND NON-DEPARTMENT PERSONNEL

## COMPOSITION AND SELECTION OF THE EXECUTION TEAM

The Execution Team includes the following individuals and teams:

1. [redacted]

2. RMSI Warden.

3. Special Operations Team: consists of a team leader, two members and one alternate member. The team leader and members are selected by [redacted] with documented approval of the Commissioner.

4. Restraint Team: consists of a team leader, five other members, and two more alternate members. The team leader, members and alternate members are selected by [redacted] with documented approval by the Commissioner.

5. Escort Team: consists of a team leader and at least six other team members. The team leader and members are selected by the Warden.



APP-000883

## SELECTION CRITERIA FOR MEMBERS OF THE EXECUTION TEAM

Members of the Execution Team are selected based on factors that include:

1. Length of service with the Department;
2. Job performance;
3. Professionalism;
4. Review of the individual's personnel file;
5. Staff recommendations;
6. Ability to maintain confidentiality;
7. Willingness to participate;
8. Any other relevant or specialized training related to the position.



APP-000884

## SELECTION OF SPECIALLY TRAINED NON-DEPARTMENT PERSONNEL

Non-department personnel are selected for roles in the execution as follows:

1. IV Team: consists of at least two members who are either physicians, physician assistants, nurses, emergency medical technicians ("EMTs"), paramedics, military corpsman with relevant medical training, or other certified or licensed personnel including those trained in the United States Military. All team members are currently certified, licensed and/or qualified within the United States to place IV lines. IV Team members are selected by the Commissioner.

2. The Physician is selected by the Commissioner.

## SELECTION CRITERIA FOR SPECIALLY TRAINED NON-DEPARTMENT PERSONNEL

Specially trained, non-department personnel are selected based on factors that include:

1. Education, training, and experience;

2. Professionalism;

3. Personal and professional recommendations;

4. Ability to maintain confidentiality;

5. Willingness to participate;

6. Any other relevant or specialized training related to the position.



APP-000885

# PROTOCOL REVIEW, PRACTICE SESSIONS, AND SPECIALIZED TRAINING FOR EXECUTION TEAM MEMBERS

## Review of the Lethal Injection Execution Protocol

1. After selection, the Execution Team, the IV Team, and the Physician must review this Protocol. This review is documented.

2. At least annually, the Warden or designee reviews the Protocol in its entirety with the Execution Team. This review is documented.

## Monthly Practice Sessions

[redacted] ensures that monthly practice sessions are conducted. Practice sessions are attended by the Warden, the Special Operations Team, the Restraint Team, and the Escort Team. These regular practice sessions include simulations of all steps of the execution process beginning 2 hours before the execution, with the following exceptions:

1. Volunteers play the role of the inmate and the Physician.

2. No IV is inserted into the person playing the role of the inmate.

3. Saline solution is substituted for the LIC.

4. A body is not placed in a body bag.

## Additional Pre-Execution Practice Sessions

Additional practice sessions are held at least twice weekly starting two weeks before a scheduled execution. Attendance of all practice sessions during this period is required absent illness or other unavoidable circumstances.

## Documentation of Practice Sessions

All practice sessions are documented with the date and time, as well as the printed names and signatures of all participants.

## Specialized Training for Department Personnel

Members of the Special Operations Team receive training in vascular access/IV therapy by a qualified third party. Updated training is conducted annually.



APP-000886

## CHEMICALS USED IN LETHAL INJECTION

The Department uses the following LIC for executions by lethal injection:

**Pentobarbital** **100 ml of a 50 mg/ml solution (a total of 5 grams)**

The Department will procure a sufficient supply of LIC to be used in lethal-injection executions. The LIC is subject to quality assurance and quality control testing. The Department will follow recommended guidelines for safe transportation and storage of LIC.

LIC will be secured [redacted]

[redacted] and RMSI Warden will conduct a semi-annual inventory of the container to verify its contents and the expiration dates of LIC. An additional inventory will be conducted 30 days before a scheduled execution. All inventories will be conducted by a minimum of two persons and documented in the log. If an inventory reveals expired LIC, appropriate disposal will occur.

[redacted]



APP-000887

# IV. PROCEDURES BEGINNING 30 DAYS BEFORE EXECUTION

**30 Days before the Day of Execution**

I. Central Office Personnel

A. [redacted]

1. Reviews documentation of training.

2. Confirms team leaders and members with documented approval by the Commissioner.

3. Sets pre-execution practice schedule.

4. Confirms that equipment inventory is completed and that any needed maintenance occurs.

5. Verifies and documents with the Warden the LIC to be used, including its quantity and expiration date.

B. Communications: Issues a news advisory about the date and time of the execution.

C. Office of Victim Services: Identifies family members of the victim(s) of the crime(s) for which the inmate was sentenced to death and advises them of the scheduled date and time of the execution.

II. RMSI or Debra Johnson Rehabilitation Center ("DJRC") Personnel

Warden:

1. Collects the Affidavit For Method of Execution from the inmate (if applicable) and provides copies to the Commissioner and [redacted] (See Appendix, p. 25).

2. Provides to the inmate the Affidavit to Select Defense Counsel Witness to Execution and Affidavit to Select Member of Clergy Preparing Inmate for Death. (See Appendix, p. 26).

3. RMSI Warden verifies and documents with the [redacted] the LIC to be used, including the quantity and expiration date.



APP-000888

4. RMSI Warden confirms that equipment inventory is completed and that any needed maintenance occurs.

5. Notifies the inmate about changes to the conditions of confinement over the next 30 days.

**21 Days before the Execution**

Central Office Personnel

Communications:

1. Receives media-witness applications, initiates background investigations on the applications, and advises the Commissioner of any issues arising from the investigations.

2. Sends witness agreement forms (Official Witness Agreement Form, Official Witness/Pool Reporter Agreement Form) to selected witnesses and establishes a deadline to return all completed forms.

**14 Days before the Execution**

I. Central Office Personnel

A. [redacted]

1. Directs the initiation of the Continuous Observation Logs, which record all daily activities of the inmate beginning 14 days before the execution. The logs are maintained at each post where the inmate is located until the execution occurs or a stay of execution is issued.

2. Directs the initiation of the final practice schedule.

B. [redacted]

Finalizes a list of all witnesses and prepares written invitations.



APP-000889

II. RMSI or DJRC Personnel

Warden:

1. Confirms receipt of Affidavit to Select Defense Counsel Witness to the Execution and Affidavit to Select Member of Clergy Preparing Inmate for Death.

2. Directs the transfer of the inmate to a cell for enhanced monitoring.

3. RMSI Warden finalizes arrangements with the [redacted] for disposition of the inmate's body.

4. RMSI Warden confirms maintenance staff are scheduled to be at RMSI at least 4 hours before the scheduled execution.

**48 Hours before the Execution**

I. Central Office Personnel

[redacted]

1. Confirms adequate staffing and vehicles are in place for regular operations and the execution.

2. Ensures that each room in the Capital Punishment Unit receives final inspection specific to its functions. The Capital Punishment Unit includes, but is not limited to, the inmate's cell, contact and non-contact visitation areas, the control room, the secure monitoring area, execution chamber, and lethal injection room.

3. Oversees transfer of female inmate from DJRC to RMSI, if applicable.

II. RMSI Personnel

Warden:

1. Verifies inventory and functionality of equipment in the Capital Punishment Unit.

2. Oversees the transfer of the inmate to a cell in the Capital Punishment Unit.



APP-000890

**12 Hours before the Execution**

RMSI Personnel

Warden:

1. Ensures that access to RMSI during the 12 hours before the execution is limited to:

   a. On-duty Department personnel;

   b. On-duty contract workers;

   c. Volunteers deemed necessary by the Warden;

   d. Approved delivery vehicles;

   e. Law enforcement personnel on business-related matters;

   f. Approved witnesses (i.e. defense counsel, clergy, Attorney General's designee).

2. Initiates lockdown of RMSI that will continue through the duration of the execution.

3. Ensures the inmate concludes the last meal by 12:00 a.m. the night before the execution and that all eating utensils and leftover food are removed from the cell.

4. Ensures non-contact visits and phone calls—excluding visits and calls from the inmate's attorney of record—are concluded 12 hours before the scheduled execution unless expressly approved by the [redacted]

**Day of Execution**

**8:00 a.m.**

A. Commissioner or designee:

Provides a brief overview of the execution for the official witnesses.



APP-000891

B. Special Operations Team:

1. Team Leader retrieves LIC with the Warden and/or [redacted]

2. Confirms that the phones in the execution chamber are operational.

3. Confirms that the camera used to monitor the IV site is operational.

4. Team Leader prepares the syringes of saline and Pentobarbital which shall be labeled as follows:

| CHEMICAL CHART | |
|---|---|
| Syringe | Label |
| 1A | 50 ml Sterile Saline Solution, BLACK |
| 2A | 50ml (50mg/ml solution) Pentobarbital, GREEN |
| 3A | 50ml (50mg/ml solution) Pentobarbital, GREEN |
| 4A | 50 ml Sterile Saline Solution, BLACK |

Preparation of syringes occurs in the Lethal Injection Room.

a. One complete primary set ("Set A") of syringes is prepared and administered in carrying out the death sentence and an additional amount of LIC is available in the Lethal Injection Room for a backup set (Set "B"). Set B is only prepared if the inmate is not deceased after administration of Set A, applicable waiting period, and examination by the Physician.

b. The syringes are labeled, identifying the chemical contained in each syringe by (i) assigned number, (ii) chemical name, (iii) chemical amount and (iv) the designated color, as set forth in the chemical chart above. This information is preprinted on a label, with one label affixed to each syringe to ensure the label remains visible.

c. Once prepared, each syringe is placed into a designated tray in the order in which they are to be administered. The preparation of syringes is documented by a designated member of the Special Operations Team on the Chemical Preparation Time Sheet. (See Appendix p. 27).

5. After the Special Operations Team prepares the primary-Set A



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syringes, the Special Operations Team prepares the IV lines for use by the IV Team. Each IV line consists of a sodium chloride bag, solution set, extension sets, and hemostatic clamps.

C. Escort Team:

1. Official witnesses report to the Administration Building no later than 8:30 a.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 9:45 a.m., where they remain until final movement to the official witness room.

2. Immediate family members of the victim(s) report to the Administration Building no later than 9:15 a.m. They are greeted by the Escort Team, processed through checkpoint, and moved to the conference room in Building 8 no later than 9:45 a.m., where they remain until final movement to the victim witness room.

3. The Escort Team processes, transports, and remains with the pre-approved official witnesses and victim witnesses through the conclusion of the execution and their return to designated staging areas and ensures that each witness group is always separated from the other groups.

4. [redacted] and the Physician are stationed in the capital punishment garage.

**10:00 a.m.**

1. At the command of the Warden, the Restraint Team removes the inmate from the holding cell, places him/her on the gurney, and secures him/her with restraints.

2. The Restraint Team moves the inmate to the execution chamber and secures the gurney. The Restraint Team secures the inmate's arms to arm extensions on the gurney. The Restraint Team confirms that the restraints are not so restrictive as to impede the inmate's circulation, yet sufficient to prevent the inmate from manipulating the catheter and IV lines.

3. The Warden, [redacted] Attorney General or designee, defense counsel witness and clergy, if requested, enter the execution chamber with the inmate.



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4. Once the inmate is secured, the IV Team attaches the leads from the electrocardiograph to the inmate's chest. The IV Team confirms that the electrocardiograph is functioning properly. A backup electrocardiograph is on site and readily available, if necessary.

5. The IV Team determines the IV sites. The IV Team members insert a primary IV catheter and a backup IV catheter. The primary IV catheter is used to administer the LIC. The backup catheter is reserved in case the primary fails.

6. The Special Operations Team Leader ensures that the catheters are properly secured, properly connected to the IV lines, and out of reach of the inmate's hands. The Special Operations Team Leader opens the IV line to start a flow of sterile saline solution in each line and administers at a slow rate to keep the lines open. Any failure of an IV line shall be immediately reported to the Commissioner.

7. If necessary, the Physician will insert a central line.

8. The Escort Team secures official witnesses and victim witnesses in the appropriate witness rooms.

9. The Attorney General/designee, defense counsel witness, and any clergy member are escorted to the official witness room.

10. The camera and audio system are activated from the control room.

**10:10 a.m.**

1. The Warden and [redacted] open the blinds to the witness rooms.

2. The Warden contacts the Commissioner to ensure that no last-minute stay or reprieve has been granted.

3. The Warden asks the inmate if he/she wants to make a last statement.

4. The Warden gives the signal to proceed. The Special Operations Team Leader directs the assigned Special Operations Team Member to confirm the chemical name and order of syringes in the Primary Set A.



APP-000894

5. The Special Operations Team Leader administers all syringes in Primary Set A. In the event of a primary line failure with the first syringe of saline, the Special Operations Team Leader switches to the back-up IV line and administers the complete set of syringes.

6. After the four syringes in Primary Set A have been administered, the Special Operations Team Leader signals to the Warden at which time a 5-minute waiting period begins.

7. After the waiting period, all witness blinds are closed, the camera is disengaged, and the privacy curtains are closed. The Warden asks the Physician to enter the room to examine the inmate and determine if he/she is deceased. The Physician determines whether the inmate is deceased.

8. The Physician reports his findings to the Warden.

9. If the inmate is not deceased, a Backup Set B of syringes is prepared, the blinds are reopened, and steps 5 through 8 are repeated.

10. A designated member of the Special Operations Team will document all information contained on the Lethal Injection Chemical Administration Record (See Appendix, pp. 31-33).

11. The Warden announces that the sentence has been carried out and directs the witnesses to exit.



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# POST-EXECUTION PROCEDURES

1. The Commissioner notifies the Governor or designee and [redacted] via telephone that the sentence has been carried out and the time that death occurred.

2. The IV Team clamps and cuts the IV lines leaving them connected to the inmate for examination by [redacted]

3. [redacted] takes appropriate investigative measures and takes custody of the deceased inmate.

4. Witnesses are escorted out of the Capital Punishment Unit. Each group of witnesses is kept separate from the other.

5. Official witnesses who are media pool reporters are returned to the media tent to participate in the media briefing.

6. Victim witnesses who wish to speak with the media are escorted to the media tent.

7. Media may remain on site in a designated location outside the secure perimeter to complete live broadcasts.

8. The Warden determines when the prison will resume normal operations after consultation with [redacted]

9. [redacted] collects the Department's records relating to the execution.

10. The Commissioner, [redacted] the Warden and other relevant personnel, if any, review the execution process and determine whether any changes or modifications should be made.



APP-000896

# STAY OF EXECUTION

1. Upon receiving notification that a court has issued a stay of execution, or the Governor has issued a reprieve, the Commissioner consults with [redacted] and advises the Warden.

2. Upon receiving notification, the Warden:

   a. Advises the witnesses that a stay or reprieve has been issued.

   b. After consultation with the Commissioner, directs the IV Team to remove the catheters, if applicable, and directs the Restraint Team to return the inmate to the holding cell.

3. The Warden informs the appropriate personnel of the stay or reprieve.

4. The Traffic Control Team Leader notifies any protestors of the stay or reprieve.

5. The Escort Team escorts witnesses from the Capital Punishment Unit.



APP-000897

# V. APPENDIX AND FORMS



APP-000898

# AFFIDAVIT FOR METHOD OF EXECUTION

Under Tennessee law, you have the right to have your execution carried out by lethal injection. You also have the option of waiving this right, and choosing electrocution as the method of your execution. The purpose of this affidavit is to allow you an opportunity to either waive your right to have your execution carried out by lethal injection or to decline to waive that right. Failure to complete this form will result in the execution being carried out by lethal injection. You will not be given another opportunity to waive your right to have your execution carried out by lethal injection. If you waive your right to have your execution carried out by lethal injection, you may rescind that waiver by contacting the Warden **no later than 14 days before the date of the execution** and signing a new affidavit to that effect.

---

I, _____ TDOC No. _____, make the following choice concerning the method of my execution set to be carried out on the ____ day of _____, _____:

_____ I waive the right to have my execution carried out by lethal injection and choose to be executed by electrocution.

_____
Signature of Inmate

_____ I have been given the opportunity to waive my right to have my execution carried out by lethal injection and I decline to waive that right.

_____
Signature of Inmate

---

I certify that I presented this Affidavit For Method of Execution to inmate _____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

_____
Signature of Warden/Designee

---

Sworn to and subscribed before me this _____ day of _____, 20____.

_____
Notary Public

My Commission expires _____.



APP-000899

# AFFIDAVIT TO SELECT INMATE WITNESSES TO EXECUTION

Under Tennessee law, Tenn. Code Ann. § 40-23-116, you may select one (1) defense counsel, a member of the clergy, and adult members of your immediate family to witness your scheduled execution. Below, please provide the full names of your selected witnesses.

Defense Counsel_____
Clergy _____
Inmate's immediate family_____

I, _____, TDOC No._____, select the above

witnesses:

_____ _____
Signature of Inmate Date

---

I certify that I presented this Affidavit to Select Inmate Witnesses to Execution to inmate

_____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

_____ _____
Signature of Warden/Designee Date

---

Sworn to and subscribed before me this _____ day of _____, 20_____

_____ My Commission expires _____
Notary Public



APP-000900

## CHEMICAL PREPARATION TIME SHEET

Date_____

## PRIMARY SYRINGE SET

Syringe 1A-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____

Syringe 2A-GREEN-50 ml (50mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 3A-GREEN-50 ml (50 mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 4A-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____



APP-000901

# CHEMICAL PREPARATION TIME SHEET

**Date**_____

## BACKUP SYRINGE SET

Syringe 1B-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____

Syringe 2B-GREEN-50 ml (50mg/ml solution) of Pentobarbital prepared

by_____ at _____ a.m.

Witnessed by _____

Syringe 3B-GREEN-50 ml (50 mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 4B-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____



APP-000902

# LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

**Inmate Name**_____ **Inmate #**_____

**Date**_____

## PRIMARY SET A

| | **Chemical** | **Time Begin** |
|---|---|---|
| Syringe 1-A | Saline 50 ml | _____ |
| Syringe 2-A | Pentobarbital 50 ml | _____ |
| Syringe 3-A | Pentobarbital 50 ml | _____ |
| Syringe 4-A | Saline 50 ml | _____ |

**End Time** _____

Recorder Signature _____



APP-000903

# LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

**Inmate Name**_____ **Inmate #**_____

**Date**_____

## BACKUP SET B

| | **Chemical** | **Time Begin** |
|---|---|---|
| Syringe 1-B | Saline 50 ml | _____ |
| Syringe 2-B | Pentobarbital 50 ml | _____ |
| Syringe 3-B | Pentobarbital 50 ml | _____ |
| Syringe 4-B | Saline 50 ml | _____ |

**End Time** _____

Recorder Signature _____



APP-000904

# DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**TIME**

_____ Report to designated area for final briefing

_____ Restraint Team and Special Operations Team report to Execution Chamber for final briefing. Special Operations Team sets up IV system.

_____ Physician in place

_____ IV Team in place (EMTs)

_____ [redacted] in place

_____ Warden in place

_____ Check blinds and curtains

_____ Advise Escort Team to transport Official Witnesses to Parole Room

_____ Advised by Escort Team that Official Witnesses are in Parole Room

_____ Advise Escort Team to escort Victim's Witnesses to Viewing Room

_____ Advised by Escort Team that Victim's Witnesses are in place

_____ Warden or designee checks to ensure execution is to proceed

_____ Gurney positioned in Death Watch Area

_____ Restraint Team enters cell and secures condemned inmate to gurney

_____ Advise Escort Team to transport Official Witnesses to Death Watch vestibule

_____ Advised by Escort Team that Official Witnesses are in the vestibule

_____ IV Team enters the Execution Chamber

_____ IV Team exits the Execution Chamber

_____ Advise Escort Team to "Transport Official Witnesses in place"

**Recorder's Initials**_____



APP-000905

## DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**TIME**

_____ Advised by Escort Team that "Witnesses are in place"

_____ Warden checks with Commissioner to proceed

_____ Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.

_____ Warden asks inmate for any last comments

_____ Warden orders Special Operations Team to proceed

_____ Lethal Injection process completed

_____ Blinds and curtains closed and closed-circuit TV deactivated

_____ Physician enters the Execution Chamber

_____ Physician pronounces death – exact time

_____ Audio deactivated to witness rooms

_____ Advise Escort Team to remove Victim's Witnesses

_____ Advise Commissioner or designee that execution is completed

_____ Physician and EMTs depart

_____ [redacted] escorted to chamber to take possession of body. Pictures will be taken of body and Execution Chamber before removal of body

_____ Advised by Escort Team Victim's Witnesses are at Checkpoint

_____ Advise Escort Team to remove Official Witnesses

_____ Advised by Escort Team that Official Witnesses are at Checkpoint

_____ The body removed from the institution

**Recorder's Initials** _____



APP-000906

## DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**Inmate's Comments if any:**

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

**Lethal Injection Recorder** **Date**



APP-000907

SPECIFIC POST ORDERS – Special Operations Team (3 Members including a Team Leader and 1 Alternate)

Duty Hours – 6:00 AM – Until properly relieved.

Composition of Team

1. Team Leader
2. Recorder
3. Camera Operator
4. Alternate Member

Equipment

[redacted]

Primary Responsibility

You have the responsibility of overseeing and leading the preparation/administration of the lethal injection chemicals, recording the steps and times of the chemical preparation/administration process, and operating the camera in the execution chamber throughout the process.

These are not all-inclusive duties; therefore, staff are subject to other duties as assigned.

Duties:

Team Leader:

1. Upon arrival at the post, visually inspects the area to ensure it is ready to carry out the sentence.

2. Ensure the camera operator tests the equipment upon arrival to the area.

3. Retrieve lethal injection chemical with either the Warden or [redacted] and complete inventory.

4. Retrieve IV lines, syringes, saline solution, supplies, etc. needed to perform the injection and complete inventory.

5. Ensure preparation of the lethal injection chemical.

6. Begin setup for lethal injection portion of execution process.



APP-000908

7. Ensure the recorder documents all steps on the Chemical Preparation Time Sheet and Lethal Injection Chemical Administration Record.

Recorder

1. Document all information on the Chemical Preparation Time Sheet(s).

2. Document all information on the Lethal Injection Chemical Administration Record(s).

3. Perform other duties as assigned by the Team Leader.

Camera Operator

1. Operate the overhead camera that monitors the IV catheter during the lethal injection process.

2. Perform other duties as assigned by the Team Leader.

Alternate Member

1. Cross train with team members to learn all duties in case the need arises.

**Depart the area once properly dismissed by the Warden or [redacted]**

**********END**********



APP-000909

SPECIFIC POST ORDERS – Restraint Team (1 Leader/Supervisor, 5 Members, and 2 Alternates)

Duty Hours – 6:00 AM – Until relieved by a supervisor (Lieutenant or above).

Composition of Team

The team will consist of 1 Team Leader, 5 members, and two alternates.

Equipment

[redacted]

[redacted]

Primary Responsibility

You have the responsibility of safely and securely removing the inmate from the holding cell in the Capital Punishment Unit, securing the inmate to the gurney, and moving the inmate to the Execution Chamber.

Duties:

1. As a team, report to the holding cell to remove the inmate.

2. Team Leader will ask the inmate to approach the cell door and submit to restraints. If the inmate is compliant, the restraints will be applied.

3. If the inmate is non-compliant but passive, inform the inmate you will be entering the cell to apply restraints and remove him/her. The restraint team will enter the cell in the use-of-force formation and apply restraints.

    a. Team Leader/Supervisor oversees movement and directs team members during move.
    b. Team member 1 is responsible for pinning, if necessary, monitoring inmate, and maintaining/utilization of the cutters.
    c. Team member 2 secures the inmates upper right appendage and applies wrist restraint.



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d. Team member 3 secures upper left appendage and applies wrist restraint.
e. Team member 4 secures the lower right appendage and applies leg restraint.
f. Team member 5 secures the lower left appendage and applies leg restraint.

4. In the event the inmate is non-compliant and exhibits threatening behavior, Team Leader will treat the situation as a potential use of force and begin de-escalation efforts to try and gain voluntary compliance. Should these efforts fail, the team will use force to remove the inmate from the cell.

5. Upon application of hand restraints, the team will remove the inmate from the cell, search the inmate, and secure the inmate on the gurney.

6. The team will transport the inmate on the gurney to the Execution Chamber. Once the gurney is in place, secure the inmate's arms to the arm extensions on the gurney.

7. The team will perform other duties as assigned.

**********END**********



APP-000911

SPECIFIC POST ORDERS – Escort Team (At least 6 Members and 1 Leader/Supervisor)

Duty Hours – 6:00 AM – Until relieved by a supervisor (Lieutenant or above).

Composition of Team

The team will consist of at least 6 members and 1 Team Leader.

Equipment

[redacted]

Primary Responsibility

Escorts are responsible for escorting official witnesses and immediate family members of the victim(s) to designated areas.

Duties:

1. The Escort Team reports to the Administration Building conference room no later than 8:00 AM to receive instructions.

2. The escorts will receive and greet official witnesses at 8:30 AM in the Administration Building. After the official witnesses are processed through checkpoint, they are moved to the Administration Building conference room. They are then escorted to the Parole Board Room in Building 8 no later than 9:45 AM. The official witnesses will remain in the Parole Board Room until final movement to the witness room.

3. The escorts will receive and greet the immediate family members of the victim at 9:15 AM in the Administration Building. After they are processed through checkpoint, the victim witnesses are moved the conference room in Building 8 no later than 9:45 AM. The victim witnesses will remain in the conference room until final movement to the victim witness room.

4. The Escort Team processes, transports, and remains with the pre-approved official witnesses and victim witnesses through the conclusion of the execution and the witnesses' return to the designated staging areas. The Escort Team ensures that each witness group always remains separated from the other groups.



APP-000912

5. Upon pronouncement of the inmate's death, the Escort Team will escort immediate family members of the victim(s) out of the Capital Punishment Unit to the Administration Building for departure.

6. Once confirmation is received that immediate family members of the victim have departed, the Escort Team will escort official witnesses from the Capital Punishment Unit to the Administration Building for departure.

7. Escorts may perform other duties as assigned by a supervisor.

**********END**********



APP-000913

## SPECIFIC POST ORDERS – Building 8 Control Room Officer

Duty Hours – 6:00 AM – 6:00 PM (Shift 2) (10A – 6P on day of move)
6:00 PM – 6:00 AM (Shift 1)

Report to Building 8 at approximately 10:00 AM (48 hours before scheduled execution) wearing the prescribed uniform and assume the duties in the Control Room in preparation for the inmate's arrival to a holding cell. If applicable, make your relief, as the equipment is issued on a 24-hour basis, you are required to indicate the key ring number and type of equipment accounted for in your post logbook. Count the keys to ensure the number of keys corresponds with the total number on the key ring chit. Key rings must be secured to a belt by a clip and a metal chain. Contact the Control Center and test your radio/body alarm.

Documentation

Logbook entries must be legible, documenting routine and unusual activity. An example of a log entry is:

> 6:00 AM Relieved Officer Williams and assumed duties as the Unit 2 Officer. Key Rings F-1, X-22, Radio, (1) set of handcuffs, (1) set of leg irons, (1) handheld metal detector, and (1) flashlight accounted for.
> 12:01 PM Count announced, Officer Smith backing count.
> 12:47 PM Clear count with 32 inmates.

Primary Responsibility

This post commences at approximately 10:00 AM, 48 hours before the scheduled execution. You have the responsibility of controlling all electronic access points to the Capital Punishment Unit and recording all activity. In addition, you are responsible for completion of the Lethal Injection Recorder Checklist, including when the time-specific events occur. Other non-routine activity should be noted in the post's logbook.

These are not all-inclusive duties. You are subject to other duties as assigned.

Security Measures

**Building access** - only authorized staff will be given access to areas within the Capital Punishment Unit. Questions regarding persons other than those with a role or previously identified in the protocols must be approved by the Warden prior to granting access. The request/approval is to be documented in the logbook.

**Official count times** - Official counts are conducted [redacted]



APP-000914

Duties:

1. Always remain alert and continuously monitor the unit's activity.

2. Complete the Lethal Injection Recorder Checklist form and note the times any identified activity occurs.

3. Announce official count times to the unit's observation officer.

4. Document the identity of all individuals who access the Capital Punishment Unit, including all staff and inmate visitors.

5. Conduct security inspection of the control room and document discrepancies in the log and submit work request for repairs.

6. Conduct key and equipment accountability during shift.

[redacted]

**********END**********



APP-000915

## SPECIFIC POST ORDERS - Unit 2 Housing Observation Officer

Duty Hours – 6:00 AM – 6:00 PM (Shift 2)
6:00 PM – 6:00 AM (Shift 1)

Report to Unit 2 wearing the prescribed uniform and relieve the outgoing officer. After you make your relief, as the equipment is issued on a 24-hour basis, you are required to indicate the key ring number and type of equipment accounted for in your post logbook. Count the keys to ensure the number of keys corresponds with the total number on the key ring chit. Key rings must be secured to a belt by a clip and a metal chain. Contact the Control Center and test your radio/body alarm.

Equipment

[redacted]

Primary Responsibility

This post commences 14 calendar days before a scheduled execution. You have the responsibility of continuous direct supervision of the inmate while he/she is housed in the designated general population housing-unit cell in preparation for his/her sentence being carried out. You will be positioned directly outside the inmate's cell with a line of sight inside the cell.

These are not all-inclusive duties. You are subject to other duties as assigned.

Documentation

Logbook entries must be legible and intelligible, documenting routine and unusual activity. An example of a log entry is:

> 6:00 AM Relieved Officer Williams and assumed duties as the Unit 2 Officer. Key Rings F-1, X-22, Radio, (1) set of handcuffs, (1) set of leg irons, (1) handheld metal detector, and (1) flashlight accounted for.
> 12:01 PM Count announced, Officer Smith backing count.
> 12:47 PM Clear count with 32 inmates.

Security Measures / Conditions of Confinement



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**Restraints** – The inmate will be restrained from the rear when going to the recreation area or other unit based out of cell activity. Full restraints will be used when inmate is moved outside of the unit.

**Meals** – The inmate will be provided meals consistent with the unit feeding schedule. All utensils and feeding materials will be retrieved following each meal.

**Telephone use** – The inmate will be permitted routine use of the telephone. All requests and initiated/completed calls will be documented in the logbook.

**Visits** – All inmate requested visits must be made in writing and approved by the Warden.

**Personal property** – Personal property may be transferred into the cell by/with the inmate upon prior approval from the Warden after consultation with Assistant Commissioner, Prison Operations. All items will be searched prior to allowance into the cell. He/she will be permitted to purchase commissary from the unit's approved list, maintain in the cell legal and religious materials, pencil, paper, and books. Use of hygiene items (soap and toothpaste) toothbrush, and a comb are permissible.

Females may have feminine hygiene items as needed.

All personal property will by visually inspected and electronically screened via x-ray each time items are removed are permitted inside the cell.

**Recreation** – The inmate will be permitted out of cell, outdoor recreation in one-hour increments on five separate days for a total of five per week. Recreation will be scheduled when the inmate is the sole person in the outdoor recreation area.

**Clothing exchange** – All clothing issued will be visually and electronically screened for contraband.

**Bedding /Mattress**– Upon initial placement, issue a new mattress, all new bedding, and towels. Authorized items include two sheets, one blanket, one pillow, one pillowcase, two wash clothes and one towel.

**Showers** – Upon request, razors will be issued and retrieved upon use each time.

**Cell sanitation** – Upon request by the inmate, sanitation supplies (broom and cleaner) may be issued only when a supervisor is present in the unit. The items must be collected immediately upon completed use.

**Official count times** – Official counts are conducted [redacted]



APP-000917

**Clinical rounds** – Ensure that Clinical Services staff visits the unit daily. The staff member will be required to initial the CR-2578 form and the officer make an entry documenting their presence in the post logbook.

Duties:

1. Always remain alert and continuously monitor inmate.

2. Ensure inmate is issued one set of clean clothing initially prior to entering cell and exchange clothing prior to re-entering the cell after each exit (shower, recreation, visitation, etc.).

3. Search inmate after each cell exit and prior to re-entering. All searches will include the use of a handheld metal detector.

4. Conduct official counts with a second staff member, sign slip, and submit to the Control Center. Staff must be certain they are observing living, breathing flesh in making an accurate count.

5. Document inmate's actions that are not indicated on the Segregation Unit Record (reading, writing, listening to music, watching tv, etc.) in the post logbook.

6. Document in the post logbook, each request made by the inmate and actions taken.

7. Document the beginning and ending times of meals, visits, and telephone calls.

8. Request a security supervisor or higher prior to removing the inmate from a secured area for supervision oversight and guidance.

9. Conduct a proper search of all items and will document the search in the logbook. Legal mail will be scanned for contraband and opened in the presence of the inmate.

[redacted]

**********END**********



APP-000918

**IN THE COURT OF APPEALS OF TENNESSEE**
**AT KNOXVILLE**

| | | |
|---|---|---|
| **MEGAN KERRIGAN,** | ) | |
| | ) | |
| **Petitioner-Appellee,** | ) | **No. E2025-01974-COA-R10-CV** |
| | ) | |
| **v.** | ) | **Knox County** |
| | ) | **Chancery Court** |
| **PATRICK NEWPORT,** | ) | **No. 212096-1** |
| | ) | |
| **Respondent-Appellant.** | ) | |

**ON EXTRAORDINARY APPEAL FROM THE ORDERS OF THE KNOX COUNTY CHANCERY COURT**

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# BRIEF OF RESPONDENT-APPELLANT

---

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## ISSUE PRESENTED FOR REVIEW

Whether the trial court erred by determining that the expiration dates of the chemicals used in executions were required to be disclosed under the Tennessee Public Records Act.



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## INTRODUCTION

The Tennessee Public Records Act (TPRA) allows citizens access to certain governmental documents. It is not a tool for advocates to obtain sensitive information that even the courts have shielded from discovery in litigation. Yet that is exactly how it was used here.

In the weeks before Harold Wayne Nichols's execution, an investigator for his team of federal public defenders asked the courts, using the TPRA, to require Tennessee to disclose information regarding its lethal-injection chemicals. That information includes expiration-date data that would reveal unique characteristics of its supplier of chemicals—expiration dates that numerous courts have shielded from discovery. Nonetheless, the chancery court granted the TPRA petition, and one day before a scheduled execution, ordered TDOC to disclose the exact expiration dates of chemicals used in the prior two executions.

That order cannot stand under the plain language of the TPRA. 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). And the TPRA's execution exception embodies that policy. The exception makes "confidential" "those parts of the record identifying . . . a person or entity involved in the procurement or provision" of lethal injection chemicals. Tenn. Code Ann. § 10-7-504(h)(1). Such information "shall not be open to public inspection" and "shall be redacted wherever possible." *Id.* §§ 10-7-504(h)(1), -(h)(2). The execution exception applies here and prevents the disclosure of unique characteristics of chemical suppliers.

The Court should reverse.



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## STATEMENT OF THE CASE AND FACTS

### I. Tennessee Public Records Act's Execution Exception

The Tennessee Public Records Act (TPRA) subjects all "public records" to "personal inspection by any citizen of this state." Tenn. Code Ann. § 10-7-503(a)(2)(A). "There is a presumption of openness," *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 864 (Tenn. 2016), and the TPRA "shall be broadly construed so as to give the fullest possible public access to public records," Tenn. Code Ann. § 10-7-505(d).

"Notwithstanding the breadth of" that language, "the General Assembly recognized from the outset that circumstances could arise where the reasons not to disclose a particular record or class of records would outweigh the policy favoring public disclosure." *Swift v. Campbell*, 159 S.W.3d 565, 571 (Tenn. Ct. App. 2004). "[I]n the interest of public policy the General Assembly has provided specific explicit exemptions from disclosure." *Patterson v. Convention Ctr. Auth.*, 421 S.W.3d 597, 606 (Tenn. Ct. App. 2013). So "[t]he once all-encompassing Public Records Act is now more narrow." *Tennessean*, 485 S.W.3d at 865.

The execution exception in Tenn. Code Ann. § 10-7-504(h) is one such public-policy exemption. At the turn of the century, when the General Assembly made lethal injection the primary method of execution, it also made "confidential" "those parts of [a] record identifying an individual as a person who has been or may in the future be directly involved in the process of executing a sentence of death." 2000 Tenn. Pub. Acts, ch. 562, § 1. And it laid out basic procedure for making confidential payments "in a manner that will protect the public identity of" employees, contractors, and volunteers. *Id.*



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Tennessee was just one of many States adopting similar legislation. In 2008, the Supreme Court's decision in "*Baze* cleared any legal obstacle" to "quick and painless" lethal-injection executions. *Glossip v. Gross*, 576 U.S. 863, 869 (2015) (referring to *Baze v. Rees*, 553 U.S. 35 (2008)). And by that time, at least nine other States already protected execution participants from unmasking by law.[1]

In the wake of *Baze*, "anti-death-penalty advocates pressured pharmaceutical companies to refuse to supply the drugs used to carry out death sentences." *Glossip*, 576 U.S. at 870. It began with a "global campaign" against the sole manufacturer of the barbiturate sodium thiopental. Mary D. Fan, *The Supply-Side Attack on Lethal Injection and the Rise of Execution Secrecy ("Supply-Side Attack")*, 95 B.U. L. Rev. 427, 439 (2015). Activists chased the manufacturer to Italy, where it was threatened with sanctions if it did not halt production. *Glossip*, 576 U.S. at 870. When that source shut down, many States turned to European manufacturers. *Supply-Side Attack*, 95 B.U. L. Rev. at 439. But British activists "partnered with U.S. anti-death penalty lawyers to ferret out new sources of lethal injection drugs and shut them down" through shaming campaigns and doxing. *Id.* When States turned to pentobarbital, activists targeted a major manufacturer in Europe,

[1] 1998 Ariz. Legis. Serv. c. 232, § 1; 1994 Fla. Sess. Law Serv. c. 94-83, § 1; Ind. Legis. Serv. Pub. L. No. 20-2002, § 5; 1999 Kansas Laws c. 164, § 21; 1990 Ky. Laws c. 496, § 20; 2003 La. Sess. Laws Act 283, § 1; 2007 Mo. Legis. Serv. H.B. 820; 1997 Mont. Laws c. 92, § 1; 2008 S.D. Laws c. 117, § 25.



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causing a stock selloff, before the European Union banned the drug's sale for use in lethal injections. *Id.* at 440; *Glossip*, 576 U.S. at 871.

Some States explored purchasing chemicals from India, but activists intervened, and after Indian authorities seized a wholesaler's records, the wholesaler cut off sales to state prisons. *Supply-Side Attack*, 95 B.U. L. Rev. at 440. When States considered using propofol, another anesthetic, the European Union threatened to cut off exports of the drug for all purposes, jeopardizing its availability for hospitals and clinics. *Anesthesiologists Ask State Not to Use Drug in Executions*, Columbia Daily Tribune (Oct. 1, 2013), available at https://perma.cc/962X-7XJZ. When States sought chemicals from stateside pharmacies, activists unmasked those too, leading officials to conclude that revealing a pharmacy's identity "presents a substantial threat of physical harm." Nomaan Merchant, *AG: Texas Can Keep Execution Drug Source Secret*, Dallas News (May 29, 2014), available at https://perma.cc/8CDX-EP7H.

In 2011, the fight over the death penalty—having shifted from courts and legislatures to the marketplace—reached Tennessee. An assistant federal public defender made "a very broad public records request generally regarding . . . the substances used" in recent and upcoming executions. *Bottei v. Ray*, No. M2011-00087-COA-R3-CV, 2011 WL 4342652, at *1 (Tenn. Ct. App. Sep. 15, 2011), *superseded by statute as recognized in West*, 460 S.W.3d at 122-23. TDOC provided records but "redacted the name(s) of the supplier(s) of the substances . . . and the employees who procured" them. *Id.* The defender sued to discover those identities. *Id.* The Court of Appeals held that the execution exception—



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as then configured—did not protect "those who supplied the lethal injection chemicals to the state or [those] who procured the chemicals." *Id*. at *3.

"[T]he legislature disagreed." *West*, 460 S.W.3d at 122. And the next General Assembly amended the execution exception to protect any "person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death." 2013 Tenn. Pub. Acts ch. 314, § 1. The Tennessee Supreme Court noted in *West* that the amendment's sponsor had said that the decision in *Bottei* was "more narrow[] than . . . appropriate" and made it "difficult for [TDOC] sometimes to obtain" chemicals, because suppliers "are afraid that they will be subject to some kind of exposure or liability." 460 S.W.3d at 122. And the Court concluded that "the legislature intended through its amendment . . . to protect the identities of all persons and entities participating in the execution." *Id*.

The legislature's "concern" was backed by "prior cases" in Tennessee and the experience of "other jurisdictions." *Id*. at 123. Now, at least 24 States—including nearly all with an active execution protocol—protect participants' identities by law. Ariz. Rev. Stat. § 13-757(C); Ark. Code Ann. § 5-4-617(i); Fla. Stat. Ann. § 945.10; Ga. Code Ann. § 42-5-36(d)(2); Idaho Code Ann. § 19-2716A(4); Idaho Admin. Code § 06.01.01.135; Ind. Code § 35-38-6-1(f); Kan. Stat. Ann. § 22-4001(b); Ky. Rev. Stat. § 45A.720; La. Rev. Stat. § 15:570(G); Miss. Code. Ann. § 99-19-51(3)(c); Mo. Rev. Stat. § 546.720(3); Mont. Code Ann. § 46-19-103(5); Neb. Rev. Stat. § 83-967(2); N.C. Gen. Stat. Ann. § 132-1.2(7); Ohio Rev. Code § 2949.221; 22 Okl. Stat. Ann. § 1015(B); Or. Admin. Rule 291-024-



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0016(3); 61 Pa. C.S.A. § 4305(c); S.C. Code § 24-3-580; S.D. Codified Law § 23A-27A-31.2; Tenn. Code Ann. § 10-7-504(h)(1); Tex. Crim. Proc. Code Art. 43.14(b); Utah Code Ann. § 64-13-27(3); Wyo. Stat. Ann. § 7-13-916.[2]

## II. Factual and Procedural History

In January 2025, TDOC announced it was ready to resume executions, using a single dose of pentobarbital. *Nichols v. Skrmetti*, No. 25-6095, 2025 WL 3523010, at *1 (6th Cir. Dec. 5, 2025). Tennessee first adopted a pentobarbital protocol in 2013, but it switched to different chemicals when it lost access to pentobarbital. *Id.*; *Abdur'Rahman v. Parker*, 558 S.W.3d 606, 611 (Tenn. 2018). And in 2022, Tennessee paused executions altogether to conduct a "thorough investigation[]" via an "independent review of the State's execution process." *Barber v. Ivey*, 600 U.S. __, 143 S. Ct. 2545, 2548 (Mem.) (2023) (Sotomayor, J., dissenting). Following that "166-page independent report," *id.*, TDOC revised its lethal injection protocol, returning to pentobarbital, I, 6. The Tennessee Supreme Court began setting execution dates shortly thereafter. I, 6.

That led to numerous efforts to uncover the source of pentobarbital. An Idaho inmate leveraged his method-of-execution litigation to subpoena records about chemicals from TDOC. *In re Subpoena to TDOC*

[2] Two other States also protect such information, though without explicit statutory provisions. *See Floyd v. Daniels*, No. 3:21-cv-00176, Dkt. 235, 301 (D. Nev.); *Mills v. Hamm*, 734 F. Supp. 3d 1226, 1260 (M.D. Ala. 2024). So does the federal government. *Citizens for Resp. and Ethics in Washington v. United States Dept. of Justice*, 728 F. Supp. 3d 113, 122 (D.D.C. 2024).



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*by Pizzuto*, No. 3:25-mc-00003, Dkt. 15 (M.D. Tenn. July 15, 2025); *see Pizzuto*, No. 3:25-mc-00003, Dkt. 21 (M.D. Tenn. Aug. 29, 2025) (order quashing subpoena), *appeal docketed*, No. 25-5826 (6th Cir). Tennessee inmates sought the same information through discovery in their method-of-execution suit. I, 99.

TDOC has thus far successfully protected the source of its chemicals from unmasking while carrying out three executions. A federal district court quashed the Idaho subpoena, finding it was a "clear . . . fishing expedition" with an "actual objective" unrelated to litigation. *Pizzuto*, No. 3:25-mc-00003, Dkt. 21, at 8-9 (M.D. Tenn. Aug. 29, 2025). And a chancery court presiding over other method-of-execution litigation entered a protective order covering similar documents. I, 99-133. Concerned about unmasking "through combining judicial efforts with extra-judicial efforts," that court even refused to require in-chambers submission of disputed documents because the court "should not have access to any information that could be used to research the identity of the persons and entities whose identities cannot be directly or indirectly disclosed." I, 101-02.

The team representing Nichols tried one more path—the TPRA. Between May 1, 2025 and August 11, 2025, Petitioner, Megan Kerrigan, sent four public records requests to TDOC. I, 21-25, 28-34, 53-57. Kerrigan is an investigator for the Federal Public Defender Services of Eastern Tennessee (I, 22), which in 2025 was representing Nichols. I, 6. Nichols had been sentenced to death in 1990 for rape and murder. *State v. Nichols*, 877 S.W.2d 722, 725 (Tenn. 1994). And after multiple delays, the execution of his sentence was scheduled for December 11, 2025.



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Order, *State v. Nichols*, No. E1998-00562-SC-R11-PD (Tenn. Mar. 3, 2025).[3]

The investigator's public-records requests sought broad information about lethal-injection chemicals, including:

- "The names, manufacturer(s) and/or compounding pharmacy(s), and dates of expiration for the . . . chemicals," I, 24, 32, 55;
- "The quantity and inventory of . . . chemicals" in TDOC's possession, I, 23, 54;
- "The results of any quality assurance or quality control testing done on . . . chemicals," I, 24, 32, 55, 57;
- "All information regarding the transportation and storage of . . . chemicals," I, 24, 55;
- "All packing of the . . . chemicals," I, 33, 56;
- "All package inserts of the . . . chemicals," I, 33, 56; and
- "All . . . chemicals" prepared or used in an execution, I, 56.

[3] By 2014, Nichols had exhausted state- and federal-court review of his conviction and sentence. *See State v. Nichols*, 877 S.W.2d 722, 739 (1994) (affirming death sentence on direct review); *Nichols v. State*, 90 S.W.3d 576 (Tenn. 2002) (upholding denial of state post-conviction relief); *Nichols v. Heidle*, 725 F.3d 516 (6th Cir. 2013) (upholding dismissal of federal habeas petition), *cert. denied*, 574 U.S. 1025 (2014). The Supreme Court reset Nichols's execution date in March 2025. Nichols subsequently sued in federal court to stop his execution, but the district court dismissed his case in November 2025. *See Nichols v. Skrmetti*, No. 3:25-cv-442, 2025 WL 3299727 (M.D. Tenn. Nov. 26, 2025). And the Sixth Circuit declined to grant him a last-minute stay of execution. *Nichols v. Skrmetti*, No. 25-6095, 2025 WL 3523010, at *2 (6th Cir. Dec. 5, 2025), *cert. denied* (No. 25-6317) 2025 WL 3523010, at *1 (U.S. Dec. 11, 2025).



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TDOC produced records responsive to some of the requests but withheld information it believed fell within the execution exception. I, 42-52, 61-64. On October 27, 2025, the investigator petitioned in Knox County Chancery Court for access to the records. I, 1.

TDOC moved to dismiss, arguing the chancery court lacked jurisdiction over a suit by a corporation, Federal Defender Services of Eastern Tennessee, that was not a citizen of Tennessee as required by Tenn. Code Ann. § 10-7-505. I, 87-88. It also responded to the petition, arguing that the denied requests sought information that could reasonably lead to discovery of the supplier, necessitating complete denial to protect the supplier's identity. I, 88-91.

The chancery court denied the motion to dismiss, finding that the investigator was a citizen "making the request . . . for the" corporation. II, 145. The court also ordered TDOC to submit the disputed records for *in camera* review by December 3, 2025. II, 142. Following that review, the chancery court entered an order on December 8, 2025, requiring TDOC to produce to the investigator, among other things:

- Records showing dates, size, expiration, and quantity of chemicals;
- Extracted expiration or use-by dates from the packing and vials of chemicals;
- Redacted certificates of compliance and analysis, but expiration dates "shall not be redacted;" and
- Reproductions of packaging inserts that omit names, addresses, and trade insignias.

II, 169-81.



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The following day, December 9, 2025, the investigator filed an "emergency motion to compel," seeking production of the records in less than 24 hours. II, 191-92. The next morning, TDOC filed a motion to alter or amend the court's December 8 judgment, asking it to allow TDOC to withhold (1) certificates of analysis and compliance; (2) inventory logs showing the expiration dates, acquisition dates, and quantities of chemicals; and (3) the expiration dates the court had ordered extracted from packaging. II, 202-27. TDOC also opposed the investigator's motion to compel, referring to its motion to alter or amend. II, 230-31.

A few hours later, the chancery court held a hearing on the investigator's motion. II, 196, 198. At that hearing, the investigator narrowed her emergency request to "the expiration dates solely." II, 198; V, 7, 12, 23. Over TDOC's objection (V, 12-21), the chancery court ordered TDOC "to reproduce and produce" the expiration dates of chemicals found in various documents responsive to the investigator's request "prior to the close of business" that day, December 10, 2025. II, 198-99; V, 24. The court also declined to stay its decision. II, 199.

TDOC immediately filed its application for extraordinary appeal with this Court, supported by a declaration of a TDOC employee.[4] III, 300. TDOC also sought, and this Court granted, a stay pending appeal. Order, *Kerrigan v. Newport*, No. E2025-01974-COA-R10-CV (Tenn. Ct. App. Dec. 10, 2025); III, 303.[5] This Court then called for an answer to

[4] The declaration was filed directly with this Court under Tenn. R. App. P. 10(c). Due to an oversight of counsel in preparing the emergency filings, it was inadvertently styled as a filing in the chancery court.

[5] Nichols's sentence was executed the next morning, December 11, 2025.



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TDOC's Rule 10 application. Despite the investigator's assertion that the appeal was both "moot" and "not ripe,"[6] the Court granted review of the chancery court's December 8 and 10, 2025 orders on the question "[w]hether the trial court erred by determining that the expiration dates of the chemicals used in executions were required to be disclosed under the Tennessee Public Records Act." Order, *Kerrigan*, No. E2025-01974-COA-R10-CV (Tenn. Ct. App. Mar. 3, 2026); III, 308. The Court also stayed proceedings in the chancery court. *Id.*

## STANDARD OF REVIEW

Interpreting and applying the Tennessee Public Records Act "are questions of law" that this Court reviews "de novo without affording a presumption of correctness to the trial court's decision." *Tennessean v. Metro. Gov't. of Nashville*, 485 S.W.3d 857, 862-63 (Tenn. 2016).

## ARGUMENT

The TPRA's execution exception prohibits the disclosure of expiration dates of the chemicals used in executions. That exception makes confidential those "parts of [a] record identifying an individual or entity" involved in an execution. Tenn. Code Ann. § 10-7-504(h)(1). It indisputably protects current and future providers of "chemicals" for executions. *Id.* Chemical packaging, labels, and certificates are

[6] Appellee's Response at 2, *Kerrigan*, No. E2025-01974-COA-R10-CV (Tenn. Ct. App. Jan. 12, 2026).



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"record[s]" of which the expiration dates are a "part." *Id.* And expiration dates do "identify" chemical suppliers.

Expiration dates themselves are unique characteristics of chemicals and their suppliers, and knowing them also makes it easy to uncover other unique characteristics of suppliers. Because the chancery court erred in ordering disclosure of this confidential information, this Court should reverse.

## I. The Execution Exception Protects Unique Characteristics of Chemical Suppliers.

The plain language of the execution exception protects all information revealing unique characteristics of chemical suppliers. Section 10-7-504(h)(1) makes confidential "those parts of the record identifying an individual or entity as a person or entity who or that has been or may in the future be directly involved in the process of executing a sentence of death." And it expressly provides that a "person or entity" includes "a person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death." *Id.*

"This Court's role in statutory interpretation is to determine what a statute means." *State v. Deberry*, 651 S.W.3d 918, 924 (Tenn. 2022). Specifically: "how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." *Id.* That requires "consider[ing] the statutory text in light of well-established canons of statutory construction" to discern the "[o]riginal public meaning." *Id.* Words of a statute retain "their natural and ordinary meaning." *Id.* at 925. And "authoritative dictionaries published around



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the time of a statute's enactment" supply meaning "[i]n the absence of statutory definitions." *Id.* By adhering to the "plain and ordinary meaning of the statutory language," the Court fulfills "the most basic principle . . . to ascertain and give effect to the legislative intent." *Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023).

Reasonable readers in 2000 and 2013—when the execution exception was enacted and then amended—would have understood "identifying" a supplier of lethal-injection chemicals to include revealing a unique characteristic of such a supplier. Although the term is undefined in the text of the exception, authoritative dictionaries supply meaning. *Long v. Chattanooga Fire and Police Pension Fund*, __ S.W.3d __, 2025 WL 2902078, at *8 (Tenn. Oct. 13, 2025). And one meaning of "identify" is "[t]o ascertain as having a certain characteristic or feature." *Identify*, *American Heritage Dictionary* (5th ed. 2016). That usage has been consistent since the exception's enactment. *Identify*, *American Heritage Dictionary* (4th ed. 2000). And it fits with similar meanings of "identify," which center on revealing identity or association. *See Identify*, *Black's Law Dictionary* (9th ed. 2009); *Identify*, *Black's Law Dictionary* (8th ed. 2004); *Identify*, *Merriam-Webster's Collegiate Dictionary* (10th ed. 2001).

In ordinary usage, the word "identify" is used the same way. Describing unique characteristics is how witnesses regularly "identify" people and things in court. For example, a witness might "identify" a robber by "describ[ing] the [robber]'s clothing" or matching "the glasses he wore [in court] as the same type he had on during the course of the



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robbery." *State v. Wilson*, C.C.A. No. 16, 1987 WL 16070, at *1 (Tenn. Crim. App. Aug. 26, 1987). Police sometimes stitch together unique characteristics—like whether someone has a mustache or a ponytail—to prepare a "composite sketch" that identifies a suspect. *State v. Reid*, 91 S.W.3d 247, 262 (Tenn. 2002). One can "identify [a] weapon by the sound it made when it was fired." *State v. Pappas*, 754 S.W.2d 620, 626 (Tenn. Crim. App. 1987). And vehicles are "identif[ied]" by "model," age, and "color." *Reed v. Allen*, 522 S.W.2d 339, 342-43 (Tenn. Ct. App. 1974).

That meaning of "identify" is confirmed by the "context in which [it] appear[s]." *Deberry*, 651 S.W.3d at 925. In the same subsection that makes confidential the parts of records "identifying" a person or entity involved in executing a death sentence, the General Assembly directed the Department of Finance and Administration to make payments to chemical suppliers "in a manner that will protect the public *identity* of the recipients." Tenn. Code Ann. § 10-7-504(h)(1) (emphasis). That contemplates there are many ways to compromise the identity of chemical suppliers beyond just revealing names and addresses—like revealing the supplier's unique characteristics.

Treating unique characteristics of chemical suppliers as confidential also fits "the statute's general purpose." *Deberry*, 651 S.W.3d at 925. "[T]he legislature intended . . . to protect the identities of all persons and entities participating in [an] execution." *West v. Schofield*, 460 S.W.3d at 122. "Our legislature['s] declar[ation of] the public policy of Tennessee to favor the anonymity of those involved" in executions, *id.*



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at 124-25, forecloses a cabined or hyper-technical construction of "identify."[7]

"[T]he overall statutory framework" likewise supports the State's interpretation. *Deberry*, 651 S.W.3d at 925. Throughout the TPRA, provisions protect "identifying information" of individuals—like confidential informants, individuals with protection orders, and undercover officers—in a way that must include unique characteristics beyond name and address. *See* Tenn. Code Ann. §§ 10-7-504(a)(2)(B), -(a)(15), -(g)(1)(A)(iii). Other provisions make clear that "identifying information"—unique characteristics—can "be used" to reveal protected individuals or sensitive places. *See* Tenn. Code Ann. §§ 10-7-504(a)(15)(A)(i), -(a)(17), -(a)(21)(A), -(g)(1)(A)(i). That phrasing would make little sense if the General Assembly understood "identify" to refer solely to the names or addresses of people or places. Instead, it confirms that "identify" retains the ordinary meaning of revealing some unique characteristic of the target.

[7] In *West*, the Supreme Court determined legislative intent based in part on the statements of a legislative sponsor. Such statements, to be sure, "should be evaluated cautiously," *BellSouth Telecomm. v. Greer*, 972 S.W.2d 663, 674 (Tenn. Ct. App. 1997), and courts should not "delve into the legislative history of an unambiguous statute." *State v. Welch*, 595 S.W.3d 615, 624 (Tenn. 2020). But here the Supreme Court has already done the delicate work of elucidating the purpose of the execution exception.



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## II. Expiration Dates of TDOC's Chemicals Reveal Unique Characteristics.

Applying that ordinary meaning of "identify" here, expiration dates are confidential and protected from disclosure. First, they reveal the formulation process of the chemical—a defining characteristic. Second, expiration dates are specific to each batch of chemicals. And third, expiration dates are one of a few markers of chemicals that, together, are equivalent to a source's signature. Such identifying information is exactly what the execution exception is designed to protect.

***Formulation.*** Expiration dates reveal the chemicals' unique characteristic of formulation. Lethal-injection chemicals are generally formulated by one of two processes: commercial manufacturing or compounding. Major pharmaceutical manufacturers synthesize drugs on an industrial scale for large populations with similar needs or conditions, while compounding pharmacies combine ingredients particularized to a customer's needs. II, 216. Chemicals formulated through either process are suitable for executions. *Whitaker v. Collier*, 862 F.3d 490, 495 (5th Cir. 2017) (holding a "switch from manufactured to compounded pentobarbital" was "not a substantial change"); *West v. Schofield*, 519 S.W.3d 550, 564 (Tenn. 2017) (approving use of compounded pentobarbital). But they retain differences because of the process.

One difference lies in the expiration date resulting from each of the two processes. Expert testimony has been that compounded pentobarbital has a short shelf-life—a matter of days—while expiration dates for manufactured product can exceed a year. II, 222-3; *see Zink v. Lombardi*, No. 12-4209-CV-C-BP, 2014 WL 11514820, at *3 (W.D. Mo.



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Jan. 27, 2014); *Swearinger v. Collier*, No. 4:19-cv-3079, 2019 WL 3935285, at *2 (S.D. Tex. Aug. 20, 2019). Public media regularly use that rule of thumb to guess at chemicals' formulation. II, 222; *see* Erik Ortiz and Abigail Brooks, *In Texas, New Details About Its Execution Drug Underscore a Closely Guarded Secret*, NBC News (Oct. 14, 2025), available at https://perma.cc/3A3F-JA24; Hayley Bedard, *New Documents Reveal Texas Has Spent More than $775,000 on Lethal Injection Drugs Since October 2024—But Many Other Details Remain Secret*, Death Penalty Information Center (Nov. 3, 2025), available at https://perma.cc/3LNL-EBSZ. Consequently, "[i]nformation such as the manner of production . . . provides experienced investigators with sufficient information" to identify a supplier. III, 237. If a State is acquiring more chemicals than it needs for a single execution or if expiration dates are a long way off, one can guess that the lethal-injection chemicals are manufactured.

And knowing whether a drug is manufactured or compounded goes a long way toward determining who made it. For example, if a distant expiration date showed that TDOC's pentobarbital is commercially manufactured, one could conclude that it came from one of the four companies listed in the Orange Book as currently authorized by the FDA to make pentobarbital. *See* "Pentobarbital," *Orange Book: Approved Drug Products with Therapeutic Equivalence Evaluations*, U.S. Food &



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Drug Administration, accessible via https://perma.cc/GNW5-NGR8 (last accessed April 15, 2026).[8]

The efforts last year of an Idaho inmate to obtain lethal-injection-chemical information emphasize the point. *See In re Subpoena to TDOC by Pizzuto*, No. 3:25-mc-00003 (M.D. Tenn.). There, given the "exceedingly small universe of manufacturer candidates" and only one other characteristic—that Idaho's supplier opposed the use of pentobarbital in executions—the inmate thought it "overwhelmingly likely" that he knew exactly who made Idaho's chemicals. III, 265. This real-world example illustrates how expiration dates "provide[] experienced investigators with sufficient information" to unmask a supplier. III, 237.

***Batches.*** Expiration dates also provide identifying information because makers of chemicals used for executions formulate them in batches. *Prieto v. Clarke*, No. 3:15-cv-587, 2015 WL 5793903, at *3 (E.D. Va. 2015) ("[E]ach batch of compounded pentobarbital is different"). And expiration dates correspond to the batch. *Whitaker v. Livingston*, No. H-13-2901, 2016 WL 3199532, at *2 (S.D. Tex. June 6, 2016). So if you can match the expiration dates of two chemicals, you have a good shot at identifying the batch they came from.

That is not hard to do in the age of information. Many "[c]ertificates of analysis and compliance list batch . . . expiration dates." III, 238, 241. And those documents are readily available online and through other

[8] Navigating to this page may require clicking the "View the Live Page" function on Perma's archive and then searching for the active ingredient "pentobarbital" in the FDA's database.



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public channels. II, 217-21. If you can match an expiration date to a certificate from a particular batch, then you will know who made it and will have the lot number to trace it through a supply chain. That is the sort of simple "investigation" that can subject suppliers to "threats, harassment, and boycotts" even when name alone is concealed. III, 237.

***Other Markers.*** Finally, not only are expiration dates unique in their own right, but they also provide an additional "clue[]" that "an experienced investigator could readily combine with other clues obtained through litigation or related requests to identify the source." III, 238. TDOC has already publicly disclosed targeted data about some of its pentobarbital in other litigation—including its potency, pH, impurity, and compliance with United States Pharmacopeia guidelines. III, 238. While TDOC was able to produce that limited information critical to the litigation without compromising its source, each additional datum revealed helps to paint an increasingly clear picture of the supplier. Even the size of vials can suggest who made a chemical. II, 223.

That is the exact tactic the inmate Pizzuto used when seeking to identify Idaho's source of lethal-injection chemicals. All that inmate needed was a few seemingly innocuous responses to discovery requests. III, 264. Had a federal court not quashed his subpoena to Tennessee outright, III, 249-57, his sweeping subpoena may well have raked in just enough information for him to identify the supplier. And his case is just one example of the wide-ranging effort to use federal and state courts to stitch together information about lethal-injection-chemical suppliers. *See, e.g., Jordan v. Comm'r, Miss. Dept. of Corr.*, 947 F.3d 1322, 1326 (11th Cir. 2020) (quashing subpoena by inmates "trying to unmask



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[Georgia's] source for [pentobarbital]"). Even when names themselves are protected, disclosing "vast . . . informational fields" makes it "possible to deduce a particular individual's name . . . by simply cross-referencing multiple fields." *Gannett Co. v. Del. Crim. Justice Information Sys.*, 768 A.2d 508, 515 (Del. 1999) (holding Delaware FOIA did not require disclosure of criminal information databases containing 300 fields of information because even "[s]crambling names and identification numbers" would still invade personal privacy).

It is nearly "humanly impossible to control" the release of "extremely potent confidential information" like that the investigator asks for. *Va. Dep't of Corr. v. Jordan*, 921 F.3d 180, 193 (4th Cir. 2019). And it is "a well-known phenomenon" what happens when it gets out. *Id.* at 184. So the General Assembly did its best to ensure TDOC can "obtain the materials that are needed" to carry out executions, *West*, 460 S.W.3d at 122, judging "that the reasons not to disclose [information about suppliers] outweigh [any] policy favoring public disclosure." *Perrusquia v. Bonner*, 719 S.W.3d 169, 180-81 (Tenn. Ct. App. 2024). It made "confidential" any "parts of [a] record identifying" a supplier of chemicals, Tenn. Code Ann. § 10-7-504(h)(1), "declar[ing] the public policy of Tennessee to favor the anonymity of those involved in carrying out capital punishment." *West*, 460 S.W.3d at 124-25. Because expiration dates reveal unique characteristics that compromise that anonymity, they are not public records.



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## III. The Chancery Court Erred in Requiring Disclosure of the Expiration Dates.

The chancery court, though, required—and then compelled—TDOC to disclose the expiration dates, even while ruling that other "distinctive characteristics" were protected. II, 169-81; 198-99. It erred in doing so.

The chancery court appears to have interpreted "identifying" to cover only information that, standing alone, locates a precise source. Although the court's written order compelling production of the expiration dates includes no explanation, its inquiry at the hearing reflects that the court focused on whether "just simply expiration date[s]" reveal *every* aspect of a supplier's identity. V, 12-21. That takes too narrow a view of the TPRA's execution exception, Part I, *supra*, and fails to account for the real-world connections between expiration dates and the unique characteristics of a supplier. V, 18.

While explicitly revealing a supplier's name or location certainly "identifies" it, that is not—as discussed in Section I above—the outer limit of the meaning of the word "identify." A covert CIA officer would hardly be relieved to learn that a spy concealed the officer's name while leaking his employment history. *See United States v. Kiriakou*, No. 1:12-cr-127, 2012 WL 3263854, at *2 (E.D. Va. Aug. 8, 2012). And TDOC's chemical supplier would likewise take little solace in its name not being directly disclosed. It naturally (and reasonably) fears disclosure of unique characteristics that would unmask it "through investigation." III, 237.

The chancery court assumed that it could order disclosure of "expiration dates in the abstract with no linkage to anything." V, 15. But



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the court has no control over the vast universe of information already available to those who want to unmask Tennessee's source. And though it rightly limited several of the investigator's requests, some information is already public, and the chancery court could not predict what else might become public in other litigation. As discussed, collecting all this public information, along with "expiration dates in the abstract," could easily allow one to create a composite sketch of a supplier. That is why redacting names and trademarks alone is not enough. III, 237. And that is why the General Assembly made confidential every part of a record "*identifying* . . . a person or entity involved in the procurement or provision of chemicals." Tenn. Code Ann. § 10-7-504(h)(1) (emphasis added).

The execution exception must be "enforce[d] . . . as written." *Deberry*, 651 S.W.3d at 925. The TPRA does provide that it "shall be broadly construed so as to give the fullest possible public access to public records." Tenn. Code Ann. § 10-7-505(d). But as this Court has recognized, the TPRA also includes legislative exceptions to public access. "[T]he TPRA's exceptions are not subsumed by the admonition to interpret the Act broadly, and courts are not free to apply a broad interpretation that disregards specific statutory language." *Perrusquia*, 719 S.W.3d at 181. Under the statutory language of the execution exception, expiration dates of chemicals used in executions are confidential.



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## CONCLUSION

The orders of the chancery court requiring disclosure of expiration dates of lethal-injection chemicals should be reversed, and the case should be remanded for further proceedings in accordance with such a judgment.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

In accordance with Tenn. R. App. P. 30(e) and Tenn. Sup. Ct. R. 46 § 3.02, the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, Attorney Signature Block, and this Certificate of Compliance, is 5,180. This word count is based upon the word processing system used to prepare this brief.

*Cody N. Brandon*
CODY N. BRANDON
*Deputy Attorney General*



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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | |
|---|---|
| State of Tennessee | ) |
| | ) Supreme Court Case No. M2020-01156-SC-DPE-DD |
| v. | ) Knox County Case No. 58183A |
| | ) CAPITAL CASE (Execution Date: Sept. 30, 2026) |
| Christa Gail Pike | ) |

FILED
2026 AUG
KNOX COUNTY
KNOXVILLE, TN

## Response to Motion for Protective Order

In its ongoing effort to deny Ms. Pike due process and secret away information about Tennessee's lethal injection protocol, the State turns to familiar *ad hominem* attacks on counsel and continues to obfuscate the facts. The State's copy-and-paste arguments are intended to distract this Court from the issues at hand but do not advance any real legal arguments. Tellingly, the State's filing only tells half of the story. The State omitted from both of its recent motions that counsel for Ms. Pike had withdrawn specific topics that it agreed were either not relevant to the specific issues before this Court or potentially protected by the execution secrecy statute—even though Ms. Pike may dispute that premise. *See* Redacted Subpoena, attached as **Exhibit A**. The State's attempts to paint counsel as unreasonable simply do not stick.

The State also attributes the unmasking of the execution physician to "court filings by the Federal Public Defender's office" but omits the fact that the court filings were made by a different office, in different litigation. The State also omits the fact that the execution physician gave an on-the-record interview with NBC News

journalists Erik Ortiz and Abigail Brooks.[1] Whatever blame is to be laid for exposing the identity of the execution physician, it is neither Ms. Pike's nor her legal team's.

These things are true: (1) Tennessee has an execution secrecy provision found at Tennessee Code Annotated § 10-7-504(h)(1); (2) That statute protects the identities of individuals involved in the execution process; and for that reason, (3) Counsel for death sentenced prisoners and the State of Tennessee have regularly entered into protective orders when litigating these types of cases.

Indeed, counsel for Ms. Pike agreed to enter into a protective order and even provided the State with a copy of the previous protective order *it supplied* to counsel in *Nichols v. Skremetti*, Case No. 3:25-cv-00442 (M.D. Tenn.) and *Burns v. Strada*, Case No. 25-414-IV (Davidson Cnty. Ch. Ct.). *See* Protective Orders, attached as **Exhibits B** and **C**. For reasons unclear to counsel, and unexplained to this Court, the protective order that the State of Tennessee prepared and supplied to counsel in both of those cases is apparently no good anymore.

The protective order submitted by the State in this litigation endorses its overly broad reading of the execution secrecy statute and functionally serves to deny Ms. Pike any opportunity to develop the facts and information necessary to develop her claims. Counsel in this case are actively litigating whether the Tennessee Department of Correction and the Attorney General's office unlawfully apply an overly broad reading of the execution secrecy statute in another case pending at the

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[1] Erik Ortiz and Abigail Brooks, *Doctor in failed Tennessee execution says he didn't want prisoner to suffer*, NBC News (June 1, 2026) https://www.nbcnews.com/news/us-news/tennessee-execution-botched-death-penalty-lethal-injection-rcna347362

Tennessee Court of Appeals. *See Kerrigan v. Newport*, Case No. E2025-01974-COA-R10-CV (Tenn. Ct. App.), Order, attached as **Exhibit D**. The State is attempting a slight of hand by proposing an order that supports its overly broad reading of the execution secrecy statute while ignoring both the outstanding litigation in that case, and the protective orders it previously drafted and proposed.

Consider the language of the order the State would have this Court enter: "The Parties are *forbidden* from discovering or eliciting testimony about *any* information that *could reasonably lead to the discovery* of *any* individual or entity who has been or may in the future be involved in the process of execution a sentence of death." (Ex. 1 to Mot.) (emphases added). The next provision further limits the type of information counsel may discover. It is hard to see what information Ms. Pike is allowed to discover under the State's proposed order. Perhaps that is the point.

There is a less onerous way to protect this information, and counsel for the State has already supplied it in the form of the protective orders entered in the *Burns* and *Nichols* cases. In fact, the protective order in *Burns* is still in effect. Those orders contemplate that in the course of litigation, information may need to be provided or disclosed and, since that information is protected or confidential, the parties to the protective order are bound by its terms and cannot share or disperse it. Counsel for Ms. Pike already stated that they would agree to a similar protective order. *See* Ex. 3 to Mot. to Quash ("I am attaching the PO that we entered in the Nichols litigation, which I believe is similar to the on in the Burns litigation. We would agree to something along these lines."). Counsel for Ms. Pike also agreed to discuss protective

measure to prevent the inadvertent disclosure of such information at the public hearing. *See id.* ("We are also happy to discuss measures that can be taken at the hearing, since cameras will be presence, to conceal identities if that need arises.").

Instead, the State seeks to deploy an onerous and overly broad protective order under the guise of protecting the identities of those that participate in executions. The effort should fail because (1) the identities are already protected and counsel for Ms. Pike has indicated its willingness to abide by that law;[2] and (2) the protective order prepared by the State and utilized in both the *Nichols* and *Burns* cases already does that.

To be clear, counsel for Ms. Pike are not "anti-death-penalty activists." They are officers of the court. They are public servants. And they have a duty to Ms. Pike to competently and diligently represent her. *See* Tenn. R. Pro. Conduct 1.3. cmt. [1] ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.").

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[2] Counsel for Ms. Pike did state to counsel for the State that if the Tennessee Supreme Court ordered that the identity of the execution physician was ordered to be revealed in the *Hines* case, that Ms. Pike would seek that physician's identity in this litigation. Not because Ms. Pike is part of a cabal to take down the death penalty in Tennessee, but because the physician that the State of Tennessee uses to place central lines is incompetent to perform the procedures required of him.

## CONCLUSION

Ms. Pike is, and always has been, willing to enter into a protective order to protect privileged and confidential information. But she cannot enter into an order that functionally serves to deny her rights to due process. She respectfully asks this Court to deny the State's motion for protective order and order that the parties agree to the protective order entered into the *Burns* and *Nichols* cases. A proposed protective order is attached.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed and served on the following on this 31st day of July 2026:

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Samantha Morris, Esq.
Matthew Kubicek, Esq.
Paul Bruno, Esq.

Luke P. Ihnen
Assistant Federal Defender

# Exhibit A

# CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
## SUBPOENA

STATE OF
TENNESSEE Vs.
CHRISTA GAIL PIKE

Case Number: 58183
Subpoena Number: 7130311
Issue Date: 07/22/2026

Mike Hammond
Mike Hammond, Clerk

To: TN DEPT OF CORRECTIONS
C/O JONATHAN SKRMETTI AG AND REP ATTN: WILL Ayers
500 CHARLOTTE AVE
NASHVILLE, TN 37219

**WITNESS PLEASE NOTE**
**You must be present in the Court named above, on the day and the time stated. Failure to appear may result in Court action against you by the Court before whom you are to appear.**

**YOU ARE HEREBY REQUIRED TO APPEAR BEFORE THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**

**ON: 08/14/2026 09:00 AM**

**AT:** KNOX COUNTY CRIMINAL COURT DIVISION 3
CITY-COUNTY BUILDING
400 MAIN STREET 149
KNOXVILLE, TN 37902

To testify on behalf of the [ ] State of Tennessee [ ✗ ] Defendant(s) as a Witness in the above noted case.

**BRING WITH YOU THE FOLLOWING:**
SEE ATTACHED

**Questions? - Call (865) 215-2515 if you are a state witness with questions about your court appearance.**

**For Americans with Disabilities Act assistance, please contact Allison Major, J.D. at ada.judicial@knoxcounty.org or (865) 215-4437. TTY (865) 215-2497**

**Return of Service:** Came hand this date and executed by:

> Delivering the within subpoena to the Witness named herein: [ ] By Mail [ ] In Person

> Unable to serve: [ ] Insufficient Address [ ] Other Reason: _____

Date: _____ By (Name and Title): _____

**CAPITAL CASE**
**(Execution Date: September 30, 2026)**
**Case No. M2020-01156-SC-DPE-DD**

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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILE**

Christa Gail Pike,
Movant,

v.

State of Tennessee,
Respondent.

Criminal Court for Knox County
No. 58183A

---

**Exhibit A**

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**Topic 1: Composition, Selection, Qualifications, and Training of the Execution Team.** The selection, qualifications, certifications, licenses, training, and gender of all members of the Execution Team, including the Special Operations Team, Restraint Team, [redacted] the qualifications of the "qualified third party" providing vascular access/IV therapy training; and each team member's experience performing, participating in, or assisting with executions.

**Topic 2: IV Team Qualifications and Training in Venous Access on Patients with Difficult Veins.** The qualifications, certifications, and training of the IV Team, including any training on IV insertion on patients with small, compromised, or difficult-to-access veins; training on the use of 23-gauge butterfly needles; and any prior experience by IV Team members or the Physician in drawing blood from or inserting an IV into Christa Pike.

**Topic 3: Central Line Capability and the Physician's Qualifications.** The qualifications, training, and certification of the Physician designated for Pike's execution, including whether the Physician is qualified and certified to place a central venous line; the qualifications of the physician who attempted to place a central line during the Carruthers attempted execution; and whether that physician is still employed or engaged by TDOC.

**Topic 4: Chemicals Used in Lethal Injection — Pentobarbital.** [redacted] TDOC's knowledge of the primary and secondary effects of the specific chemicals to be used; and any assessment of whether the risk of pulmonary edema is heightened for Pike given her thrombocytosis.

**Topic 5: Testing, Quality Assurance, and Chain of Custody of Execution Drugs.** All testing performed on the pentobarbital to be used in Pike's execution, including testing for potency, sterility, and endotoxins; [redacted] quality assurance and quality control measures; "recommended guidelines" for safe transportation and storage; [redacted] and whether TDOC has procured sufficient quantities to account for the risk that Pike's thrombocytosis may require higher or multiple doses.

**Topic 6: Procedures for Assessing and Preventing Pain and Suffering During Execution.** All procedures, processes, or measures used or taken by TDOC to determine whether an inmate experiences pain and suffering during an execution, and all procedures, processes, or measures used or taken to ensure that an inmate does not experience pain and suffering, including assessments of consciousness.

**Topic 7: Protocol's Failure to Require Medical Evaluation or Accommodate Individual Medical Conditions.** Whether the current protocol requires an evaluation of an inmate's medical history or veins prior to execution; whether the protocol accounts for unique physical or psychological characteristics of individual inmates that may affect the efficacy of the protocol or the risk of harm; whether the protocol permits deviation or accommodation; and every provision, if any, that permits such accommodation.

**Topic 8: Pike's Thrombocytosis and Its Impact on Execution.** TDOC's knowledge of Pike's thrombocytosis, including that it is due to a rare form of blood cancer called myeloproliferative disorder; any assessment TDOC has conducted regarding how Pike's thrombocytosis may affect IV access, the delivery of pentobarbital, and the risk of pulmonary edema; any modifications TDOC has made or plans to make to address Pike's thrombocytosis; and any medical professionals consulted.

**Topic 9: Pike's Small and Compromised Veins and the Risk of Failed IV Insertion.** TDOC's knowledge of Pike's documented history of difficulty with blood draws due to her small, compromised veins; TDOC's knowledge that medical staff currently use a 23-gauge butterfly needle to draw blood from Pike; any steps taken to ensure the execution team can achieve and maintain peripheral IV access on Pike; TDOC's contingency plan if peripheral IV access cannot be achieved; the risk of pentobarbital leaking into Pike's tissue and muscles; and the risk that the 5-minute time for death may be grossly underestimated for Pike.

**Topic 10: Pike's Complex PTSD and Bipolar Disorder and Their Impact on Execution.** TDOC's knowledge of Pike's complex PTSD and bipolar disorder, including TDOC records confirming these diagnoses; TDOC's knowledge of Pike's history of sexual and physical assault; any assessment of the impact of the execution process on Pike's psychological conditions; any mental health professionals consulted; [redacted] and any provisions made to address that risk.

**Topic 11: The Fourteen-Day Isolation Period and Death Watch Procedures.** The death watch and isolation procedures under the current protocol, including the duration, location, and conditions of confinement; [redacted] the transfer of Pike from the Debra K. Johnson Rehabilitation Center to Riverbend Maximum Security Institution 48 hours before execution; whether Pike will be observed by male corrections officers; and any provisions for female corrections officers.

**Topic 12: Impact of the Execution Process on Pike's PTSD — Physical Restraint, Blackout Period, and Related Procedures.** The procedures by which the Restraint Team will remove Pike from her cell, apply restraints, secure her on a gurney, and transport her to the execution chamber; the sex of the Restraint Team members; [redacted] and any assessment TDOC has made of the risk that these procedures will trigger Pike's PTSD.

[redacted]

**Topic 14: Alternative Methods of Execution.** TDOC's evaluation of each alternative method of execution alleged in Pike's motion, including the use of a central line inserted by a qualified physician, and hanging; whether TDOC possesses or could readily obtain the equipment and trained personnel necessary for each alternative; and all facts that tend to render each alternative unavailable to TDOC.

**Topic 15: Religious Accommodations and Spiritual Advisor Access.** Whether the current protocol permits clergy or a spiritual advisor to remain in the execution chamber during the administration of lethal injection chemicals and at the time of death; whether any offer has been made to Pike to have a spiritual advisor attend her execution; the compelling governmental interest, if any, served by the prohibition; TDOC's knowledge that Pike identifies as Buddhist; and whether other death-sentenced prisoners have been afforded spiritual advisor access and, if so, the basis for any disparate treatment.

[redacted]

**Topic 17: Pike-Specific Execution Planning.** Whether TDOC has developed any execution plan specific to Christa Pike; any assessments of Pike's physical, medical, or psychological condition in anticipation of her execution; any medical risks identified and steps taken to mitigate those risks; any accommodations to the standard protocol considered or evaluated to address Pike's thrombocytosis, small and compromised veins, complex PTSD, and bipolar disorder; any consultations with Pike's treating physicians or mental health providers; and all documents, records, or communications regarding execution-specific planning for Pike.

# Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

| | | |
|---|---|---|
| **HAROLD WAYNE NICHOLS,** | ) | |
| | ) | |
| **Plaintiff,** | ) | **CAPITAL CASE** |
| | ) | |
| **v.** | ) | **Case No. 3:25-cv-00442** |
| | ) | |
| **JONATHAN SKRMETTI, et al.,** | ) | **JUDGE RICHARDSON** |
| | ) | |
| **Defendants.** | ) | |

## INITIAL AGREED PROTECTIVE ORDER

To protect the confidentiality of the redacted portions of Tennessee's lethal injection protocol and to facilitate the efficient exchange of information related to this litigation, the Court hereby orders:

**Unredacted Protocol**

1. A protective order governing the redacted portions of Tennessee's lethal injection protocol is necessary to protect the State of Tennessee from oppression and undue burden.
2. Defendants shall produce to Plaintiff an unredacted copy of Tennessee's lethal injection protocol for use in this litigation only. The protections of this Order apply to both the unredacted document itself as well as the contents of the redacted information.
3. The unredacted protocol and its contents shall receive an Attorney's Eyes Only designation.

4. Unless given prior written consent of Defendants, or upon prior order of this Court obtained after notice and briefing by the parties pursuant to Local Rules 37.01 and 7.01, the unredacted protocol or its contents shall not be disclosed to any person other than:

a. Counsel for Plaintiff, counsel for Defendants, and co-counsel retained for this litigation.

b. Employees of such counsel.

c. Experts and consultants retained by Plaintiff or Defendants in this litigation, provided that each expert or consultant shall be shown this Order, informed that this Order applies to them, and further informed that failure to comply with this Order may result in being held in contempt of court. Consultants and experts shown the unredacted protocol shall not be permitted to retain copies.

d. Testifying witnesses. Any testifying witness may only be shown the unredacted protocol in a deposition at which counsel for Defendants are present. A testifying witness who is shown the unredacted protocol shall be shown this Order, informed that this Order applies to them, and further informed that failure to comply with this Order may result in being held in contempt of court. At the request of Defendants, any portion of the deposition transcript involving the unredacted protocol may be designated Attorney's Eyes Only, subjecting that portion of the transcript to the same protections described in this Order. Testifying witnesses who are shown the unredacted protocol shall not be permitted to retain copies.

e. The Court, court personnel, and court reporters.

5. Every person receiving the unredacted protocol shall not reveal to or discuss such information with any person who is not entitled to receive such information under this Order.

6. If Plaintiff desires to file redacted portions of the legal injection protocol with the Court, the parties shall confer pursuant to Local Rule 37.01(a) to determine if resolution by agreement is possible. If the parties are unable to reach an agreement and Plaintiff still wishes to file redacted portions of the protocol with the Court, Plaintiff must file a motion to seal the redacted portions of the protocol pursuant to Local Rules 5.03(b) and Local Rule 7.01(a). Defendants shall retain the burden of supporting the request to seal and shall file a response to the motion to seal within fourteen (14) days, in conformance with Local Rules 5.03(b) and 7.01(a)(3).

7. All provisions of this Order shall continue to be binding after the conclusion of this action. Within sixty (60) days after the conclusion of the litigation, Plaintiff shall destroy, obliterate, or redact all copies of the unredacted lethal injection protocol and any portions of deposition transcripts that discussed the unredacted portions of the lethal injection protocol.

8. Plaintiff and Defendants shall use every reasonable effort to maintain the confidentiality of the redacted portions of the lethal injection protocol. This includes, but is not limited to, appropriate electronic security measures, such as access limitation, password protection, and/or encryption.

9. In the event that redacted portions of the protocol are unintentionally disclosed to the public, those portions shall not lose their confidential status.

10. If Plaintiff receives a lawful subpoena, open record request, or similar request from any court in another action that compels the production of the unredacted lethal injection protocol, Plaintiff shall, after a meet and confer required by Local Rule 37.01, request that the Court to modify this order to permit disclosure. Plaintiff's motion shall be served upon Defendants and the subpoenaing party. Both Defendants and the subpoenaing party shall have fourteen (14) days to respond to the motion. Plaintiff may not produce the unredacted lethal injection protocol unless this Court modifies the Limited Agreed Protective Order to permit disclosure.

**All Other Information**

11. Designation

a. Any party or non-party may designate as "CONFIDENTIAL" any discovery response, document, information, or material which that party or non-party considers in good faith to contain information that would implicate prison security, state confidentiality rules, personal privacy interests (including, but not limited to, personal identifiers and confidential health information), or trade secrets/proprietary information if disclosed to a non-party.

b. Any party or non-party may designate as "ATTORNEY'S EYES ONLY" any discovery response, document, information, or material if disclosure to a named party would implicate the same interests identified in Paragraph 5(a).

c. All discovery responses, documents, information, and materials shall be treated as CONFIDENTIAL, whether or not so designated, for a period of fourteen (14) days following their production by a party or non-party. A producing party may designate any discovery responses, documents, information, or materials as

"CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," within that fourteen (14) day period by notifying all parties in writing and specifically identifying the produced discovery responses, documents, information, or materials.

d. A party or non-party may designate information disclosed during a hearing or deposition as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by indicating so on the record at the hearing or deposition.

e. A party or non-party may designate information disclosed during written discovery as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by indicating so in their response.

f. If a party contends that any discovery responses, documents, information, or materials are not entitled to a "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" designation, such party may at any time give written notice challenging such designation to the party or non-party who produced the discovery responses, documents, information, or materials.

    i. The designating party shall have fourteen (14) days from the receipt of the written notice to respond unless the Court orders a shorter or longer time.

    ii. The parties must meet and confer in good faith in an effort to resolve by agreement the disputed designation. If the parties cannot resolve the dispute, then the parties may bring the matter to the Court's attention in accordance with Local Rule 22.08.

    iii. All discovery responses, documents, information, or materials designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" shall be treated as such unless and until the designating party withdraws their designation

in writing or the Court rules that the responses, documents, information, or materials are not entitled to the designation.

12. Unless given prior written consent of the designating party, or upon prior order of this Court obtained after notice and briefing by the parties, information designated as "CONFIDENTIAL" shall not be disclosed to any person other than:

a. Counsel of record for the parties in this litigation.

b. Paralegals, investigators, and other such employees of such counsel who are actively supporting counsel of record for the parties in this litigation and to whom disclosure is necessary for purposes of litigation.

c. Experts and consultants retained by the parties in this litigation.

d. Testifying witnesses.

e. The Court and court personnel.

f. Court reporters.

g. Named party in the case.

13. Unless given prior written consent of Defendants, or upon prior order of this Court obtained after notice and briefing by the parties, information designated as "ATTORNEY'S EYES ONLY" shall not be disclosed to any person other than:

a. Counsel of record for the parties in this litigation.

b. Paralegals, investigators, and other such employees of such counsel who are actively supporting counsel of record for the parties in this litigation and to whom disclosure is necessary for purposes of litigation.

c. Experts and consultants retained by the parties in this litigation.

d. Testifying witnesses.

e. The Court and court personnel.

f. Court reporters.

14. Except for individuals identified in Paragraphs 6(a), 6(e), 7(a), and 7(e), every person receiving information designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" must complete and attach their signature to the Certification found as Exhibit 1 and agree to be bound by this Order. Each certification of an individual identified in Paragraphs 6(b), 6(c), 6(g), 7(b), and 7(c) shall be maintained and preserved by counsel who received the designated information. Each certification of an individual identified in Paragraphs 6(d), 6(f), 7(d), and 7(f) shall be maintained and preserved by counsel who designated the information.

a. If an individual's identity would be considered Non-Discoverable Information because of their involvement in the process of executing a sentence of death, they may sign the Certification pseudonymously.

15. Any person receiving material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" shall not reveal to or discuss its contents with any person who is not entitled to receive such information under this Order.

16. Use of information exchanged in discovery shall be limited only to this litigation between the named parties. Any person receiving designated information under the terms of this Order shall not use that information for any other purposes, in any other litigation, or for any other parties.

17. If any party believes they must reveal material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" in a court filing, that party shall, after a meet and confer with opposing counsel, request that the Court grant leave to file such information

under seal. Absent an order granting a motion for leave to seal, a party may not file material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" unless this Court modifies this Protective Order to permit the filing or the Court otherwise permits the filing.

18. All provisions of this Order shall continue to be binding after the conclusion of this action. Within sixty (60) days after the conclusion of the litigation, all parties shall destroy, obliterate, or redact all material and any portions of deposition transcripts, filings, or other documents that were designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY."

19. Plaintiffs and Defendants shall use every reasonable effort to maintain the confidentiality of the material designated "CONFIDENTIAL" and "ATTORNEY'S EYES ONLY." This includes, but is not limited to, appropriate electronic security measures, such as access limitation, password protection, and/or encryption.

20. If the contents of material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" are unintentionally disclosed to the public, that material shall not lose its confidential status. Upon learning of the public disclosure of designated material by any person provided information under this protective order, counsel shall promptly notify the designating party. Such notification shall inform the designating party of the factual circumstances which led to the public disclosure as well as the identities of all individuals known by counsel to have knowledge of the contents of designated material. The parties acknowledge that, should some aspect of material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" become public knowledge via

means not related to a violation of this protective order, the parties anticipate requesting an amendment of this protective order to permit use of that information freely.

21. If any party receives a lawful subpoena from any court in another action, a public records request under any state or federal law, or any other request for documents that compels the production of material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," the party shall, after a meet and confer required by Local Rule 22.08, request that the Court modify this order to permit disclosure. The motion shall be served upon the designating party and the subpoenaing party. Both the designating party and the subpoenaing party shall have at least fourteen (14) days to respond to the motion. The subpoena recipient may not produce the material designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" unless this Court modifies the Protective Order to permit disclosure.

22. Inadvertent disclosure shall not constitute a waiver of any applicable privilege or work product protection or affect the ability of a party or non-party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection.

Entered this ___ day of _____, 2025.

**IT IS SO ORDERED**

_____
JUDGE RICHARDSON

SUBMITTED FOR ENTRY:

JONATHAN SKRMETTI
Attorney General and Reporter

*/s/ Cody N. Brandon*
CODY N. BRANDON (037504)
Deputy Attorney General
Constitutional Defense Division
P.O. Box 20207
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Off. (615) 532-7400
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*Counsel for Defendant*

*/s/ Luke Ihnen*
LUKE IHNEN (BPR #035190)
Federal Defender Services of Eastern TN, Inc.
800 S Gay Street
Suite 2400
Knoxville, TN 37929-9714
(865) 637-7979

**CERTIFICATE OF SERVICE**

I certify that on the 21st day of May, 2025, a copy of the foregoing was filed and served via the Court's CM/ECF system on the following:

**Helen Susanne Bales**
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(865) 637-7979
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Fax: 865-637-7999
Email: stephen_ferrell@fd.org

*/s/ Cody N. Brandon*
CODY N. BRANDON
Deputy Attorney General

# Exhibit C

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

| | | |
|---|---|---|
| KEVIN BURNS, BYRON BLACK, JON HALL, KENNATH HENDERSON, ANTHONY DARRELL HINES, HENRY HODGES, FARRIS MORRIS, WILLIAM GLENN ROGERS, and OSCAR SMITH, | ) | NF |
| Plaintiffs, | ) | CAPITAL CASE |
| v. | ) | CASE NO. 25-414-IV |
| FRANK STRADA, in his official capacity as Tennessee's Commissioner of Correction, and | ) | |
| KENNETH NELSEN, in his official capacity as Warden of Riverbend Maximum Security Institution, | ) | |
| Defendants. | ) | |

FILED
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CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

## PROTECTIVE ORDER

Whereas certain discovery materials in this case may qualify as Prohibited Material,[1] confidential or highly confidential information, and to prevent any prohibited direct or indirect disclosure or undue disclosure of any such information, Plaintiffs and Defendants (collectively, "Parties") have separately requested that the Court enter a Protective Order; and whereas the Court has determined that the terms set forth herein are appropriate to protect the respective interests of the Parties and third parties; accordingly, it is **HEREBY ORDERED**:

## I. DEFINITIONS

1. Action: the above captioned action, including any amendments thereto.

[1] The definition of "Prohibited Material" is on Pages 3-4 of this Protective Order. If any provision of this Protective Order is viewed as needing to be revised or clarified, then the Court will entertain motions addressing such concerns.

2. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

3. CONFIDENTIAL Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under the rulings of this Court or Tennessee Rule of Civil Procedure 26.03.

4. Counsel (without qualifier): Outside Counsel and In-House Counsel (as well as their support staff).

5. Designating Party: a Party or Non-Party that designates information or tangible items that it produces in disclosures or in responses to discovery as "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

6. Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

7. Expert: a person who has (1) been retained by a Party or its Counsel to serve as an expert witness or as an undisclosed consultant in this Action (as well as his or her employees and support staff), (2) is not a current employee of a Party, and (3) at the time of retention, is not anticipated to become an employee of a Party.

8. HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY Information or Items: Protected Material the disclosure of which to another Party or

Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

9. In-House Counsel: attorneys who are employees of a Party to this Action, and their support staff. In-House Counsel does not include Outside Counsel.

10. Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.

11. Outside Counsel: attorneys who are not employees of a Party to this Action but are retained in this Action to represent or advise a Party to this Action and who have signed the "Acknowledgement and Agreement to be Bound" that is attached hereto as Exhibit A, as well as their support staff to whom it is reasonably necessary to disclose the information for this Action (including but not limited to attorneys, paralegals, secretaries, law clerks, and investigators), provided that a supervising attorney confirms in writing that their support staff agrees to adhere to the terms set forth in the "Acknowledgment and Agreement to be Bound" (Exhibit A).

12. Party: any party to this Action.

13. PROHIBITED MATERIAL: information (regardless of how it is generated, stored, or maintained), documents, identities, or tangible things that qualify for protection under the rulings of this Court, Tenn. R. Civ. P. 26.03, Tenn. Code Ann. § 10-7-504(h), or other applicable law. This material may not be disclosed to Plaintiffs' Counsel or to the Court. If disclosure to the Court is deemed necessary to resolve a dispute about disclosure, redaction,

pseudonyms, or related issues, and if the Court believes that an *in camera* inspection of Prohibited Material is necessary, then the Court will conduct the inspection of the material at the Attorney General's Office with a representative of the Attorney General's Office present during this inspection. These measures are designed to protect the material from disclosure and to protect the Parties and the Court from any claim of intentional or unintentional disclosure of Prohibited Material. Otherwise, this Court should not have access to any information that could be used to research the identity of the persons and entities whose identities cannot be directly or indirectly disclosed under the rulings of the Court, Tenn. R. Civ. P. 26.03, Tenn. Code Ann. § 10-7-504(h), or other applicable law. The Court is committed to preserving the sanctity of Prohibited Material and will carefully examine efforts to obtain such Prohibited Material or material calculated to lead to the discovery of Prohibited Material through combining judicial efforts with extra-judicial efforts.

14. Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

15. Professional Vendors: persons or entities that provide litigation support services *(e.g.,* photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

16. Protected Material: any Disclosure or Discovery Material that is designated as "PROHIBITED MATERIAL" or as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

17. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

## II. SCOPE

18. The protections conferred by this Order apply to not only Protected Material (as defined above), but also to: (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any oral, written, or electronic communications, testimony, or presentation by Parties or their Counsel that might reveal Protected Material.

19. Data Security of Protected Material. Any Receiving Party or person in possession of or transmitting another Party's Protected Material must maintain an information security program consistent with standard industry practices that is designed to protect and secure the Protected Material from loss, misuse, unauthorized access, unauthorized disclosure, and theft. To the extent a Receiving Party or person does not have an information security program, a Receiving Party may comply with this Data Security provision by having the Protected Material maintained by and/or stored with a secure eDiscovery/litigation support site(s) or claims administrator that maintains an information security program that aligns with standard industry practices. Any Protected Material in paper format

must be maintained in a secure location with access limited to persons entitled to access the Protected Material under this Order. Protected Material shall not be copied or otherwise reproduced by a Receiving Party, except for transmission to qualified recipients, without the written permission of the Designating Party or by further order of the Court. If a Receiving Party or any person in possession of or transmitting another Party's Protected Material discovers any loss of Protected Material or a breach of security, including any actual or suspected unauthorized access relating to another Party's Protected Material, they shall comply with the "Unauthorized Disclosure of Protected Material" provisions in Section X of this Order.

## III. DURATION

20. Even after final disposition of this Action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. The Court retains jurisdiction even after termination of this Action to enforce this Order and to make such amendments, modifications, deletions, and additions to this Protective Order as the Court from time to time deems appropriate.

## IV. DESIGNATING PROTECTED MATERIAL

21. Exercise of Restraint and Care in Designating Material for Protection. A Designating Party shall use good faith in designating information as "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY

CONFIDENTIAL - ATTORNEYS' EYES ONLY," making such a designation only when there is a legitimate reason for the restrictions on disclosure called for by the designation. Designations that are clearly unjustified or that have been made for an improper purpose *(e.g.,* to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other Parties) are prohibited. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, then that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

22. Manner and Timing of Designations. Except as otherwise provided in this Order or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated in discovery responses and before the material is disclosed or produced. Designation in conformity with this Order requires:

(a) For information in documentary form *(e.g.,* paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affixes the legend "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" to each page of a paper or electronic document that contains Protected Material or to the cover page of bound or grouped material. Electronic materials may be

designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information by any method reasonably designed to alert the Receiving Party that the information is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information, such as, but not limited to, the subject line of an e-mail containing such materials or, in the case of spreadsheets or other documents not produced in paginated form, in a field in the overlay or in the document's file name. A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all material made available for inspection shall be treated as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" in accord with the foregoing. A Party may designate documents produced by a Non-Party as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" if the documents contain information for which that

Party would have a right to apply the proposed designation if produced by that Party, by notifying all other Parties of the designation in writing within twenty-one (21) days after the production of documents by the Non-Party. The deadline to designate Non-Party materials may be extended by agreement of the Parties.

(b) For testimony given in deposition or in other pretrial proceedings, in the event that a Producing Party designates a witness's deposition or other testimony as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the specific page and line designations over which confidentiality is claimed must be provided to the Receiving Party within thirty (30) days of receipt of the final transcript, provided, however, that the Receiving Party will consider reasonable requests for an extension of the deadline. Deposition testimony shall be treated as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" pending the deadline. After the 30-day period, if no Party has designated some or all of that deposition transcript as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" under this Protective Order, the entire deposition, or those portions of the deposition not designated as confidential, will no longer be considered confidential.

(c) For information produced in some form other than documentary and for any other tangible items, that the Producing Party affixes, in a prominent place on the exterior of the container or containers in which

the information or item is stored, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s). A Party may designate information produced by a Non-Party as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" if the document contains information for which that Party would have a right to apply the proposed designation if produced by that Party, by notifying all other Parties of the designation in writing within twenty-one (21) days after the production of information by the Non-Party. The deadline to designate Non-Party materials may be extended by agreement of the Parties.

23. Inadvertent Failures to Designate. Disclosure of "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information does not, alone, waive the confidential status of such information. The Parties shall use reasonable care in designating qualified information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information. In the event that "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information is disclosed without a marking or designation of it as such, the Party may thereafter assert a claim or

designation of confidentiality if made within a reasonable length of time and before such document is used in any substantial way by the Receiving Party, and promptly provide replacement information or items with the appropriate designation (and, if applicable, using the same Bates number as the original production). Thereafter, the Receiving Party must immediately delete, sequester, or return to the Producing Party the original "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information and all copies of the same and make no use of such Information. A recipient's prior disclosure of newly designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Material shall not violate this Order.

## V. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24. This Order shall not preclude any Party from bringing before the Court, at any time, the question of whether any particular information is properly designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information. In its request for relief from the Court, the Party disputing the designation of any information shall identify the information that it believes is not properly designated. The Party asserting the propriety of any designation has the burden to defend the designation.

25. Prior to bringing any motion, the Parties shall meet and confer in good faith to attempt to resolve the dispute. The Challenging Party shall initiate

this process by providing written notice of each designation it is challenging. The Parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient) within ten (10) days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. The Designating Party must provide either redesignated documents or an explanation of the basis within twenty-one (21) days of the meet-and-confer. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet-and-confer process first or establishes that the Designating Party is unwilling to participate in the meet-and-confer process in a timely manner.

26. If the dispute cannot be resolved, the Parties shall treat the information consistent with its designation until a ruling is made by the Court.

27. Any person or entity receiving "PROHIBITED MATERIAL" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information may use the procedures set forth in this section to challenge the Designating Party's confidentiality designation.

## VI. ACCESS TO AND USE OF PROTECTED MATERIAL

28. Basic Principles. Except as otherwise set out in this Order, a Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, including any appeal(s) or as described in Paragraph 34. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of Section XII below. Protected Material must be stored and maintained by a Receiving Party, at a location, and in a secure manner that ensures that access is limited to the persons authorized under this Order.

29. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) The Receiving Party;

(b) The Receiving Party's Outside Counsel in this Action;

(c) Insurance Representatives to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgement and Agreement to be Bound" (Exhibit A);

(d) Experts (as defined in this Order) retained by the Receiving Party and their staff (1) to whom disclosure is reasonably necessary for this Action and

(2) who have signed the "Acknowledgment and Agreement to be Bound" (Exhibit A);

(e) The Court and its personnel, and any appellate court or other court (and their personnel) before which the Parties appear in this Action;

(f) Court reporters, videographers, and their staff;

(g) Professional jury or trial consultants and mock jurors or focus group members who have signed a confidentiality agreement, and Professional Vendors to whom disclosure is reasonably necessary for this Action and whose representative has signed the "Acknowledgement and Agreement to be Bound" (Exhibit A);

(h) Any mediator who is assigned to hear this Action, and his or her staff, who have signed the "Acknowledgement and Agreement to be Bound" (Exhibit A);

(i) During their depositions or a hearing, or during preparations for the same, witnesses in the Action and their attorneys to whom disclosure is reasonably necessary and who have signed the "Acknowledgement and Agreement to be Bound" (Exhibit A), unless otherwise agreed to by the Designating Party or ordered by the Court;

(j) The author or recipient of a document containing the Protected Material or a custodian or other person who otherwise possessed or personally knows the information;

(k) Any other person as to whom the Designating Party has consented to disclosure in advance; and,

(l) Such other persons as the Parties may agree or as may be ordered by the Court.

30. Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, any information or items designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" may be disclosed only to:

(a) The Receiving Party's In-House Counsel;

(b) The Receiving Party's Outside Counsel in this Action;

(c) Insurance Representatives to whom disclosure is reasonably necessary for this action and who have signed the "Acknowledgement and Agreement to be Bound" (Exhibit A);

(d) Experts (as defined in this Order) retained by the Receiving Party and their staff (1) to whom disclosure is reasonably necessary for this Action, (2) who have signed the "Acknowledgement and Agreement to be Bound" (Exhibit A), and (3) as to whom the procedures set forth in Paragraph 35 have been followed;

(e) The Court and its personnel, and any appellate court or other court (and their personnel) before which the Parties appear in this Action;

(f) Court reports, videographers, and their staff;

(g) Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action

and who have signed the "Acknowledgment and Agreement to be Bound" (Exhibit A);

(h) Any mediator who is assigned to hear this Action, and his or her staff, who have signed the "Acknowledgment and Agreement to be Bound" (Exhibit A);

(i) During their depositions or a hearing, or during preparations for the same, current and former employees of the Designating Party in this Action and their attorneys to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to be Bound" (Exhibit A), provided that the document is relevant to their work responsibilities during the relevant time and that no copy of any document marked as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information shall be left with the witness or included in the witness's copy of the transcript. Where a former employee is currently employed by a competitor of the Designating Party, the Designating Party may move for a protective order requiring heightened protections at least ten (10) business days prior to the deposition or may object during the course of the deposition to the disclosure of any particular document marked "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" by explaining the basis for its legitimate concerns of competitive harm. If objecting during the course of the deposition, then the objecting party may request a telephonic ruling from the Court. If the Court is not

available, then the parties will not show the objected-to document to the witness and will leave the deposition open. It will be the objecting party's obligation to seek a ruling from the Court within three (3) days of the deposition;

(j) The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or personally knows the information;

(k) Any other person as to whom the Designating Party has consented to disclosure in advance; and

(l) Such other persons as the Parties may agree or as may be ordered by the Court.

31. Nothing contained in this Order shall be construed to restrict or limit the use, dissemination, or disposition by the Designating Party of its own information that it designates as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

32. Nothing contained in this Order shall prevent a party from sharing a witness's own account-level data with that witness.

33. Exclusion of Individuals from Depositions. Counsel shall have the right to exclude any person who is not authorized by this Order to receive documents or information designated as Protected Materials from any deposition where testimony regarding Protected Materials or the use of Protected Materials is likely to arise, but only during periods of examination or testimony directed to or comprising Protected Material. This Paragraph does not apply to the deponent.

34. Law Enforcement Purposes. The Parties may disclose Protected Material to other State Attorneys' General and United States federal government enforcement agencies investigating and/or prosecuting consumer protection claims against Defendants related to the allegations in the Complaint in this case, provided that those agencies agree in writing to be bound by the terms of this Order. The State Attorneys' General and United States federal government enforcement agencies who receive Protected Material under this Paragraph may use it for investigating and/or litigating their consumer protection claims against Defendants related to the allegations in the Complaint in this case. The State's determination that investigations or prosecutions arc "related to" this litigation is limited to this Protective Order and not intended to have a preclusive or binding effect regarding whether other investigations and/or prosecutions are "related to" this litigation in any other context.

35. Procedures for Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Protected Material to Experts.

(a) Before a Party provides "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Protected Material to an Expert retained in connection with the prosecution or defense of this litigation, the Party (both the Designating Party and the Receiving Party) shall disclose to the other (1) the full name of the Expert and the city and state of the Expert's primary residence, and (2) either the name of the

Expert's current employer, the Expert's current Curriculum Vitae, or a link to the Expert's website.

(b) A Party that makes a disclosure specified in Paragraph 35(a) may disclose the subject Protected Material to the identified Expert unless, within seven (7) days of delivering the request, the Party receives a written objection from the other Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection pursuant to Paragraph 35(b) must meet and confer with the opposing Party (through direct voice-to-voice dialogue) to try to resolve the matter by agreement. If no agreement is reached, then the Producing Party may file a motion for protective order that would preclude the Expert from receiving "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information within fourteen (14) days of the written objection. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet-and-confer requirements imposed in this Paragraph. In any such proceeding, the Party opposing disclosure to the Expert bears the burden of proving that the risk of harm that the disclosure would entail (under the safeguards imposed by this Order) outweighs the opposing Party's need to disclose the Protected Material to its Expert.

(d) Any opposition to a motion for protective order filed pursuant to this Paragraph will be filed within seven (7) days of the motion. A reply, if any, will be due within three (3) days of the opposition.

## VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

36. If a Receiving Party is served with a subpoena or a court order issued in other litigation that would compel disclosure of any information or items designated in this Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the Receiving Party must:

(a) promptly notify in writing the Counsel of Record for the Designating Party (by mail, if possible) unless prohibited by law from doing so. Such notification must include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

37. The purpose of imposing these duties is to alert the interested parties to the existence of this Order and to afford the Designating Party in this Action an opportunity to address its confidentiality interests in the court from which the subpoena or order is issued. The Designating Party shall bear

the burden and expense of seeking protection in that court of its Protected Material. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any Protected Material before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. Nothing in these provisions should be construed as authorizing or encouraging the party that received the Protected Material in this Action to disobey a lawful directive from any other court.

## VIII. PARTY'S OWN INFORMATION

38. The restrictions on the use of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information established by this Protective Order are applicable only to the use of the Disclosure or Discovery Material received by a Party from another Party or from a Non-Party. A Party is free to do whatever it desires with its own confidential information, provided that any dissemination of the information by the Party that owns the information may lead to the loss of that information's confidential status.

## IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

39. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these

provisions should be construed as prohibiting a Non-Party from seeking additional protections. Any Party issuing a subpoena to a Non-Party shall enclose a copy of this Order.

40. In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(a) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(b) promptly provide the Non-Party with a copy of the Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(c) make the information requested available for inspection by the Non-Party, if requested.

41. If the Non-Party fails to object or seek a protective order from this Court within fourteen (14) days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before determination by the Court. Absent a Court order to the contrary, the Non-Party shall bear the

burden and expense of seeking protection in this Court of its Protected Material.

42. For a period of fourteen (14) days following production by a Non-Party, that production shall be deemed "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" even if not so designated by the Non-Party, to provide the Parties an adequate opportunity to designate information as appropriate. The inadvertent failure by any Party to designate information produced by Non-Parties as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall be addressed consistent with Section IV of this Order.

## X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

43. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, or if the Receiving Party learns that Protected Materials have been compromised due to a security breach, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures or breach; (b) use its best efforts to retrieve all unauthorized copies of the Protected Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person or persons to execute the "Acknowledgment and Agreement to be Bound" (Exhibit A).

44. Nothing in these provisions limits or prohibits a Party or Non-Party from seeking any available legal or equitable remedies or relief for the

unauthorized disclosure of its Protected Material, including but not limited to attorneys' fees and costs associated with enforcing its rights under this Order.

## XI. MISCELLANEOUS

45. Previously Produced Material. Material that Defendants previously produced in Tennessee in response to civil investigative demands, interrogatories, subpoenas, or other requests may be subject to being used in discovery in this Action. Any material previously designated "CONFIDENTIAL" under the terms of the Parties' pre-suit Confidentiality Agreement will be treated consistently as "CONFIDENTIAL" material subject to the terms of this Protective Order, and such designation may be disputed under the terms of this Protective Order. Any material for which a previous designation of "CONFIDENTIAL" under the terms of the Parties' pre-suit Confidentiality Agreement has been withdrawn or overruled by Court Order will be treated consistently as not protected material under the terms of this Protective Order.

46. Public Knowledge or Independent Acquisition. Notwithstanding any other provision of this Order, no person shall be precluded from using or disclosing, in any lawful manner, any Protected Material that (a) was public knowledge prior to disclosure, other than by public disclosure in violation of a court order, including this or other protective orders; (b) was independently known by that person; (c) either is independently and

lawfully developed or is acquired by the Receiving Party from any source, other than the designating source, unless the Receiving Party knows or should know that the person came into possession of such Protected Material unlawfully; or (d) becomes public knowledge other than by an act or omission of the Receiving Party or by violation of a court order, including this or other protective orders. The burden of proving prior possession, prior knowledge, or prior public knowledge of such Protected Material shall be on the Receiving Party.

47. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

48. Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

49. Source Code. Prior to the disclosure of any source code, the Parties will confer regarding the definition of source code and any additional protections that may be necessary, then present either an agreed-upon proposed Order or present competing proposed Orders to the Court regarding the provisions that will govern the protection of the source code.

50. No Waiver. Nothing in this Order shall be deemed a waiver of the right of any party to oppose production of any information or material on any

available grounds or to object to the authenticity or admissibility of any document, testimony, or other evidence.

51. No Modification of Privileges. Nothing in this Order shall modify the law regarding the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and any other applicable privilege or protection from disclosure to the extent such privilege or protection exists under applicable law.

52. Filing Protected Material. This Order explicitly permits Parties to file under seal with the Clerk pleadings, motions, or other papers that contain information that any Party has designated as Protected Material. Any pleading, motion, or other paper containing information that any Party has designated as Protected Material shall be filed using the following procedures:

(a) a redacted version (*i.e.*, a version containing line-by-line redactions of Protected Material) of the pleading, motion, or paper shall always be filed on the public docket;

(b) an unredacted version of the pleading, motion, or paper shall be e-mailed to opposing Counsel and, if applicable, to a third party that designated information in the filing as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information; and

(c) following the filing of the redacted version on the public docket, an unredacted version of the pleading, motion, or paper shall be sent in an

envelope marked "Sealed" to the Davidson County Chancery Court Clerk, with a notation that the material must be filed under seal. The paper should also include a cover page containing a typed statement in substantially the following form:

**SUBJECT TO PROTECTIVE ORDER - PROTECTED MATERIAL**

The contents of this envelope are filed under seal, have been designated as Protected Material, and are subject to a Protective Order of the Court. The contents are not to be made public except as set forth in the Protective Order or upon further order of the Court.

53. A pleading, motion, or paper containing information that a Party has designated as Protected Material will be treated as filed on the date by which the filing Party completed (a) and (b). The filing of such a pleading, motion, or paper shall not be construed as agreement on the part of the filing Party that the information is in fact Protected Material or that filing such information under seal is appropriate. Within seven (7) business days following the conclusion of briefing (or the due date for filing a Reply, if no Reply is filed) on the underlying motion or other papers filed under seal, the Party or Non-Party that designated the information as Protected Material may file an omnibus motion to seal requesting that some or all of the redacted information remain as such. The Designating Party may move the Court for an extension of time. If no such timely motion to seal is filed, or upon denial of any such motion, then the original filing Party shall promptly file an unredacted version of the pleading, motion, or other paper on the public docket.

54. Challenges to Sealing Orders by Members of the Public. Any interested member of the public may challenge the sealing of particular documents that have been filed under seal, and the Party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

55. Presentation of Protected Material to the Court. With respect to testimony elicited during hearings, at trial, or at other proceedings before the Court, whenever Counsel for any Party believes that any question or line of questioning calls for the disclosure of Protected Material, Counsel may alert the Court to this concern and the Court shall take such action as it concludes is necessary and appropriate in light of the confidentiality interests at stake and the public's right of access. For purposes of any hearing, trial, or other proceeding in this case, a Party's failure to have previously challenged the designation of Protected Material shall not prevent that Party from arguing that the proceeding, including any discussion of the Protected Material, should proceed publicly.

56. Compliance with Federal and State Law. Nothing contained herein shall alter either Party's obligations to maintain and protect information that is privileged or otherwise protected under state, federal, or common law or to alter Tennessee's obligations under teh Tennessee Public Records Act. Tennessee shall not make any disclosures of Protected Material outside of those addressed elsewhere in this Order unless such a disclosure is required by law and will provide notice of such disclosure to the Designating Party seven (7) days prior to disclosing Protected Material if permitted by law.

57. Prosecution Bar. Absent written consent from the Designating Party, any individual bound by this agreement who receives access to "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information must not be involved in the prosecution of patents or patent applications relating to the subject matter of the "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information. For purposes of this Paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of these patent claims. Prosecution includes, for example, original prosecution, reissue, and reexamination and other post-grant proceedings. This Prosecution Bar begins when access to "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information is first received by the individual and ends two (2) years after final disposition of this Action has expired.

58. Export Controls. Disclosure of Protected Material shall be subject to all applicable laws and regulations relating to the export of technical data contained in such Protected Material, including the release of such technical data to foreign persons or nationals in the United States or elsewhere. The Receiving Party shall comply with all applicable export control laws and regulations, *see, e.g.,* 15 C.F.R. § 734. No Protected Material may leave the territorial boundaries or the United States of America or be made available to any foreign national who is not (i) lawfully admitted for permanent residence in the United States or (ii) identified as a protected individual under the Immigration and

Naturalization Act, *see* 8 U.S.C. § 1324b(a)(3). Without limitation, this prohibition extends to Protected Material (including copies) in physical and electronic form. The viewing of Protected Material is similarly prohibited, except that Protected Material may be taken outside the territorial limits of the United States (to the extent permitted by law) if it is reasonably necessary for a deposition taken in a foreign country. The restrictions contained within this Paragraph may be amended through express written consent of the Producing Party to the extent that such agreed-to procedures conform with applicable export control laws and regulations.

## XII. FINAL DISPOSITION

59. Final disposition shall be deemed to be the later of: (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion or all appeals, re-hearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

60. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after the final disposition of this Action, each Receiving Party and each Non-Party in receipt of Protected Material pursuant to the procedures in Paragraph 34 above must take reasonable steps to return all Protected Material to the Producing Party or destroy such material, except: (l) backup tapes or other disaster recovery systems that

are routinely deleted or written over in accordance with an established routine system maintenance practice; (2) emails sent or received by counsel for the Receiving Party; (3) documents that must be preserved as government records or in compliance with other statutory, regulatory, or legal authorities; or (4) work product kept in the ordinary course of business in which confidential material is referenced or described. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, upon the written request of the Producing Party, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) within a reasonable time after receiving the request that (1) identifies (by category, if appropriate) all the Protected Material that was returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel is entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material.

61. Notwithstanding the foregoing, any Receiving Party that is an insurance company with a potential coverage obligation with respect to this Action, or a Defendant that is pursuing insurance coverage for this Action, shall be permitted to retain copies of Protected Material subject to all requirements of this Protective Order and solely to the extent such retention is necessary to comply with applicable law and its regulatory and contractual obligations or to pursue insurance coverage from its insurer; and such insurance company and Defendant shall return or destroy such Protected Material within ninety (90) days of the end of the above-stated reasons or obligations to retain the Protected Material.

## XIII. STANDARD PROTECTIVE ORDER

62. This Order supersedes any applicable Standard Protective Order or pre-suit confidentiality agreement, and as of the date of this Order, this Order governs the treatment of Protected Material produced in this action, including Protected Material produced when the Standard Protective Order or pre-suit confidentiality agreement was in effect in this action.

Dated: August 26, 2025

Russell T. P

CHANCELLOR RUSSELL T. PERKINS

cc: Kelley J. Henry, Esq.
Amy D. Harwell, Esq.
Elijah Swiney, Esq.
Katherine Dix, Esq.
Drew Brazer, Esq.
Cody N. Brandon, Esq.
Mary McCullohs, Esq.
David Wickenheiser, Esq.
Matthew Kubicek, Esq.



MAILED 8/26/25

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE**
**TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV**

| | | |
|---|---|---|
| **KEVIN BURNS, BYRON BLACK, JON HALL, KENNATH HENDERSON, ANTHONY DARRELL HINES, HENRY HODGES, FARRIS MORRIS, WILLIAM GLENN ROGERS, and OSCAR SMITH,** | ) | |
| **Plaintiffs,** | ) | **CAPITAL CASE** |
| **v.** | ) | **CASE NO. 25-414-IV** |
| **FRANK STRADA, in his official capacity as Tennessee's Commissioner of Correction, and** | ) | |
| **KENNETH NELSEN, in his official capacity as Warden of Riverbend Maximum Security Institution,** | ) | |
| **Defendants.** | ) | |

**EXHIBIT A**

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the Chancery Court of Davidson County, Tennessee, in the case of *Kevin Burns et al. v. Frank Strada, et al.*, Case No. 25-414-IV. I agree to comply with and to be bound by all terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is

subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the Chancery Court of Davidson County, Tennessee for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this Action.

I hereby appoint _____[print or type full name] of _____ [print or type full address and telephone number] as my Tennessee agent for service of process in connection with this Action or any proceedings related to enforcement of this Protective Order.

_____
PRINT NAME HERE

_____
SIGN NAME HERE

_____
DATE

_____
COUNTY

_____
STATE

cc: Kelley J. Henry, Esq.
Amy D. Harwell, Esq.
Elijah Swiney, Esq.
Katherine Dix, Esq.
Drew Brazer, Esq.
Cody N. Brandon, Esq.
Mary McCullohs, Esq.
David Wickenheiser, Esq.
Matthew Kubicek, Esq.

# Exhibit D

FILED
03/03/2026
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

**MEGAN KERRIGAN v. PATRICK NEWPORT**

**Chancery Court for Knox County**
**No. 212096-1**

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**No. E2025-01974-COA-R10-CV**

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## ORDER

Patrick Newport filed an application for an extraordinary appeal pursuant to Tennessee Rule of Appellate Procedure 10 seeking review of the order entered by the trial court requiring disclosure of certain public records under the Tennessee Public Records Act. Megan Kerrigan filed a response in opposition to the application. Upon consideration of the application, answer, and the accompanying documents thereto, we conclude this is a proper case for extraordinary review of the trial court's December 8, 2025 and December 10, 2025 orders concerning disclosure of the relevant expiration dates. The sole issue on appeal shall be whether the trial court erred by determining that the expiration dates of the chemicals used in executions were required to be disclosed under the Tennessee Public Records Act.

Accordingly, the application for an extraordinary appeal is GRANTED. The record on appeal shall be transmitted to the appellate court clerk within thirty (30) days of the date of entry of this order. This appeal shall then proceed in accordance with the rules of appellate procedure and the rules of this court. All proceedings in the trial court are STAYED pending the outcome of this appeal and any further review in the Supreme Court of Tennessee.

**PER CURIAM**

# Exhibit E

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

| | |
|---|---|
| **State of Tennessee** | **)** |
| | **) Supreme Court Case No. M2020-01156-SC-DPE-DD** |
| **v.** | **) Knox County Case No. 58183A** |
| | **) CAPITAL CASE (Execution Date: Sept. 30, 2026)** |
| **Christa Gail Pike** | **)** |

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**[Proposed] Protective Order**

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To preserve the confidentiality of individuals and entities involved in the process of executing a sentence of death, as well as facilitating efficient testimony and exchange of information related to this litigation, the Court hereby orders:

**Privileged and Confidential Information**

1. Designation

   a. Any party or non-party may designate as "CONFIDENTIAL" any discovery response, document, information, or material which that party or non-party considers in good faith to contain information that would implicate prison security, state confidentiality rules, personal privacy interests (including, but not limited to, personal identifiers and confidential health information), or trade secrets/proprietary information if disclosed to a non-party.

   b. Any party or non-party may designate as "ATTORNEY'S EYES ONLY" any discovery response, document, information, or

material if disclosure to a named party would implicate the same interests identified in Paragraph 1(a).

c. All discovery responses, documents, information, and materials shall be treated as CONFIDENTIAL, whether or not so designated, following their production by a party or non-party. A producing party may designate any discovery responses, documents, information, or materials as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," by notifying all parties in writing and specifically identifying the produced discovery responses, documents, information, or materials.

d. A party or non-party may designate information disclosed during a hearing or deposition as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by indicating so on the record at the hearing or deposition.

e. A party or non-party may designate information disclosed during written discovery as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by indicating so in their response.

f. If a party contends that any discovery responses, documents, information, or materials are not entitled to a "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" designation, such party may at any time give written notice challenging such designation to the

party or non-party who produced the discovery responses, documents, information, or materials.

i. The parties must meet and confer in good faith in an effort to resolve by agreement any disputed designation. If the parties cannot resolve the dispute, then the parties may bring the matter to the Court's attention.

ii. All discovery responses, documents, information, or materials designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" shall be treated as such unless and until the designating party withdraws their designation in writing or the Court rules that the responses, documents, information, or materials are not entitled to the designation.

2. Unless given prior written consent of the designating party, or upon prior order of this Court obtained after notice and briefing by the parties, information designated as "CONFIDENTIAL" shall not be disclosed to any person other than:

a. Counsel of record for the parties in this litigation.

b. Paralegals, investigators, and other such employees of such counsel who are actively supporting counsel of record for the parties in this litigation and to whom disclosure is necessary for purposes of litigation.

c. Experts and consultants retained by the parties in this litigation.

d. Testifying witnesses.

e. The Court and court personnel.

f. Court reporters.

g. Named party in the case.

3. Unless given prior written consent of Respondents, or upon prior order of this Court obtained after notice and briefing by the parties, information designated as "ATTORNEY'S EYES ONLY" shall not be disclosed to any person other than:

a. Counsel of record for the parties in this litigation.

b. Paralegals, investigators, and other such employees of such counsel who are actively supporting counsel of record for the parties in this litigation and to whom disclosure is necessary for purposes of litigation.

c. Experts and consultants retained by the parties in this litigation.

d. Testifying witnesses.

e. The Court and court personnel.

f. Court reporters.

4. Any person receiving material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" shall not reveal to or discuss its contents with any person who is not entitled to receive such information under this Order.

5. Use of information exchanged in discovery shall be limited only to this litigation between the named parties. Any person receiving designated information under the terms of this Order shall not use that information for any other purposes, in any other litigation, or for any other parties.

6. If any party believes they must reveal material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" in a court filing, that party shall, after a meet and confer with opposing counsel, request that the Court grant leave to file such information under seal. Absent an order granting a motion for leave to seal, a party may not file material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" unless this Court modifies this Protective Order to permit the filing or the Court otherwise permits the filing.

7. All provisions of this Order shall continue to be binding after the conclusion of this action. Within sixty (60) days after the conclusion of the litigation, all parties shall destroy, obliterate, or redact all material and any portions of deposition transcripts, filings, or other documents that were designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY."

8. Movants and Respondents shall use every reasonable effort to maintain the confidentiality of the material designated "CONFIDENTIAL" and "ATTORNEY'S EYES ONLY." This includes, but is not limited to,

appropriate electronic security measures, such as access limitation, password protection, and/or encryption.

9. If the contents of material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" are unintentionally disclosed to the public, that material shall not lose its confidential status. Upon learning of the public disclosure of designated material by any person provided information under this protective order, counsel shall promptly notify the designating party. Such notification shall inform the designating party of the factual circumstances which led to the public disclosure as well as the identities of all individuals known by counsel to have knowledge of the contents of designated material. The parties acknowledge that, should some aspect of material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" become public knowledge via means not related to a violation of this protective order, the parties anticipate requesting an amendment of this protective order to permit use of that information freely.

10. If any party receives a lawful subpoena from any court in another action, a public records request under any state or federal law, or any other request for documents that compels the production of material designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," the party shall request that the Court modify this order to permit disclosure. The motion shall be served upon the designating party and the

subpoenaing party. The subpoena recipient may not produce the material designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" unless this Court modifies the Protective Order to permit disclosure.

11. Inadvertent disclosure shall not constitute a waiver of any applicable privilege or work product protection or affect the ability of a party or non-party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection.

ENTERED this _____ day of _____

_____

**JUDGE MARK E. WARD, SENIOR JUDGE**
SPECIAL MASTER

FILED
BY MIKE HAMMOND
2026 AUG -3 PM 4:02
KNOX COUNTY CRIMINAL COURT
KNOXVILLE, TN

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | | |
|---|---|---|
| State of Tennessee | ) | |
| | ) | Case No. M2020-01156-SC-DPE-DD |
| v. | ) | Knox County Case No. 58183A |
| | ) | CAPITAL CASE |
| | ) | Special Master Judge Ward |
| Christa Gail Pike | ) | |

**Christa Pike's Response in Opposition to Motion to Quash or Modify Subpoenas and to Limit Discovery**

Christa Gail Pike, through counsel, files this Response in Opposition to the State of Tennessee's Motion to Quash or Modify Subpoenas and to Limit Discovery. For support, Ms. Pike submits the following.

## BACKGROUND

In furtherance of Ms. Pike's petition under Rule 12(4)(E) of the Tennessee Supreme Court Rules, the Tennessee Supreme Court has charged the Special Master in this proceeding with a fact-finding mission on five issues relating to the State's lethal injection protocol and its application to Ms. Pike in her execution scheduled for September 30, 2026.

The issues that the Court referred to the Special Master are: (1) whether Ms. Pike's thrombocytosis makes it "sure or very likely" that achieving peripheral IV access will cause serious illness and needless suffering; (2) whether her history of sexual assault and PTSD diagnosis makes it "sure or very likely" that pre-execution transfer to and observation by male officials at Riverbend will cause serious illness

and needless suffering; (3) whether her small and compromised veins make it "sure or very likely" that achieving peripheral IV access will cause serious illness and needless suffering; (4) whether her proposed alternative execution methods would "significantly reduce a substantial risk of severe pain"; and (5) whether the Tennessee Department of Correction ("TDOC") would permit a spiritual advisor in the execution chamber. This exercise should not be a hollow one, with no meaningful opportunity to actually learn facts through discovery and witness testimony. But, that is what the State urges the Special Master to do by foreclosing pre-hearing fact discovery and severely limiting the testimony Ms. Pike can seek from TDOC at the upcoming evidentiary hearing.

Recognizing that the stakes could not be higher, the Court has empowered the Special Master with a broad order of reference that imposes virtually no procedural limitations under Tenn. R. Civ. P. 53. Ms. Pike respectfully requests that the Special Master deny the State's instant Motion and grant Ms. Pike's Motion to Compel Expedited Discovery.

## I. Subpoenas for Testimony and Written Discovery to TDOC

Consistent with the purpose of an evidentiary hearing and the Special Master's charge to make findings of fact, Ms. Pike has sought to learn facts in this proceeding through written discovery and live witness testimony, both of which the State has resisted.

### A. Subpoenas for Hearing Testimony

The State does not dispute that representatives from TDOC can and will offer relevant testimony at the evidentiary hearing. The subpoenas[1] were issued by the Knox County Criminal Court on July 22, 2026, commanding TDOC to appear before the Criminal Court for Knox County, where the hearing is to take place, upon instruction from Complex Case Attorney Paul Bruno. To enable TDOC to identify appropriate representatives to appear and testify, Ms. Pike attached to the subpoenas a list of 17 topics previewing the areas in which she would seek testimony. (State's Mot. Ex. 1).

On July 24, 2026, the State identified portions of the subpoena topics it believed were irrelevant to the five issues referred to the Special Master. (State's Mot. Ex. 3). In response, on July 30, 2026, counsel for Ms. Pike agreed to withdraw certain portions of the subpoena topics and to withhold others in abeyance pending resolution of related issues in another pending execution litigation. (*Id.*) A copy of the subpoena topics with withdrawn portions redacted, as was sent to the State on July 30, 2026, is attached hereto as **Exhibit A**. The next day, the State filed the instant motion to quash or further modify the subpoenas. Ms. Pike respectfully requests that the Special Master deny the State's motion.

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[1] This Court issued three separate subpoenas for several days of TDOC testimony, each otherwise identical. (*See* State's Mot. Ex. 1) Ms. Pike refers herein to these subpoenas collectively as the "subpoenas" or "subpoena."

### B. Written Discovery

On July 15, 2026, the parties met and conferred regarding a joint scheduling order, in which Ms. Pike requested time for limited discovery. The State declined this proposal, and the parties ultimately submitted a proposed scheduling order that included expert discovery but otherwise was silent as to fact discovery. The Court and Special Master entered this Scheduling Order on July 23, 2026.

The parties met and conferred again on July 24, 2026, during which Ms. Pike again raised the issue of conducting such limited discovery as is necessary to prepare for an evidentiary hearing. The parties agreed to exchange discovery for review and on July 27, 2026, Ms. Pike accordingly sent a set of narrowly tailored interrogatories and requests for admission to the State. (*See* State's Mot. Ex. 3). On July 28, 2026, Ms. Pike requested the State's position on the discovery requests. (*Id.*) In response, the State reiterated that it "[did not] believe these discovery requests are procedurally proper . . . ." A copy of the email is attached hereto as **Exhibit B**. On July 30, 2026, having already conferred several times by phone and email, and concerned about delay, Ms. Pike responded that there was an impasse regarding written discovery and she would be filing her motion but was still open to discussing discovery-related issues.

As the August 11th evidentiary hearing rapidly approaches, Ms. Pike filed her Motion to Compel on July 30, 2026. Ms. Pike construes the portion of the State's motion relating to limiting discovery to be a response in opposition to the Motion to Compel, and she incorporates by reference her arguments in the Motion to Compel.

## LEGAL STANDARD

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" Tenn. R. Civ. P. 26.02(1). Tennessee courts construe discovery rules broadly and liberally in favor of disclosure of non-privileged material. *Estes v. Good*, 1990 WL 77181, at *3 (Tenn. Ct. App. June 8, 1990). And, a court may modify a subpoena if it would be "unreasonable and oppressive." *Id.* 45.07(4). "The rules favor discovery. Thus, the party opposing discovery must demonstrate with more than conclusory statements and generalizations that the discovery limitations being sought are necessary to protect it from, among other things, oppression or undue burden or expense." *State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Grp. Trust*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006). Courts "should decline to limit discovery if the party seeking the limitations cannot produce specific facts to support its request." *Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1990). The burden rests squarely on the State to demonstrate with more than conclusory statements and generalizations that the requested limitation is necessary to protect against annoyance, embarrassment, oppression, or undue burden or expense. *Id.*

## ARGUMENT

### I. The Special Master Should Decline to Quash or Further Modify the Hearing Subpoena.

#### A. The Subpoenas Are Valid and Enforceable.

The State takes issue with the fact that the subpoenas were issued by the Knox County Criminal Court, which is where the witnesses are required to appear and

where the underlying criminal case originated. The State spills much ink over subpoena procedure in the normal course, but this proceeding is *suis generis* under the Court's new Rule 12(4)(E) procedure, and the State disregards both the breadth of powers afforded to the Special Master and prior guidance in this matter.

Specifically, counsel for Ms. Pike were instructed by Complex Case Attorney Paul Bruno with the Tennessee Administrative Office of the Courts, who is assisting the Court and Special Master in this case, to issue these Subpoenas by the Knox County Criminal Court. *See* Dec. of Luke P. Ihnen, attached hereto as **Exhibit C**. The Court issued the subpoenas accordingly.[2] Indeed, the Special Master has entered an order in this proceeding in the Knox County Criminal Court, *see* Order Granting Media Requests), with which the State takes no issue.

The State suggests the subpoenas should have been issued by the Davidson County Chancery Court because Ms. Pike's "collateral litigation began" there "and that case has not yet been dismissed." This ignores prior rulings from both courts. The Davidson County Chancery Court found that it lacked subject matter jurisdiction over Ms. Pike's January 8, 2026 challenge and transferred the case to the Tennessee Supreme Court. (*See* Tennessee Supreme Court, No. M2026-00667-SC-UNK-CV. Order at 1, May 12, 2026.) The Tennessee Supreme Court dismissed the transferred

[2] As the State noted in its own correspondence with Mr. Bruno, "There is some confusion as to the proper filing procedure for the special master proceedings." Counsel for all parties are navigating a new and unique procedural posture, and Ms. Pike would be happy to have the subpoenas reissued from another court if the Tennessee Supreme Court or the Special Master so advises.

case, agreeing that the Davidson County Chancery Court lacked jurisdiction under the new provisions of Rule 12(4)(E). (Order at 2, May 12, 2026.)[3]

Regardless, Tennessee Rule of Civil Procedure 53.02 vests a special master with "broad powers to carry out his assigned task," limited only by "the boundaries set forth in the order of reference." *Pennington v. Boundry, Inc.*, 2008 WL 1923110, at *9 (Tenn. Ct. App. May 1, 2008). This plainly includes requiring the attendance of witnesses at the hearing for whom subpoenas have not only been issued but substantively negotiated in good faith between the parties, and the State and TDOC have not suffered any prejudice. This procedural complaint is nothing more than gamesmanship designed to run out the clock in a proceeding where time is of the essence, and the Special Master should not grant the Motion to Quash on this ground.

### B. The Remaining Subpoena Topics Are Relevant.

Tennessee Rule of Civil Procedure 26.02(1) embodies a broad policy favoring discovery of non-privileged information that "is relevant to the subject matter involved in the pending action." Tenn. R. Civ. P. 26.02(1). To be "relevant to the subject matter involved in the pending action" means to be "germane" or "bearing on the subject matter," *West v. Schofield*, 460 S.W.3d 113, 125 (Tenn. 2015) (cleaned up), and the subject matter of a case includes all facts that "relate[] to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Tenn. R. Civ. P. 26.02(1). The subject matter of a case also includes "a variety of fact-

[3] Additionally, in its Order of Reference, the Court noted it was in error to file Ms. Pike's Rule 12(4)(E) motion in the Davidson County Chancery Court proceeding, No. M2026-00667-SC-UNK-CV.

oriented issues [that] may arise during litigation that are not related to the merits." *West*, 460 S.W.3d at 125 (cleaned up). Thus, relevancy has been "broadly construed" to include "any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case's issues" so long as "there is 'some probative value as to the subject matter involved in the pending action.'" *Patton v. Pearson*, 2023 WL 3815062, at *7 (Tenn. Ct. App. June 5, 2023) (cleaned up).

As discussed above, Ms. Pike already agreed to withdraw or narrow certain subpoena topics after conferring with the State, including withdrawing Topics 13 and 16 in their entirety. (*See* **Exhibit A**.) The State does not challenge the relevancy of **Topics 2, 8, 9, 14, or** 17. (State's Mot. at 11). The remaining subpoena topics are all relevant to one or more of the referred issues, and each is addressed below.

***Topic 1.*** This topic relates to the composition, selection, qualifications, and training of the execution team, including as it relates to training on vascular access and IV therapy. Under the broad definition of relevance, this sort of testimony is plainly relevant to Issues 1 and 3 of the Order, as team members' training and qualifications is "germane" to the issues of achieving peripheral IV access and whether doing so is likely to cause serious illness and needless suffering. *See West*, 460 S.W.3d at 125. Likewise, the same testimony would be germane to whether an alternative method of execution would significantly reduce a substantial risk of severe pain, or not. Additionally, the gender of the execution team members is also relevant to Issue 2 of the Order. Notably, Topic 1 does not seek the name of the participating physician or other team members, and counsel for Ms. Pike reiterated

by email that she agreed with regard to certifications and similar topics that identifying information for specific individuals need not be disclosed. (*See* State's Mot. Ex. 3 at 1).

***Topic 3.*** This topic relates to the execution physician's qualifications and ability to place a central line if needed (and is the topic with which the State actually seems to take issue on page 12 of its Motion). The State takes too narrow a view on relevancy in seeking to distinguish between peripheral IV access and central IV access as provided for in the State's own lethal injection protocol (State's Mot. Ex. 4 at 20), and in distinguishing the latter from Ms. Pike's affirmative burden of pleading an alternative method of execution. And, the qualifications of the physician who will be tasked with placing a central line is plainly germane to the issue of whether that would reduce a substantial risk of severe pain. That a central line is a contingency plan expressly contemplated in the State's protocol only makes testimony about that process *more* germane to the issues in this proceeding, not less.[4]

***Topic 4.*** As previously narrowed, Topic 4 relates to TDOC's knowledge of the effects of the chemicals to be used in Ms. Pike's execution, including risks of pulmonary edema in light of her medical condition. That the Court's Order does not use the word "pentobarbital" makes the impact of its use no less relevant to at least Issue 4 of the Order.

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[4] As noted in undersigned counsel's email of July 30, 2026 (State's Mot. Ex. 3 at 1), Ms. Pike agreed to hold this topic in abeyance pending resolution by the Court of a similar question in another movant's proceedings. Ms. Pike nonetheless addresses this Subpoena topic here to preserve her arguments.

***Topic 5.*** Likewise, for the same reasons, the non-withdrawn portions of Topic 5 are "germane" to at least Issue 4 of the Order, and likely also to Issues 1 and 3. Characteristics of the chemicals themselves as well as how Ms. Pike might react to them in light of her medical conditions are relevant here. Additionally, the State's reliance on its briefing (not a ruling) in the *Kerrigan v. Newport* case is misplaced. For one, the issue on appeal in that case is limited to whether the expiration dates of chemicals used in executions were required by statute to be disclosed to an individual under a Tennessee Public Records Act request. For another, the State attached its Rule 10 Application to its motion—not any substantive brief on the merits of the issue presented. Ms. Pike attached the Order granting the same to her Response to the Motion for Protective Order.

***Topic 6.*** This topic relating to procedures for assessing and preventing pain and suffering during execution is directly relevant to Issues 1 through 4, all of which direct the Special Master to make findings and conclusions relating to illness and suffering. The State reads in the word "*any*" pain and suffering (Motion at 13, emphasis in original) where that qualifier does not appear in Topic 6 in order to shoehorn in its irrelevant constitutional argument. Whether and how TDOC monitors and prevents pain and suffering is inherently germane to determining whether an inmate's "illness" is "serious" and "suffering" is "needless" as referred to the Special Master.

***Topic 7.*** Topic 7 is relevant for the same reasons as Topic 6. The State complains that the "questions" in Topic 7 can be answered by reading the protocol,

but whether the protocol in fact "accounts for" Ms. Pike's unique medical characteristics, affects the risk of harm to her, or would be applied to permit any accommodation cannot be answered by its text. The State effectively concedes as much by agreeing to produce witnesses on the closely related Topics 2, 8, and 9. Moreover, the fact that the written protocol is also relevant does not make TDOC's testimony on these topics any less relevant or admissible. *See State v. Shelton*, 649 S.W.2d 24, 27 (Tenn. Crim. App. 1983) (holding that oral testimony of a fact in issue is permitted even where the same fact is also reflected in a writing). A witness's knowledge of how a written procedure functions in practice is independent, competent evidence.

***Topics 10, 11, 12.*** The State argues that these topics are or may be moot by agreement of the parties to modify certain aspects of the pre-execution and transportation and observation protocols for Ms. Pike. These topics are relevant to Issue 2 of the Order, as each relates to Ms. Pike's PTSD and how the current protocol for transporting, housing, and monitoring her at a men's prison will impact her. The State's Motion does not otherwise argue or explain why each of these topics would be irrelevant. To date, the parties have not yet reached an agreement that would moot Issue 2 of the Order or these corresponding subpoena topics.

***Topic 15.*** The State similarly argues that Topic 15, which relates to religious accommodations for Ms. Pike's faith and access to a spiritual advisor before and during execution, is or may be mooted by agreement. This topic is plainly relevant to Issue 5 of the Order, which asks whether TDOC is required or willing to permit Ms.

Pike to have a spiritual advisor in the execution chamber during execution. The State does not otherwise argue Topic 15 would be irrelevant in the absence of an agreement by the parties resolving Issue 5. The parties have not yet finalized an agreement that would resolve Issue 5 or the corresponding subpoena topic. If they do before the hearing, Ms. Pike will withdraw this topic.

Relevancy is a low bar, and evidence is relevant so long as it is "germane" or has "some probative value" as to the subject matter at hand. The Special Master should deny the State's attempt at avoiding giving relevant TDOC testimony that is integral to the fact-finding mission with which the Court has empowered him.

## II. The Special Master Should Compel the State to Respond to Ms. Pike's Written Discovery Requests.

In response to Ms. Pike's Motion to Compel, the State suggests in its Motion the parties and the Court would be "best served" if the parties "focus on preparing evidence" in the mere two weeks before the evidentiary hearing. (State's Mot. at 14). That is precisely what Ms. Pike is attempting to do through her written discovery requests—prepare evidence under a remarkably compressed schedule. This case is fundamentally unlike others that may utilize the powers of a special master under Rule 53, such as in typical civil litigation where the parties unquestionably would engage in written fact discovery and the special master may on that basis make some finding or reach some conclusion. There is no dispute that the Court has asked the Special Master here to "receive evidence," (Order at 2), and in order to *receive* evidence there must *be* evidence. Consistent with the outer bounds of Rule 53, the Order grants the Special Master "other such powers as are appropriate" to accomplish

his task (*id.*), which plainly includes ordering TDOC to respond to basic discovery requests.

In a last-ditch effort to avoid discovery, the State baldly asserts that responding to written discovery would be unduly burdensome. This naked assertion with no explanation of TDOC's ability to respond or why the specific discovery propounded would be unduly burdensome is not enough. *Flowers*, 209 S.W.3d at 615; *Duncan*, 789 S.W.2d at 561. In a conclusory fashion, the State gestures to the shortage of time for responding under the circumstances. (State's Mot. at 15). The State makes no effort whatsoever to respond to the points in Ms. Pike's Motion to Compel regarding her efforts to limit TDOC's burden in responding and the likelihood that TDOC has already gathered responsive information for this and/or other litigation. (Motion to Compel at 11–12.)

Ms. Pike first raised the need for limited written discovery on July 15, 2026, and the State asked to confer about discovery several times over the course of the next two weeks. To be certain, Ms. Pike agrees that "rushed decisions on discovery orders in a brand-new proceeding created just months ago," (State's Mot. at 15), are not ideal, but that is the unavoidable reality here and Ms. Pike trusts that the Special Master is able to make a sound decision notwithstanding the "rushed" timeline. To suggest there is "no need" to address the issue of written discovery head on before an evidentiary hearing, (*id.*), grossly minimizes the issues at stake.

"The law favors making all relevant evidence available to the trier of fact." *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 212 (Tenn. Ct. App. 2002). The Special

Master should compel the State to respond to Ms. Pike's written discovery requests by August 7, 2026.

## CONCLUSION

Ms. Pike issued subpoenas to TDOC for narrowly-tailored hearing testimony relevant to the referred Issues and subsequently narrowed the testimony topics even further at the request of the State. Similarly, Ms. Pike propounded a limited set of written discovery requests to avoid trial-by-ambush at the evidentiary hearing, which would be incongruous with the purpose for which the Court appointed a Special Master. For the reasons described above and in Ms. Pike's Motion to Compel, the Special Master should deny the State's Motion to Quash and compel TDOC to respond to her discovery requests in advance of the hearing.

Respectfully submitted,

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Stephen A. Ferrell (TN BPR No. 025170)
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed and served on the following on this 3rd day of August 2026:

John W. Ayers, Esq.
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-6739
Will.Ayers@ag.tn.gov

w/ electronic copy to:

David Wickenheiser, Esq.
Catherine Cline, Esq.
Samantha Morris, Esq.
Matthew Kubicek, Esq.
Paul Bruno, Esq.

Susanne Bales
Assistant Federal Defender

# Exhibit A

# CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
## SUBPOENA

STATE OF
TENNESSEE Vs.
CHRISTA GAIL PIKE

Case Number: 58183
Subpoena Number: 7130311
Issue Date: 07/22/2026

Mike Hammond
Mike Hammond, Clerk

To: TN DEPT OF CORRECTIONS
C/O JONATHAN SKRMETTI AG AND REP ATTN: WILL Ayers
500 CHARLOTTE AVE
NASHVILLE, TN 37219

**WITNESS PLEASE NOTE**
**You must be present in the Court named above, on the day and the time stated. Failure to appear may result in Court action against you by the Court before whom you are to appear.**

**YOU ARE HEREBY REQUIRED TO APPEAR BEFORE THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**

**ON: 08/14/2026 09:00 AM**

**AT:** KNOX COUNTY CRIMINAL COURT DIVISION 3
CITY-COUNTY BUILDING
400 MAIN STREET 149
KNOXVILLE, TN 37902

To testify on behalf of the [ ] State of Tennessee [ ✗ ] Defendant(s) as a Witness in the above noted case.

**BRING WITH YOU THE FOLLOWING:**
SEE ATTACHED

**Questions? - Call (865) 215-2515 if you are a state witness with questions about your court appearance.**

**For Americans with Disabilities Act assistance, please contact Allison Major, J.D. at ada.judicial@knoxcounty.org or (865) 215-4437. TTY (865) 215-2497**

**Return of Service:** Came hand this date and executed by:

> Delivering the within subpoena to the Witness named herein: [ ] By Mail [ ] In Person

> Unable to serve: [ ] Insufficient Address [ ] Other Reason: _____

Date: _____ By (Name and Title): _____

**CAPITAL CASE**
**(Execution Date: September 30, 2026)**
**Case No. M2020-01156-SC-DPE-DD**

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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILE**

Christa Gail Pike,
Movant,

v.

State of Tennessee,
Respondent.

Criminal Court for Knox County
No. 58183A

---

**Exhibit A**

---

**Topic 1: Composition, Selection, Qualifications, and Training of the Execution Team.** The selection, qualifications, certifications, licenses, training, and gender of all members of the Execution Team, including the Special Operations Team, Restraint Team, [redacted] the qualifications of the "qualified third party" providing vascular access/IV therapy training; and each team member's experience performing, participating in, or assisting with executions.

**Topic 2: IV Team Qualifications and Training in Venous Access on Patients with Difficult Veins.** The qualifications, certifications, and training of the IV Team, including any training on IV insertion on patients with small, compromised, or difficult-to-access veins; training on the use of 23-gauge butterfly needles; and any prior experience by IV Team members or the Physician in drawing blood from or inserting an IV into Christa Pike.

**Topic 3: Central Line Capability and the Physician's Qualifications.** The qualifications, training, and certification of the Physician designated for Pike's execution, including whether the Physician is qualified and certified to place a central venous line; the qualifications of the physician who attempted to place a central line during the Carruthers attempted execution; and whether that physician is still employed or engaged by TDOC.

**Topic 4: Chemicals Used in Lethal Injection — Pentobarbital, T**[redacted] TDOC's knowledge of the primary and secondary effects of the specific chemicals to be used; and any assessment of whether the risk of pulmonary edema is heightened for Pike given her thrombocytosis.

**Topic 5: Testing, Quality Assurance, and Chain of Custody of Execution Drugs.** All testing performed on the pentobarbital to be used in Pike's execution, including testing for potency, sterility, and endotoxins; [redacted] quality assurance and quality control measures; "recommended guidelines" for safe transportation and storage; [redacted] and whether TDOC has procured sufficient quantities to account for the risk that Pike's thrombocytosis may require higher or multiple doses.

**Topic 6: Procedures for Assessing and Preventing Pain and Suffering During Execution.** All procedures, processes, or measures used or taken by TDOC to determine whether an inmate experiences pain and suffering during an execution, and all procedures, processes, or measures used or taken to ensure that an inmate does not experience pain and suffering, including assessments of consciousness.

**Topic 7: Protocol's Failure to Require Medical Evaluation or Accommodate Individual Medical Conditions.** Whether the current protocol requires an evaluation of an inmate's medical history or veins prior to execution; whether the protocol accounts for unique physical or psychological characteristics of individual inmates that may affect the efficacy of the protocol or the risk of harm; whether the protocol permits deviation or accommodation; and every provision, if any, that permits such accommodation.

**Topic 8: Pike's Thrombocytosis and Its Impact on Execution.** TDOC's knowledge of Pike's thrombocytosis, including that it is due to a rare form of blood cancer called myeloproliferative disorder; any assessment TDOC has conducted regarding how Pike's thrombocytosis may affect IV access, the delivery of pentobarbital, and the risk of pulmonary edema; any modifications TDOC has made or plans to make to address Pike's thrombocytosis; and any medical professionals consulted.

**Topic 9: Pike's Small and Compromised Veins and the Risk of Failed IV Insertion.** TDOC's knowledge of Pike's documented history of difficulty with blood draws due to her small, compromised veins; TDOC's knowledge that medical staff currently use a 23-gauge butterfly needle to draw blood from Pike; any steps taken to ensure the execution team can achieve and maintain peripheral IV access on Pike; TDOC's contingency plan if peripheral IV access cannot be achieved; the risk of pentobarbital leaking into Pike's tissue and muscles; and the risk that the 5-minute time for death may be grossly underestimated for Pike.

**Topic 10: Pike's Complex PTSD and Bipolar Disorder and Their Impact on Execution.** TDOC's knowledge of Pike's complex PTSD and bipolar disorder, including TDOC records confirming these diagnoses; TDOC's knowledge of Pike's history of sexual and physical assault; any assessment of the impact of the execution process on Pike's psychological conditions; any mental health professionals consulted; [redacted] and any provisions made to address that risk.

**Topic 11: The Fourteen-Day Isolation Period and Death Watch Procedures.** The death watch and isolation procedures under the current protocol, including the duration, location, and conditions of confinement; [redacted] the transfer of Pike from the Debra K. Johnson Rehabilitation Center to Riverbend Maximum Security Institution 48 hours before execution; whether Pike will be observed by male corrections officers; and any provisions for female corrections officers.

**Topic 12: Impact of the Execution Process on Pike's PTSD — Physical Restraint, Blackout Period, and Related Procedures.** The procedures by which the Restraint Team will remove Pike from her cell, apply restraints, secure her on a gurney, and transport her to the execution chamber; the sex of the Restraint Team members; [redacted] and any assessment TDOC has made of the risk that these procedures will trigger Pike's PTSD.

[redacted]

**Topic 14: Alternative Methods of Execution.** TDOC's evaluation of each alternative method of execution alleged in Pike's motion, including the use of a central line inserted by a qualified physician, and hanging; whether TDOC possesses or could readily obtain the equipment and trained personnel necessary for each alternative; and all facts that tend to render each alternative unavailable to TDOC.

**Topic 15: Religious Accommodations and Spiritual Advisor Access.** Whether the current protocol permits clergy or a spiritual advisor to remain in the execution chamber during the administration of lethal injection chemicals and at the time of death; whether any offer has been made to Pike to have a spiritual advisor attend her execution; the compelling governmental interest, if any, served by the prohibition; TDOC's knowledge that Pike identifies as Buddhist; and whether other death-sentenced prisoners have been afforded spiritual advisor access and, if so, the basis for any disparate treatment.

[redacted]

**Topic 17: Pike-Specific Execution Planning.** Whether TDOC has developed any execution plan specific to Christa Pike; any assessments of Pike's physical, medical, or psychological condition in anticipation of her execution; any medical risks identified and steps taken to mitigate those risks; any accommodations to the standard protocol considered or evaluated to address Pike's thrombocytosis, small and compromised veins, complex PTSD, and bipolar disorder; any consultations with Pike's treating physicians or mental health providers; and all documents, records, or communications regarding execution-specific planning for Pike.

# Exhibit B

Outlook

FW: Pike subpoenas

From Luke Ihnen <Luke_Ihnen@fd.org>
Date Sat 8/1/2026 2:41 PM
To [redacted]
Cc Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>

Here is an email from Will responding to my request for their position on the discovery requests to the extent it is helpful for the response.

Luke P. Ihnen
Assistant Federal Defender

**From:** Will Ayers <Will.Ayers@ag.tn.gov>
**Sent:** Tuesday, July 28, 2026 2:48 PM
**To:** Luke Ihnen <Luke_Ihnen@fd.org>
**Cc:** Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>[redacted]; David Wickenheiser[redacted]; Samantha Morris [redacted] Catherine Cline [redacted] Matthew Kubicek [redacted]
**Subject:** RE: Pike subpoenas

Luke, can we get on a call tomorrow afternoon to discuss? We don't believe these discovery requests are procedurally proper or feasible given the timeframe. And we'd like to hammer out the topics in the subpoenas because those are going to inform who testifies. We also think it's appropriate to seek a protective order to ensure confidentiality of execution participants and suppliers is protected, so we'd like to get your thoughts on that as well. Our goal is to work toward agreement on as much of this as possible so that we can avoid any unnecessary pre-hearing motion practice.

Finally, we all realize this is a new procedure and we're all up against the clock, but we'd appreciate if you would copy us on any communications with Paul or Judge Ward— we'll do our best to do the same.

**From:** Luke Ihnen <Luke_Ihnen@fd.org>
**Sent:** Tuesday, July 28, 2026 1:10 PM
**To:** Will Ayers <Will.Ayers@ag.tn.gov>
**Cc:** Protocol team <Protocolteam@ag.tn.gov>; Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>;[redacted]
**Subject:** RE: Pike subpoenas

Hi Folks:

A couple of things.

First, we would like to get your position either way on the discovery requests we sent.

Second, we received the order from Judge Ward granting media access in Knoxville. I sent Paul an email to clarify whether that meant Ward had denied our request to move the hearing or whether he was still considering it.

Thanks,

Luke P. Ihnen
Assistant Federal Defender

**From:** Luke Ihnen
**Sent:** Monday, July 27, 2026 12:50 PM
**To:** 'Will Ayers' <Will.Ayers@ag.tn.gov>
**Cc:** Protocol team <Protocolteam@ag.tn.gov>; Susanne Bales <Susanne_Bales@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>; [redacted]
**Subject:** RE: Pike subpoenas

Will and Team:

It might be easier if you all tell us who plans to appear subject to the subpoena and then we can raise objections, etc. from there?

I am attaching the limited discovery requests we discussed on Friday.

Thanks,

Luke P. Ihnen
Assistant Federal Defender

**From:** Will Ayers <Will.Ayers@ag.tn.gov>
**Sent:** Friday, July 24, 2026 12:44 PM
**To:** Luke Ihnen <Luke_Ihnen@fd.org>; Stephen Ferrell <Stephen_Ferrell@fd.org>
**Cc:** Protocol team <Protocolteam@ag.tn.gov>
**Subject:** Pike subpoenas

Luke and Steve, here's a copy of one of the subpoenas with sections highlighted that we don't believe are relevant to any of the five issues from the TSC order. As I mentioned, some of these we might not be able to agree on, but let us know if you can agree that any of these topics are not really before the special master. This is of course without prejudice to raising these issues later on if the TSC orders further briefing or development.

**Will Ayers**
Assistant Attorney General
Office of the Tennessee Attorney General
Law Enforcement and Special Prosecutions Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 253-3856
will.ayers@ag.tn.gov

MAKING THE CASE FOR TENNESSEE
TENNESSEE ATTORNEY GENERAL

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# Exhibit C

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | | |
|---|---|---|
| State of Tennessee | ) | |
| | ) | Case No. M2020-01156-SC-DPE-DD |
| v. | ) | Knox County Case No. 58183A |
| | ) | CAPITAL CASE |
| | ) | Special Master Judge Ward |
| Christa Gail Pike | ) | |

---

**Declaration of Luke Ihnen**
**In Support of Christa Pike's Response in Opposition**
**to Motion to Quash or Modify Subpoenas and to Limit Discovery**

---

I, Luke P. Ihnen, declare as follows:

1. I am over the age of 18, of sound mind, and otherwise competent to make this Declaration.

2. If called upon, I could testify competently to the matters contained in this Declaration and the Motion to Compel that it supports.

3. I make all of my statements in this Declaration based on my personal knowledge and in accordance with Tenn. R. Civ. P. 72.

4. I am counsel to Movant Christa Gail Pike. I am a licensed attorney in the State of Tennessee with active status, and my Tennessee Board of Professional Responsibility number is BPR No. 035190.

5. In accordance with the above-referenced action, on Wednesday, July 22, 2026, Pike issued three subpoenas to the Tennessee Department of Corrections (the "Subpoenas"), filing the same in the Criminal Court for Knox County.

6. Prior to service of the Subpoenas, I emailed Paul Bruno, Complex Case Attorney, Tennessee Administrative Office of the Courts, who is assisting the Court and Special Master Hon. Mark Ward on Tuesday, July 21, 2026, asking for clarification as to the court from which the Subpoenas should issued. A true and correct copy of that email is attached hereto as Exhibit 1.

7. In response to my email, I received a call from Mr. Bruno on Tuesday, July 21, 2026, instructing me that the Subpoenas should be filed in the Criminal Court for Knox County.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 3, 2026, in Knoxville, Tennessee.

Luke P. Ihnen
Assistant Federal Defender

# Exhibit 1

**From:** Luke Ihnen
**To:** [redacted]
**Subject:** Fwd: Pike Logistics Question
**Date:** Monday, August 3, 2026 3:32:21 PM

---

lpi

Begin forwarded message:

> **From:** Luke Ihnen <Luke_Ihnen@fd.org>
> **Date:** July 21, 2026 at 9:22:00 AM EDT
> **To:** paul.bruno@tncourts.gov
> **Cc:** Stephen Ferrell <Stephen_Ferrell@fd.org>, Susanne Bales <Susanne_Bales@fd.org>
> **Subject: Pike Logistics Question**
>
> Hi Paul:
>
> We want to send a subpoena to ensure a trial witness but are having a little bit of difficulty trying to figure out what court we should file that in. Normally it would be the clerk of court but the clerk here is the appellate court. TRCP 45.05(2) also allows submission of an affidavit to the judge which makes some sense given the circumstances here.
>
> In any event, any help you can provide on this would be greatly appreciated.
>
> Best personal regards,
>
> **Luke P. Ihnen**
> Assistant Federal Defender
> Federal Defender Services of Eastern Tennessee, Inc.
> Capital Habeas Unit
> 800 South Gay Street, Suite 2400
> Knoxville TN 37929
> (p) 865.637.7979
> (f) 865.637.7999
> Luke_Ihnen@fd.org

FILED
AUG 04 2026
By Mike Hammond, Clerk

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | | |
|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| Respondent, | ) | Knox County Case No. 58183A |
| | ) | |
| v. | ) | No. M2020-01156-SC-DPE-DD |
| | ) | |
| **CHRISTA GAIL PIKE,** | ) | Special Master W. Mark Ward |
| | ) | |
| Movant. | ) | |

**ORDER DENYING MOTION TO COMPEL EXPEDITED DISCOVERY AND GRANTING IN PART MOTION TO QUASH OR MODIFY SUBPOENAS AND TO LIMIT DISCOVERY**

Before the Special Master are Movant Christa Gail Pike's "Motion to Compel Expedited Discovery" filed on July 30, 2026, and the State of Tennessee's "Motion and Memorandum of Law for Protective Order," and "Motion and Memorandum of Law to Quash or Modify Subpoenas and to Limit Discovery," received on July 31, 2026, but filed on August 3, 2026. Also before the Court is Ms. Pike's "Response to Motion for Protective Order" which was received by the Master and filed on August 3, 2026, as well as State's "Reply in Support of Motion for Protective Order" filed August 3, 2026. In addition, before the Court is "Christa Pike's Response in Opposition to Motion to Quash or Modify Subpoena's and to Limit Discovery" filed on August 3, 2026. The Special Master has considered the motions, memorandums, the entire record, and the applicable law.

**Procedural Background**

A Knox County jury convicted Ms. Pike of first-degree murder and sentenced her to death. The Tennessee Supreme Court affirmed the conviction and sentence of death in 1998. *State v. Pike*, 978 S.W.2d 904 (Tenn. 1998). Pike's conviction and death sentence have survived state post-

conviction and federal habeas review. On August 27, 2020, the State filed a Motion in the Tennessee Supreme Court asking that an execution date be set.

On January 8, 2025, the State of Tennessee Department of Correction released its most recent revisions to its Lethal Injection Protocol, applicable to Ms. Pike's execution. Thereafter, on September 30, 2025, the Tennessee Supreme Court entered an Order setting Ms. Pike's execution to be conducted on September 30, 2026. On December 5, 2025, the Tennessee Supreme Court entered an Order amending Tennessee Supreme Court Rule 12(4)(E) to provide that: "After a date of execution is set, any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court." The amended rule also provided that:

> If the collateral litigation may involve fact-finding, the moving party must request the appointment of a special master, consistent with the procedures outlined in Tennessee Rule of Civil Procedure 53. Any response in opposition to the motion for a special master must be filed within five (5) days of the motion, unless a different response time is ordered by the Court. If the Court grants the motion for a special master, the Court may appoint a special master, consistent with the procedures outlined in Rule 53. Any objection to the findings of the special master shall be by motion filed in this Court not later than five (5) days after being served with notice of the filing of the report, unless a different response time is ordered by the Court.

Tenn. Sup. Ct. R. 12(4)(E).

Finally, the Rule also provides that "the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E).

Despite the clear mandate of Rule 12(4)(E), on January 8, 2026, Ms. Pike filed a collateral action in the Chancery Court of Davidson County seeking declaratory judgment and injunctive relief from the State's Lethal Injection Protocol. She did so without compliance with Rule 12(4)(E). This Special Master cannot know whether this initial failure to comply with the Rule

was an oversight or a tactical decision. However, after the filing in Chancery Court, on April 13, 2026, Ms. Pike filed a "Response to Motion to Dismiss" in which she attacks the legality of Rule 12(4)(E). Rather than rule on the motion to dismiss, on May 7, 2026, the Chancery Court transferred the case to the Tennessee Supreme Court. On May 12, 2026, the Tennessee Supreme Court entered an Order finding the transfer to be inappropriate and ordered the case transferred to the Tennessee Supreme Court dismissed "without prejudice to filing a motion that comports with Tennessee Supreme Court Rule 12(4)(E)."

Ms. Pike did not file her Rule 12(4)(E) motion until June 12, 2026. That motion made factual assertions and requested a master be appointed pursuant to the Rule. The motion did not request discovery. Among other arguments in opposition, the Attorney General argued that the motion should be dismissed due to the excessive delay in filing the Rule 12(4)(E) motion. After considering the arguments, on July 10, 2026, the Tennessee Supreme Court appointed the undersigned as Special Master pursuant to Tennessee Supreme Court Rule 12(4)(E) and Tennessee Rule of Civil Procedure 53. The Supreme Court directed the Special Master to conduct an evidentiary hearing, receive evidence, and submit a report containing findings of fact and conclusions of law on the matters specifically referred in its order. The Supreme Court held all issues not specifically referred in abeyance.

The Supreme Court referred the following five matters:

1. Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access under the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will cause Ms. Pike serious illness and needless suffering.
2. Given Ms. Pike's cited history of sexual assault and asserted diagnosis of post-traumatic stress disorder, whether Ms. Pike's movement to Riverbend Maximum Security Institution before the execution—where male prison officials would observe her for two weeks before

execution—would make it "sure or very likely" that the challenged protocol will cause Ms. Pike serious illness and needless suffering.

3. Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access under the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will cause Ms. Pike serious illness and needless suffering.
4. Whether Ms. Pike's proposed alternative methods of execution would significantly reduce a substantial risk of severe pain.
5. Whether the Tennessee Department of Correction is required to permit, or would be willing to permit, Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

In light of the September 30, 2026 execution date, the Court ordered the Special Master to submit "the record of the proceedings and the Special Master's report of findings of fact and conclusions of law not later than August 21, 2026." It also ordered any objections to the report to be filed by the parties by August 28, 2026. Finally, the Court indicated that once the report was received, the Court would set a briefing schedule [in the Tennessee Supreme Court] on the issues which were the subject of the report. Hence, the Court anticipates that once the Special Master submits his report and the record, the parties will be given an opportunity to fully brief those issues in the Tennessee Supreme Court

With regard to Ms. Pike's challenges to Rule12(4)(E) that do not require factual development, the Court directed the parties to submit additional briefing no later than July 17, 2027. On that date Ms. Pike filed a brief in the Tennessee Supreme Court noting, among other things, a question as to whether the Rule authorizes or contemplates discovery.

According to Ms. Pike's counsel, on July 15, 2026, counsel conferred regarding a proposed schedule for the proceedings. Ms. Pike proposed an abbreviated discovery schedule that included deadlines for written discovery requests, responses, and discovery motions. The State opposed the

general discovery. Despite the dispute, Ms. Pike's counsel and the State submitted to the Special Master an agreed proposed scheduling order that omitted written-discovery deadlines and instead addressed expert disclosures and reports, witness and exhibit disclosures, pretrial briefing, the evidentiary hearing, and proposed findings of fact and conclusions of law.

On July 22, 2026, Ms. Pike caused three subpoenas to issue to the Tennessee Department of Correction, commanding testimony at the August 12, 13, and 14 hearing sessions. The subpoenas identified (17) seventeen topics for examination.

On July 23, 2026, the Special Master entered what was represented to the court as an agreed upon scheduling order requiring: Ms. Pike's expert disclosure by July 31; the State's expert disclosure by August 3; Ms. Pike's expert reports and supporting materials by August 5; the State's expert reports and supporting materials by August 7; the parties' witness and exhibit disclosures and pretrial briefs by August 7; and proposed findings of fact and conclusions of law by August 18. The scheduling order set the evidentiary hearing for August 11 through 14, 2026. The scheduling order does not provide for party-initiated written discovery or deadlines pertaining to the same.

On July 30, 2026, Ms. Pike filed her Motion to Compel Expedited Discovery, requesting an order compelling the State to respond to the proposed interrogatories and requests for admission within (7) seven days. This was the first time that the Special Master was informed that there was a discovery dispute. The hearing is set to begin on August 11, 2026.

On July 31, 2026[1], the State filed its Motion and Memorandum of Law to Quash or Modify Subpoenas and to Limit Discovery, seeking to quash the subpoenas or, alternatively, to limit testimony to certain topics and to preclude written discovery. The State also moved for a general

[1] The Special Master received a copy on July 31, 2026, but the same was apparently not filed until August 3, 2026.

protective order concerning information that identifies, or reasonably could lead to the identification of, persons or entities involved in carrying out a sentence of death. On August 3, 2026, the Special Master received Ms. Pike's "Response to Motion for Protective Order" and the State's "Reply in Support of Motion for Protective Order.

With regard to the State's "Motion and Memorandum of Law for Protective Order," the parties agree that a protective order is appropriate, they dispute the exact language of the order. The Special Master will limit the present Order to addressing the subpoenas and request for expedited discovery and will enter a separate general protective order.

With regard to the State's "Motion and Memorandum of Law to Quash or Modify Subpoenas" the State argues that the subpoenas should be quashed because they were filed in the wrong court and they seek privileged, confidential and irrelevant information. Ms. Pike in her "Response to Motion for Protective Order" attaches a modified version of the subpoenas as Exhibit A to her response. It is unclear from the record, whether this modified version was actually filed in the record as a replacement for the initial subpoena, but Ms. Pike in her "Response to Motion for Protective Order" indicates that she has withdrawn specific topics as not relevant or privileged –"even though Ms. Pike may dispute that premise." In any event, it appears that the parties are not that far off in agreeing to the matters contained in Ms. Pike's amended subpoena attached to her response as Exhibit A. While the State's argument about "where" the subpoenas should be filed is interesting and, no doubt, will likely be clarified in the future, in the interest of judicial economy, the State is ordered to respond to the subpoena's as modified by the Court below. The hearing is one week away. Even if the State is right, requiring Ms. Pike to reissue the subpoenas on the eve of the hearing serves no purpose. The Special Master has parsed through the 17 areas of inquiry reflected in the subpoenas applying the withdrawals and concessions of the parties and evaluating

them for relevancy and for confidential and privileged information and has determined the areas he will allow, subject to the limitations imposed by the General Protective Order which will be filed contemporaneous with the present Order.. Those determinations will be reflected below.

The State's "Motion and Memorandum of Law to Quash or Modify Subpoenas and to Limit Discovery" includes an argument that the State should not be required to provide written discovery, i.e., answer the interrogatories and requests for admissions. Among its arguments, the State contends that Rule 12(4)(E) does not contemplate written discovery, that Special Masters appointed pursuant to Rule 12(4)(E) and Tenn. R. Civ. P. 53 do not have the power to compel discovery, that Ms. Pike did not ask for discovery in her Motion filed in the Tennessee Supreme Court and the Tennessee Supreme Court did not mention discovery in the Order appointing a Special Master. The State also argues that the discovery propounded includes significant irrelevant and privileged and confidential information. Although Ms. Pike made concessions concerning the areas of inquiry in her subpoenas, she made no such concessions with regard to the discovery requests.

Again, the arguments made by the State regarding discovery applicable to Rule 12(4)(E) proceedings will need to be clarified at some point, but the Special Master finds that there is no need to reach the merits of these arguments in the present proceeding. The Special Master will assume, without deciding, that he has the power to compel the State to answer the interrogatories and the requests for admissions and to shorten the response time from the usual thirty days to seven. However, in the exercise of discretion, the Special Master will not impose this burden on the State in the last week leading up to the hearing. Much has been said about the compressed timeline in getting this matter before the Tennessee Supreme Court for its determination of the likelihood of Ms. Pike's success in the collateral litigation. That compressed timeline is largely the

product of Ms. Pike's delay in filing the collateral litigation and delay in filing the Rule 12(4)(E) motion in the Tennessee Supreme Court. Had she timely filed the Motion earlier there would have been the traditional thirty days for parties to answer discovery. Further, Counsel for Ms. Pike agreed to a scheduling order that did not contain discovery deadlines, then waited until June 30, 2026 [12 days before the agreed hearing date] to notify the Special Master that there was a discovery dispute. The parties completed briefing on the discovery dispute on August 3, 2026, and we are now one week from the hearing. Requiring the State in the last week leading up to the hearing to focus its attention on answering this discovery rather than preparing its case for the hearing is unduly burdensome. The Special Master further finds that expedited written discovery (seven days) is not warranted in light of the expedited hearing schedule, the disclosure requirements already imposed, and its ruling with regard to the subpoenas.

Accordingly, it is **ORDERED** as follows:

1. **Motion to Compel Expedited Discovery.** Movant's Motion to Compel Expedited Discovery is **DENIED**. The State is not required to serve responses to Movant's expedited interrogatories or requests for admission in the abbreviated time requested.

2. **Motion to Quash or Modify Subpoenas.** The State's Motion to Quash or Modify Subpoenas and to Limit Discovery is **GRANTED IN PART** as set forth below.

3. **Subpoena Topics Permitted.** The subpoenas served on the Tennessee Department of Correction are **MODIFIED**. Testimony may be sought only on subpoena topics 1 [as Amended in Pike's Ex. A and as limited by the Court's Protective Order] , 2 [as limited by the Court's protective Order], 3 [only as worded up to first semi-colon and as limited by the Court's Protective Order], 4 [as Amended in Pike's Ex. A], 6, 7, 8, 9, 10-12 [all as Amended in Pike's Ex. A], 14, 15 and 17, subject to the limits in this Order and the Court's General Protective Order.

4. **Subpoena Topics Excluded.** Subpoena topics 5, 13 and 16 are **STRICKEN**. No witness shall be required to provide testimony on those topics in this proceeding.

5. **Protected Information.** Nothing in this Order permits discovery of, testimony about, or disclosure of Privileged and Confidential Information as defined in the Court's General Protective Order. This limitation includes information that identifies, or reasonably could lead to the identification of, persons or entities involved in the process of carrying out a sentence of death.

6. **Written-Discovery Relief.** In light of the denial of Movant's Motion to Compel Expedited Discovery, the State's request to bar or limit Movant's pending written discovery is **DENIED AS MOOT.**

7. **Other Objections Preserved.** The State may raise any otherwise applicable objection at the evidentiary hearing, including objections based on relevance, privilege, confidentiality, foundation, and the Tennessee Rules of Evidence. No provision of this Order is intended to override the General Protective Order entered contemporaneously with the present Order.

Entered this 4th day of August, 2026.

IT IS SO ORDERED.

**SPECIAL MASTER W. MARK WARD**

FILED
AUG 04 2026
By Mike Hammond, Clerk

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | | |
|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| Respondent, | ) | Knox County Case No. 58183A |
| | ) | |
| v. | ) | No. M2020-01156-SC-DPE-DD |
| | ) | |
| **CHRISTA GAIL PIKE,** | ) | Special Master W. Mark Ward |
| | ) | |
| Movant. | ) | |

**ORDER GRANTING MOTION FOR GENERAL PROTECTIVE ORDER**

Before the Special Master is the State of Tennessee's Motion and Memorandum of Law for Protective Order and Ms. Pike's Response to Motion for Protective Order and the State's "Reply in Support of Motion for Protective Order." Having considered these pleadings, the entire record, and the applicable law, the Special Master finds good cause for entry of a general protective order.

The Special Master further finds that information that identifies, or reasonably could lead to the identification of, individuals or entities involved in the process of carrying out a sentence of death is privileged and confidential; is not subject to discovery or testimony in this proceeding; and its disclosure would create an undue burden and risk of harm. The Special Master also finds that such information is outside the matters referred for determination in this proceeding.

Accordingly, the State's Motion for Protective Order is **GRANTED**. The Special Master further hereby orders:

**Privileged and Confidential Information**

1 The Parties are forbidden from discovering or eliciting testimony about any information that could reasonably lead to the discovery of any individual or entity who has been

or may in the future be involved in the process of executing a sentence of death. This information shall be considered Privileged and Confidential.

2. Information need not be explicitly identifying to be Privileged and Confidential, and includes, but is not limited to, any information that could reasonably lead to the disclosure of the identity of:

a. Any physician, pharmacist, pharmacy, manufacturer, compounder, wholesaler, distributor, or other person or entity involved in the execution process or acquisition, production, or testing of execution chemicals. This includes information, such as the manner or location of production and testing, that would shrink the pool of potential sources and could reasonably lead to disclosure when combined with other information.

b. Any laboratory that provides testing on execution chemicals.

c. Any employee of the State who participates in the process of executing a sentence of death, except for those employees who are directly identified by the Lethal Injection Protocol.

d. Any contractor or employee of a contractor who participates in the process of executing a sentence of death.

e. Any volunteer who participates in the process of executing a sentence of death.

f. Any person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death.

Entered this 4th day of August, 2026.

**IT IS SO ORDERED.**

**SPECIAL MASTER W. MARK WARD**

FILED
BY MIKE HAMMOND
2026 AUG -7 PM 3:50
KNOX COUNTY CRIMINAL COURT

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

| | |
|---|---|
| **State of Tennessee** | ) |
| | ) **Supreme Court Case No. M2020-01156-SC-DPE-DD** |
| **v.** | ) **Knox County Case No. 58183A** |
| | ) **CAPITAL CASE (Execution Date: Sept. 30, 2026)** |
| **Christa Gail Pike** | ) |

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**Prehearing Brief of Christa Gail Pike**

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On June 12, 2026, Ms. Pike filed a Motion and Request to Appoint a Special Master Pursuant to Tenn. Sup. Ct. R. 12(4)(E). *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. June 12, 2026), (Rule 12 Mot.). On July 10, 2026, the Tennessee Supreme Court appointed the Honorable Mark Ward, Senior Judge, as Special Master pursuant to Rule 12(4)(E) and Tennessee Rule of Civil Procedure 53 to receive evidence, fix the time and place for hearings, and transmit to the Court the record of proceedings and a report of findings of fact and conclusions of law no later than August 21, 2026. (July 10 Order at 1–2).

The Court referred five specific issues to the Special Master:

> (1) whether Ms. Pike's diagnosis of thrombocytosis makes it "sure or very likely" that achieving peripheral IV access under the current protocol will cause her serious illness and needless suffering;
>
> (2) whether Ms. Pike's history of sexual assault and diagnosis of PTSD make it "sure or very likely" that her movement to a men's facility and observation by male prison officials will cause her serious illness and needless suffering;
>
> (3) whether Ms. Pike's small and compromised veins make it "sure or very likely" that achieving peripheral IV access will cause her serious illness and needless suffering;

(4) whether Ms. Pike's proposed alternative methods of execution would significantly reduce a substantial risk of severe pain; and

(5) whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber.

(*Id.* at 2–3). Issues not specifically referred to the Special Master were held in abeyance pending completion of the Special Master's report. *Id.* at 3. On August 7, 2026, the parties filed a stipulation of dismissal of Issue (5) pursuant to an agreement by the parties.

## FACTUAL BACKGROUND

### A. Sentence and Incarceration

In 1996 at age eighteen, Ms. Pike became the youngest woman sentenced to death in the modern era of the death penalty for her role in the murder of Colleen Slemmer. She is currently one of only 45 women on death row in the United States. *See* Death Penalty Information Center, Women, https://deathpenaltyinfo.org/death-row/women (last accessed August 5, 2026). If her execution proceeds as scheduled on September 30, 2026, she would be the first woman executed by the State of Tennessee in more than 200 years.[1]

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[1] *See* Executions in the U.S. 1608–2002, Espy File, available at https://deathpenaltyinfo.org/executions/executions-overview/executions-in-the-u-s-1608-2002-the-espy-file (last visited August 5, 2026). Historical research identifies only three women executed in the State of Tennessee, ever. All three were executed between 1807–1819. The Espy database identifies four executions of women: 1) March 20, 1807, hanging of Molly Holcomb, a Black female; 2) 1808 hanging of an unnamed Black female; 3) 1819 hanging of an unnamed Black female, and 4) 1820 hanging of Eve Martin, race unknown, for accessory to murder. However, Eve Martin was incorrectly included—she was the victim of a homicide, not an accessory. *See* David

Ms. Pike has been incarcerated at the Debra K. Johnson Rehabilitation Center (DJRC) since her 1996 conviction. For nearly 30 years, she was held in a seven-by-twelve-foot cell for twenty-two to twenty-four hours a day with little to no human contact, before a 2024 settlement with the State ended that isolation and extended her the same behavior-dependent privileges afforded to men on Tennessee's death row. Expert evaluations document that this prolonged isolation had devastating effects on Ms. Pike's mental health. Bethany Brand, Ph.D., a licensed clinical psychologist and trauma expert who evaluated Ms. Pike in 2023, confirmed that solitary confinement exacerbated her pre-existing psychiatric vulnerabilities. (Report of Dr. Bethany Brand, July 29, 2023, at 31).

**B. Developmental and Trauma History**

Ms. Pike was born in 1976 in Beckley, West Virginia into a family marked by generations of severe emotional and psychiatric instability, alcoholism, and interpersonal violence on both sides. (Brand Report at 3). Her mother was a chronic alcoholic who suffered from depression and attempted suicide when Ms. Pike was three years old; her father played little consistent role in her upbringing, and neither parent provided stable care. (Opp'n to Execution Date Mot. at 8, June 7, 2021) (citing PC Tr. Vol. VII at 175–76); (Brand Report at 10).

Ms. Pike's father physically abused her throughout her childhood, at times striking her five or six times in a single day with a belt folded over to increase the

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V. Baker, Women and Capital Punishment in the United States: An Analytical History, 132 (McFarland, 2015).

pain. Her mother's boyfriends separately subjected her to physical abuse, including one who beat her with a belt hard enough to be criminally charged and another who beat Ms. Pike and her sister regularly with a leather strap with a wood handle. (Opp'n to Execution Date Mot. at 9–10) (citing Jan. 2007 Ex. 1-A, Social History at 14, 28).

Beginning at approximately age two, Ms. Pike was sexually abused by her paternal grandmother's boyfriend, and she exhibited behavioral indicators of early sexual abuse as young as kindergarten and first grade, like drawing male genitalia. (Human Rights Pet'n App'x, Ex. 8, Post-Conviction Test. of Carrie Ross, at 190–93).

When she was eleven, Ms. Pike was raped by a neighbor who restrained her and inserted objects into her body. (Opp'n to Execution Date Mot. at 11) (citing PC Tr. Vol. VIII at 257–58; Jan. 2007 Ex. 1-A, Social History at 44). The assailant was charged, though the charge was later reduced. (*Id.*).

At age seventeen, Ms. Pike was raped again, this time by a stranger who dragged her off the street at night, struck her head against a rock, and covered her mouth as she screamed before fleeing when a passing car's headlights interrupted the attack. (Opp'n to Execution Date Mot. at 12) (citing Jan. 2007 Ex. 1-A, Social History at 44; Jan. 2007 Ex. 6, Hospital Records at 18–30); Clinical Interview with Christa Pike (Oct. 5, 1995). Contemporaneous hospital records confirmed the assault. (*Id.*).

**C. Documented Psychological/Psychiatric Conditions**

A post-conviction psychiatric evaluation diagnosed Ms. Pike with bipolar II disorder, dissociation, and post-traumatic stress disorder, concluding that each

condition flowed from complex trauma in childhood. (Opp'n to Execution Date Mot. at 12–13) (citing PC Tr. Vols. XXIX–XXX; PC Ex. 42, Dr. Kenner PowerPoint); (Brand Report at 61, Decl. of Bethany Brand, Ph.D. ¶¶ 16–17). A subsequent trauma-focused review of her records concluded that, measured against more than 30 years of the reviewing expert's clinical practice, the severity of Ms. Pike's early abuse and neglect was extreme and consistent with a diagnostic profile of PTSD and dissociation.

As would be expected from her history, TDOC medical records document a consistent psychiatric diagnosis across more than a decade of incarceration: treatment plans and progress notes from 2010 forward identify Ms. Pike's Axis I diagnosis as Bipolar I Disorder, depression, and, beginning by at least 2017, her providers have consistently documented a dual diagnosis of Bipolar I Disorder and Post-Traumatic Stress Disorder, moderate. (TDOC Mental Health Treatment Plan (Feb. 11, 2011)); (TDOC Mental Health Treatment Plan Review (Oct. 28, 2020)).

TDOC's treating psychiatric providers have prescribed Ms. Pike a range of psychotropic medications over the years to manage these conditions, including Topamax, Wellbutrin, Vistaril, Lamictal, Abilify, and, at times, Lithium and Prazosin (commonly used to treat trauma-related nightmares), with her treatment plans identifying mood instability and overreaction to hostility as the target symptoms of care. TDOC Medication Admin. Rec. (2017–18); Meharry Med. Coll. Hematology/Oncology Consultation (Mar. 22, 2019).

### D. Documented Physical/Medical Conditions

Medical records document persistently elevated platelet count in Ms. Pike's blood work (any value over 450k is considered elevated). Ms. Pike was formally referred to hematology in 2017 after lab work revealed a platelet count of approximately one million and was subsequently diagnosed with CALR-mutated essential thrombocytosis, a myeloproliferative blood disorder, confirmed by genetic testing showing a CALR mutation with JAK2 negativity. (MNGH Dr Robert Hardy Cancer and Infusion Center, Clinic Notes, Zivot-000078). She has since been maintained on daily low-dose aspirin therapy and monitored through periodic hematology/oncology telemedicine consultations and repeat blood work. (Hematology Oncology Telemedicine Clinic Note, Zivot-000425).

Ms. Pike also has a documented history of small and compromised veins and difficulty with blood draws. TDOC medical staff consistently use a 23-gauge butterfly needle—a needle gauge typically reserved for infants and small children because of their comparably small, difficult-to-access veins—to draw her blood. Additionally, Ms. Pike's regular blood draws—required every several months to monitor platelet counts and electrolytes related to her thrombocytosis—cause cumulative trauma to her veins: every venipuncture causes minor trauma, local clotting, and microscopic fibrosis, progressively making frequently accessed veins more difficult to access over time. (Van Norman Report at 20). The cumulative effect of years of repeated blood draws through these already-tiny veins has further degraded their integrity. (*Id.*).

### E. The Tennessee Lethal Injection Protocol

Tennessee's current lethal injection execution protocol calls for a single drug pentobarbital administered through the intravenous injection of four syringes in consecutive series: a 50 mL saline flush, followed by two 50 mL syringes each containing 2,500 mg of pentobarbital (for a total dose of 5 grams), followed by a final 50 mL saline flush. Protocol at 19–20. If the prisoner is not executed after the first dose, a second set of syringes with identical contents will be administered.

The Protocol requires the establishment of at least two functioning intravenous lines before execution can proceed, Protocol § E.2; however, it does not identify the size of the IV catheter to be used. The "IV Team" responsible for establishing venous access may consist of "physicians, physician assistants, nurses, emergency medical technicians ('EMTs'), paramedics, military corpsman with relevant medical training, or other certified or licensed personnel." Protocol at 8. The Protocol does not specify what training or qualifications are required beyond these broad categories, nor does it detail the experience level necessary for IV Team members. If peripheral IV access cannot be achieved, the Protocol provides that "the Physician will insert a central line." Protocol at 20.

For female inmates, the Protocol requires transfer from the DJRC to Riverbend Maximum Security Institution (RMSI), a men's facility, forty-eight hours before the scheduled execution.[2] Protocol at 12–13. During this period, the inmate is held in a

[2] Both Ms. Pike and the State of Tennessee endorse this reading of the protocol, and Ms. Pike pled the same. The Tennessee Supreme Court mistakenly suggests that Ms. Pike will be transferred to RMSI two weeks prior to her execution.

death watch cell under constant observation by corrections officers. The Protocol makes no provision for female corrections officers to observe female inmates during the death watch period. Protocol at 12–15. In the twelve hours before execution, the Protocol prohibits any contact with family or friends.

## LEGAL STANDARD

### I. The Eighth Amendment Prohibits Punishments That Create an Objectively Intolerable Risk of Serious Harm.

To succeed on the merits of an Eighth Amendment claim involving an anticipated execution, a plaintiff typically must make two showings. First, the plaintiff must demonstrate that the challenged course of action poses an "objectively intolerable risk of harm" or a "substantial risk of serious harm. " *Baze v. Rees*, 553 U.S. 35, 50 (2008) (quoting *Farmer v. Brennan*, 511 U.S. 825, 842, 846 (1994)). This future harm can constitute cruel and unusual punishment where the plaintiff shows that the risk is "sure or very likely to cause serious illness and needless suffering" and gives rise to "sufficiently imminent dangers." *Id.* (quoting *Helling v. McKinney*, 509 U.S. 25, 33–35 (1993)).

Although Eighth Amendment cases routinely discuss such harm using the shorthand of pain, it is well established that the Eighth Amendment encompasses more than what modern medicine would classify as physical pain. Rather, the Eighth Amendment considers all forms of sufficiently severe "needless suffering." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze*, 553 U.S. at 50). This includes where the State's chose method poses a "superadd[ition]" to a death sentence in the form of "terror, pain, or disgrace." *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019). Indeed,

courts have found that psychological terror or pain can independently support an Eighth Amendment claim. *See Grayson v. Comm'r, Ala. Dep't of Corr.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024) (recognizing that there "may exist a form of execution that induced psychological terror or pain that is severe enough to support an Eighth Amendment claim").

Second, and in addition to plaintiff's demonstration that the State's protocol creates a demonstrated risk of needless suffering, the plaintiff must also show that the risk is substantial "when compared to the known and available alternatives." *Glossip*, 576 U.S. at 878; *see also Baze*, 553 U.S. at 61. When an individual challenges some aspect of her proposed execution, "the Eighth Amendment requires [her] to plead and prove a known and available alternative." *Glossip*, 576 U.S. at 880. The alternative pled by Plaintiff must establish that the alternative is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Baze*, 553 U.S. at 52; *see also Abdur'Rahman v. Parker*, 558 S.W.3d 606, 616 (Tenn. 2018) ("[U]nder the federal or state constitution, a death-sentenced inmate must establish . . . that the risk is substantial compared to the known and available alternatives."). Moreover, the proposed alternative must be available and detailed to permit a finding that the state could carry it out "relatively easily and reasonably quickly." *Bucklew*, 587 U.S. at 141. However, the alternative method of execution need not be one that is presently authorized by state law. *Id.* at 139-40. Rather, as long as that plausible alternative course of action is "known and available," then the

plaintiff's challenge does not allege, either explicitly or by implication, that "the death penalty is categorically unconstitutional." *Glossip*, 576 U.S. at 880.

## II. Article I, Sections 13, 16, and 32 of the Tennessee Constitution Provides Analogous, if Not Potentially Broader, Protection Against Cruel and Unusual Punishment.

The Tennessee Supreme Court has held that the two-prong test established in *Baze* and *Glossip* applies equally to a challenge under Article I, Section 16 of the Tennessee Constitution. *West v. Schofield*, 519 S.W.3d 550, 563–64, 567–68 (Tenn. 2017). Moreover, the Tennessee Supreme Court may not construe the Eighth Amendment in a way contrary to the United States Supreme Court's construction. *Id.* at 566. In the method-of-execution context, the Tennessee Supreme Court has reasoned that there is "no difference in language between the [Eighth Amendment] and [Article I, Section 16] which would warrant application of a different standard under the Tennessee Constitution." *Abdur'Rahman*, 558 S.W.3d at 616–18.

Notwithstanding this general alignment, Tennessee courts have expressly recognized that they are "always free to expand the minimum level of protection mandated by the federal constitution." *Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn. 1988). Other state courts have exercised precisely this type of freedom in analogous contexts. In one such instance, the Montana Supreme Court read the dignity provision of the Montana Constitution together with its cruel-and-unusual-punishment clause "to provide Montana citizens with greater protections from cruel and unusual punishment than does the federal constitution." *Walker v. State*, 68 P.3d 872, 883 (Mont. 2003); *see also Armstrong v. State*, 989 P.2d 364, 388–89 (Mont. 1999)

(holding that the state constitution is not a "cook book of disconnected and discrete rules" but rather a "compact of overlapping and redundant rights and guarantees").

Under this reasoning, multiple state constitutional provisions may be read together to provide cumulative protections that exceed the floor established by any single federal analog. Tennessee's Constitution contains additional textual hooks that may support broader protections than the Eighth Amendment alone. Article I, Section 13 of the Tennessee Constitution prohibits "unnecessary rigor" in arrest and confinement, which Pike's method of execution is sure to independently violate because it is an abuse that "cannot be justified by necessity". *See State v. Todd*, 2017 WL 1205945, at *5 (Tenn. Ct. App. Mar. 31, 2017) (quoting *Sterling v. Cupp*, 290 Or. 611, 620, 625 P.2d 123, 130 (Or. 1981).

Finally, Article I, Section 32 of the Tennessee Constitution guarantees "humane treatment"—a provision the Tennessee Supreme Court has addressed, though not in the specific method-of-execution context. *See State v. Brimmer*, 876 S.W.2d 75, 88 (Tenn. 1994) (addressing Article I, Section 32 in the context of a general challenge to the death penalty).

Tennessee courts have not foreclosed these provisions from being read to provide protection beyond the Eighth Amendment's floor. Indeed, in a circumstance such as this, where the current protocol is needlessly harsh, degrading, and dehumanizing and cannot be justified by necessity when less degrading, dehumanizing and less harsh alternatives exist, the provisions should be read together to provide more than the floor.

### III. Deference and Its Limit

Although the Constitution affords a "measure of deference to a State's choice of execution procedures," *Bucklew*, 587 U.S. at 120, a state's refusal to adopt a feasible and readily implemented alternative that will significantly reduce a substantial risk of severe pain, without a "legitimate penological justification" can be viewed as "cruel and unusual" under the Eighth Amendment, *Baze*, 553 U.S. at 51-52. It is thus the State's burden to articulate such a justification not to adopt a preferred method of execution. *Bucklew*, 587 U.S. at 134-35; *see, e.g.*, *Glossip*, 576 U.S. at 877-79 (state's failure to procure drugs despite good-faith effort to obtain them justified refusal); *Baze*, 553 U.S. at 57 (state had legitimate interest in selecting method it regarded as "preserving the dignity of the procedure").

## ANALYSIS

### ISSUE 1: Under the Current Lethal Injection Protocol, Ms. Pike's Thrombocytosis Will Cause Serious Illness and Needless Suffering.

Given Ms. Pike's diagnosis of thrombocytosis, achieving peripheral IV access and use of pentobarbital pursuant to the current lethal injection protocol makes it sure or very likely that the challenged protocol will cause her serious illness and needless suffering. *Baze v. Rees*, 553 U.S. 35, 50 (2008).

#### A. Ms. Pike's Thrombocytosis Is a Documented, Chronic, and Progressive Condition

Ms. Pike's thrombocytosis, attributable to a rare myeloproliferative blood cancer, creates a substantial risk that clotting will impede delivery of pentobarbital while simultaneously depleting a critical clotting protein, thereby predisposing her

to IV failure or a uniquely severe hemorrhagic form of the pulmonary edema already documented in Tennessee's recent pentobarbital executions.

Ms. Pike was formally referred to hematology in 2017 after lab work revealed a platelet count of approximately one million and was subsequently diagnosed with CALR-mutated essential thrombocytosis, a myeloproliferative blood disorder, confirmed by genetic testing showing a CALR mutation with JAK2 negativity. (MNGH Dr Robert Hardy Cancer and Infusion Center, Clinic Notes, Zivot-000078). At approximately 1,000,000 per microliter of blood, Ms. Pike's platelet count was more than twice the upper limit of normal. (Report of Dr. Joel Zivot, January 6, 2026, ¶ 9). She has since been maintained on daily low-dose aspirin therapy and monitored through periodic hematology/oncology telemedicine consultations and repeat blood work. (Hematology Oncology Telemedicine Clinic Note, Zivot-000425). This condition has persisted for years, with her platelet count continuing to fluctuate. For example, platelet counts in 2025 and 2026, while lower with aspirin, consistently measure on the high-end of normal or the high-end range.

Additionally, Ms. Pike's regular blood draws—required every several months to monitor platelet counts and electrolytes—cause cumulative trauma to her veins. (Report of Dr. Gail Van Norman, August 5, 2026, at 20). Every time blood is drawn, minor trauma occurs in the vein that leads to local clotting and microscopic fibrosis, or scarring. (*Id.*). The more frequent the blood draws, the more likely that frequently accessed veins will become increasingly difficult to access over time.

### B. The Medical Mechanism of Thrombocytosis: Clotting and Bleeding Risks

Depending on her platelet count at the time of execution, Ms. Pike's thrombocytosis creates a dual, paradoxical risk: an increased risk of clotting at the IV site—which can occlude the catheter and prevent drug delivery—or an increased risk of catastrophic bleeding. These mechanisms, operating simultaneously, expose Ms. Pike to uniquely severe complications during lethal injection.

Dr. Joel Zivot, a board-certified anesthesiologist and critical care physician at Emory University with thirty-one years of clinical practice, who has examined death row prisoners in eight states including Tennessee, will testify that Ms. Pike's thrombocytosis is likely caused by a myeloproliferative disorder, a clonal stem-cell disease in which the bone marrow overproduces blood cells—in this case, platelets. (Zivot Report at ¶ 8). Ms. Pike's thrombocytosis exposes her to an increased risk of clotting and/or an increased risk of catastrophic bleeding.

Dr. Gail A. Van Norman, a board-certified anesthesiologist and professor emeritus at the University of Washington with over thirty-five years of clinical experience, opines that essential thrombocytosis is associated with microvascular inflammation—inflammation of the small blood vessels—which can make veins more fragile and subject to rupture, and venous access more difficult. (Van Norman Report at 20). The longer a patient has thrombocytosis, the greater the risk, with over half of patients experiencing complications after twenty years. (*Id.*). These effects compound the already-elevated risks posed by Ms. Pike's small, scarred veins.

Platelets are critical to blood clot formation. (Zivot Report at ¶ 8). Due to her thrombocytosis, Ms. Pike's elevated platelet count creates a substantial risk that blood clots will form at and around the site of any intravenous catheter insertion. (*Id.* at 8-10). Clot formation at the IV site can occlude the catheter, preventing delivery of the lethal chemical into the bloodstream, and may necessitate repeated, painful attempts at venous access or placement of a central line.

In addition, a very high platelet count can *also* lead to dangerous, uncontrolled bleeding when excess circulating platelets consume von Willebrand Factor ("vWF"), a critical blood-clotting protein that acts as a bridge between platelets and the vessel wall at sites of injury. (Zivot Report at ¶ 8). As a result, Ms. Pike faces a compounding risk of clotting at the IV site that may prevent drug delivery and/or hemorrhage—particularly in the lungs, where pentobarbital's known toxicity is already expected to damage capillary endothelium.

### C. Ms. Pike's Thrombocytosis Creates a Cascade of Foreseeable Harms During Lethal Injection

Ms. Pike's thrombocytosis creates a cascade of foreseeable harms during the administration of pentobarbital. This includes three sequential risks: (1) increased clotting at the IV site that may occlude the catheter and prevent drug delivery; (2) the near-certainty of pulmonary edema based on autopsy evidence from recent Tennessee executions; and (3) the transformation of that pulmonary edema into a uniquely severe hemorrhagic event due to Ms. Pike's depleted von Willebrand Factor. Each risk compounds the others, producing what Dr. Zivot describes as "death by drowning in one's own blood."

*Increased risk of clotting and rupture at the IV site.* Ms. Pike's elevated platelet count creates a substantial risk that blood clots will form at and around the site of any intravenous catheter insertion. (Van Norman Report at 20). Thrombocytosis can increase inflammation and clotting in small veins that makes these veins more fragile and subject to rupture, and venous access more difficult. (*Id.*). The resulting complications, such as repeat attempts to establish peripheral or central venous access, line infiltration and/or inadvertent intra-arterial injection of pentobarbital, could prevent delivery of the lethal chemical into the bloodstream, preventing or slowing onset of effects, causing a lingering and extremely painful death from suffocation. (Van Norman Report at 7-9). If these complications arise, pentobarbital may not reach the central circulation, meaning it cannot produce the rapid unconsciousness intended by the protocol. The result is a substantial risk that Ms. Pike will remain conscious—and aware of pain—for a prolonged period while execution personnel attempt to reestablish venous access or while a compromised IV line delivers the drug erratically. (*Id.* at 13).

***Pulmonary edema.*** Even assuming successful IV access, the evidence establishes that pentobarbital-induced pulmonary edema is a near-certainty. Dr. Zivot reviewed the autopsy findings of two Tennessee inmates recently executed by pentobarbital under the same protocol: Byron Black (executed August 5, 2025) and Harold Nichols (executed December 11, 2025). (Addendum Report of Joel B. Zivot, M.D. (Apr. 8, 2026) at 2-4). Both showed pulmonary edema at autopsy—a condition that could not have pre-existed and requires a beating heart to develop, confirming

that it occurred *during* the execution process while the heart was still pumping. (*Id.* at 3). This is consistent with the published medical literature: a study of 43 lethal injection autopsies across eight states found pulmonary edema in 79% of all cases and 66.7% of pentobarbital-only executions. Zivot, Edgar & Lubarsky, *Execution by Lethal Injection: Autopsy Findings of Pulmonary Edema*, medRxiv (Aug. 17, 2022) at 6-8.

Dr. Zivot will explain that pentobarbital's highly alkaline pH (9.8 to 11) is "extremely noxious to human tissue"—akin to a severe chemical burn—and that the massive quantities injected under the Protocol (5 grams in 100 mL of solution) are directly toxic to the delicate pulmonary capillary endothelial cells, causing edema fluid to escape into the lungs. (Zivot Addendum at 5; Zivot, *et al.* Study at 9-11). Similarly, Dr. Van Norman opines that barbiturates like pentobarbital are "strongly alkaline and very caustic," causing immediate tissue destruction on contact—damage that patients liken to "being set on fire." (Van Norman Report at 7). Dr. Zivot characterizes the resulting pulmonary edema as "an excruciatingly painful condition characterized by the sensation of drowning and a burning in the lungs as they fill with blood." (Zivot Addendum at 6.) Critically, pentobarbital provides sedation but *no pain relief at any dose*—it is not an analgesic. (Zivot Report at 19; Zivot Adden. at 6). Dr. Zivot therefore opines that it is a "virtual certainty" that Ms. Pike would experience this excruciating pain before death. (Zivot Addendum at 8).

***Ms. Pike's thrombocytosis would produce an even more severe, hemorrhagic form of pulmonary edema.*** Ms. Pike's predisposition to abnormal clotting "would very likely produce an even more severe pattern of bloody froth in the

lungs" than what is observed in inmates without her condition. (Zivot Report at 10). Where ordinary inmates experience pulmonary edema that is excruciatingly painful, Ms. Pike's execution would produce what Dr. Zivot describes as "death by drowning in one's own blood"—a hemorrhagic pulmonary edema of uniquely catastrophic severity. (*Id.*). Dr. Zivot concludes that a substantial risk exists that executing Ms. Pike under this Protocol will result in "an even more exaggerated, cruel death caused by drowning in one's own blood," combined with emotional terror and trauma in anticipation of that death. (*Id.* at 22).

**D. Conclusion**

Ms. Pike's thrombocytosis, a documented and chronic myeloproliferative blood disorder, creates a cascading series of foreseeable medical complications during lethal injection. First, her elevated platelet count and repeated blood draws create a substantial risk of clot formation, IV failure, or rupture at the IV catheter site, impeding delivery of pentobarbital. Second, the excess platelets may simultaneously deplete von Willebrand Factor, predisposing her to uncontrolled hemorrhage. Third, pentobarbital-induced pulmonary edema—a near-certainty based on autopsy evidence from recent Tennessee executions—will be transformed into a catastrophic hemorrhagic event as Ms. Pike's compromised clotting ability causes her lungs to fill with blood.

This evidence more than satisfies the *Baze* standard. The protocol, as applied to Ms. Pike, presents a risk that is "sure or very likely to cause serious illness and needless suffering" and constitutes an "objectively intolerable risk of harm." *Baze*,

553 U.S. at 50. The risk is grounded in Ms. Pike's specific, documented medical condition, confirmed by her medical records, and attested to by qualified experts who hold their opinions to a reasonable degree of medical certainty. For all of these reasons, it is sure or very likely that achieving peripheral IV access pursuant to the current lethal injection protocol and administering pentobarbital to Ms. Pike will cause her serious illness and needless suffering, in violation of the Eighth Amendment.

**ISSUE 2: The Transfer of Ms. Pike to a Men's Facility, Her Observation by Male Officials, and the Manner of Her Execution Are Sure or Very Likely to Cause Serious Illness and Needless Suffering.**

The protocol will cause Ms. Pike serious illness and needless suffering as it relates to her mental health on four grounds, independently, and in combination. First, Ms. Pike's clinically validated complex PTSD—arising from documented, repeated sexual assault by multiple male perpetrators—means that the Protocol's use of an all-male restraint team will not merely remind her of her past assaults, but it will cause her to neurobiologically relive them in real time. Second, any difficulties in achieving venous access will compound and intensify this re-traumatization at the precise moment of her death. Third, the cumulative conditions of the protocol, including forced transfer to a men's facility, constant observation by male officers, and near-total isolation from supportive contacts, create a substantial and unaddressed risk that Ms. Pike will psychologically decompensate before the execution can even be carried out. Fourth, additional execution contingencies—including invasive close monitoring during the pre-execution period, the possibility of

femoral venous access if peripheral IV access fails, and the risk of a prolonged or failed execution attempt—each independently constitute recognized trauma triggers that would cause Ms. Pike to experience severe psychological re-traumatization.

### A. Contemporaneous Records Document Repeated Sexual Victimization by Multiple Perpetrators

Ms. Pike suffered extreme, chronic sexual abuse from preschool age through age seventeen—a history that Dr. Brand, with over thirty years in trauma practice, characterized as more extreme than almost any case she has encountered. (Brand Forensic Report, July 29, 2023, at 2). Ms. Pike reported sexual abuse by at least five different perpetrators across her childhood and adolescence, a pattern reflecting the systematic failure of every adult caretaker to protect her—facts squarely relevant to how she will experience being placed, unprotected, in the custody of unfamiliar men during her final days.

The abuse began when Ms. Pike was a preschooler. Her paternal grandmother's boyfriend, Ernest Johnson, orally raped her over a period of years—from preschool through kindergarten. He locked her in a dark chicken coop infested with spiders—an experience that produced both a lifelong phobia and the earliest traumatic imprint of male sexual violence, powerlessness, and confinement. (Brand Forensic Report, July 29, 2023, at 9–10). When she was eleven, a neighbor named Claude Davis raped Ms. Pike, causing a genital infection severe enough to require medical attention—for which Davis was prosecuted. (Brand Forensic Report, July 29, 2023, at 12).

Ms. Pike's mother's boyfriend, Steve Kyaw, sexually molested her through repeated groping and twisting of her nipples, accompanied by verbal degradation, calling her a "slut" and "whore." In addition to physical and sexual abuse, Kyaw exposed Ms. Pike to graphic sexual information and behavior at a young age. (Brand Forensic Report, July 29, 2023, at 13).

At the age of seventeen, Ms. Pike was raped again. Contemporaneous records corroborate this assault in detail. On January 14, 1994, while walking to a store in Carrboro, North Carolina, a man grabbed Ms. Pike, threw her to the ground, and raped her. (Carrboro, NC Police Department Sexual Assault Incident Report, Jan. 14, 1994.) She screamed, struck her attacker, and the assailant fled when an automobile approached. (*Id.*).

Medical records from the University of North Carolina at Chapel Hill document that the seventeen-year-old Ms. Pike presented crying, "tearful, very upset while telling the story," with abrasions on her breast and leg and bruising on her inner thigh near her genitals and knee. (UNC Chapel Hill Medical Records, Jan. 14, 1994.) The police interview records document that Ms. Pike was so distraught and sobbing that she could not be understood at times during her statement. (Carrboro NC Police Interview, Jan. 14, 1994).

### B. Ms. Pike's Complex PTSD Arising From Repeated Sexual Assault Is Clinically Validated, Corroborated by Decades of Independent Evaluation, and Unrebutted

Ms. Pike's PTSD and bipolar disorder diagnoses are supported by clinical records spanning more than three decades, confirmed by multiple independent

evaluators using distinct methodologies, and validated by Dr. Brand's own gold-standard diagnostic testing.

Dr. Brand's evaluation in January 2023 confirmed and expanded upon Ms. Pike's prior diagnoses. Using the CAPS-5—the gold-standard clinician-administered interview for PTSD diagnosis under DSM-5—Dr. Brand determined that Ms. Pike meets full diagnostic criteria for PTSD with severely disruptive symptoms across all four symptom clusters. (Brand Forensic Report, July 29, 2023, at 14–18). Dr. Brand further identified eight co-occurring disorders: Complex Posttraumatic Stress Disorder, Bipolar I Disorder, Dissociative Amnesia, Depersonalization/Derealization Disorder, Panic Disorder, Obsessive-Compulsive Disorder, Hoarding Disorder, and Specific Phobia (spiders). (Brand Forensic Report, July 29, 2023, at 33–35).

Ms. Pike's PTSD symptoms manifest in specific, ongoing ways. Most relevant here, she experiences ***intrusive symptoms***, or strong physical reactions when reminded of her trauma—including gagging, shuddering, and chills when reminded of the oral rape—demonstrating that her body continues to respond to trauma cues as though the events are occurring in the present. (Brand Forensic Report, July 29, 2023, at 23-24). In addition, she experiences ***marked alterations in arousal and reactivity***, meaning she lives in a state of constant hypervigilance. She is easily startled by loud noises and by people walking past her. She has severe difficulty concentrating and experiences chronic insomnia—typically requiring three to four

hours to fall asleep, with frequent awakenings throughout the night. (Brand Forensic Report, July 29, 2023, at 24).[3]

At bottom, Ms. Pike suffers from complex and multi-faceted psychiatric disorders that are the result of severe trauma. Ms. Pike's trauma has become structurally embedded in her neurobiological responses, such that its cues involuntarily activate the full sensory and affective apparatus of the original victimization events. As will be described in further detail below, Ms. Pike's diagnoses reflect a documented, severe clinical profile that directly predicts how Ms. Pike will respond to the protocol's specific conditions.

### C. The Neurobiology of Trauma Establishes That the Protocol Will Cause Ms. Pike to Relive Her Assaults in Real Time—Not Merely Recall Them

The certified question asks whether the protocol's conditions "would make it 'sure or very likely'" that Ms. Pike will suffer serious illness and needless suffering. The answer turns on a scientific principle central to Dr. Brand's opinion: traumatic memory is qualitatively different from ordinary autobiographical memory, and that difference has direct, predictable, and severe consequences for how Ms. Pike will experience the protocol's restraint procedures.

Consistent with established trauma science, ordinary autobiographical memories are stored as coherent verbal narratives that the individual can

[3] To manage these conditions, Ms. Pike was being treated with Bupropion (Wellbutrin), Aripiprazole (Abilify), and Propranolol, confirming ongoing active psychiatric management of her conditions. (Brand Forensic Report, July 29, 2023, at 36.)

deliberately retrieve and recount while remaining aware that the events occurred in the past. Traumatic memories, by contrast, are not stored this way. They are encoded as fragmented, involuntary sensory and physical fragments that are not deliberately recalled but are involuntarily relived when triggered by sensory or physical stimuli that mirror the original trauma. (Brand Addendum, June 1, 2026, at 5).

This distinction is not metaphorical. When a traumatic memory is triggered, the individual does not "remember" the event in the colloquial sense. Instead, the brain reactivates the original sensory, affective, and motor experience as though the traumatic event "is even currently happening (as in a flashback)." (Brand Forensic Report, July 29, 2023, at n1). Dr. Brand observed this phenomenon directly during her evaluation: while narrating a childhood memory of an abuser throwing her into a pool, Ms. Pike shifted from past tense to present tense—a verbal marker that Dr. Brand identifies as indicating that the individual has "temporarily lost full awareness that this awful experience is over and occurred in the past." (*Id.* at 11).

Several aspects of the lethal injection protocol as applied to Ms. Pike will trigger superadded trauma. First, Ms. Pike will be moved from DJRC, where she has lived for decades, to a men's facility forty-eight hours before her execution. During this period, Ms. Pike will be held in a death watch cell, constantly observed by male corrections officers, with no provision under the current protocol for female corrections officers to observe female inmates during the death watch period.[4] Dr.

[4] The parties conferred on this issue, but TDOC could not guarantee that Ms. Pike would be overserved solely by female guards.

Brand characterizes this transfer not as "mere administrative procedure" but as "added and severe punishment" for a woman with Ms. Pike's history. (Brand Addendum, June 1, 2026, at 5). Dr. Brand opines that this isolation "replicat[es], with harsh precision, the abandonment she has known her entire life." (Brand Addendum, June 1, 2026, at 5; Brand Forensic Report, July 29, 2023, at 30).

Next, she will be physically extracted from her cell and restrained by a group of men, rendered immobile and unable to move, which "will return her, in full sensory and neurobiological force, to every violation she ever survived." (Brand Addendum, June 1, 2026, at 5). Ms. Pike was repeatedly held down by men and raped throughout her childhood and adolescence. The Protocol's own design—an all-male restraint team physically immobilizing Ms. Pike—is therefore not merely likely to trigger this response; it is a near-perfect replication of the precise sensory conditions of her original assaults.

The combination of forced transfer to a men's facility, constant male observation, total isolation from supportive contacts, anticipation of physical restraint by men, and knowledge of impending death creates a compounding cascade of trauma triggers that, in Dr. Brand's clinical opinion, creates a substantial risk that Ms. Pike will decompensate—that she will be "returned, in her final hours, to the terror that defined her life." (*Id.* at 6). Dr. Zivot reached the same conclusion: "It is conceivable that in anticipation of an execution, Ms. Pike's mental health would deteriorate to the point of a loss of agency and be unable to undergo an execution on that basis." (Zivot Report, Jan. 6, 2026, ¶ 20).

Dr. Brand's August 4, 2026 addendum further addresses the impact of close monitoring at DJRC during the pre-execution isolation period. Even at the women's facility, if Ms. Pike is observed during private moments such as using the restroom, bathing, or dressing, Dr. Brand opines that this would constitute re-traumatization. Being watched by staff during these private times "would replicate the loss of bodily autonomy and privacy that characterized her original victimizations." (Brand Second Addendum, Aug. 4, 2026, at 1–2). Dr. Brand explains that the traumatic trigger here is "the loss of privacy and control over her own body," which "would be highly likely to evoke the same feelings of exposure, helplessness, and powerlessness she experienced during the rapes." (Id. at 2).

For Ms. Pike, the convergence of her complex PTSD with the physiological realities of lethal injection compels only one conclusion: at the moment of execution, she will simultaneously experience the neurobiological reliving of her sexual assaults—triggered by physical restraint at the hands of multiple men—and the physiological sensations of drowning, choking, and air hunger as her lungs fill with fluid and blood. This compounded sensory profile will produce suffering far exceeding what any inmate without Ms. Pike's particular trauma history would experience and far exceeding what any legitimate penological purpose requires.

Dr. Brand opines that a failed or prolonged execution attempt would cause additional severe psychological harm. When an execution does not go smoothly—such as when executioners require an extended period to set IV lines, or when the lethal injection does not kill the inmate—"the prisoner is highly likely to experience a near-

death event of the type known to cause long-term and grave psychological consequences." (Brand Second Addendum, Aug. 4, 2026, at 2–3). Citing peer-reviewed literature, Dr. Brand explicitly compares repeated or extended execution attempts to "mock executions, a recognized form of psychological torture." (*Id.* at 3). The psychological mechanism is the same: "the trauma associated with mock execution stems from the prisoner's subjective experience of imminent death, prolonged uncertainty, and helplessness, not from whether the threat of death is genuine. Those conditions are precisely what a repeated or extended execution attempt produces." (*Id.*). Dr. Brand further notes that when a traumatized person is in an extremely heightened state of terror, "they may lose control of their bladder and/or bowels, or vomit, due to the extreme hyperarousal produced by facing death while highly triggered by trauma reminders." (*Id.*).

Dr. Brand's August 4, 2026 addendum identifies additional execution contingencies that would independently cause severe re-traumatization, including any attempt to place central or femoral venous access, which involves exposure of and needle insertion in the groin region and "directly re-trigger the terror, as well as the sensory and situational memories, of being raped." (Brand Second Addendum, Aug. 4, 2026, at 2). For Ms. Pike, "procedures requiring genital or groin-area exposure, as well as being touched in those private areas by unfamiliar personnel, particularly male personnel, and particularly under conditions of physical restraint, would directly re-trigger the terror, as well as the sensory and situational memories, of being raped." (*Id.*).

Critically, Dr. Brand emphasizes that Ms. Pike's pre-existing PTSD does not protect against further traumatic harm—it heightens her vulnerability to it. "A nervous system already sensitized by repeated trauma exposure requires less provocation to trigger a full physiological and psychological trauma response, and that response is typically more severe, more prolonged, and more difficult to regulate than it would be in someone without a trauma history." (Brand Second Addendum, Aug. 4, 2026, at 4–5). Any of the contingencies described above "would constitute what is described in the literature as retraumatization," which "occurs when a current situation reactivates the physiological and psychological response associated with a prior trauma." (*Id.* at 4).

**D. Conclusion**

Ms. Pike's complex PTSD, arising from documented sexual assault by multiple male perpetrators, means the Protocol's forced transfer to a men's facility, constant male observation, and near-total isolation create a substantial risk of psychological torture and decompensation. The protocol's all-male restraint team will not merely remind her of her past assaults but will cause her to neurobiologically relive them in real time. That retraumatization will be compounded at the moment of death by the drowning and suffocation sensations of pulmonary edema—a near-certainty under Tennessee's Protocol and one likely exacerbated by Ms. Pike's thrombocytosis. That is, it will produce needless and superadded suffering.

The Protocol was designed for men without regard to Ms. Pike's particular vulnerabilities—vulnerabilities that make the specific mechanisms of this Protocol

uniquely and predictably torturous for her. In other words, the Protocol "will, for this woman with this particular history, constitute a form of suffering that goes far beyond what any sentence requires.... What awaits her is not only death. It is, for Christa, a form of dying that is uniquely and needlessly cruel." (Brand Addendum, June 1, 2026, at 6).

This evidence satisfies the *Baze* standard: the protocol, as applied to Ms. Pike, presents a risk that is "sure or very likely to cause serious illness and needless suffering." *Baze*, 553 U.S. at 50. *See Grayson v. Comm'r, Ala. Dep't of Corr.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024) (recognizing that there "may exist a form of execution that induced psychological terror or pain that is severe enough to support an Eighth Amendment claim").

**ISSUE 3: Ms. Pike's Small and Compromised Veins Are Incompatible with Reliable Peripheral IV Access**

Ms. Pike's extremely small peripheral veins, generally accessible only by 23-gauge butterfly needles typically reserved for infants, are fundamentally incompatible with the reliable delivery of pentobarbital under the TDOC lethal injection protocol. The catheter required for her veins: (1) is not designed for sustained drug injection, (2) creates dangerous pressure differentials, (3) carries an unacceptably high risk of infiltration and vein rupture, and (4) mandates injection speeds so slow that the short-acting pentobarbital will redistribute before reaching the brain in adequate concentrations. Compounding these physical realities, the TDOC IV Team lacks the qualifications necessary either to achieve venous or central

line access in a patient with Ms. Pike's anatomy or to address the cascade of complications that will inevitably follow.

### A. Ms. Pike's Medical History Documents Small, Compromised, and Difficult-to-Access Veins

Ms. Pike's medical records establish that she has extremely small veins that are virtually inaccessible by standard IV techniques. Her routine blood draws, conducted every several months to monitor platelet counts and renal function, require the use of a 23-gauge butterfly needle placed in the veins of her hand rather than the standard antecubital veins at the elbow. (Van Norman Report at 19; Goldstein Report at 5). These hand veins are themselves a "default" option, used only when larger veins are inaccessible. (Van Norman Report at 20). That TDOC's own personnel cannot access Ms. Pike's veins with anything larger than this tiny gauge, ordinarily reserved for neonatal patients and brief blood draws, is itself powerful evidence of the severity of her venous access limitations.

Additionally, her regular blood draws themselves compound the problem. Every venipuncture causes minor trauma, local clotting, and microscopic scarring, progressively making frequently accessed veins more difficult to access over time. (Van Norman Rep. at 20). The cumulative effect of years of repeated blood draws through these already-tiny veins has further degraded their integrity.

Validated clinical scoring systems identify Ms. Pike as possessing all four of the most significant predictors of difficult IV access: prior difficult IV access, nonpalpable veins, nonvisible veins, and veins less than 3 mm in diameter. (Van Norman Report at 19). Research demonstrates that each of these factors

independently increases the risk of failed IV access by up to 4.4-fold, with nonpalpable and nonvisible veins increasing risk by up to 8.1-fold and 10-fold, respectively. (*Id.*). The confluence of all four risk factors in a single patient "virtually assur[es] a difficult IV start, or failure to secure a peripheral IV access." (*Id.*).

### B. Ms. Pike's Veins Are Incompatible with Reliable Pentobarbital Delivery Under the Current Protocol

Even assuming TDOC could establish peripheral IV access, the small-gauge catheter required for her anatomy is fundamentally incompatible with the reliable delivery of pentobarbital.

***The Small-Gauge Catheter Is Not Designed for Sustained Drug Injection.*** TDOC will need to use a small-gauge catheter to access Ms. Pike's veins, but such a catheter is not designed for and is fundamentally unsuited for the sustained injection of lethal volumes of pentobarbital. The success of small-gauge needles for brief blood draws is not an indication that an IV can be placed. (Van Norman Report at 19). The reality is that larger catheters will blow Ms. Pike's small veins, but smaller catheters present the technical challenges described below—creating a situation in which central line placement would be indicated in most clinical cases. (Van Norman Report at 6). That TDOC's own personnel cannot access Ms. Pike's veins with anything larger than a tiny gauge is itself powerful evidence of the severity of her venous access limitations—and of the unsuitability of the current protocol for her anatomy. (*Id.*).[5]

[5] These problems are not solved by the usage of a 22-gauge catheter. Flow through a 22-gauge catheter is approximately one-third that of a standard 18-gauge needle used

***The Small-Gauge Catheter Creates Dangerous and Unmanageable Pressure Differentials.*** The pressure required to inject a given volume of fluid through a small-gauge catheter is roughly double the amount needed through a 20-gauge catheter and triple the pressure needed through a standard 18-gauge adult catheter. (Van Norman Report at 21). As Dr. Van Norman will explain, this is analogous to placing one's thumb over the end of a garden hose, increasing the pressure and velocity of the jet of water. (*Id.* at 22). The same principle applies when pentobarbital is forced through a tiny small-gauge opening: the "jet" of fluid exiting the catheter subjects the vein wall to dramatically increased pressure, magnifying the risk of rupture and extravasation—particularly in veins that are already small and fragile from thrombocytosis and repeated venipuncture. (*Id.*).[6]

Further compounding this problem, the Protocol calls for 50 ml syringes, which are physically unable to generate the high pressures needed for rapid injection through a small-gauge catheter. (Van Norman Report at 22). Studies show that 60 ml syringes generate only 19 psi, compared to 20 ml syringes at 32 psi or 10 ml syringes at 53 psi. (*Id.*). The combination of a tiny catheter with a large, low-pressure syringe means that achieving adequate delivery speed is physically impossible without rupturing the vein.

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for drug infusions. (Van Norman Report at 20). Even applying very high pressures (300 mmHg), it is physically impossible to match the highest flow of even a 20-gauge catheter using a 22-gauge. (*Id.* at 21). A 24-gauge catheter performs worse still.

[6] "Extravasation" describes incidents in which the IV drug or fluid is inadvertently injected into tissues outside of the vein, or when IV fluid flows through a misplaced catheter and ends up in surrounding tissues. (Van Norman Report at 7 n.4).

*The Small-Gauge Catheter Carries an Unacceptably High Risk of Infiltration and Vein Rupture.* When infiltration or extravasation occurs—as it will given the foregoing pressure dynamics—the consequences for Ms. Pike will be catastrophic. Pentobarbital is strongly alkaline and extremely caustic; its pH is comparable to drain cleaner. (Van Norman Report at 7; Zivot Adden. at 5). Infiltration of even small amounts of a barbiturate into subcutaneous tissue causes instant, excruciating pain that patients liken to being set on fire, and requires emergency intervention to reduce extensive tissue damage, including deep burns and sloughing of the skin. (Van Norman Report at 7).

Critically, pentobarbital has never been widely used as an anesthetic in humans due to its adverse cardiovascular effects, and there is no clinical tolerance data for subcutaneous exposure. (*Id.* at 8). There is simply no basis to predict that any amount of subcutaneous pentobarbital exposure is survivable without extreme suffering.

***Slow Injection Speeds Will Cause Pentobarbital to Redistribute Before Reaching the Brain.*** The pressure differential inherent in the use of a small-gauge catheter creates an impossible dilemma. If the operator pushes the pentobarbital at normal injection speeds, the massive pressure will rupture Ms. Pike's fragile veins, causing extravasation of a highly caustic drug into surrounding tissues. But if the operator slows the injection to protect the veins, the pharmacological consequences are equally devastating.

Pentobarbital is a short-acting barbiturate that rapidly redistributes from the brain to other tissues. Slower injection reduces necessary pressure, but leads to reduced peak blood levels of pentobarbital because of its rapid clearance from the bloodstream, lowering levels in the brain and reducing the intended sedative effects of the drug. (Van Norman Report at 23). In practical terms, this means the drug will begin redistributing away from its site of action before the full dose has been delivered—leaving Ms. Pike in a state of inadequate (or non-existent) anesthesia while she experiences the excruciating effects of pentobarbital-induced pulmonary edema. (Zivot Adden. at ¶¶ 6–8).

### C. TDOC Personnel Are Insufficiently Qualified to Achieve Venous Access or Address Complications

The foregoing medical and pharmacological challenges would be difficult for any execution team to manage. But the evidence establishes that TDOC's personnel are particularly ill-equipped to address them. The TDOC Protocol permits the IV Team to consist of "physicians, physician assistants, nurses, emergency medical technicians ('EMTs'), paramedics, military corpsman with relevant medical training, or other certified or licensed personnel." (TDOC Protocol at 8). This broad and nonspecific list reveals TDOC's failure to appreciate the specialized skill set required to access Ms. Pike's veins. However, under Tennessee's own ALS/BLS protocols, EMTs cannot place IVs. (Goldstein Report at 5). Yet TDOC lists EMTs as eligible IV Team members. This internal inconsistency reveals a fundamental lack of understanding about the scope of practice of the very personnel TDOC proposes to use. The fact that the Protocol does not even detail the specific training or

qualifications required for IV Team members further underscores TDOC's indifference to the skill level necessary for Ms. Pike's execution. (*Id.*).

Dr. Goldstein will testify that Ms. Pike's case "would require someone who has a particular skill set of obtaining difficult IV's and even then, there is no guarantee that the IV will be able to be maintained or a suitable vein found." (*Id.*). The Protocol requires not one but two properly functioning IV lines. (TDOC Protocol at 19). Obtaining two adequate peripheral IV sites in a patient whose medical records document that even a single 23-gauge butterfly needle in the hand is difficult is, to use Dr. Goldstein's assessment, "highly unlikely." (Goldstein Report at 5).

When peripheral access fails—as it almost certainly will—the Protocol provides that "the Physician will insert a central line." (TDOC Protocol at 20). But the evidence from the May 21, 2026 attempted execution of Tony Carruthers demonstrates that the execution physician[7] utilized by TDOC and likely to perform this procedure for Ms. Pike is dangerously unqualified.

The execution physician admitted in a deposition that he had not placed a central line in over 12 years prior to the Carruthers execution and has only placed approximately a dozen central lines in his entire career. (Van Norman Report at 15). By comparison, most credentialing bodies require physicians to perform at least 10 lines at each site—a minimum of 30 total—before being considered competent. (*Id.*). ACGME minimums for anesthesiology residents require at least 20 cardiac

[7] This brief omits the use of the physician's name and relies on publicly available reporting pursuant to the protective order.

anesthesia cases (all requiring central lines), and the average emergency room resident performs approximately 17 central lines per year during training alone. The execution physician's lifetime total is less than a single year of a typical resident's experience. (*Id.*).

During the Carruthers execution—a person with no prior reported history of difficult blood draws—the execution physician demonstrated numerous lapses of the standard of care: he failed to use ultrasound guidance (now standard of care), failed to place the patient in Trendelenberg position, inadequately anesthetized the insertion site causing the prisoner to moan and groan in pain audible to media witnesses, and ultimately failed to achieve central line access after nearly an hour of attempts. (Van Norman Rep. at 16–18 (citing DeLiberato Decl., July 20, 2026)). Moreover, the execution physician has a documented history of serious injury during central line placement, including placement of a guidewire into the carotid artery—an extremely serious injury that can cause stroke and death. (*Id.* at 16).

In short, the execution physician "does not have sufficient training or continuing experience to be considered competent in central line placement by most medical specialty credentialling bodies" and that his actions during the Carruthers execution are "consistent with attempted placement of a subclavian vein central line by a physician who has not had recent training or adequate ongoing experience with central line placement, and is not qualified to be placing central venous catheters for any purpose." (Van Norman Rep. at 6, 18).

### D. Conclusion

The convergence of these factors—Ms. Pike's documented tiny and compromised veins, the dangerous pressure physics of the small-gauge catheter, the pharmacological failure mode of slow injection, the caustic nature of pentobarbital, and the demonstrated incompetence of TDOC's execution personnel—establishes that the challenged protocol, as applied to Ms. Pike, makes it "sure or very likely" that she will suffer serious illness and needless suffering. The Protocol offers no mechanism to evaluate or address these risks. It provides no specification of the skill level required for its IV Team, no realistic fallback when peripheral access fails, and an execution physician whose incompetence has already been demonstrated under far more favorable circumstances. The evidence establishes the near-certainty of a prolonged, excruciating, and botched execution.

This evidence satisfies the *Baze* standard: the protocol, as applied to Ms. Pike, presents a risk that is "sure or very likely to cause serious illness and needless suffering." *Baze*, 553 U.S. at 50.

## ISSUE 4: Proposed Alternative Methods of Execution

Under *Glossip*, a person challenging the constitutionality of a method of execution must identify a "known and available alternative method of execution that entails a lesser risk of pain." 576 U.S. at 878. The alternative must be "feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain." *Id.* Ms. Pike satisfies this standard through two proposed alternatives, each supported by expert medical testimony: (1) central line placement by a qualified,

currently-practicing physician, which would eliminate the risks created by reliance on peripheral IV access and an incompetent physician; and (2) execution by hanging, which would eliminate the entirety of the IV access crisis, avoid the excruciating pulmonary edema and psychological torture that accompanies lethal injection, and produce either instantaneous death or unconsciousness within seconds.

### A. Proposed Alternative 1: Central Line Placement by Qualified, Currently-Practicing Medical Personnel

Ms. Pike's first proposed alternative addresses the substantial risk of severe pain arising from the peripheral IV access component of Tennessee's lethal injection protocol. Rather than relying on an underqualified physician with no recent central line experience, Ms. Pike proposes that TDOC retain a qualified, trained, currently-practicing physician to place a central line using ultrasound guidance and proper sterile technique.

***Qualified Physicians Are Readily Available to Place Central Lines.*** Qualified emergency medicine or critical care physicians who place central lines on a daily basis are readily available in the medical community. Dr. Goldstein explains that central line placement requires "a physician that places and utilizes central lines on a regular basis" and that "[m]ost of the central lines are placed by critical care and/or Emergency Medicine physicians, as this is something they manage and use on a daily basis." (Goldstein Report at 4). For example, to be considered "adequate" for central line placement, an Emergency Medicine physician in training needs at least 20 supervised placements, and competency requires continued practice thereafter. (Goldstein Report at 4).

Dr. Van Norman confirms that healthcare systems "now generally require proof that a practitioner has appropriate training and also has continued proficiency (meaning they have actually placed central lines in patients recently)." (Van Norman Report at 11–12). Practitioners must also demonstrate placement of up to 10 central lines in the preceding two-year privileging period, and professional guidelines now require the use of ultrasound. (Van Norman Report at 12). These standards exist precisely because competent, currently-practicing physicians are available—and can be retained—to perform this procedure safely.

***Central Line Placement Would Eliminate the Risks of Peripheral IV Access and Incompetent Personnel.*** The current protocol creates a substantial risk of failed IV access and resulting pain. For example, the TDOC protocol requires the IV Team to establish at least two functioning IV lines, (TDOC Protocol § E.2), which "seems highly unlikely in Ms. Pike's case," (Goldstein Report at 5). Dr. Van Norman confirms that Ms. Pike "has significantly elevated risk of suffering an already common complication[] of peripheral lines in lethal injection executions" and that it is "extremely likely that she will require central vein access during her execution." (Van Norman Report at 6).

Additionally, peripheral IV access, even with a small-gauge needle, cannot safely deliver lethal injection drugs. As explained above, the pressure physics of a small-gauge catheter create an unacceptable risk of extravasation, and pentobarbital's caustic, alkaline nature causes instant, excruciating pain—likened to "being set on fire"—when it contacts subcutaneous tissue. (Van Norman Report at 7,

20–21; Goldstein Report at 5). Because peripheral IV access is likely not a viable path for Ms. Pike's execution, central venous access by a qualified physician is the only means of significantly reducing the risk of severe pain from the IV access component of the protocol. TDOC's current physician is unqualified to place a central line.

***A Qualified Physician Would Directly Address All Risks Associated with IV Access.*** As an alternative, retaining a qualified, currently-practicing emergency medicine or critical care physician—one who meets credentialing standards, uses ultrasound guidance, and employs proper sterile technique—would directly address each source of risk identified above. Unlike peripheral IV access through a small-gauge catheter, a properly placed central line provides "more stable" vascular access once obtained delivering medication directly into the central circulation without the elevated infiltration and extravasation risks associated with small peripheral veins. (Goldstein Report at 4). The use of ultrasound increases "the chance of successful cannulation," (*id.*), and is now "standard of care" for central line placement, (Van Norman Report at 12). These are standard medical practices that would eliminate the protracted, agonizing IV attempts that Ms. Pike faces.

**B. Proposed Alternative 2: Execution by Hanging**

Ms. Pike's second proposed alternative method is execution by hanging, a method historically authorized and practiced in Tennessee. *See* Tenn. Code Ann. § 10-7-504(h). Unlike lethal injection, hanging requires no specialized pharmaceutical supply chain, no IV access, no venous patency, and no physician participation. (Goldstein Report at 5). It eliminates entirely the "limiting step" in Ms. Pike's case—

the inability to obtain and maintain adequate IV access. (Goldstein Report at 5). It also likely reduces the psychological terror of lethal injection. Hanging is feasible and readily implemented, and would significantly reduce the risk of severe pain by producing either instantaneous death through cervical fracture or unconsciousness within seconds through cerebral hypoxia—a fraction of the prolonged, conscious suffering caused by pentobarbital-induced pulmonary edema.

The expert medical evidence establishes that hanging would significantly reduce the risk of severe pain compared to lethal injection. Dr. Goldstein explains that hanging as a form of execution, "if done properly, causes instantaneous death." (Goldstein Report at 2). This is accomplished by placing the ligature at the optimal position on the neck at Cervical vertebrae #2, accounting for the person's weight to generate sufficient force from an immediate drop. (Goldstein Report at 2). The result is an atlanto-occipital dislocation—"essentially an internal decapitation, causing the spinal cord to separate from the brain enough to stop all bodily functions"—or bilateral pedicle fractures of C2 ("Hangman's fracture") due to severe hyperextension, "leading to spinal transection and death." (Goldstein Report at 2).

Even in the event that calculations are imprecise and strangulation occurs rather than cervical fracture, unconsciousness results "within 10-20 seconds" due to venous occlusion and cerebral hypoxia. (Goldstein Report at 2–3). After this period, "the patient is unconscious and unresponsive, as the brain is starved of oxygen and unable to get rid of waste, which leads to death within minutes." (Goldstein Report

at 3). The potential period of conscious suffering from strangulation is "anywhere from 10-30 seconds." (Goldstein Report at 4).

Hanging will substantially lessen the risks noted above. Lethal injection involves "substantial variability depending on the type of drug or drugs selected, dosing, intravenous access, administration, route and time." (Goldstein Report at 4). The ability to obtain adequate IV access "can be the limiting step and in itself is not painless." (Goldstein Report at 4). Even if a suitable vein is obtained, "there is always the possibility of the vein extravasating the medication into the surrounding tissue," leading to "tissue break down, erratic absorption, and partial treatment" which "can lead to pulmonary edema, seizures and incomplete anesthesia and therefore awareness." (Goldstein Report at 4). Hanging, by contrast, eliminates all IV-related risks. There is "no need for IV access and venous patency, which seems to be the limiting step in Ms. Pike's case, no medication and even if it doesn't cause immediate death the time of discomfort is less than for lethal injection." (Goldstein Report at 5).

The overall "botched" rate for capital punishment is 3.15%. Lethal injection carries the highest botched rate at 7.2%, while hanging is consistent with the average at 3.12%. (Goldstein Report at 6). "These statistics, along with Ms. Pike's unique anatomy strengthens my opinion that hanging be a viable alternative. . . ." (Goldstein Report at 6). Hanging eliminates the risks of lethal injection entirely. Death occurs either instantaneously through cervical fracture or within seconds through loss of consciousness from cerebral hypoxia—a fraction of the time in which lethal injection produces ongoing, conscious suffering. (Goldstein Report at 4–5).

### C. Conclusion

Ms. Pike has identified two known and available alternative methods of execution—each of which is feasible, readily implemented, and would significantly reduce the substantial risk of severe pain posed by Tennessee's current lethal injection protocol as applied to her. The expert medical evidence demonstrates that either alternative would significantly reduce the substantial risk of severe pain that Ms. Pike faces under the current protocol. Ms. Pike satisfies the *Glossip* standard through two proposed alternatives, each supported by expert medical testimony.

## CONCLUSION

Tennessee's lethal injection protocol as applied to Ms. Pike's severe mental and physical conditions creates an "objectively intolerable risk of harm" or a "substantial risk of serious harm." *Baze*, 553 U.S. at 50. That risk of harm is "sure or very likely to cause serious illness and needless suffering" and gives rise to "sufficiently imminent dangers." *Id.* Tennessee cannot show otherwise and Ms. Pike is entitled to relief.

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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| **v.** | ) | **No. M2020-01156-SC-DPE-DD** |
| | ) | |
| **CHRISTA GAIL PIKE,** | ) | **CAPITAL CASE** |
| | ) | |
| ***Movant.*** | ) | **Execution: September 30, 2026** |

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**STATE OF TENNESSEE'S PRE-TRIAL BRIEF**

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## INTRODUCTION

As her September 30, 2026, execution date approaches, death row inmate Christa Gail Pike raises several challenges to Tennessee's lethal injection protocol. On July 10, 2026, the Tennessee Supreme Court appointed a special master under Tenn. Sup. Ct. R. 12(4)(E) to conduct a hearing and issue findings of fact and conclusions of law as to five issues raised in Pike's motion to stay her execution.

The Special Master should limit these proceedings to address only the issues identified by the Supreme Court and reject Pike's attempt to mutate this hearing into a top-to-bottom review of Tennessee's lethal injection protocol. On the issues identified by the Supreme Court, the State will show that Pike falls far short of showing a "sure or very likely" injury that constitutes "serious illness or needless suffering."

## ISSUES BEFORE THE COURT

The issues referred to the Special Master are:

(1) Whether achieving peripheral IV access pursuant to the current lethal injection protocol is sure or very likely to cause Pike serious illness or needless suffering given her diagnosis of thrombocytosis. Supreme Court Order, 2.

(2) Whether the movement of Pike to RMSI and whether observation by male prison guards prior to two weeks prior to Pike's execution is sure or very likely to cause Pike serious illness or needless suffering given her history of sexual assault and asserted diagnosis of PTSD. *Id*.

(3) Whether achieving peripheral IV access pursuant to the current lethal injection protocol is sure or very likely to cause Pike serious illness or needless suffering given her allegedly small and compromised veins. *Id*. at 2-3.

(4) Whether Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain." *Id*. at 3.

(5) Whether TDOC is required to permit Pike to have a spiritual advisor in the execution chamber during the execution. *Id*.

Sup. Ct. Order at 2-3.

## ARGUMENT

### I. The Special Master Should Limit Testimony to the Scope of the Supreme Court's Order.

A court may appoint a special master to make findings of facts and conclusions of law. Tenn. R. Civ. P. 53.01; Tenn. Sup. Ct. R. 12(4)(E); Sup. Ct. Order at 1-3. But a special master's authority is subject to the "specifications and limitations stated in the order" appointing the special master. Tenn. R. Civ. P. 53.02. Indeed, a special master does not have the "authority" to carry out a task that was not assigned to him. *Pennington v. Boundry, Inc.*, No. M200602650COAR3CV, 2008 WL 1923110, at *9 (Tenn. Ct. App. May 1, 2008).

Here, the Supreme Court appointed the Special Master "under the conditions set forth" in its order. Sup. Ct. Order at 1. One of those conditions was that the Special Master is required to conduct an evidentiary hearing "on the matters specifically referred by this order." *Id*. at 2. Those matters are the five issues referenced above. And to further ensure the Special Master did not address any issues besides the five identified in its order, the Supreme Court ordered that any "[i]ssues not specifically referred to the Special Master are hereby held in abeyance pending completion of the Special Master's report." *Id*. at 3.

Thus, if a topic is not one of the five identified issues, the parties and Special Master may not address it. Indeed, Rule 53.02 specifically "[s]ubject[s]" the Special Master's "exercise [of] power" upon the "specifications and limitations stated in the order" appointing him. Tenn. R. Civ.

P. 53.02. The Court of Appeals has confirmed that a special master's "broad powers to carry out his assigned task . . . ultimately are limited to the boundaries set forth in the order." *Pennington*, 2008 WL 1923110, at *9. Indeed, a special master "may not exceed the authority granted to him by the order of reference, even with the parties' consent." *Brady v. Brady*, No. M201401598COAR3CV, 2015 WL 9946259, at *3 (Tenn. Ct. App. Aug. 18, 2015).

As a result, the Special Master should limit testimony to the issues in the Supreme Court's order. It should not permit a general inquiry into Tennessee's lethal injection protocol. As described below, Pike is attempting to pry these issues open to float broader questions about Tennessee's lethal injection protocol. But those questions are "held in abeyance" for the Supreme Court to consider only *after* the Special Master has issued his report. Sup. Ct. Order at 3. As a result, the Special Master should not permit testimony on issues not covered by the Supreme Court's order.

## II. Method-of-Execution Challenges Face a Steep Climb.

The U.S. Supreme Court "has yet to hold that a State's method of execution qualifies as cruel and unusual." *Barr v. Lee*, 591 U.S. 979, 980 (2020) (quoting *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019)). "[U]nderstandably so." *Bucklew*, 587 U.S. at 133. Tennessee and other States, working "through the initiative of the people and their representatives," have historically endeavored to adopt "less painful modes of execution." *Id.*

Courts facing method-of-execution claims like Pike's apply a "two-prong test" under both the U.S. and Tennessee Constitutions. *West v. Schofield*, 519 S.W.3d 550, 567-68 (Tenn. 2017) (*West III*); *see Bucklew*, 587 U.S. at 133-34. Challengers face an "exceedingly high bar" to obtaining relief. *Barr*, 591 U.S. at 980. The demanding two-step standard reflects that "the Constitution affords a measure of deference to a State's choice of execution procedures." *Bucklew*,

587 U.S. at 134 (quotation omitted). It also helps prevent "method-of-execution claims from becoming a 'backdoor means to abolish' the death penalty." *Id.* at 137 (citation omitted).

*First*, an inmate must establish that a given method "presents a risk that is *sure or very likely* to cause serious illness and needless suffering and give rise to sufficiently *imminent* dangers." *West III*, 519 S.W.3d at 563 (cleaned up) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (emphasis in original). The method must "present[] a 'substantial risk of serious harm'—serious pain over and above death itself." *Nance v. Ward*, 597 U.S. 159, 164 (2022) (quoting *Glossip*, 576 U.S. at 877). "[M]ere possibilities" "are not sufficient to satisfy the Plaintiffs' burden to establish a substantial risk of severe pain." *West III*, 519 S.W.3d at 564-65 (citing *Baze v. Rees*, 553 U.S. 35, at 62 (2008)) (collecting cases).

*Second*, the inmate must "show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew*, 587 U.S. at 134 (citations omitted). "A minor reduction in risk is insufficient; the difference must be clear and considerable." *Id.* at 143. The Eighth Amendment's purpose is to prevent cruel and unusual punishment, "not to substitute the court's judgment of best practices for each detailed step in the procedure for that of corrections officials." *Cooey v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009). Thus, to avoid "transform[ing] courts into boards of inquiry charged with determining 'best practices' for executions," Plaintiff must do more than "merely [] show[] a slightly or marginally safer alternative." *Baze*, 553 U.S. at 51. Further, a challenger must establish that the State "could carry . . . out" the alternative method "relatively easily and reasonably quickly." *Bucklew*, 587 U.S. at 141 (citation omitted).

## III. Pike Cannot Show A Likelihood of Success on Any Issue Referred by the Tennessee Supreme Court.

### A. Peripheral IV access is not sure or very likely to cause serious illness or needless suffering. (Issues 1 & 3)

Achieving peripheral IV access pursuant to the current lethal injection protocol will not cause Pike serious illness or needless suffering. And her proposed alternative method of execution—death by hanging—would not significantly reduce a substantial risk of severe pain, as a matter of law.

#### 1. Pike must clear an exceptionally high bar to show an Eighth Amendment violation.

Just last week, the Tennessee Supreme Court restated the guiding principle that governs all capital punishment challenges: "As stated many times by a multitude of courts, 'capital punishment is constitutional.'" *State v. Hines*, No. M2025-00221-SC-DPE-DD, at 5 (Tenn. Aug. 6, 2026) (Order) (quoting *Glossip*, 576 U.S. at 869). That long-settled approval reflects the death penalty's status as an "accepted punishment at the time of the adoption of the Constitution and the Bill of Rights." *Glossip*, 576 U.S. at 867–68. The Tennessee Supreme Court has also "repeatedly . . . upheld the death penalty as permissible under the Tennessee Constitution." *West III*, 519 S.W.3d at 568 n.17 (collecting cases). As "an expression of society's moral outrage at particularly offensive conduct," capital punishment "is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs." *State v. Black*, 815 S.W.2d 166, 190 (Tenn. 1991) (quoting *Gregg v. Georgia*, 428 U.S. 153, 183 (1976)).

"[B]ecause it is settled that capital punishment is constitutional, it necessarily follows that there must be a constitutional means of carrying it out." *Glossip*, 576 U.S. at 869 (quoting *Baze v. Rees*, 553 U.S. 35, 47 (2008) (plurality op.)) (cleaned up). That "recognition" has "animated" the U.S. and Tennessee Supreme Courts' interpretation of the bar on cruel and unusual punishment. *Id.*;

*see Abdur'Rahman v. Parker*, 558 S.W.3d 606, 615 (Tenn. 2018) (*Abdur'Rahman II*) (discussing *Baze*, 553 U.S. at 47). Two principles from the precedents are particularly relevant to the Special Master's determination of whether peripheral IV access is "sure or very likely to cause serious illness and needless suffering." *Baze*, 553 U.S. at 50.

*First*, Pike must demonstrate a concrete, imminent injury to show that she is "sure or very likely" to experience serious illness or needless suffering. *Id.* A risk that is "sure or very likely" must be more likely than a "significant possibility." *McGehee v. Hutchinson*, 854 F.3d 488, 492 (8th Cir. 2017). It is insufficient to merely show there is a "substantial risk of serious harm." *In re Ohio Execution Protocol*, 860 F.3d 881, 886 (6th Cir. 2017). Instead, plaintiffs must point to "sufficiently imminent dangers" that create an "objectively intolerable risk of harm" such that prison officials cannot "plead[] that they were subjectively blameless for purpose of the Eighth Amendment." *Glossip*, 576 U.S. at 877 (cleaned up). Indeed, "[i]f there is no scientific consensus" over the claims raised by plaintiffs, "then the challenger might well be unable to meet this burden." *McGehee*, 854 F.3d at 493.

And such a showing cannot be made through speculation. "[U]ncertainty" is not sufficient to show that a risk of sure or very likely. *In re Ohio Execution Protocol*, 860 F.3d at 887. Pike must point to "scientific evidence" that a lethal injection protocol is going to cause serious pain instead of relying on mere "speculat[ion]." *In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 453 (6th Cir. 2018). Evidence of previous mistakes is not enough because it can only amount to speculation. *Hines*, No. M2025-00221-SC-DPE-DD, at 6-7; *Cooey v. Strickland*, 589 F.3d 210, 224 (6th Cir. 2009) ("Speculations, or even proof, of medical negligence in the past or in the future are not sufficient to render a facially constitutionally sound protocol unconstitutional."); *Jackson v. Danberg*, 594 F.3d 210, 226 (3d Cir. 2010) (collecting cases).

*Second*, to show "serious illness and needless suffering," Pike must point to the wanton infliction of pain. "[T]he Eighth Amendment does not guarantee a prisoner a painless death—something that, of course, isn't guaranteed to many people, including most victims of capital crimes." *Bucklew*, 587 U.S. at 132–33 (citing *Glossip*, 576 U.S. at 869–70). If the Eighth Amendment "demand[ed] the elimination of essentially all risk of pain," that "would effectively outlaw the death penalty altogether." *Glossip*, 576 U.S. at 869. So, the mere fact that "an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of harm' that qualifies as cruel and unusual." *Baze*, 553 U.S. at 50 (plurality op.) (quoting *Farmer v. Brennan*, 511 U.S. 825, 842, 846 & n.9 (1994)).

Instead, the cruel-and-unusual-punishment provision prohibits only "long disused (unusual) forms of punishment that intensified the sentence of death with a (cruel) superaddition of terror, pain, or disgrace." *Bucklew*, 587 U.S. at 133 (cleaned up). That emphasis on the State's "malevolence," *Baze*, 553 U.S. at 50, in imposing a "wanton infliction of pain" reflects Founding-era history. *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 306 (Tenn. 2005) (*Abdur'Rahman I*). As ratified, the cruel-and-unusual-punishment provision draws from the English Bill of Rights "to ensure that the new Nation would never resort" to "certain barbaric punishments" previously practiced. *City of Grants Pass v. Johnson*, 603 U.S. 520, 542 (2024). Among them: "disemboweling, quartering, public dissection, and burning alive," *id.*, as well as "the use of the rack or the stake," "breaking on the wheel, flaying alive, rending asunder with horses, maiming, mutilating, and scourging to death," *Bucklew*, 587 U.S. at 131 (cleaned up). Uniting these off-limits methods is their "unnecessary cruelty"—meaning the method chosen "savored of torture" and reflected the executioners' being "pleased with hurting others." *Bucklew*, 587 U.S. at 130–31 (cleaned up).

For the reasons discussed below, Pike will be unable to show that the pain she alleges is "sure or very likely" to occur or that the pain she alleges would constitute "serious illness and needless suffering." *See Baze*, 553 U.S. at 49-50.

**2. Pike cannot transform two narrow questions into a sprawling inquiry.**

There are only two narrow issues related to serious illness and needless suffering during Pike's execution that the Supreme Court has referred to the Special Master: (1) whether "achieving peripheral IV access" is "sure or very likely" to cause Pike "serious illness and needless suffering" given her thrombocytosis, and (2) whether "achieving peripheral IV access" "sure or very likely" to cause Pike "serious illness and needless suffering" given her "allegedly small and compromised veins." Sup. Ct. Order at 2-3 (cleaned up). The Special Master may not venture beyond those narrow topics and should reject Pike's attempt to tack on the following irrelevant and foreclosed issues.

**Central Line Access and Physician Qualifications to Set a Central Line.** Pike has issued subpoenas on this topic (*see* Ex. 1 to State's Mot. to Quash, Topics 3 and 14), and she has asked experts to opine on whether the physician who participated in the attempted execution of Tony Carruthers in May 2026 is qualified to set a central line. Van Norman Expert Report at 3, 15-19.

This issue is foreclosed by precedent. On August 6, 2026, the Supreme Court rejected a similar argument from Anthony Hines, another inmate with an imminent execution date who filed a Rule 12(4)(E) motion for a conditional stay of execution or appointment of a special master based on the theory that the physician who attempted to set a central line in Carruthers was unqualified. Rejecting this theory, the Supreme Court stated:

> Mr. Hines 'guesses that the State *might* use a physician who *might* be unqualified to establish a *backup* central IV line during his execution, *if* needed." . . . 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. *West*,

> 519 S.W.3d at 564–65 (quoting *Baze*, 553 U.S. at 62). Accordingly, Mr. Hines's maladministration claim is 'all but foreclosed,' *Cooey v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009), as a matter of law because an alleged 'potential flaw' in administration is too speculative 'to state an Eighth Amendment claim,' *Zink v. Lombardi*, 783 F.3d 1089, 1101 (8th Cir. 2015).

*Hines*, No. M2025-00221-SC-DPE-DD, at 6-7. The same reasoning applies here. At most, Pike's allegations could only establish a risk of maladministration due to the physician's alleged lack of qualifications to set a central line, a theory that 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." *Id*. at 7 (cleaned up). The issues of the past physician's qualifications or what happened during the Carruthers execution related to a central IV line are therefore off the table. The Special Master must not entertain any evidence on this issue.

Even without *Hines*, these issues would be outside the scope of the Supreme Court's order. The Supreme Court has not asked the Special Master to decide whether setting a central line constitutes serious illness or needless suffering; the issue is whether "achieving peripheral IV access" is sure or very likely will cause Pike serious illness or needles suffering. Sup. Ct. Order at 2-3. Peripheral IV access is not the same as a central line. *Compare Peripheral IV*, Cleveland Clinic, https://my.clevelandclinic.org/health/treatments/24930-peripheral-iv (last visited August 6, 2026) *with Central Venous Catheter*, Cleveland Clinic, https://my.clevelandclinic.org/health/treatments/23927-central-venous-catheter (last visited August 6, 2026). Indeed, the Protocol describes different steps for those processes. *Compare* Protocol, Ex. 1 at 20 at ¶¶ 5-6 *with* Protocol, 20 at ¶ 7. The Special Master's authority does not extend beyond the scope of the Supreme Court's order, *see Pennington*, 2008 WL 1923110, at *9, and so the issue of central line IV access in general should not be at issue.

**Risks from Pentobarbital.** Pike also wants to delve into the effects of pentobarbital. (*see* Ex.1 to State's Mot. to Quash, Topic 4), and she has asked experts to opine on whether she will experience pulmonary edema as a result of the pentobarbital or whether pentobarbital will be effective. *See, e.g.*, Zivot Expert Report ¶¶ 17-19.

But the Supreme Court's order does not mention pentobarbital or pulmonary edema. Indeed, it does not mention any other execution topic besides "achieving peripheral IV access." Sup. Ct. Order at 2-3. Under the protocol, pentobarbital is not administered until *after* IV access has been achieved, *after* catheters are properly secured, and *after* a flow of saline is started in the IV lines. Protocol, Ex. 1 at 20. Thus, the administration of pentobarbital is plainly outside the scope of Issues 1 or 3.[1] *Pike* cannot use this hearing to litigate the use, effects, or procurement of pentobarbital because those topics are beyond the scope of the Supreme Court's order. Tenn. R. Civ. P. 53.02; *Pennington*, 2008 WL 1923110, at *9.

### 3. Pike's thrombocytosis does not create an Eighth Amendment violation. (Issue 1)

The State will show that Pike is not likely to suffer any injury related to peripheral IV access caused by Pike's thrombocytosis. The State will show that the condition is unlikely to affect peripheral IV access in any way. And even if Pike could show that peripheral IV access will be affected by her thrombocytosis, the State will show that any injury related to that access does not constitute an Eighth Amendment injury. The State intends to rely on the expert testimony of Dr. Richard Mansour, Nurse Liz Campbell, and Dr. Joseph Antognini on this topic. And the State will plan to present factual testimony by TDOC Assistant Commissioner of Prison Operations Linda

[1] Dr. Antognini, one of the State's experts, addresses the effects of pentobarbital as well as Pike's theory of pulmonary edema in his expert report. These opinions are offered in response to the theories raised in Pike's Supreme Court motion and offered by Pike's experts. If the Special Master finds that these issues are outside the scope of the proceedings, the State will not elicit his testimony or rely on his report to address any excluded issue.

Thomas and Warden Kenneth Nelsen. The State will show that TDOC employs qualified persons to establish IV access and that it performs a review of medical records to determine how to best carry out an execution.

The Protocol also provides for trained medical professionals to "determine[] the IV sites." (Protocol, Ex. 1 at 20.) TDOC has trained personnel who are prepared and able to establish peripheral IV access. Pike's argument that her thrombocytosis places an impossible burden on these trained professionals does not "raise . . . beyond the speculative level" the possibility that the trained medical professional of the IV Team will be unable to locate peripheral vein access. *Webb v. Nashville Area Habitat for Human., Inc.,* 346 S.W.3d 422, 427 (Tenn. 2011). And even if Pike could make such a showing, she will not be able to show that repeated attempts to find IV access (something that happens in hospitals every day) is sufficient to qualify as "serious illness or needless suffering." *See Barber v. Governor of Alabama*, 73 F.4th 1306, 1319 (11th Cir.), *cert. denied sub nom. Barber v. Ivey*, 143 S. Ct. 2545 (2023) (rejecting the premise that "protracted efforts to obtain IV access (*i.e.*, 'repeatedly pricking [an inmate] with a needle') would give rise to an unconstitutional level of pain"); *Workman v. Bredesen*, 486 F.3d 896, 907-08 (6th Cir. 2007) ("The risk of negligence in implementing a death-penalty procedure . . . does not establish a cognizable Eighth Amendment claim").

**4. Pike's alleged small and compromised veins do not create an Eighth Amendment violation. (Issue 3)**

The State will also show that Pike is not likely to suffer any injury related to peripheral IV access caused by Pike's allegedly small and compromised veins. The State will show that Pike has not established she has small or compromised veins and that there is no evidence to prove that the IV team will not be able to establish peripheral IV access. Even if Pike could show that her allegedly small and compromised veins will make peripheral IV access more difficult, the State

will show that any injury related to that access does not constitute an Eighth Amendment injury. The State intends to rely on the expert testimony of Nurse Liz Campbell on this topic. The State will also plan to present factual testimony from Assistant Commissioner Thomas and Warden Kenneth Nelsen.

On this topic, Pike can articulate nothing but a series of "possibilities" and "hypothetical[s]." *West III*, 519 S.W.3d at 564-65 (quoting *Baze*, 553 U.S. at 62) (collecting cases). She argues that her narrow veins *may* make it difficult for trained medical staff to establish IV access. That speculative allegation is insufficient for Pike to carry her burden. *Id*.; *see also Hines*, No. M2025-00221-SC-DPE-DD, at 6-7. And as discussed, even if she could establish that IV access was likely to become an issue, she will not be able to show that repeated IV attempts constitute "serious illness or needless suffering" as contemplated in the Supreme Court's order.

### B. Pike's Proposed Methods of Execution Would Not Significantly Reduce a Substantial Risk of Severe Pain. (Issue 4)

As a matter of law, Pike will not be able to show that any of her proposed alternative methods is likely to significantly reduce a substantial risk of severe pain. Given its efficacy, the "single-dose pentobarbital" protocol has "been repeatedly invoked by prisoners as a *less* painful and risky alternative to the lethal-injection protocols of other jurisdictions." *Barr*, 591 U.S. at 980 (emphasis in original). Indeed, Justices of the U.S. Supreme Court have cited single-dose pentobarbital as a "significantly less risky alternative" method given that pentobarbital "does not carry the risks" of other drugs and "is widely conceded to be able to render a person fully insensate." *Zagorski v. Parker*, 586 U.S. 938, 939 (2018) (Sotomayor, J., dissenting).

As it stands, pentobarbital "has become a mainstay of state executions." *Barr*, 591 U.S. at 980. As of 2020, it had "been used to carry out over 100 executions, without incident." *Id*. And its use has been upheld by the U.S. Supreme Court, federal circuit courts, and state courts of last

resort. *See, e.g.*, *Bucklew*, 587 U.S. 119; *Whitaker v. Collier*, 862 F. 3d 490 (5th Cir. July 7, 2017); *Jones v. Commissioner*, 811 F.3d 1288, 1296 (11th Cir. 2016); *Zink v. Lombardi*, 783 F. 3d 1089 (8th Cir. Mar. 6, 2015); *Gissendaner v. Commissioner*, 779 F. 3d 1275 (11th Cir. Mar. 2, 2015); *West III*, 519 S.W.3d at 564-65; *State ex rel. Johnson v. Blair*, 628 S.W.3d 375 (Mo. 2021); *Owens v. Hill*, 758 S.E.2d 794, 802-03 (Ga. 2014); *Valle v. Florida*, 70 So.3d 530, 541 (Fla. 2011).

The Tennessee Supreme Court, for its part, considered and rejected a constitutional challenge to the State's earlier one-drug pentobarbital protocol. In *West III*, the Court applied the two-prong method-of-execution test to conclude that the use of a single dose of compounded pentobarbital did not violate the U.S. or Tennessee Constitutions' prohibition on cruel and unusual punishments. 519 S.W.3d at 568. The Court rejected the plaintiffs' speculations about pain that might occur if pentobarbital did not work as intended. *Id*. at 564. It also rejected their claim that pentobarbital exposed inmates to "an unacceptable risk of a lingering death" when pentobarbital "causes unconsciousness within seconds." *Id*. at 567. And "mere possibilities" of protocol maladministration, the Court explained, are "not sufficient to satisfy the [inmates'] burden to establish a substantial risk of severe pain." *Id*. at 564.

Nothing Pike can present here will upset that precedent. First, her request that the State use a 23-gauge butterfly needle fails. Her own experts have opined that using a 23-gauage needle is likely to lead to a higher risk of IV complications and a prolonged execution process. *See, e.g.,* Van Norman Expert Report at 20-23. And even if a smaller needle could reduce some risk of harm, the injury Pike complains about—the routine, minor annoyance of a needle stick—does not constitute "serious illness or needless suffering." *Baze,* 553 U.S. at 50. As a result, there is no reason to believe that Pike's request for a 23-gauge butterfly needle is likely to reduce *any* risk of harm.

In any event, the alternative fails as a matter of law. A "method of execution" is a distinct way to cause death. Tennessee's legislature has approved two: lethal injection and electrocution. Tenn. Code Ann. § 40-23-114. Likewise, federal and state precedent equates a method of execution with a distinct way to cause death, such as nitrogen hypoxia (*Bucklew*, 587 U.S. at 141–42), firing squad (*Nichols v. Skrmetti*, No. 3:25-CV-442, 2025 WL 3299727, at *21–23 (M.D. Tenn. Nov. 26, 2025)), a single bullet to the back of the head (*id.*), or lethal injection with a different chemical or combination of chemicals (*Abdur'Rahman II*, 558 S.W.3d at 623–25); *see also Bucklew*, 587 U.S. at 134 (listing "hanging, the firing squad, electrocution, and lethal injection" as "traditionally accepted methods of execution").

Tennessee's appellate courts and the Sixth Circuit have never held that a plaintiff can state a claim for a method-of-execution challenge by asking for the challenged method to be carried out with slightly different equipment. To do so would buck against Supreme Court precedent, which requires an inmate to plead something more than a "slightly or marginally safer alternative." *Glossip*, 576 U.S. at 877 (2015) (quoting *Baze*, 553 U.S. at 51).

With that precedent in view, Pike's demand for a small needle falls short. An equipment swap is not a distinct way to cause death. And her request would result in "[a] minor reduction in risk" at best. *Bucklew*, 587 U.S. at 143. She is not challenging the State's method of lethal injection or even claiming that the State should use a different drug. Instead, she demands the judiciary order TDOC to use a specific needle in a specific execution. That is nothing more than the "substitut[ion] [of] the court's judgment of best practices for each detailed step in the procedure for that of corrections officials." *Id.* It is certainly not an alternative permitted under Supreme Court precedent. To grant her demand would usurp authority from TDOC and "transform courts into boards of inquiry charged with determining 'best practices' for executions." *Baze*, 553 U.S. at 51.

Pike's second proposed alternative, hanging, fares no better. The State will show that hanging increases the risk of a severe injury because it exposes inmates to the risk of severe harm. Pike's own expert concedes that hanging and lethal injection both carry risks of complication and concludes that hanging is merely a "viable option" compared to lethal injection. Goldstein Expert Report at 6-7. Indeed, federal caselaw is filled with comparisons that make the same point. For example, when articulating why executions are not constitutionally required to be painless, the United States Supreme Court opined that "[m]any and perhaps most hangings were evidently painful for the condemned person because they caused death slowly." *Bucklew*, 587 U.S. at 132 (quoting S. Banner, *The Death Penalty: An American History* 48 (2002) (Banner)). Similarly, the Sixth Circuit analyzed the pain associated with potential pulmonary edema and found that "sensations of drowning and suffocation [alleged in allegations of pulmonary edema] . . . look[] a lot like the risks of pain associated with hanging." *In re Ohio Execution Protocol Litigation*, 946 F.3d 287, 290 (6th Cir. 2019).

The result is that Pike has not articulated an alternative that would significantly reduce a substantial risk of pain. The Special Master should therefore deem that Pike cannot prevail on Issue 4 in the Supreme Court's order as a matter of law.

**C. Pike will not be observed by male officers for two weeks. (Issue 2)**

The Special Master should rule that Issue 2 is moot because TDOC will move Pike to Riverbend Maximum Security Institution ("RMSI") no earlier than 24 hours before her execution and will assign female guards to observe her while she is there. Declaration of Linda Thomas, attached as Exhibit 2. Thus, the two conditions assumed in the Supreme Court's order—that she will be housed at RMSI for two weeks, during which time she will be observed by males—are not present.

Yet again, Pike tries to overinflate this narrow issue to include topics unrelated to the Supreme Court's order. She has issued subpoenas for details about the "gender of all members of the Execution Team including thee Special Operations Team [and] Restraint Team" and "the sex of the Restraint Team members." Ex. 1 to State's Mot. to Quash, Topics 1 and 12. But the Supreme Court's order only asks whether "the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where should would be observed by male prison officials for two weeks prior to the execution" is sure or very likely to cause serious illness or needless suffering. Sup. Ct. Order at 2. And the Execution Team, including the Special Operations Team and Restraint Team, is not responsible for observing Pike under the Protocol. *See* Protocol, Ex. 1 at 15. Pike has no basis for trying to uncover information about individuals on the Execution Team, and the Special Master should not entertain Pike's arguments for why members of the Execution Team must be female. The Supreme Court has not referred that issue to the Special Master.

As noted, Pike will be transferred to RMSI no earlier than 24 hours before her scheduled execution on Sept. 30, 2026. Thomas Decl., Ex. 2. Additionally, the State is committed to assigning only female staff to observe Pike during the brief time she is housed at RMSI, to the best of its ability. *Id*. Moreover, Pike will be the only inmate housed in the Capital Punishment Unit at RMSI while she is housed there, and she will have access to a privacy screen when necessary. *Id*.

Thus, since Pike will only be housed at RMSI for a maximum of 24 hours and will not be observed by male prison officials while she is there, there is no likelihood that she will experience "serious illness and needless suffering" due to the factors identified by the Supreme Court. Sup. Ct. Order at 2 (quoting *Baze*, 553 U.S. at 50). The Special Master should find that this issue is moot.

**D. Pike's spiritual advisor will be with her during her execution. (Issue 5)**

This issue is resolved by agreement. The parties have stipulated that TDOC will allow Ms. Pike's spiritual adviser, Rev. Mikey Noechel, to be present in the execution chamber with her during her execution. *See* Aug. 7, 2026 Notice. The Special Master should find that this issue is also moot.

## IV. Testimony from Pike's Experts Dr. Goldstein, Dr. Van Norman, and Dr. Brand, As Well As from Fact Witness Maria DeLiberato, Must Be Excluded

### A. Dr. Goldstein is unqualified to opine on hanging or lethal injection.

Pike's proposed expert, Dr. Scott Goldstein, is an emergency room physician whose report provides a "medical perspective" on hanging and lethal injection. Crucially, however, he has no clinical or professional experience with deaths by hanging or lethal injection. Nor does Dr. Goldstein indicate that he has ever witnessed any such executions or attempted executions. Dr. Goldstein does not even suggest that he has treated anyone who was hung but survived. Indeed, the entire basis of Dr. Goldstein's opinions, according to his Report, is apparently only a review of others' written materials. Although Dr. Goldstein states that his opinion is based in part on his clinical experience, there is nothing in his report to back it up.

"As a threshold issue, the trial judge must first consider whether a witness qualifies 'by knowledge, skill, experience, training, or education" to offer an opinion within the area of his or her expertise.'" *State v. Ferrell*, 277 S.W.3d 372, 378 (Tenn. 2009) (quoting *State v. Stevens*, 78 S.W.3d 817, 834 (Tenn. 2002). "The determinative factor is whether the witness's qualifications authorize him or her to give an informed opinion *on the subject at issue*." *State v. Stevens*, 78 S.W.3d 817, 834 (Tenn. 2002) (emphasis in original).

Examples abound of courts excluding an expert's testimony when the expert has no subject matter expertise. *See, e.g.*, *Warlick v. Kirkland*, No. M2019-01576-COA-R3-CV, 2020 WL 5352134, at *5 (Tenn. Ct. App. 2020) (affirming a holding that an expert in personal loans is not

qualified to testify about commercial loans); *Nichols v. Hanzel*, 674 N.E.2d 1237 (Ohio Ct. App. 1996) (affirming a holding a dermatologist and internist was not an expert in osteonecrosis); *Hudson v. Arias*, 667 N.E.2d 50, 53-54 (Ohio Ct. App. 1996) (reversing where trial court permitted gastroenterologist to testify as expert in gynecology where he admitted he had no knowledge of the requisite standard of care); *Kettle v. Baylor Medical Center at Garland*, 232 S.W.3d 832, 840 (Tex. 2007) (affirming holding that cardiologist did not demonstrate he was sufficiently qualified to opine on a pulmonologist's conduct); *Clark v. Memorial Hermann Hosp. System*, No. 01–02–01139–CV, 2004 WL 440422, at *4-5 (Tex. Ct. App. 2004) (affirming trial's court's exclusion of a thoracic surgeon's and a cardiologist's testimony regarding use of pharmacological agents because, *inter alia*, of a lack of personal experience treating patients); *United States v. Heilbron*, No. 15-CR-2030WJ, 2017 WL 3600733, at *3, *7 (D.N.M. 2017) (excluding holistic physician's testimony on echocardiograms because he had never performed one); *Barringer v. Forsyth Cnty. Wake Forest Univ. Baptist Med. Ctr.*, 197 N.C. App. 238, 258, 677 S.E.2d 465, 479 (N.C. Ct. App. 2009) ("Because Dr. Raptoulis has never performed the relevant surgical procedures, he was not qualified to testify that those procedures were performed incorrectly,"); *Hall v. Flannery*, 840 F.3d 922 (7th Cir. 2016) (a surgeon could testify that a cancer was too advanced for surgery, but claiming that a radiologist should have discovered the cancer sooner "would be, at best, just parroting the opinion of an expert in radiology" (quoting *Dura Auto. Sys. Of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 613 (7th Cir. 2002)).

Here, while Dr. Goldstein may be qualified as an expert in emergency medicine, he is not qualified to testify on the topic of death by hanging or lethal injection, given he has no direct experience with either and would simply be parroting the opinions of others whose published materials he has read.

Further, any testimony and any portion of Dr. Goldstein's report that relate to central line placement—the only subject matter in which Dr. Goldstein appears to have personal experience—must be excluded given the Supreme Court's August 6, 2026 Order in *Hines,* for the reasons discussed above. All of Pike's allegations surrounding central line placement can only relate to a hypothetical maladministration claim, "which 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." *Hines*, No. M2025-00221-SC-DPE-DD, at 7 (cleaned up).

The Special Master should therefore exclude both Dr. Goldstein's report and his testimony.

**B. Dr. Van Norman is unqualified to opine on thrombocytosis.**

Dr. Gail Van Norman is a professor of anesthesiology and pain medicine who consults as an expert witness in capital punishment cases "both as a paid and as a pro bono" expert. Van Norman Expert Report at 3.

A portion of Dr. Van Norman's report is dedicated to essential thrombocytosis, regular blood draws, and their intersection with the increased likelihood of clotting. *Id*. at 19-20. But Dr. Van Norman's report does not show that she has any clinical or professional experience with this subject matter. Nowhere in her report does she suggest that she has ever treated an individual with essential thrombocytosis, or that she has evaluated the risk of clotting in a person who receives "regular blood draws." *Id*. at 20.

Dr. Van Norman can only parrot information from other experts she has read on the topics of thrombocytosis and regular blood draws. Consequently, she is unqualified to testify on this subject matter. The Special Master should therefore strike this portion of her report and prohibit her from testifying about the same.

**C. Dr. Brand's testimony relates only to moot issues.**

Pike intends to present the report and testimony of Bethany Brand, Ph.D. However, the only relevance of Dr. Brand's testimony is to Issue 2 and Pike's desire to not be observed by male correctional officers. *See* Brand Expert Report, First Addendum at 47; Second Addendum at 51. As discussed above, TDOC has accommodated Pike's mental health needs to the fullest extent possible by: (1) accommodating her request to be moved to the Capital Punishment Unit at RMSI no earlier than 24 hours before her execution; (2) agreeing to make every effort to assign only female staff to observe Ms. Pike while she is housed at RMSI; (3) noting that Pike will be the only inmate in the Capital Punishment Unit during the entire time she is housed there; and (4) ensuring a privacy screen is available while Pike is housed at RMSI. Thomas Decl., Ex. 2.

In light of these facts, Issue 2 is moot and Dr. Brand's declaration and testimony should be excluded, as they are relevant exclusively to that issue.

### D. Fact Witness Maria DeLiberato's testimony must be excluded pursuant to the Supreme Court's August 6, 2026 order in *Hines*.

Finally, Pike intends to put forth a declaration and possibly testimony by Maria DeLiberato, an attorney who was present at the attempted execution of Tony Carruthers on May 21, 2026. Based on her statements to the media, it is apparent that Ms. DeLiberato intends to testify regarding her alleged observations in the Capital Punishment Unit.[2] However, because her testimony can only be relevant to Pike's claims regarding central line placement, and because the Supreme Court's August 6, 2026 order forecloses that issue, the Special Master must exclude her testimony as the issue foreclosed. *Hines*, No. M2025-00221-SC-DPE-DD, at 7.

[2] Fox Nashville, *Press Conference After Execution of Tony Carruthers Was Halted*, at 11:10, (YouTube, May 26, 2026), https://www.youtube.com/live/y9XHWcpLWWw?si=tY_FMde-SNV664S-&t=670.

## CONCLUSION

For the foregoing reasons, the Special Master should find that Pike is not sure or very likely to suffer serious illness or needless suffering based on any issue referred by the Tennessee Supreme Court. The Special Master should also find as a matter of law that Pike has not proposed a readily available alternative method of execution that would significantly reduce a substantial risk of severe pain. Finally, the Special Master should limit and exclude Pike's expert reports and proposed testimony insofar as she seeks to raise issues that are foreclosed by precedent or outside the scope of these proceedings.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed and served on this the 7th day of August 2026, upon:

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# TENNESSEE DEPARTMENT OF CORRECTION

# LETHAL INJECTION EXECUTION PROTOCOL



APP-001136

# COMMISSIONER'S STATEMENT

The Tennessee Department of Correction ("the Department") is responsible for the incarceration of convicted felons serving sentences ranging from one year to death. Inmates sentenced to death are executed at Riverbend Maximum Security Institution ("RMSI").

As Commissioner of the Department, it is my duty to oversee the humane and constitutional execution of inmates sentenced to death in Tennessee. Tennessee law establishes lethal injection as the primary method for carrying out a death sentence and authorizes the Department to promulgate rules and regulations to facilitate executions by lethal injection. This Protocol will be reviewed as needed by me and/or my designee(s).

Commissioner

1-8-2025
Date



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# I. INTRODUCTION

This Protocol summarizes the most significant events, Department procedures, and personnel responsibilities for carrying out the Tennessee Supreme Court's orders on executions by lethal injection. It will be used to ensure the humane and constitutional execution of inmates sentenced to death in Tennessee. There will be no deviation from this Protocol except by order of the Commissioner, when deemed necessary to effectuate the purpose of this Protocol.



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# II. PRIMARY RESPONSIBILITIES OF DEPARTMENT AND NON-DEPARTMENT PERSONNEL

## CENTRAL OFFICE PERSONNEL

### COMMISSIONER

The Commissioner is responsible for overseeing the administration of humane and constitutional executions in Tennessee.

[redacted]

[redacted] is responsible for the planning and overall direction of all pre-execution, execution, and post-execution activities.

[redacted]

[redacted] is responsible for notifying the inmate and the inmate's counsel of the execution date, obtaining a completed Affidavit for Method of Execution from the inmate, and serving as custodian of the Department's records related to executions in Tennessee.



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# PERSONNEL AT RMSI

## WARDEN

The Warden is responsible for carrying out the directives of the Assistant Commissioner of Prison Operations to ensure that this Protocol is followed.

## SPECIAL OPERATIONS TEAM

The Special Operations Team is responsible for preparing the lethal injection chemicals ("LIC") for administration.

## RESTRAINT TEAM

The Restraint Team is responsible for inmate management immediately before, during, and after the execution, including the use of appropriate restraint procedures.

## ESCORT TEAM

The Escort Team is responsible for coordinating the movement of all pre-approved witnesses.

[redacted]

# NON-DEPARTMENT PERSONNEL

## IV TEAM

The IV Team is responsible for establishing properly functioning IV lines for administration of the LIC.

## PHYSICIAN

The Physician is responsible for determining that the inmate is deceased using accepted medical standards and establishing central line IV access if necessary.

## CLERGY

Clergy, [redacted], may be approved in accordance with state law and Department policy to deliver chaplaincy services to the inmate and the inmate's family as requested.



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# III. COMPOSITION, SELECTION, AND TRAINING OF DEPARTMENT AND NON-DEPARTMENT PERSONNEL

## COMPOSITION AND SELECTION OF THE EXECUTION TEAM

The Execution Team includes the following individuals and teams:

1. [redacted]

2. RMSI Warden.

3. Special Operations Team: consists of a team leader, two members and one alternate member. The team leader and members are selected by [redacted] with documented approval of the Commissioner.

4. Restraint Team: consists of a team leader, five other members, and two more alternate members. The team leader, members and alternate members are selected by [redacted] with documented approval by the Commissioner.

5. Escort Team: consists of a team leader and at least six other team members. The team leader and members are selected by the Warden.



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## SELECTION CRITERIA FOR MEMBERS OF THE EXECUTION TEAM

Members of the Execution Team are selected based on factors that include:

1. Length of service with the Department;
2. Job performance;
3. Professionalism;
4. Review of the individual's personnel file;
5. Staff recommendations;
6. Ability to maintain confidentiality;
7. Willingness to participate;
8. Any other relevant or specialized training related to the position.



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## SELECTION OF SPECIALLY TRAINED NON-DEPARTMENT PERSONNEL

Non-department personnel are selected for roles in the execution as follows:

1. IV Team: consists of at least two members who are either physicians, physician assistants, nurses, emergency medical technicians ("EMTs"), paramedics, military corpsman with relevant medical training, or other certified or licensed personnel including those trained in the United States Military. All team members are currently certified, licensed and/or qualified within the United States to place IV lines. IV Team members are selected by the Commissioner.

2. The Physician is selected by the Commissioner.

## SELECTION CRITERIA FOR SPECIALLY TRAINED NON-DEPARTMENT PERSONNEL

Specially trained, non-department personnel are selected based on factors that include:

1. Education, training, and experience;

2. Professionalism;

3. Personal and professional recommendations;

4. Ability to maintain confidentiality;

5. Willingness to participate;

6. Any other relevant or specialized training related to the position.



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# PROTOCOL REVIEW, PRACTICE SESSIONS, AND SPECIALIZED TRAINING FOR EXECUTION TEAM MEMBERS

## Review of the Lethal Injection Execution Protocol

1. After selection, the Execution Team, the IV Team, and the Physician must review this Protocol. This review is documented.

2. At least annually, the Warden or designee reviews the Protocol in its entirety with the Execution Team. This review is documented.

## Monthly Practice Sessions

[redacted] ensures that monthly practice sessions are conducted. Practice sessions are attended by the Warden, the Special Operations Team, the Restraint Team, and the Escort Team. These regular practice sessions include simulations of all steps of the execution process beginning 2 hours before the execution, with the following exceptions:

1. Volunteers play the role of the inmate and the Physician.

2. No IV is inserted into the person playing the role of the inmate.

3. Saline solution is substituted for the LIC.

4. A body is not placed in a body bag.

## Additional Pre-Execution Practice Sessions

Additional practice sessions are held at least twice weekly starting two weeks before a scheduled execution. Attendance of all practice sessions during this period is required absent illness or other unavoidable circumstances.

## Documentation of Practice Sessions

All practice sessions are documented with the date and time, as well as the printed names and signatures of all participants.

## Specialized Training for Department Personnel

Members of the Special Operations Team receive training in vascular access/IV therapy by a qualified third party. Updated training is conducted annually.



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## CHEMICALS USED IN LETHAL INJECTION

The Department uses the following LIC for executions by lethal injection:

**Pentobarbital** **100 ml of a 50 mg/ml solution (a total of 5 grams)**

The Department will procure a sufficient supply of LIC to be used in lethal-injection executions. The LIC is subject to quality assurance and quality control testing. The Department will follow recommended guidelines for safe transportation and storage of LIC.

LIC will be secured [redacted]

[redacted] and RMSI Warden will conduct a semi-annual inventory of the container to verify its contents and the expiration dates of LIC. An additional inventory will be conducted 30 days before a scheduled execution. All inventories will be conducted by a minimum of two persons and documented in the log. If an inventory reveals expired LIC, appropriate disposal will occur.

[redacted]



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# IV. PROCEDURES BEGINNING 30 DAYS BEFORE EXECUTION

**30 Days before the Day of Execution**

I. Central Office Personnel

A. [redacted]

1. Reviews documentation of training.

2. Confirms team leaders and members with documented approval by the Commissioner.

3. Sets pre-execution practice schedule.

4. Confirms that equipment inventory is completed and that any needed maintenance occurs.

5. Verifies and documents with the Warden the LIC to be used, including its quantity and expiration date.

B. Communications: Issues a news advisory about the date and time of the execution.

C. Office of Victim Services: Identifies family members of the victim(s) of the crime(s) for which the inmate was sentenced to death and advises them of the scheduled date and time of the execution.

II. RMSI or Debra Johnson Rehabilitation Center ("DJRC") Personnel

Warden:

1. Collects the Affidavit For Method of Execution from the inmate (if applicable) and provides copies to the Commissioner and [redacted] (See Appendix, p. 25).

2. Provides to the inmate the Affidavit to Select Defense Counsel Witness to Execution and Affidavit to Select Member of Clergy Preparing Inmate for Death. (See Appendix, p. 26).

3. RMSI Warden verifies and documents with the [redacted] the LIC to be used, including the quantity and expiration date.



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4. RMSI Warden confirms that equipment inventory is completed and that any needed maintenance occurs.

5. Notifies the inmate about changes to the conditions of confinement over the next 30 days.

**21 Days before the Execution**

Central Office Personnel

Communications:

1. Receives media-witness applications, initiates background investigations on the applications, and advises the Commissioner of any issues arising from the investigations.

2. Sends witness agreement forms (Official Witness Agreement Form, Official Witness/Pool Reporter Agreement Form) to selected witnesses and establishes a deadline to return all completed forms.

**14 Days before the Execution**

I. Central Office Personnel

A. [redacted]

1. Directs the initiation of the Continuous Observation Logs, which record all daily activities of the inmate beginning 14 days before the execution. The logs are maintained at each post where the inmate is located until the execution occurs or a stay of execution is issued.

2. Directs the initiation of the final practice schedule.

B. [redacted]

Finalizes a list of all witnesses and prepares written invitations.



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II. RMSI or DJRC Personnel

Warden:

1. Confirms receipt of Affidavit to Select Defense Counsel Witness to the Execution and Affidavit to Select Member of Clergy Preparing Inmate for Death.

2. Directs the transfer of the inmate to a cell for enhanced monitoring.

3. RMSI Warden finalizes arrangements with the [redacted] for disposition of the inmate's body.

4. RMSI Warden confirms maintenance staff are scheduled to be at RMSI at least 4 hours before the scheduled execution.

**48 Hours before the Execution**

I. Central Office Personnel

[redacted]

1. Confirms adequate staffing and vehicles are in place for regular operations and the execution.

2. Ensures that each room in the Capital Punishment Unit receives final inspection specific to its functions. The Capital Punishment Unit includes, but is not limited to, the inmate's cell, contact and non-contact visitation areas, the control room, the secure monitoring area, execution chamber, and lethal injection room.

3. Oversees transfer of female inmate from DJRC to RMSI, if applicable.

II. RMSI Personnel

Warden:

1. Verifies inventory and functionality of equipment in the Capital Punishment Unit.

2. Oversees the transfer of the inmate to a cell in the Capital Punishment Unit.

**12 Hours before the Execution**

RMSI Personnel

Warden:

1. Ensures that access to RMSI during the 12 hours before the execution is limited to:

   a. On-duty Department personnel;

   b. On-duty contract workers;

   c. Volunteers deemed necessary by the Warden;

   d. Approved delivery vehicles;

   e. Law enforcement personnel on business-related matters;

   f. Approved witnesses (i.e. defense counsel, clergy, Attorney General's designee).

2. Initiates lockdown of RMSI that will continue through the duration of the execution.

3. Ensures the inmate concludes the last meal by 12:00 a.m. the night before the execution and that all eating utensils and leftover food are removed from the cell.

4. Ensures non-contact visits and phone calls—excluding visits and calls from the inmate's attorney of record—are concluded 12 hours before the scheduled execution unless expressly approved by the [redacted]

**Day of Execution**

**8:00 a.m.**

A. Commissioner or designee:

Provides a brief overview of the execution for the official witnesses.

B. Special Operations Team:

1. Team Leader retrieves LIC with the Warden and/or [redacted]

2. Confirms that the phones in the execution chamber are operational.

3. Confirms that the camera used to monitor the IV site is operational.

4. Team Leader prepares the syringes of saline and Pentobarbital which shall be labeled as follows:

| CHEMICAL CHART | |
|---|---|
| Syringe | Label |
| 1A | 50 ml Sterile Saline Solution, BLACK |
| 2A | 50ml (50mg/ml solution) Pentobarbital, GREEN |
| 3A | 50ml (50mg/ml solution) Pentobarbital, GREEN |
| 4A | 50 ml Sterile Saline Solution, BLACK |

Preparation of syringes occurs in the Lethal Injection Room.

a. One complete primary set ("Set A") of syringes is prepared and administered in carrying out the death sentence and an additional amount of LIC is available in the Lethal Injection Room for a backup set (Set "B"). Set B is only prepared if the inmate is not deceased after administration of Set A, applicable waiting period, and examination by the Physician.

b. The syringes are labeled, identifying the chemical contained in each syringe by (i) assigned number, (ii) chemical name, (iii) chemical amount and (iv) the designated color, as set forth in the chemical chart above. This information is preprinted on a label, with one label affixed to each syringe to ensure the label remains visible.

c. Once prepared, each syringe is placed into a designated tray in the order in which they are to be administered. The preparation of syringes is documented by a designated member of the Special Operations Team on the Chemical Preparation Time Sheet. (See Appendix p. 27).

5. After the Special Operations Team prepares the primary-Set A



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syringes, the Special Operations Team prepares the IV lines for use by the IV Team. Each IV line consists of a sodium chloride bag, solution set, extension sets, and hemostatic clamps.

C. Escort Team:

1. Official witnesses report to the Administration Building no later than 8:30 a.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 9:45 a.m., where they remain until final movement to the official witness room.

2. Immediate family members of the victim(s) report to the Administration Building no later than 9:15 a.m. They are greeted by the Escort Team, processed through checkpoint, and moved to the conference room in Building 8 no later than 9:45 a.m., where they remain until final movement to the victim witness room.

3. The Escort Team processes, transports, and remains with the pre-approved official witnesses and victim witnesses through the conclusion of the execution and their return to designated staging areas and ensures that each witness group is always separated from the other groups.

4. [redacted] and the Physician are stationed in the capital punishment garage.

**10:00 a.m.**

1. At the command of the Warden, the Restraint Team removes the inmate from the holding cell, places him/her on the gurney, and secures him/her with restraints.

2. The Restraint Team moves the inmate to the execution chamber and secures the gurney. The Restraint Team secures the inmate's arms to arm extensions on the gurney. The Restraint Team confirms that the restraints are not so restrictive as to impede the inmate's circulation, yet sufficient to prevent the inmate from manipulating the catheter and IV lines.

3. The Warden, [redacted] Attorney General or designee, defense counsel witness and clergy, if requested, enter the execution chamber with the inmate.



APP-001154

4. Once the inmate is secured, the IV Team attaches the leads from the electrocardiograph to the inmate's chest. The IV Team confirms that the electrocardiograph is functioning properly. A backup electrocardiograph is on site and readily available, if necessary.

5. The IV Team determines the IV sites. The IV Team members insert a primary IV catheter and a backup IV catheter. The primary IV catheter is used to administer the LIC. The backup catheter is reserved in case the primary fails.

6. The Special Operations Team Leader ensures that the catheters are properly secured, properly connected to the IV lines, and out of reach of the inmate's hands. The Special Operations Team Leader opens the IV line to start a flow of sterile saline solution in each line and administers at a slow rate to keep the lines open. Any failure of an IV line shall be immediately reported to the Commissioner.

7. If necessary, the Physician will insert a central line.

8. The Escort Team secures official witnesses and victim witnesses in the appropriate witness rooms.

9. The Attorney General/designee, defense counsel witness, and any clergy member are escorted to the official witness room.

10. The camera and audio system are activated from the control room.

**10:10 a.m.**

1. The Warden and [redacted] open the blinds to the witness rooms.

2. The Warden contacts the Commissioner to ensure that no last-minute stay or reprieve has been granted.

3. The Warden asks the inmate if he/she wants to make a last statement.

4. The Warden gives the signal to proceed. The Special Operations Team Leader directs the assigned Special Operations Team Member to confirm the chemical name and order of syringes in the Primary Set A.



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5. The Special Operations Team Leader administers all syringes in Primary Set A. In the event of a primary line failure with the first syringe of saline, the Special Operations Team Leader switches to the back-up IV line and administers the complete set of syringes.

6. After the four syringes in Primary Set A have been administered, the Special Operations Team Leader signals to the Warden at which time a 5-minute waiting period begins.

7. After the waiting period, all witness blinds are closed, the camera is disengaged, and the privacy curtains are closed. The Warden asks the Physician to enter the room to examine the inmate and determine if he/she is deceased. The Physician determines whether the inmate is deceased.

8. The Physician reports his findings to the Warden.

9. If the inmate is not deceased, a Backup Set B of syringes is prepared, the blinds are reopened, and steps 5 through 8 are repeated.

10. A designated member of the Special Operations Team will document all information contained on the Lethal Injection Chemical Administration Record (See Appendix, pp. 31-33).

11. The Warden announces that the sentence has been carried out and directs the witnesses to exit.



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# POST-EXECUTION PROCEDURES

1. The Commissioner notifies the Governor or designee and [redacted] via telephone that the sentence has been carried out and the time that death occurred.

2. The IV Team clamps and cuts the IV lines leaving them connected to the inmate for examination by [redacted]

3. [redacted] takes appropriate investigative measures and takes custody of the deceased inmate.

4. Witnesses are escorted out of the Capital Punishment Unit. Each group of witnesses is kept separate from the other.

5. Official witnesses who are media pool reporters are returned to the media tent to participate in the media briefing.

6. Victim witnesses who wish to speak with the media are escorted to the media tent.

7. Media may remain on site in a designated location outside the secure perimeter to complete live broadcasts.

8. The Warden determines when the prison will resume normal operations after consultation with [redacted]

9. [redacted] collects the Department's records relating to the execution.

10. The Commissioner, [redacted] the Warden and other relevant personnel, if any, review the execution process and determine whether any changes or modifications should be made.



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# STAY OF EXECUTION

1. Upon receiving notification that a court has issued a stay of execution, or the Governor has issued a reprieve, the Commissioner consults with [redacted] and advises the Warden.

2. Upon receiving notification, the Warden:

   a. Advises the witnesses that a stay or reprieve has been issued.

   b. After consultation with the Commissioner, directs the IV Team to remove the catheters, if applicable, and directs the Restraint Team to return the inmate to the holding cell.

3. The Warden informs the appropriate personnel of the stay or reprieve.

4. The Traffic Control Team Leader notifies any protestors of the stay or reprieve.

5. The Escort Team escorts witnesses from the Capital Punishment Unit.



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# V. APPENDIX AND FORMS



APP-001159

# AFFIDAVIT FOR METHOD OF EXECUTION

Under Tennessee law, you have the right to have your execution carried out by lethal injection. You also have the option of waiving this right, and choosing electrocution as the method of your execution. The purpose of this affidavit is to allow you an opportunity to either waive your right to have your execution carried out by lethal injection or to decline to waive that right. Failure to complete this form will result in the execution being carried out by lethal injection. You will not be given another opportunity to waive your right to have your execution carried out by lethal injection. If you waive your right to have your execution carried out by lethal injection, you may rescind that waiver by contacting the Warden **no later than 14 days before the date of the execution** and signing a new affidavit to that effect.

---

I, _____ TDOC No. _____, make the following choice concerning the method of my execution set to be carried out on the ____ day of _____, _____:

_____ I waive the right to have my execution carried out by lethal injection and choose to be executed by electrocution.

_____
Signature of Inmate

_____ I have been given the opportunity to waive my right to have my execution carried out by lethal injection and I decline to waive that right.

_____
Signature of Inmate

---

I certify that I presented this Affidavit For Method of Execution to inmate _____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

_____
Signature of Warden/Designee

---

Sworn to and subscribed before me this _____ day of _____, 20____.

_____
Notary Public

My Commission expires _____.



APP-001160

# AFFIDAVIT TO SELECT INMATE WITNESSES TO EXECUTION

Under Tennessee law, Tenn. Code Ann. § 40-23-116, you may select one (1) defense counsel, a member of the clergy, and adult members of your immediate family to witness your scheduled execution. Below, please provide the full names of your selected witnesses.

Defense Counsel_____
Clergy _____
Inmate's immediate family_____

I, _____, TDOC No._____, select the above

witnesses:

_____ _____
Signature of Inmate Date

---

I certify that I presented this Affidavit to Select Inmate Witnesses to Execution to inmate

_____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

_____ _____
Signature of Warden/Designee Date

---

Sworn to and subscribed before me this _____ day of _____, 20_____

_____ My Commission expires _____
Notary Public



APP-001161

## CHEMICAL PREPARATION TIME SHEET

Date_____

## PRIMARY SYRINGE SET

Syringe 1A-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____

Syringe 2A-GREEN-50 ml (50mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 3A-GREEN-50 ml (50 mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 4A-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____



APP-001162

# CHEMICAL PREPARATION TIME SHEET

**Date**_____

## BACKUP SYRINGE SET

Syringe 1B-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____

Syringe 2B-GREEN-50 ml (50mg/ml solution) of Pentobarbital prepared

by_____ at _____ a.m.

Witnessed by _____

Syringe 3B-GREEN-50 ml (50 mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 4B-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____



APP-001163

# LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

**Inmate Name**_____ **Inmate #**_____

**Date**_____

## PRIMARY SET A

| | **Chemical** | **Time Begin** |
|---|---|---|
| Syringe 1-A | Saline 50 ml | _____ |
| Syringe 2-A | Pentobarbital 50 ml | _____ |
| Syringe 3-A | Pentobarbital 50 ml | _____ |
| Syringe 4-A | Saline 50 ml | _____ |

**End Time** _____

Recorder Signature _____



APP-001164

# LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

**Inmate Name**_____ **Inmate #**_____

**Date**_____

## BACKUP SET B

| | **Chemical** | **Time Begin** |
|---|---|---|
| Syringe 1-B | Saline 50 ml | _____ |
| Syringe 2-B | Pentobarbital 50 ml | _____ |
| Syringe 3-B | Pentobarbital 50 ml | _____ |
| Syringe 4-B | Saline 50 ml | _____ |

**End Time** _____

Recorder Signature _____



APP-001165

# DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST

**Inmate Name**_____ **Inmate #**_____

**Date**_____

| TIME | |
|---|---|
| _____ | Report to designated area for final briefing |
| _____ | Restraint Team and Special Operations Team report to Execution Chamber for final briefing. Special Operations Team sets up IV system. |
| _____ | Physician in place |
| _____ | IV Team in place (EMTs) |
| _____ | [redacted] in place |
| _____ | Warden in place |
| _____ | Check blinds and curtains |
| _____ | Advise Escort Team to transport Official Witnesses to Parole Room |
| _____ | Advised by Escort Team that Official Witnesses are in Parole Room |
| _____ | Advise Escort Team to escort Victim's Witnesses to Viewing Room |
| _____ | Advised by Escort Team that Victim's Witnesses are in place |
| _____ | Warden or designee checks to ensure execution is to proceed |
| _____ | Gurney positioned in Death Watch Area |
| _____ | Restraint Team enters cell and secures condemned inmate to gurney |
| _____ | Advise Escort Team to transport Official Witnesses to Death Watch vestibule |
| _____ | Advised by Escort Team that Official Witnesses are in the vestibule |
| _____ | IV Team enters the Execution Chamber |
| _____ | IV Team exits the Execution Chamber |
| _____ | Advise Escort Team to "Transport Official Witnesses in place" |

**Recorder's Initials**_____



APP-001166

## DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**TIME**

_____ Advised by Escort Team that "Witnesses are in place"

_____ Warden checks with Commissioner to proceed

_____ Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.

_____ Warden asks inmate for any last comments

_____ Warden orders Special Operations Team to proceed

_____ Lethal Injection process completed

_____ Blinds and curtains closed and closed-circuit TV deactivated

_____ Physician enters the Execution Chamber

_____ Physician pronounces death – exact time

_____ Audio deactivated to witness rooms

_____ Advise Escort Team to remove Victim's Witnesses

_____ Advise Commissioner or designee that execution is completed

_____ Physician and EMTs depart

_____ [redacted] escorted to chamber to take possession of body. Pictures will be taken of body and Execution Chamber before removal of body

_____ Advised by Escort Team Victim's Witnesses are at Checkpoint

_____ Advise Escort Team to remove Official Witnesses

_____ Advised by Escort Team that Official Witnesses are at Checkpoint

_____ The body removed from the institution

**Recorder's Initials** _____



APP-001167

## DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**Inmate's Comments if any:**

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

**Lethal Injection Recorder** **Date**



APP-001168

SPECIFIC POST ORDERS – Special Operations Team (3 Members including a Team Leader and 1 Alternate)

Duty Hours – 6:00 AM – Until properly relieved.

Composition of Team

1. Team Leader
2. Recorder
3. Camera Operator
4. Alternate Member

Equipment

[redacted]

Primary Responsibility

You have the responsibility of overseeing and leading the preparation/administration of the lethal injection chemicals, recording the steps and times of the chemical preparation/administration process, and operating the camera in the execution chamber throughout the process.

These are not all-inclusive duties; therefore, staff are subject to other duties as assigned.

Duties:

Team Leader:

1. Upon arrival at the post, visually inspects the area to ensure it is ready to carry out the sentence.

2. Ensure the camera operator tests the equipment upon arrival to the area.

3. Retrieve lethal injection chemical with either the Warden or [redacted] and complete inventory.

4. Retrieve IV lines, syringes, saline solution, supplies, etc. needed to perform the injection and complete inventory.

5. Ensure preparation of the lethal injection chemical.

6. Begin setup for lethal injection portion of execution process.



APP-001169

7. Ensure the recorder documents all steps on the Chemical Preparation Time Sheet and Lethal Injection Chemical Administration Record.

Recorder

1. Document all information on the Chemical Preparation Time Sheet(s).

2. Document all information on the Lethal Injection Chemical Administration Record(s).

3. Perform other duties as assigned by the Team Leader.

Camera Operator

1. Operate the overhead camera that monitors the IV catheter during the lethal injection process.

2. Perform other duties as assigned by the Team Leader.

Alternate Member

1. Cross train with team members to learn all duties in case the need arises.

**Depart the area once properly dismissed by the Warden or [redacted]**

**********END**********



APP-001170

SPECIFIC POST ORDERS – Restraint Team (1 Leader/Supervisor, 5 Members, and 2 Alternates)

Duty Hours – 6:00 AM – Until relieved by a supervisor (Lieutenant or above).

Composition of Team

The team will consist of 1 Team Leader, 5 members, and two alternates.

Equipment

[redacted]

[redacted]

Primary Responsibility

You have the responsibility of safely and securely removing the inmate from the holding cell in the Capital Punishment Unit, securing the inmate to the gurney, and moving the inmate to the Execution Chamber.

Duties:

1. As a team, report to the holding cell to remove the inmate.

2. Team Leader will ask the inmate to approach the cell door and submit to restraints. If the inmate is compliant, the restraints will be applied.

3. If the inmate is non-compliant but passive, inform the inmate you will be entering the cell to apply restraints and remove him/her. The restraint team will enter the cell in the use-of-force formation and apply restraints.

    a. Team Leader/Supervisor oversees movement and directs team members during move.
    b. Team member 1 is responsible for pinning, if necessary, monitoring inmate, and maintaining/utilization of the cutters.
    c. Team member 2 secures the inmates upper right appendage and applies wrist restraint.



APP-001171

d. Team member 3 secures upper left appendage and applies wrist restraint.
e. Team member 4 secures the lower right appendage and applies leg restraint.
f. Team member 5 secures the lower left appendage and applies leg restraint.

4. In the event the inmate is non-compliant and exhibits threatening behavior, Team Leader will treat the situation as a potential use of force and begin de-escalation efforts to try and gain voluntary compliance. Should these efforts fail, the team will use force to remove the inmate from the cell.

5. Upon application of hand restraints, the team will remove the inmate from the cell, search the inmate, and secure the inmate on the gurney.

6. The team will transport the inmate on the gurney to the Execution Chamber. Once the gurney is in place, secure the inmate's arms to the arm extensions on the gurney.

7. The team will perform other duties as assigned.

**********END**********



APP-001172

SPECIFIC POST ORDERS – Escort Team (At least 6 Members and 1 Leader/Supervisor)

Duty Hours – 6:00 AM – Until relieved by a supervisor (Lieutenant or above).

Composition of Team

The team will consist of at least 6 members and 1 Team Leader.

Equipment

[redacted]

Primary Responsibility

Escorts are responsible for escorting official witnesses and immediate family members of the victim(s) to designated areas.

Duties:

1. The Escort Team reports to the Administration Building conference room no later than 8:00 AM to receive instructions.

2. The escorts will receive and greet official witnesses at 8:30 AM in the Administration Building. After the official witnesses are processed through checkpoint, they are moved to the Administration Building conference room. They are then escorted to the Parole Board Room in Building 8 no later than 9:45 AM. The official witnesses will remain in the Parole Board Room until final movement to the witness room.

3. The escorts will receive and greet the immediate family members of the victim at 9:15 AM in the Administration Building. After they are processed through checkpoint, the victim witnesses are moved the conference room in Building 8 no later than 9:45 AM. The victim witnesses will remain in the conference room until final movement to the victim witness room.

4. The Escort Team processes, transports, and remains with the pre-approved official witnesses and victim witnesses through the conclusion of the execution and the witnesses' return to the designated staging areas. The Escort Team ensures that each witness group always remains separated from the other groups.



APP-001173

5. Upon pronouncement of the inmate's death, the Escort Team will escort immediate family members of the victim(s) out of the Capital Punishment Unit to the Administration Building for departure.

6. Once confirmation is received that immediate family members of the victim have departed, the Escort Team will escort official witnesses from the Capital Punishment Unit to the Administration Building for departure.

7. Escorts may perform other duties as assigned by a supervisor.

**********END**********



APP-001174

## SPECIFIC POST ORDERS – Building 8 Control Room Officer

Duty Hours – 6:00 AM – 6:00 PM (Shift 2) (10A – 6P on day of move)
6:00 PM – 6:00 AM (Shift 1)

Report to Building 8 at approximately 10:00 AM (48 hours before scheduled execution) wearing the prescribed uniform and assume the duties in the Control Room in preparation for the inmate's arrival to a holding cell. If applicable, make your relief, as the equipment is issued on a 24-hour basis, you are required to indicate the key ring number and type of equipment accounted for in your post logbook. Count the keys to ensure the number of keys corresponds with the total number on the key ring chit. Key rings must be secured to a belt by a clip and a metal chain. Contact the Control Center and test your radio/body alarm.

Documentation

Logbook entries must be legible, documenting routine and unusual activity. An example of a log entry is:

> 6:00 AM Relieved Officer Williams and assumed duties as the Unit 2 Officer. Key Rings F-1, X-22, Radio, (1) set of handcuffs, (1) set of leg irons, (1) handheld metal detector, and (1) flashlight accounted for.
> 12:01 PM Count announced, Officer Smith backing count.
> 12:47 PM Clear count with 32 inmates.

Primary Responsibility

This post commences at approximately 10:00 AM, 48 hours before the scheduled execution. You have the responsibility of controlling all electronic access points to the Capital Punishment Unit and recording all activity. In addition, you are responsible for completion of the Lethal Injection Recorder Checklist, including when the time-specific events occur. Other non-routine activity should be noted in the post's logbook.

These are not all-inclusive duties. You are subject to other duties as assigned.

Security Measures

**Building access** - only authorized staff will be given access to areas within the Capital Punishment Unit. Questions regarding persons other than those with a role or previously identified in the protocols must be approved by the Warden prior to granting access. The request/approval is to be documented in the logbook.

**Official count times** - Official counts are conducted [redacted]



APP-001175

Duties:

1. Always remain alert and continuously monitor the unit's activity.

2. Complete the Lethal Injection Recorder Checklist form and note the times any identified activity occurs.

3. Announce official count times to the unit's observation officer.

4. Document the identity of all individuals who access the Capital Punishment Unit, including all staff and inmate visitors.

5. Conduct security inspection of the control room and document discrepancies in the log and submit work request for repairs.

6. Conduct key and equipment accountability during shift.

[redacted]

**********END**********



APP-001176

## SPECIFIC POST ORDERS - Unit 2 Housing Observation Officer

Duty Hours – 6:00 AM – 6:00 PM (Shift 2)
6:00 PM – 6:00 AM (Shift 1)

Report to Unit 2 wearing the prescribed uniform and relieve the outgoing officer. After you make your relief, as the equipment is issued on a 24-hour basis, you are required to indicate the key ring number and type of equipment accounted for in your post logbook. Count the keys to ensure the number of keys corresponds with the total number on the key ring chit. Key rings must be secured to a belt by a clip and a metal chain. Contact the Control Center and test your radio/body alarm.

Equipment

[redacted]

Primary Responsibility

This post commences 14 calendar days before a scheduled execution. You have the responsibility of continuous direct supervision of the inmate while he/she is housed in the designated general population housing-unit cell in preparation for his/her sentence being carried out. You will be positioned directly outside the inmate's cell with a line of sight inside the cell.

These are not all-inclusive duties. You are subject to other duties as assigned.

Documentation

Logbook entries must be legible and intelligible, documenting routine and unusual activity. An example of a log entry is:

> 6:00 AM Relieved Officer Williams and assumed duties as the Unit 2 Officer. Key Rings F-1, X-22, Radio, (1) set of handcuffs, (1) set of leg irons, (1) handheld metal detector, and (1) flashlight accounted for.
> 12:01 PM Count announced, Officer Smith backing count.
> 12:47 PM Clear count with 32 inmates.

Security Measures / Conditions of Confinement



APP-001177

**Restraints** – The inmate will be restrained from the rear when going to the recreation area or other unit based out of cell activity. Full restraints will be used when inmate is moved outside of the unit.

**Meals** – The inmate will be provided meals consistent with the unit feeding schedule. All utensils and feeding materials will be retrieved following each meal.

**Telephone use** – The inmate will be permitted routine use of the telephone. All requests and initiated/completed calls will be documented in the logbook.

**Visits** – All inmate requested visits must be made in writing and approved by the Warden.

**Personal property** – Personal property may be transferred into the cell by/with the inmate upon prior approval from the Warden after consultation with Assistant Commissioner, Prison Operations. All items will be searched prior to allowance into the cell. He/she will be permitted to purchase commissary from the unit's approved list, maintain in the cell legal and religious materials, pencil, paper, and books. Use of hygiene items (soap and toothpaste) toothbrush, and a comb are permissible.

Females may have feminine hygiene items as needed.

All personal property will by visually inspected and electronically screened via x-ray each time items are removed are permitted inside the cell.

**Recreation** – The inmate will be permitted out of cell, outdoor recreation in one-hour increments on five separate days for a total of five per week. Recreation will be scheduled when the inmate is the sole person in the outdoor recreation area.

**Clothing exchange** – All clothing issued will be visually and electronically screened for contraband.

**Bedding /Mattress**– Upon initial placement, issue a new mattress, all new bedding, and towels. Authorized items include two sheets, one blanket, one pillow, one pillowcase, two wash clothes and one towel.

**Showers** – Upon request, razors will be issued and retrieved upon use each time.

**Cell sanitation** – Upon request by the inmate, sanitation supplies (broom and cleaner) may be issued only when a supervisor is present in the unit. The items must be collected immediately upon completed use.

**Official count times** – Official counts are conducted [redacted]



APP-001178

**Clinical rounds** – Ensure that Clinical Services staff visits the unit daily. The staff member will be required to initial the CR-2578 form and the officer make an entry documenting their presence in the post logbook.

Duties:

1. Always remain alert and continuously monitor inmate.

2. Ensure inmate is issued one set of clean clothing initially prior to entering cell and exchange clothing prior to re-entering the cell after each exit (shower, recreation, visitation, etc.).

3. Search inmate after each cell exit and prior to re-entering. All searches will include the use of a handheld metal detector.

4. Conduct official counts with a second staff member, sign slip, and submit to the Control Center. Staff must be certain they are observing living, breathing flesh in making an accurate count.

5. Document inmate's actions that are not indicated on the Segregation Unit Record (reading, writing, listening to music, watching tv, etc.) in the post logbook.

6. Document in the post logbook, each request made by the inmate and actions taken.

7. Document the beginning and ending times of meals, visits, and telephone calls.

8. Request a security supervisor or higher prior to removing the inmate from a secured area for supervision oversight and guidance.

9. Conduct a proper search of all items and will document the search in the logbook. Legal mail will be scanned for contraband and opened in the presence of the inmate.

[redacted]

**********END**********



APP-001179

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

| | | |
|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

---

## DECLARATION OF LINDA THOMAS

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1. I, Linda Thomas, make the following Declaration under penalty of perjury, and declare and state as follows:

2. I am over the age of eighteen and have personal knowledge of the information contained in this Declaration.

3. I am currently employed with the Tennessee Department of Correction (TDOC) as the Assistant Commissioner of Prison Operations.

4. In my current position, among other duties and responsibilities, I am responsible for several aspects of TDOC's Lethal Injection Execution Protocol, including overseeing the transport and observation of inmates sentenced to death.

5. TDOC plans to transfer Christa Pike, who is currently housed at the Debra K. Johnson Rehabilitation Center, to the Capital Punishment Unit at Riverbend Maximum Security Institute ("RMSI") no earlier than 24 hours before her scheduled execution at 10 a.m. on Sept. 30, 2026.

6. TDOC will make every effort to assign only female staff to observe Ms. Pike while she is housed at RMSI.

7. Ms. Pike will be the only inmate in the Capital Punishment Unit during the entire time she is housed at RMSI.

8. In addition, a privacy screen will be available while she is housed at RMSI.

9. My responsibilities as Assistant Commissioner of Prison Operations also include reviewing requests for spiritual accommodations submitted by inmates sentenced to death.

10. TDOC has reviewed and approved spiritual accommodation requests submitted by Ms. Pike. An approval letter responding to those requests is attached as Exhibit 1 to this declaration.

11. Among other approved requests, TDOC has approved Ms. Pike's request for her spiritual adviser, Rev. Mikey Noechel, to be present in the execution chamber during her execution.

12. I declare under penalty of perjury that the foregoing is true and correct.

LINDA THOMAS

7 Aug 2026

DATE

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ *John W. Ayers*
JOHN W. AYERS (BPR# 037494)
Assistant Attorney General
DAVID WICKENHEISER (BPR# 040427)
Assistant Attorney General
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*Counsel for the State of Tennessee*

FILED
BY MIKE HAMMOND
2026 AUG -7 AM 10: 15
KNOX COUNTY CRIMINAL COURT
KNOXVILLE, TN

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | |
|---|---|
| State of Tennessee | ) |
| | ) Supreme Court Case No. M2020-01156-SC-DPE-DD |
| v. | ) Knox County Case No. 58183A |
| | ) CAPITAL CASE (Execution Date: Sept. 30, 2026) |
| Christa Gail Pike | ) |

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## Stipulation of Dismissal of Issue #5

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The Tennessee Supreme Court appointed a Special Master on July 10, 2026 pursuant to Tennessee Supreme Court Rule 12(4)(E) and Tennessee Rule of Civil Procedure 53 to receive evidence and fix the time and place for beginning and closing the hearings on issues referred by the Court including, specifically:

> (5) Whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

Take notice that the parties, through counsel, have conferred and agreed that just resolution of this claim is the best interests of both parties. Accordingly, the parties hereby stipulate and agree to the accommodations provided in the attached **Exhibit A**.

Pursuant to this agreement, the parties agree and stipulate that Issue (5) referred to the Special Master be **DISMISSED**.

**AGREED:**

Luke P. Ihnen (TN BPR No. 035190)
FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.
800 S. Gay Street, Suite 2400
Knoxville, TN 37929
Phone: (865) 637-7979
Luke_Ihnen@fd.org

*Counsel for Christa Gail Pike*

Will Ayers w/ permission

John W. Ayers (TN BPR No. 03794)
Office of the Tennessee Attorney General
Law Enforcement and Special Prosecutions Division
P.O. Box 20207
Nashville, Tennessee 37202
Phone: (615) 741-6739
Will.Ayers@ag.tn.gov

*Counsel for the State of Tennessee*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed and served on the following on this 7th day of August 2026:

John W. Ayers, Esq.
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-6739
Will.Ayers@ag.tn.gov

w/ electronic copy to:

David Wickenheiser, Esq.
Catherine Cline, Esq.
Samantha Morris, Esq.
Matthew Kubicek, Esq.
Paul Bruno, Esq.

Luke P. Ihnen
Assistant Federal Defender

# Exhibit A

TN Department of Correction

July 27, 2026

Luke Ihnen
Federal Defender Services of Eastern Tennessee
800 S. Gay St., Suite 2400
Knoxville, TN 37929-9714

Re: Religious Accommodation Request for Christa Pike

Dear Mr. Ihnen,

This letter confirms the Tennessee Department of Correction has reviewed Christa Pike's requests for religious accommodations related to her scheduled execution, which will be granted as outlined below.

1. Rev. Mikey Noechel will be permitted to visit Ms. Pike at the Debra K. Johnson Rehabilitation Center daily during the 14-day observation period preceding Ms. Pike's scheduled execution date on September 30, 2026. Rev. Noechel will schedule those visits with DJRC Warden Clark. He should plan to arrive 15 to 30 minutes before the start of each visit for processing through security. These visits will be contact visits if desired by Ms. Pike.

2. Rev. Noechel will be permitted a contact visit with Ms. Pike at the Riverbend Maximum Security Institute during the 12-hour period before her scheduled execution. Rev. Noechel will schedule this visit with RMSI Warden Nelsen. Rev. Noechel should plan to arrive 15 to 30 minutes before the start of this visit for processing through security. This visit must be completed no later than 8 a.m. on the day of Ms. Pike's scheduled execution.

3. Rev. Noechel will be permitted to be in the execution chamber with Ms. Pike once she is removed from the Capital Punishment Unit at RMSI on the day of her scheduled execution. Rev. Noechel will be permitted to meditate with Ms. Pike before IV lines are established but not while the IV team is securing IV access. Rev. Noechel should plan to arrive no later than 7 a.m. on the day of the execution for processing through security.

4. After the IV lines have been established, Rev. Noechel will be permitted to engage in chanting/singing and vocal meditation with Ms. Pike for as long as she is able.

5. During his visit to Ms. Pike on the day of her execution, Rev. Noechel will be permitted to bring into RMSI his traditional robes and prayer beads, subject to RMSI's visitor clothing policies. Any objects brought to the prison by Rev. Noechel are subject to search and inspection.

TN Department of Correction

Rev. Noechel is instructed that he must not interfere with the work, movement, or communication of the execution team and must follow instructions from Warden Nelsen during the extraction or in the execution chamber.

If you have additional questions regarding this process, please contact Will Ayers at the Attorney General's Office.

Sincerely,

Warden Kenneth Nelsen
Riverbend Maximum Security Prison
Tenn. Department of Correction

Warden Jordan Clark
Debra H. Johnson Rehabilitation Center
Tenn. Department of Correction

CC: Rev. Mikey Noechel
Liberty Lander, Tennessee Department of Correction
Will Ayers, Office of the Attorney General of Tennessee

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

| | | |
|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

---

**RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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This cause came before the undersigned by order of the Tennessee Supreme Court for an evidentiary hearing pursuant to Tenn. R. Civ. P. 53 and Tenn. Sup. Ct. R. 12(4)(E). Over the course of three days—from August 11 to August 13, 2026—the undersigned accepted evidence from Movant Christa Pike ("Ms. Pike") and Respondent State of Tennessee ("the State") on the following referred issues:

> (1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));
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> (2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id*.;
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> (3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id*.;

(4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id*. at 52; and

(5) Whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

Tenn. Sup. Ct. Order at 2-3.

The parties have jointly resolved the fifth issue and, as a result, have stipulated to its dismissal. *See* Stip. of Dismissal of Issue #5. Specifically, the parties indicated that Ms. Pike's spiritual adviser would be allowed to be in the execution chamber with her during her execution pursuant to a letter from TDOC approving this accommodation request. *Id*. Thus, the undersigned concludes that this issue is moot.

Having reviewed the briefing, evidence in the record, and applicable law, the undersigned makes the following findings of fact and conclusions of law on the remaining four issues:

## I. ISSUE I

**Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993)).**

### A. Findings of Fact

1. Ms. Pike is a 50-year-old death row inmate who is set to be executed by lethal injection at the Riverbend Maximum Security Institute ("RMSI") on September 30, 2026.

2. She is currently housed at the Debra K. Johnson Rehabilitation Center ("DJRC"), a correctional facility for women.

3. The lethal injection chemical ("LIC") called for by the current Tennessee Department of Correction ("TDOC") Lethal Injection Execution Protocol ("the Protocol") is 100 ml of a 50 mg/ml solution (a total of 5 grams) of pentobarbital.

4. The LIC is administered through a peripheral IV line, which is set by at least two team members who are currently certified, licensed and/or qualified within the United States to place IV lines ("IV Team").

5. The IV Team inserts a primary IV catheter, which is used to administer the LIC, and a backup IV catheter, which is reserved in case the primary fails.

6. Ms. Pike has been diagnosed with essential thrombocytosis, a condition that causes a high platelet count in the blood.

7. Essential thrombocytosis is overactivity of the bone marrow cells that give rise to platelets and is most often driven by an acquired mutation in the DNA of a hematopoietic stem cell. These mutations can cause stem cells to overproduce platelets.

8. The most common mutations are JAK2, CALR, and MPL. CALR is the second most frequently identified mutation, and it appears to be less progressive than the more common JAK2 mutation. Ms. Pike has the CALR mutation.

9. Platelets are blood cells primarily responsible for initiating hemostasis by forming a plug at sites of vascular injury, i.e. repairing holes in blood vessels.

10. Due to the function of platelets, elevated counts can cause abnormal clotting/thrombosis.

11. Elevated platelet counts can also cause paradoxical bleeding. The blood vessel walls create a protein called von Willebrand Factor which works together with platelets to "plug" a hole in the inner layer of the blood vessel. Excessive platelets can consume the von Willebrand Factor, leading to von Willebrand Factor deficiency and abnormal bleeding.

12. As for what constitutes a normal platelet count, 95% of the healthy population measures 150,000 to 450,000 platelets/μL. Platelet counts between 500,000 and 1,000,000/μL fall

outside this statistical normal range but are not considered high risk for thrombosis in otherwise low-risk individuals under age 60, according to the testimony of the State's expert Dr. Richard Mansour, a physician board certified in internal medicine, hematology, and medical oncology who has been practicing in the field of hematology since 1984.

13. When the platelet count is in the range of approximately 500,000 to 1,000,000/μL and the patient is under age 60 without additional high-risk features, treatment is often not required beyond observation and low-dose aspirin in selected cases.

14. Von Willebrand Factor deficiency is unlikely to occur unless the platelet count is in the range of 1,500,000 or 2,000,000/μL. Platelet counts below 1,000,000/μL are insignificant in relation to the activity of the von Willebrand Factor, according to Dr. Mansour.

15. At the time of her diagnosis nine years ago, Ms. Pike's platelet count was 1,000,000 platelets/μL. In the past two years, Ms. Pike's platelet count has ranged between 433,000/μL and 695,000/μL, with the most recent documented count being 452,000/μL in May 2026.

16. She is being treated with low-dose "baby" aspirin.

17. Ms. Pike's experts—Dr. Gail A. Van Norman and Dr. Joel B. Zivot, both board certified anesthesiologists—testified that her elevated platelet count increases the risk of issues with IV access, including abnormal clotting at the site of the IV catheter or abnormal bleeding during IV placement.[1]

[1] Dr. Zivot further testified that Ms. Pike's elevated platelet count increases the risk of pulmonary edema or hemorrhage following the administration of a lethal dose of pentobarbital. Given that the administration of the LIC succeeds peripheral IV access, this alleged risk exceeds the scope of the issue referred to the undersigned by the Tennessee Supreme Court. Therefore, the undersigned is reluctant to make any findings regarding the risk of pulmonary edema or hemorrhage. Nonetheless, it should be noted that Dr. Mansour testified that he has never encountered a patient with pulmonary hemorrhage or edema with a suspected cause of thrombocytosis and he was unable to find any literature supporting a causal relationship between thrombocytosis and pulmonary hemorrhage or edema.

18. Dr. Van Norman, however, acknowledged that Ms. Pike's medical records do not reflect any symptoms of thrombocytosis, such as clotting or abnormal bleeding.

19. The State's expert, Dr. Mansour, testified that Ms. Pike is a low-risk patient and that her condition does not create a high risk of interference with IV access, clotting, or excessive bleeding.

20. Dr. Mansour's opinions are supported by Ms. Pike's medical records which reflect thirteen different reports of phlebotomy (blood draws), twelve of which were successful on the first attempt attempt, and one which required a second attempt. Twelve of those reports also reflected that the skin stopped bleeding in the usual manner, and one did not answer the question.

21. Dr. Mansour's opinions are further supported by Ms. Pike's medical records which demonstrate that, as of November 2021, she was above the normal range of standard activity for all three tests to diagnose von Willebrand Disease.

22. The undersigned finds the testimony and declaration of Dr. Mansour credible and persuasive, especially given his extensive experience with blood disorders such as thrombocytosis. Dr. Mansour was the only hematologist who testified in the hearing.

23. Ms. Pike's diagnosis of essential thrombocytosis does not substantially increase the risk of clotting at the IV site because she is at low risk for thrombotic events.

24. Any increased risk of clotting is ameliorated by the aspirin Ms. Pike takes for her condition.

25. Ms. Pike's von Willebrand Factor level and activity was normal in November 2021, and the results would not change significantly in the past five years because her platelet counts have not reached the level required to alter the level or function of the von Willebrand Factor. Therefore, there is not a high risk of excessive bleeding at the IV site.

26. It is unusual for an elevated platelet count to cause clinically significant complications related to peripheral IV access within the first 24 to 48 hours after placement. This conclusion was also supported by the testimony of Elizabeth Campbell, MSN, RN, CRNI, VA-BC, a nurse IV access specialist who also testified for the State.

**B. Conclusions of Law**

Ms. Pike's thrombocytosis and elevated platelet counts do not make it "sure or very likely" that she will experience abnormal clotting or excessive bleeding during IV access. *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993)). The evidence contradicts any indication that her von Willebrand Factor has been depleted and the "[m]ere possibilit[y]" that she may experience clotting due to her slightly elevated platelet count is "not sufficient to satisfy [her] burden to establish a substantial risk of severe pain." *West v. Schofield*, 519 S.W.3d 550, 563 (Tenn. 2017) (citing *Baze*, 553 U.S. at 62). In sum, Ms. Pike has failed to establish that her diagnosis of thrombocytosis creates a "substantial risk" that achieving peripheral IV access will cause "an objectively intolerable risk of harm." *West*, 519 S.W.3d at 563 (cleaned up) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)). Therefore, the Court finds that given Ms. Pike's diagnosis of thrombocytosis, achieving peripheral IV access pursuant to the current lethal injection protocol would not make it "sure or very likely" that the challenged protocol will "cause [her] serious illness and needless suffering." *see Baze*, 553 U.S. at 50 (quoting *Helling*, 509 U.S. at 33). Issue 1 is answered in the negative.

## II. ISSUE 2

**Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.***

### A. Findings of Fact

1. Ms. Pike's medical records reflect a diagnosis of PTSD.

2. Ms. Pike's psychologist expert, Dr. Bethany Brand, offered uncontroverted testimony that Ms. Pike suffered repeated sexual assaults from an early age.

3. Dr. Brand drew several conclusions in her report and testimony that were based on inaccurate assumptions. Ms. Pike will be transferred to RMSI 24 hours before her execution, not 48 hours before her execution, and not two weeks, as contemplated in the Supreme Court's order. Additionally, while at RMSI and while under close observation at DJRC, Ms. Pike will be to contact friends, family members, spiritual advisors, and legal counsel.

4. The Court credits the uncontroverted testimony of Dr. Bethany Brand that close observation, extraction, and movement to RMSI may aggravate Ms. Pike's PTSD.

**5.** The evidence also showed that Ms. Pike would need to be extracted from her cell if she were subject to execution by hanging, or indeed by any other method.

6. Based on the testimony of Dr. Brand, whether Pike is extracted from her cell for execution by hanging, lethal injection, or any other method, she would experience some level of psychological distress.

7. As RMSI Warden Kenneth Nelsen testified, TDOC's only execution facility is at RMSI, so Ms. Pike would need to be moved to RMSI under any execution protocol.

8. As TDOC Assistant Commissioner Linda Thomas testified, Ms. Pike has been under the supervision and observation of male and female guards while incarcerated at DJRC.

9. AC Thomas's declaration and testimony also establish that Ms. Pike will be moved to RMSI only within the 24-hour period before her scheduled execution.

10. Both TDOC witnesses testified that the TDOC plans to staff women to observe Ms. Pike while at RMSI.

11. While under close observation, Ms. Pike will have access to a privacy screen.

12. While under close observation, Ms. Pike will be able to contact friends, family, spiritual advisors, and legal counsel.

13. Thus, the Court finds that the factual predicates assumed in the issue referred by the Supreme Court—that Ms. Pike will be transported to RMSI two weeks before her execution and that she will be observed by male guards during that time—are not present.

14. To be sure, Ms. Pike will be transferred to RMSI, but not more than 24 hours before her execution, and TDOC has represented in court filings and sworn testimony that she will be observed by only female guards at RMSI.

**B. Conclusions of Law**

The Tennessee Supreme Court has tasked the undersigned with determining the narrow question of whether "the movement of Ms. Pike to [RMSI] before the execution, where she would be observed by male prison officials for two weeks prior to the execution is sure or very likely to cause Ms. Pike serious illness and needless suffering." Sup. Ct. Order at 2.

Despite her cited history of sexual assault and diagnosis of PTSD, the current Protocol is not sure or very likely to cause Ms. Pike serious illness and needless suffering, because "mental suffering" alone "is not material to the Eighth Amendment inquiry under *Baze* and *Glossip*"

"[u]nless accompanied by serious physical pain." *In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 450 (6th Cir. 2018) (internal quotations and citations omitted).

Ms. Pike has not connected any alleged psychological harm to Tennessee's lethal injection protocol.[2] In fact, Dr. Brand's testimony established that psychological harm would result from close monitoring and extraction from the cell in *any* execution protocol. "[B]ecause it is settled that capital punishment is constitutional, it necessarily follows that there must be a constitutional means of carrying it out." *Glossip*, 576 U.S. at 869 (quoting *Baze*, 553 U.S. at 47) (cleaned up). The evidence shows that extraction from an inmate's cell will be a component of any execution. Under binding precedent, this Court cannot conclude that such extraction would be unconstitutional in every case. As a result, Ms. Pike has not shown that the particular method of execution contemplated in the Protocol is sure or very likely to cause her serious illness or needless suffering.

In addition, even crediting Dr. Brand's testimony about Ms. Pike's history of sexual assault and diagnosis of PTSD, the current Protocol is not sure or very likely to cause her serious illness and needless suffering, because Ms. Pike will not be moved to RMSI and observed by male prison officials for two weeks prior to her execution. Ms. Pike is also not sure or very likely to be caused serious illness and needless suffering because, when she is moved to RMSI no more than 24 hours before her execution, she will be observed by female prison officials and have the use of a privacy screen.

[2] Dr. Brand's opinions concerning TDOC's extraction procedure, possible femoral venous access, the risk of repeated execution attempts, and the close monitoring by guards at DJRC are outside the scope of the Supreme Court's Order addressing Issue 2. Accordingly, the Court will not factor them into its analysis of Issue 2.

Ms. Pike's complaints about how she is observed prior to her execution, how she is extracted from her cell, and where the execution takes place do not give rise to the sort of "serious illness and needless suffering" described in Eighth Amendment caselaw. The ultimate request of Ms. Pike's expert, Dr. Brand, is for Ms. Pike to be executed at DJRC immediately after being extracted from her cell. TDOC witnesses have testified that this is not possible. For this Court to conclude that Ms. Pike's constitutional rights would be violated unless this demand is met would amount to usurping executive authority as a "board[] of inquiry charged with determining 'best practices' for executions." *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). The Court declines to assume that role and answers Issue 2 in the negative.

## III. ISSUE 3

**Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.***

### A. Findings of Fact

1. Ms. Pike did not present testimony from any medical professional who has examined her veins. Consequently, the Court relies upon the testimony of experts who reviewed her medical records.

2. Ms. Pike's medical records reflect thirteen different reports of phlebotomy (blood drawing).

3. Twelve of those phlebotomy records documented successful venous access on the first attempted needle insertion, and one required a second attempt.

4. Twelve of those reports reflected that the skin site stopped bleeding in the usual manner and one report did not answer the question.

5. Ms. Pike's medical records reflect that a 23-gauge butterfly needle was used for each of the thirteen blood draws.

6. The State presented the testimony of Nurse Campbell, who is double board certified in vascular access and infusion nursing with more than 30 years of experience. The Court finds her testimony credible and persuasive.

7. Nurse Campbell testified that patients often self-identify as having small veins, though this is not a true medical diagnosis. This testimony was uncontroverted.

8. Nurse Campbell testified that use of a 23-gauge butterfly needle during blood draws is "standard" and such needles are "very commonly requested by patients."

9. Nurse Campbell testified that patient requests, such as a request for a 23-gauge butterfly needle, are "very frequently" honored if they are within reason.

10. There is no evidence in the record that shows whether a 23-gauge butterfly needle was used in Ms. Pike's blood draws because she requested it, because the medical professional drawing the blood preferred it, because use of that needle was medically necessary, or simply because the prison had no other needles available.

11. Nurse Campbell testified that it is not uncommon to require more than one attempt to secure IV access in patients. Ms. Pike's expert, Dr. Van Norman, testified to the same effect. Nurse Campbell further testified that Ms. Pike's records reflect that none of her blood draws took more than two attempts.

12. The expert testimony based upon Ms. Pike's medical records revealed that no medical professional who has personally evaluated Ms. Pike has diagnosed her with small or compromised veins. Nor has any medical professional documented any difficulty in accessing her veins in her medical records.

13. Nurse Campbell testified that, when medical professionals do have difficulty accessing a patient's veins, they will often document this fact in the patient's medical records.

14. Nurse Campbell testified that medical professionals use a DIVA (Difficult Intravenous Access) score to alert other practitioners about potentially difficult vein access.

15. No expert testified that Ms. Pike's medical records contained a DIVA score or any other indication of difficult venous access.

16. There is no evidence in the record to explain why some of Ms. Pike's blood draws were done in her hands, be it to honor Ms. Pike's preference or the medical professional's preference, or because of medical necessity. Therefore, no conclusions regarding venous access can be drawn from the location of the blood draws.

17. There was no evidence in the record that Ms. Pike's past blood draws have caused or will likely cause venous access issues. Ms. Pike's expert, Dr. Gail Van Norman, testified that she believed repeated blood draws would make Ms. Pike's veins harder to access, but she did not explain precisely how access would be more difficult, or how many blood draws it would take to cause such problems. Nor did she address the fact that the phlebotomy records document blood draws mostly from veins in Ms. Pike's hands, whereas IV access is most commonly obtained in the bend of the arm or forearm (as she and other experts explained).

18. The State's experts, Dr. Antognini, Dr. Mansour, and Nurse Campbell, all consistently testified that they did not see anything in Ms. Pike's medical records that would suggest difficulty in achieving IV access as set forth in the Protocol.

19. Therefore, the Court finds that the weight of the evidence established that Ms. Pike does not have small or compromised veins at all, let alone veins that would most likely be used for peripheral IV access under the Protocol.

## B. Conclusions of Law

Based on the evidence presented to the Court, Ms. Pike does not have small or compromised veins, and she has not shown that achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering." Sup. Ct. Order at 3. At most, Ms. Pike has shown that she *could* experience some unknown amount of pain from peripheral IV access, but no more than any other person would. As Ms. Pike's own expert Dr. Van Norman testified, tens of thousands of people receive IV lines every day in the United States, and a portion of those people require more than one attempt to achieve IV access. There is no evidence in the record that achieving such access in Pike's case would cause any pain beyond the ordinary annoyance of a needle stick.

The evidence Ms. Pike has produced amounts to speculation about *potential* problems with peripheral IV access. But such speculation is not sufficient as a matter of law to establish an Eighth Amendment violation. *See Cooey v. Strickland*, 589 F.3d 210, 224 (6th Cir. 2009) ("Speculations, or even proof, of medical negligence in the past or in the future are not sufficient to render a facially constitutionally sound protocol unconstitutional."). Put another way, the evidence before the Court has only alluded to "mere possibilities or hypotheticals" about IV problems, which "are not sufficient to establish a substantial risk of severe pain." *State v. Hines*, No. M2025-00221-SC-DPE-DD, at 5 (Tenn. Aug. 6, 2026) (Order). The Court therefore answers Issue 3 in the negative.

## IV. ISSUE 4

**Whether Ms. Pike's proposed alternative methods of execution would significantly reduce a substantial risk of severe pain.**

### A. Findings of Fact

1. During the proceedings before this Court, Ms. Pike expressly abandoned her attempt to plead execution by lethal injection via a 23-gauge butterfly needle as an alternative method of execution.

2. Ms. Pike did so after her expert, Dr. Van Norman, concluded that a 23-gauge butterfly needle would require substantially more pressure to intravenously deliver the volume of fluid contemplated in the Protocol (100ml of saline and 100ml of pentobarbital solution).

3. As for Ms. Pike's second pleaded alternative of execution by lethal injection via a central line, the Court finds it would not significantly reduce a substantial risk of pain.

4. To the contrary, the expert testimony established that this alternative would *increase* the risk of pain in Ms. Pike's execution.

5. Dr. Van Norman testified that a central line is a "relatively dangerous" procedure that can lead to severe complications.

6. Dr. Scott Goldstein testified to the same effect, describing lung damage and arterial bleeding as potential complications of a central line.

7. Neither expert's testimony on the potential complications of a central IV line was contradicted or challenged.

8. No expert testified that the potential complications of peripheral IV access would be as serious as, or more serious than, those from complications of central line IV access, which include infiltration (damage to the vein from an improperly placed IV) and extravasation (leakage of the LIC into surrounding tissue outside the vein).

9. Thus, the evidence established that, if anything, IV access by a central line only, without attempting peripheral IV access, would pose a greater risk of pain and suffering than peripheral IV access.

10. Turning to Ms. Pike's third proposed alternative method of execution—hanging, Ms. Pike did not meet her burden to introduce scientific evidence to establish that this method of execution would significantly reduce a substantial risk of severe pain.

11. The testimony of Pike's expert, Dr. Scott Goldstein, was not probative on this topic because he was unable to provide any basis for his conclusions. For example, Dr. Goldstein's declaration states, "Death occurring from strangulation is due to cerebral hypoxia and ischemic neuronal death. Regardless of the cause of unconsciousness the patient usually becomes unconscious within 10-20 seconds." Goldstein Decl. at 3. When testifying, however, he admitted the sources he cited indicated only that unconsciousness may start *as soon as* 15 seconds, not that unconsciousness would "usually" occur within 20 seconds. Dr. Goldstein was unable to cite any source to support this conclusion.

12. Nor was Dr. Goldstein able to demonstrate a connection between his education, training, and experience and the subject matter of judicial hangings. In effect, he undertook a research project on the subject of hanging. Even insofar as the Court would be inclined to weigh his testimony in that light, Dr. Goldstein indicated a lack of familiarity with the sources he cited on judicial hanging. For example, he was unaware of whether the author of a text about executions was a physician. He was also unable to explain even the most superficial knowledge of the methodology used in that text.

13. The Court therefore accords no weight to Dr. Goldstein's opinions and conclusions regarding hanging.

14. The State's expert on hanging, Karen Kelly, M.D., is a forensic pathologist and medical examiner. Dr. Kelly testified that she has decades of experience in forensic pathology and has autopsied victims of hanging (though not judicial hanging).

15. The Court finds Dr. Kelly to be credible in the fields of forensic pathology and the mechanics of hanging, though it should be noted that it was nearly impossible for either side to procure an expert on judicial hangings in the United States, given that no one has been executed by that method in 30 years.

16. Indeed, Dr. Kelly testified that death by judicial hanging has not been carried out in this country since the 1990s, though it continues to be used in other countries.

17. Dr. Kelly testified that there are at least three methods of judicial hanging. One is the short-drop method of hanging. In this method, the person either kneels or stands on a raised support. A ligature is placed around the neck and the person is bent forward or the support is removed, allowing suspension by the neck. Dr. Kelly testified that persons executed by short-drop hanging typically die of strangulation.

18. Dr. Kelly also testified about the standard-drop hanging method, in which a ligature surrounds the person’s neck and the person is dropped a standard distance of 4-6 feet. This method was used in the United States in the late 19th and early 20th centuries. Many persons executed by this method died by strangulation, often slowly.

19. Lastly, Dr. Kelly testified about the long-drop hanging method. This method involves a calculation of the amount of force required to cause fracture of the neck by the ligature. The length of the rope is determined by the person's height. As the mass of the body continues to drop by gravity, the head is constrained by the ligature. The sudden stop of the body weight by the ligature causes deceleration of the neck and head with catastrophic injuries to the neck structures.

20. Dr. Kelly testified that two hangings in Washington State in the 1990s were carried out with the long-drop method. While the two hangings used very similar methods and materials, the autopsies of the two inmates yielded medically distinct injuries.

21. Dr. Kelly testified that the required equipment for a long-drop judicial hanging would include an upright structure with a projecting cross beam and trap door, as well as a noose with 5 to 13 coils made of rope resistant to stretching. A hood is also placed on the condemned.

22. Dr. Kelly testified that a trained executioner is essential to successfully carry out a long-drop judicial hanging. In the past, hanging executioners were often trained by one another.

23. Dr. Kelly's testimony on the methods of hanging and the elements needed to carry out a judicial hanging was uncontradicted.

24. RMSI Warden Nelsen testified that TDOC does not currently possess the materials to carry out a hanging, including a gallows or suitable rope.

25. He also testified that TDOC does not currently employ anyone with expertise on hanging. He further stated that he did not know where TDOC could locate such a person.

26. TDOC AC Thomas testified to the same effect regarding TDOC's inability to carry out a hanging.

27. This testimony from both TDOC witnesses was uncontroverted.

28. As for the mechanism of death by hanging, Dr. Kelly testified that it can occur in multiple ways.

29. First, if long-drop judicial hanging is carried out properly, death would likely be instantaneous due to an internal transection of the spinal cord.

30. Second, if the inmate is dropped with too much force, decapitation could result, also causing instantaneous death.

31. Third, if the inmate is dropped with too little force, the inmate would likely die by strangulation, via mechanical asphyxia caused by suspension of the body from a ligature around the neck. Death would not be instantaneous in this scenario.

32. Dr. Kelly opined that death by strangulation in this manner would likely be painful and distressing.

33. As for how long it would take for an inmate to lose consciousness before dying by strangulation from hanging, little evidence was offered.

34. Dr. Kelly cited one study based on a review of an amateur video of a single hanging by suicide that determined "apparent" unconsciousness after roughly 13 seconds.

35. The Court accords little weight to this study for three reasons. First, it did not involve a judicial hanging, but rather a hanging by suicide, which Dr. Kelly testified was a distinct method not relevant to the questions before the Court. Second, it relied upon the smallest possible sample size: just one person. Third, it employed an unreliable and unscientific method: conclusions drawn from watching an amateur video, as opposed to scientific measurements taken under clinical conditions.

36. Dr. Kelly testified that a person subject to strangulation by hanging was likely to lose consciousness in under one minute, but no expert introduced anything approaching a comprehensive review of the length of time to loss of consciousness in judicial hangings where the inmate died by strangulation.

37. In light of the evidence adduced at the hearing, the Court concludes that judicial hanging is a long-disused method with substantial variability in outcome. As evidenced by the hangings in Washington State in the 1990s discussed by Dr. Kelly, even the same or very similar methods using modern equipment can result in different outcomes. Thus, it is unknown not just

how long unconsciousness would take in many cases; it is also unknown how death would result: by decapitation, by internal trauma, or by strangulation.

38. The Court is therefore unable to conclude that hanging as an alternative means of execution would offer any shorter period of consciousness than Tennessee's current method of lethal injection, let alone any reduction in the risk of pain.

39. This is true first due to the lack of evidence showing that unconsciousness would result more quickly in an execution by hanging, but also due to the evidence that lethal injection by pentobarbital causes unconsciousness within 20-30 seconds and death by one undisputed mechanism: cardiovascular and respiratory failure after unconsciousness.

40. The State's anesthesiologist expert, Dr. Joseph Antognini, testified about the effects of pentobarbital on the human body. His opinion, consistent with his testimony in past cases, including *Bucklew*, is that a large dose of pentobarbital (5 grams, in the case of Tennessee's Protocol) causes unconsciousness within 20-30 seconds.

41. Dr. Antognini's conclusion was based on his own clinical experience administering barbiturates (a class of drugs to which pentobarbital belongs) to patients for anesthesia. He testified that loss of consciousness typically resulted within seconds.

42. Dr. Antognini also cited a number of studies to support his conclusion. In particular, he relied upon studies published by Aleman (2015) and Buhl (2013) that showed horses collapsed within 20-30 seconds after receiving large doses of pentobarbital.

43. Dr. Antognini concluded that the horses collapsed due to loss of consciousness. He was cross-examined extensively on this topic, and the studies did not contradict this conclusion. In fact, the Aleman study ultimately concluded that "an intravenous overdose of pentobarbital sodium solution is an effective, fast, and humane method of euthanasia."

44. Dr. Antognini testified that barbiturates act similarly across all mammal species, and that the findings from these studies would apply to humans as well. This conclusion was uncontroverted.

45. Ms. Pike's anesthesiologist expert, Dr. Zivot, was unable to provide a competing opinion as to how long pentobarbital would take to render a person unconscious. The Court repeatedly invited Dr. Zivot to offer an opinion on this point, but he declined.

46. The Court therefore concludes that pentobarbital, as administered under Tennessee's protocol, would cause a loss of consciousness within 20-30 seconds.

47. That leaves the question of how much pain, if any, an inmate would feel in those 20-30 seconds. Dr. Antognini testified that about 10% of people may feel mild discomfort when injected with a barbiturate such as pentobarbital. He testified that more modern drugs such as propofol also carry this risk, but at an increased rate.

48. Dr. Antognini further testified that this risk of mild pain has been understood and tolerated in the clinical setting for decades, while also noting that analgesics (pain relievers) are often given along with the anesthetic agent. He based this opinion on his decades of clinical experience.

49. Dr. Antognini testified that this mild pain, if experienced at all, would last no longer than the 20-30 second period before unconsciousness under the Protocol.

50. Dr. Zivot disagreed and stated that an inmate would experience severe pain before losing consciousness. Yet he cited no authorities for this conclusion, and he did not appear to have any clinical experience wherein he observed a patient experiencing such pain after injection with a barbiturate such as pentobarbital. Dr. Zivot adverted generally to observations of executions by pentobarbital, but cited no specific examples in his testimony.

51. The Court therefore concludes that there is a small risk of mild discomfort from the injection of pentobarbital.

52. The court also concludes that the method of death resulting from injection with pentobarbital is cardiovascular and respiratory failure, as described by Dr. Antognini. His testimony regarding the mechanism of death was uncontroverted.

53. It should be noted that Dr. Zivot stated that pentobarbital likely causes pulmonary edema (fluid or blood in the lungs) before death, but he did not opine that the *cause* of death from pentobarbital injection would be pulmonary edema.

54. As for the degree of potential pain from pulmonary edema before loss of consciousness, Dr. Zivot opined that the pain would be excruciating and severe, akin to drowning. He based this opinion on autopsies of inmates executed by lethal injection. Dr. Zivot contended that this pulmonary edema could not have occurred post-mortem.

55. Dr. Antognini testified that pulmonary edema is a common post-mortem finding, especially in drug overdoses. He testified that no clinical study has demonstrated a link between pentobarbital and pulmonary edema. He further testified that barbiturates, including pentobarbital, have been used in clinical settings for decades, and if pulmonary edema had been suspected as an adverse side effect, these drugs would have been discontinued long ago. This testimony was uncontroverted.

56. Dr. Antognini also testified that anesthetic agents similar to barbiturates, such as propofol, are injected intravenously in the practice of medical aid in dying (MAID) in Canada and certain European countries. He testified that propofol overdoses are known to cause pulmonary edema, yet clinicians who administer MAID through IV anesthetic have not stated any concerns about this in medical literature.

57. Dr. Antognini cited an animal study indicating that pulmonary edema can occur post-mortem, and that the effects of pulmonary edema increase as time passes after death. Dr. Antognini was cross-examined extensively on this topic, and was able to cite the study's findings to defend his opinion that pulmonary edema, if it occurs at all from pentobarbital injection, likely occurs after death.

58. That said, Dr. Antognini could not say definitively that pulmonary edema does not occur before death. He opined that even if pulmonary edema occurs before death, it would not be felt because the inmate would lose consciousness within 20-30 seconds, for the reasons he previously explained. To illustrate why, Dr. Antognini explained that under a whole lung lavage procedure, patients are anesthetized and saline is pumped into their lungs. Under that procedure, patients are not brought out of anesthesia by the massive inflow of fluid into their lungs.

59. Dr. Antognini and Dr. Zivot disagreed as to how quickly pulmonary edema would result. Dr. Zivot maintained that it would occur rapidly, within seconds. Dr. Zivot produced no studies or scientific evidence to support this theory.

60. Dr. Antognini believed it would take longer, due to the time it would take for the pentobarbital to reach the lungs, and would not set in until after the inmate lost unconsciousness. Thus, Dr. Antognini's belief was that whether or not pentobarbital causes pulmonary edema is immaterial, given that the inmate would be unconscious and not capable of feeling pain by the time it began to set in.

61. In light of this competing testimony, the Court is unable to conclude whether pentobarbital causes pulmonary edema, or, if it does, when edema begins to set in.

62. Nevertheless, given the Court's prior conclusion that loss of consciousness results within 20-30 seconds after pentobarbital enters the inmate's body, the Court concludes that it is unlikely that an inmate would perceive any pain resulting from pulmonary edema.

**B. Conclusions of Law**

Ms. Pike has not produced scientific evidence to show that hanging, or any other alternative method of execution, would substantially reduce a risk of severe pain. As a threshold matter, hanging is the only properly-raised alternative method of execution before this Court. Under United States Supreme Court precedent, a "method of execution" is a distinct way to cause death. Tennessee's legislature has approved two: lethal injection and electrocution. Tenn. Code Ann. § 40-23-114. Likewise, federal and state precedent equates a method of execution with a distinct way to cause death, such as nitrogen hypoxia (*Bucklew*, 587 U.S. at 141–42), firing squad (*Nichols v. Skrmetti*, No. 3:25-CV-442, 2025 WL 3299727, at *21–23 (M.D. Tenn. Nov. 26, 2025)), a single bullet to the back of the head (*id.*), or lethal injection with a different chemical or combination of chemicals (*Abdur'Rahman II*, 558 S.W.3d at 623–25); *see also Bucklew*, 587 U.S. at 134 (listing "hanging, the firing squad, electrocution, and lethal injection" as "traditionally accepted methods of execution").

Neither the Tennessee Supreme Court or the United States Supreme Court has ever held that a plaintiff can plead an alternative in a method-of-execution challenge by asking for the challenged method to be carried out with slightly different equipment or procedures. To do so would contravene binding precedent, which requires an inmate to plead something more than a "slightly or marginally safer alternative." *Glossip*, 576 U.S. at 877 (2015) (quoting *Baze*, 553 U.S. at 51). Thus, hanging, which is a distinct method of causing death that has been held to be constitutional, is the only alternative method of execution Ms. Pike has pleaded.

Ms. Pike has failed to produce evidence showing that hanging will substantially reduce a risk of severe pain, compared with Tennessee's Protocol. The Protocol provides for a dose of 5g of pentobarbital delivered intravenously. The Court has concluded that this method of execution is likely to result in unconsciousness within 20-30 seconds, with a low risk of mild discomfort during that short window of time. Here, as in *Bucklew*, the "the relevant question isn't how long it will take for [Ms. Pike] to die, but how long [s]he will be capable of feeling pain." 587 U.S. at 147. And again, as in *Bucklew*, Dr. Zivot was evasive about how long Ms. Pike would feel pain. Instead, he stood on the general statement that "[d]eath from pentobarbital injection is not instantaneous." The upshot is that "Dr. Zivot's statements [] fail to specify how long [Ms. Pike] is likely to be able to feel pain." *Bucklew,* 587 U.S. at 148. The Court is left with only one expert who even attempted to answer this critical question: Dr. Antognini.

With that in view, Ms. Pike's burden was to produce "scientific evidence" rather than "speculat[ion]" that the alternative method of hanging would substantially reduce a risk of severe pain, compared to execution by a lethal dose of pentobarbital. *In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 453 (6th Cir. 2018) (discussing the first prong of the *Glossip* test). Ms. Pike did not meet this burden. As discussed, the Court concludes that hanging is an unpredictable method of execution. The experts and literature indicate that persons executed by hanging can die in multiple ways, including by strangulation. A "successful" hanging resulting in instantaneous death requires equipment and expertise that the State of Tennessee does not have. And no evidence was introduced to establish how long, on average, inmates who die by strangulation during hanging are conscious. Thus, the record contains no evidence to show that hanging would be any less painful than lethal injection by pentobarbital.

Because Ms. Pike has failed to meet her burden on this issue, the Court must conclude as a matter of law that Ms. Pike's other claims must fail as well, even if they may have had independent merit. The failure to plead and prove a viable alternative method of execution is dispositive in a method-of-execution challenge because identifying "a known and available alternative method of execution that entails a lesser risk of pain" is "a requirement of all Eighth Amendment method-of-execution claims." *Glossip*, 576 U.S. at 867. Ms. Pike has "failed to present any evidence suggesting that [hanging] would significantly reduce [her] risk of pain," which ends any inquiry into her other claims in this action. *Bucklew*, 587 U.S. at 148. At best, she has proposed a method that offers a "minor reduction in risk," but that is "insufficient" because to prevail, "the difference must be clear and considerable." *Id.* at 143.

The Eighth Amendment's purpose is to prevent cruel and unusual punishment, "not to substitute the court's judgment of best practices for each detailed step in the procedure for that of corrections officials." *Cooey*, 589 F.3d at 225. Thus, to avoid "transform[ing] courts into boards of inquiry charged with determining 'best practices' for executions," Ms. Pike had to do more than "merely [] show[] a slightly or marginally safer alternative." *Baze*, 553 U.S. at 51. She did not.

Additionally, Ms. Pike had to establish that the State of Tennessee "could carry . . . out" the alternative method "relatively easily and reasonably quickly." *Bucklew*, 587 U.S. at 141 (citation omitted). But the evidence shows that TDOC lacks the equipment to carry out a hanging and would not be able to find personnel with the necessary expertise even if it did.

In sum, none of Ms. Pike's alternatives would significantly reduce a substantial risk of severe pain. Issue 4 is answered in the negative.

Entered this ___ day of August, 2026.

SPECIAL MASTER W. MARK WARD

Respectfully Submitted,

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FILED
BY ANNE RAYMOND
2026 AUG 17 AM 10: 18
KNOX COUNTY CRIMINAL COURT
KNOXVILLE, TN

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

| | |
|---|---|
| **State of Tennessee** | ) |
| | ) **Supreme Court Case No. M2020-01156-SC-DPE-DD** |
| **v.** | ) **Knox County Case No. 58183A** |
| | ) **CAPITAL CASE (Execution Date: Sept. 30, 2026)** |
| **Christa Gail Pike** | ) |

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**Motion for Emergency Relief**

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Christa Gail Pike, through counsel, submits this Motion for Emergency Relief and requests that this Court reopen the hearing in this matter. For support, Ms. Pike shows:

## Introduction

The parties have gone to great lengths to protect and conceal the identity of the physician that the State of Tennessee uses in its executions. The State has taken the position that the identity of the execution physician, even if known from a prior execution, is protected for any future execution. This Court entered a protective order explaining the same; and at the hearing in this matter, the State of Tennessee routinely objected to any questions regarding the qualifications necessary for a physician—any physician—to establish central line access. This Court routinely granted those objections even though Ms. Pike pled a central line placed by a physician qualified and competent to do so as an alternative. (Pike Rule 12 Mot. at 25–26).

Less than 24 hours after the hearing in this matter concluded, the execution physician made a public statement to a news outlet about his intention to participate

in Ms. Pike's scheduled execution on September 30, 2026. *See* Doctor who oversaw failed Tennessee procedure to handle Christa Pike's execution, Fox17 News (*available at* https://fox17.com/news/local/doctor-who-oversaw-failed-tennessee-procedure-to-handle-christa-pikes-execution). The execution physician's admission, made less than a day after the close of proof on Ms. Pike's Eighth Amendment challenge to her upcoming execution, undermines the integrity of these proceedings. This Court found that the discovery of certain information about the execution physician designated for Ms. Pike's execution was permissible. Yet, this Court also routinely barred evidence about the physician present for Mr. Carruthers' attempted execution. This Court must take action to clarify the record and permit consideration of plainly relevant evidence.

Ms. Pike respectfully requests that this Court enter an Order reopening the hearing in this matter for the limited purpose so that she can present testimony about the qualifications necessary to place a central line. Alternatively, this Court must treat the evidence it received as an offer of proof on the lack of the execution physician's qualifications as substantive evidence. Specifically, Maria DeLiberato's testimony about the numerous errors the execution physician made and Dr. Gail Van Norman's written report opining that the execution physician in Mr. Carruthers' case was not qualified nor competent to place a central line must now both be considered as substantive evidence.

## Argument

The execution physician's public statement is directly relevant to (*at least*) three of the four issues referred to the Special Master by the Tennessee Supreme Court's Order. Issue 4 asks whether Ms. Pike's proposed alternatives would "significantly reduce a substantial risk of severe pain." Ms. Pike's Alternative 1 requires central line placement by "a qualified, trained, and certified medical doctor who has placed a central line this decade." The execution physician's confirmed participation requires that Ms. Pike be able to elicit proof about whether the State, in fact, is able to readily implement this alternative. Without testimony establishing the execution physician's qualifications, the Special Master cannot make findings on Issue 4 because the feasibility of Ms. Pike's primary alternative depends entirely on the capabilities of the physician that the State intends to use.

Additionally, Issues 1 and 3 ask whether Ms. Pike's thrombocytosis and compromised veins make it "sure or very likely" that achieving peripheral IV access will cause serious illness and needless suffering. These issues cannot be resolved in isolation from what happens when peripheral access fails. The lethal injection protocol provides that when peripheral IV access cannot be achieved, "the Physician will insert a central line."

This Court should grant relief for three reasons. First, this Court has already found this this information is relevant. In its August 4th Order, it allowed testimony regarding the "qualifications, training, and certification of the Physician designated

for Pike's execution, including whether the Physician is qualified and certified to place a central venous line." (August 4, 2026 Order at 8).

Second, this case is distinguishable from *State v. Hines*, No. M2025-00221-SC-DPE-DD in every respect. In *Hines*, the physician's identity was revealed by third parties in connection with *prior* executions, and whether he *might* participate in Hines' future execution was uncertain.[1] The State argued that the media may have outed a "past physician," but that it is "not publicly known whether that same physician will attend Hines' *future* execution..." (State Resp. in *Hines* at 24). Here, the execution physician outed himself publicly and stated that he will participate specifically in Ms. Pike's execution. Ms. Pike is not seeking to unmask an anonymous participant—the participant has voluntarily announced his own role and directly put his participation at issue. If the State's privilege laws are intended to protect the individuals who participate in executions, the execution physician has surely waived that protection repeatedly.

In *Hines*, the State emphasized that Hines' complaint "includes no allegation that there is any risk of maladministration to any Plaintiff because of the physician or the procedure to place a central line." (State's Resp. in *Hines* at 24). The Court could therefore conclude that the physician's identity was irrelevant to the claims actually before it. This case is inapposite. Ms. Pike has specifically alleged that

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[1] In fact, *Hines* does not address discoverability because neither party appealed the lower court's discovery order. The Court there addressed Hines' substantive Rule 12 arguments regarding the likelihood of success on the merits of his motion for a stay. It declined specifically to address the Chancery Court's Order granting a motion to compel TDOC to produce the name of the supervising physician.

presence of "a qualified, trained, and certified medical doctor who has placed a central line this decade" is a feasible alternative to the existing protocol. The physician's qualifications are the central factual predicate to Ms. Pike's claims.

In *Hines*, the State invoked Tenn. Code Ann. § 10-7-504(h)(1) and *West v. Schofield*, 460 S.W.3d 113 (Tenn. 2015), to argue that the physician's identity was privileged. Whatever force that argument may have had in *Hines*, it has none here. The execution physician chose to speak publicly about his participation in Ms. Pike's execution—less than 24 hours after the hearing in this matter concluded. A confidentiality privilege exists to protect individuals from involuntary disclosure and cannot be invoked to shield information that the individual himself has voluntarily placed in the public domain.

Finally, the Tennessee Supreme Court in *Hines* denied that motion under Rule 12 based on Hines pleading that the 2025 protocol would cause severe suffering due to "TDOC's culture of noncompliance, recklessness, and secrecy." *Hines*, at *4. Ms. Pike's claims are substantially different. She has established it is very likely she will need a central line placed during her execution. She requires testimony about the execution physician's qualifications to support her proposed alternatives and to allow the Court to appropriately weigh the pain and suffering involved in each.

The execution physician's public statement was made on August 14, 2026—less than 24 hours after this hearing concluded. Ms. Pike could not have presented testimony on this subject nor sought discovery of the same during the hearing because the confirmation did not exist until the hearing concluded. The interests of justice

and due process require that Ms. Pike be permitted to develop the record on a matter that is central to at least three of the four referred issues.

## Conclusion

Ms. Pike's execution is scheduled for September 30, 2026. This Court has an obligation to ensure that the factual record is complete, particularly where newly available evidence goes to the heart of whether the State can carry out Ms. Pike's execution without inflicting "serious illness and needless suffering." *Baze v. Rees*, 553 U.S. 35, 50 (2008). For the foregoing reasons, Ms. Pike respectfully requests that this Court order the Special Master to reopen the evidentiary hearing for the limited purpose of receiving testimony concerning the execution physician's qualifications and his confirmed participation in Ms. Pike's scheduled execution.

In the alternative, because the factual basis for excluding the testimony of Ms. DeLiberato and Dr. Gail Van Norman has changed—because the execution physician has confirmed his participation in Ms. Pike's scheduled execution—Ms. Pike requests that this Court:[2]

A. Order that any testimony elicited as an offer of proof from Maria DeLiberato regarding the execution physician be treated as substantive evidence; and,

[2] The State was afforded an opportunity to cross examine both Ms. DeLiberato and Dr. Van Norman. Accordingly, there is no harm to the State by admitting this testimony as substantive evidence in this case.

B. Order that Dr. Van Norman's report, submitted for identification only, be admitted as substantive evidence that the execution physician is not qualified to place a central line for Ms. Pike.

Respectfully submitted,

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FILED
AUG 17 2026
By Mike Hammond, Clerk

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

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**RESPONSE TO MOVANT'S MOTION FOR EMERGENCY RELIEF**

---

The Court should deny Christa Pike's motion for emergency relief. There is no emergency because the identity of the physician who will participate in her execution is still unknown, and Pike has not shown that she is entitled to *any* relief under governing precedent. Pike's motion suffers from several factual and legal flaws that foreclose her request to reopen the proof:

1. **Pike can only speculate about the identity of the physician who will participate in her execution.** Pike is mistaken if she thinks she knows the identity of the physician or any other person who will participate in her execution. That's because no participant in any execution is confirmed until 30 days beforehand. Lethal Injection Protocol at 14, attached as Exhibit 1. What's more, TDOC's Commissioner must sign off on the full list of future execution participants. *Id.* None of the media sources Pike cites claims to have the list of participants for her execution. Nor could they, because that list will not exist until August 30, 2026. And regardless of what any past execution participant may say to the media, only the Commissioner can decide whether that person will be a future participant. *Id.* The fact is that no one yet knows who the physician will be for Pike's execution. The Court should therefore reject her attempt to create a last-minute distraction based on pure speculation.

2. ***Hines* forecloses Pike's arguments for relief.** Pike's motion carefully avoids quoting the analysis or holding of *State v. Hines,* No. M2025-00221-SC-DPE-DD (Tenn. Aug. 6, 2026) (Order). This should come as no surprise because, given Pike's speculation about the identity of future execution participants, *Hines* forecloses her attempt to use media headlines to get another bite at the apple. In *Hines,* the Tennessee Supreme Court rejected the argument that the identity of a past execution physician, even one who "failed" to set a central IV line, was relevant to a method-of-execution challenge like the one Pike brings here:

> Accepting Mr. Hines's allegations as true, he has established at most that Physician A was unable to place a central IV line for Mr. Carruthers' attempted execution. But, as already noted, "an isolated mishap alone does not give rise to an Eighth Amendment violation, precisely because such an event, while regrettable, does not suggest cruelty, or that the procedure at issue gives rise to a 'substantial risk of serious harm.'" *Baze*, 553 U.S. at 50 (quoting *Farmer*, 511 U.S. at 842).
>
> As characterized by the State in its response to the instant motion, Mr. Hines "guesses that the State might use a physician who might be unqualified to establish a backup central IV line during his execution, if needed." He further suggests that his declining health may make it more difficult for the IV team to establish a primary IV line, thus increasing the likelihood that placement of a central line will be necessary. 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. *West*, 519 S.W.3d at 564–65 (quoting *Baze*, 553 U.S. at 62). Accordingly, Mr. Hines's maladministration claim is "all but foreclosed," *Cooey v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009), as a matter of law because an alleged "potential flaw" in administration is too speculative "to state an Eighth Amendment claim," *Zink v. Lombardi*, 783 F.3d 1089, 1101 (8th Cir. 2015).

*Id.* at 6.

*Hines* is directly on point and dooms Pike's motion. Like Hines, Pike can only guess who the physician will be in her execution. Like Hines, she can only guess that the physician, whoever he or she is, may attempt to set a central IV line. And like Hines, she gambles on "mere possibilities or hypotheticals" to hitch her guesses to the possibility of future harm. *Id.* Thus, *Hines* forecloses her arguments related to the central IV line or any past physician's qualifications to set one.

3. **The identity of the future physician is not relevant to any issue referred to this Court.** Even if the Court credits Pike's speculation and concludes that the past physician who spoke to the media about his participation in the Carruthers and Hines executions will participate in her execution, relief is still not warranted because this issue is not relevant.

For one thing, Pike has already introduced evidence on the topic of qualifications to set a central line generally. Two of her experts, Dr. Van Norman and Dr. Goldstein, testified about the risks that come with central lines and the skills needed to set one. Pike therefore has no valid argument to reopen the proof to introduce evidence on this topic.

For another, Issue 4 is a foregone conclusion insofar as Pike argues for an alternative method of execution via lethal injection by central IV line.[1] Last week, her own experts testified that a central line is *more* likely to cause pain than a peripheral IV line. Dr. Goldstein in particular testified that the potential complications of a central line include organ damage and arterial bleeding. Based on the proof Pike presented, she has not met her burden to identify "a known and available alternative method of execution that entails a *lesser* risk of pain," which is "a requirement of all Eighth Amendment method-of-execution claims." *Glossip v. Gross*, 576 U.S. 863, 867 (2015) (emphasis added). Since Pike cannot prevail on Issue 4 due to her own experts' conclusions about central lines, the Court should decline to reopen the proof.

Pike suggests that the physician's qualifications bear on Issues 1 and 3 because they go to what would happen *if* the IV team is unable to establish peripheral IV access. Mot. for Emer. Relief

[1] Pike's argument on this point is contradictory. She contends that (1) a central line ought to be performed first as a viable, readily available alternative; and (2) she needs to introduce evidence of a past execution participant's lack of qualifications to set a central line in order to somehow prove that it is a viable, readily available alternative. This internal logical failure undermines her basis for introducing new evidence. It is also an attack on a straw-man argument about inability to perform a central line that was never advanced in this litigation.

at 3. But as explained above, the Supreme Court has already determined that "mere possibilities or hypotheticals" are insufficient to grant relief on the kind of theory Pike advances. *Hines,* No. M2025-00221-SC-DPE-DD at 6. The Supreme Court knew about Pike's theories on central line IV access when it limited the scope of this Court's hearing to *peripheral* IV access while holding all other issues in abeyance. Sup. Ct. Order at 2-3. Pike provides no basis for why an unverified news report should alter the scope of the Supreme Court's carefully drafted order. Her motion amounts to a demand for this Court to ignore the Supreme Court's directions.

4. **The motion lacks legal foundation.** Finally, Pike's motion identifies not a single source of authority that justifies her requests: not one case; not one rule of evidence or civil procedure. The legal cupboard is completely bare. Without any foundation to ground a legal analysis, this Court should deny the motion outright.

## CONCLUSION

Pike's motion is based solely on speculation about things she has read in the media. Her requested relief is foreclosed by controlling law and her own experts' testimony. The motion should be denied in full.

Respectfully submitted,

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# TENNESSEE DEPARTMENT OF CORRECTION

# LETHAL INJECTION EXECUTION PROTOCOL



APP-001230

# COMMISSIONER'S STATEMENT

The Tennessee Department of Correction ("the Department") is responsible for the incarceration of convicted felons serving sentences ranging from one year to death. Inmates sentenced to death are executed at Riverbend Maximum Security Institution ("RMSI").

As Commissioner of the Department, it is my duty to oversee the humane and constitutional execution of inmates sentenced to death in Tennessee. Tennessee law establishes lethal injection as the primary method for carrying out a death sentence and authorizes the Department to promulgate rules and regulations to facilitate executions by lethal injection. This Protocol will be reviewed as needed by me and/or my designee(s).

Commissioner

1-8-2025
Date

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# I. INTRODUCTION

This Protocol summarizes the most significant events, Department procedures, and personnel responsibilities for carrying out the Tennessee Supreme Court's orders on executions by lethal injection. It will be used to ensure the humane and constitutional execution of inmates sentenced to death in Tennessee. There will be no deviation from this Protocol except by order of the Commissioner, when deemed necessary to effectuate the purpose of this Protocol.

## II. PRIMARY RESPONSIBILITIES OF DEPARTMENT AND NON-DEPARTMENT PERSONNEL

### CENTRAL OFFICE PERSONNEL

#### COMMISSIONER

The Commissioner is responsible for overseeing the administration of humane and constitutional executions in Tennessee.

[redacted]

[redacted] is responsible for the planning and overall direction of all pre-execution, execution, and post-execution activities.

[redacted]

[redacted] is responsible for notifying the inmate and the inmate's counsel of the execution date, obtaining a completed Affidavit for Method of Execution from the inmate, and serving as custodian of the Department's records related to executions in Tennessee.

# PERSONNEL AT RMSI

## WARDEN

The Warden is responsible for carrying out the directives of the Assistant Commissioner of Prison Operations to ensure that this Protocol is followed.

## SPECIAL OPERATIONS TEAM

The Special Operations Team is responsible for preparing the lethal injection chemicals ("LIC") for administration.

## RESTRAINT TEAM

The Restraint Team is responsible for inmate management immediately before, during, and after the execution, including the use of appropriate restraint procedures.

## ESCORT TEAM

The Escort Team is responsible for coordinating the movement of all pre-approved witnesses.

[redacted]

[redacted]

## NON-DEPARTMENT PERSONNEL

### IV TEAM

The IV Team is responsible for establishing properly functioning IV lines for administration of the LIC.

### PHYSICIAN

The Physician is responsible for determining that the inmate is deceased using accepted medical standards and establishing central line IV access if necessary.

### CLERGY

Clergy, [redacted], may be approved in accordance with state law and Department policy to deliver chaplaincy services to the inmate and the inmate's family as requested.

## III. COMPOSITION, SELECTION, AND TRAINING OF DEPARTMENT AND NON-DEPARTMENT PERSONNEL

### COMPOSITION AND SELECTION OF THE EXECUTION TEAM

The Execution Team includes the following individuals and teams:

1. [redacted]

2. RMSI Warden.

3. Special Operations Team: consists of a team leader, two members and one alternate member. The team leader and members are selected by [redacted] with documented approval of the Commissioner.

4. Restraint Team: consists of a team leader, five other members, and two more alternate members. The team leader, members and alternate members are selected by [redacted] with documented approval by the Commissioner.

5. Escort Team: consists of a team leader and at least six other team members. The team leader and members are selected by the Warden.

## SELECTION CRITERIA FOR MEMBERS OF THE EXECUTION TEAM

Members of the Execution Team are selected based on factors that include:

1. Length of service with the Department;
2. Job performance;
3. Professionalism;
4. Review of the individual's personnel file;
5. Staff recommendations;
6. Ability to maintain confidentiality;
7. Willingness to participate;
8. Any other relevant or specialized training related to the position.



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## SELECTION OF SPECIALLY TRAINED NON-DEPARTMENT PERSONNEL

Non-department personnel are selected for roles in the execution as follows:

1. IV Team: consists of at least two members who are either physicians, physician assistants, nurses, emergency medical technicians ("EMTs"), paramedics, military corpsman with relevant medical training, or other certified or licensed personnel including those trained in the United States Military. All team members are currently certified, licensed and/or qualified within the United States to place IV lines. IV Team members are selected by the Commissioner.

2. The Physician is selected by the Commissioner.

## SELECTION CRITERIA FOR SPECIALLY TRAINED NON-DEPARTMENT PERSONNEL

Specially trained, non-department personnel are selected based on factors that include:

1. Education, training, and experience;

2. Professionalism;

3. Personal and professional recommendations;

4. Ability to maintain confidentiality;

5. Willingness to participate;

6. Any other relevant or specialized training related to the position.



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# PROTOCOL REVIEW, PRACTICE SESSIONS, AND SPECIALIZED TRAINING FOR EXECUTION TEAM MEMBERS

## Review of the Lethal Injection Execution Protocol

1. After selection, the Execution Team, the IV Team, and the Physician must review this Protocol. This review is documented.

2. At least annually, the Warden or designee reviews the Protocol in its entirety with the Execution Team. This review is documented..

## Monthly Practice Sessions

[redacted] ensures that monthly practice sessions are conducted. Practice sessions are attended by the Warden, the Special Operations Team, the Restraint Team, and the Escort Team. These regular practice sessions include simulations of all steps of the execution process beginning 2 hours before the execution, with the following exceptions:

1. Volunteers play the role of the inmate and the Physician.

2. No IV is inserted into the person playing the role of the inmate.

3. Saline solution is substituted for the LIC.

4. A body is not placed in a body bag.

## Additional Pre-Execution Practice Sessions

Additional practice sessions are held at least twice weekly starting two weeks before a scheduled execution. Attendance of all practice sessions during this period is required absent illness or other unavoidable circumstances.

## Documentation of Practice Sessions

All practice sessions are documented with the date and time, as well as the printed names and signatures of all participants.

## Specialized Training for Department Personnel

Members of the Special Operations Team receive training in vascular access/IV therapy by a qualified third party. Updated training is conducted annually.

## CHEMICALS USED IN LETHAL INJECTION

The Department uses the following LIC for executions by lethal injection:

**Pentobarbital 100 ml of a 50 mg/ml solution (a total of 5 grams)**

The Department will procure a sufficient supply of LIC to be used in lethal-injection executions. The LIC is subject to quality assurance and quality control testing. The Department will follow recommended guidelines for safe transportation and storage of LIC.

LIC will be secured [redacted]

[redacted] and RMSI Warden will conduct a semi-annual inventory of the container to verify its contents and the expiration dates of LIC. An additional inventory will be conducted 30 days before a scheduled execution. All inventories will be conducted by a minimum of two persons and documented in the log. If an inventory reveals expired LIC, appropriate disposal will occur.

[redacted]

# IV. PROCEDURES BEGINNING 30 DAYS BEFORE EXECUTION

**30 Days before the Day of Execution**

I. Central Office Personnel

A. [redacted]

1. Reviews documentation of training.

2. Confirms team leaders and members with documented approval by the Commissioner.

3. Sets pre-execution practice schedule.

4. Confirms that equipment inventory is completed and that any needed maintenance occurs.

5. Verifies and documents with the Warden the LIC to be used, including its quantity and expiration date.

B. Communications: Issues a news advisory about the date and time of the execution.

C. Office of Victim Services: Identifies family members of the victim(s) of the crime(s) for which the inmate was sentenced to death and advises them of the scheduled date and time of the execution.

II. RMSI or Debra Johnson Rehabilitation Center ("DJRC") Personnel

Warden:

1. Collects the Affidavit For Method of Execution from the inmate (if applicable) and provides copies to the Commissioner and [redacted] (See Appendix, p. 25).

2. Provides to the inmate the Affidavit to Select Defense Counsel Witness to Execution and Affidavit to Select Member of Clergy Preparing Inmate for Death. (See Appendix, p. 26).

3. RMSI Warden verifies and documents with the [redacted] the LIC to be used, including the quantity and expiration date.

4. RMSI Warden confirms that equipment inventory is completed and that any needed maintenance occurs.

5. Notifies the inmate about changes to the conditions of confinement over the next 30 days.

**21 Days before the Execution**

Central Office Personnel

Communications:

1. Receives media-witness applications, initiates background investigations on the applications, and advises the Commissioner of any issues arising from the investigations.

2. Sends witness agreement forms (Official Witness Agreement Form, Official Witness/Pool Reporter Agreement Form) to selected witnesses and establishes a deadline to return all completed forms.

**14 Days before the Execution**

I. Central Office Personnel

A. [redacted]

1. Directs the initiation of the Continuous Observation Logs, which record all daily activities of the inmate beginning 14 days before the execution. The logs are maintained at each post where the inmate is located until the execution occurs or a stay of execution is issued.

2. Directs the initiation of the final practice schedule.

B. [redacted]

Finalizes a list of all witnesses and prepares written invitations.



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II. RMSI or DJRC Personnel

Warden:

1. Confirms receipt of Affidavit to Select Defense Counsel Witness to the Execution and Affidavit to Select Member of Clergy Preparing Inmate for Death.

2. Directs the transfer of the inmate to a cell for enhanced monitoring.

3. RMSI Warden finalizes arrangements with the [redacted] for disposition of the inmate's body.

4. RMSI Warden confirms maintenance staff are scheduled to be at RMSI at least 4 hours before the scheduled execution.

**48 Hours before the Execution**

I. Central Office Personnel

[redacted]

1. Confirms adequate staffing and vehicles are in place for regular operations and the execution.

2. Ensures that each room in the Capital Punishment Unit receives final inspection specific to its functions. The Capital Punishment Unit includes, but is not limited to, the inmate's cell, contact and non-contact visitation areas, the control room, the secure monitoring area, execution chamber, and lethal injection room.

3. Oversees transfer of female inmate from DJRC to RMSI, if applicable.

II. RMSI Personnel

Warden:

1. Verifies inventory and functionality of equipment in the Capital Punishment Unit.

2. Oversees the transfer of the inmate to a cell in the Capital Punishment Unit.

**12 Hours before the Execution**

RMSI Personnel

Warden:

1. Ensures that access to RMSI during the 12 hours before the execution is limited to:

   a. On-duty Department personnel;

   b. On-duty contract workers;

   c. Volunteers deemed necessary by the Warden;

   d. Approved delivery vehicles;

   e. Law enforcement personnel on business-related matters;

   f. Approved witnesses (i.e. defense counsel, clergy, Attorney General's designee).

2. Initiates lockdown of RMSI that will continue through the duration of the execution.

3. Ensures the inmate concludes the last meal by 12:00 a.m. the night before the execution and that all eating utensils and leftover food are removed from the cell.

4. Ensures non-contact visits and phone calls—excluding visits and calls from the inmate's attorney of record—are concluded 12 hours before the scheduled execution unless expressly approved by the [redacted]

**Day of Execution**

**8:00 a.m.**

A. Commissioner or designee:

Provides a brief overview of the execution for the official witnesses.

B. Special Operations Team:

1. Team Leader retrieves LIC with the Warden and/or [redacted]

2. Confirms that the phones in the execution chamber are operational.

3. Confirms that the camera used to monitor the IV site is operational.

4. Team Leader prepares the syringes of saline and Pentobarbital which shall be labeled as follows:

| CHEMICAL CHART | |
|---|---|
| Syringe | Label |
| 1A | 50 ml Sterile Saline Solution, BLACK |
| 2A | 50ml (50mg/ml solution) Pentobarbital, GREEN |
| 3A | 50ml (50mg/ml solution) Pentobarbital, GREEN |
| 4A | 50 ml Sterile Saline Solution, BLACK |

Preparation of syringes occurs in the Lethal Injection Room.

a. One complete primary set ("Set A") of syringes is prepared and administered in carrying out the death sentence and an additional amount of LIC is available in the Lethal Injection Room for a backup set (Set "B"). Set B is only prepared if the inmate is not deceased after administration of Set A, applicable waiting period, and examination by the Physician.

b. The syringes are labeled, identifying the chemical contained in each syringe by (i) assigned number, (ii) chemical name, (iii) chemical amount and (iv) the designated color, as set forth in the chemical chart above. This information is preprinted on a label, with one label affixed to each syringe to ensure the label remains visible.

c. Once prepared, each syringe is placed into a designated tray in the order in which they are to be administered. The preparation of syringes is documented by a designated member of the Special Operations Team on the Chemical Preparation Time Sheet. (See Appendix p. 27).

5. After the Special Operations Team prepares the primary Set A



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syringes, the Special Operations Team prepares the IV lines for use by the IV Team. Each IV line consists of a sodium chloride bag, solution set, extension sets, and hemostatic clamps.

C. Escort Team:

1. Official witnesses report to the Administration Building no later than 8:30 a.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 9:45 a.m., where they remain until final movement to the official witness room.

2. Immediate family members of the victim(s) report to the Administration Building no later than 9:15 a.m. They are greeted by the Escort Team, processed through checkpoint, and moved to the conference room in Building 8 no later than 9:45 a.m., where they remain until final movement to the victim witness room.

3. The Escort Team processes, transports, and remains with the pre-approved official witnesses and victim witnesses through the conclusion of the execution and their return to designated staging areas and ensures that each witness group is always separated from the other groups.

4. [redacted] and the Physician are stationed in the capital punishment garage.

**10:00 a.m.**

1. At the command of the Warden, the Restraint Team removes the inmate from the holding cell, places him/her on the gurney, and secures him/her with restraints.

2. The Restraint Team moves the inmate to the execution chamber and secures the gurney. The Restraint Team secures the inmate's arms to arm extensions on the gurney. The Restraint Team confirms that the restraints are not so restrictive as to impede the inmate's circulation, yet sufficient to prevent the inmate from manipulating the catheter and IV lines.

3. The Warden, [redacted] Attorney General or designee, defense counsel witness and clergy, if requested, enter the execution chamber with the inmate.

4. Once the inmate is secured, the IV Team attaches the leads from the electrocardiograph to the inmate's chest. The IV Team confirms that the electrocardiograph is functioning properly. A backup electrocardiograph is on site and readily available, if necessary.

5. The IV Team determines the IV sites. The IV Team members insert a primary IV catheter and a backup IV catheter. The primary IV catheter is used to administer the LIC. The backup catheter is reserved in case the primary fails.

6. The Special Operations Team Leader ensures that the catheters are properly secured, properly connected to the IV lines, and out of reach of the inmate's hands. The Special Operations Team Leader opens the IV line to start a flow of sterile saline solution in each line and administers at a slow rate to keep the lines open. Any failure of an IV line shall be immediately reported to the Commissioner.

7. If necessary, the Physician will insert a central line.

8. The Escort Team secures official witnesses and victim witnesses in the appropriate witness rooms.

9. The Attorney General/designee, defense counsel witness, and any clergy member are escorted to the official witness room.

10. The camera and audio system are activated from the control room.

**10:10 a.m.**

1. The Warden and [redacted] open the blinds to the witness rooms.

2. The Warden contacts the Commissioner to ensure that no last-minute stay or reprieve has been granted.

3. The Warden asks the inmate if he/she wants to make a last statement.

4. The Warden gives the signal to proceed. The Special Operations Team Leader directs the assigned Special Operations Team Member to confirm the chemical name and order of syringes in the Primary Set A.

5. The Special Operations Team Leader administers all syringes in Primary Set A. In the event of a primary line failure with the first syringe of saline, the Special Operations Team Leader switches to the back-up IV line and administers the complete set of syringes.

6. After the four syringes in Primary Set A have been administered, the Special Operations Team Leader signals to the Warden at which time a 5-minute waiting period begins.

7. After the waiting period, all witness blinds are closed, the camera is disengaged, and the privacy curtains are closed. The Warden asks the Physician to enter the room to examine the inmate and determine if he/she is deceased. The Physician determines whether the inmate is deceased.

8. The Physician reports his findings to the Warden.

9. If the inmate is not deceased, a Backup Set B of syringes is prepared, the blinds are reopened, and steps 5 through 8 are repeated.

10. A designated member of the Special Operations Team will document all information contained on the Lethal Injection Chemical Administration Record (See Appendix, pp. 31-33).

11. The Warden announces that the sentence has been carried out and directs the witnesses to exit.



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# POST-EXECUTION PROCEDURES

1. The Commissioner notifies the Governor or designee and [redacted] via telephone that the sentence has been carried out and the time that death occurred.

2. The IV Team clamps and cuts the IV lines leaving them connected to the inmate for examination by [redacted]

3. [redacted] takes appropriate investigative measures and takes custody of the deceased inmate.

4. Witnesses are escorted out of the Capital Punishment Unit. Each group of witnesses is kept separate from the other.

5. Official witnesses who are media pool reporters are returned to the media tent to participate in the media briefing.

6. Victim witnesses who wish to speak with the media are escorted to the media tent.

7. Media may remain on site in a designated location outside the secure perimeter to complete live broadcasts.

8. The Warden determines when the prison will resume normal operations after consultation with [redacted]

9. [redacted] collects the Department's records relating to the execution.

10. The Commissioner, [redacted] the Warden and other relevant personnel, if any, review the execution process and determine whether any changes or modifications should be made.

# STAY OF EXECUTION

1. Upon receiving notification that a court has issued a stay of execution, or the Governor has issued a reprieve, the Commissioner consults with [redacted] and advises the Warden.

2. Upon receiving notification, the Warden:

   a. Advises the witnesses that a stay or reprieve has been issued.

   b. After consultation with the Commissioner, directs the IV Team to remove the catheters, if applicable, and directs the Restraint Team to return the inmate to the holding cell.

3. The Warden informs the appropriate personnel of the stay or reprieve.

4. The Traffic Control Team Leader notifies any protestors of the stay or reprieve.

5. The Escort Team escorts witnesses from the Capital Punishment Unit.

# V. APPENDIX AND FORMS

# AFFIDAVIT FOR METHOD OF EXECUTION

Under Tennessee law, you have the right to have your execution carried out by lethal injection. You also have the option of waiving this right, and choosing electrocution as the method of your execution. The purpose of this affidavit is to allow you an opportunity to either waive your right to have your execution carried out by lethal injection or to decline to waive that right. Failure to complete this form will result in the execution being carried out by lethal injection. You will not be given another opportunity to waive your right to have your execution carried out by lethal injection. If you waive your right to have your execution carried out by lethal injection, you may rescind that waiver by contacting the Warden no later than 14 days before the date of the execution and signing a new affidavit to that effect.

---

I, _____ TDOC No. _____, make the following choice concerning the method of my execution set to be carried out on the ____ day of _____, _____:

_____ I waive the right to have my execution carried out by lethal injection and choose to be executed by electrocution.

_____
Signature of Inmate

_____ I have been given the opportunity to waive my right to have my execution carried out by lethal injection and I decline to waive that right.

_____
Signature of Inmate

---

I certify that I presented this Affidavit For Method of Execution to inmate _____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

_____
Signature of Warden/Designee

---

Sworn to and subscribed before me this _____ day of _____, 20____.

_____
Notary Public

My Commission expires _____.



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# AFFIDAVIT TO SELECT INMATE WITNESSES TO EXECUTION

Under Tennessee law, Tenn. Code Ann. § 40-23-116, you may select one (1) defense counsel, a member of the clergy, and adult members of your immediate family to witness your scheduled execution. Below, please provide the full names of your selected witnesses.

Defense Counsel _____
Clergy _____
Inmate's immediate family _____

I, _____, TDOC No. _____, select the above witnesses.

_____ _____
Signature of Inmate Date

---

I certify that I presented this Affidavit to Select Inmate Witnesses to Execution to inmate _____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

_____ _____
Signature of Warden/Designee Date

---

Sworn to and subscribed before me this _____ day of _____, 20_____

_____ My Commission expires _____
Notary Public



APP-001255

# CHEMICAL PREPARATION TIME SHEET

Date_____

## PRIMARY SYRINGE SET

Syringe 1A-BLACK-50 ml of Sterile Saline Solution prepared by_____

at_____ a.m.

Witnessed by _____

Syringe 2A-GREEN-50 ml (50mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 3A-GREEN-50 ml (50 mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by _____

Syringe 4A-BLACK-50 ml of Sterile Saline Solution prepared by_____

at _____ a.m.

Witnessed by _____



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# CHEMICAL PREPARATION TIME SHEET

Date_____

## BACKUP SYRINGE SET

Syringe 1B-BLACK-50 ml of Sterile Saline Solution prepared by_____

at_____a.m.

Witnessed by _____

Syringe 2B-GREEN-50 ml (50mg/ml solution) of Pentobarbital prepared

by_____ at _____a.m.

Witnessed by _____

Syringe 3B-GREEN-50 ml (50 mg/ml solution) of Pentobarbital prepared

by_____at _____ a.m.

Witnessed by_____

Syringe 4B-BLACK-50 ml of Sterile Saline Solution prepared by_____

at_____a.m.

Witnessed by _____



APP-001257

# LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

Inmate Name_____ Inmate #_____

Date_____

## PRIMARY SET A

| | Chemical | Time Begin |
|---|---|---|
| Syringe 1-A | Saline 50 ml | _____ |
| Syringe 2-A | Pentobarbital 50 ml | _____ |
| Syringe 3-A | Pentobarbital 50 ml | _____ |
| Syringe 4-A | Saline 50 ml | _____ |

**End Time** _____

Recorder Signature _____



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# LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

**Inmate Name**_____ **Inmate #**_____

**Date**_____

## BACKUP SET B

| | **Chemical** | **Time Begin** |
|---|---|---|
| Syringe 1-B | Saline 50 ml | _____ |
| Syringe 2-B | Pentobarbital 50 ml | _____ |
| Syringe 3-B | Pentobarbital 50 ml | _____ |
| Syringe 4-B | Saline 50 ml | _____ |

**End Time**_____

Recorder Signature_____



APP-001259

# DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**TIME**

| | |
|---|---|
| _____ | Report to designated area for final briefing |
| _____ | Restraint Team and Special Operations Team report to Execution Chamber for final briefing. Special Operations Team sets up IV system. |
| _____ | Physician in place |
| _____ | IV Team in place (EMTs) |
| _____ | [redacted] in place |
| _____ | Warden in place |
| _____ | Check blinds and curtains |
| _____ | Advise Escort Team to transport Official Witnesses to Parole Room |
| _____ | Advised by Escort Team that Official Witnesses are in Parole Room |
| _____ | Advise Escort Team to escort Victim's Witnesses to Viewing Room |
| _____ | Advised by Escort Team that Victim's Witnesses are in place |
| _____ | Warden or designee checks to ensure execution is to proceed |
| _____ | Gurney positioned in Death Watch Area |
| _____ | Restraint Team enters cell and secures condemned inmate to gurney |
| _____ | Advise Escort Team to transport Official Witnesses to Death Watch vestibule |
| _____ | Advised by Escort Team that Official Witnesses are in the vestibule |
| _____ | IV Team enters the Execution Chamber |
| _____ | IV Team exits the Execution Chamber |
| _____ | Advise Escort Team to "Transport Official Witnesses in place" |

**Recorder's Initials**_____

## DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**TIME**

_____ Advised by Escort Team that "Witnesses are in place"

_____ Warden checks with Commissioner to proceed

_____ Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.

_____ Warden asks inmate for any last comments

_____ Warden orders Special Operations Team to proceed

_____ Lethal Injection process completed

_____ Blinds and curtains closed and closed circuit TV deactivated

_____ Physician enters the Execution Chamber

_____ Physician pronounces death – exact time

_____ Audio deactivated to witness rooms

_____ Advise Escort Team to remove Victim's Witnesses

_____ Advise Commissioner or designee that execution is completed

_____ Physician and EMTs depart

_____ [redacted] escorted to chamber to take possession of body. Pictures will be taken of body and Execution Chamber before removal of body

_____ Advised by Escort Team Victim's Witnesses are at Checkpoint

_____ Advise Escort Team to remove Official Witnesses

_____ Advised by Escort Team that Official Witnesses are at Checkpoint

_____ The body removed from the institution

**Recorder's Initials**_____



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## DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER CHECKLIST (continued)

**Inmate Name**_____ **Inmate #**_____

**Date**_____

**Inmate's Comments if any:**

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

**Lethal Injection Recorder** **Date**

SPECIFIC POST ORDERS – Special Operations Team (3 Members including a Team Leader and 1 Alternate)

Duty Hours – 6:00 AM – Until properly relieved

Composition of Team

1. Team Leader
2. Recorder
3. Camera Operator
4. Alternate Member

Equipment

[redacted]

Primary Responsibility

You have the responsibility of overseeing and leading the preparation/administration of the lethal injection chemicals, recording the steps and times of the chemical preparation/administration process, and operating the camera in the execution chamber throughout the process.

These are not all-inclusive duties; therefore, staff are subject to other duties as assigned.

Duties:

Team Leader:

1. Upon arrival at the post, visually inspects the area to ensure it is ready to carry out the sentence.

2. Ensure the camera operator tests the equipment upon arrival to the area.

3. Retrieve lethal injection chemical with either the Warden or [redacted] and complete inventory.

4. Retrieve IV lines, syringes, saline solution, supplies, etc. needed to perform the injection and complete inventory.

5. Ensure preparation of the lethal injection chemical.

6. Begin setup for lethal injection portion of execution process.

7. Ensure the recorder documents all steps on the Chemical Preparation Time Sheet and Lethal Injection Chemical Administration Record.

Recorder

1. Document all information on the Chemical Preparation Time Sheet(s).

2. Document all information on the Lethal Injection Chemical Administration Record(s).

3. Perform other duties as assigned by the Team Leader.

Camera Operator

1. Operate the overhead camera that monitors the IV catheter during the lethal injection process.

2. Perform other duties as assigned by the Team Leader.

Alternate Member

1. Cross train with team members to learn all duties in case the need arises.

**Depart the area once properly dismissed by the Warden or [redacted]**

**********END**********



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SPECIFIC POST ORDERS – Restraint Team (1 Leader/Supervisor, 5 Members, and 2 Alternates)

Duty Hours – 6:00 AM – Until relieved by a supervisor (Lieutenant or above).

Composition of Team

The team will consist of 1 Team Leader, 5 members, and two alternates.

Equipment

[redacted]

Primary Responsibility

You have the responsibility of safely and securely removing the inmate from the holding cell in the Capital Punishment Unit, securing the inmate to the gurney, and moving the inmate to the Execution Chamber.

Duties:

1. As a team, report to the holding cell to remove the inmate.
2. Team Leader will ask the inmate to approach the cell door and submit to restraints. If the inmate is compliant, the restraints will be applied.
3. If the inmate is non-compliant but passive, inform the inmate you will be entering the cell to apply restraints and remove him/her. The restraint team will enter the cell in the use-of-force formation and apply restraints.
    a. Team Leader/Supervisor oversees movement and directs team members during move.
    b. Team member 1 is responsible for pinning, if necessary, monitoring inmate, and maintaining/utilization of the cutters.
    c. Team member 2 secures the inmates upper right appendage and applies wrist restraint.

d. Team member 3 secures upper left appendage and applies wrist restraint.
e. Team member 4 secures the lower right appendage and applies leg restraint.
f. Team member 5 secures the lower left appendage and applies leg restraint.

4. In the event the inmate is non-compliant and exhibits threatening behavior, Team Leader will treat the situation as a potential use of force and begin de-escalation efforts to try and gain voluntary compliance. Should these efforts fail, the team will use force to remove the inmate from the cell.

5. Upon application of hand restraints, the team will remove the inmate from the cell, search the inmate, and secure the inmate on the gurney.

6. The team will transport the inmate on the gurney to the Execution Chamber. Once the gurney is in place, secure the inmate's arms to the arm extensions on the gurney.

7. The team will perform other duties as assigned.

**********END**********



APP-001266

SPECIFIC POST ORDERS – Escort Team (At least 6 Members and 1 Leader/Supervisor)

Duty Hours – 6:00 AM – Until relieved by a supervisor (Lieutenant or above).

Composition of Team

The team will consist of at least 6 members and 1 Team Leader.

Equipment

[redacted]

Primary Responsibility

Escorts are responsible for escorting official witnesses and immediate family members of the victim(s) to designated areas.

Duties:

1. The Escort Team reports to the Administration Building conference room no later than 8:00 AM to receive instructions.

2. The escorts will receive and greet official witnesses at 8:30 AM in the Administration Building. After the official witnesses are processed through checkpoint, they are moved to the Administration Building conference room. They are then escorted to the Parole Board Room in Building 8 no later than 9:45 AM. The official witnesses will remain in the Parole Board Room until final movement to the witness room.

3. The escorts will receive and greet the immediate family members of the victim at 9:15 AM in the Administration Building. After they are processed through checkpoint, the victim witnesses are moved the conference room in Building 8 no later than 9:45 AM. The victim witnesses will remain in the conference room until final movement to the victim witness room.

4. The Escort Team processes, transports, and remains with the pre-approved official witnesses and victim witnesses through the conclusion of the execution and the witnesses' return to the designated staging areas. The Escort Team ensures that each witness group always remains separated from the other groups.



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5. Upon pronouncement of the inmate's death, the Escort Team will escort immediate family members of the victim(s) out of the Capital Punishment Unit to the Administration Building for departure.

6. Once confirmation is received that immediate family members of the victim have departed, the Escort Team will escort official witnesses from the Capital Punishment Unit to the Administration Building for departure.

7. Escorts may perform other duties as assigned by a supervisor.

**********END**********



APP-001268

SPECIFIC POST ORDERS – Building 8 Control Room Officer

Duty Hours – 6:00 AM – 6:00 PM (Shift 2) (10A – 6P on day of move)
6:00 PM – 6:00 AM (Shift 1)

Report to Building 8 at approximately 10:00 AM (48 hours before scheduled execution) wearing the prescribed uniform and assume the duties in the Control Room in preparation for the inmate's arrival to a holding cell. If applicable, make your relief, as the equipment is issued on a 24-hour basis, you are required to indicate the key ring number and type of equipment accounted for in your post logbook. Count the keys to ensure the number of keys corresponds with the total number on the key ring chit. Key rings must be secured to a belt by a clip and a metal chain. Contact the Control Center and test your radio/body alarm.

Documentation

Logbook entries must be legible, documenting routine and unusual activity. An example of a log entry is:

> 6:00 AM Relieved Officer Williams and assumed duties as the Unit 2 Officer. Key Rings F-1, X-22, Radio, (1) set of handcuffs, (1) set of leg irons, (1) handheld metal detector, and (1) flashlight accounted for.
> 12:01 PM Count announced, Officer Smith backing count.
> 12:47 PM Clear count with 32 inmates.

Primary Responsibility

This post commences at approximately 10:00 AM, 48 hours before the scheduled execution. You have the responsibility of controlling all electronic access points to the Capital Punishment Unit and recording all activity. In addition, you are responsible for completion of the Lethal Injection Recorder Checklist, including when the time-specific events occur. Other non-routine activity should be noted in the post's logbook.

These are not all-inclusive duties. You are subject to other duties as assigned.

Security Measures

**Building access** - only authorized staff will be given access to areas within the Capital Punishment Unit. Questions regarding persons other than those with a role or previously identified in the protocols must be approved by the Warden prior to granting access. The request/approval is to be documented in the logbook.

**Official count times** - Official counts are conducted [redacted]

Duties:

1. Always remain alert and continuously monitor the unit's activity.
2. Complete the Lethal Injection Recorder Checklist form and note the times any identified activity occurs.
3. Announce official count times to the unit's observation officer.
4. Document the identity of all individuals who access the Capital Punishment Unit, including all staff and inmate visitors.
5. Conduct security inspection of the control room and document discrepancies in the log and submit work request for repairs.
6. Conduct key and equipment accountability during shift.

[redacted]

**********END**********



APP-001270

## SPECIFIC POST ORDERS - Unit 2 Housing Observation Officer

Duty Hours – 6:00 AM – 6:00 PM (Shift 2)
6:00 PM – 6:00 AM (Shift 1)

Report to Unit 2 wearing the prescribed uniform and relieve the outgoing officer. After you make your relief, as the equipment is issued on a 24-hour basis, you are required to indicate the key ring number and type of equipment accounted for in your post logbook. Count the keys to ensure the number of keys corresponds with the total number on the key ring chit. Key rings must be secured to a belt by a clip and a metal chain. Contact the Control Center and test your radio/body alarm.

Equipment

[redacted]

Primary Responsibility

This post commences 14 calendar days before a scheduled execution. You have the responsibility of continuous direct supervision of the inmate while he/she is housed in the designated general population housing-unit cell in preparation for his/her sentence being carried out. You will be positioned directly outside the inmate's cell with a line of sight inside the cell.

These are not all-inclusive duties. You are subject to other duties as assigned.

Documentation

Logbook entries must be legible and intelligible, documenting routine and unusual activity. An example of a log entry is:

> 6:00 AM Relieved Officer Williams and assumed duties as the Unit 2 Officer. Key Rings F-1, X-22, Radio, (1) set of handcuffs, (1) set of leg irons, (1) handheld metal detector, and (1) flashlight accounted for.
> 12:01 PM Count announced, Officer Smith backing count.
> 12:47 PM Clear count with 32 inmates.

Security Measures / Conditions of Confinement



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**Restraints** – The inmate will be restrained from the rear when going to the recreation area or other unit based out of cell activity. Full restraints will be used when inmate is moved outside of the unit.

**Meals** – The inmate will be provided meals consistent with the unit feeding schedule. All utensils and feeding materials will be retrieved following each meal.

**Telephone use** – The inmate will be permitted routine use of the telephone. All requests and initiated/completed calls will be documented in the logbook.

**Visits** – All inmate requested visits must be made in writing and approved by the Warden.

**Personal property** – Personal property may be transferred into the cell by/with the inmate upon prior approval from the Warden after consultation with Assistant Commissioner, Prison Operations. All items will be searched prior to allowance into the cell. He/she will be permitted to purchase commissary from the unit's approved list, maintain in the cell legal and religious materials, pencil, paper, and books. Use of hygiene items (soap and toothpaste) toothbrush, and a comb are permissible.

Females may have feminine hygiene items as needed.

All personal property will by visually inspected and electronically screened via x-ray each time items are removed are permitted inside the cell.

**Recreation** – The inmate will be permitted out of cell, outdoor recreation in one-hour increments on five separate days for a total of five per week. Recreation will be scheduled when the inmate is the sole person in the outdoor recreation area.

**Clothing exchange** – All clothing issued will be visually and electronically screened for contraband.

**Bedding /Mattress**– Upon initial placement, issue a new mattress, all new bedding, and towels. Authorized items include two sheets, one blanket, one pillow, one pillowcase, two wash clothes and one towel.

**Showers** – Upon request, razors will be issued and retrieved upon use each time.

**Cell sanitation** – Upon request by the inmate, sanitation supplies (broom and cleaner) may be issued only when a supervisor is present in the unit. The items must be collected immediately upon completed use.

**Official count times** – Official counts are conducted [redacted]

**Clinical rounds** – Ensure that Clinical Services staff visits the unit daily. The staff member will be required to initial the CR-2578 form and the officer make an entry documenting their presence in the post logbook.

Duties:

1. Always remain alert and continuously monitor inmate.

2. Ensure inmate is issued one set of clean clothing initially prior to entering cell and exchange clothing prior to re-entering the cell after each exit (shower, recreation, visitation, etc.).

3. Search inmate after each cell exit and prior to re-entering. All searches will include the use of a handheld metal detector.

4. Conduct official counts with a second staff member, sign slip, and submit to the Control Center. Staff must be certain they are observing living, breathing flesh in making an accurate count.

5. Document inmate's actions that are not indicated on the Segregation Unit Record (reading, writing, listening to music, watching tv, etc.) in the post logbook.

6. Document in the post logbook, each request made by the inmate and actions taken.

7. Document the beginning and ending times of meals, visits, and telephone calls.

8. Request a security supervisor or higher prior to removing the inmate from a secured area for supervision oversight and guidance.

9. Conduct a proper search of all items and will document the search in the logbook. Legal mail will be scanned for contraband and opened in the presence of the inmate.

[redacted]

**********END**********



APP-001273

FILED
08/18/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**STATE OF TENNESSEE v. CHRISTA GAIL PIKE**

**Criminal Court for Knox County**
**No. 58183A**

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**No. M2020-01156-SC-DPE-DD**

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**ORDER**

On August 17, 2026, Christa Gail Pike filed a Motion for Emergency Relief, asking this Court to order the Special Master to reopen the evidentiary hearing for the limited purpose of receiving testimony "concerning the execution physician's qualifications and his confirmed participation in Ms. Pike's scheduled execution." The State filed a response asserting no emergency exists because the identity of the physician is not confirmed, according to the Lethal Injection Protocol, until 30 days prior to the execution. Ms. Pike filed a reply to the State's response.

This case is still pending before the special master as the special master's report and recommendation has not yet been filed. Therefore, any request to reopen the evidentiary hearing should be directed to the special master and not this Court. Ms. Pike's Motion for Emergency Relief is respectfully denied.

PER CURIAM

Kyle A. Hixson, J., not participating

FILED
BY MIKE HAMMOND
2026 AUG 18 PM 3:43
KNOX COUNTY CRIMINAL COURT
KNOXVILLE TN

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

| | |
|---|---|
| State of Tennessee | ) |
| | ) Supreme Court Case No. M2020-01156-SC-DPE-DD |
| v. | ) Knox County Case No. 58183A |
| | ) CAPITAL CASE (Execution Date: Sept. 30, 2026) |
| Christa Gail Pike | ) |

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## Christa Gail Pike's Proposed Findings of Fact and Conclusions of Law

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Christa Gail Pike, through counsel, submits her Proposed Findings of Fact and Conclusions of Law pursuant to the scheduling order entered in this matter.

### BACKGROUND

Christa Gail Pike is a death-row inmate currently incarcerated at the Debra K. Johnson Rehabilitation Center (DJRC) in Nashville, Tennessee, where she has been continuously incarcerated since 1996. She is presently scheduled for execution on September 30, 2026. On July 10, 2026, the Tennessee Supreme Court entered an Order appointing the Honorable W. Mark Ward, Senior Judge, as Special Master. The Order directed Special Master Ward to conduct an evidentiary hearing and issue findings of fact and conclusions of law on five specific issues regarding Ms. Pike's challenges to Tennessee's lethal injection protocol.

The five issues referred to the Special Master are:

> (1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));

(2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder (PTSD), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering";

(3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering,";

(4) whether Ms. Pike's proposed alternative methods of execution would significantly reduce a substantial risk of severe pain.; and

(5) whether TDOC is required to or would permit a spiritual advisor to be present in the execution chamber during Ms. Pike's execution.

Prior to the hearing, the parties resolved Issue 5 by stipulation and dismissal because the Tennessee Department of Correction (TDOC) approved Ms. Pike's request for her spiritual adviser, Reverend Mikey Noechel, to be present in the execution chamber during the execution. The remaining proposed findings of fact were elicited during the hearing in this matter.[1]

[1] As of this filing, only transcripts from August 11 and 13 have been provided to the parties. Ms. Pike will supplement these findings as necessary and appropriate to support her claims.

## FINDINGS OF FACT

> "It's not a requirement that [lethal injection] be humane, it just is a requirement that it not be cruel. . . I think that there's cruelty . . . it's a feature not a glitch." (Tr. Vol 1, 285:21–25). "[F]or a long time, lethal injection looked kind of okay and it was designed to look kind of okay. But it's not okay. It's not okay. . . It doesn't do what it's claimed to do. It doesn't create a painless death. It doesn't create a humane death. It creates cruel death. And I think that that's by design. I'm not suggesting it was intended, but that's the finding." (Tr. Vol 1, 298:19–299:5).
>
> - Dr. Joel Zivot

### *Issue 1*

1. Ms. Pike has thrombocytosis. "She's had it investigated by hematologists. She has the genetic defect. . . There could be periods where the platelet count fluctuates, but . . . this does not mean that she does not have this diagnosis." (Tr. Vol 1, 279:4–13). "Her condition is not curable." (Tr. Vol 1, 280:25). Her platelet count "always generally is running high . . . her thrombocytosis is persistent and is material and presents [ ] this particular risk [clotting] to her." (Tr. Vol 1, 282:1–8).

2. Thrombocytosis is defined as "an excess number" of platelets. The normal number is between 150,000 to 450,000. "[M]ost people are probably in the [ ] two to 300,000 range. It's not so common to see platelet counts even above 400,000." (Tr. Vol 1, 253:4–5, 16–20). Thrombocytosis, then, means a platelet count of more than 450,000. (Tr. Vol 1, 254:1–2). Essential thrombocytosis is a "precancerous condition . . . It's a genetic defect that [Ms. Pike] has that has resulted in this problem." (Tr. Vol 1, 254:7–10).

3. Even though thrombocytosis is defined as a platelet count above 450,000, the daily count can wax and wane. (Tr. Vol 1, 254:18–20). Ms. Pike's most

recent platelet count (452,000) is "abnormal." (Tr. Vol 1, 277:22–278:1). Ms. Pike's next most recent platelet count (433,000) is still a "high number." "[M]ost people are like 200, 250, 300." (Tr. Vol 1, 289:16–29).

4. Ms. Pike's thrombocytosis "increases problems with IV access. . . ." (Tr. Vol 1, 221:1–2). "All patients with essential thrombocytosis have increased clotting, increased oozing, and microvascular disease." (Tr. Vol 1, 223:3–5). "Intravenous may be started, it just may not last long or it also may be difficult to find a vein [ ] that's patent and able to accommodate an intravenous catheter." (Tr. Vol 1, 283:12–15).

5. When the platelet count is "higher than normal, the risk is that the blood will clot more readily." (Tr. Vol 1, 255:5–7).

6. The State's expert on hematology, Dr. Richard Mansour, testified that he could not rule out the risk posed by Ms. Pike's thrombocytosis, acknowledging that risk is a continuous variable that increases along a spectrum and that Ms. Pike has a higher risk for clotting than an average patient.

7. Dr. Mansour had not placed an IV line in fifteen to twenty years.

8. Dr. Mansour acknowledged on cross-examination that he had not reviewed all of Ms. Pike's platelet level records and was unfamiliar with several documented platelet counts showing consistent levels well-above 450,000, including counts of 509,000, 670,000, 581,000, 695,000, 573,000, 525,000, and 660,000.

9. "[T]here are certain kinds of conditions that people have that make them very likely to bleed. There are other kinds of conditions that people can have that make them very likely to clot. . . thrombocytosis is a condition that makes the chances

of [abnormal clotting] when it shouldn't clot. But also paradoxically . . . people can also have some increased tendency to bleed. And that's because platelets themselves involve another kind of factor called Von Willibrand's factor." (Tr. Vol 1, 255:22–256:8). Platelets can "consume the Von Willebrand's factor. . . and in that situation, instead of clotting, now you bleed." (Tr. Vol 1, 256:15–18). "[I]f there's more of the factor that causes clotting, it should result in more clotting, not less. But in this kind of paradoxical circumstance, there can be more bleeding than clotting." (Tr. Vol 1, 256:22–25).

10. Thrombocytosis can impact "both blood draws and IV starts [because] these patients all have increased clotting of the blood because they have an elevation of an element of blood called platelets to . . . a very [ ] high degree and it causes both small and big blood clots to form." (Tr. Vol 1, 180:18–24). When blood vessels are injured, "platelets activate and these people will have increased clotting and potentially internal scarring of the veins." (Tr. Vol 1, 181:1–2).

11. People with thrombocytosis "have a form of what's called microvascular disease because of the scarring and difficulty with platelets in the veins [and] often smaller internal diameters." (Tr. Vol 1, 181:3–6). They also have "more bleeding if they have a broken vein and they have more chance for . . . the vein to clot off and the IV to clot off if they have an IV start." (Tr. Vol 1, 181:6–9). They "are more difficult to access because of smaller scarred veins. Have a propensity for clotting the IVs off when they have them. And present a problem with oozing and bleeding around the

veins. If there is a break in the vein it can make IV starts more difficult." (Tr. Vol 1, 181:10–15).

12. If the vein is damaged during IV placement, "you get bleeding and in the case of someone with thrombocytosis you're going to get potentially more bleeding than usual." (Tr. Vol 1, 184:17–20).

13. There is no documentation that would show difficult vein access due to repeated blood draws "because she has essential thrombocytosis. We simply are aware of [ ] the fact that she has a higher risk for having difficult access." (Tr. Vol 1, 225:18–23).

14. Once an intravenous line is placed, because it "is not supposed to be there normally," the body will regard the catheter as an "invader and will kind of try to clot itself around that catheter under normal circumstances." (Tr. Vol 1, 259:1–4). Because of Ms. Pike's thrombocytosis, "the vessel itself can become inflamed and then the inflammation [ ] happens very rapidly [and] there can then be a clot because she now has this . . . tendency to clot." (Tr. Vol 1, 259:7–10). The risk that Ms. Pike faces is "quite material." (Tr. Vol 1, 259:14).

15. Pentobarbital is an "extremely caustic" chemical, like Drain-o or lye. (Tr. Vol 1, 188:25–186:1). If it is injected into the tissues—as opposed to the veins—it may cause a "deep chemical burn that is very severe. It destroys tissue on contact. . . It is excruciatingly painful." (Tr. Vol 1, 189:4–6, 12–13). Dr. Van Norman has "personally seen patients scream when that happens," and has "personally had to deal with burns that happened from barbiturate injections of pentobarbital or thiopental during

anesthesia care." (Tr. Vol 1, 189:12–15). "I don't mean the sensation burning. Mean it can literally cause a burn." (Tr. Vol 1, 214:22–23).

16. The reason why pentobarbital was used at all in a clinical setting was because it was used in "quite a small quantity and it has been [ ] normally in an IV that's flushing continuously with fluid and, you know, brisk circulation." (Tr. Vol 1, 240:1–4). If pentobarbital travels "beyond outside of a vessel, then getting into the tissue itself, that can be very caustic and result in a very serious burn." (Tr. Vol 1, 240:17–20).

17. Additionally, the drug does not have the "same clinical effect when that drug doesn't get totally in the bloodstream. Pentobarbital . . . doesn't have clinical effect in the tissues. So the clinical effect you'll see will be reduced by whatever amount [ ] is given into the tissues. . . ." (Tr. Vol 1, 189:21–190:1). "So you get reduced clinical effect. You get local excruciating pain. You get local instant destruction of tissue damage." (Tr. Vol 1, 190:2–4).

18. Pentobarbital is classified along a "log scale," meaning that as the number goes up by one on the pH scale, the alkali level actually increases by a factor of ten each time. (Tr. Vol 1, 238:18–20). "So pentobarbital is nine or ten. And so that means [ ] each time you go up by one it's a factor of ten. So from seven to eight it would be ten times as strong an alkali. From eight to nine, would be a hundred times. And then [ ] nine to ten would be a thousand times. So a thousand times potentially stronger an alkali than water. And also as a similar kind of compound, it's like bleach." (Tr. Vol 1, 239:4–12).

19. Pentobarbital "does not relieve pain in any dose. It's not used for pain control." (Tr. Vol 1, 263:5–7). "[N]o one would use a barbiturate alone . . . and expect it to do anything like control pain. . . that's not what it's used for." (Tr. Vol 1, 263:14–17). It would be "one drug in a series of drugs that would be used at the beginning of an anesthetic." (Tr. Vol 1, 263:22–23).

20. Pulmonary edema is "generally a combination of blood and other kinds of fluid that accumulate within the lungs. . . it's a terrifying experience to try breathe [ ] through this fluid. And that's what people who are afflicted with pulmonary edema face." (Tr. Vol 1, 249:12–14, 250:2–5).

21. Dr. Joel Zivot is board certified in anesthesiology and critical care medicine. He has reviewed more than 300 autopsies of inmates executed by lethal injection, and the "finding of pulmonary edema is very common with pentobarbital. Probably on the order of sixty-five to seventy percent of the time. . . it's not a glitch. It's a normal finding. A normal and common finding of pulmonary edema when people are killed with pentobarbital." (Tr. Vol 1, 248:17–249:4).

22. In Dr. Zivot's opinion, pulmonary edema "happens very rapidly. That the time it would take for pentobarbital to travel from the arm to the lungs is really only a matter of moments. And so almost instantly, [ ] there's likely some pulmonary edema that's occurring." (Tr. Vol 1, 250:10–14). An inmate is "sensate to pain at that time." (Tr. Vol 1, 265:9). "It starts to happen at the beginning. So the beginning is when you're going to have the highest chance of feeling it." (Tr. Vol 1, 295:1–4). "[T]he

amount of time that will be there will be enough that it could be experienced as cruel and painful." (Tr. Vol 1, 297:14–17).

23. "I think that even if it's short, even if we could concede that it's some short period of time. . . the amount of pain is very severe. And the timing of it is long enough that the brain can conceive of it. That it can be experienced" (Tr. Vol 1, 299:6–14).

24. Pulmonary edema occurs because the huge quantity that is injected into an inmate "burns through this very thin membrane and now blood rapidly enters into the lungs themselves." (Tr. Vol 1, 251:16–18). "And the reason why it gets frothy like that is because a person is breathing." (Tr. Vol 1, 251:22–23).

25. Byron Black's autopsy showed "pulmonary congestion and edema. . . that's something that should not be present here. So the lungs are basically heavy, full with congestion fluid and blood and there's blood in the airways as well themselves." (Tr. Vol 1, 245:2–9).

26. Harold Wayne Nichols' autopsy showed that the "cut surfaces of the lungs exude marked amounts of blood and frothy fluid." (Tr. Vol 1, 247:23–24).

27. Pulmonary edema is an injury to the lungs. "And so now the body has this immediate reaction to being injured. . . platelets are going to be circulating and will be in these injured lungs. . . [having] even a more intense and worse inflammatory kind of reaction to this injury." (Tr. Vol 1, 257:15–258:2). For Ms. Pike, "it will be an [ ] even worse, if it's possible to imagine, potentially worse example of pulmonary edema that she may face in this case." (Tr. Vol 1, 258:4–7).

28. People under anesthesia can recall what happens to them, "they know it's happening. . . patients react to pain even under deep anesthesia." (Tr. Vol 1, 292:20–293:1). "[I]f you put your finger in a flame and count to 30, 30 seconds if Dr. Antognini - - or 20 if Dr. Antognini says 20, 20 seconds is an awfully long time to be burned alive." (Tr. Vol 1, 293:6–9). "I don't know, and neither does he, how long it exactly would be . . . No one knows the duration [of experienced pain]. It's not knowable. I can surmise it, but it's not knowable. . . I think it could be minutes. It won't be one second. It could be minutes. Or a minute." (Tr. Vol 1, 293:10–13, 294:3–4, 18–19).

29. Dr. Joseph Antognini has testified or provided reports for states or state department of corrections in cases in: Oklahoma, Tennessee, Georgia, Alabama, Louisiana, South Carolina, South Dakota, Arkansas, Ohio, Missouri, and Florida. He has never declined to take a case because of a state's chosen method of execution.

30. Dr. Antognini has endorsed protocols using pentobarbital, nitrogen hypoxia, three-drug midazolam protocols, and Florida's three-drug protocol consisting of etomidate, recuronium, and potassium acetate.

31. In *In re Federal Bureau of Prisons' Execution Protocol Cases*, 471 F. Supp. 3d 209 (D.D.C. 2020), the testimony of Dr. Zivot and Dr. Van Norman was credited over the testimony of Dr. Antognini.

32. In *Henness (In re Ohio Execution Protocol Litig.)*, 2019 U.S. Dist. LEXIS 8200, *224 (S.D. Ohio Jan. 14, 2019), United States Magistrate Judge Michael R.

Merz found that Dr. Antognini's opinions were "shown to be an outlier in the field of anesthesiology."

33. More recently, in *Hoffman v. Westcott*, 2025 U.S. Dist. LEXIS 43627, *22 (M.D. La Mar. 11, 2025), Chief United States District Judge Shelly Dick found that "Dr. Antognini's opinions are untested scientific hypotheses. The studies on which he relies are either irrelevant or unpersuasive." *See also id.* at n.106 ("Dr. Antognini relied on . . . a 'dog study.' Reliance on a dog euthanasia study is flawed. Dr. Antognini admits dogs have different ventilation, different cardiac output, and different metabolisms as compared to humans.).

34. In every case Dr. Antognini has testified or provided a report for, he has opined that the inmate loses consciousness in under a minute. For example, in *Hoffman, supra*, he opined that loss of consciousness "will occur between 10 and 40 seconds" after the inmate inhales nitrogen. *Id.* at *22. In *Brant v. Allen*, Case No. 3:13-cv-412, (M.D. Fl.) he opined that the inmate would lose consciousness in 30-60 seconds after etomidate is administered.

35. In the more than 200 articles listed on his CV, Dr. Antognini has never published an article about pentobarbital. He has published seven articles about thiopental, but those articles deal with immobilization of the spinal cord—not the time until unconsciousness.

36. Dr. Antognini's conclusions are bolstered by animal studies that he grossly misconstrues and extrapolates from to support his opinions. For example, the Aleman study cited in ¶ 9 of his Declaration omits the fact that the horses were

heavily sedated and received more than just pentobarbital. Both conclusions in the Aleman study relied upon by Dr. Antognini to support his opinion that loss of consciousness occurs in 20-30 seconds qualify their conclusions with the word "might." In fact, the Aleman study says, specifically "This *might* support lack of conscious perception."

37. The Buhl study, cited by Dr. Antognini to support his unconsciousness theory is similarly mischaracterized. Dr. Antognini's contention that "collapse" of the horses equaled unconsciousness is not founder anywhere in the article and he could not offer the explanation on cross-examination. Additionally, the study states: "It is impossible to know whether the horses were able to register pain or distress from the commencement of the pentobarbital injection until cardiac death occurred up to 15 minutes later." The horses in that study were also heavily sedated—a finding that the study notes in its conclusion: "As horses should be deeply anesthesized during the procedure, it is unlikely that they do experience pain."

38. The Evans study analyzed dog euthanasia using pentobarbital and found: "One of the undesirable results of euthanasia with pentobarbital alone is the occurrence of terminal gasps several seconds to minutes after the onset of apnea." Witnesses to Tennessee executions note the gasps of inmates as the pentobarbital is injected in their bodies. Both Byron Black and Harold Wayne Nichols had pulmonary edema noted in their autopsy reports.

39. Paragraphs 15 and 16 of Dr. Antognini's Declaration contain no sources or citations and depend on his theory about the onset of unconsciousness being true.

40. Dr. Antognini admitted that flash pulmonary edema—the allegation made by Ms. Pike—is different than pulmonary edema. The study he cites for his opinion that pulmonary edema is a post-mortem finding (Shiotani) is a study from Japan involving *three* individuals, who all suffered cardiac arrest and were administered CPR prior to their death. Pulmonary edema was found through electronic CT scans days after their death. Dr. Antognini agreed that CPR can cause pulmonary edema as part of post-resuscitation lung injury.

41. The rabbit study cited by Dr. Antognini is from 1950 and actually shows that the rabbits injected with pentobarbital had the heaviest lung weights—an indicator of pulmonary edema—upon autopsy conducted immediately after their death. Dr. Antognini included Table 2 from that study in his Declaration but strategically omitted Table 1.

42. TDOC has never made an "accommodation" for an inmate scheduled to be executed based on a specific medical condition that inmate had been diagnosed with. (Tr. Vol 1, 74:6–11).

43. TDOC has not, "at this point," taken any steps to make "accommodations" for Ms. Pike's specific medical condition(s). (Tr. Vol 1, 74:18–25; 87:25). Warden Nelsen has not received specialized training about Ms. Pike's medical conditions, (Tr. Vol 1, 109:9–10), has not made any assessment about Ms. Pike's difficulty with blood draws, (Tr. Vol 1, 109:13), has not been involved in any discussions about contingency plans like placing a central line for Ms. Pike's

scheduled execution, (Tr. Vol 1, 109:17), and has not been involved in any discussion about Ms. Pike's specific mental illness, (Tr. Vol 1, 109:24).

*Issue 2*

44. Dr. Bethany Brand is a licensed clinical psychologist and nationally recognized expert in trauma with over thirty years of clinical, research, and teaching experience. She specializes in the assessment and treatment of individuals who have experienced chronic, severe trauma, including childhood sexual abuse.

45. Dr. Brand conducted a comprehensive psychological evaluation of Ms. Pike, including administration of the Clinician-Administered PTSD Scale for DSM-5 ("CAPS-5") which is the gold-standard diagnostic interview for post-traumatic stress disorder.

46. Ms. Pike suffered extreme, chronic, and repeated sexual abuse beginning in early childhood and continuing through age seventeen. She was sexually assaulted by at least five different perpetrators over the course of her childhood and adolescence. The abuse began in preschool when Ms. Pike's paternal grandmother's boyfriend orally raped her on a repeated basis over a period of years. When she was eleven, a neighbor raped Ms. Pike and restrained her while inserting objects into her body. The assault caused a genital infection sufficiently severe to require medical attention. The perpetrator was subsequently prosecuted for this offense. At age seventeen, Ms. Pike was raped by a stranger who dragged her off the street at night, struck her head against a rock, and covered her mouth as she screamed.

Contemporaneous hospital records and a police report from the Carrboro, North Carolina Police Department document this assault and the injuries she sustained.

47. Based on her administration of the CAPS-5 and her comprehensive evaluation, Dr. Brand confirmed that Ms. Pike meets the full diagnostic criteria for PTSD with severely disruptive symptoms.

48. Dr. Brand testified that traumatic memory is qualitatively different from ordinary autobiographical memory. Traumatic memories are not encoded in narrative form; rather, they are stored as involuntary sensory fragments—visual images, bodily sensations, sounds, and smells—that are neurobiologically relived when triggered, not merely recalled as past events.

49. Dr. Brand testified that being closely observed for two weeks at DJRC and for 24 hours at Riverbend Maximum Security Institution (RMSI) would be very psychologically harmful to Ms. Pike and likely to trigger a traumatic response, particularly when she is away from everything familiar, as sexual assault survivors can find comfort in control and familiarity.

50. Dr. Brand testified that the Protocol's use of a potentially all-male restraint and extraction team will cause Ms. Pike to neurobiologically relive her past sexual assaults in real time. Because her assaults involved being physically overpowered and immobilized by men, the execution protocol's requirement that she be physically restrained to a gurney constitutes a near-perfect replication of the sensory conditions of her original assaults.

51. Dr. Brand testified that being strapped to a gurney while the IV Team inserts intravenous lines into her body would precipitate a full trauma flashback, including loss of touch with present reality, and would likely activate the involuntary fight/flight/freeze/immobility survival response. In this state, Ms. Pike would experience the subjective terror of being actively raped while being physically unable to resist.

52. Dr. Brand specifically testified that femoral venous access—insertion of a catheter into the groin area—would "directly re-trigger the terror, as well as the sensory and situational memories, of being raped" because of the intimate anatomical location and the positioning required, which closely replicates the physical configuration of sexual assault.

53. Dr. Brand acknowledged that if observation during the execution process were performed exclusively by female staff, it would lessen—though not eliminate—the negative psychological impact on Ms. Pike. However, Dr. Brand testified that the extraction and physical restraint process itself cannot be ameliorated by changing the gender of observation staff because the core traumatic trigger is the experience of being physically overpowered and immobilized, not merely being watched.

54. The execution protocol requires that Ms. Pike be extracted from her cell, physically restrained, placed on a gurney, transported to the execution chamber, and strapped down for intravenous line placement. Each of these steps involves physical contact and restraint by correctional staff—predominantly male officers.

55. Dr. Brand testified that the cumulative effect of these sequential restraint events—extraction, transport, strapping to the gurney, and IV insertion—constitutes a cascading series of trauma triggers that would place Ms. Pike in an escalating state of neurobiological re-traumatization. Each successive physical contact intensifies the flashback response, making it increasingly severe and impossible to manage or self-regulate.

56. Dr. Brand testified that the psychological suffering Ms. Pike would experience constitutes severe mental anguish above and beyond the punishment of death itself. The Protocol does not merely execute Ms. Pike; it subjects her to the subjective experience of being raped—again—as a precondition to her execution.

57. Ms. Pike will be placed under "continuous observation" in the Capital Punishment Unit at RMSI starting no earlier than 24 hours prior to her scheduled execution. (Protocol at 16). "Continuous observation documents activity of the inmate over a period of time. Their recreation, their eating, their property, their reading, any type of activity in the cell [including] showers, visits, et cetera." (Tr. Vol 1, 84:7–11).

58. "Continuous observation" is the same as "continuous lockdown status." (Tr. Vol 1, 84:16). While under "continuous observation," the inmate is "removed from the general population and does not have free movement throughout either the facility or the area where they're housed." (Tr. Vol 1, 90:4–8). During that period the inmate is under "one-on-one observation." (Tr. Vol 1, 85:7–8; 91:20–24). "[T]he officer is positioned outside the inmate's cell [and has] constant visual sight of the inmate to observe all their activities." (Tr. Vol 1, 103:13–15). During showers an "officer is on

the outside of the cell observing them through the bars." (Tr. Vol 1, 108:15–21). There is a control room that's looking directly into the cells in the Capital Punishment Unit. (Tr. Vol 1, 131:12–13). "Continuous observation" is solitary confinement.

59. According to Linda Thomas, Assistant Commissioner of Prison Operations for the TDOC, TDOC "will make every effort to assign only female staff to observe Ms. Pike" while she is under continuous observation at RSMI. (Thomas Decl. ¶ 6). According to Warden Nelsen, that is the "goal." (Tr. Vol 1, 112:17–20; 113:21).

60. TDOC cannot guarantee that Ms. Pike will be under continuous observation by solely female staff. (Tr. Vol 1, 70:20–23).

61. Dr. Brand's testimony established that these concessions do not address the core harm: the extraction, restraint, and physical immobilization by male staff that constitutes the central traumatic trigger and cannot be ameliorated by observation conditions alone.

62. Linda Thomas does not know how many officers work an observation period in the Capital Punishment Unit, (Tr. Vol 1, 70:24–71:1); does not know how long each of the shifts are, (Tr. Vol 1, 71:2–3); does not know how many female corrections officers are employed at RMSI, (Tr. Vol 1, 71:5–8); and does not know how many female corrections officers are employed by TDOC, (Tr. Vol 1, 71:9–11). Warden Nelsen does not know how many female corrections officers are employed at RMSI. (Tr. Vol 1, 98:2–4).

63. Warden Nelsen is "not sure" if RMSI has feminine hygiene products should Ms. Pike need them. (Tr. Vol 1, 105:3–5).

64. TDOC has taken the "same steps [it uses] for everyone," regarding the steps that have been taken to ensure that Ms. Pike is observed solely by female guards and staff while at RMSI. (Tr. Vol 1, 66:23–25).

65. The "extent that" Linda Thomas could "commit to" regarding Ms. Pike's transportation from DJRC to RMSI was that TDOC would "definitely use females. . . We will use female staff." (Tr. Vol 1, 67:6–9).

66. Linda Thomas could not guarantee that Ms. Pike would be transported solely by female staff. (Tr. Vol 1, 67:19–23).

67. When Ms. Pike is extracted from her cell prior to her scheduled execution, the warden will "[stand] in front of [the] cell" and announce that guards will be entering her cell, (Tr. Vol 1, 134:23–24); then four or five guards "all dressed in black" will stand "shoulder to shoulder" with "their hands on the shoulder in front of them" and announce with "very loud commands" that they are entering her cell, (Tr. Vol 1, 135:1–5); then they will order her "to kneel on the bunk, place [her] forehead on the wall, and then [restrain her] in the cell," (Tr. Vol 1, 135:5–7).

68. Then, they will shackle her "belly, hands, and feet," "stand behind" her, and "lift [her] onto the gurney." (Tr. Vol 1, 135:12–14). Then they will strap her down. (Tr. Vol 1, 135:15). It will take a "considerable amount of time securing all of the straps." (Tr. Vol 1, 135:15–16). Then they will "roll [her] in to the execution chamber." (Tr. Vol 1, 135:20).

69. In the execution chamber, they will secure "the gurney to the floor." (Tr. Vol 1, 136:1). Then they will "put the arms on the gurney. Each side of the arm. The left side and the right side." (Tr. Vol 1, 136:2–3). Then they will unhandcuff Ms. Pike and then outstretch her arms along the gurney. (Tr. Vol 1, 136:4–5). Then they will attempt to inject her body with pentobarbital.

70. Media and witnesses will not be able to see what is happening, but they will hear Ms. Pike's screams. (Tr. Vol 1, 138:24–25).

*Issue 3*

71. Tennessee's lethal injection protocol requires the establishment of two functioning peripheral intravenous lines—a primary line and a backup line— but does not identify the size of the IV catheter to be used.

72. Dr. Scott Goldstein, a board-certified emergency medicine physician with extensive experience in vascular access, testified that obtaining two peripheral IV sites in Ms. Pike is "highly unlikely" given her documented venous access challenges.

73. Peripheral IV access is access in the peripheral veins of the arms and legs—not veins in the pelvis, belly, heart, chest, or neck. (Tr. Vol 1, 173:1–5).

74. Dr. Gail Van Norman is professor emeritus of anesthesiology at the University of Washington, Department of Anesthesiology and Pain Medicine. (Tr. Vol 1, 152:2–5). She worked as an anesthesiologist for over forty years and placed "tens of thousands" of peripheral IV lines. (Tr. Vol 1, 154:16–25). She last placed a peripheral IV line "in the last several months." (Tr. Vol 1, 160:16–17).

75. Certain risk factors "increase the risk that [someone] will have a difficult IV access or an IV access failure by between four and ten-fold": obesity, "when the veins are less than three millimeters in diameter, when the veins cannot be felt, or when the veins cannot be seen. (Tr. Vol 1, 173:15–23). Ms. Pike's BMI is 30.76 "so she is an obese patient. And obesity is one of the main risk factors for difficult IV starts." (Tr. Vol 1, 179:2–4; 220:23–25).

76. Prison staff use a 23-gauge needle for Ms. Pike's blood draws, which is "an extremely small needle. It's not the size of needle . . . normally [used] to administer anesthesia, except in babies or in very small children." (Tr. Vol 1, 176:10–13). They also draw blood from Ms. Pike's hand "because [they] can't see a vein or feel a vein in the arm. Hand veins are particularly fragile and they're also particularly painful to draw blood from." (Tr. Vol 1, 177:13–16).

77. When drawing blood the needle only needs to get a "fraction of an inch, really just a millimeter or so into the vein. Because once the little hole in the needle is in the vein," blood can be drawn. (Tr. Vol 1, 182:17–20). "IV starts involve [ ] threading . . . both the needle and that sheath into the vein. You have to go quite a ways into the vein. And the . . . needle and the catheter are a bigger diameter even for the gauge . . . that you're putting in because you have this little sheath over it." (Tr. Vol 1, 182:25–183:7). "[U]nless you get that needle . . . position well into the vein, you won't be able to thread the catheter off of it. And a common problem in IV starts is that people don't get these threaded far enough. And the further you have to thread those into the vein . . . the more likely it becomes that you can rupture the vein or go

through the posterior, the backside of the vein wall and cause the IV not to work. And more likely you'll [ ] have the vein blow up and not be able to put an IV catheter in it." (Tr. Vol 1, 183:8–19).

78. If an IV needle is too big "it could push the vein away. You can injure the vein, rupture the vein, and more likely, you will tear the vein as you try to put the catheter in." (Tr. Vol 1, 184:8–14). If the vein is damaged during IV placement "you will get bleeding around the vein and that compresses the vein and makes it even smaller and more difficult to get into. Or displaces the vein. So you get a big bruise there that's pushing the vein off to the side and it can be difficult to feel, difficult to see, and difficult to get an IV in." (Tr. Vol 1, 184:20–25).

79. When that happens "you have a much higher likelihood that the drug or that fluid is going to end up in the tissues around the vein partially or totally . . . And [ ] it may have detrimental effects on the tissues around the vein and if you're trying to elicit an effect from the drug, you're going to be giving less of it into the bloodstream where it will have its effect. So if you get a large infiltration, the drugs have diminished effect." (Tr. Vol 1, 185:9–18).

80. If an IV needle is too small "it's [ ] really hard to get any kind of volume into the vein. . . 50 cc's [ ] is a large amount of fluid. . . Through a small catheter, it will take quite a while to inject that. . . That means that if you're again administering a drug, the drug will not get to as high a peak level because you're administering it over a longer period of time. . . pentobarbital [is] being cleared from the blood very quickly and so you never get up to the level that you would get with a larger IV. And

you're going to see lesser clinical effects." (Tr. Vol 1, 185:23–186:18). "Another problem is that the pressure that you have to use to push that drug through the IV is higher the smaller the IV is." (Tr. Vol 1, 186:20–22). "And in smaller, fragile veins that can cause the vein to burst. And then you're back at looking at a situation where your drug or your fluid is not going in the vein. It's going into the tissues around the vein." (Tr. Vol 1, 187:12–15).

81. Ms. Pike has a "significantly elevated risk of problems with IV access as evidenced by the fact that she has essential thrombocytosis . . . plus she's obese, plus they're already using a tiny child's needle to try to draw her blood. So her risk is quite elevated. . . These patients in the operating room could be very difficult to have IVs in." (Tr. Vol 1, 181:23–182:6).

82. To a reasonable degree of medical certainty, Dr. Gail Van Norman opines that Ms. Pike has a "highly elevated risk of a difficult IV access. Somewhere between quadruple to ten times the chance of a person who has [ ] not got her conditions of obesity and essential thrombocytosis [ ] or small veins - - of having the same problem. . . She has elevated risks." (Tr. Vol 1, 190:14–21).

83. Linda Thomas, checks the qualifications and verifies the license(s) and certification(s) of the IV Team. (Tr. Vol 1, 57:21–58:1). She does so by "checking the Tennessee Department of Health license on people that participate in the [IV] team. . . " (Tr. Vol 1, 59:23–24), and "[speaking] to them," (Tr. Vol 1, 92:5–7). However, she could not state what licenses are required, only that it is based on what their job titles are pursuant to the protocol. (Tr. Vol 1, 60:4–8). She only checks the TDOH website.

(Tr. Vol 1, 61:21–23). She did not know if the TDOH website contains information about potential discipline for a licensed provider. (Tr. Vol 1, 62:2–3).

84. After struggling at the beginning, the IV Team achieved peripheral IV access on Tony Carruthers' right arm after "seven or so minutes of trying." (Tr. Vol 1, 139:19–20). They attempted to achieve peripheral IV access on Mr. Carruthers' left arm for twelve minutes, including "six or seven sticks" in Mr. Carruthers' left arm. (Tr. Vol 1, 141:1–3).

85. After failing to achieve peripheral IV access on Mr. Carruthers' left arm, the IV Team "tried to get access into his left hand . . . but they said it was not flowing." (Tr. Vol 1, 141:18–19). Then the execution physician entered the room and "instructed the IV [T]eam to take off [Mr. Carruthers'] socks to look for veins in his feet." (Tr. Vol 1, 143:11–12). "Mr. Carruthers was wincing and appeared to be in pain." (Tr. Vol 1, 144:15–16). He was stuck over a dozen times. (Tr. Vol 1, 148:9–10).

86. "[P]rotracted attempts at IV access are excruciating." (Tr. Vol 1, 208:19).

87. Mr. Carruthers had no prior reported history of difficulty with vascular access. Ms. Pike has small, compromised veins from repeated blood draws and the use of a 23-gauge butterfly needle.

*Issue 4*

88. A central line or central IV is "placing a catheter - - usually a longer catheter because they're deeper veins - - into the veins that are inside [ ] the body cavities or that run into the body cavity. So this would be veins that run into the pelvis, the abdomen, and the chest and specifically veins that go in the heart." (Tr.

Vol 1, 197:22–198:3). The "typical ones that are place[d] are placed either in the internal jugular vein or the subclavian vein, which runs under the collar bone or the femoral vein, which runs in the groin." (Tr. Vol 1, 198:4–7). These veins are much larger, have more blood flow, and have a much larger access sight. (Tr. Vol 1, 198:9–10).

89. Dr. Gail Van Norman has placed "well over 4,000" central lines. (Tr. Vol 1, 156:12–17). For approximately ten years, she was "in charge of the program that educated and guaranteed the continuing qualifications of all [ ] providers to place central lines as part of their practice." (Tr. Vol 1, 156:23–157:2). She also "had responsibility for re-evaluating their skills every two years and either certifying them as competent or referring them back for further trainings . . . before [they could] place central lines. . . ." (Tr. Vol 1, 157:5–10).

90. For a medical professional that is "trained and [has] a lot of experience, they're not all that difficult. But they are very prone to extreme complications," for the untrained medical professional. (Tr. Vol 1, 198:19–21).

91. Complications that may arise when an untrained and inexperienced medical professional attempts to place a central line include "rupture of the main vein inside of the body cavity," which could cause the inmate to bleed to death, (Tr. Vol 1, 198:22–23); placing a guide wire "into the vessel can cause a stroke and fatality if you place it in an artery, such as the carotid artery, subclavian artery, or femoral artery, all of which run right next to their respective veins," (Tr. Vol 1, 199:1–4); and lines

that are placed in the chest, like in the subclavian veins and even the jugular vein "can also clip the lung and cause the lung to collapse," (Tr. Vol 1, 199:5–8).

92. "There are a number of life-threatening complications that can occur if these are not done properly. And they have a fairly high complication rate. . . ." (Tr. Vol 1, 199:9–11).

93. Training and continuing clinical experience are "absolutely necessary to be able to do these lines accurately, efficiently, and safely." (Tr. Vol 1, 199:19–21). "[M]ost healthcare organizations require [ ] that a physician show that [ ] they did receive actual training in how to do the line and that since the point of training, they have continuing clinical experience." (Tr. Vol 1, 200:4–9). Training 10, 15, or even 20 years ago is insufficient. "It's a manual dexterity type procedure, and if you don't do it often, you aren't going to be as good at it. So most institutions require that if a physician wants to place a central line, they [ ] show that they've had the training. They document their recent clinical experience, or they need some training or continuing clinical experience requirement that the hospital itself sets up to show competence." (Tr. Vol 1, 200:13–20). They must do so approximately every two years. (Tr. Vol 1, 200:22–25).

94. Ultrasound is the standard of care when placing a central line. (Tr. Vol 1, 201:5–7).

95. After almost an hour of trying to secure peripheral IV access on Mr. Carruthers, the execution physician announced that he was going to place a central line. (Tr. Vol 1, 144:16–17).

96. Before doing so, he asked members of the IV Team "if any of them had experience with jugular access." (Tr. Vol 1, 144:18–19). Then, the execution physician used an infrared vein finder to try and locate a vein in Mr. Carruthers' neck. (Tr. Vol 1, 145:1–2). One IV Team member who said that he had experience with jugular access later said that he "didn't feel like he could do this." (Tr. Vol 1, 145:4–6).

97. Neither the execution physician nor the prison staff were aware if Mr. Carruthers was allergic to lidocaine. (Tr. Vol 1, 145:10–13). After approximately five minutes, the execution physician began to jab Mr. Carruthers with a needle for central line access. "He asked Tony if it hurt. Tony said, yes, he could feel it. The physician responded, 'Well, it must just - - it may just be some pressure.'" (Tr. Vol 1, 146:7–10). After the execution physician inserted the needle, Ms. Carruthers "began gutturally groaning, and said 'It hurts. It hurts.'" (Tr. Vol 1, 146:13–14). Blood oozed from the puncture wound. (Tr. Vol 1, 146:19). There were at least two. (Tr. Vol 1, 146:23–25).

98. After approximately seven minutes, the execution physician announced that he would not be able to set a central line and tried to start IV access in Mr. Carruthers' right shoulder—the same arm where peripheral IV access was already achieved. (Tr. Vol 1, 147:6–10).

99. Dr. Goldstein testified that judicial hanging, if conducted properly by trained personnel using established drop-table calculations, causes death through cervical fracture—specifically, atlanto-occipital dislocation or bilateral pedicle fractures of C2—resulting in instantaneous loss of consciousness and rapid death.

100. Dr. Erin Kelly, a board-certified forensic pathologist, confirmed that unconsciousness from hanging occurs in under one minute. Dr. Kelly referenced video evidence demonstrating that unconsciousness occurred in approximately thirteen seconds in a documented hanging case.

101. The evidence demonstrated that the Washington State executions conducted in the 1990s are examples of successful judicial hangings under modern conditions that both resulted in instantaneous deaths for both condemned individuals.

102. Dr. Kelly indicated that even if hanging is performed improperly, it is likely to result in rapid unconsciousness within seconds.

103. Hanging eliminates all IV-related risks: no venous access is needed, no medication is required, and the procedure eliminates the restraint-to-gurney procedure that triggers Ms. Pike's PTSD. The inmate is positioned standing on a platform with a noose, which does not replicate the sensory conditions of sexual assault in the way that being physically held down on a gurney does.

104. The materials required for judicial hanging—wood, hardware, and rope—are readily and inexpensively available. The construction of a gallows does not require specialized pharmaceutical supply chains, medical equipment, or physician participation.

105. Hanging is historically authorized in Tennessee and remains a constitutional form of execution.

## CONCLUSIONS OF LAW

1. The Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments." A method of execution violates the Eighth Amendment if it is "sure or very likely to cause serious illness and needless suffering, and give rise to sufficiently imminent dangers." *Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion); *Glossip v. Gross*, 576 U.S. 863, 877 (2015). The Eighth Amendment encompasses all forms of sufficiently severe "needless suffering," including "terror, pain, or disgrace" that is superadded to the sentence of death itself. *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019).

2. To establish an Eighth Amendment violation, a challenger must demonstrate that the challenged method presents a "substantial risk of serious harm"—that is, a risk that is "sure or very likely" to materialize, not merely speculative or remote. *Glossip*, 576 U.S. at 877. The risk must also be "sufficiently imminent," meaning it will occur "in the ordinary course" of carrying out the protocol. *Baze*, 553 U.S. at 50.

3. Article I, Sections 13, 16, and 32 of the Tennessee Constitution provide analogous protections against cruel and unusual punishment. The Tennessee Supreme Court has recognized that these provisions may afford protections broader than or independent of those provided by the Eighth Amendment. *West v. Schofield*, 519 S.W.3d 550, 563–64 (Tenn. 2017); *Abdur'Rahman v. Parker*, 558 S.W.3d 606, 616 (Tenn. 2018). Article I, Section 13 specifically prohibits "unnecessary rigor" in the execution of punishment—a textual prohibition that has no federal analogue and

provides an independent state-law basis for relief when the State employs execution methods that inflict suffering beyond what is required to effectuate the death sentence.

4. The undisputed evidence establishes that Ms. Pike has essential thrombocytosis, a myeloproliferative blood disorder confirmed by genetic testing (CALR mutation with JAK2 negativity) and documented in her medical records since at least 2017. The constitutional question is whether this condition, in conjunction with the Protocol's requirements, creates a substantial risk of serious harm that is sure or very likely to occur during her execution. The evidence demonstrates that it does. Dr. Zivot and Dr. Van Norman testified that Ms. Pike's thrombocytosis creates an elevated risk of clotting at the IV catheter site, which may occlude the catheter and prevent reliable drug delivery. Dr. Van Norman further testified that thrombocytosis causes microvascular inflammation that makes veins more fragile and subject to rupture, compounding the risks posed by Ms. Pike's small, compromised veins. Dr. Zivot testified that the autopsy evidence from Tennessee's own recent executions—Byron Black (August 5, 2025) and Harold Nichols (December 11, 2025)—demonstrates that pulmonary edema develops in the substantial majority of pentobarbital executions. The imminence of this harm is demonstrated by its documented occurrence in both Tennessee executions conducted under the current Protocol.

5. The State's expert testimony does not rebut these conclusions. Dr. Mansour, a board-certified hematologist, acknowledged that thrombocytosis is a

condition that produces excess platelets and that excess platelets can lead to clotting. He conceded that while risk is a continuous variable, Ms. Pike has a higher risk for clotting than a normally presenting patient. Moreover, Dr. Mansour acknowledged on cross-examination that he had not reviewed all of Ms. Pike's platelet records and was unfamiliar with several documented counts well-above average when shown them during questioning, undermining the foundation for his risk assessment.

6. The relevant constitutional inquiry is not whether the State's experts would characterize the risk as "concerning" in a clinical context, but whether the evidence establishes a substantial risk of serious harm that is sure or very likely to occur. The evidence therefore establishes that peripheral IV access and pentobarbital administration under the current Protocol present a substantial risk of serious harm to Ms. Pike that is sure or very likely to occur in the ordinary course of her execution. *Baze*, 553 U.S. at 50. The Protocol accordingly violates the Eighth Amendment's prohibition on cruel and unusual punishment and Article I, Sections 13, 16, and 32 of the Tennessee Constitution.

7. The Eighth Amendment prohibits methods of execution that "superadd" to the punishment of death "terror, pain, or disgrace" beyond what is necessary to carry out the sentence. *Bucklew*, 587 U.S. at 133. The Supreme Court has recognized that this prohibition encompasses psychological suffering. *See Bucklew*, 587 U.S. at 133 (acknowledging cognizable claims based on "terror"); *see also Grayson v. Comm'r, Ala. Dep't of Corr.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024) (recognizing that psychological suffering may support an Eighth Amendment method-of-execution

claim). The constitutional question is whether the Protocol's observation, restraint, and execution procedures will cause Ms. Pike psychological suffering that constitutes a "superaddition" to the death penalty—suffering that is not a necessary incident of carrying out the sentence. The evidence demonstrates that it will.

8. Dr. Bethany Brand, a licensed clinical psychologist with over thirty years of experience specializing in trauma, testified that Ms. Pike meets the full diagnostic criteria for PTSD. Dr. Brand testified that Ms. Pike suffered extreme, chronic, and repeated sexual abuse from early childhood through age seventeen, including multiple rapes by at least five different perpetrators. Dr. Brand's unrebutted testimony established that the Protocol's observation protocol and restraint procedures—physical extraction by officers, immobilization on a gurney, and IV insertion while restrained in a supine position—replicate the precise sensory conditions of Ms. Pike's sexual assaults. Dr. Brand testified that these procedures will cause Ms. Pike to neurobiologically relive her past sexual assaults in real time, experiencing the subjective terror of being actively raped while unable to resist. This psychological harm is not speculative; it is the predictable and certain consequence of applying the Protocol to a person with Ms. Pike's documented trauma history and diagnosed PTSD.

9. TDOC's concessions regarding female observation staff and a privacy screen do not ameliorate the constitutional harm. Dr. Brand's unrebutted testimony established that the central traumatic trigger is the observation, physical extraction, restraint, and immobilization. The Protocol cannot be implemented without

physically restraining Ms. Pike, immobilizing her on a gurney, and inserting IV lines while she is restrained. Dr. Brand testified that these procedures will trigger a full neurobiological trauma response regardless of who is observing. TDOC's commitment to make "every effort" to assign female observation staff addresses a secondary concern but does not address the core constitutional violation.

10. The evidence therefore establishes that the Protocol's observation, restraint, and execution procedures are sure or very likely to cause Ms. Pike serious illness and needless suffering in the form of severe psychological harm, in violation of the Eighth Amendment. *Baze*, 553 U.S. at 50. Article I, Section 13 of the Tennessee Constitution provides an independent basis for relief. Section 13 specifically prohibits "unnecessary rigor" in the execution of punishment—language that has no federal analogue and reflects an independent state constitutional judgment that prisoners may not be subjected to suffering beyond what is necessary to carry out their sentences. Even if the Protocol were constitutionally permissible when applied to inmates without Ms. Pike's trauma history, subjecting her to the subjective experience of sexual assault as a condition of carrying out her death sentence constitutes "unnecessary rigor" prohibited by Article I, Section 13.

11. The evidence establishes that Ms. Pike possesses all four of the most significant clinical predictors of difficult peripheral IV access under a validated clinical scoring system: (1) a documented history of prior difficult IV access; (2) nonpalpable veins; (3) nonvisible veins; and (4) veins less than 3mm in diameter. Dr. Van Norman testified that each of these factors independently increases the risk of

failed IV access, with nonpalpable and nonvisible veins increasing risk by 8.1-fold and 10-fold, respectively. The confluence of all four factors in a single patient, Dr. Van Norman testified, "virtually assur[es] a difficult IV start, or failure to secure a peripheral IV access." This risk is corroborated by the objective evidence: TDOC's own medical staff have consistently used a 23-gauge butterfly needle—typically reserved for infants and small children—for Ms. Pike's blood draws, and the majority of draws have been performed from hand veins, which are clinically used only when larger antecubital veins are unavailable.

12. The Protocol requires the establishment of two functioning peripheral IV lines. Dr. Goldstein testified that obtaining two peripheral IV sites in Ms. Pike is "highly unlikely" given her documented venous access challenges. Nurse Elizabeth Campbell, the State's own vascular access expert, testified that phlebotomy—drawing blood with a needle—is fundamentally different from IV access, which requires threading a catheter into a vein and maintaining it in place for infusion. This distinction is critical: the fact that TDOC staff can draw blood from Ms. Pike using a 23-gauge butterfly needle does not establish that they can place and maintain a peripheral IV catheter suitable for pentobarbital infusion.

13. Even assuming peripheral IV access could be achieved, the small-gauge catheter required for Ms. Pike's anatomy is incompatible with reliable pentobarbital delivery. Dr. Van Norman testified that the pressure required to inject fluid through a small-gauge catheter is roughly double that of a 20-gauge catheter and triple that of a standard 18-gauge adult catheter. This pressure differential creates a substantial

risk of vein rupture and extravasation—leakage of the drug into surrounding tissues. Pentobarbital is strongly alkaline (pH 9-11) and extremely caustic. Dr. Van Norman testified that infiltration of even small amounts into subcutaneous tissue causes "instant, excruciating pain that patients liken to being set on fire" and causes severe tissue destruction including deep burns and sloughing of skin. The imminence of this harm is demonstrated by the physics of small-gauge catheter infusion: the very equipment that Ms. Pike's anatomy necessitates creates pressure differentials that significantly increase the likelihood of extravasation.

14. The evidence therefore establishes that peripheral IV access under the current Protocol presents a substantial risk of serious harm to Ms. Pike that is sure or very likely to occur. *Baze*, 553 U.S. at 50. This risk arises from the combination of her documented venous access difficulties, the incompatibility of small-gauge catheters with reliable pentobarbital delivery, the caustic nature of the drug, and the demonstrated deficiencies in TDOC personnel qualifications. The Protocol accordingly violates the Eighth Amendment and Article I, Section 13 of the Tennessee Constitution.

15. A challenger to a method of execution who establishes a substantial risk of severe pain must also identify a "known and available alternative" that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Glossip*, 576 U.S. at 877; *Bucklew*, 587 U.S. at 139–40. The Supreme Court has made clear that an alternative need not be "presently authorized by state law"; it must be "known and available" in the sense that it is a recognized method that can

be practically implemented. *Bucklew*, 587 U.S. at 139–40. The challenger bears the burden of showing that the alternative would "significantly reduce a substantial risk of severe pain"—not that it would eliminate all risk, but that it would meaningfully reduce the identified risks. *Id.* at 139. Ms. Pike has identified two alternatives that independently satisfy this standard.

16. Ms. Pike has identified two alternative methods, each of which independently satisfies the *Glossip/Bucklew* standard.

17. Ms. Pike's first proposed alternative is the use of a central venous line placed by a qualified, currently-practicing emergency medicine or critical care physician using real-time ultrasound guidance. This alternative is *feasible* because qualified physicians who maintain current competency in ultrasound-guided central line placement are readily available throughout Tennessee and nationwide. The alternative is *readily implemented* because it requires only the retention of a qualified physician—not new equipment, pharmaceuticals, or infrastructure. It *significantly reduces a substantial risk of severe pain* by eliminating the prolonged peripheral IV attempts that Ms. Pike's anatomy makes virtually certain, eliminating the risk of extravasation through a small-gauge peripheral catheter, and ensuring reliable high-flow venous access that can deliver pentobarbital at appropriate speeds without the pressure differentials that create extravasation risk. Central line placement by a qualified physician directly addresses the risks identified in Issues 1 and 3: it bypasses Ms. Pike's compromised peripheral veins entirely and provides access that is not subject to the same clotting and occlusion risks.

18. Central venous access by a qualified physician competent in its placement is properly understood as an alternative "method of execution" within the meaning of *Bucklew*, not merely a substitution of equipment within the existing Protocol. The Supreme Court has made clear that an alternative need not represent an entirely different execution modality to qualify as a "known and available alternative." *Bucklew*, 587 U.S. at 139-40. The relevant inquiry is whether the proposed alternative would "significantly reduce a substantial risk of severe pain." *Id.* It is not enough to show "a slightly or marginally safer alternative." *Baze*, 553 U.S. at 51. Central line placement by a physician competent in its placement is a fundamentally different *method* of achieving vascular access, not a mere equipment substitution, for four independent reasons:

a. First, the anatomical pathway is different: peripheral IV access uses surface veins in the arms or hands, while central venous access uses the large veins of the central circulation (internal jugular, subclavian, or femoral).

b. Second, the required personnel qualifications are different: the current Protocol permits IV Team members with minimal or unspecified training, while central line placement requires a physician with documented competency and recent practice in a specialized procedural skill.

c. Third, the procedural technique is different: peripheral IV placement involves palpation and direct visualization, while ultrasound-guided

central line placement involves real-time imaging, sterile technique, and guidewire insertion—an entirely distinct set of skills and equipment.

d. Fourth, the placement of a central line is only a backup option in the case of failed IV access in the current protocol, it is not anticipated to be used in standard circumstances. These differences are not cosmetic; they directly address the constitutional harm.

19. Peripheral access in Ms. Pike creates a substantial risk of prolonged, painful attempts and extravasation because of her small, compromised veins and thrombocytosis. Central access by a qualified physician bypasses those veins entirely, provides more stable high-flow access, and substantially reduces the duration of the restraint period that triggers Ms. Pike's PTSD. Though there are higher risks of complications in central line placement, this Court is not required to evaluate the risks of "maladministration." *Hines*, 2026 WL 2280854 at *5 (quoting *West*, 519 S.W.3d at 564-65).

20. Ms. Pike's second proposed alternative is execution by judicial hanging. This alternative is *feasible* because the materials required—wood, hardware, and rope—are readily and inexpensively available, and the methodology is well-documented. Dr. Goldstein and Dr. Kelly both testified regarding the mechanics of judicial hanging, including the established drop-table calculations that determine proper drop length based on the prisoner's weight. The alternative is *readily implemented* because it does not require a specialized pharmaceutical supply chain,

intravenous access, or physician participation. It *significantly reduces a substantial risk of severe pain* for two independent reasons:

a. First, Dr. Goldstein testified that properly conducted judicial hanging causes death through cervical fracture—specifically, atlanto-occipital dislocation or bilateral pedicle fractures of C2—resulting in instantaneous loss of consciousness. Dr. Kelly, the State's forensic pathology expert, confirmed that unconsciousness from hanging occurs in under one minute and referenced video evidence showing unconsciousness in approximately thirteen seconds.

b. Second, even if hanging is performed improperly and results in strangulation rather than cervical fracture, Dr. Goldstein testified that the period of potential conscious suffering is approximately 10-30 seconds—a fraction of the duration associated with pulmonary edema, which the autopsy evidence shows occurs in the substantial majority of pentobarbital executions. Judicial hanging also eliminates all IV-related risks and, importantly, does not require Ms. Pike to be restrained in a supine position by multiple staff members—thereby eliminating the restraint-to-gurney procedure that triggers her PTSD.

21. Both alternatives address the psychological harm identified in Issue 2. Central line placement, while still requiring IV access, can be performed more quickly by a qualified physician and reduces the duration of the traumatic restraint period. Hanging eliminates the IV-access process entirely and does not require the supine

restraint positioning that replicates the sensory conditions of Ms. Pike's sexual assaults.

22. The State has not articulated a legitimate penological justification for refusing either alternative. Under *Bucklew*, once a challenger identifies a feasible, readily implemented alternative that significantly reduces a substantial risk of severe pain, the burden shifts to the State to demonstrate a legitimate reason for rejecting it. 587 U.S. at 139–40. TDOC's testimony that it has "never considered" hanging does not constitute such a justification. Nor does the observation that TDOC currently lacks trained personnel—the *Bucklew* Court made clear that an alternative need not be "presently authorized by state law" or currently implemented; it need only be "known and available." *Id.* The evidence establishes that both proposed alternatives are known methods of execution that can be practically implemented and that would significantly reduce the substantial risks of severe pain identified in Issues 1, 2, and 3. Ms. Pike has therefore satisfied her burden under *Glossip* and *Bucklew*.

Respectfully submitted,

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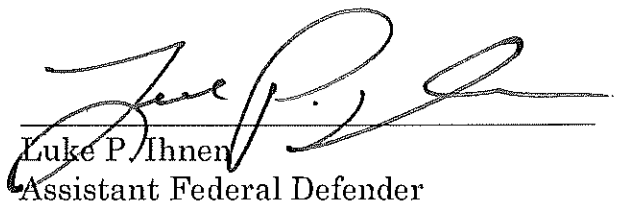

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FILED
BY MIKE HAMMOND
2026 AUG 18 AM 9:35
KNOX COUNTY CRIMINAL COURT

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **State of Tennessee** | ) | |
| | ) | **Supreme Court Case No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | **Knox County Case No. 58183A** |
| | ) | **CAPITAL CASE (Execution Date: Sept. 30, 2026)** |
| **Christa Gail Pike** | ) | |

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**Reply to the State's Opposition to Movant's Motion for Emergency Relief**

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Christa Gail Pike, through counsel, submits this Reply to the State's Opposition to her Motion for Emergency Relief:

## I. The State's "Speculation" Argument Is Belied by the Execution Physician's Own Public Statements.

The State contends that Ms. Pike "can only speculate about the identity of the physician who will participate in her execution" and that "no one yet knows who the physician will be." (State Resp. at 1). This is the same argument the State advanced in *Hines*—that any connection between a past execution physician and a future execution is mere speculation. In *Hines*, the State told this Court that it was "not publicly known whether that same physician will attend Hines' future execution." (*See* State Resp. in *Hines* at 24). Then, at the State's direction, control, and knowledge, that same physician in Mr. Hines's execution spoke openly to the news media about his participation. *See* Doctor involved in past failed Tennessee execution participates in Anthony 'Darrell' Hines' lethal injection, NBC News (Aug. 13, 2026), *available at* https://www.nbcnews.com/news/us-news/tennessee-execution-anthony-darrell-hines-death-penalty-rcna592333.

Here, the execution physician himself publicly stated—less than twenty-four hours after this hearing concluded—that he intends to participate in Ms. Pike's scheduled execution on September 30, 2026. The State cannot credibly maintain that this is "pure speculation" when its own physician has announced his participation to a news outlet.

The State's invocation of the protocol's 30-day confirmation process is a red herring. The State surely knows which physician it intends to use for Ms. Pike's execution—and if it truly does not, it should say so unequivocally rather than hiding behind procedural technicalities. Is the State genuinely representing to this Court that it has no knowledge of which physician that it intends to use for Ms. Pike's scheduled execution? The State cannot permit its physician to make public statements about his confirmed participation and then tell this Court that nobody knows who the physician will be. Such gamesmanship undermines the integrity of these proceedings, manipulates the Court into denying plainly relevant relief based on a fiction, and forecloses an assumption of regularity by the State.

## II. *Hines* Does Not Foreclose Disclosure or the Relief Ms. Pike Seeks.

The State asserts that "*Hines* forecloses Pike's arguments for relief" and that "Pike's motion carefully avoids quoting the analysis or holding of *State v. Hines*..." (State Resp. at 2). This fundamentally misreads what *Hines* decided. First, the Tennessee Supreme Court in *Hines* specifically declined to decide the question of whether the identity or qualifications of the execution physician are discoverable.

While the State block-quotes its preferred "holding" of *Hines*, it specifically omitted the first three sentences of its "quoted" paragraph:

> We disagree with both assertions. First, the chancery court's July 17, 2026 order, *which is not before this Court*, requires TDOC to respond to a request for admission about whether Physician A will be part of the team for Mr. Hines's execution. It does not declare Physician A unqualified, nor has Mr. Hines established, through anecdotal evidence or otherwise, that Physician A is unqualified to perform the responsibilities assigned by the 2025 protocol.

*State v. Hines*, No. M2025-00221-SC-DPE-DD at 6 (emphasis added). The lower court in *Hines* granted a motion to compel TDOC to produce the name of the supervising physician, and neither party appealed that discovery order. The Tennessee Supreme Court addressed only the substantive Rule 12 arguments regarding the likelihood of success on the merits of Mr. Hines' motion for a stay. It specifically declined to address the Chancery Court's discovery ruling. *Hines* is therefore not a ruling on discoverability—it is a ruling on the sufficiency of Mr. Hines's pleading. *Id.*

Second, the Tennessee Supreme Court's determination in *Hines* about the qualifications of the physician rested on *relevance to that party's specific claims*—not on any blanket privilege shielding the physician's qualifications from inquiry. Mr. Hines' complaint was fundamentally about the "risks of maladministration," which were "all but foreclosed." *Hines*, at 7. The Court could therefore conclude that the physician's qualifications were irrelevant *to Hines' claims as pled.*

Ms. Pike's case is fundamentally different. She has specifically alleged that the presence of a qualified, trained, and certified medical doctor who has placed a central line is a feasible alternative to the existing protocol. (Rule 12 Mot. at 25). The

physician's qualifications are the central factual predicate of her claims. This Court itself recognized as much when it permitted testimony regarding the "qualifications, training, and certification of the Physician designated for Ms. Pike's execution, including whether the Physician is qualified and certified to place a central venous line." (August 4, 2026 Order at 8).

The State is attempting to use *Hines*—a case decided on different claims, different facts, and a different procedural posture—to prevent Ms. Pike from obtaining testimony that this Court has already deemed relevant. The State's reliance on *Hines* is an effort to mislead this Court into conflating a ruling about one litigant's insufficient pleading with a blanket bar on all inquiry into physician qualifications.

## III. Ms. Pike Does Not Seek the Physician's Identity—She Seeks His Qualifications, Which Are Directly Relevant to Her Claims.

The State devotes the majority of its Response to arguing about the "identity" of the execution physician. (State Resp. at 1, 3). But Ms. Pike has never sought to unmask an anonymous participant. The physician has unmasked himself and continues to do so, publicly. Despite that, in pleadings and during the public hearing, Ms. Pike made great efforts to avoid mentioning the physician's name. Ms. Pike is held to a standard that the State is not holding its paid contractor to. Ms. Pike seeks only what this Court already found relevant: testimony about whether the physician designated for her execution possesses the qualifications necessary to place a central venous line safely.

The distinction matters. Dr. Gail Van Norman testified that most healthcare organizations require physicians placing central lines to show that they have received actual training and that they have continuing clinical experience. (Tr. Vol. 1, 199:22–201:1). She explained that it is not sufficient to have trained years ago without continuing practice, because central line placement is a "manual dexterity type procedure" and "if you don't do it often, you aren't going to be as good at it." *Id.* Most institutions require permission to continue the procedure approximately every two years, during which a physician must demonstrate continued competency. *Id.* Maria DeLiberato's testimony described a physician who could not establish a central line after multiple painful attempts. (Tr. Vol. 1, 141:20–144:20).

The feasibility of Ms. Pike's stated alternative depends entirely on whether the physician the State intends to use meets the relevant standards. The State has made much in this litigation about Ms. Pike's ability to prove that her stated alternatives are "readily available," but now seeks to prevent her from identifying the evidence she would need to do so.

Forbidding Ms. Pike from eliciting testimony about relevant qualifications—when the physician himself has publicly announced his participation—would be a grave miscarriage of justice. There is no confidentiality interest to protect where the physician has voluntarily placed his participation in the public domain. And there is no justification for preventing Ms. Pike from developing the factual record on a matter that goes to the heart of at least three of the four referred issues.

## Conclusion

Accordingly, Ms. Pike respectfully requests that this Court order the Special Master to reopen the evidentiary hearing for the limited purpose of receiving testimony from and concerning the execution physician's qualifications and his confirmed participation in Ms. Pike's scheduled execution.

In the alternative, because the factual basis for the testimony of Ms. DeLiberato and Dr. Gail Van Norman's has changed because the execution physician has confirmed his participation in Ms. Pike's scheduled execution, Ms. Pike requests that this Court:

A. Order that any testimony elicited as an offer of proof from Maria DeLiberato regarding the execution physician be included in the factual record; and,

B. Order that Dr. Van Norman's report, submitted for identification only, be admitted as substantive evidence of the qualifications necessary to establish a central line.

Respectfully submitted,

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FILED
BY MIKE HAMMOND
AUG 20 2026
KNOX COUNTY CRIMINAL COURT
KNOXVILLE, TN

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **STATE OF TENNESSEE,** *Respondent,* | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | **Knox County Case No. 58183A** |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** *Movant.* | ) | |

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**ORDER DENYING MOTION FOR EMERGENCY RELIEF**

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Pending before the Special Master is Ms. Pike's *Motion for Emergency Relief*, filed on August 17, 2026, seeking to reopen the evidentiary hearing that concluded on August 13, 2026. As grounds for her motion, Ms. Pike asserts "the execution physician made a public statement to a news outlet about his intention to participate in Ms. Pike's scheduled execution on September 30, 2026." Ms. Pike moves the Court to reopen the hearing "for the limited purpose so that she can present testimony about the qualifications necessary to place a central line." Alternatively, Ms. Pike asks the Court to treat the evidence received as an offer of proof of the lack of the execution physician's qualifications as substantive evidence. The State of Tennessee, also on August 17, 2026, filed a response in opposition. Ms. Pike, on August 18, 2026, filed a reply. The Tennessee Supreme Court issued an order stating, "any request to reopen the evidentiary hearing should be directed to the special master and not his Court." As such, this Court will address Ms. Pike's motion.

Ms. Pike argues, "[t]he execution physician's confirmed participation requires that Ms. Pike be able to elicit proof about whether the State, in fact, is able to readily implement this alternative." Continuing, she asserts, "Without testimony establishing the execution physician's qualifications, the Special Master cannot make findings on Issue 4 because the feasibility of Ms.

Pike's primary alternative depends entirely on the capabilities of the physician that the State intends to use." Relatedly, Ms. Pike asserts that "[s]he has established it is very likely she will need a central line placed during her execution."

The State argues, "Pike can only speculate about the identity of the physician who will participate in her execution" because, in accordance with the Lethal Injection Protocol (at page 14), the list of execution participants will not be known until August 30, 2026. The State further argues that "*Hines* forecloses Pike's arguments for relief" due to the speculation of the identity of future execution participants, the possibility of the need for a central line, and the possibility of future harm. The State also argues that the identity of the future physician is not relevant to any issue referred to this Court as Ms. Pike has already introduced evidence on the topic of qualifications to set a central line generally, and her own experts testified that a central line is more likely to cause pain than a peripheral IV line. Finally, the State argues that Ms. Pike's motion lacks legal foundation.

The Court does not find Ms. Pike's motion to be well-taken. First, the physician's "*intention* to participate in Ms. Pike's scheduled execution" does not mean that he will actually participate. Second, as noted on page 14 in hearing Exhibit 2 that was introduced by Ms. Pike, the Commissioner will confirm "team leaders and members with documented approval" thirty (30) days before the day of execution. As such, the identity of the physician for Ms. Pike's execution has not yet been confirmed.

Third, regarding Ms. Pike's assertion that "[s]he has established it is very likely she will need a central line placed during her execution," the Court could not disagree more. Upon reviewing the evidentiary hearing testimony, the Court is not convinced the peripheral IV access

will be difficult to obtain. The Court is certainly not convinced that it is "*very likely*" Ms. Pike will need a central line placement.

Fourth, and specific to Issue 4, the Court finds central line placements can also result in complications. Improper IV placement in a peripheral vein will usually not put the person's life in danger, but improper placement of a central line may cause such an issue. The Court concludes that there was no proof presented at the evidentiary hearing that placement of a central line, as opposed to peripheral IV access, would "significantly reduce a substantial risk of severe pain," and, therefore, is a viable alternative to the peripheral IV placement.

Based upon the speculation at this time as to the identity of the physician that will participate in the execution as well as to whether a central line will be needed, the Court respectfully **DENIES** Ms. Pike's *Motion for Emergency Relief.*

Entered this 20th day of August, 2026.

W. Mark Ward, Senior Judge
Special Master

FILED
AUG 20 2026
Clerk of the Appellate Courts
REc'd By

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **STATE OF TENNESSEE,** *Respondent,* | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | **Knox County Case No. 58183A** |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** *Movant.* | ) | |

## SPECIAL MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

On July 10, 2026, the Tennessee Supreme Court appointed a Special Master to address five issues in this matter:

> (1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));
>
> (2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;
>
> (3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;
>
> (4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id.* at 52.
>
> (5) Whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

The Court conducted an evidentiary hearing August 11-13, 2026.

## Findings of Fact

The Court heard from eleven witnesses. The following summarizes the testimony of each witness.

### Linda R. Thomas

Linda R. Thomas is the Tennessee Department of Correction Assistant Commissioner of Prison Operations. Ms. Thomas plans and directs pre-execution and execution activities. She checks the qualifications of the IV team and noted that the members of the IV team have decades of experience in providing IV access.

Ms. Thomas will oversee the transfer of Ms. Pike from the Debra K. Johnson Rehabilitation Center (DKJRC) to the Riverbend Maximum Security Institution (RMSI) and the observation of Ms. Pike at DKJRC and RMSI. The Tennessee Department of Correction (TDOC) has made provisions to ensure that female corrections officers will transport and observe Ms. Pike. Ms. Pike will be transferred to RMSI no earlier than 24 hours before her scheduled execution, which is set for 10:00 a.m. on September 30, 2026. Ms. Pike will be the only inmate in the Capital Punishment Unit (CPU) during the entire time Ms. Pike is housed at RMSI. A privacy screen will be available to Ms. Pike to provide her a degree of privacy when using the restroom or taking a shower.

### Warden Kenneth Nelson

Kenneth Nelson is the warden at RMSI. He supervises the executions at RMSI. While at RMSI, Ms. Pike will be observed by four officers at a time, each working twelve-hour shifts. Two officers will be positioned outside of Ms. Pike's cell at RMSI conducting continuous observations while documenting their observations. A third officer will be in the control room, and a fourth officer will be the supervisor in charge. There will be no other inmates in the CPU. The agency's goal is to put all female staff in the CPU.

Maria DeLiberato

Maria DeLiberato is a capital defense lawyer with the ACLU. She represents Tony Carruthers and observed the attempted execution of Mr. Carruthers on May 21, 2026. She noted her observations regarding the cell used on the CPU and provided an offer of proof regarding the extraction process, IV access, and attempted central line placement regarding Mr. Carruthers.

Bethany Brand, Ph.D.

Dr. Bethany Brand is an expert in the field of clinical psychology. She opined that Ms. Pike suffers from post-traumatic stress disorder and bipolar disorder. She believes that it will be very "psychologically harmful" and "likely trigger her past traumas" for Ms. Pike to be observed while she's washing, toileting, and/or changing her clothes, regardless of the gender of the observer. Moving Ms. Pike to RMSI, even for less than 24 hours, will be "traumatizing" and make her feel out of control and will be highly triggering to her. However, she did testify if Ms. Pike was moved to Riverbend "immediately" that "that element would no longer be severe."

Testifying beyond the scope of this particular question, Dr. Brand also testified that other aspects of the Lethal Injection Protocol like her forcible extraction from her cell, restraints, and movement to the execution chamber, and strapping her to a gurney will also be highly triggering due to her history of being abused. Inserting an IV near her chest or groin would cause issues for Ms. Pike due to her past.

Dr. Brand believes Ms. Pike would still suffer severe punishment even if she was not moved from her current prison setting. In fact, there does not appear to be any scenario by which Ms. Brand believes Ms. Pike would avoid suffering, absent no execution at all. Dr. Brand believes the current execution protocol, even with the accommodations made for Ms. Pike, will surely or very likely cause terror and pain to Ms. Pike due to her post-traumatic stress disorder.

The Court notes that Dr. Brand has not spoken to Ms. Pike since 2023. In her report written in 2023, Dr. Brand noted, "Christa has matured and learned to process her trauma, and she is truly a different person than she was at the time of the murder. Christa will always carry that history of trauma with her, but she now has the tools to control her emotions and deal with life's stressors." However, that does not mean she doesn't suffer from the diagnosed disorders.

Gail A. Van Norman, M.D.

Dr. Van Norman is an expert in the field of anesthesiology. She defined peripheral IV access as basically access to the veins in the limbs (arms and legs). Central line access is generally access to the veins located in the pelvis, belly, heart, chest, and/or neck. Gaining peripheral IV access may be difficult with obese patients, with veins that are less than three millimeters in diameter, when the veins cannot be felt, or when the veins cannot be seen.

Phlebotomy and starting an IV are two different procedures. Phlebotomy involves drawing blood, which requires simply getting the blood drawing needle into a vein, a needle which can be quite small. Further, the needle needs to go just a millimeter or so into the vein.

IV insertion involves threading a needle with a sheath over it (resulting in a diameter larger than a small needle alone) quite a way into the vein. The further one has to thread a needle into the vein, the more likely one may rupture the vein or cause the vein to blow up. An 18-gauge needle is the average sized needle used in IV insertion. A 20-gauge IV needle is used with obese patients.[1] Dr. Van Norman gave opinions regarding potential complications if too large of a needle is used or if too small of a needle is used. If pentobarbital[2] gets into the flesh around the vein, it may cause a deep chemical burn that is very severe. It destroys tissue on contact.

[1] According to Linda Thomas, there are four different gauges of needles in the execution room: 18, 20, 22, and 24.
[2] Dr. Van Norman notes that pentobarbital and its sister thiopental, which is identical in characteristics to pentobarbital, are extremely caustic chemicals.

A central line is a central IV placement in veins inside the body cavity using a longer catheter because the veins are deeper. These veins are usually much larger, and they are not difficult veins to access. Ultrasound is a standard of care when doing a central line IV placement. Central line placements can also result in complications. Improper IV placement in a peripheral vein will usually not put the person's life in danger, but improper placement of a central line may cause such an issue.

Dr. Van Norman reviewed some of Ms. Pike's medical records. She noted from the records that when drawing blood from Ms. Pike, a 23-gauge butterfly needle was used. This needle is an extremely small needle that is not normally used when administering anesthesia to adults. She also noticed that blood was generally drawn from Ms. Pike through her hands. Generally, blood would be drawn from the hands when a person cannot see or feel a vein in the arm. Although hand veins are easier to see, blood draws from the hands are particularly painful.

Dr. Van Norman opined that Ms. Pike was obese, given her 30.76 BMI. She also noted that Ms. Pike has essential thrombocytosis, a condition associated with increased clotting and paradoxically with increased bleeding. Dr. Van Norman opined to a reasonable degree of medical certainty that Ms. Pike is at a high risk for failing to gain peripheral vein access due to her essential thrombocytosis, her obesity, and the prior use of tiny needles to draw her blood.

With that said, from a review of the medical records, Dr. Van Norman noted it appears that Ms. Pike did not have any trouble having her blood drawn. There is no mention in the records of Ms. Pike having small veins, non-palpable veins, or non-visible veins. Notably, Dr. Van Norman has not examined Ms. Pike.

Dr. Joel Zivot, M.D.

Dr. Joel Zivot is also an expert in the field of anesthesiology. He testified that thrombocytosis is "defined has having a platelet count more than 450,000." He reviewed Ms. Pike's medical records and found one relevant medical condition: thrombocytosis. He testified that the normal platelet count number is between 150,000 to 450,000. He further testified that most people are in the two to 300,000 range and that it's not so common to see platelet counts even above 400,000." At the time Ms. Pike was diagnosed she had a platelet count around 1,000,000, which he considered to be "very high.". He described the condition as a genetic defect and uncurable. He further testified that after her initial diagnosis her platelet count number had been "waxing and waning," but when he looked at the number "it's been in the high 400 range, but it generally at least over 500---500,000 at all times that I've seen it measured." Dr. Zivot testified that thrombocytosis is a condition that increases both the chance of clotting, but also the chances of bleeding. He opined that:

> So thrombocytosis is a condition that makes the chances of clotting – and when I say clotting, I really mean abnormal clotting, so clotting when it shouldn't clot. But also paradoxically with thrombocytosis, people can also have some increased tendency to bleed.

With regard to the increased chance of bleeding, he explained that platelets can consume another blood clotting component, the Von Willebrand's factor, giving rise to an increased risk of bleeding.

With regard to the possible clotting, Dr. Zivot testified on direct that "once an intravenous is in place" …the body kind of regards the catheter as a bit of an invader and will kind of try to clot itself around the catheter under normal circumstances." "So this catheter that, you know, that is placed could just clot. And so it just won't work."

Dr. Zivot also offered testimony in his direct examination on the effects of injecting pentobarbital in Ms. Pike pursuant to the lethal injection protocol. Among other things, he testified that pentobarbital is caustic to tissue and can cause very serious burns. He also indicated that it causes pulmonary edema in 65% - 70 % of people killed by pentobarbital. He described an injection of pentobarbital as causing an "extremely uncomfortable feeling" and as being a "terrifying experience." He further opined that pulmonary edema "happens very rapidly." "That the time it would take for pentobarbital to travel from the arm to the lungs is really only a matter of moments. And so almost instantly, there's some – likely some pulmonary edema that's occurring. And we, you know, can surmise this by observing people who have been executed with pentobarbital and some of the movements that they make or coughing or even complaints that people have made before they've died." He also opined that pulmonary edema cannot happen after death and requires the heart to beat. He opined further that he was "certain" that pentobarbital causes pulmonary edema. Finally, he opined that:

> So although pulmonary edema can happen, you know, happens commonly, you know, in anyone that's executed, in the case of Ms. Pike [her increased tendency to bleed], it will be an even more –even worse, if it's possible to imagine, potentially worse example of pulmonary edema that she may face in this case.

On cross-examination, counsel questioned Dr. Zivot about Ms. Pike's most recent platelet count of 452,000 on May 8, 2026, and her next most recent platelet count of 433,000 on November 21, 2025, and asked him "would you agree that her thrombocytosis is not so extreme as it was in 2017 when I believe her platelet counts were one million?" Dr. Zivot responded:

> A. Yeah. Well, I mean, I think you'd just have to draw it again. Just draw it today and see what it is today. You know, I don't know what it is today.

Upon further cross-examination, Dr. Zivot testified that his opinions about the risks posed to Ms. Pike due to her thrombocytosis would not change even if her current platelet levels matched her most recent levels. He opined that even 433,000 was a high platelet count.

On the subject of "achieving peripheral IV access," Dr. Zivot was asked the following question and gave the following answer:

> Q. If someone is diagnosed with thrombocytosis, just the diagnosis in general and a high platelet count, in your opinion would that prevent intravenous access?
> A. No. Intravenous may be started, it just may not last long or it also may be difficult to find a vein, you know, that's patent and able to accommodate an intravenous catheter. (emphasis added)

On the subject of pulmonary edema Dr. Zivot was asked the following question and gave the following answer:

> Q. And it's your opinion that the person experiencing pulmonary edema would actually be sensate to pain at the time?
>
> A. That's my opinion.

Dr. Zivot also expressed that he was against all forms of lethal injection, and he believes all forms of lethal injection are cruel.

On redirect, Dr. Zivot explained that although aspirin is used to treat thrombocytosis, it does not affect the platelet counts, it merely affects the process of clotting.

After the parties completed their examinations, the Court asked Dr. Zivot a few questions. Dr. Zivot indicated that he held a Master of Laws degree, had been involved as an expert witness in the case that resulted in *Bucklew v. Precythe*, 587 U.S. 119 (2019), which also involved Dr. Antognini, and that he was well aware that the United States Supreme Court had indicated in that opinion that the most relevant Eighth Amendment question is how long the inmate will be capable of feeling pain. Dr. Zivot also testified that he did not know if he had read Dr. Antognini report

but would not be surprised if he had said the longest the person would be capable of feeling pain after injection with pentobarbital would be 20-30 seconds. Thereafter the following occurred:

THE COURT: If it's the most important thing that the Eighth Amendment has for the Court to consider, why is there no mention of that in your report?

THE WITNESS: It wasn't – It wasn't asked of me, you know, it wasn't – I mean, to comment on how long the pain would be present.

THE COURT: So even though you know it's the most important consideration for the Court, you don't give me a time frame that a person is going to be capable of feeling pain?

THE WITNESS: Well, I can answer you now, if you want.

THE COURT: Wouldn't that be outside your report?

THE WITNESS: You know—

THE COURT: Since you didn't put it in your report, nobody has a chance to test your methodology for coming up with that.

THE WITNESS: You know, I don't know how to answer you. Like, I mean, I can—

THE COURT: Well, why would you avoid—

THE WITNESS: Yeah.

THE COURT: --the most important thing the Court needs to know?

Thereafter, in an attempt to relieve Dr. Zivot from explaining his avoidance of the topic in his report, counsel for Ms. Pike sought permission to refresh Dr. Zivot's memory with a single sentence in his report, which read: "Death from pentobarbital injection is not instantaneous." The Court pointed out the obvious that the question was not the time to "death" but the time the person could feel pain. Thereafter, the following occurred:

THE COURT: You've talked about the time of death and you've talked about the person feeling pain, but you've given me no duration.

THE WITNESS: Well—

THE COURT: Are you telling me you don't know the duration?

THE WITNESS: No one knows the duration. It's not knowable. I can surmise it, but it's not knowable.

THE COURT: So when you say a person is drowning, you don't know if they're feeling that for one second or two seconds?

THE WITNESS: Well, I don't think it's one—

THE COURT: Or ten seconds.

THE WITNESS: I think it's longer than that. That's my professional opinion about this.

THE COURT: But you are not going to give me a time frame or a methodology for how you're doing that?

THE WITNESS: Well, it's based upon the way the drug works. What I've seen in thousands of cases of anesthesia and thousands of cases of pulmonary edema and my opinion – and my understanding of the pentobarbital or drugs of that class work, I think it could be minutes. Or a minute.

THE COURT: So you said pulmonary edema is excruciatingly painful?

THE WITNESS: Yes.

THE COURT: But if you don't feel it, it can't be painful.

THE WITNESS: It happens at the beginning. It starts at the beginning. So the beginning is when you're going to have the highest chance of feeling it. As time progresses, then you may feel – you know, then your capacity to feel it will be less.

The colloquy extends longer, but ends with the following:

THE WITNESS: I'm just trying to – the –this question about how long is obviously critical and I think it's been debated, you know, between the experts. And so – and so my contention, you know, is that the amount of time that will be there will be enough that it could be experienced as cruel and painful. That's my – that's my medical opinion. My opinion is to how long –

THE COURT: No matter how short it is, it's going to be enough severity –

THE WITNESS: Yes.

THE COURT: -- to be –

THE WITNESS: Yes.

THE COURT: Okay, All right. So why didn't you discuss that in either one of your reports?

THE WITNESS: I don't have an answer for you.

Dr. Joseph Antognini, M.D., M.B.A.

Dr. Antognini is an expert in the fields of general medicine and anesthesiology. He has personally administered pentobarbital and thiopental, both of which have similar effects. When administered pentobarbital, a person will generally become unconscious within 20 to 30 seconds. That person would typically have EEG silence in about one minute. Approximately ten percent of people will feel burning, but not severe pain. He opined that someone who is unconscious cannot have the experience of pain. Dr. Antognini opined that if pulmonary edema occurs, it will not occur during the period of consciousness. The Court notes that Dr. Antognini has extensive clinical experience. The Court also notes that Dr. Antognini had a very good grasp of the articles he cited to support his opinions and did not avoid the critical question as to how long a person would be sensate after having been given the required dose of pentobarbital.

Dr. Richard Mansour

Dr. Richard Mansour is an expert in the fields of hematology, medical oncology, and internal medicine. Thrombocytosis is a medical condition in which a person has an elevated platelet count, which can cause issues with clotting and, paradoxically, with bleeding in some circumstances. Ms. Pike suffers from essential thrombocytosis. Treatment for the condition varies, depending on whether the patient is low risk or high risk. Patients under 60 who do not have any known vascular disease with levels around 600,000, 700,000, may not be treated at all. On the other hand, if they have some kind of risk like high blood pressure or high cholesterol, they may be given baby aspirin once or twice a day. For patients over 60 with platelet counts that are very high, like 800,000, there are known drugs that can be prescribed. Dr. Mansour opines that Ms. Pike has low risk essential thrombocytosis. He first based this opinion on a platelet count of 660,000, but subsequently became aware of platelet counts of 433,000 and 452,000. She is low risk for having a stroke in her brain, her heart, her eye, or some rare stroke. He testified:

> It's just low risk. I wouldn't expect any particular effect from any other person who's in the normal range with these platelet counts. I'd expect the platelets to behave the same as what I described what platelets do when there is disruption of the blood vessel.

However, she does not appear to be at risk for excessive bleeding as her von Willebrand protein and function are normal. Interference with the Willebrand protein and function is a rare syndrome that usually takes place when platelet counts reach 1,500,000 to 2,000,000. He does not think that her elevated platelet count would interfere with the insertion of an IV line. Part of the basis for this opinion comes from his review of Ms. Pike's medical records wherein they showed that in approximately thirteen blood draws from Ms. Pike, the blood draws took only one stick in twelve

of the draws and two sticks in one draw. There also appeared to be no problems when the IV was removed. This indicates to him that veins are accessible.

Elizabeth Campbell

Elizabeth Campbell is an expert in the fields of general nursing and vascular access. She described the process for obtaining IV access. She opined that "small veins" is not a medical diagnosis and usually comes from a patient's self-identifying. DIVA stands for Difficult IV Access. When noted, it can assist future practitioners by providing notice that the patient may have conditions that cause difficulty in obtaining IV access. She did not see anything in Ms. Pike's medical records that indicated that Ms. Pike's veins would be difficult to access. She did notice that all but one of Ms. Pike's phlebotomy procedures were successful on the first attempt. The one other procedure took two sticks. The blood was drawn from the hand, the forearm, and the bend in the elbow. She also noted that a 23-gauge needle, which has been used with Ms. Pike, is standard in phlebotomy.

Scott Goldstein, D.O.

Dr. Scott Goldstein is an expert in the field of emergency medicine. Ms. Pike also tendered him as an expert in "hanging." Although Pike's counsel conceded: "[J]ust to be clear, experts in judicial hanging in this country would be rare at this point since there aren't currently any states practicing that." Goldstein testified he authored an article on hanging and strangulation. However, upon further questioning, he admitted that he really didn't discuss judicial hangings in the article, other than to distinguish them from suicide attempts. He further testified that he had never reviewed the hanging protocol of any state. He opines that hanging leads to death in one of two ways: instantaneous transection of the spinal cord or strangulation.

Dr. Goldstein testified that if the drop does not result in transection of the spinal cord, death will occur by strangulation in which "consciousness *could* be lost in approximately 10-20 seconds" with death in "approximately a minute." Dr. Goldstein submitted a letter as a medical report which was marked as Ex. 26. At one place in the report he says unconsciousness will occur "in about 30 seconds." At another place in the report he says that unconsciousness will occur *within* 10-20 seconds. Dr. Goldstein affirmed that he cited two articles for that later proposition in his report which was marked as Exhibit 26. He confirmed that those articles were noted as footnotes 6 and 7 in his report. On cross-examination Dr. Goldstein was asked where in his cited articles it said "*within* 10 to 20 seconds." The Court took a recess to allow him to read the articles cited and find where he obtained his information. After the recess Dr. Goldstein admitted that he could not find the information in either article. He said: "There must have been a mistake in where I read it and where I did my bibliography part, but I still believe my fact." The Court asked: "So you're saying now that information is somewhere else in one of the bibliography things? A. Yes." The Court took another recess to allow him to find where he got his information. After the recess, when asked if he was able to find the article, he testified that one of the articles pertaining to suicide had the following statement: "Particularly as loss of consciousness has been reported to occur *as early as* 15 seconds after suspension." Based on this testimony from Dr. Goldstein, the Master concludes that Dr. Goldstein misrepresented and/or embellished his report by citing two articles supporting his statement that unconsciousness occurs *within* 10-20 seconds. Whether the embellishment was intentional, was an artificial intelligence hallucination, or was from negligence, his credibility was severely damaged, and his opinions are entitled to little, if any, weight.

As mentioned, Dr. Goldstein was not familiar with the hanging protocol of any state, but he did attempt to describe a hanging in the most general of terms. However, he could not cite to

anything in his bibliography that provided that description. He testified further that there are "numerous examples and types of formulas and tables to figure out height, weight, drop length, to figure out the best way for this to occur." When questioned further, he acknowledged that he did not know "what every state or location uses for calculations." He put in his report that "usually twice the height is sufficient," but testified that sometimes a drop of twice the height would lead to strangulation.

Dr. Goldstein also opined that once pentobarbital is given intravenously, it can take upwards of one minute to produce unresponsiveness. He admitted that he has not used pentobarbital and that this opinion was not based upon his personal knowledge.

Dr. Goldstein believes that Ms. Pike has difficult IV access based upon the use of 23-gauge butterfly needles for blood draws. However, when reading her medical records, he did not find any evidence that there were difficulties with performing blood draws, that multiple attempts were needed to get blood draws, that there was any trouble getting a blood draw with larger needles, or that an IV line could not be established.

In his report, Dr. Goldstein says: "Hanging as a form of execution, *if done properly*, causes instantaneous death." Dr. Goldstein opined that both hanging and lethal injection are suitable options for capital punishment. "They both carry risks of unintended complications that may result in prolonged dying and potential suffering, *if done incorrectly*." In his report, Dr. Goldstein said: "Hanging involves substantial variability in outcome depending on the mechanics of the procedure. The variability is based on body habitus, weight, drop length and technique. Any variation of these can lead to strangulation instead of hanging. *If done correctly*, the person immediately dies with no pain and/or suffering due to transection of the spinal cord. If there is variation in how the person is hung, it can lead to strangulation, which there is a period of time

where there is decreased blood and air flow, leading to anxiety, thrashing and possible seizures. There is potential for conscious suffering if the patient becomes strangulated, instead of hanged lasting anywhere from 10-30 seconds."

Dr. Goldstein testified that gallows can be built with wood, hardware nails, and rope.

Dr. Goldstein discussed the "botch" rates of different forms of execution. He indicated that the botch rate for judicial hangings was greater than the botch rate for lethal injection. His source for his statistics was a book written by a political scientist, Austin Sarat, "Gruesome Spectacles: Botched Executions and America's Death Penalty." When asked if he had reviewed the specific executions that the author used when counting botched executions to see what happened in those executions, he responded at first by saying that he did not look at *every one*. This led the Court and everyone else to believe that he had looked at some of the specific executions. However, the next question asked of him was whether he had looked at *any* of them, to which he responded, "No." Upon questioning by the Court he indicated that he was not sure what the word "botched" meant, knew nothing about the author, the number of executions looked at, the dates of those executions or anything about the methodology used to come up with the statistic. As mentioned, the Court does not find Dr. Goldstein to be a credible witness.

Karen Kelly, M.D.

Karen Kelly is an expert in the field of forensic pathology and the mechanics of death by hanging. In suicidal hanging, the person generally dies from asphyxia (oxygen exclusion), and the person usually experiences unconsciousness in less than one minute. From reviewing two hangings in Washington state in the 90's, Dr. Kelly found that one died from vertebral lacerations and the other died from a complete transection of the spinal cord. Both suffered very quick, if not instantaneous, death. She opined that if a hanging did not result in damage to the spinal cord or the

vertebral arteries, the prisoner would undergo strangulation, which would be a significantly painful and anxious way to die.

Dr. Kelly also testified that a judicial hanging "*if it's done correctly*" can cause instantaneous death. She reviewed the history of hanging and indicated that various hanging tables had been in existence since the 1800's. She further testified that the last judicial hanging in the United States occurred in 1996. She also indicated that hangings ended in Britian in the 1960's. In her declaration which was marked as Ex. 28, Dr. Kelly cites archeological studies of the remains of persons judicially hanged with the long drop method, one of which involved an examination of 34 executed prisoners remains which indicated that ten of the prisoners had died partially or wholly by strangulation or asphyxia, and two of them entirely due to strangulation or asphyxia. The authors of that study believed this called into question the universal description of death as "almost instantaneous." She concludes her report: From the studies above, even in the setting of these requirements, the results and outcomes are variable and may lead to pain and suffering by strangulation/asphyxia. The authors of the biomechanics paper (reference 3) states: 'The only conclusion that can be made is that the outcome in any individual hanging must be uncertain, with decapitation, tearing of the neck structures, fracture and/or dislocation with immediate unconsciousness and prolonged apparent consciousness occurring at similar drop energies.'"

**Conclusions of Law**

**(1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));**

The Master finds that Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that given her diagnosis of thrombocytosis, achieving peripheral IV access

pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering." The Court further finds that Ms. Pike's thrombocytosis and elevated platelet counts do not make it "sure or very likely" that she will experience abnormal clotting or excessive bleeding during IV access. *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993)). The evidence contradicts any indication that her von Willebrand Factor has been depleted and the "[m]ere possibilit[y]" that she may experience clotting due to her slightly elevated platelet count is "not sufficient to satisfy [her] burden to establish a substantial risk of severe pain." *West v. Schofield*, 519 S.W.3d 550, 563 (Tenn. 2017) (citing *Baze*, 553 U.S. at 62). In sum, Ms. Pike has failed to establish that her diagnosis of thrombocytosis creates a "substantial risk" that achieving peripheral IV access will cause "an objectively intolerable risk of harm." West, 519 S.W.3d at 563 (cleaned up) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)). Therefore, the Court finds that given Ms. Pike's diagnosis of thrombocytosis, achieving peripheral IV access pursuant to the current lethal injection protocol would not make it "sure or very likely" that the challenged protocol will "cause [her] serious illness and needless suffering." see *Baze*, 553 U.S. at 50 (quoting *Helling*, 509 U.S. at 33).

Ms. Pike presented Dr. Van Norman, who opined that Ms. Pike was obese, given her 30.76 BMI, and that Ms. Pike suffers from essential thrombocytosis, a condition associated with increased clotting and paradoxically with increased bleeding. Dr. Van Norman opined to a reasonable degree of medical certainty that Ms. Pike is at a high risk for failing to gain peripheral vein access due to her essential thrombocytosis, her obesity, and the prior use of tiny needles to draw her blood. However, from a review of some of Ms. Pike's medical records, Dr. Van Norman noted that it appears that Ms. Pike did not have any trouble having her blood drawn. There is no

mention in the records of Ms. Pike having small veins, non-palpable veins, or non-visible veins. Notably, Dr. Van Norman has not examined Ms. Pike.

Ms. Pike also presented Dr. Joel Zivot. Based upon a record's review, Dr. Zivot also found that Ms. Pike suffers from essential thrombocytosis. He believes she is at an increased risk due to her condition, but primarily with regard to post-IV insertion and concludes the risk is the same no matter how low Ms. Pike's platelet counts come down.

The State presented Dr. Richard Mansour, an expert in the field of hematology. He noted that thrombocytosis is a medical condition in which a person has an elevated platelet count, which can cause issues with clotting and, paradoxically, with bleeding in some circumstances. He found that Ms. Pike suffers from essential thrombocytosis. Dr. Mansour has extensive experience as a hematologist and appeared to the Court to be extremely knowledgeable and credible. He opined that Ms. Pike has low risk essential thrombocytosis, which means she is generally a low risk for having a stroke in her brain, her heart, her eye, or some rare stroke. However, she does not appear to be at risk for excessive bleeding as her von Willebrand protein and function are normal. His opinion is based, in part, on the fact that Ms. Pike does not have extremely high platelet counts, but is on the low end of the abnormal spectrum. Dr. Mansour does not think that her elevated platelet count would interfere with the insertion of an IV line. Part of the basis for this opinion comes from his review of Ms. Pike's medical records wherein they showed that in approximately thirteen blood draws from Ms. Pike, the blood draws took only one stick in twelve of the draws and two sticks in one draw. There also appeared to be no problems when the IV was removed. This indicates to him that veins are accessible.

Further, neither Ms. Pike nor any other witness testified that she had ever actually had any difficulty or serious pain with vein access.

The Court concludes that even with Ms. Pike's diagnosis of essential thrombocytosis, Ms. Pike has failed to show by a preponderance of the evidence that achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering." The Special Master finds that Dr. Mansour was the most qualified and credible expert to give opinions regarding Ms. Pike's thrombocytosis and the potential issues that condition could have as it relates to IV access of Ms. Pike. The Master gives great weight to his opinions and accepts them fully over any conflicting opinions. Further, his opinions support the Master's conclusions.

Ms. Pike contends that the question posed to the Special Master inferred consideration of what happens after peripheral IV access is achieved, including the administration of the lethal dose of pentobarbital. The Special Master disagreed, but heard evidence pertaining to the same as it relates to the comparative analysis required in answering Question 4 referred by the Supreme Court. The Special Master gives great weight to the testimony of Dr. Antognini that unconsciousness will occur within 20-30 seconds and that no severe pain will be experienced before unconsciousness. The Master assigns little weight to the testimony of Dr. Zivot. He was evasive in his opinion about the length of time a person would remain conscious when administered pentobarbital. Although he knew it was an important consideration he skillfully avoided any clear discussion of the same in his direct testimony. Dr. Zivot eventually said he did not know but testified it was not immediately and could be up until the time of death. The Special Master finds that Dr. Antognini's testimony is entitled to greater weight than Dr. Zivot's. .Even if the question was interpreted broadly to include the effects of pentobarbital, Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that given her diagnosis of thrombocytosis, achieving peripheral IV access *and administering pentobarbital* pursuant to the

current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering." Ms. Pike relies on "mere possibilities" which are insufficient to stablish a substantial risk of pain.

> **(2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering,"** ***see id.*****;**

The Master finds that Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that, given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering."

The Court first wants to note the accommodations that have been made by the Tennessee Department of Correction for Ms. Pike's scheduled execution, as those accommodations somewhat alter this question. TDOC has made provisions to ensure that female corrections officers will transport and observe Ms. Pike. Ms. Pike will be transferred to RMSI no earlier than 24 hours before her scheduled execution, which is set for 10:00 a.m. on September 30, 2026. Ms. Pike will be the only inmate in the Capital Punishment Unit (CPU) during the entire time Ms. Pike is housed at RMSI. While at RMSI, Ms. Pike will be observed by four officers at a time, each working twelve-hour shifts. Two officers will be positioned outside of Ms. Pike's cell at RMSI conducting continuous observations while documenting their observations. A third officer will be in the control room, and a fourth officer will be the supervisor in charge. The agency's goal is to put all female staff in the CPU. A privacy screen will be available to Ms. Pike to provide her a degree of

privacy when using the restroom or taking a shower. The Court finds that Ms. Pike will not be observed by male guards at RMSI for two weeks prior to the scheduled execution. Instead, she will be observed by female guards for less than 24 hours. Thus, the Special Master finds that the factual predicates assumed in the issue referred by the Supreme Court—that Ms. Pike will be transported to RMSI two weeks before her execution and that she will be observed by male guards during that time—are not present.

Dr. Bethany Brand opined that Ms. Pike suffers from post-traumatic stress disorder and bipolar disorder. She believes that it will be very psychologically harmful for Ms. Pike to be observed while she's washing, toileting, and/or changing her clothes, regardless of the gender of the observer. The Court finds that TDOC's goal is to put all female staff in the CPU and that Ms. Pike will be provided with a privacy screen to provide her a degree of privacy when using the restroom or taking a shower, thereby minimizing, if not alleviating, any psychological harm.

Dr. Brand also believes that moving Ms. Pike to RMSI, even for less than 24 hours, will make her feel out of control and will be highly triggering to her. She believes that strapping Ms. Pike to a gurney will also be highly triggering due to her history of being abused. Inserting an IV near her chest or groin would also cause issues to Ms. Pike due to her past.

The Court does find that Ms. Pike suffers from post-traumatic stress disorder and bipolar disorder. However, the Court also finds that the accommodations made by TDOC regarding Ms. Pike's scheduled execution have minimized the potential for Ms. Pike experiencing significant triggering and/or anxiety. Despite these accommodations, Dr. Brand believes Ms. Pike will still suffer severe punishment even if she was not moved from her current prison setting. In fact, there does not appear to be any scenario by which Dr. Brand believes Ms. Pike would avoid mental suffering, absent no execution at all. Dr. Brand believes the current execution protocol, even with

the accommodations made for Ms. Pike, will surely or very likely cause terror and pain to Ms. Pike due to her post-traumatic stress disorder.

What is also significant to the Court is that Dr. Brand has not spoken to Ms. Pike since 2023. As such, Dr. Brand does not know Ms. Pike's current psychological condition. It is further important for the Court to note that in her report written in 2023, Dr. Brand noted, "Christa has matured and learned to process her trauma, and she is truly a different person than she was at the time of the murder. Christa will always carry that history of trauma with her, but she now has the tools to control her emotions and deal with life's stressors." The Court has considered Dr. Brand's testimony and, despite her wording, whether Ms. Pike will be psychologically harmed beyond that which would accompany any execution and the extent and severity of that additional psychological harm remains speculative. Furthermore, "mental suffering" alone "is not material to the Eighth Amendment inquiry under *Baze* and *Glossip*" "[u]nless accompanied by serious physical pain." *In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 450 (6th Cir. 2018) (internal quotations and citations omitted).

Based upon the foregoing, the Court concludes that Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that given her cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), the movement of Ms. Pike to Riverbend Maximum Security Prison for less than 24 hours before the execution, where she will be observed by female prison officials prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering."

**(3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id.*;**

The Court finds that Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that given Ms. Pike's allegedly small and compromised veins, achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering."

The Court first notes that there was no proof presented that Ms. Pike has small and compromised veins. Ms. Pike did not present testimony from any medical professional who examined her veins. Likewise, Ms. Pike did not testify that she had ever been advised that she had small veins, nor did she or any other medical professional testify that Ms. Pike had experienced any pain and/or problems with vein access.

Ms. Pike attempted to satisfy her burden of proof solely by a review of her medical records. In fact, from a review of the medical records, Dr. Van Norman noted it appears that Ms. Pike did not have any trouble having her blood drawn. There is no mention in the records of Ms. Pike having small veins, non-palpable veins, or non-visible veins. Dr. Van Norman did note that a 23 gauge butterfly needle was used to draw blood from Ms. Pike and that access was gained through her hand. From these facts alone, Ms. Pike asks this Master to speculate that she has small veins.

Dr. Mansour noted from his review of Ms. Pike's medical records that in approximately thirteen blood draws from Ms. Pike, the blood draws took only one stick in twelve of the draws and two sticks in one draw. There appeared to be no problems when the IV was removed. This indicates to him that veins are accessible.

Nurse Elizabeth Campbell did not see anything in Ms. Pike's medical records that indicated that Ms. Pike's veins would be difficult to access. She did notice that all but one of Ms. Pike's phlebotomy procedures were successful on the first attempt. The one other procedure took two

sticks. The blood was drawn from the hand, the forearm, and the bend in the elbow. She testified that use of a 23 gauge needle to draw blood is common.

Based on this evidence, the Court finds that Ms. Pike has failed to show by a preponderance of the evidence that given Ms. Pike's allegedly small and compromised veins, achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering." In fact, she has not even shown that she has small veins. At most, Ms. Pike has shown that she could experience some unknown amount of pain from peripheral IV access, but no more than any other person would. As Ms. Pike's own expert Dr. Van Norman testified, tens of thousands of people receive IV lines every day in the United States, and a portion of those people require more than one attempt to achieve IV access. There is no evidence in the record that achieving such access in Pike's case would cause any pain beyond the ordinary annoyance of a needle stick. The evidence Ms. Pike has produced amounts to speculation about potential problems with peripheral IV access. But such speculation is not sufficient as a matter of law to establish an Eighth Amendment violation. See *Cooey v. Strickland*, 589 F.3d 210, 224 (6th Cir. 2009) ("Speculations, or even proof, of medical negligence in the past or in the future are not sufficient to render a facially constitutionally sound protocol unconstitutional."). Put another way, the evidence before the Court has only alluded to "mere possibilities or hypotheticals" about IV problems, which "are not sufficient to establish a substantial risk of severe pain." *State v. Hines*, No. M2025-00221-SC-DPE-DD, at 5 (Tenn. Aug. 6, 2026) (Order). As such, the Court concludes that achieving peripheral IV access pursuant to the current lethal injection protocol would not make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering."

**(4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id.* at 52.**

The Court finds that Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that a proposed alternative method of execution would "significantly reduce a substantial risk of severe pain." The Court first notes that Ms. Pike has withdrawn her alternative of using a 23-gauge needle. Her remaining two alternative methods of execution are the placement of a central line and hanging.

When a prisoner asserts that the State's chosen method of execution cruelly superadds pain to the death sentence, a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason. *Glossip v. Gross*, 576 U.S. 863, at 877, 135 S.Ct. 2726, 2732–2738 (2015); *Baze v. Rees*, 553 U.S. 35, at 52, 128 S.Ct. 1520, at 1532 (2008); *Bucklew v. Precythe*, 587 U.S. 119, 134, 139 S. Ct. 1112, 1125, 203 L. Ed. 2d 521 (2019). As mentioned, an inmate must show that his proposed alternative method is not just theoretically " 'feasible' " but also " 'readily implemented.' " *Glossip*, 576 U.S., at ——— – ———, 135 S.Ct., at 2737–2738. 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 v. Precythe*, 587 U.S. 119, 141 2019). The proposed alternative need not be one "presently authorized by" state law. *Bucklew*, 139 S.Ct. at 1128. Thus, the inmate "may point to a well-established protocol in another State as a potentially viable option." *Id.* But it is not enough to argue for "a slightly or marginally safer alternative." *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 51). The "difference [in risk] must be clear and considerable." *Bucklew*, 139 S.Ct. at 1130.

***Central Line***

Central line access is generally access to the veins located in the pelvis, belly, heart, chest, and/or neck. A central line is a central IV placement in veins inside the body cavity using a longer catheter because the veins are deeper. These veins are usually much larger, and they are not difficult veins to access. Central line placements can also result in complications. Improper IV placement in a peripheral vein will usually not put the person's life in danger, but improper placement of a central line may cause such an issue. The Court concludes that Ms. Pike has failed to carry her burden by a preponderance of the evidence to show that a dispensing with peripheral IV access and making central line placement the only method of lethal injection would "significantly reduce a substantial risk of severe pain."

In addition, hanging is the only properly-raised alternative method of execution before this Court. Under United States Supreme Court precedent, a "method of execution" is a distinct way to cause death. Tennessee's legislature has approved two: lethal injection and electrocution. Tenn. Code Ann. § 40-23-114. Likewise, federal and state precedent equates a method of execution with a distinct way to cause death, such as nitrogen hypoxia (*Bucklew,* 587 U.S. at 141–42), firing squad (*Nichols v. Skrmetti*, No. 3:25-CV-442, 2025 WL 3299727, at *21–23 (M.D. Tenn. Nov. 26, 2025)), a single bullet to the back of the head (id.), or lethal injection with a different chemical or combination of chemicals (*Abdur'Rahman II*, 558 S.W.3d at 623–25); see also *Bucklew*, 587 U.S. at 134 (listing "hanging, the firing squad, electrocution, and lethal injection" as "traditionally accepted methods of execution"). Neither the Tennessee Supreme Court or the United States Supreme Court has ever held that a plaintiff can plead an alternative in a method-of-execution challenge by asking for the challenged method to be carried out with slightly different equipment or procedures. To do so would contravene binding precedent, which requires an inmate to plead

something more than a "slightly or marginally safer alternative." *Glossip*, 576 U.S. at 877 (2015) (quoting *Baze*, 553 U.S. at 51). Thus, hanging, which is a distinct method of causing death that has been held to be constitutional, is the only alternative method of execution Ms. Pike has pleaded.

***Hanging***

Comparing hanging to the present Tennessee lethal injection protocol "is a necessarily comparative exercise. To decide whether the State has cruelly 'superadded' pain to the punishment of death isn't something that can be accomplished by examining the State's proposed method in a vacuum, but only by 'comparing' that method with a viable alternative." *Bucklew v. Precythe*, 587 U.S. 119, 136, 139 S. Ct. 1112, 1126, 203 L. Ed. 2d 521 (2019). The Special Master notes that any comparison in the present case is limited as Ms. Pike did not offer any detailed evidence of any judicial hanging protocol from any other state or nation as a part of her proposed alternative. Instead of making a detailed proposal, Ms. Pike couched her proposed alternative of hanging in general, non-specific terms.

Justice Blackmun, in his dissent in *Campbell v. Wood*, 511 U.S. 1119, 114 S. Ct. 2125, 2127, 128 L. Ed. 2d 682 (1994), made the following observations about hanging:

> Under the most "ideal" of circumstances, hanging kills by breaking the spine. "When the victim is dropped from a sufficient height his vertebrae are dislocated and his spinal cord crushed; unconsciousness is immediate and death follows a short time later." App. to Pet. for Cert. A-49 (Reinhardt, J., dissenting), quoting Gardner, Executions and Indignities-An Eighth Amendment Assessment of Methods of Inflicting Capital Punishment, 39 Ohio St.L.J. 96, 120 (1978). Hanging, however, is a crude and imprecise practice, which always includes a risk that the inmate will slowly strangulate or asphyxiate, if the rope is too elastic or too short, or will be decapitated, if the rope is too taut or too long. A veteran prison warden has described a typical hanging:

> "When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and the prisoner strangles to death. His eyes pop almost out of his head, his tongue swells and protrudes from his mouth, his neck may be broken, and the rope many times takes large portions of skin and flesh from the side of the face that the noose is on. He urinates, he defecates, and droppings fall to the floor while witnesses look on." App. to Pet. for Cert. A-57 (Reinhardt, J., dissenting), quoting Gardner, 39 Ohio St.L.J., at 121.
>
> A person who slowly asphyxiates or strangulates while twisting at the end of a rope unquestionably experiences the most torturous and "wanton infliction of pain," *Gregg v. Georgia*, 428 U.S., at 173, 96 S.Ct., at 2925 (joint opinion of Stewart, Powell, and STEVENS, JJ.), while partial or complete decapitation of the person, as blood sprays uncontrollably, obviously violates human dignity.

*Campbell v. Wood*, 511 U.S. 1119, 114 S. Ct. 2125, 2127, 128 L. Ed. 2d 682 (1994) (Justice Blackmun, dissenting).

In his report, Dr. Goldstein says: "Hanging as a form of execution, *if done properly*, causes instantaneous death." Dr. Goldstein opined that both hanging and lethal injection are suitable options for capital punishment. "They both carry risks of unintended complications that may result in prolonged dying and potential suffering, *if done incorrectly*." In his report, Dr. Goldstein said: "Hanging involves substantial variability in outcome depending on the mechanics of the procedure. The variability is based on body habitus, weight, drop length and technique. Any variation of these can lead to strangulation instead of hanging. *If done correctly*, the person immediately dies with no pain and/or suffering due to transection of the spinal cord. If there is variation in how the person is hung, it can lead to strangulation, which there is a period of time where there is decreased blood and air flow, leading to anxiety, thrashing and possible seizures. There is potential for conscious suffering if the patient becomes strangulated, instead of hanged lasting anywhere from 10-30 seconds."

Against this background, the Court was interested in hearing proof regarding the comparison of the time to unconsciousness of lethal injection to the time to unconsciousness in hangings. The Court credits Dr. Antognini's opinion that when administered pentobarbital, a person will generally become unconscious within 20 to 30 seconds. The Court also credits his opinion that the person may experience mild pain at the injection cite but will be unconscious before any pulmonary edema causes pain. He has personally administered pentobarbital and thiopental, both of which have similar effects, and has seen the effects of both. The Court also notes that Dr. Antognini has extensive clinical experience.

Dr. Zivot was evasive in his opinion about the length of time a person would remain conscious when administered pentobarbital. Dr. Zivot eventually said he did not know but testified it was not immediately and could be up until the time of death. Dr. Goldstein also opined that once pentobarbital is given intravenously, it can take upwards of one minute to produce unresponsiveness. He admitted that he has not used pentobarbital and that this opinion was not based upon his personal knowledge. As noted below, this Court does not find Dr. Goldstein to be credible and affords his opinion on the length of time to unconsciousness with pentobarbital, no weight.

Regarding the length of time a person may remain conscious when spinal cord transection is not achieved, the opinion provided to the Court was given by Dr. Goldstein. He opined that strangulation may result in a loss of consciousness in approximately 10 to 20 seconds and that death would occur in approximately one minute. He later said 30 seconds. The Court finds Dr. Goldstein not credible. The true time to unconsciousness may be far greater than 30 seconds. In addition, whatever period of time that a person dangles on the end of a rope would be a period in which the person suffers severe pain and terror. The severity of that terror is far greater than any

provided by lethal injection. Furthermore, even assuming a time to unconsciousness of 10-20 seconds during which the person would be in terror and severe pain, Pike cannot show that hanging is clearly a safer alternative than lethal injection under the current Tennessee protocol.

The Court finds Dr. Goldstein not to be a credible witness. First, his expertise is in emergency medicine, not judicial hangings. Second, in his report he cited two articles for the proposition that strangulation may result in a loss of consciousness in approximately 10 to 20 seconds and that death would occur in approximately one minute. When given the opportunity (during a recess) to locate in the articles where it said "approximately 10 to 20 seconds", Dr. Goldstein could not find that notation in either article. He explained that there must have been a mistake in where he read it and when he did his bibliography for his article. Upon being given an opportunity to find such a reference in a different article, he referenced an article that stated a loss of consciousness has been reported *as early as* 15 seconds after suspension, but apparently did not notate an upper limit. Third, when testifying about the "botch" rates of different forms of execution, he merely used statistics from an article he had read, written by a political scientist about whom Dr. Goldstein knew nothing. Finally, when asked if he had reviewed the specific executions that the author used when counting botched execution to see what happened in those executions, he responded by saying that he did not look at every one. This led the Court and everyone else to believe that he had looked at *some* of the specific executions. However, the next question asked of him was whether he had looked at *any* of them, to which he responded, "No." Dr. Goldstein has no credibility with this Court.

There was also proof presented regarding the possibility of pulmonary edema occurring with lethal injection. Dr. Zivot opined, based upon his review of a number of autopsy reports prepared following lethal injections, that pulmonary edema occurs in 65-70% of the lethal injection

executions. Pulmonary edema is generally a combination of blood and other kinds of fluid that accumulate within the lungs. He believes that lethal injection by pentobarbital can cause pulmonary edema, and that the pulmonary edema sets in very rapidly. Dr. Zivot believes that if this condition occurred during the lethal injection process, the individual would experience pain.

Dr. Antognini opined that if pulmonary edema occurs, it will not occur during the period of consciousness, which is the period most relevant to the Court when addressing this issue. He opined that someone who is unconscious cannot have the experience of pain. He has personally administered pentobarbital and thiopental, both of which have similar effects, and has seen the effects of both. The Court credits Dr. Antognini's opinions regarding this issue.

Since Ms. Pike did not offer a specific hanging protocol for comparison, it is extremely difficult to compare any psychological stress placed on Ms. Pike from the lethal injection protocol with that on a hypothetical hanging protocol. The Special Master assumes that under any hanging protocol it would be necessary to forcibly remove Ms. Pike from her cell, restrain her, force her to the execution chamber, force her up to the gallows, and restrain her movement. Under these circumstances, it would appear that any hanging protocol would be equally, if not more stressful.

Finally, Dr. Goldstein repeatedly referred to a hanging done *correctly* or *incorrectly*. However, neither "expert" on hanging provided any testimony that leads this Special Master to believe that at the time hanging ended in this country or as it existed or exists in any other country, the practice of hanging had been perfected to ensure spinal dissection and eliminate the risk of strangulation. Neither "expert" offered any evidence concerning the details of any other hanging protocol. Dr. Goldstein testified he had never even read the hanging protocol of any other state. As Justice Blackmun noted: "Hanging, however, is a crude and imprecise practice, which always includes a risk that the inmate will slowly strangulate or asphyxiate, if the rope is too elastic or too

short, or will be decapitated, if the rope is too taut or too long." *Campbell v. Wood*, 511 U.S. 1119, 114 S. Ct. 2125, 2127, 128 L. Ed. 2d 682 (1994) (Justice Blackmun, dissenting). Nothing presented to this Special Master by either hanging "expert" indicates that there is or was any hanging protocol that could eliminate the risks associated with judicial hanging. If anything, the archeological studies referred to by Dr. Kelly support a finding that despite all the attempts at perfecting judicial hanging, death by strangulation remained a significant possibility, when it was abandoned in this country.

The Court concludes that there was no credible proof presented that hanging, as an alternative method of execution, would "significantly reduce a substantial risk of severe pain."

Even if the Court had meaningful information regarding the alternative of hanging, the Court finds that hanging is not "a feasible and readily implemented alternative method of execution." Linda R. Thomas noted that TDOC does not have anyone on staff with experience in carrying out judicial hangings. TDOC does not have the equipment to carry out a judicial hanging. Warden Kenneth Nelson indicated that a hanging could not be carried out at RMSI because TDOC does not have the equipment, does not employ anyone who has expertise in execution by hanging, and it is not approved by Tennessee law.

The Court finds that Ms. Pike has failed to present a proposed alternative method of execution that "significantly reduces a substantial risk of severe pain" and that is feasible and can be readily implemented.

**(5) Whether TDOC is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.**

On August 7, 2026, the parties filed a *Stipulation of Dismissal of Issue #5*. The parties stipulated and agreed to the accommodations provided in Exhibit A attached to the stipulation.

The parties also agreed and stipulated that Issue (5) referred to the Special Master should be dismissed. This Court approves the filed stipulation and does not need to further address this issue.

Entered this 20th day of August, 2026.

W. Mark Ward, Senior Judge
Special Master

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

## NOTICE REGARDING SPECIAL MASTER'S REPORT

The State of Tennessee gives notice that it does not object to the findings of fact and conclusions of law in the report filed by Special Master W. Mark Ward on August 20, 2026.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Document received by the TN Supreme Court.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was filed and served on this the 27th day of August 2026, upon:

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Document received by the TN Supreme Court.

FILED
08/27/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**STATE OF TENNESSEE v. CHRISTA GAIL PIKE**

**Criminal Court for Knox County**
**No. 58183A**

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**No. M2020-01156-SC-DPE-DD**

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# ORDER

Christa Gail Pike, a death-row inmate scheduled for execution on September 30, 2026, filed a "Motion and Request to Appoint a Special Master Pursuant to Tenn. Sup. Ct. R. 12(4)(E)." In her motion, Ms. Pike asserted facial and as-applied challenges to Tennessee's current lethal injection protocol and requested the appointment of a special master "to develop the facts to support these claims." Ms. Pike also contended that Tennessee Supreme Court Rule 12(4)(E) is unconstitutional and otherwise unlawful and requested that the Court reconsider and amend the rule.

On July 10, 2026, this Court appointed a Special Master and referred certain specified issues to the Special Master for a hearing. The Court also set a briefing schedule for the challenges Ms. Pike raised to Tennessee Supreme Court Rule 12(4)(E). Additional briefs on those issues were filed on July 17, 2026. The Court held all other issues not specifically referred to the Special Master in abeyance pending completion of the Special Master's report and indicated that a briefing schedule on those issues would be set upon receipt of the Special Master's report.

The Special Master's report was filed on August 20, 2026. It is therefore ORDERED that any additional briefing by the parties on the issues not referred to the Special Master and held in abeyance shall be filed by September 4, 2026.

PER CURIAM

KYLE A. HIXSON, J., NOT PARTICIPATING.

Electronically RECEIVED on August 27, 2026
Appellate Court Clerk

Electronically FILED on August 27, 2026
Appellate Court Clerk

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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|---|---|
| **State of Tennessee** | **)** |
| | **) Supreme Court Case No. M2020-01156-SC-DPE-DD** |
| **v.** | **) Knox County Case No. 58183A** |
| | **) CAPITAL CASE (Execution Date: Sept. 30, 2026)** |
| **Christa Gail Pike** | **)** |

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**Christa Gail Pike's Objections to the**
**Special Master's Findings of Fact and Conclusions of Law**

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Christa Gail Pike, through counsel, submits these objections to the Special Mater's Findings of Fact and Conclusions of Law pursuant to this Court's order. The Special Master's Report contains the opinions of a biased judge, not based on the facts or evidence presented, without any citation to the record in this case. He gets the facts wrong, and he gets the law wrong. This Court should set aside the Special Master's Report and enter an order staying Ms. Pike's execution so that she may pursue collateral litigation.

## GENERAL OBJECTIONS

### I. The Special Master erroneously excluded relevant evidence about post-IV access effects from Questions 1 and 3.

The Special Master erred in ruling during the hearing that "the extent of and duration and the seriousness of the pain that Ms. Pike will undergo after achieving peripheral IV access is essentially irrelevant to questions one and three" (Aug. 11 Tr. Vol. 1, 47:1–4), and in confining all evidence of post-access effects—including pulmonary edema and extravasation—to the comparative alternative-method analysis under **Question 4** alone, (Aug. 11 Tr. Vol. 1, 47:5-10). *See State v. Cheairs*,

2025 WL 407435, at *5 (Tenn. Crim. App. Feb. 5, 2025), *appeal denied* (June 23, 2025) ("Generally, relevant evidence is admissible. Tenn. R. Evid. 402. Relevant evidence is evidence that has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" (quoting Tenn. R. Evid. 401)). *See also State v. Martinez*, 2026 WL 411742, at *22 (Tenn. Crim. App. Feb. 13, 2026) ("'Excluding relevant evidence under [Tennessee Rule of Evidence 403] is an extraordinary remedy that should be used sparingly and persons seeking to exclude otherwise admissible and relevant evidence have a significant burden of persuasion.'" (quoting *State v. James*, 81 S.W.3d 751, 757–58 (Tenn. 2002) (alteration in original)).

In its referral, this Court specifically requested that the Special Master receive evidence regarding whether "achieving peripheral IV access pursuant to the current lethal injection protocol" will make it "sure or very likely" that the protocol will cause Ms. Pike "serious illness and needless suffering." (Order at 2). That language reaches the protocol's entire anticipated procedures relating to vein access, not merely the moment of needle insertion. The protocol's undeniable purpose in obtaining IV access is to deliver pentobarbital, and the suffering that flows from delivering that drug through Ms. Pike's compromised veins—due to repeated blood draws from thrombocytosis, potential clotting and extravasation of a caustic drug, and flash pulmonary edema—is part of "achieving" access under the protocol as written. (Aug. 12 Vol 2, 188:20–190:6, Vol. 3, 213:19–215:4, 255:5–259:14). By excluding this evidence from **Questions 1** and **3**, the Special Master required Ms. Pike to prove

suffering from needle placement in isolation—a limitation the referral order does not impose and the protocol itself does not contemplate.

Because the Special Master's construction impermissibly narrowed the scope of this Court's referral and excluded evidence directly probative of serious illness and needless suffering, this Court should hold that post-access effects are properly considered under **Questions 1** and **3** and should credit that evidence in evaluating those questions.

## II. The Special Master erroneously excluded relevant evidence about the placement of a central line from Questions 1 and 3.

The Special Master further erred by excluding all evidence concerning central line placement—including the qualifications of the designated physician and the likelihood that Ms. Pike would require a central line given her compromised veins—from **Questions 1** and **3**, ruling that "[t]he qualifications of the physician and what happened in Tony Carruthers' execution is beyond the scope of question one and question three." (Aug. 11 Tr. Vol. 1, 34:1–5, 37:21–23). *See Cheairs*, 2025 WL 407435, at *5. S*ee also Martinez*, 2026 WL 411742, at *22.

This ruling overlooked that the protocol itself makes a central line the mandatory next step when peripheral access fails. (Protocol at 20). Ms. Pike clearly pled that central-line placement was the foreseeable result of failure to "achiev[e] peripheral IV access pursuant to the current lethal injection protocol." (Order at 2). The Special Master's ruling that the central line contingency lies outside the protocol's peripheral-access process cannot be reconciled with either the plain

language of the protocol, or the State's own characterization of the protocol as a single, unified procedure.

The Court should hold that central line evidence is within the scope of **Questions 1** and **3** and should consider it in evaluating whether achieving peripheral access under the protocol makes serious illness and needless suffering sure or very likely.

## III. The Special Master erroneously excluded relevant evidence about the attempted execution of Tony Carruthers.

The Special Master erred in excluding evidence regarding the attempted execution of Tony Carruthers. The Special Master excluded the testimony of eyewitness Maria DeLiberato regarding the extraction, IV-access attempts, and central line placement during Carruthers's attempted execution, sustaining the State's relevance objection and directing that the remainder be treated only as an "offer of proof." (Aug. 11. Tr. Vol. 2, 132:20–22). The Special Master likewise refused to receive Dr. Gail Van Norman's opinion on the qualifications of the physician who attempted Carruthers's central line placement, stating that he would "exercise [his] discretion not to do an offer of proof on this because of the nature of this hearing[.]" (Aug. 11. Tr. Vol. 3, 204:6–16). The Special Master provided no legal basis for the exclusion and none exists.

Ms. DeLiberato's offer of proof established the following: The IV Team struggled for approximately seven minutes to achieve access in Carruthers's right arm. (Aug. 11. Tr. Vol. 2, 139:16–20). The team then attempted access on the left arm for approximately twelve minutes, with six or seven needle sticks. (Aug. 11. Tr. Vol.

1, 141:1–3). The team then moved to the left hand, but the "IV was not flowing." (Aug. 11. Tr. Vol. 1, 141:17–19). The execution physician then entered the room and directed the IV Team to attempt access in Carruthers's feet. (Aug. 11. Tr. Vol. 1, 143:10–12). For over 10 minutes, the IV team attempted to gain access through Carruthers's feet, and throughout, "Mr. Carruthers was wincing and appeared to be in pain." (Aug. 11. Tr. Vol. 1, 143:13–144:20). He asked members of the IV Team "if any of them had experience with jugular access" (Aug. 11. Tr. Vol. 1,144:18–20); one team member who initially said he did, later stated "he didn't feel like he could do this." (Aug. 11. Tr. Vol. 1, 145:3–6). The physician then decided he would place a central line. (Aug. 11. Tr. Vol. 1, 145:7–9). The physician attempted the central line below Carruthers's right clavicle, at which time Carruthers "began gutturally groaning, and said, 'It hurts. It hurts.'" (Aug. 11. Tr. Vol. 1, 146:11–14). Blood oozed from the puncture wound. (Aug. 11. Tr. Vol. 1, 146:19). Approximately 28 minutes after the physician entered the room, he announced he would not be able to set a central line. (Aug. 11. Tr. Vol. 1, 141:21–25, 147:6–7). The execution was ultimately called off. (Aug. 11. Tr. Vol. 1, 148:1–4). The entire process—from the beginning of IV access attempts through the halted execution—lasted over an hour and Carruthers was stuck over a dozen times. (Aug. 11. Tr. Vol. 1, 148:9–10).

In her expert report, Dr. Van Norman opined that the physician in the Carruthers execution, the same physician who has publicly declared he will be the

physician on Ms. Pike's execution,[1] was not competent to place a central line. (Aug. 3, 2026 Expert Report of Gail A. Van Norman, M.D. at 6). The Special Master refused to even allow an oral offer of proof on this topic, which he stated was an option afforded to him by "the law" when it's "absolutely, positively, clearly irrelevant that it's not an error for me to deny the offer of the proof." (Aug. 11 Tr. Vol. 3, 202:16–18). But relevance is defined broadly as evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401.

That is precisely the case here regarding **Questions 1** and **3**. The Special Master was tasked with making determinations regarding Ms. Pike's underlying conditions, including her thrombocytosis and small veins, and if those conditions will make it "sure or very likely" that "achieving peripheral IV access" will cause her serious illness and needless suffering. (Order at 2–3).[2]

Carruthers attempted execution under the identical protocol and by the same execution team at issue here required multiple IV attempts followed by an attempted central line placement—the very outcome Ms. Pike contends is foreseeable in her case

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[1] Caleb Wethington, *The doctor in a botched lethal injection says he will now oversee the execution of the only woman on TN's death row. Here's what we know*, WSMV4 (August 14, 2026), https://www.wsmv.com/2026/08/14/doctor-botched-lethal-injection-says-he-will-now-oversee-execution-only-woman-tns-death-row-heres-what-we-know/.

[2] Notably, the Special Master did not say that the placement of the central line and any issues attendant thereto were not relevant as to potential pain and suffering for Ms. Pike; he merely interpreted **Questions 1** and **3** as written in the Order to only encompass the process of peripheral IV access and explicitly noted that the central line is an argument "down the road." (Aug. 11 Tr. Vol. 1, 37:10–38:21).

given her thrombocytosis and compromised veins. The exclusion of that evidence in a case where the inmate has a "highly elevated risk of a difficult IV access—"[s]omewhere between quadruple to ten times" that of an inmate without her conditions—is particularly prejudicial. (Aug. 11 Tr. Vol. 2, 190:13-21).

Evidence of a prior, similar occurrence under the same protocol is relevant under Tenn. R. Evid. 401 to show that the risk Ms. Pike identifies is not speculative. Courts evaluating method-of-execution challenges routinely consider how a protocol has actually operated rather than crediting only its text. *See Baze v. Rees*, 553 U.S. 35, 49–50 (2008) (assessing the protocol as implemented). The Special Master's refusal to permit even an oral offer of proof compounds the error by depriving this Court of the substance of the excluded testimony. This exclusion is in direct contradiction with Tenn. R. Evid. 401 and 402, because the Carruthers evidence has a direct tendency to make the existence of a fact of consequence—namely, the foreseeability of failed peripheral IV access and painful central line attempts under this protocol—more probable. Indeed, the Carruthers attempted execution transforms Ms. Pike's risk from the mere possibility the Special Master found into a demonstrated, documented probability.

This Court should hold that the Carruthers evidence was improperly excluded under **Questions 1** and **3** and should either grant admission of Ms. DeLiberato's and Dr. Van Norman's excluded testimony directly or order a limited remand for the purpose of receiving it.

## IV. The Special Master erroneously limited Dr. Van Norman's relevant expert testimony.

The Special Master permitted Dr. Van Norman to testify as an anesthesiologist on venous access but restricted her testimony concerning execution procedures, "botched" executions, and the broader risks of IV-access failure, reasoning that "[s]he's not an expert in lethal injection or executions or anything else. She's done a book report." (Aug. 11. Tr. Vol. 2, 171:7–11).[3]

Dr. Van Norman's expert report addressed the specific, cascading risks of IV failure, extravasation, and slow injection as they would manifest in Ms. Pike's case—risks that require anesthesiologic expertise to explain and that are documented in the peer-reviewed literature and prior execution records she reviewed. (Aug. 3, 2026 Expert Report of Gail A. Van Norman, M.D. at 6–12, 20–23). Tenn. R. Evid. 702 and 703 permit expert testimony where specialized knowledge will assist the trier of fact. Tennessee applies a flexible approach to expert qualification that looks to a witness's knowledge, training, and experience rather than a rigid subject-matter label. *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257, 263–65 (Tenn. 1997). The Special Master's characterization of Dr. Van Norman's literature-based analysis as a mere "book report" conflated her qualification in anesthesiology with the scope of opinions an anesthesiologist may permissibly offer by applying that expertise to the facts of

[3] The Special Master later advised that he understood the role of literature reviews in the context of expert testimony, "so long as the literature is the type of material that that expert would use in their profession and reasonably rely upon those and they're reliable." (Aug. 13 Tr. Vol. 1, 5:23–6:5).

this case, which is the ordinary function of expert testimony. Notably, the Special Master did not balk at Dr. Antognini's literature reviews, demonstrating his clear bias against Ms. Pike and her experts. In fact, Dr. Antognini testified that his opinions on pentobarbital (and consciousness) come from "the review of the literature that I've cited in my report." (Aug. 13 Tr. Vol. 3, 557:20–25, 558:1–18). He also testified that literature reviews are a "fairly common practice in the field of medicine." (Aug. 13 Tr. Vol. 3, 558:19–22).

Stated differently, the Special Master's acknowledgment of Dr. Van Norman's opinion that Ms. Pike is at "high risk for failing to gain peripheral vein access,"( Report at 5, 18), while barring consideration of her expertise on the next logical inquiry—*i.e.*, what happens when access fails and an unqualified physician attempts a central line—improperly deprived Ms. Pike of the complete scope of Dr. Van Norman's expertise as relevant here. The ability to achieve IV access is not entirely distinct from the ability to maintain it, and both are relevant to the referred question of whether it is "'*sure or very likely*' that the challenged protocol will 'cause [Ms. Pike] serious illness and needless suffering.'" (Order at 2–3) (emphasis in original). Dr. Van Norman's review of relevant literature did not inherently transform her opinions on physician qualifications, the attempted Carruthers execution, or the ability to maintain an IV into unreliable ones under Tenn. R. Evid. 702 and 703. At a minimum, the Special Master should have allowed the testimony and then assigned it an appropriate weight rather than excluding it altogether.

The Court should hold that Dr. Van Norman's testimony was improperly restricted and should consider her full opinion, including as it bears on execution-related IV failure and its consequences.

## V. The Special Master erroneously cast Dr. Joel Zivot's scientifically supported conclusions as "evasive" or "unsupported."

In making conclusions regarding the effects of pentobarbital post-injection for the purpose of "the comparative analysis required in answering Question 4," the Special Master "assign[ed] little weight to the testimony of Dr. Zivot." (Report at 20, 30). According to the Special Master, Dr. Zivot was "evasive" about the length of time it would take to become unconscious after administration of pentobarbital and "avoided any clear discussion of the same in his direct testimony" before "eventually [saying] he did not know . . . ." (Report at 20). This dismissive and pre-conceived conclusion misstates and mischaracterizes Dr. Zivot's expert opinion on this question.

Dr. Zivot is an expert anesthesiologist who testified regarding the impacts of thrombocytosis as well as the effects of pentobarbital administration, including the significant pain likely to follow from pentobarbital injection and the onset of pulmonary edema. (Report at 7). Dr. Zivot has been a practicing physician for nearly forty years. He is board certified in both anesthesiology and critical care medicine, publishes regularly in peer reviewed publications in anesthesiology and has been repeatedly certified as an expert in anesthesiology. (Aug. 11 Tr. Vol. 3, 229:12–232:15). Even though the State never questioned Dr. Zivot on this topic, the Special Master questioned Dr. Zivot at length regarding how long a person would be able to

feel pain after the injection of pentobarbital.[4] (Aug. 11 Tr. Vol. 3, 287:18–298:2). The Special Master's characterization of Dr. Zivot's testimony implies that Dr. Zivot is unknowledgeable, inexpert, or unreliable. Instead, as excerpted in the Report (10), when asked, "Are you telling me you don't know the duration?" Dr. Zivot testified:

> No one knows the duration. It's not knowable. I can surmise it, but it's not knowable. . . . it's based upon the way the drug works. What I've seen in thousands of cases of anesthesia and thousands of cases of pulmonary edema and my opinion -- and my understanding of the pentobarbital or drugs of that class work, I think it could be minutes. It won't be one second. It could be minutes. Or a minute.

(Aug. 11 Tr. Vol. 3, 294:1–20). Dr. Zivot testified that, with respect to the precise duration that someone would feel pain, that the duration "is not knowable" because "once a person is dead, you can't ask them whether they experienced their own death as cruel." (Aug. 11 Tr. Vol. 3, 298:8–14). This is not an evasive or avoidant answer—it is a scientifically honest one.

He also testified based on his clinical expertise: "I've also seen on many occasions frequently that patients react to pain even under deep anesthesia. And I also know that this idea about the number of seconds of pain is important because really the question is, how long can a reasonable person endure terrible pain reasonably." (Aug. 11 Tr. Vol. 3, 292:25–293:5). Additionally, Dr. Zivot clearly

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[4] Recognizing the length of this exchange, the Special Master included an abridged version in his report that attempts to show Dr. Zivot's purported evasiveness. (Report at 9–11). However, Dr. Zivot repeatedly offered to answer any questions the Special Master had on this question. (Aug. 11 Tr. Vol. 3 296:22–297:1) (THE COURT: "We're not going to talk about it. But I just—yeah, why didn't you put a duration in your report?" THE WITNESS: "It just didn't come up. I mean, again, I'm happy to address it now.").

testified it was his expert medical opinion that a person experiencing pulmonary edema—an experience he called "terrifying" and analogized to the feeling of pouring an entire glass of water into one's trachea (Aug. 11 Tr. Vol. 3, 249:7–250:6)—would be sensate to pain while that was happening. He concluded that, as an expert on pain relief, "the timing of it is long enough that the brain can conceive of it. That it can be experienced. That's my contention." (Aug. 11 Tr. Vol. 3, 299:6–15).

It is clear that Dr. Zivot was attempting to answer the Special Master's question as best as his experience and the science would allow him to. That such an answer does not offer comfortable certainty is not valid grounds for disregarding his testimony—it proves the point. Under Tenn. R. Evid. 702 and *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257 (Tenn. 1997), an expert's reliability should be assessed based on the support for the opinion and not on the content of his viewpoint. The Court should hold that the rejection of Dr. Zivot's testimony was not supported by an appropriate application of the governing reliability standard and should reweigh his testimony regarding the pain and suffering caused by administration of pentobarbital and its after-effects under **Questions 1**, **3**, and **4**.

## VI. The Special Master erroneously made adverse credibility findings against Dr. Scott Goldstein.

The Special Master found that Dr. Goldstein "misrepresented and/or embellished" his report on the time to unconsciousness in hanging because he could not immediately locate a specific source during live testimony, concluding that "[w]hether the embellishment was intentional, was an artificial intelligence

hallucination, or was from negligence, his credibility was severely damaged," and affording his opinions "little, if any, weight." (Report at 14).

Dr. Goldstein is a board-certified, emergency medicine physician that has been practicing for more than twenty-four years and is currently the Chief of Emergency Medical Services and Disaster Medicine at Temple University Hospital. (Aug. 12 Tr. Vol. 5, 416:22–418:9). Dr. Goldstein has been teaching emergency medicine for nearly twenty years as a clinical associate professor and routinely treated patients after a hanging or attempted hanging. (Aug. 12 Tr. Vol. 5, 418:9–420:14) Dr. Goldstein was Ms. Pike's principal expert on the comparative safety and efficacy of hanging as an alternative method of execution under **Question 4**.

During his testimony, the Special Master fixated on a single footnote in his report. His report states that "regardless of the cause of unconsciousness the patient usually becomes unconscious within 10-20 seconds," citing footnotes 6 and 7 for that proposition. (Goldstein Rep. at 3). Footnote 6 is Kiani & Simes, *Delayed Bilateral Internal Carotid Artery Thrombosis Following Accidental Strangulation*, Br. J. Anaesth. 2000; 84:521-24—the very article Dr. Goldstein identified on cross-examination, which states that "loss of consciousness has been reported to occur as early as 15 seconds after suspension." (Aug. 12 Tr. Vol. 5, 456:14–21). Fifteen seconds falls squarely within the 10-20 second range in Dr. Goldstein's report and is consistent with the State's own forensic pathology expert, Dr. Kelly, who testified that loss of consciousness in a documented strangulation case occurred in 13 seconds. (Aug. 12 Tr. Vol. 5, 493:4–12). The only difficulty at the hearing was Dr. Goldstein's

need for two brief recesses to locate the precise page of a bibliography citation while testifying without the benefit of a search function—after which he correctly and specifically identified the source, down to the page number and quoted language. (Aug. 12 Tr. Vol. 5, 456:14–21). The proposition itself was never shown to be false, unsupported, or contradicted by any other evidence in the record. As discussed, *infra*, Dr. Antognini had marked difficulty identifying the propositions supported by the articles cited in his declaration. His testimony should be weighed at least the same as Dr. Goldstein's.

Tenn. R. Evid. 702 and *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257, 263–65 (Tenn. 1997), assess expert reliability by reference to the soundness of the underlying methodology and the support for the substance of an opinion, not the precision of citation formatting or immediate photographic recall on the stand. The record confirms that Dr. Goldstein's methodology was sound: he identified the governing medical literature in his report, and when pressed on cross-examination, he located and quoted the exact supporting language—demonstrating that his opinion rested on an actual, verifiable source rather than fabrication. Treating a momentary difficulty locating a bibliography citation, for a proposition that was in fact accurately supported, as intentional misrepresentation applied a harsher standard than Tennessee law requires. The Special Master's further speculation that the citation lapse reflected an "artificial intelligence hallucination" had no basis in the record and is a red herring: no witness testified that Dr. Goldstein used AI to prepare his report, Dr. Goldstein expressly and unequivocally denied using AI in his

written work, and the proposition he could not immediately place turned out to be accurately sourced. This speculation, unmoored from any evidence, illustrates a hostility to Ms. Pike's witnesses that was evident throughout the proceedings.

Because the record demonstrates that the very proposition the Special Master found "embellished" was in fact accurately sourced and consistent with the State's own expert testimony, the Court should hold that the wholesale rejection of Dr. Goldstein's testimony was not supported by an appropriate application of the governing reliability standard and should reweigh his testimony regarding hanging as an alternative method under **Question 4**.

## VII. The denial of Ms. Pike's Motion to Compel was an abuse of discretion.

The Special Master effectively adopted the State's position that the expedited proceedings did not contemplate pre-hearing written discovery, denying Ms. Pike's Motion to Compel Expedited Discovery and instead granting the State's Motion to Limit Discovery. This was an abuse of discretion. *See West v. Schofield*, 460 S.W.3d 113, 120 (Tenn. 2015) ("The applicable standard of review for pretrial discovery decisions is abuse of discretion. An abuse of discretion occurs when the trial court applies incorrect legal standards, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." (internal citations removed)). "Discretionary decisions must take the applicable law and relevant facts into account." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (holding trial court erred in denying motion to compel discovery).

Tenn. R. Civ. P. 53.02(c) authorizes a special master to "regulate all proceedings in every hearing before him or her" and to "require the production before him or her of evidence upon all matters embraced in the reference," and the Court's Order directed the Special Master to "exercise such other powers as are appropriate and applicable under Rule 53." (Order at 2). In furtherance of this fact-finding endeavor, and after conferring with the State about the need for discovery, Ms. Pike issued a limited set of interrogatories and requests for admission to the State. The State refused to engage in discovery and Ms. Pike filed a Motion to Compel Expedited Discovery, arguing that (1) both the Court's Order and Rule 53 contemplate that the parties would develop evidence, since it explicitly empowered the Special Master to receive evidence; (2) the absence of opportunity to develop a factual record impinged upon Ms. Pike's due process right to a meaningful opportunity to be heard on her claims; and (3) the burden of discovery would be minimal in light of the narrowly-tailored requests and the fact that the State had already gathered much of the responsive information for other lethal injection litigation. (Pike Mot. to Compel (July 30, 2026)). The State subsequently filed its own Motion to Limit Discovery,[5] arguing briefly that discovery was not contemplated in the Order and would be unduly burdensome, irrelevant, and/or privileged. (State Mot. and Mem. to Quash or Modify Subpoenas and to Limit Discovery at 14–15). The State provided no analysis or

[5] The State's motion also separately sought to quash subpoenas for testimony issued to TDOC, and the majority of its motion was dedicated to that issue. The Special Master rightly rejected it.

specific factual support for its claim that discovery would be unduly burdensome, other than stating the obvious—that the hearing was fast approaching. (*Id.*).

The Special Master denied Ms. Pike's motion, effectively depriving her of all ability to develop a factual record in advance of the hearing. In doing so, the Special Master said he "will assume, without deciding, that he has the power to compel the State to answer the interrogatories and the requests for admissions and to shorten the response time . . ." but that, "in the exercise of discretion" he would "not impose this burden on the State" in light of the compressed timeline. (Order Denying Mot. to Compel at 7 (Aug. 4, 2026)). The Special Master further held that expedited written discovery "is not warranted in light of the expedited hearing schedule, the disclosure requirements already imposed, and its ruling with regard to the subpoenas [denying in part the State's motion to quash or modify]." (*Id.* at 8). Ms. Pike agrees with the Special Master's assumption that he could compel discovery, but his decision not to was an abuse of discretion.

Denial of all pre-hearing written discovery from the State under the life-or-death, high stakes at issue here plainly "causes an injustice to the complaining party." *West*, 460 S.W.3d at 120. As a result of the discovery denial, Ms. Pike was forced to litigate complex medical, scientific, and protocol-implementation issues without advance knowledge of the State's evidence, the execution team's qualifications, contingency plans for failed IV access, pentobarbital testing results, or any planned accommodations for her medical conditions—a posture Ms. Pike warned would "reduce the evidentiary hearing to a hollow exercise." (Mot. to Compel at 1–2). Indeed,

the Tennessee Department of Correction (TDOC) representatives subpoenaed by Ms. Pike were hostile and evasive during their direct examination.

"Tennessee's discovery and evidentiary rules reflect a broad policy favoring discovery of all relevant, non-privileged information. This policy enables the parties and the courts to seek the truth so that disputes will be decided by facts rather than by legal maneuvering." *Lee Med.*, 312 S.W.3d at 525 (internal citation omitted). Likewise, Tennessee law favors making relevant evidence available to the trier of fact. *Id.* (explaining the policy rationale underlying Tenn. R. Evid. 501). Where disclosure concerns exist, courts balance the need for the information against the harm of disclosure, rather than denying discovery outright. *West*, 460 S.W.3d at 127–28. That balance was not struck here: in particular, discovery relating to the execution team's qualifications and training—distinct from their actual identities—bore directly on the referred issues, and less restrictive alternatives, such as the protective orders employed in prior capital litigation, were available but unused.

Here, the Special Master's reasoning was primarily based on the burden the compressed timeline of this proceeding would impose on the State. But the State offered no explanation regarding TDOC's actual ability to respond or why the specific discovery sought would be unduly burdensome; nor did the Special Master engage with such an analysis. Instead, the State simply stated, and the Special Master accepted, that it would be "best served" if it were "free to focus on preparing evidence and experts for testimony" rather than providing Ms. Pike with discovery ordinarily permitted under Rule 26.02(1). That is not sufficient to overcome the low

discoverability bar. *See State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Grp. Trust*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006) ("The rules favor discovery. Thus, the party opposing discovery must demonstrate with more than conclusory statements and generalizations that the discovery limitations being sought are necessary to protect it from, among other things, oppression or undue burden or expense."); *Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1990) (stating courts "should decline to limit discovery if the party seeking the limitations cannot produce specific facts to support its request."). Thus, the Special Master further erred in not holding the State to this standard in limiting discovery, because he did not correctly take "applicable law and relevant facts into account." *Lee Med.*, 312 S.W.3d at 524.

The blanket denial of pre-hearing discovery deprived Ms. Pike of a meaningful opportunity to be heard, and the Court should remand for limited, targeted discovery on the qualifications and contingency-planning issues central to the referred questions. *See Doe 1 ex rel. Doe 1 v. Roman Cath. Diocese of Nashville,* 154 S.W.3d 22, 43 (Tenn. 2005) (vacating and remanding the trial court's denial of certain discovery requests in plaintiff's motion to compel where "broader range of facts is likely to be material" under correct legal standard for plaintiffs' claim).

## VIII. The denial of Ms. Pike's Emergency Motion to Reopen the Hearing was an abuse of discretion.

The Special Master excluded evidence about the execution physician's qualifications during the hearing on the grounds that a particular physician's qualifications were not relevant to Ms. Pike's claims and that the identities of

execution team members are privileged. (Aug. 11 Vol. 1, Tr. 31:7–34:5) (addressing the State's position that *Hines* forecloses arguments of likely harm predicated on the assumption that the Carruthers physician would participate in her execution: "The qualifications of the physician and what happened in Tony Carruthers' execution is beyond the scope of question one and question three."), 44:20–24 (regarding **Question 4**: "What I don't think is relevant is the qualifications of the doctor that is going to do the central line under the protocol or the ones that have done other central lines for any other -- anybody else's execution down the road."), *id.* 58:24–59:4 ("I am going to direct your attention to the fact that the identity of all these people on this team is privileged and we do not want you to testify about anything that could be used to identify these persons. So I want you to keep your responses as generic and general as possible."), *id.* 62:25–63:3 ("I ruled you could not get into the specific qualifications of the physician under one and three. You can get into your proposed qualifications of a hypothetical physician under your -- four."), Vol. 2, 132:15-22 (allowing Ms. DeLiberato to testify regarding what happened from extraction on, including the actions of the physician during the Carruthers execution only as an offer of proof), Vol. 3, 201:16–205:15 (sustaining objection to Dr. Van Norman's testimony regarding the Protocol and physician qualifications and denying offer of proof for the appellate record)).

Less than 24 hours after the hearing closed, the physician himself publicly stated he intends to participate in Ms. Pike's execution—eliminating both the

speculation and the privilege.[6] Based on this revelation, Ms. Pike moved to reopen the hearing for the limited purpose of addressing this newly available evidence, or alternatively to reclassify as substantive evidence the offer of proof of Ms. DeLiberato and identification-only report of Dr. Van Norman already in the record. (Pike Mot. for Emergency Relief at 2 (Aug. 17, 2026)). The Special Master denied the motion without applying any legal standard and without addressing the alternative relief. (Order Denying Mot. for Emergency Relief at 2–3 (Aug. 20, 2026)). Additionally, and perhaps more importantly, in denying what was effectively a discovery motion, the Special Master simultaneously announced merits conclusions on the very issues that the excluded and newly-sought evidence was intended to address. This omission was prejudicial to Ms. Pike because the excluded evidence was directly material to **Questions 1**, **3**, and **4**.

Ms. Pike's motion identified three independent grounds compelling reopening, none of which the Special Master addressed in his brief denial. First, the Special Master's own August 4, 2026 Order had already held that the qualifications, training, and certification of the physician designated for Ms. Pike's execution—including whether that physician is qualified and certified to place a central venous line—were relevant and discoverable. (Order on Mot. to Quash, at 8 (Aug. 4, 2026)). His subsequent exclusion of that same category of evidence during the hearing itself and

[6] Sydney Keller, Karen Aguilar, Ashley Griffin, *Doctor who oversaw failed Tennessee procedure to handle Christa Pike's execution*, Fox17 News (Aug. 14, 2026), https://fox17.com/news/local/doctor-who-oversaw-failed-tennessee-procedure-to-handle-christa-pikes-execution.

his refusal to revisit that exclusion once the physician's identity and participation were no longer speculative, cannot be reconciled with his own prior ruling. Second, Ms. Pike's motion demonstrated that *State v. Hines* did not foreclose relief: *Hines* addressed only the sufficiency of a different inmate's pleading regarding a distinguishable claim of general "maladministration," and this Court expressly declined to decide whether a physician's qualifications are discoverable at all, resolving only the merits of Mr. Hines's Rule 12 motion. (Pike Reply at 2-3 (citing *State v. Hines*, No. M2025-00221-SC-DPE-DD, Order (Aug. 6, 2026)). Unlike *Hines*, Ms. Pike specifically pled placement of a central line by "a qualified, trained, and certified medical doctor who has placed a central line this decade" as her primary alternative under **Question 4**, making the designated physician's qualifications—not his identity—the central factual predicate of her claim. (Pike Mot. for Emergency Relief at 2–3); (Reply at 2–3). Third, Ms. Pike explained that any confidentiality interest in the physician's identity was extinguished by his own voluntary public statement. A privilege designed to protect against involuntary disclosure affords no continuing protection once the individual himself has placed the very fact at issue in the public domain—particularly where, as here, Ms. Pike sought only the physician's qualifications and made every effort to avoid naming him. *See* Tenn. Code Ann. § 10-7-504(h)(1). *See also West v. Schofield*, 460 S.W.3d 113, 121–25 (Tenn. 2015). The Special Master's Order denying the motion addressed none of these three arguments.

Ultimately, the Special Master concluded he was "not convinced that it is '*very likely*' that Ms. Pike will need a central line placement," found that "central line

placements can also result in complications," and concluded "that there was no proof presented at the evidentiary hearing that placement of a central line, as opposed to a peripheral IV access, would 'significantly reduce a substantial risk of severe pain[.]'" (Order Denying Motion for Emergency Relief at 3 (Aug. 20, 2026)). But, as cited above, the Special Master *excluded* this very evidence. It is therefore error to turn around and rely on the resultant lack of proof to support a ruling denying further efforts to *put forward* such proof. This is the very sort of "illogical conclusion," "clearly erroneous assessment of the evidence," and "reasoning that causes an injustice" to Ms. Pike that Tennessee courts find to be an abuse of discretion. *See West,* 460 S.W.3d at 120; *Lee Med.*, 312 S.W.3d at 524 (holding trial court erred in denying motion to compel discovery).

The Special Master's abuse of discretion denied Ms. Pike a meaningful opportunity to litigate her Eighth Amendment claims on the issues this Court referred for factual development. This Court should admit Ms. DeLiberato's offer-of-proof testimony and Dr. Van Norman's report as substantive evidence on **Questions 1**, **3**, and **4**. If the Court concludes a further hearing is warranted before doing so, it should instead remand for a limited supplemental hearing on the qualifications of the physician who has now publicly confirmed he will participate in Ms. Pike's execution. At a minimum, the Court should disregard the Special Master's findings on **Questions 1**, **3**, and **4** to the extent they rest on the absence of evidence he improperly refused to receive.

## IX. The Special Master erred in precluding offers of proof.

The Special Master also declined to permit oral offers of proof on evidence he excluded. Tenn. R. Evid. 103(a)(2) provides that error may not be predicated upon the exclusion of evidence unless its substance was made known to the court by an offer of proof. By excluding multiple categories of evidence while simultaneously refusing to permit offers of proof memorializing that evidence, the Special Master created the very evidentiary gap Tenn. R. Evid. 103 is designed to prevent, leaving this Court without an adequate basis to assess the prejudice flowing from the exclusions or whether the excluded evidence would have altered the outcome.

In explaining his general approach to excluding evidence, the Special Master indicated he was reluctant to allow all necessary offers of proof because permitting them "about everything that I rule out in this case" would descend into "excruciating detail." (Aug. 11 Tr. Vol. 2, 125:6–19). The hearing ended a day and a half early.[7]

More specifically, the Special Master denied Ms. Pike the opportunity to make an offer of proof with respect to Ms. Pike's proposed evidence and testimony from Dr. Van Norman concerning the qualifications of the physician who attempted Tony

[7] It is deeply concerning to Ms. Pike that both the State and the Special Master appeared to be interested in concluding the hearing as quickly as possible. (Aug. 11 Tr. Vol. 3, 203:1–4) ("MR. AYERS: The State would agree with what the Court said before lunch, which is that if we have to submit offers of proof for every evidentiary issue the Court rules on, we're going to be here into next week."); (Aug. 11 Tr. Vol. 3, 203:13–19) ("MS. BALES: Your Honor, I could move through this topic very quickly. THE COURT: Well, that's what you said last time and it's -- an hour later we were still going on and I'm exaggerating -- MS. BALES: It wasn't an hour. THE COURT: I'm sure I exaggerated . . ."). While Ms. Pike of course does not wish to waste anyone's time, in this life-or-death situation, she should have been afforded the due opportunity and leeway to put forward her proposed evidence.

Carruthers's central-line placement, as detailed *supra*. The Special Master stated that "the law says that when it's absolutely, positively, clearly irrelevant that it's not an error for me to deny the offer of the proof," and agreed only to admit Dr. Van Norman's report "for ID only," which "deprives [the State] of the opportunity to cross-examine her." (Aug. 11 Tr. Vol. 3, 202:6–203:2). The Special Master declined to receive any other oral offer of proof, stating: "I'm going to rule that that's not admissible. I'm going to exercise my discretion not to do an offer of proof on this because of the nature of this hearing…." (Aug. 11 Tr. Vol. 3, 204:6–16).

By excluding multiple categories of evidence—including the Carruthers testimony, central-line evidence, and portions of Dr. Van Norman's opinion—while simultaneously refusing to permit offers of proof memorializing that evidence, the Special Master created the substantial evidentiary gaps he now claims support his findings and leaves this Court without an adequate basis to assess the prejudice flowing from the exclusions or whether the excluded evidence would have altered the outcome.

The Court should hold that Ms. Pike is entitled to supplementation of the record with the substance of the improperly excluded evidence, through the existing offers of proof, a limited remand to develop the record further, or both, before evaluating the merits of the underlying exclusions.

## X. The cumulative effect of these errors is a denial of due process.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Sections 8 and 9 of the Tennessee Constitution guarantee

Ms. Pike a meaningful opportunity to be heard, including adequate time for preparation and meaningful access to discovery, before a neutral decision-maker applying a consistent evidentiary and legal standard. *Goldberg v. Kelly*, 397 U.S. 254, 267–71 (1970); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Where, as here, a series of individual errors—legal, evidentiary, and procedural—combine to deny a litigant a fair opportunity to develop and present her case, the cumulative effect of those errors may itself constitute an independent due process violation even if no single error, viewed in isolation, would warrant relief. *See Chambers v. Mississippi*, 410 U.S. 284, 302–03 (1973) (holding that the cumulative effect of rulings that deprived a defendant of a fair opportunity to defend against the charge violated due process); *State v. Hester*, 324 S.W.3d 1, 76–77 (Tenn. 2010) (recognizing the cumulative error doctrine where the cumulative effect of multiple errors may deprive a litigant of a fair proceeding even where the individual errors are harmless in isolation). This principle applies with particular force in capital litigation, where the stakes are the ultimate and irreversible sanction of death.[8]

The record here reflects not an isolated misstep but a pattern of errors spanning nearly every stage of the proceedings—legal, evidentiary, and procedural—

[8] It is also particularly notable here, where the Special Master and the State made multiple mentions that Ms. Pike may "eventually" be able to present evidence on issues at a later date, ignoring the reality that her execution will foreclose any future presentation of evidence. (Aug. 11 Tr. Vol. 1, 37:16–38:4), (Aug. 11 Tr. Vol. 3,201:7–12) ("They -- again, they are going to have the chance to brief this to the Supreme Court. Just because they can't introduce proof in this evidentiary hearing doesn't mean the issue is gone forever.")

each of which independently prejudiced Ms. Pike and which, taken together, deprived her of the fair hearing this Court's referral order contemplated.

The Special Master applied incorrect and, in some instances, self-contradictory legal standards to the central questions referred to him. He invented an unsupported requirement that a proposed alternative method of execution must involve a wholly distinct means of causing death, foreclosing consideration of Ms. Pike's central-line proposal before any evidence on it could be developed. He required Ms. Pike to show that TDOC presently possesses the staff and equipment to carry out hanging, contrary to *Bucklew v. Precythe*, 587 U.S. 119 (2019) and *Nance v. Ward*, 597 U.S. 159 (2022)which ask only whether a well-established protocol exists elsewhere. And he applied categorically different evidentiary standards to the current protocol and Ms. Pike's proposed alternatives—crediting every assumption favorable to the State and every assumption unfavorable to Ms. Pike—rather than the symmetrical comparison *Glossip v. Gross*, 576 U.S. 863 (2015) and *Bucklew* require.

Compounding those legal errors, the Special Master systematically excluded the evidence Ms. Pike needed to satisfy the very standards he applied. He excluded evidence of the pain and suffering that would follow a failed peripheral IV attempt—including extravasation and pulmonary edema—from **Questions 1** and **3**, even though that suffering is the direct and foreseeable consequence of "achieving peripheral IV access" under the protocol as written. He excluded all evidence concerning central-line placement from **Questions 1** and **3** notwithstanding the protocol's own designation of a central line as the mandatory next step when

peripheral access fails. He excluded eyewitness testimony and expert opinion concerning the attempted Carruthers execution—the sole real-world application of this exact protocol by this exact execution team—as irrelevant, even though that execution resulted in over an hour of failed IV attempts and an unsuccessful central-line placement by the same physician slated to participate in Ms. Pike's execution.. And he restricted Dr. Van Norman's testimony regarding the consequences of IV-access failure to her narrow qualification in anesthesiology, disregarding Tenn. R. Evid. 702 and 703's flexible approach to expert qualification.

Even where evidence was not excluded outright, the Special Master's credibility findings applied a markedly asymmetric standard that operated to discount it in substance. He characterized Dr. Zivot's scientifically grounded conclusions as evasive and unsupported. He found that Dr. Goldstein had "misrepresented and/or embellished" his opinion on the timing of unconsciousness in hanging based solely on a momentary difficulty locating a bibliography citation during live testimony—even though the cited source, once located, supported the very proposition at issue. The wholesale rejection of Dr. Goldstein's testimony prevented Ms. Pike from putting on critical evidence regarding the comparative suffering of hanging. And across the proceedings, the Special Master consistently credited the State's experts, including Dr. Mansour, Dr. Antognini, and Nurse Campbell—none of whom examined Ms. Pike either—without comparable scrutiny while subjecting every one of Ms. Pike's experts to searching, often dispositive criticism on grounds, such as reliance on peer-reviewed literature, that Tennessee law expressly permits.

Finally, the procedural posture of the hearing compounded each of these substantive errors. The Special Master denied Ms. Pike's motion to compel discovery, forcing her to litigate complex medical and protocol-implementation issues without advance knowledge of the State's evidence or the execution team's qualifications. He denied Ms. Pike's motion to reopen the hearing after the execution physician publicly confirmed he would participate in Ms. Pike's execution—eliminating the very speculation the Special Master had cited to exclude evidence concerning that physician's qualifications. And throughout the hearing, he refused to permit oral offers of proof memorializing the substance of excluded evidence, ultimately ending the hearing a day and a half early and leaving this Court without an adequate record to assess the prejudice flowing from any individual exclusion.

These combined errors created a self-fulfilling cycle: the legal-standard errors defined away entire categories of proof before they could be offered; the evidentiary exclusions then made good on that pre-commitment by keeping the disqualified categories of proof out of the record; the asymmetric credibility findings discounted what evidence did make it in; and the procedural rulings—denying discovery, refusing to reopen, and declining offers of proof—foreclosed Ms. Pike from curing any of the foregoing or preserving an adequate record for review. The result was not an isolated mishap but a proceeding structurally weighted against Ms. Pike at every stage, from the scope of discoverable evidence, to the admissibility of proof, to the weight assigned to the proof that was admitted. *Cf. Chambers*, 410 U.S. at 302–03. This is precisely the scenario the cumulative-error doctrine addresses: a proceeding

in which no single ruling can be isolated as outcome-determinative because the errors operated together to prevent Ms. Pike from ever assembling a complete record on any referred issue. *Hester*, 324 S.W.3d at 76–77. The referral order contemplated a genuine factual inquiry into whether Tennessee's execution protocol, and Ms. Pike's proposed alternatives to it, comply with the Eighth Amendment. What she received instead was a proceeding in which the outcome on every issue was substantially predetermined, the evidence excluded, and unfair credibility findings made before the record could be fairly developed.

For these reasons, Ms. Pike respectfully requests that this Court hold that the cumulative effect of the errors identified above deprived her of the fundamentally fair proceeding required by the Fourteenth Amendment, the Eighth Amendment, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution, independent of whether any single error would warrant relief on its own. Ms. Pike further requests that the Court vacate the Special Master's Findings of Fact and Conclusions of Law in their entirety and enter an order staying Ms. Pike's execution so that she may pursue collateral litigation. This relief is warranted both by the individual errors identified above and by their cumulative due-process effect, which independently requires a new proceeding regardless of whether any single error would warrant relief on its own.

Should the Court decline to grant that relief in full, Ms. Pike requests the following alternative relief, each tailored to the specific error it remedies: (1) a limited remand for supplementation of the record with the evidence the Special Master

improperly excluded and refused to preserve through offers of proof, including the Carruthers testimony and Dr. Van Norman's related opinion; (2) admission of that wrongfully excluded evidence and treatment of Ms. DeLiberato's offer of proof and Dr. Van Norman's report as substantive evidence in evaluating **Questions 1**, **3**, and **4**; and (3) targeted discovery on the qualifications of the physician designated for Ms. Pike's execution and TDOC's contingency planning for failed peripheral access.

## OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW[9]

### I. Question 1: Ms. Pike's thrombocytosis.

#### A. Testimony from Dr. Joel Zivot.

The Special Master's report states that Dr. Zivot "is also an expert in the field of anesthesiology." However, Dr. Zivot is also board certified in critical care medicine. Counsel for Ms. Pike moved for Dr. Zivot to be certified as an expert in critical care. (Aug. 11 Tr. Vol 3, 233:1–2). After voir dire, the state did not object. (Aug. 11 Tr. Vol 3, 236:6–9). Nevertheless, the Court refused to rule on counsel's motion to certify Dr. Zivot as an expert in critical care medicine, despite certifying both Dr. Mansour and Dr. Antognini as experts in their board-certified specialties. (Aug. 11 Tr. Vol 3, 236:10–16). (*See* Report at 11, 12).

To support his findings that Dr. Zivot was less credible than Dr. Antognini, the Special Master misquoted Dr. Zivot's testimony regarding pulmonary edema. Compare the Special Master's Report: "He also opined that pulmonary edema cannot

[9] There is substantial overlap between **Question 1** and **Question 3**. Ms. Pike has attempted to organize her objections based on the primary question the testimony supports; however, her objections should be applied equally to both questions.

happen after death and requires the heart to beat," (Report at 7), with Dr. Zivot's actual testimony:

> Q: And its also your opinion that pulmonary edema cannot happen after you are dead?
>
> A: Not to the degree that we're seeing it in these autopsies, no.
>
> THE COURT: I'm sorry, I'm not hearing you good. What was the last question?
>
> MS. MORRIS: It's his opinion that pulmonary edema cannot happen after you are dead.

(Aug. 11 Tr. Vol 3, 265:16–23). So, instead of confirming with the record, the Special Master simply accepted the fact fed to him by the State. In fact, Dr. Zivot expanded on his opinion even further:

> Q: I'm asking you, you stated as a fact that pulmonary edema cannot happen after a person is dead.
>
> A: If a person dies and the lungs are undamaged, and then pulmonary edema does not happen after - - to any degree - - there is some shifting of fluid that can happen over periods of time . . . but in the immediate period there - - it's not an immediate postmortem finding of pulmonary edema to the degree that we're seeing in these autopsies.
>
> Q: So it's your opinion that over time from the time of death to the time of autopsy, the more time that passes more fluid cannot enter the lungs?
>
> A: There are - - you know, generally, an autopsy is done either within hours or maybe a couple of days . . . and so in that period of time, it's my opinion, not just mine but the - - I think, you know the medical position, that a significant amount of pulmonary edema is not the consequence of a - - of just postmortem, you know, of the passage of time in the postmortem period that wasn't present, you know, at the time of death.

(Aug. 11 Tr. Vol 3, 266:9–267:3). This testimony is crucial because Dr. Zivot is discussing the nuances of pentobarbital and the onset of flash pulmonary edema—

not whether pulmonary edema can occur after death. The testimony also directly rebuts Dr. Antognini's testimony (supported by one study of three individuals who developed pulmonary edema after death post cardiac arrest and CPR). The Special Master either missed the nuance, or he didn't care.

The Special Master noting that "Dr. Zivot expressed that he was against all forms of lethal injection, and he believes all forms of lethal injection are cruel" is a red herring and selectively prejudicial for two reasons. First, the Special Master appears to insinuate—without saying so specifically—that Dr. Zivot is biased against the death penalty. He expressly testified that he was not opposed to the death penalty, only lethal injection: "Well, I'm against lethal injection and, you know, I'm not - -the death penalty which, of course, involves lethal injection, that, I'm against." (Aug. 11 Tr. Vol 3, 284:8–10). Second, Dr. Zivot's position on lethal injection is consistent with both the American Medical Association and the American Board of Anesthesiology. And it is consistent with Dr. Antognini's own declaration: "Nothing in this report should be construed as endorsement or approval, or disapproval, of the Tennessee protocol or providing instructions, advice or assistance to the State of Tennessee or any other entity to carry out a legal judicial execution." (Antognini Decl. at ¶ 35).

The Special Master is correct that he "pointed out the obvious that the question was not the time to 'death' but the time the person could feel pain." (Report at 9). It was not the first instance where the Special Master did the State's work for it, despite limiting or prohibiting counsel for Ms. Pike from exploring several areas of inquiry.

That is beside the point. Dr. Zivot did not testify as to the duration an inmate experiences pain and the timing of the death because it is not a knowable period of time. "I don't know, and neither does [Dr. Antognini], how long it exactly would be . . . No one knows the duration [of experienced pain]. It's not knowable. I can surmise it, but it's not knowable. . . I think it could be minutes. It won't be one second. It could be minutes. Or a minute." (Aug. 11 Tr. Vol 3, 293:10–13, 294:3–4, 18–19). Dr. Zivot's opinions were scientifically accurate and honest, not evasive.

**B. Testimony from Dr. Joseph Antognini.**

Federal courts since *Bucklew* have found Dr. Antognini's opinions to be outside the mainstream. In *Henness (In re Ohio Execution Protocol Litig.)*, 2019 U.S. Dist. LEXIS 8200, *224 (S.D. Ohio Jan. 14, 2019), United States Magistrate Judge Michael R. Merz found that Dr. Antognini's opinions were "shown to be an outlier in the field of anesthesiology." In *In re Federal Bureau of Prisons' Execution Protocol Cases*, 471 F. Supp. 3d 209 (D.D.C. 2020), the testimony of Dr. Zivot and Dr. Van Norman was credited over the testimony of Dr. Antognini. More recently, in *Hoffman v. Westcott*, 2025 U.S. Dist. LEXIS 43627, *22 (M.D. La Mar. 11, 2025), Chief United States District Judge Shelly Dick found that "Dr. Antognini's opinions are untested scientific hypotheses. The studies on which he relies are either irrelevant or unpersuasive." *See also id.* at n.106 ("Dr. Antognini relied on . . . a 'dog study.' Reliance on a dog euthanasia study is flawed. Dr. Antognini admits dogs have different ventilation,

different cardiac output, and different metabolisms as compared to humans.).[10] Additionally, the Department of Justice credited the opinions of Dr. Van Norman and Dr. Zivot over Dr. Antognini's opinions in its January 2025 review of the federal lethal injection protocol involving pentobarbital. (Aug. 13 Tr. Vol 6, 555:16–556:1).

The truth is that Dr. Antognini's opinions never change and are always supportive of execution—regardless of the method. (Tr. Vol 6, 554:2–24). In every case Dr. Antognini has testified or provided a report for (which include Oklahoma, Tennessee, Georgia, Alabama, Louisiana, South Carolina, South Dakota, Arkansas, Ohio, Missouri, and Florida) he has opined that the inmate loses consciousness in under a minute. For example, in *Hoffman*, *supra*, he opined that loss of consciousness "will occur between 10 and 40 seconds" after the inmate inhales nitrogen. *Id*. at *22. In *Brant v. Allen*, Case No. 3:13-cv-412, (M.D. Fl.) he recently opined that the inmate would lose consciousness in 30-60 seconds after etomidate is administered. If Dr. Zivot's answers are "evasive," Dr. Antognini's are "canned"—not because the science says so, but because his client(s) need it to.

The Special Master also notes Dr. Antognini's "good grasp" of the articles he cited as lending credit to Dr. Antognini's opinions. But right off the bat, Dr. Antognini confused the first article when asked about it:

> Q: My understanding of the [Aleman] study, that there's two groups of horses; is that correct?
>
> A: I'd have to review that. Thought there's more than two groups in that particular study. I thought there was four groups - -

[10] The Evans study cited in Dr. Antognini's declaration in this case is also a dog study. He also cites horse and rabbit studies, including one from more than 75 years ago.

Q: That's actually the Buhl - -

A: - - or three - -

Q: We'll get to that one . . .

Q: So my understanding, that one group got a drug called xylazine; is that - - did I pronounce that right?

A: Yes, that's correct.

Q: Is that a sedative?

A: Yes. It's used in veterinary medicine for that purpose.

Q: Okay. And the group that got the sedative also got ketamine. Does that sound right?

A: There was a separate group, I think - - I think one group got xylanzine, another group got xylazine plus ketamine . . .

Q: And then my understanding of the study is that another group, and this might be the group you were referring to, got an inhaled anesthetic plus xylazine and ketamine. Does that sound right?

A: Yes, that's correct . . .

Q: So both groups got a combination of pentobarbital and phenytoin; is that correct?

A: And what study are you referring to?

Q: This is Aleman.

A: I don't recall - - I'm sorry. Did you say that they also received phenytoin?

Q: Pentobarbital and phenytoin, is my understanding.

A: I don't recall that, but that's certainly possible.

(Aug. 13 Tr. Vol 6, 566:5–568:11). He continued to fumble over the rest of his articles when pressed about their findings and conclusions on cross examination. Dr. Antognini even admitted that he "may be confusing one (study) to the other." (Aug. 13 Tr. Vol 6, 572:22–23). And he admitted to not being able to find one of the conclusions he cited a study for, just like the Special Master faults Dr. Goldstein for. (Aug. 13 Tr. Vol 6, 573:14–16). The Special Master's finding is simply wrong.

There are at least three problems with Dr. Antognini's opinion that the onset of unconsciousness with pentobarbital is within 20 to 30 seconds.[11] First, Dr. Antognini has published more than 200 chapters, abstracts, letters to the editor, and peer-reviewed publications and has never written a single word about pentobarbital. (Aug. 13 Tr. Vol 6, 553:18–25). Even the articles in Dr. Antognini's CV that discuss thiopental—a sister drug of pentobarbital, do not talk about the onset of unconsciousness. (Aug. 13 Tr. Vol 6, 557:9–17).

Second, as he admitted himself, his "theory of unconsciousness" requires that the drugs be administered through a functioning IV, meaning extravasation, clotting, or slower administration will affect his estimate. (Aug. 13 Tr. Vol 6, 560:10–24). Those are precisely the claims Ms. Pike has made and has proven.

Third, Dr. Antognini mischaracterizes and misconstrues the animal studies he relies on to bolster his theory of unconsciousness. For example, the Aleman study

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[11] *See* Zivot testimony (Aug. 11 Tr. Vol 3, 293:6–9 ("[I]f Dr. Antognini says 20, 20 seconds is an awfully long time to be burned alive.")); (Aug. 11 Tr. Vol 3, 299:12–14 ("So I think that the amount of pain is very severe. And the timing of it is long enough that the brain can conceive of it. That it can be experienced.")).

cited in ¶ 9 of his Declaration omits the fact that the horses were heavily sedated and received more than just pentobarbital. And both conclusions in the Aleman study relied upon by Dr. Antognini to support his opinion that loss of consciousness occurs in 20-30 seconds qualify their conclusions with the word "might." In fact, the Aleman study says, specifically "This *might* support lack of conscious perception." (Aug. 13 Tr. Vol 6, 569:15–18). When pressed on that point, Dr. Antognini explained that that conclusion was "a rather offhanded loose conclusion" the he didn't agree with because it was "speculation on their part." (Aug. 13 Tr. Vol 6, 571:4–8). He cited it anyway.

Similarly, the Buhl study, cited in ¶ 10 of Dr. Antognini's declaration to support his theory that unconsciousness results in approximately 27 seconds based on "collapse" of the horses, does not actually say that. When asked to point to where that correlation was made, Dr. Antognini responded: "So the author in the study looked at collapse, time to collapse. Then he did not specifically say that that was part of their (indiscernible) unconsciousness, but they do talk about, I believe, another study, again, I may be confusing one to the other, that is considered to be sort of the onset of the clinical signs of death in this setting."[12] (Aug. 13 Tr. Vol 6, 572:19–25). He also admitted: "I - - at this point I'm not finding it (collapse equals unconsciousness), but I believe that that - - that was in the basis of my opinion."[13]

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[12] *But see* (Report at 11) ("The Court also notes that Dr. Antognini had a very good grasp of the articles he cited to support his opinions . . . .").

[13] *But see* (Report at 14) ("[T]he Master concludes that Dr. Goldstein misrepresented and/or embellished his report by citing two articles supporting his statement. . . Whether the embellishment was intentional, was an artificial intelligence hallucination, or was from negligence, his credibility was severely damages, and his opinions are entitled to little, if any, weight.").

(Aug. 13 Tr. Vol 6, 573:14–16). That study also had separate findings—not cited by Dr. Antognini—that it was "impossible to know whether the horses were able to register pain," and that it was unlikely that the horses experienced pain because they had also received a sedative. (Aug. 13 Tr. Vol 6, 573:19–574:19). Both conclusions undercut Dr. Antognini's theory of unconsciousness. Nevertheless, the Special Master credits Dr. Antognini over Dr. Zivot and Dr. Van Norman. As the testimony shows, there were similar problems with his other articles. (Aug. 12 Tr. Vol. 6, 574:20–600:23).

**C. Testimony from Dr. Richard Mansour.**

The Special Master's Report notes that Dr. Mansour's opinion was first based "on a platelet count of 660,000, but subsequently became aware of platelet counts of 433,000 and 452,000." (Report at 12), (Aug. 12 Tr. Vol 4, 573:14–16). However, the Special Master omits the fact that Dr. Mansour was shown several medical records on cross examination he was either not provided by the State, or did not review. (Aug. 12 Tr. Vol 4, 397:1– Vol. 5, 406:7). The platelet levels in those records were 509,000, 670,000, 581,000, 695,000, 573,000, 525,000, and 660,000—all well above 450,000. Dr. Mansour testified that he was specifically looking for lab reports when he reviewed the records that were provided to him, (Aug. 12 Tr. Vol 4, 403:15– 18), and that if the records were in the records provided to him he would have cited them in his report, (Aug. 12 Tr. Vol 4, 400:12–19).

While Dr. Mansour testified that Ms. Pike was at "low risk" for "having a stroke in her brain, her heart, her eye, or some rare stroke," (Report at 12), Dr. Mansour did

*not* testify that Ms. Pike was at low risk for clotting at or along her peripheral IV. Indeed, the Special Master credits Dr. Mansour's opinion that Ms. Pike's elevated platelet count would not interfere with insertion of an IV line because he based that opinion "from his review of Ms. Pike's medical records wherein they showed that in approximately thirteen blood draws from Ms. Pike, the blood draws took only one stick in twelve of the draws and two sticks in one draw. There also appeared to be no problems when the IV was removed. This indicates to him that veins are accessible." (Report at 12–13). There are three problems with this finding.

First, the Special Master makes no mention that Dr. Mansour did not examine Ms. Pike, yet apparently credits his testimony over Ms. Pike's own experts who also did not examine her. Secondly, Dr. Mansour testified that he had not placed an IV line in 15 to 20 years. (Aug. 12 Tr. Vol 4, 386:20–25). Recall that Dr. Van Norman had placed an IV line "in the last several months." (Aug. 11 Tr. Vol 1, 160:16–17). Third, all experts admitted, even during cross examination by the State, that blood draws are different than IV placement. The Special Master blends the two when convenient, and separates them when not.

In fact, Dr. Mansour testified that a patient who has successful blood draws does not always have successful IV placement, but "if you can access [the same vein] for blood draws, that could be an IV access site." (Aug. 12 Tr. Vol 4, 394:10–18). The only problem is that Dr. Mansour based that opinion on drawing blood from the "elbow crease" vein because its "the largest vein usually you could see in the arm underneath the thinnest part of the skin." (Aug. 12 Tr. Vol 4, 394:25–1). Then he

testified that "if you can't access that one, then it's probably going to be difficult to find another one." (Aug. 12 Tr. Vol 4, 395:3–5). Dr. Mansour stated this opinion after apparently reviewing Ms. Pike's phlebotomy records showing that her blood draws are primarily in her hand. That may not call Dr. Mansour's opinion into question, but it does support Ms. Pike's claim under **Question 3**.

## II. Question 2: Ms. Pike's PTSD and bipolar disorder.

Ms. Pike objects to the Special Master's finding that she has failed to carry her burden to show that her movement to Riverbend Maximum Security Institution (RMSI) prior to her execution would make it "sure of very likely" that the challenged protocol will cause her "serious illness and needless suffering." The facts established at the hearing demonstrate that because of Pike's history of sexual assault and resulting severe mental illnesses, she will suffer needless suffering and torture under the state's execution protocol.

Ms. Pike first objects to any limitation of consideration of Dr. Brand's testimony as it applies to Ms. Pike's claim that Tennessee's Protocol would violate her Eighth Amendment rights due to her psychological issues. Prior to the introduction of evidence, the parties agreed that this Court had made a factual error in the second issue assigned to the Special Master for factual development. (*See generally* Aug. 11 Tr. Vol. 1, 11–13). The protocol does not contemplate a two-week stay at the men's prison for Ms. Pike even though that is the factual predicate in the second issue presented. Nor did Ms. Pike plead in her Rule 12 Motion that she would be observed for two-weeks at RMSI. (*See* Rule 12 Mot. at 19 ("Specifically, Pike will

be isolated and observed by men for nearly two weeks at the women's prison.")). Because Ms. Pike pled in her motion to this Court that the issue of psychological torture was broader, she argued that the entire time period leading up to her execution should be considered. In the end, the Special Master concluded that he was limited to the effects of observations by guards at RMSI. This truncated the claim pled to this Court and precluded consideration of the most compelling evidence from Ms. Pike's expert.

Ms. Pike objects to the Master's finding that "'mental suffering' alone 'is not material to the Eighth Amendment inquiry under *Baze* and *Glossip*.' '[u]nless accompanied by serious physical pain.'" (Report at 23 (*quoting In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 450 (6th Cir. 2018)). The mental suffering quoted from the cited opinion is the "mental suffering associated with being under a sentence of death." However, the evidence presented at this hearing was not about the mental suffering that all executed inmates are likely to suffer from. Rather, the psychological pain and torture that are likely to occur during Ms. Pike's execution are directly associated with her history as a victim of repeated rape sexual abuse which resulted in PTSD. This is a unique torture due to Ms. Pike's history.

The Supreme Court has never said that mental suffering cannot be considered in relation to Eighth Amendment challenges to methods of execution. The Eighth Amendment prohibits methods of execution that "superadd" to the punishment of death "terror, pain, or disgrace" beyond what is necessary to carry out the sentence. *Bucklew*, 587 U.S. at 133. The Court has recognized that this prohibition

encompasses psychological suffering. *See Bucklew*, 587 U.S. at 133 (acknowledging cognizable claims based on "terror"); *see also Grayson v. Comm'r, Ala. Dep't of Corr.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024) (recognizing that psychological suffering may support an Eighth Amendment method-of-execution claim). The constitutional question is whether the Protocol's observation, restraint, and execution procedures will cause Ms. Pike psychological suffering that constitutes a "superaddition" to the death penalty—suffering that is not a necessary incident of carrying out the sentence. The uncontested evidence presented at the hearing demonstrates that it will.

Dr. Brand's testimony differentiated the mental suffering of an inmate about to be executed with the terror and torture that Ms. Pike would experience while being strapped to the gurney and killed: "That is likely to precipitate her having a flashback where she will lose all sense of current reality, and as I explained earlier, she'll be transported in her mind back to times when she was being raped, feeling the full emotional and physical force and sensations of that time." (Aug. 12 Tr. Vol. 4, 338).

**A. Testimony from TDOC officials.**

The Special Master incorrectly characterizes and attributes the measures taken by the TDOC to ensure that Ms. Pike is observed by solely female guards during her time in the Capital Punishment Unit as definitive. Specifically, the Special Master states that TDOC "has made provisions to ensure that female corrections officers will transport and observe Ms. Pike." (Report at 2).

That is not what the facts show. Instead, Ms. Thomas testified that TDOC "will make *every effort* to assign only female staff to observe Ms. Pike" while she is under

continuous observation at RMSI. (Thomas Decl. ¶ 6). According to Warden Nelsen, that is the "goal." (Aug. 11 Tr. Vol 1, 112:17–20; 113:21). Neither Ms. Thomas, nor TDOC, could guarantee that Ms. Pike will be under continuous observation by solely female staff. (Aug. 11 Tr. Vol 1, 70:20–23). Ms. Thomas could not say how many officers work an observation period in the Capital Punishment Unit, (Aug. 11 Tr. Vol 1, 70:24–71:1); did not know how long each of the shifts were, (Aug. 11 Tr. Vol 1, 71:2–3); did not know how many female corrections officers are employed at RMSI, (Aug. 11 Tr. Vol 1, 71:5–8); and did not know how many female corrections officers are employed by TDOC, (Aug. 11 Tr. Vol 1, 71:9–11). Warden Nelsen did not know how many female corrections officers are employed at RMSI. (Aug. 11 Tr. Vol 1, 98:2–4). Similarly, Ms. Thomas could not "commit to" female staff transporting Ms. Pike from the Debra K. Johnson Rehabilitation Center (DJRC) to RMSI, testifying without specifics that TDOC would "definitely use females. . . We will use female staff." (Aug. 11 Tr. Vol 1, 67:6–9).

Ms. Thomas and Warden Nelsen's inability to answer these basic questions reveal the lack of planning regarding Ms. Pike's transportation and observation. If TDOC had made definitive "provisions" to ensure that Ms. Pike was to be observed by solely female staff, TDOC would have had answers to those questions.

Despite the weight that the Special Master gave those promises, Ms. Thomas and TDOC have essentially declared that they will comply with the bare minimum standard that TDOC is already required to meet under the Prison Rape Elimination Act (PREA). At the hearing in this matter counsel for Ms. Pike attempted to impeach

Ms. Thomas regarding TDOC's documented non-compliance with the PREA. Specifically, counsel attempted to introduce into evidence a 2023 audit performed by the Tennessee Comptroller citing numerous violations of the PREA under Ms. Thomas' watch. (Aug. 11 Tr. Vol. 1, 71:20–72:16). That report shows that TDOC:

- Faces critical staffing shortages and ongoing and deeply rooted challenge of attrition in their ranks (page 17).
- TDOC must rely on "unsustainable overtime hours" due to challenges in filling officer vacancies (page 22).
- Did not ensure facilities performed the required annual PREA screenings to minimize the risk of victimization (Page 77).
- Housed potential aggressors in the same cells as potential victims of sexual abuse (page 78).
- Did not conduct or ensure CoreCivic conducted investigations of sexual abuse and sexual harassment in accordance with federal standards and department policy (page 86).[14]

During testimony before the General Assembly, Ms. Thomas stated that TDOC had "a ways to go" regarding compliance with the PREA.[15] Staffing shortages and a culture of noncompliance regarding PREA make TDOC's so-called "provisions"

[14] Tennessee Comptroller of the Treasury, Performance Audit and Report: Department of Correction at 5–6 (Dec. 12, 2023), https://digitalcommons.memphis.edu/cgi/viewcontent.cgi?article=1033&context=govpubs-tn-comptroller-performance-audit-reports.

[15] Rose Gilbert, *State lawmakers 'disturbed' by findings that the Department of Corrections failed to appropriately prevent and investigate sexual assault*, WPLN News (Dec. 15, 2023), https://wpln.org/post/state-lawmakers-disturbed-by-findings-that-the-department-of-corrections-failed-to-appropriately-prevent-and-investigate-sexual-assault/.

dubious at best. The Special Master found that the evidence was irrelevant despite its direct implications for Ms. Pike.

The Special Master apparently places significate weight on the fact that Ms. Pike will be the only inmate in the Capital Punishment Unit during her continuous observation at RMSI. (Report at 2; Thomas Decl. at ¶ 7). That is a red herring. There are never any other inmates in the Capital Punishment Unit during the death watch. (Aug. 11 Tr. Vol. 1, 72:24–73:2). The totality of testimony from TDOC's representatives, while apparently enough to convince the Special Master, amount to nothing more passive assertions.

**B. Testimony from Dr. Bethany Brand.**

Dr. Bethany Brand is a licensed clinical psychologist and nationally recognized expert in trauma with over thirty years of clinical, research, and teaching experience. Dr. Brand conducted a comprehensive psychological evaluation of Ms. Pike, including administration of the Clinician-Administered PTSD Scale for DSM-5 ("CAPS-5") which is the gold-standard diagnostic interview for PTSD. Based on her administration of the CAPS-5 and her comprehensive evaluation, Dr. Brand confirmed that Ms. Pike meets the full diagnostic criteria for PTSD with severely disruptive symptoms. (Aug. 12 Tr. Vol. 4 327:19–25). The Special Master did not dispute this diagnosis. (Report at 4).

Ms. Pike's PTSD is the result of extreme, chronic, and repeated sexual abuse, beginning in early childhood and continuing through the age of seventeen. She was sexually assaulted by at least five different perpetrators over the course of her

childhood and adolescence. The abuse began in preschool when Ms. Pike's paternal grandmother's boyfriend orally raped her on a repeated basis over a period of years. (Aug. 12 Tr. Vol. 4, 324:2–10). When she was eleven, a neighbor raped Ms. Pike and restrained her while inserting objects into her body. (Aug. 12 Tr. Vol. 4, 325:12–18). The assault caused a genital infection sufficiently severe to require medical attention. The perpetrator was subsequently prosecuted for this offense. At age seventeen, Ms. Pike was raped by a stranger who dragged her off the street at night, struck her head against a rock, and covered her mouth as she screamed. Contemporaneous hospital records and a police report from the Carrboro, North Carolina Police Department document this assault and the injuries she sustained. (Aug. 12 Tr. Vol. 4, 325, 326:20–25). The trauma from these sexual assaults was compounded by the fact that her family did not believe her and failed to protect her. (Aug. 12 Tr. Vol. 4, 326:4–16).

Ms. Pike will be placed under "continuous observation" in the Capital Punishment Unit at RMSI starting no earlier than 24 hours prior to her scheduled execution. (Protocol at 16). "Continuous observation documents activity of the inmate over a period of time. Their recreation, their eating, their property, their reading, any type of activity in the cell [including] showers, visits, et cetera." (Aug. 11 Tr. Vol 1, 84:7–11).

Dr. Brand testified that being closely observed for two weeks at DJRC and for 24 hours at RMSI would be very psychologically harmful to Ms. Pike and likely to trigger a traumatic response, particularly when she is away from everything familiar, as sexual assault survivors can find comfort in control and familiarity. (Aug. 12 Tr.

Vol. 4, 335:24-336:6). "It will be very, very distressing to her, more than for the average person." (Aug. 12 Tr. Vol. 4, 335:7–8).

Dr. Brand acknowledged that if observation during the execution process were performed exclusively by female staff, it would lessen—though not eliminate—the negative psychological impact on Ms. Pike. However, Dr. Brand testified that the extraction and physical restraint process itself cannot be ameliorated by changing the gender of observation staff because the core traumatic trigger is the experience of being physically overpowered and immobilized, not merely being watched.

The execution protocol requires that Ms. Pike be extracted from her cell, physically restrained, placed on a gurney, transported to the execution chamber, and strapped down for intravenous line placement. Each of these steps involves physical contact and restraint by correctional staff—predominantly male officers. Dr. Brand's testimony established that these concessions do not address the core harm: the extraction, restraint, and physical immobilization by male staff that constitutes the central traumatic trigger and cannot be ameliorated by observation conditions alone.

According to Dr. Brand, traumatic memory is qualitatively different from ordinary autobiographical memory. Traumatic memories are not encoded in narrative form; rather, they are stored as involuntary sensory fragments—visual images, bodily sensations, sounds, and smells—that are neurobiologically relived when triggered, not merely recalled as past events. (Aug. 12 Tr. Vol.4, 330–332). She compared this to flashbacks experienced by veterans:

> We've all heard of flashbacks. So, for example, a veteran may come home from war. They're back on U.S. soil. They're not in danger, but if they

> hear a car backfire, they--their survival brain interprets that they may be being shot at or an explosive device has gone off and they may drop to the ground, even though they're in a downtown area. They're totally safe.

(Aug. 12 Tr. Vol.4, 331: 19–25).

Dr. Brand also testified that the protocol's use of a potentially all-male restraint and extraction team will cause Ms. Pike to neurobiologically relive her past sexual assaults in real time. Because her assaults involved being physically overpowered and immobilized by men, the execution protocol's requirement that she be physically restrained to a gurney constitutes a near-perfect replication of the sensory conditions of her original assaults. Thus, being strapped to a gurney while the IV Team inserts intravenous lines into her body would precipitate a full trauma flashback, including loss of touch with present reality, and would likely activate the involuntary fight/flight/freeze/immobility survival response:

> It will be highly triggering for Christa Pike. She will experience being held down and then being tied down, very similar to how she experienced being pinned and trapped and raped. She won't be able to escape like she couldn't escape back then. That is likely to precipitate her having a flashback where she will lose all sense of current reality, and as I explained earlier, she'll be transported in her mind back to times when she was being raped, feeling the full emotional and physical force and sensations of that time.

(Aug. 12 Tr. Vol. 4, 338: 9–18). In this state, Ms. Pike would experience the subjective terror of being actively raped while being physically unable to resist. This would be torture.

Dr. Brand specifically testified that femoral venous access—insertion of a catheter into the groin area—would "directly re-trigger the terror, as well as the

sensory and situational memories, of being raped" because of the intimate anatomical location and the positioning required, which closely replicates the physical configuration of sexual assault. (Aug. 12 Tr. Vol. 4, 347–348).

The Special Master found that "there does not appear to be any scenario by which Ms. Brand believes Ms. Pike would avoid suffering, absent no execution at all." (Report at 3). This overly broad generalization supports his pre-conceived decision and discounts the very valuable testimony Dr. Brand provided about mitigating Ms. Pike's risk of serious illness and needless suffering. Specifically, Dr. Brand testified that:

- I think it would be much easier on her and less psychologically distressful if she could be transferred [to RMSI] immediately before the execution so that she could sleep where she's familiar with sleeping her last night of full - - her last full day of life. (Aug. 12 Tr. Vol. 4 343:23–344:2).

- I think that would be helpful (to staff women to observe Ms. Pike). It would be even more helpful if it's women she knows, staff she knows. That little bit of familiarity helps trauma survivors feel somewhat more in control, less - - somewhat less likely to be triggered into a full-blown flashback. (Aug. 12 Tr. Vol. 4 344:24–345:3).

- It may be slightly better (if TDOC changed their protocol so that the execution occurred at DJRC). I think ultimately what would be best is staying in her familiar cell with staff that she's familiar with until the last moments. (Aug. 12 Tr. Vol. 4 345:12–14).

- [48 hours of observation] would be more tolerable. If it could be shifted so that it's every half hour and so Christa could tell, if I go to the restroom now, somebody's not going to be looking in the window and watching me, that would help. She could bathe that quickly. She could, you know, get her private activities done when nobody's watching. (Aug. 12 Tr. Vol. 4 353:5–11).

The Special Master also took Dr. Brand's opinion about Ms. Pike's ability to cope with her trauma out of context to support his preordained finding. (Report at 4). Dr. Brand's full opinion was that she believed Ms. Pike had the "tools and emotions to deal with life's stressors," "but that does not mean she doesn't suffer from the disorders of which I diagnosed her with at that same time." (Aug. 12 Tr. Vol. 4 342:17–343:3). In other words, Ms. Pike *still* suffers from PTSD and bipolar disorder and will *still* be triggered by the events leading up to her execution *even though* in her 30 years in prison she has also developed tools and emotions to deal with life's stressors. The stressors of an execution are not the same as the stressors of daily life inside a prison.

The Special Master also flippantly discarded Ms. Pike's serious trauma by comparing it to the stress of any inmate going through an execution. Dr. Brand directly rebutted that biased presumption:

> Yes, I would say it would be very, very distressing for all prisoners, but we know from people who already have PTSD that their brains have become sensitized and they suffer more severe symptoms at re-traumatization than people who are having a first trauma . . . Obviously, anybody who is facing execution would be very frightened, but for somebody who has her history and is being strapped down and undergoing all this as I've described . . . her brain is very likely to go into fight or flight, then tonic immobility, and then full shutdown with possibly throwing up, losing consciousness. The whole cascade is extremely psychologically harmful.

(Aug. 12 Tr. Vol. 4 348:25–349:5; 349:9–16). Put simply, the Special Master misses the point of Dr. Brand's testimony. That is, despite Ms. Pike's learned coping skills, despite the fact that any inmate would be distressed during the execution process, Ms. Pike's will be markedly worse, and cause serious illness and needless suffering precisely because of her PTSD. That is exactly what this Court asked.

Given Ms. Pike's history of sexual assault, physical abuse, and resulting PTSD, she has demonstrated through the testimony of Dr. Brand, that it is "sure or very likely" that she will suffer serious illness and needless suffering when she is moved from DJRC to Riverbend, extracted from her cell, strapped to a gurney and inserted with IV lines to cause her death. Dr. Brand predicted that it is sure or very likely that these events, prescribed in the Protocol, will cause her to involuntarily re-live the trauma of past rapes. This evidence is uncontroverted and surely leads to the conclusion she will suffer superadded pain, disgrace and terror that other condemned inmates would not. Ms. Pike objects to the Master's failure to consider Dr. Brand's testimony on this issue and find an Eighth Amendment violation.

## III. Question 3: Ms. Pike's difficulty with peripheral IV access.

The Special Master committed a clear error by relying on Ms. Pike's phlebotomy (blood draw) records as the primary evidentiary basis for concluding that she would not face difficulty achieving peripheral IV access. (Report at 24–25). This factual and logical error pervades the findings on **Questions 1** and **3**: the uncontested testimony at the hearing established that phlebotomy and IV insertion are two fundamentally different procedures, and success in one does not predict success in the other.

Throughout his Report, the Special Master repeatedly cited Ms. Pike's phlebotomy records as affirmative evidence that her veins are accessible and that peripheral IV access would not pose a constitutional risk:

- "Part of the basis for this opinion comes from [Dr. Mansour's] review of Ms. Pike's medical records wherein they showed that in approximately thirteen blood draws from Ms. Pike, the blood draws took only one stick in twelve of the draws and two sticks in one draw. There also appeared to be no problems when the IV was removed. This indicates to him that veins are accessible." (Report at 12–13). *See also* (Aug. 12 Tr. Vol. 4 379:1–21).[16]
- "Ms. Pike attempted to satisfy her burden of proof solely by a review of her medical records. In fact, from a review of the medical records, Dr. Van Norman noted it appears that Ms. Pike did not have any trouble having her blood drawn." (Report at 24).
- Nurse Campbell "did notice that all but one of Ms. Pike's phlebotomy procedures were successful on the first attempt. The one other procedure took two sticks." (Report at 13).
- "Based on this evidence, the Court finds that Ms. Pike has failed to show by a preponderance of the evidence that given Ms. Pike's allegedly small and compromised veins, achieving peripheral IV access pursuant to the current lethal injection protocol would make it 'sure or very likely' that the challenged protocol will cause [Ms. Pike] serious illness and needless suffering." (Report at 25).

[16] Dr. Mansour admitted he had not placed an IV in at least fifteen years. (Aug. 12 Tr. Vol. 4, 378:13–20).

The Special Master treated phlebotomy records as functionally interchangeable with IV access records. But no such records of IV access exist for Ms. Pike. The Special Master acknowledged this implicitly by relying exclusively on blood-draw records while purporting to make findings about peripheral IV access—two procedures that the experts agreed are materially different.

**A. Testimony from Dr. Gail Van Norman.**

By contrast, uncontested expert testimony established a clear distinction between phlebotomy and the placement of IV catheters. Dr. Van Norman testified directly and without contradiction that phlebotomy and IV insertion are "two different procedures":

> Mainly, phlebotomy and starting an IV are two different procedures. When we're drawing blood, all we have to do is get the blood drawing needle into a vein. It can be quite small. We're not trying to – we're not trying to infuse drugs or give fluids through it so we can choose a very small needle.
>
> And we only have to get that needle a fraction of an inch, really just a millimeter or so into the vein. Because once the little hole in the needle is in the vein, we can withdraw blood.
>
> We don't have to thread that needle into the vein and risk rupturing the vein. The vein can be quite -- can be pretty small and give up its blood because we're not trying to put an object in it.

(Aug. 11 Tr. Vol. 2, 182:9–24).

By contrast, she explained that IV insertion requires threading a larger-diameter catheter much further into the vein:

> IV starts involve not only threading a needle, which has a catheter over it, a sheath over it, we have to thread both the needle and that sheath into the vein. You have to go quite a ways into the vein. And it's a bigger diameter with the -- I'm sorry -- the needle and the catheter are a bigger

> diameter even for the gauge of the -- of -- that you're putting in because you have this little IV sheath over it.
>
> And unless you get that needle -- the needle positioned well into the vein, you won't be able to thread the catheter off of it. And a common problem in IV starts is that people don't get these threaded far enough in.
>
> And the further you have to thread those into the vein -- the needle and the catheter -- the more likely it becomes that you can rupture the vein or go through the posterior, the backside of the vein wall and cause the IV not to work. And more likely you'll -- you'll have the vein blow up and not be able to put an IV catheter in it.

(Aug. 11 Tr. Vol. 2, 182:15–183:19).

When cross-examined by the State, Dr. Van Norman was asked whether she saw any documentation indicating difficulty achieving "venous access" in Ms. Pike. (Aug. 11 Tr. Vol. 3, 219:19–23). She responded: "These are blood draws. They are not IV access, so you can't—it's not the same thing. So there's no documentation here about IV access and being able to get a small needle into a vein does not predict whether you will be able to get an IV into that vein." (Aug. 11 Tr. Doc. 3 219:24–220:3). *See also* (Aug. 11 Tr. Vol 3, 217:21–24 ("Q: You would agree that this is a phlebotomy record, correct? A: That's correct. It is not an IV placement.")).

This testimony was uncontested. No witness—including the State's experts—contradicted the proposition that phlebotomy and IV insertion involve materially different procedures, equipment, and risk profiles. Even Nurse Campbell acknowledged on cross-examination that a 23-gauge butterfly is a *phlebotomy* needle and that 20- and 22-gauge needles are IV catheters—distinct instruments for distinct purposes. (Aug. 13 Tr. Vol. 1, 22:17–23:7, 44:8–45:4). And Nurse Campbell herself was careful to state only that phlebotomy records showed "standard" blood draws—

she did not testify that successful phlebotomy predicts successful IV access in an execution setting. (Aug. 13 Tr. Vol. 1, 21:14–22:12).

This error is material and prejudicial to Ms. Pike. The Special Master's conflation of phlebotomy with IV access infected his conclusions on both **Question 1** (thrombocytosis) and **Question 3** (small and compromised veins). On **Question 3**, the error was dispositive. The Special Master wrote: "In fact, she has not even shown that she has small veins. At most, Ms. Pike has shown that she could experience some unknown amount of pain from peripheral IV access, but no more than any other person would." (Report at 25). This conclusion rests entirely on phlebotomy records that, as a matter of uncontested medical testimony, cannot bear the inferential weight placed on them.

The record contains no evidence that any medical professional has ever attempted to place a peripheral IV catheter in Ms. Pike. The execution protocol calls for needles of 18, 20, 22, or 24 gauge—each of which requires threading a catheter deep into the vein. (Aug. 11 Tr. Vol. 1, 86:15–87:5; Vol. 2, 115:1–10, 182:25–184:7). The phlebotomy records document successful insertion of a 23-gauge butterfly needle—a tiny, short needle that enters the vein only a millimeter—into hand veins. (Aug. 11 Tr. Vol. 1, 22:17–23:7; Vol. 2, 182:25–184:7). Dr. Van Norman explained that (a) the hand is typically used only when arm veins cannot be seen or felt, (Aug. 11 Tr. Vol. 2, 177:2–17); and (b) a 23-gauge butterfly is "an extremely small needle" that is "not normally used when administering anesthesia to adults" except "in babies or in very small children," (Aug. 11 Tr. Vol. 2, 176:6–13).

The Special Master discounted the testimony of Dr. Van Norman on this issue because she did not examine Ms. Pike. However, the Special Master credited the testimony of the State's experts, Dr. Richard Mansour, Dr. Joseph Antognini, and nurse Elizabeth Campbell—none of whom examined Ms. Pike either. The Special Master's opinions evince clear bias against Ms. Pike and her experts. Additionally, compared to Dr. Mansour or Dr. Antognini who had not placed IV lines in years, Dr. Van Norman has placed "tens of thousands" of peripheral IV lines, (Aug. 11 Tr. Vol 1, 154:16–25), and last placed a peripheral IV line "in the last several months," (Aug. 11 Tr. Vol 1, 160:16–17).

While it is true that Dr. Van Norman "noted it appears that Ms. Pike did not have any trouble having her blood drawn," (Report at 5), the Special Master omits her testimony to support his conclusion that because there is "no mention in the records of Ms. Pike having small veins, non-palpable veins, or non-visible veins," (*id.*), that concludes the matter. Dr. Van Norman specifically testified that medical records would not note whether or not a patient's veins are going to be difficult to access because of blood draws: "That - - what kind of documentation would I - - I don't understand your question. There's no documentation that anyone would write that would say she will have difficult access because she has essential thrombocytosis. We simply are aware of that she - - the fact that she has a higher risk for having difficult access." (Aug. 11 Tr. Vol 3, 225:14–23). The Special Master's report selectively omits testimony from Ms. Pike's experts that do not support his pre-conceived resolution of these claims.

By treating phlebotomy success as probative of IV-access success, the Special Master committed a factual error that no expert testimony supports. *See West,* 460 S.W.3d at 120 (establishing that an abuse of discretion occurs when the court relies on an "illogical conclusion," "clearly erroneous assessment of the evidence," and "reasoning that causes an injustice"). The evidence actually in the record supports the opposite inference: the persistent use of the smallest available needle in hand veins—a location used only when larger arm veins are unavailable—suggests that Ms. Pike's vascular presentation is precisely the type that creates elevated risk for larger-gauge IV catheter placement.

This Court should hold that the Special Master's reliance on phlebotomy records as evidence of likely successful IV access was clear error, unsupported by any expert testimony in the record, and that those records cannot serve as a factual basis for resolving Questions One or Three against Ms. Pike.

## IV. Question 4: Ms. Pike's pled alternative methods.

Ms. Pike objects to the Special Master's finding that she has "failed to carry her burden by a preponderance of the evidence" that one of her proposed alternative methods of execution "would 'significantly reduce a substantial risk of severe pain.'" The Supreme Court has "made clear that the Eighth Amendment requires a prisoner to plead and prove a known and available alternative." *Glossip v. Gross*, 576 U.S. 863, 880 (2015). A challenger to a method of execution who establishes a substantial risk of severe pain must also identify a "known and available alternative" that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe

pain." *Id.* at 877; *Bucklew*, 587 U.S. at 139–40. The Supreme Court has made clear that an alternative need not be "presently authorized by state law"; it must be "known and available" in the sense that it is a recognized method that can be practically implemented. *Bucklew*, 587 U.S. at 139–40. The challenger bears the burden of showing that the alternative would "significantly reduce a substantial risk of severe pain"—not that it would eliminate all risk, but that it would meaningfully reduce the identified risks. *Id.* at 139.

Article I, Sections 13, 16, and 32 of the Tennessee Constitution provide analogous protections against cruel and unusual punishment. This Court has recognized that these provisions may afford protections broader than or independent of those provided by the Eighth Amendment. *West v. Schofield*, 519 S.W.3d 550, 563–64 (Tenn. 2017); *Abdur'Rahman v. Parker*, 558 S.W.3d 606, 616 (Tenn. 2018). Article I, Section 13 specifically prohibits "unnecessary rigor" in the execution of punishment—a textual prohibition that has no federal analogue and provides an independent state-law basis for relief when the State employs execution methods that inflict suffering beyond what is required to effectuate the death sentence.

Ms. Pike proposed as alternatives to the current Tennessee execution protocol, two alternative methods of execution: (1) Achieving IV access by the placement of a Central line by a physician competent to do this procedure; and (2) execution by hanging.

### A. Central Line Placement.

Ms. Pike's first proposed alternative is the use of a central venous line placed by a competent, currently-practicing emergency medicine or critical care physician using real-time ultrasound guidance. This alternative is *feasible* because the procedure is already contemplated in the current Tennessee Protocol, to be done "if necessary." (Protocol at 20). However, Ms. Pike's alternative stipulates that it must be done by a physician who maintains current competency in ultrasound-guided central line placement. Such physicians are readily available throughout Tennessee and nationwide. This alternative is *readily implemented* because it requires only the retention of a qualified physician—not new equipment, pharmaceuticals, or infrastructure. It *significantly reduces a substantial risk of severe pain* by eliminating the prolonged peripheral IV attempts that Ms. Pike's anatomy makes virtually certain, eliminating the risk of extravasation through a small-gauge peripheral catheter, and ensuring reliable high-flow venous access that can deliver pentobarbital at appropriate speeds without the pressure differentials that create extravasation risk.

Despite meeting these criteria for an alternative method of execution, the Special Master rejected it because "[u]nder United States Supreme Court precedent, a 'method of execution' is a distinct way to case death," (Report at 27). The Special Master reaches this conclusion without any direct citation to that precedent. That is because the Supreme Court has never articulated such a holding. Although the Court has considered alternatives that are completely different methods of execution, the

only requirements it has articulated are cited above: that the alternative method of execution be *feasible* and *readily implemented*. *See Baze*, 553 U.S. at 52 ("To qualify, the alternative procedure must be feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain.") Ms. Pike's alternative of the placement of a central line by a competent physician easily meets the *Baze* standard. The Special Master then goes further, stating, "Neither the Tennessee Supreme Court or the United States Supreme Court has ever held that a plaintiff can plead an alternative in a method-of-execution challenge by asking for the challenged method to be carried out with slightly different equipment or procedures. To do so would contravene binding precedent, which requires an inmate to plead something more than a 'slightly or marginally safer alternative.'" *Id.* at 27–28 (*citing Glossip v. Gross*, 576 U.S. 863, 877 (2015)). But this is, again, both wrong and illogical.[17]

Instead, the central questions regarding proposed alternatives in a method of execution challenge are: (1) whether the alternative "significantly reduce[s] a substantial risk of severe pain," *Glossip*, 576 U.S. at 877 (alteration in original), and (2) whether the alternative is feasible and readily implemented, *id.* at 877–78, 880. *See also Baze v. Rees*, 553 U.S. 35, 52 (2008); *Bucklew v. Precythe*, 587 U.S. 119, 141

[17] The Special Master's own reasoning confirms as much: in illustrating what he considers distinct "methods of causing death," the Special Master points to both firing squad and a single bullet to the back of the head—two procedures that are both death by gunshot, differing only in equipment and methodology. Findings of Fact at 27. If those examples qualify as distinct methods under the Special Master's own framework, there is no principled basis to exclude a protocol modification like central-line placement, which likewise differs from the current protocol of peripheral IV in equipment and procedure.

(2019). Regarding proposed alternatives, the core of *Glossip* and *Bucklew* was to evaluate whether the proposed alternative decreased the ***relative degree of risk***. The Special Master recast this question as whether it involved a fully distinct method of death. This standard is wholly invented. There is no additional requirement under Supreme Court precedent that the proposed alternative must substantially decrease harm ***and use substantially different equipment or procedures.***

Even more, the Supreme Court has, in fact, recognized the sufficiency of an inmate's alternative pleading, including the specific use of a central line for an individual with compromised veins. In *Nelson v. Campbell*, the Supreme Court was charged with evaluating an inmate's claims that use of a "cut down" procedure, whereby a two-inch incision would be made in his arms or legs with local anesthesia to access his compromised veins and no physician present, would violate the Eighth Amendment in a case brought under 42 U.S.C. § 1983. 541 U.S. 637, 640–42 (2004). The inmate argued that using a "cut-down" procedure was wholly unnecessary to gaining venous access and alleged that the alternative of central line placement was a feasible, more humane alternative. *Id.* at 645–46. Acceptance of this well pleaded alternative was necessary to the Court's finding that his claims sounded in Section 1983 (challenging the *method* of his execution), rather than in habeas (which would be correct if the inmate's challenge would prevent his execution entirely). In both scenarios—the use of a "cut-down" or placement of a central line—"gaining venous access" in order to inject lethal drugs was the mechanism of death. *See id.* The

Supreme Court accepted this alternative, reversed the Eleventh Circuit, and remanded for an evidentiary hearing. *Id.*[18]

This erroneous standard pervaded the Special Master's evidentiary rulings throughout the hearing and his weighting of evidence. The Special Master excluded evidence relating to central line placement throughout the proceedings on this basis. *See e.g.,* (Aug. 11 Tr. Vol. 1, 34:1–6, 38:1–21, 44:9–45:2, 62:25–63:24; Vol. 2, 132:16–25, 142:15–25; Vol. 3, 204:6–205:12). This was severely prejudicial to Ms. Pike as it prohibited the full and fair adjudication of her claims.

A conclusion of law resting on a fully invented standard cannot serve as a legitimate basis for excluding Ms. Pike's evidence, as discussed more below, or resolving Question Four against her. This error severely prejudiced Ms. Pike's ability to fairly present her claims. *See State v. Davidson*, 509 S.W.3d 156, 193 (Tenn. 2016) ("A trial court abuses its discretion when it applies an incorrect legal standard, reaches a conclusion that is not logical, bases its decision on a clearly erroneous assessment of the evidence, or uses reasoning that causes an injustice to the complaining party.").

By its plain terms, the Special Master's Report disregards the referred question and makes a conclusion of law not called for by the Tennessee Supreme

[18] To be sure, *Nelson* predates the Supreme Court's official requirement that an inmate plead a feasible alternative. However, the Supreme Court in *Nance v. Ward* pointed to *Nelson* as sufficiently setting out an alternative such that the Court could find their claims sounded in Section 1983, as they would not prevent the State entirely from performing the execution. 597 U.S. 159, 168 (2022) (finding that "each prisoner had still said enough to leave the Court convinced that alternatives to the challenged procedures were available.")

Court. Question Four asks whether "Ms. Pike's proposed alternative methods of execution would 'significantly reduce a substantial risk of severe pain.'" (Order at 3). The question presupposes that Ms. Pike has pleaded alternatives, and the Order does not refer to the Special Master the question of whether Ms. Pike's proposed alternatives are distinct methods of execution as a matter of law. By declaring that her proposed alternative was not a "distinct method of causing death," the Special Master both ignores the directive of the Court and side-steps the factual inquiry that it would otherwise require. This is beyond the scope of his authority under Rule 53, which limits a special master's powers to matters embraced in the reference. Tenn. R. Civ. P. 53.02; (Order at 2–3).

The Special Master's categorical requirement of a distinct method of causing death rests on an unsupported and self-contradictory legal standard. That error, standing alone, is sufficient to overturn the Special Master's findings, as it imposes a narrower test than *Bucklew* and its progeny require. The error is compounded by its consequences: because the Special Master treated central line placement as legally foreclosed from the outset, he denied offers of proof and excluded testimony regarding that alternative throughout the hearing, foreclosing the very showing the referral order contemplates—a readily available change to the existing protocol that would reduce Ms. Pike's risk of severe pain—before that showing could even be made, and causing prejudice that cannot be cured after the fact. This Court should hold that a protocol modification, including central line placement, qualifies as an alternative

method under **Question 4** and should evaluate Ms. Pike's central line proposal under the correct legal standard.

This alternative significantly reduces a substantial risk of severe pain by eliminating the prolonged peripheral IV attempts that Ms. Pike's anatomy makes virtually certain, eliminating the risk of extravasation through a small-gauge peripheral catheter, and ensuring reliable high-flow venous access that can deliver pentobarbital at appropriate speeds without the pressure differentials that create extravasation risk. Central line placement by a qualified physician directly addresses the risks identified in **Question 1** and **Question 3**: it bypasses Ms. Pike's compromised peripheral veins entirely and provides access that is not subject to the same clotting and occlusion risks. The Special Master therefore erred in rejecting consideration of this alternative because it is not an entirely different method of execution.

Under *Baze*, the State's refusal "to adopt such an alternative in the face of these documented advantages, without a legitimate penological justification for adhering to its current method of execution, then a State's refusal to change its method can be viewed as "cruel and unusual" under the Eighth Amendment." Ms. Pike has met the standard by proffering an alternative that effectively addresses a "substantial risk of serious harm."

**B. Hanging.**

Ms. Pike's second proposed alternative is execution by judicial hanging. This alternative is *feasible* because the materials required—wood, hardware, and rope—

are readily and inexpensively available, and the methodology is well-documented. Dr. Goldstein and Dr. Kelly both testified regarding the mechanics of judicial hanging, including the established drop-table calculations that determine proper drop length based on the prisoner's weight. These calculations are "available in the literature." (Aug. 12 Tr. Vol. 5, 489:9–11). Dr. Kelly expressed the opinion that a judicial hanging conducted by properly-trained personnel would be successful. (Aug. 12 Tr. Vol. 5, 496: 21–22).

The alternative is *readily implemented* because it does not require a specialized pharmaceutical supply chain, intravenous access, or physician participation. It *significantly reduces a substantial risk of severe pain* for two independent reasons. First, Dr. Goldstein testified that properly conducted judicial hanging causes death through cervical fracture—specifically, atlanto-occipital dislocation or bilateral pedicle fractures of C2—resulting in instantaneous loss of consciousness. Dr. Kelly, the State's forensic pathology expert, testified that judicial hangings from Washington State resulted in "instantaneous death." (Aug. 12 Tr. Vol. 5, 489:14–15).

Second, even if hanging is performed improperly and results in strangulation rather than cervical fracture, Dr. Goldstein testified that the period of potential conscious suffering is approximately 10-30 seconds—a fraction of the duration associated with pulmonary edema, which the autopsy evidence shows occurs in the substantial majority of pentobarbital executions. Dr. Kelly confirmed that unconsciousness from hanging occurs "quite quickly," in under one minute. (Aug. 12 Tr. Vol. 5, 484:10–17). She referenced video evidence showing unconsciousness in

approximately thirteen seconds. (Aug. 12 Tr. Vol. 5, 493:5). Judicial hanging eliminates all IV-related risks and, importantly, does not require Ms. Pike to be restrained in a supine position by multiple staff members—thereby eliminating the restraint-to-gurney procedure that triggers her PTSD.

The State has not articulated a legitimate penological justification for refusing either alternative. Under *Bucklew*, once a challenger identifies a feasible, readily implemented alternative that significantly reduces a substantial risk of severe pain, the burden shifts to the State to demonstrate a legitimate reason for rejecting it. 587 U.S. at 139–40. TDOC's testimony that it has "never considered" hanging does not constitute such a justification. Nor does the observation that TDOC currently lacks trained personnel—the *Bucklew* Court made clear that an alternative need not be "presently authorized by state law" or currently implemented; it need only be "known and available." *Id.*

The Master's conclusion that "Ms. Pike did not offer any detailed evidence of any judicial hanging protocol from any other state or nation as part of her proposed alternative" is beside the point. The Supreme Court has never articulated a requirement to present a "well-established protocol in another state." (Report at 28). Dr. Kelly testified that Washington and Delaware both conducted judicial hangings in the 1990's. (Aug. 12 Tr. Vol. 5, 493:20–22). Dr. Kelly had reviewed tables used in Washington's judicial hangings that were presented in articles on the subject, demonstrating that detailed information on this method of execution is readily available.

Case law from the Supreme Court consistently recognizes that hanging was considered a constitutionally acceptable method of execution throughout this country's history until recent times. "By the middle of the 19th century, 'hanging was the 'nearly universal form of execution' in the United States." *Baze*, 553 U.S. at 40, (citing *Campbell v. Wood,* 511 U.S. 1119, (1994)). "The death penalty was an accepted punishment at the time of the adoption of the Constitution and the Bill of Rights. In that era, death sentences were usually carried out by hanging." *Glossip*, 576 U.S. at 867. "While hanging was considered more humane than some of the punishments of the Old World, it was no guarantee of a quick and painless death." *Bucklew*, 587 U.S. at 132. These opinions recognize that hanging as a potential alternative method of execution is consistent with the Eighth Amendment.

The Special Master also concluded that hanging is not a "feasible and readily implemented alternative method of execution." (Report at 33). In denying Ms. Pike's proposed alternative of hanging, he credited only the testimony of Assistant Commissioner Linda Thomas and Warden Kenneth Nelsen, who noted that TDOC does not have anyone on staff with experience in carrying out judicial hangings and that TDOC does not have the equipment for judicial hangings. *Id.* This misrepresents

both the evidence and the legal standard and constitutes reversible error.[19] *See Davidson*, 509 S.W.3d at 193.

First, in order to identify a feasible alternative, the proposal need not be "presently authorized by" state law. *Bucklew*, 587 U.S. at 140. In *Nance*, the Supreme Court went so far as to acknowledge that a feasible alternative can include those methods that would require an affirmative legislative change. *Nance*, 597 U.S. at 170. Any "incidental delay" involved in changing a procedure is "not relevant to the vehicle question," and instead the inquiry focuses on "whether the requested relief would 'necessarily' invalidate, or foreclose the State from implementing, the death sentence." *Id.* In *Bucklew*, the Court recognized that it is sufficient for a person to "point to a well-established protocol in another State as a potentially viable option." *Bucklew*, 587 U.S. at 140. Ms. Pike has met this standard.

Ms. Pike identified that hanging has been judicially authorized historically in the State of Tennessee. *See* (Rule 12 Mot. at 26) (citing *Shipp v. State*, 172 S.W. 317,

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[19] In his Conclusions of Law, the Special Master quoted extensively from Justice Blackmun's ***dissent*** in *Campbell v. Wood*, 511 U.S. 1119 (1994), to characterize hanging as "a crude and imprecise practice, which always includes a risk that the inmate will slowly strangulate or asphyxiate[.]" Report at 28–29, 32. This is error. The ***majority*** in *Campbell v. Wood* denied certiorari, and the Ninth Circuit had previously upheld Washington state's hanging protocol as constitutional. *Campbell v. Wood*, 18 F.3d 662 (9th Cir. 1994). The dissent's characterization of hanging as categorically dangerous is not binding law—it represents the view of justices who would have granted certiorari to find hanging unconstitutional. Using it as the factual or legal baseline for assessing Ms. Pike's hanging alternative is misleading: as hanging has been held constitutional, it is by definition a viable "method of execution" under *Bucklew*'s framework.

318 (Tenn. 1914)). She also argued that judicial hanging in other states has been repeatedly identified as a constitutional method of execution by the Supreme Court and others. (Aug. 13 Tr. Vol. 1, 76:18–77:11). *See Glossip*, 576 U.S. at 867–68; *Campbell v. Wood*, 18 F.3d 662, 687 (9th Cir. 1994) (upholding judicial hanging under the Washington Field Instruction as constitutional). In *Campbell,* the trial court concluded after an evidentiary hearing, which included those directly involved in the procedure that "hanging according to the protocol does not involve lingering death, mutilation, or the unnecessary and wanton infliction of pain." *Id*. at 687. In the hearing, Ms. Pike identified the Washington protocol as a feasible alternative that, according to the State's own witness, resulted in successful, instantaneous executions. (Aug. 13 Tr. Vol. 1, 76:18–77:11). While caselaw indicates that "pointing" to a well-established protocol is enough, which Ms. Pike has done, Washington's protocol and the Military Protocol that it was largely based upon are also publicly discussed. *See Campbell*, 18 F.3d at 683, 687.

The Court should hold that the Special Master applied the wrong legal standard in evaluating the feasibility of Ms. Pike's proposed alternative and should find that Ms. Pike satisfied her burden under *Bucklew* and *Nance* by pointing to Washington's well-established and judicially upheld hanging protocol, regardless of whether TDOC currently has the staff or equipment to carry it out.

### C. Conclusion

Both alternatives address the psychological harm identified in **Question 2**. Central line placement, while still requiring IV access, can be performed more quickly

by a qualified physician and reduces the duration of the traumatic restraint period. Hanging eliminates the IV-access process entirely and does not require the supine restraint positioning that replicates the sensory conditions of Ms. Pike's sexual assaults. Thus, the evidence establishes that both proposed alternatives are known methods of execution that can be practically implemented and that would significantly reduce the substantial risks of severe pain identified in Issues 1, 2, and 3. Ms. Pike therefore objects to the Master's finding that she has failed to satisfy her burden of pleading a feasible and readily available alternative to Tennessee's Protocol under *Glossip* and *Bucklew*.

## CONCLUSION

Based on the errors and omissions noted above, Ms. Pike objects to each of the conclusions of law found by the Special Master, including that:

1. The Special Master erred in finding Ms. Pike had not met her burden in establishing it was sure or very likely that the challenged protocol will cause Ms. Pike serious illness and needless suffering given her thrombocytosis;

2. The Special Master erred in finding Ms. Pike had not met her burden in establishing that it was sure or very likely that the challenged protocol will cause Ms. Pike serious illness and needless suffering given her history of sexual assault and diagnosis of PTSD;

3. The Special Master erred in finding Ms. Pike had not met her burden in establishing it was sure or very likely that the challenged protocol will cause Ms. Pike serious illness and needless suffering given her small and compromised veins; and

4. The Special Master erred in finding Ms. Pike's proposed alternative methods of execution would not significantly reduce a substantial risk of severe pain.

Accordingly, this Court should set aside the Special Master's Report and enter an order staying Ms. Pike's execution so that she may pursue collateral litigation.

Respectfully submitted,

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Electronically RECEIVED on September 04, 2026
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Appellate Court Clerk

**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **Respondent,** | ) | |
| | ) | |
| **v.** | ) | **CAPITAL CASE** |
| | ) | |
| **CHRISTA GAIL PIKE,** | ) | |
| | ) | **Execution: Sept. 30, 2026** |
| **Movant.** | ) | |

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# STATE'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO THE MOTION FOR A STAY OF EXECUTION

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## INTRODUCTION

This Court should deny a stay of execution based on any of the remaining issues in Christa Pike's motion that were not referred to the special master. She has no likelihood of success on any claims from her underlying collateral litigation, and some of her claims simply fall outside the scope of Tenn. Sup. Ct. R. 12(4)(E).

## BACKGROUND

### A. Factual Background

Pike killed Colleen Slemmer thirty-one years ago because she "just felt mean that day." *State v. Pike*, 978 S.W.2d 904, 908 (Tenn. 1998). Armed with a box cutter and meat cleaver, Pike and two accomplices lured Slemmer to an isolated area. *Id.* at 909. There, Pike kneed Slemmer's head, threw her to the ground, and repeatedly kicked her. *Id.* When Slemmer tried to flee, Pike sliced her stomach with the box cutter. *Id.* Pike sat "looking at Slemmer and 'just watching her bleed.'" *Id.* When Slemmer again tried to escape, Pike slashed her across the back. *Id.* As Slemmer begged for her life, Pike repeatedly kicked her in the face. *Id.* Pike then cut Slemmer's throat as she begged for mercy. *Id.* When Slemmer made one final attempt to flee, Pike smashed the back of her head with a large chunk of asphalt. *Id.* at 908, 910. Pike and her accomplice also forced Slemmer to remove her blouse and bra, and they carved a pentagram into her chest. *Id.* at 909-10. Pike kept a piece of Slemmer's skull as a souvenir and showed it to a friend. *Id.* at 908.

## B. Procedural Background

A Knox County jury convicted Pike of first-degree murder and sentenced her to death. *Id*. at 907. This Court affirmed Pike's conviction and death sentence on direct appeal. *Id*. Pike's conviction and death sentence also survived state post-conviction and federal habeas review. *Pike v. State*, No. E2009-00016-CCA-R3-PD, 2011 WL 1544207 (Tenn. Crim. App. Apr. 25, 2011), *perm. app. denied* (Tenn. Nov. 15, 2011); *Pike v. Gross*, 936 F.3d 372 (6th Cir. 2019), *cert. denied* 590 U.S. 978 (2020). While on death row, Pike was convicted of attempted first-degree murder after she tried to strangle another inmate with a boot lace. *State v. Pike*, No. M2005-00738-CCA-R3CD, 2006 WL 547997, at *1 (Tenn. Crim. App. Mar. 6, 2006).

Last year, this Court set Pike's execution for Sept. 30, 2026. *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 20, 2025) (order). Two months later, the Court amended Rule 12(4)(E), which now says in part: "After a date of execution is set, any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court." *In re: Amendment of Tenn. Sup. Ct. R. 12(4)(E)*, No. ADM2025-01930 (Tenn. Dec. 5, 2025).

In January 2026, Pike commenced collateral litigation in Davidson County Chancery Court by filing a complaint for declaratory and broad injunctive relief from the State's execution protocol—without a contemporaneous stay motion in this Court. The State moved to dismiss for lack of jurisdiction and failure to state a claim.

The trial court found it lacked jurisdiction and transferred the case to this Court under the supposed authority of Rule 12(4)(E). But in May 2026, this Court dismissed the transferred case and stated that "the case should have been dismissed" when the Chancery Court found it lacked jurisdiction. *Pike v. Skrmetti*, No. M2026-00667-SC-UNK-CV (Tenn. May 12, 2026) (order). The trial court has yet to enter a dismissal order.

Weeks later, Pike filed a motion under Rule 12(4)(E), asking this Court to appoint a special master, adjudicate her challenges to the State's execution protocol, and grant declaratory and injunctive relief. Mot. at 41. This Court construed her motion as a request for a stay of execution and appointed a special master to receive evidence and make findings of fact on five of the issues she raised. *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. July 10, 2025) (order). After a hearing in August 2026, the special master issued findings of fact and conclusions of law, ruling for the State on all issues.[1] *See generally* Special Master's Report. This Court then set a deadline for the parties to submit any additional briefing on issues not referred to the special master.

## LEGAL STANDARD

To obtain a stay of execution under Tenn. Sup. Ct. R. 12(4)(E) based on "state court collateral litigation that would potentially affect the method or timing of execution," that collateral litigation "must commence with the filing of a [stay] motion" in this Court. "[T]he Court will not grant a stay or delay of an execution date pending resolution of collateral

[1] The parties stipulated to resolve Issue 5 (Pike's access to a spiritual adviser in the execution chamber) through an accommodation, which obviated the need for evidence on this issue. Report at 33-34.

litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation." *Id.* This standard requires "more than a mere possibility of success." *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018). It requires "a significant possibility of success on the merits." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). That is, Pike must "raise questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation and thus for more deliberate investigation." *Six Clinics Holding Corp. II v. Cafcomp Sys.*, 119 F.3d 393, 402 (6th Cir. 1997).

## ARGUMENT

**No Remaining Issue Held in Abeyance Warrants a Stay.**

Pike cannot show a significant possibility that any of her medical issues or confinement conditions will "present[] a risk that is sure or very likely to cause serious illness and needless suffering and give rise to sufficiently imminent dangers" during her execution. *West v. Schofield*, 519 S.W.3d 550, 563 (Tenn. 2017) (cleaned up) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)). All other issues are foreclosed by precedent or not properly before this Court.

### A. Pike's alleged medical issues do not warrant a stay.

Pike's motion lists five medical conditions she believes will cause intolerable pain during her execution: thrombocytosis, bipolar disorder, post-traumatic stress disorder ("PTSD"), hyperlipidemia,[2] and "small and compromised veins." Mot. at 28. The special master found that none of

[2] Commonly known as high cholesterol. https://my.clevelandclinic.org/health/diseases/21656-hyperlipidemia (last accessed Sept. 3, 2026).

the medical conditions referred for a hearing (thrombocytosis related to IV access, PTSD, and small veins) threatened any constitutional violation that would warrant a stay of execution. Report at 17-25. Neither do Pike's other alleged medical conditions that fall outside the special master's report: thrombocytosis related to pulmonary edema, hyperlipidemia, and bipolar disorder.

**1. Pike's concerns about thrombocytosis and pulmonary edema are speculative and refuted by the evidence.**

Pike has thrombocytosis, which can lead to excess platelets in her blood and potential problems with bleeding and clotting. Mot. at 28-29. She says this condition may increase the risk of pulmonary edema—fluid in the lungs that she believes will cause a drowning sensation—during her execution by lethal injection with pentobarbital. Mot. at 28-29.

But Pike's speculations about potential risks based on her thrombocytosis are insufficient as a matter of law to show a likelihood of success on any corresponding Eighth Amendment claim. *See State v. Hines*, No. M2025-00221-SC-DPE-DD (Tenn. Aug. 6, 2026) (order) (holding that a claim was "all but foreclosed . . . as a matter of law because" it was "too speculative to state an Eighth Amendment claim." (cleaned up)). Her theory rests on a stack of unfounded assumptions: (1) thrombocytosis makes her more susceptible to pulmonary edema; (2) pentobarbital causes pulmonary edema before death; (3) she will remain conscious to experience the effects of pulmonary edema after she is injected with a lethal dose of pentobarbital, and (5) the sensation of pulmonary edema will be like "drowning in one's own blood." Mot. at 14, 28-29. But this is nothing more than a heap of "mere

possibilities" that "are not sufficient to satisfy [Pike's] burden to establish a substantial risk of severe pain." *West*, 519 S.W.3d at 564 (Tenn. 2017) (citing *Baze v. Rees*, 553 U.S. 35, 62 (2008) (plurality opinion)). This claim fails as a matter of law.

In any event, Pike's concerns are refuted by the special master's report, which concluded that (1) it is unlikely Pike's thrombocytosis will lead to pulmonary edema, and (2) Pike will likely not feel the effects of pulmonary edema, even if it even occurs before her death. Report at 20-21.

Those findings have abundant record support. The evidence established that Pike is a "low risk" thrombocytosis patient who is not likely to experience any adverse effects during her execution because of her condition, including pulmonary edema. Report at 12-13, 20-21; Trial Record Vol. IV at 367-71, 375-76, 380-81. The evidence also showed that "a person will generally become unconscious within 20 to 30 seconds" after receiving a lethal injection of pentobarbital. Report at 11; Trial Record Vol. VI at 510-515. "[T]he person may experience mild pain at the injection cite but will be unconscious before any pulmonary edema causes pain." Report at 30; Trial Record Vol. VI at 513-33. This proof is consistent with the United States Supreme Court's statement that pentobarbital "is widely conceded to be able to render a person fully insensate and does not carry the risks of pain that some have associated with other lethal injection protocols." *Barr v. Lee*, 591 U.S. 979, 980 (2020) (cleaned up). It is "a mainstay of state executions" and "[h]as been used to carry out over 100 executions, without incident." *Id.*

Pike offered no expert opinion or evidence to effectively rebut this conclusion. Report at 30. Her anesthesiology expert, Dr. Joel Zivot, was

"evasive in his opinion about the length of time a person would remain conscious when administered pentobarbital." *Id.* The special master questioned Dr. Zivot extensively on this topic, but he refused to take a position. Trial Record Vol. I at 287-99. Stressing the significance of this failure, the special master included a portion of this colloquy in his report. Report at 7-11. Thus, even though the issue was not specifically referred to the special master, Pike had her chance to prove that it is "sure or very likely" that she would suffer "serious illness and needless suffering" during her execution because of pulmonary edema aggravated by her thrombocytosis. *Baze*, 553 U.S. at 50. She failed.

Nearly a decade ago, this Court held that execution by injected pentobarbital is constitutional. *West*, 519 S.W.3d at 566. Now that this method has been challenged yet again, the Court should hold as a matter of law that the alleged risk of pulmonary edema is nothing more than a "mere possibilit[y] or hypothetical[]" that is insufficient as a matter of law to establish an Eighth Amendment violation. *State v. Hines*, No. M2025-00221-SC-DPE-DD (Tenn. Aug. 6, 2026) (order).

And even if the Court assumes Pike will experience pulmonary edema before death, the potential pain she alleges is not "objectively intolerable." *Baze*, 553 U.S. at 50. Whatever pain Pike could feel—*if* pulmonary edema occurred, *if* she was conscious—is not cruel and unusual because "sensations of drowning and suffocation . . . look[] a lot like the risks of pain associated with hanging." *In re Ohio Execution Protocol Litig.*, 946 F.3d 287, 290 (6th Cir. 2019). And hanging—which often "caused death slowly" through suffocation over several minutes,

*Bucklew v. Precythe,* 587 U.S. 119, 132 (2019)—"ha[s] been considered constitutional for as long as the United States have been united." *In re Ohio Execution Protocol Litig.*, 946 F.3d at 290. Thus, Pike's pulmonary edema theory is based on speculative allegations about the sort of pain that "was virtually never questioned." *Bucklew*, 587 U.S. at 132.

In sum, Pike cannot show that pentobarbital will "intensif[y] the sentence of death with a (cruel) superaddition of terror, pain, or disgrace" because of her thrombocytosis. *Id.* at 133 (cleaned up). The speculative risk of pain alleged here does not come anywhere close to being "dragged to the place of execution," "embowelled alive," "beheaded," "quartered," "public[ly] dissect[ed]," or "burn[t] alive." *Wilkerson v. State of Utah,* 99 U.S. 130, 135 (1878). This Court should therefore find that even if Pike experiences pulmonary edema, whatever pain she would feel would fall short of the "severe" pain necessary to show a likelihood of success on the merits of an Eighth Amendment claim. *Glossip*, 576 U.S. at 882.

**2. Pike developed no argument or evidence to show why her hyperlipidemia would warrant a stay.**

Pike has shown no likelihood of success on any claim related to her alleged hyperlipidemia. She never explained how that condition makes it "sure or very likely" that she will suffer "serious illness and needless suffering" during her execution. *Baze*, 553 U.S. at 50. Her motion mentioned the term only twice. Mot. at 16, 28. It contained no factual allegations or legal argument about how hyperlipidemia relates to any claims in her underlying collateral litigation. *Id.* Her expert materials mentioned the term just once, buried in a list of other conditions, with no commentary on how it related to her execution. Zivot Decl., App'x 218A.

With no apparent connection to any claim pending in her underlying collateral litigation, this issue falls outside the scope of Rule 12(4)(E). As this Court recently explained, "the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour . . . claim." *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Apr. 30, 2026) (order).

This issue is also waived because Pike "fail[ed] to develop an argument in support." *Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). At most, she referred to it "in a perfunctory manner" without any "effort at developed argumentation." *Smith v. Hughes*, 639 S.W.3d 627, 648 (Tenn. Ct. App. 2021) (citation and quotation marks omitted). It is not up to this Court to "put flesh on its bones." *Id.* Without any allegations, argument, or evidence linking this condition to a claim pending in collateral litigation, the Court should deem this issue waived.

**3. Pike's mental health conditions, including bipolar disorder, are not linked to the method of her execution and will not result in superadded pain.**

Pike believes that her bipolar disorder, combined with her PTSD, the "imminent threat of execution," and events leading up to her execution, will cause her mental health to "deteriorate," leading to "loss of agency and incompetency to withstand execution." Mot. at 31. This theory is not likely to succeed for three reasons.

*First*, Pike does not link her PTSD or bipolar disorder to any method of execution—lethal injection or otherwise. She links these conditions

only to "execution" in the abstract. Mot. at 30. That is not sufficient to show that she is likely to succeed in an Eighth Amendment challenge to the State's lethal injection protocol because she has failed to link her "specific medical conditions" to "Tennessee's chosen method (i.e., lethal injection using single drug pentobarbital)." *Nichols v. Skrmetti,* No. 3:25-CV-442, 2025 WL 3299727, at *19 (M.D. Tenn. Nov. 26, 2025).

*Second*, Pike cannot show a likelihood of success on any claim based on her mental health because while "[p]sychological pain or mental suffering is a likely result of being sentenced to death and anticipating the execution, [] that experience of psychological suffering could not *by itself* make a method of execution unconstitutional." *In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 454 (6th Cir. 2018) (emphasis added). The relevant question is whether Pike can show that something about the *specific method* of execution is sure or very likely to cause superadded pain *during* the execution. *Id.*; *Bucklew*, 587 U.S. at 119. She did not even attempt to make that showing.

Nor is it clear "how [Pike] could segregate anxiety from anticipated execution in general from anxiety about execution by a particular method." *In re Ohio Execution Protocol Litig.*, 881 F.3d at 450. While she may very well experience distress before being executed, there is no basis for this Court to find that the State's lethal injection protocol will be the cause. Rather, taking Pike's allegations at face value, *any* execution protocol would cause her the same psychological distress. *See, e.g.*, Mot. at 31 (voicing fears about extraction from her cell and the kind of "routine restraint procedure" that would attend any method of execution). Her

own expert testified as much. Report at 22 ("[T]here does not appear to be any scenario by which Dr. Brand believes Ms. Pike would avoid mental suffering, absent no execution at all."); *see also* Trial Record Vol. I at 343-45. Because Pike's motion fails to peg the protocol as the cause of any psychological harm, she is not entitled to a stay based on this issue. *See Grayson v. Comm'r, Alabama Dep't of Corr.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024) (approving a district court's conclusion that an inmate's allegations of potential psychological distress described "a type of pain that would exist regardless of the method of execution").

*Third*, the conditions of confinement that Pike believes will trigger her PTSD and bipolar disorder—transport to Riverbend Maximum Security Institution ("RMSI") two weeks before her execution, where she will be observed by male guards—will not happen. Mot. at 29-30. The State's witnesses testified that Pike will be moved to RMSI no earlier than 24 hours before her execution, and while she is at RMSI, she will be observed by female guards. Report at 21-22; Trial Record Vol. I at 67-74, 83-88, 112-16. So, there is no factual support for Pike's allegation that she will suffer psychological "torture" before her execution. Mot. at 29.

In addition, Pike's allusions to her competency to be executed are out of place here. Mot. at 31. To contest her competency, Pike had to raise that issue in response to the State's motion to set an execution date. *See Black v. State*, No. M2000-00641-SC-DPE-CD, 2025 WL 1927568, at *4 (Tenn. July 8, 2025), *cert. denied*, 146 S. Ct. 58 (2025) (describing Tennessee's procedures for contesting competency to be executed). She did not. *State v. Pike*, No. M2020-01156-SC-DPE-DD (June 7, 2021)

(Pike's response to State's motion to set execution). This issue is not properly before the Court.

### B. Pike's confinement conditions satisfy constitutional requirements.

Pike is unlikely to succeed on any claim based on her confinement conditions. She says the protocol violates her Eighth Amendment right "not to be forced into isolation for fourteen days." Mot. at 37. She also says her option to choose electrocution or lethal injection offends a bundle of constitutional rights because if she does not choose electrocution, which entails a three-day "death watch" period, she will be subject to "isolation" for fourteen days under the lethal injection protocol. *Id.* at 36-37. But her confinement conditions under the protocol will not amount to cruel and unusual punishment because she will not be deprived of basic necessities, and she will not endure anything like isolation.

Unlike a method-of-execution challenge, a conditions-of-confinement claim includes objective and subjective components. A court must first determine whether the "alleged wrongdoing was objectively harmful enough to establish a constitutional violation" and then determine whether prison officials acted with "a sufficiently culpable state of mind." *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (citation and quotation marks omitted). The objective component requires a showing of extreme deprivation. Only a showing that Pike lacks "the minimal civilized measure of life's necessities" will suffice. *Id.* at 9 (cleaned up). The subjective component requires Pike to show that the State acted with deliberate indifference to her health or safety. *Wilson v. Seiter*, 501 U.S. 294, 302–03 (1991). And courts "will not intervene in internal prison operations without an urgently compelling and

extraordinary reason." *Smith v. Baugh*, No. 3:05-0860, 2007 WL 1080137, at *2 (M.D. Tenn. Apr. 9, 2007).

Pike cannot show that she will be deprived of basic necessities such as "reasonably adequate food, clothing, shelter, sanitation, recreation, and medical care." *Vick v. Core Civic*, 329 F. Supp. 3d 426, 451 (M.D. Tenn. 2018). The protocol ensures that she will receive all of those things. During the two weeks before her execution, Pike will receive standard meals "consistent with the unit feeding schedule." Protocol at 43. She will receive a new mattress, bedding, towels, and linens. *Id.* She can shower and get cleaning supplies "upon request." *Id.* at 42. She will have one hour of outdoor recreation five days a week. *Id.* And she will receive daily clinical services to address her medical needs. *Id.* at 44. This matches confinement conditions that federal courts have upheld as constitutional. *Vick*, 329 F. Supp. 3d at 452 (citing *Rodgers v. Jabe*, 43 F.3d 1082, 1087–88 (6th Cir. 1995)).

Nor is Pike's segregation from the general population cruel and unusual punishment. *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978). To show a likelihood of success on this issue, Pike must show that the specific *conditions* of her segregation are cruel and unusual. *See id.*; *Coleman v. Governor of Michigan*, 413 Fed. App'x 866, 875 (6th Cir. 2011); *Adams v. Galloway*, No. 04-2605, 2006 WL 1645252, at *2 (W.D. Tenn. June 8, 2006). She cannot do that for the reasons explained above.

And contrary to her allegations, Pike will not be isolated before her execution. To be sure, she will be the only inmate in her unit. But she is "permitted routine use of the telephone" during the two weeks before her

execution. Protocol at 43. She can buy things from the commissary. *Id*. She will have no limit on visits, so long as visit requests are "in writing and approved by the Warden." *Id*. That is a far cry from isolation.

There will also be no "twelve-hour blackout" period before the execution when Pike will be completely cut off from human contact. Mot. at 30. In fact, since TDOC has granted Pike's spiritual accommodation requests, her spiritual advisor will be allowed a contact visit with her in the twelve hours before her execution, and that advisor will be allowed in the execution chamber with her. Trial Record Vol. IV 494-96.

These conditions exceed the minimum conditions required by federal courts, which have affirmed extended confinement for twenty-three hours per day. *See, e.g*., *Argue v. Hofmeyer*, No. 03-1156, 80 Fed. App'x 427, 428–29 (6th Cir. Oct. 30, 2003). As many courts have recognized, an inmate's freedom to engage in relationships that may be normal for free citizens is naturally, and constitutionally, curtailed by the demands of prison administration. *See Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) ("[F]reedom of association is among the rights least compatible with incarceration.").

In sum, Pike cannot show that she is likely to succeed on the merits of an Eighth Amendment claim based on her short-term segregation from other inmates. *See Harden-Bey v. Rutter*, 524 F.3d 789, 794–95 (6th Cir. 2008). She will not be deprived of necessities; she will have adequate food, clothing, shelter, sanitation, recreation, and medical care. *Vick*, 329 F. Supp. 3d at 451; *Rhodes v. Chapman*, 452 U.S. 337, 348 (1981). And she

will not be isolated; she will have greater telephone and visitor access than other inmates, plus daily access to healthcare. Protocol at 43.

### C. An option to elect a method of execution is constitutional, and in any event, the issue is moot.

Pike's manufactured dilemma about choosing her execution method is not the quandary she suggests, and no constitutional problem would arise even if she had to choose her method of execution. She is not entitled to a stay on this basis either.

Tennessee gives certain inmates a choice of two constitutional methods of execution: lethal injection or electrocution. The default method is lethal injection. Tenn. Code Ann. § 40-23-114(a). But inmates like Pike, who committed their underlying offense before January 1, 1999, may sign a written waiver electing to be executed by electrocution. *Id*. § 114(b). The protocol thus gives eligible inmates an opportunity to sign an affidavit waiving, or declining to waive, the right to execution by lethal injection. Protocol at 25. If an eligible inmate refuses to choose and does not sign the waiver, then the default method of execution by lethal injection applies. *Id*.

Pike says this procedure violates the First, Eighth, and Fourteenth Amendments. Mot. at 36-37. But she advances no argument to show how the First or Fourteenth Amendments come into play. That issue is waived for lack of any supporting argument. *Sneed*, 301 S.W.3d at 615.

Even if Pike had developed this argument, it would fail because the protocol does not require her to choose her method of execution; it merely allows that choice. Protocol at 25. And "[t]he mere existence of the option" between lethal injection and electrocution "is not a violation of [Pike's]

constitutional rights." *Johnson v. Bell*, 457 F. Supp. 2d 839, 841 (M.D. Tenn. 2006) (quoting *Poland v. Stewart*, 117 F.3d 1094, 1105 (9th Cir. 1997)). It is also well-established that the option to waive execution by lethal injection does not violate the Free Exercise Clause of the First Amendment. *Id*. (holding that an inmate's "free exercise of religion is not violated by forcing him to choose, or not to choose, the method of execution"); *see also Campbell v. Wood*, 18 F.3d 662, 687 (9th Cir. 1994) (finding no free exercise issue in providing a choice of execution method because the inmate "may remain absolutely silent and refuse to participate in any election"). Likewise, such a choice is not cruel and unusual punishment under the Eighth Amendment. *Johnson*, 457 F. Supp. 2d at 843 ("The existence of an option that [Pike] may choose to exercise, or may choose not to exercise, standing alone, does not constitute cruel and unusual punishment."). Pike's option to be executed by electrocution instead of lethal injection is constitutionally sound, and so she is not entitled to a stay on this basis.

Pike fares no better with the argument that the option before her is "arbitrary and capricious" under the Eighth Amendment. Mot. at 37. That theory applies to how a court imposes a death sentence, not how a prison carries it out. *Godfrey v. Georgia*, 446 U.S. 420, 427 (1980); *State v. Smith*, 857 S.W.2d 1, 22 (Tenn. 1993). Pike does not attack her death sentence, but rather the correctional procedures that will precede her execution. This Court should reject her "attempt to equate [her] situation—the *carrying out* of [her] death sentence—with the *imposition* of a death sentence." *Woods v. Comm'r, Alabama Dep't of Corr.*, 951 F.3d

1288, 1295 (11th Cir. 2020). This theory is simply not "within the scope" of Eighth Amendment precedent. *Miller v. Hamm*, 640 F. Supp. 3d 1220, 1238 (M.D. Ala. 2022).

Finally, this election issue is moot because Pike has already been presented with the option of electrocution. *See* Protocol at 14-15 (providing for election thirty days before the execution date). Because she did not choose electrocution, she will be executed by lethal injection. *See* Tenn. Code Ann. § 40-23-114. There was never any "arbitrary and capricious" choice. But even if there was, it has already been made and is moot.

**D. Pike's resuscitation claim is foreclosed by precedent.**

Pike has no likelihood of success on her theory about the lack of a resuscitation provision in the lethal injection protocol because "the State is under no obligation to attempt revival" after an execution attempt. *West,* 519 S.W.3d at 567.

Her motion asks this Court to order the State to rewrite the protocol to provide for resuscitation if things go wrong. Mot. at 34-36, 41. But there is no constitutional requirement for the protocol to anticipate every conceivable snag with a "Plan B." *Jackson v. Danberg*, 594 F.3d 210, 227–28 (3d Cir. 2010). Consequently, Pike is not entitled to relief merely because "there may be some possibility that [she] could be resuscitated after being declared dead." *West*, 519 S.W.3d at 567. In stark terms, the *West* court went on: "The intended result of an execution is to render the inmate dead. Therefore, as a result, the State is under no obligation to attempt revival efforts." *Id.* It follows that the State has no duty to provide for such efforts in any execution protocol.

Other courts have voiced similar skepticism about the notion that States must provide for resuscitation in execution protocols. *See, e.g.*, *Moore v. Rees*, 138 F. Supp. 3d 860, 870 (E.D. Ky. 2015) (expressing uncertainty about whether "such a claim is plausible" under United States Supreme Court precedent); *Rhoades v. Reinke*, 830 F. Supp. 2d 1046, 1063 (D. Idaho 2011), *aff'd*, 671 F.3d 856 (9th Cir. 2011) (listing a resuscitation provision as an "additional safeguard[]" beyond what precedent required).

Because the State need not attempt revival after an execution attempt, *West*, 519 S.W.3d at 567, Pike's resuscitation argument leads nowhere. On the contrary, it would undermine the purpose of her execution. *Id*. And Tennessee is not bound to copy another State's protocol, even one that contains comprehensive resuscitation provisions. *Abdur'Rahman v. Parker,* 558 S.W.3d 606, 623 (Tenn. 2018).

Pike's arguments on this score are also too speculative to show a likelihood of success on the merits because they depend on the remote possibility that she may survive execution. Mot. at 34-36. She does not say why that is a likely outcome, or how it is sure or very likely to cause superadded pain. In fact, it is highly unlikely that this will happen, because "[p]entobarbital . . .[h]as been used to carry out over 100 executions, without incident." *Lee*, 591 U.S. at 980. "The Eighth Amendment does not come into play" on such speculative theories. *Bucklew*, 587 U.S. at 134. The Court should decline to grant a stay based on this issue.

### E. Pike's phone-access claim is not properly before the Court.

Finally, Pike frets that her counsel will lack "immediate access" to a phone on the day of her execution. Mot. at 39-40. She is not entitled to a stay on this basis for two reasons.

*First*, Pike did not raise this issue in her underlying "state court collateral litigation." Tenn Sup. Ct. R. 12(4)(E). It is therefore not properly before this Court because the purpose of a Rule 12(4)(E) motion is only to "facilitate[] existing state collateral proceedings." *State v. Carruthers,* No. W1997-00097-SC-DDT-DD (Tenn. Feb. 17, 2026) (order). "Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour . . . claim." *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Apr. 30, 2026) (order).

*Second*, her anecdotes do not show that phone access is a potential problem. She concedes that Tony Carruthers's lawyer made phone calls during his attempted execution. Mot. at 40. His attorneys then filed an emergency motion in this Court in the middle of the execution attempt. *State v. Hines*, No. M2025-00221-SC-DPE-DD (Tenn. Aug. 6, 2026) (order). The same day, they sued on Carruthers' behalf in federal district court. *Carruthers v. Strada*, M.D. Tenn. No. 3:26-cv-00680. Any suggestion that Pike's lawyers will have trouble communicating or seeking redress is belied by these facts.

## CONCLUSION

Pike's motion for a stay of execution should be denied.

Respectfully submitted,

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**CERTIFICATE OF REDACTION COMPLIANCE**

In accord with Tenn. R. App. P. 20B, undersigned counsel certifies that this filing submitted to *State v. Pike*, No. M2020-01156-SC-DPE-DD, complies with the omission and redaction requirements of Rule 20B. The certification is made per review on Sept. 4, 2026.

*/s/ John W. Ayers*
Assistant Attorney General

**CAPITAL CASE**
**(Execution Date: September 30, 2026)**
**Case No. M2020-01156-SC-DPE-DD**

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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILE**

Christa Gail Pike,
Movant,

v.

State of Tennessee,
Respondent.

Criminal Court for Knox County
No. 58183A

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# Supplemental Briefing on Remaining Issues

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Ms. Pike submits this supplemental briefing on the issues not referred to the Special Master and held in abeyance pursuant to this Court's August 27, 2026 Order.

## ARGUMENT

In addition to the briefing provided, *infra*, Ms. Pike renews her general objections to the extreme limitations placed on this proceeding by the Special Master. Including, specifically, (1) erroneously excluding relevant evidence about post-IV access effects from Questions 1 and 3; (2) erroneously excluding evidence about the placement of a central line from Questions 1 and 3; (3) erroneously excluding relevant evidence about the attempted execution of Tony Carruthers; (4) erroneously limiting the testimony provided by Dr. Gail Van Norman; and (5) the Special Master's disparate treatment and credibility findings of Ms. Pike's experts compared to experts for the State of Tennessee.

Ms. Pike also renews her objection to the denial of her emergency motion to reopen the hearing. Less than 24 hours after the hearing closed, the physician himself publicly stated he intends to participate in Ms. Pike's execution—eliminating both the speculation and the



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privilege.[1] Although the State has tried to shield the identity of the physician who will be called upon during Ms. Pike's execution, that person has already revealed his identity to the media. Despite this public disclosure, the State has refused to confirm whether the physician's statements to the press are accurate. The State continues to assert the privilege codified in Tenn. Code Ann. § 10–7–504(h)(1). The operative clause of the statute provides:

> those parts of the record identifying an individual or entity as a person or entity who has been or may in the future be directly involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to public inspection. . . .

Tenn. Code Ann. § 10–7–504(h)(1). At the same time, the statute provides that "nothing in this subsection (h) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information." Tenn. Code Ann. § 10–7–504(h)(2).

Although Tenn. Code Ann. § 10–7–504(h) does not contain a waiver provision, "the lack of an express waiver provision does not imply that a

[1] Sydney Keller, Karen Aguilar, Ashley Griffin, *Doctor who oversaw failed Tennessee procedure to handle Christa Pike's execution*, Fox17 News (Aug. 14, 2026), https://fox17.com/news/local/doctor-who-oversaw-failed-tennessee-procedure-to-handle-christa-pikes-execution.



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statutory privilege cannot be waived." *Castillo v. Rex*, 715 S.W.3d 321, 338 (Tenn. 2025) (noting that the attorney-client privilege, accountant-client privilege, and psychologist-client privilege are each codified without provision for waiver, yet may each be waived). Indeed, "it has long been the case under general common-law principles of waiver that the holder of a right or privilege—even one phrased in mandatory language—may waive the right." *Id.* at 335. This Court recently affirmed:

> The doctrine of waiver, from its nature, is applicable, generally speaking, to all rights or privileges to which a person is legally entitled, whether secured by contract[,] conferred by statute, or guaranteed by the constitution, provided such rights or privileges rest in the individual, and are intended for his sole benefit. A right or privilege given by statute may be waived or surrendered, in whole or in part, by the party to whom or for whose benefit it is given, if he does not thereby destroy the rights and benefits conferred upon or flowing to another in or from said statute or other legal or equitable source. Even when a statute in so many words declares a transaction void for want of certain forms, the party for whose protection the requirement is made often may waive it, void being held to mean only voidable at the party's choice. A waiver is not, however, allowed to be operative where it would infringe upon the rights of others, or would be against public policy or morals. Where the object of a law is the good of the public as well as of the individual, such protection to the state cannot, at will, be waived by any individual, an integral part thereof. The fact that the individual is willing to waive his protection cannot avail. The public good is entitled to protection and consideration; and if, in order to effectuate the object, there must be enforced protection to the individual,



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> such individual must submit to such enforced protection for the public good.

*Castillo*, 715 S.W.3d at 335–36 (quoting *Black Diamond Coal Mining Co. v. Rankin*, 98 S.W.2d 311, 312 (Tenn. 1936)). In *Castillo*, this Court first considered who holds and who may waive the privilege as "only the person entitled to the benefit of a privilege may waive the privilege." *Id.* at 336 (quoting *Powell v. Cmty. Health Sys., Inc.*, 312 S.W.3d 496, 512 (Tenn. 2010).

The execution secrecy statute clearly identifies the holder of any privilege it creates as any "person or entity who or that has been or may in the future be directly involved in the process of executing a sentence of death." Tenn. Code Ann. § 10–7–504(h)(1). It is this person or entity who is "entitled to the benefit" of the statute. *Castillo*, 715 S.W.3d at 336 (quoting *Powell*, 312 S.W.3d at 512).

The legislative history and intent of the execution secrecy statute, which this Court had occasion to examine in *West v. Schofield* supports this view. 460 S.W.3d 113, 121–23 (Tenn. 2015). Specifically, this Court remarked: "Senator Norris' comments clearly indicate that . . . the legislature intended through its amendment to the statute to protect the identities of all persons and entities participating in the execution of a



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convicted murderer sentenced to death." *Id.* at 122. The Court also found support for the "legislature's concern with protecting the identities of those involved with executions" in prior cases. *Id.* at 123 ("Ricky Bell, a former warden of the Tennessee prison in which death row inmates are housed, has stated in an affidavit that the 'identity of the execution team is kept confidential for the security of the institution and for the safety of the staff members and their families.' The former warden explained, '[m]embers of the execution team and their families may be subject to retaliation and harassment if their identities became known throughout the institution or to the public at large.'") (quoting *Workman v. Campbell,* No. M2001–01445–COA–R3–CV, 2002 WL 869963, at *6 (Tenn. Ct. App. May 7, 2002) (internal citations omitted)).

The text of the execution secrecy statute, its legislative history and intent, and this Court's commentary on the same, establish that those involved with executions are those "entitled to [its] benefit." *Castillo*, 715 S.W.3d at 336 (quoting *Powell*, 312 S.W.3d at 512). Therefore, it is those involved with executions who hold any privilege associated with the statute, and only they can waive it. *Id.* The execution physician has done so here.



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A waiver may only be operative where it would not "infringe upon the rights of others, or would be against public policy or morals." *Castillo*, 715 S.W.3d at 336 (quoting *Black Diamond Coal Mining Co.*, 98 S.W.2d at 312). As this Court has noted, "[t]he proposition of an unwaivable privilege gives us great pause because it is contrary to established legal principles." *Id.* at 337. An unwaivable privilege creates great "potential for abuse," "invit[ing] parties to use privileged information offensively as a sword while in the same breath claim privilege when that information is challenged." *Id.* at 338. Such would be the case here if the execution physician is allowed make statements to the press about his role in Ms. Pike's execution while she is prevented from even acknowledging his role in the process in her arguments before this Court.

The execution physician's identity is significant here because of his inability to set a central line during the attempted execution of Tony Carruthers. The evidence established a very strong likelihood that peripheral IV access will not be achieved on Ms. Pike. In that event, the service of a physician who is demonstrably incompetent at setting a central line constitutes superadded pain and suffering, terror, and disgrace. Such an execution would violate the Eighth Amendment to the



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United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, and 32.

Finding waiver of the "executioner-identity" privilege—if such a thing even exists—would not undermine the goals of Tennessee Code Annotated § 10–7–504(h). The reality is this: the execution physician's identity was willfully and voluntarily disclosed by the physician himself and is now public information. It is no longer privileged or confidential. Allowing Ms. Pike to acknowledge this reality does not expose the execution physician to additional danger. As this Court observed in *Castillo*: "The genie is out of the bottle. In any other context, the explicit and intentional disclosure of confidential information by the privilege holder would constitute waiver." *Id.* at 339.

## I. Tennessee's protocol is unconstitutional as applied to Ms. Pike given her serious medical conditions in violation of the Eighth Amendment to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, and 32.

The current protocol is unconstitutional in the way that it will be applied to Ms. Pike because of her serious medical conditions. Each condition, on its own and together, makes it sure or very likely that Ms. Pike will experience unnecessary and superadded pain and suffering,



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terror, and disgrace. *Baze v. Rees*, 553 U.S. 35, 48 (2008). Ms. Pike's Rule 12 Motion invokes the likely possibility that she will be tortured and relive past sexual traumas when she is forcibly removed from her cell and forcibly strapped to the gurney while the execution team attempts to achieve peripheral IV access. (Pike Mot. at 31). The Special Master limited all consideration of this issue. The question is not whether the individual components of the protocol in isolation will trigger Ms. Pike's severe mental illness. Rather, the constitutional question is whether the protocol in its totality, including its observation, restraint, and execution procedures will cause Ms. Pike psychological suffering that constitutes a "superaddition" to the death penalty—suffering that is not a necessary incident of carrying out the sentence. *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019). The Supreme Court has recognized that this prohibition encompasses psychological suffering. *See id.* (acknowledging cognizable claims based on "terror"). *See also Grayson v. Comm'r, Ala. Dep't of Corr.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024) (recognizing that psychological suffering may support an Eighth Amendment method-of-execution claim).



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Furthermore, Article I, Section 13 of the Tennessee Constitution provides that "no person arrested and confined in jail shall be treated with unnecessary rigor." The Oregon Supreme Court, interpreting a similar provision in its own constitution, has held that inmates may "raise a constitutionally founded objection to a search by corrections officers of the opposite sex that involves touching of sexually intimate body areas even through clothing." *Sterling v. Cupp*, 625 P.2d 123, 136 (Or. 1981). Similarly, Utah has an "unnecessary rigor" clause in its constitution which protects prisoners from "unnecessary abuse." *Bott v. DeLand*, 922 P.2d 732, 737 (Utah 1996). In that case, the Utah Supreme Court characterized abuse as "needlessly harsh, degrading, or dehumanizing treatment." *Id.* at 740. Even if the Tennessee Department of Correction can mitigate Ms. Pike's suffering during the observation period, the remaining procedures in the protocol are unable to be ameliorated and are plainly unconstitutional as they will be applied to Ms. Pike given her serious mental illness.

Similarly, Article I, Section 32 of the Tennessee Constitution affords inmates the right to "humane treatment." In *State v. Brimmer*, 876 S.W.2d 75, 88 (Tenn. 1994)—a general challenge to the death penalty



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under the Eighth Amendment—this Court held that Article I, Section 32 did not "add any additional restriction" to the death penalty. However, *Brimmer* does not address the application of a protocol on an inmate with serious mental illness and this Court "is always free to expand the minimum level of protection mandated by the federal constitution." *Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn. 1988).

This Court must consider the testimony from Maria DeLiberato that establishes the factual basis for Dr. Bethany Brand's expert opinion that Ms. Pike's PTSD will be profoundly triggered leading to an unconstitutionally tortuous execution. When Ms. Pike is extracted from her cell prior to her scheduled execution, the warden will "[stand] in front of [the] cell" and announce that guards will be entering her cell, (Aug. 11 Tr. Vol 1, 134:23–24); then four or five guards "all dressed in black" will stand "shoulder to shoulder" with "their hands on the shoulder in front of them" and announce with "very loud commands" that they are entering her cell, (Aug. 11 Tr. Vol 1, 135:1–5); then they will order her "to kneel on the bunk, place [her] forehead on the wall, and then [restrain her] in the cell," (Aug. 11 Tr. Vol 1, 135:5–7). they will shackle her "belly, hands, and feet," "stand behind" her, and "lift [her] onto the gurney." (Aug. 11



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Tr. Vol 1, 135:12–14). Then they will strap her down. (Aug. 11 Tr. Vol 1, 135:15). It will take a "considerable amount of time securing all of the straps." (Aug. 11 Tr. Vol 1, 135:15–16). They will "roll [her] into the execution chamber." (Aug. 11 Tr. Vol 1, 135:20). In the execution chamber, they will secure "the gurney to the floor." (Aug. 11 Tr. Vol 1, 136:1). Then they will "put the arms on the gurney. Each side of the arm. The left side and the right side." (Aug. 11 Tr. Vol 1, 136:2–3). They will unhandcuff Ms. Pike and then outstretch her arms along the gurney. (Aug. 11 Tr. Vol 1, 136:4–5). Then they will attempt to inject her body with pentobarbital.

The testimony supports Dr. Brand's conclusions that Ms. Pike will suffer psychological torture, not just from one component of the protocol in isolation, but in the totality of the protocol as it will be applied to her. Specifically, Dr. Brand testified that the extraction and physical restraint process itself cannot be ameliorated by changing the gender of observation staff because the core traumatic trigger is the experience of being physically overpowered and immobilized, not merely being watched. Each step of the protocol involves physical contact and restraint by (predominantly male) correctional staff. Dr. Brand's testimony



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established that the concessions made by TDOC do not—and indeed cannot—address that core harm: the extraction, restraint, and physical immobilization by male staff that constitutes the central traumatic trigger cannot be ameliorated by observation conditions alone. Traumatic memories are not encoded in narrative form; rather, they are stored as involuntary sensory fragments—visual images, bodily sensations, sounds, and smells—that are neurobiologically relived when triggered, not merely recalled as past events. (Aug. 12 Tr. Vol. 4, 330–32). Because Ms. Pike's sexual assaults involved being physically overpowered and immobilized by men, the execution protocol's requirement that she be physically restrained to a gurney constitutes a near-perfect replication of the sensory conditions of her original assaults. Thus, being strapped to a gurney while the IV Team inserts intravenous lines into her body would precipitate a full trauma flashback, including loss of touch with present reality, and would likely activate the involuntary fight/flight/freeze/immobility survival response:

> It will be highly triggering for Christa Pike. She will experience being held down and then being tied down, very similar to how she experienced being pinned and trapped and raped. She won't be able to escape like she couldn't escape back then. That is likely to precipitate her having a flashback where she will lose all sense of current reality, and as I



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> explained earlier, she'll be transported in her mind back to times when she was being raped, feeling the full emotional and physical force and sensations of that time.

(Aug. 12 Tr. Vol. 4, 338:9–18). Thus, the protocol, as applied to Ms. Pike creates an environment that makes it "sure or very likely" that she will suffer from "serious illness and needless suffering." *Baze,* 553 U.S. at 50.

## II. Tennessee's protocol is unconstitutional because it does not provide for the provision of medical care, or the resuscitation of an inmate in the event of a failed execution in violation of the Eighth Amendment to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, and 32.

Under the Eighth Amendment, all inmates have the constitutional right to comprehensive medical care during their incarceration. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). The "deliberate indifference" to an inmate's medical needs "constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Id.* at 104 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). "Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment." *Brown v. Plata*, 563 U.S. 493, 510 (2011). *See also id.* at 511 ("Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic



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sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society."). When the government fails in this basic duty, "courts have a responsibility to remedy the resulting Eighth Amendment violation." *Id.* at 511.

That obligation runs in the event of a failed execution. After the execution physician entered the room during the attempted execution of Mr. Carruthers, he asked members of the IV Team "if any of them had experience with jugular access" (Aug. 11. Tr. Vol. 1,144:18–20); one team member who initially said he did, later stated "he didn't feel like he could do this." (Aug. 11. Tr. Vol. 1, 145:3–6). The physician then decided he would place a central line. (Aug. 11. Tr. Vol. 1, 145:7–9). The physician attempted the central line below Mr. Carruthers's right clavicle, at which time Mr. Carruthers "began gutturally groaning, and said, 'It hurts. It hurts.'" (Aug. 11. Tr. Vol. 1, 146:11–14). Blood oozed from the puncture wound. (Aug. 11. Tr. Vol. 1, 146:19). Approximately 28 minutes after the physician entered the room, he announced he would not be able to set a central line. (Aug. 11. Tr. Vol. 1, 141:21–25, 147:6–7). The execution was ultimately called off. (Aug. 11. Tr. Vol. 1, 148:1–4).



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The failures during the attempted execution of Mr. Carruthers, combined with the unique medical conditions of Ms. Pike created a likelihood that an attempted execution with unqualified staff will reach the point where Ms. Pike needs medical care. Tennessee's protocol makes no provision for this. Without the insistence of the attorney witness during Mr. Carruthers' attempted execution, this tortuous situation might have gone on much longer. Tennessee has a constitutional duty to provide medical assistance in these circumstances under the Eighth Amendment.

Attempting to execute Ms. Pike without a procedure or mechanism to provide medical care or resuscitation makes it sure or very likely that her execution will result in unnecessary and superadded pain and suffering, terror, and disgrace or lingering death of the kind suffered by Byron Black and Mr. Carruthers. (*See* Pike Mot. at 12–13, 36). *Baze*, 553 U.S. at 50.

## III. The imposition of a fourteen-day isolation period is arbitrary and capricious and violates the First, Eighth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, 17, 19, and 32.



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Fourteen days before her scheduled execution—a period that will begin less than two weeks from now—Ms. Pike will be isolated at the Debra K. Johnson Rehabilitation Center (DJRC), cut off from any person familiar to her, (most likely[2]) in a cell she is unfamiliar with, in a part of the prison she is unfamiliar with, where she will be continuously observed twenty-four hours a day for the last days of her life. The State uses terms like "continuous observation" or "continuous lockdown status" to avoid what we all know to be true, and what every single man executed under this protocol has experienced: solitary confinement. The terms mark a distinction without a difference.

More than one hundred and thirty years ago, the United States Supreme Court recognized that solitary confinement "bears 'a further terror and peculiar mark of infamy.'" *Davis v. Ayala*, 576 U.S. 257, 287 (2015) (Kennedy, J., concurring) (citing *In re Medley*, 134 U.S. 160, 170 (1890)). No matter the length of time, solitary confinement is

[2] Ms. Pike is left to speculate because the Tennessee Lethal Injection Protocol is void of all detail. In practice, male inmates at Riverbend Maximum Security Institution (RMSI) are moved to a separate area of Unit 2 where they are isolated before being moved to the Capital Punishment Unit. It is unclear where DJRC officials plan to isolate Ms. Pike and officials have refused to engage counsel in a conversation about the same.



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undoubtedly cruel and unusual. We know, for instance, that solitary confinement can cause increased "anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors." *Davis*, 576 at 289 (Kennedy, J., concurring) (citing Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & Pol'y 325 (2006)). *See In re Medley*, 134 U.S. at 168 ("A considerable number of the prisoners fell, *after even a short confinement*, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide. . . .") (emphasis added). This is doubly so for Ms. Pike, who was held in solitary confinement for nearly three decades before winning some small freedoms less than five years ago. The arbitrary imposition of a fourteen-day isolation period will not only return her to that state, but it will return her to the same state of "nonconsensual observation, exposure, and violation," she experienced as child. (Hr'g Ex. 18 at 1). "The experience of being watched without the ability to protect her own bodily privacy would be highly likely to evoke the same feelings of exposure, helplessness, and powerlessness she experienced during [her] rapes." (Hr'g Ex. 18 at 1–2).



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The Eighth Amendment—made applicable to the States through the Fourteenth Amendment, *Estelle*, 429 U.S. at 101–02 (1976)—applies to claims made by inmates challenging their conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). And while the Eighth Amendment does not guarantee "comfortable" prisons, neither does it allow inhumane ones. *Id*. Under the Fourteenth Amendment, inmates have a liberty interest in avoiding conditions of confinement that impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Wilkinson v. Austin*, 545 U.S. 209, 223 (2005) (citing *Sandlin v. Connor*, 515 U.S. 472, 484 (1995)).

The Eighth Amendment's Cruel and Unusual Punishments Clause prohibits punishments that are "unduly harsh in light of longstanding prior practice." John F. Stinneford, The Original Meaning of "Cruel," Georgetown Law Journal Vol. 105:441, 493 (2017). The historical record shows that in addition to cruel, tortuous, or barbarous *methods* of punishment, the Founders—and the English drafters before them—were concerned primarily with disproportionate and arbitrary sentences. *See id*. at 473 (The Eighth Amendment "directs us to measure proportionality in light of longstanding prior punishment practices."). *See also* John F.



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Stinneford, Rethinking Proportionality Under the Cruel and Unusual Punishments Clause, Virginia L. Rev., Vol. 97: 4 899 (2011); Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif. L. Rev. 839 (1969); 5 William Blackstone, Commentaries *378.

When the Supreme Court first had occasion to address the original meaning of the Eighth Amendment it too focused on disproportionate or arbitrary sentences. In 1892 Justice Field wrote that the "inhibition" of the Eighth Amendment was directed "not only against punishments of the character mentioned, but against all punishments which by their excessive length or severity are greatly disproportioned to the offences charged." *O'Neil v. Vermont*, 144 U.S. 323, 339–40 (1892) (Field, J., dissenting).[3] "The whole inhibition is against that which is excessive either in the bail required, or fine imposed, or punishment inflicted." *Id.* at 340.

Nearly a century later, a majority of the Court struck down the death penalty because it was imposed selectively, irregularly, and arbitrarily. *Furman v. Georgia*, 408 U.S. 238, 239–40 (1972). Writing

[3] The Court in that case ruled on the constitutionality of a state statute and did not base its holding on the federal question.



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separately, Justice Douglas noted that the Eighth Amendment "was concerned primarily with selective or irregular application of harsh penalties and that its aim was to forbid arbitrary and discriminatory penalties of a severe nature. . ." *Id*. at 242 (Douglas, J., concurring). *See also id*. at 249 (a punishment is "unusual" as that term is used in the Eighth Amendment, "if it is administered arbitrarily or discriminatorily"). Justice Brennan went further, explaining that "the very words 'cruel and unusual punishments' imply condemnation of the arbitrary infliction of severe punishments. And, as we now know, the English history of the Clause reveals a particular concern with the establishment of a safeguard against arbitrary punishments." *Id*. at 274 (Brennan, J., concurring). *See also id*. at 277 ("The more significant function of the Clause [ ] is to protect against the danger of their arbitrary infliction.").

The fourteen-day solitary confinement period is disproportionate and arbitrary because it is an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Austin*, 545 U.S. at 223. It means "exclusion from human associations." *In re Medley*, 134 U.S. at 168. In *In re Medley*, instead of confinement where "[the



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inmate] and his friends reside," where "they may . . . see him and visit him," and where "his religious adviser and legal counsel may often visit him without any hindrance of law on the subject," the inmate was "transferred to a place where imprisonment always implies disgrace, and which . . . is itself an infamous punishment. . . ." *Id.* at 168–69. Like the statute in *In re Medley*, the protocol gives absolute authority to TDOC officials to approve or deny visits, approve or deny comfort items, and staff Ms. Pike's observation with any staff they choose—male or female—regardless of the impact that will have on her. The protocol establishes policies and procedures in the vaguest of terms for the "government, discipline and police of the penitentiary, and for the punishment of prisoners confined, not inconsistent with the law, as they deem expedient." *Id.* at 169. Like the statute in that case, "[w]hat these may be at any particular time is unknown." *Id.*

We do know some details. Ms. Pike will be removed from her friends and her cell and placed in a new cell in a different part of the prison. According to TDOC officials, while under "continuous observation," Ms. Pike will be "removed from the general population and [will] not have free movement throughout either the facility or the area where [she's]



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housed." (Aug. 11 Tr. Vol 1, 90:4–8). During that period Ms. Pike will be under "one-on-one observation." (Aug. 11 Tr. Vol 1, 85:7–8; 91:20–24). "[T]he officer is positioned outside [Ms. Pike's] cell [and will have] constant visual sight of [Ms. Pike] to observe all [her] activities." (Aug. 11 Tr. Vol 1, 103:13–15). During showers an "officer is on the outside of the cell observing [Ms. Pike] through the bars." (Aug. 11 Tr. Vol 1, 108:15–21). There is a control room that's looking directly into the cells in the Capital Punishment Unit. (Aug. 11 Tr. Vol 1, 131:12–13). Dr. Brand testified that the continuous observation of Ms. Pike will be "very, very distressing to her, more than for the average person"—even the average death row inmate given her PTSD. (Aug. 12 Tr. Vol. 4, 335:7–8).

What is more, the fourteen-day isolation period serves no legitimate purpose because the isolation period if an inmate chooses electrocution is only three days. *See* Execution Procedures for Electrocution at 47 (Mar. 13, 2017 Rev.). Imposing a fourteen-day isolation period for electing (or choosing not to elect) one method of execution, and a three-day isolation period for electing another is arbitrary and disproportionate, has no rational relation to any government purpose, and violates Ms. Pike's rights under the First, Eighth, and Fourteenth Amendments to the



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United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, 17, 19, and 32. *See In re Medley*, 134 U.S. at 171 (solitary confinement is an "additional punishment of the most important and painful character, and is, therefore, forbidden by this provision of the Constitution of the United States).

It also creates an environment that makes it "sure or very likely" that Ms. Pike will suffer from "serious illness and needless suffering," *Baze*, 553 U.S. at 50, because of the increased "anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors" inherent in solitary confinement, *Davis*, 576 at 289 (Kennedy, J., concurring); because Ms. Pike will be returned to the state of her previous solitary confinement for nearly thirty years; and because "[t]he experience of being watched without the ability to protect her own bodily privacy would be highly likely to evoke the same feelings of exposure, helplessness, and powerlessness she experienced during [her] rapes." (Hr'g Ex. 18 at 1–2).

In her statement respecting the denial of certiorari in *Apodaca, et al. v. Raemisch, et al.*, 586 U.S. 931 (2018), Justice Sotomayor referenced Charles Dickens' recount of a visit to Philadelphia's Eastern State



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Penitentiary, writing: "Dickens did not question the penal officers' motives. He concluded, rather, that they did 'not know what it is that they are doing' and that 'very few' were 'capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers.'" *Id.* at 937 (citing C. Dickens, American Notes for General Circulation 146 (J. Whitley & A. Goldman eds. 1972)). "We are no longer so unaware. Courts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping prisoners . . . in 'near total isolation' from the living world, in what comes perilously close to a penal tomb.'" *Id*. (citations omitted). For the last two weeks of her life, Ms. Pike will be forced into "near total isolation" in what will become her penal tomb.

## IV. Tennessee's protocol violates Ms. Pike's right to petition for redress under the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 17, 19, and 32.

The right of access to the courts flows from the First, Eighth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, § 8, 13, 17, 19, and 32. Ms. Pike has a constitutional right to seek redress by asserting rights that she believes



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violate the Eighth Amendment up to, and during her execution. "[I]t is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." *Johnson v. Avery*, 393 U.S. 483, 485 (1969). Where the functions of a state agency conflict with an inmate's rights under the constitution, "the regulations may be invalidated." *Id.* at 486.

The protocol is silent on counsel's access to a phone during the execution. Indeed, counsel has always assumed they would be afforded the right to access a phone during a failed execution. However, the vagueness of the protocol "effectively [eliminates counsel's access to a phone]." *Johnson*, 393 U.S. at 487. The record supports this conclusion. During the attempted execution of Mr. Carruthers, counsel for Mr. Carruthers "asked to use the phone." (Aug. 11 Tr. Vol. 2, 143:22–23). She was denied access to both the phone in execution chamber and in the media viewing area. (Aug. 11 Tr. Vol. 2, 143:23–24). By negligence or design, counsel for Mr. Carruthers was forced to leave the execution chamber to use a phone in the Capital Punishment Unit that had to be plugged in. (Aug. 11 Tr. Vol. 2, 144:1–4). When she needed to use the phone a second time, she again had to leave the execution chamber while



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staff were attempting to execute Mr. Carruthers. (Aug. 11 Tr. Vol. 2, 145:18–20). Both the Warden of RMSI and counsel for the State of Tennessee were permitted to have access to mobile phones, while counsel for Mr. Carruthers was forced to leave the execution chamber to place a call. What is more, counsel for death row prisoners are often forced to write important numbers on their body in humiliating fashion due to restrictions placed on counsel for death row inmates that are not similarly placed on counsel for the State.

Importantly, the violation of Ms. Pike's right against cruel and unusual punishment may not arise until the actual day, hour, or time of execution. Counsel must be able to gain immediate access to a telephone, while witnessing, before and during Ms. Pike's execution so that they may contact the courts to protect her right against cruel and unusual punishment of the kind experienced by Mr. Carruthers. The phone restriction (and other restrictions placed on counsel for the condemned) substantially burdens Ms. Pike's constitutional rights and serves no legitimate government interest. Nor is the restriction narrowly tailored to serve a government interest, should one exist. This Court should declare that counsel for Ms. Pike be able to gain immediate access to a



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phone and all telephone numbers in the execution chamber or media room before, during, and after Ms. Pike's execution or, in the alternative, be able to bring a mobile phone into the prison like the Warden and Assistant Attorney General.

## V. Christa Pike asks this court to consider the evidence adduced at the evidentiary hearing before the Special Master in her renewed request for a Certificate of Commutation.

In the Rule 12 motion currently pending before this court, Ms. Pike asked the Court to reconsider its denial of a certificate of commutation when it set Ms. Pike's execution date. Ms. Pike renews that request and incorporates arguments from her original Request. She further asks that the Court consider the evidence from the hearing before the Special Master.

The jury that sentenced Ms. Pike to death heard absolutely none of the evidence of horrific sexual abuse she suffered as a child. Later, when some of that evidence was presented in post-conviction, the trial judge discounted the mitigating nature of that evidence because Ms. Pike's own family did not believe her when she told them what had happened. That judge failed to recognize the severity of both the abuse and the impact of



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its minimization. Instead of weighing this evidence in mitigation, the judge did not consider "traumatic life events such as having been raped" to be of mitigating value because Christa's mother and sister did not "believe[] her when she had told them about these events." "This lack of credibility with her family members about such serious matters could have been a very negative factor for the jury as it related to [Christa's] credibility to other information which she had told other witnesses and experts." (Order Den. Post-Conviction Relief at 89–90). Put another way, the post-conviction court wrongly refused to consider powerful, documented mitigation—a child rape victim who was not believed or supported by family—and turned it into aggravation. That same court refused to find that trial counsel was ineffective for failing to present it.

The State of Tennessee does not dispute Ms. Pike's history of sexual abuse or the resulting diagnosis of PTSD:

> The State does not dispute the terrible things that Ms. Pike suffered. I think everybody in this courtroom wishes that those things had never happened to Ms. Pike. I think we all wish that we were not here today and that she was not on death row.

(Aug. 13 Tr. Vol. 1 at 82:22–83:1). The State also did not challenge the effects that PTSD was likely to have on her execution. Rather, the State



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concentrated on the issue referred by this Court to argue that the evidence was beyond the scope of the hearing.

That reality is now squarely before this Court. Ms. Pike's childhood of brutal sexual abuse is powerful evidence that was never given weight in mitigation and now affects the constitutionality of her execution under the Eighth Amendment as well as the Tennessee Constitution. In addition to making the execution unconstitutional, it mandates the issuance of a certificate of commutation under Tennessee Code Annotated § 40-27-106.

## CONCLUSION

Accordingly, Ms. Pike requests that this Court:

1. Declare that the current protocol, as applied to Ms. Pike, is unconstitutional under the Tennessee Constitution and the First, Eighth, and Fourteenth Amendments to the United States Constitution and issue a stay of execution to permit Ms. Pike to pursue collateral litigation.

2. Declare that the Respondents must implement a contingency plan in the case that an execution is botched, and that life-saving medical procedures be administered if death does not result within five minutes of the beginning of the execution. This should apply to any form of execution, including electrocution and lethal injection.



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3. Declare that the current lethal injection protocol, as applied to Ms. Pike, is cruel and unusual punishment under the Eighth Amendment and issue a permanent injunction against use of the current lethal injection protocol against Ms. Pike.

4. Declare that the fourteen-day isolation period is unconstitutional on its face and as applied to Ms. Pike under the First, Fourteenth, and Eighth Amendments and issue a permanent injunction preventing the Respondents from imposing the same.

5. Declare that counsel for Ms. Pike be able to gain immediate access to a phone and all telephone numbers in the execution chamber or media room before, during, and after Ms. Pike's execution or, in the alternative, be able to bring a cellphone into the prison like the Warden and Assistant Attorney General.

6. Reconsider this Court's denial of Ms. Pike's request for a certificate of commutation and grant the request in light of the evidence presented in support of this motion and at the hearing in this matter.

7. Any other relief warranted in this Court's discretion.



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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

In accordance with Tenn. R. App. P. 30(e) of Tenn. Sup. Ct. R. 46 § 3.02, the total number of words in this supplemental briefing, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, Attorney Signature Block, and this Certificate of Compliance is 6,406. This word count is based upon the word processing system used to prepare this brief.

*/s/ Luke P. Ihnen*
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed and served via the Court's electronic filing system on the 4th day of September 2026.

*/s/ Luke P. Ihnen*
Luke P. Ihnen
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**IN THE SUPREME COURT OF TENNESSEE**

**AT NASHVILLE**

**STATE OF TENNESSEE v. CHRISTA GAIL PIKE**

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**No. M2020-01156-SC-DPE-DD**

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# BRIEF AMICUS CURIAE IN SUPPORT OF CHRISTA PIKE BY ORGANIZATIONS AND EXPERTS IN THE FIELD OF TRAUMA AND SEXUAL VIOLENCE


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## INTEREST OF AMICI CURIAE

*Amici* are individuals and nonprofit organizations working toward a world where women and girls are not victimized or exploited because of their gender.[1] They are personally and professionally familiar with the phenomenon of relived trauma. *Amici* know what it means for a woman or girl to reexperience the time when she was raped or tortured. They know the horror it represents. They provide this brief so the court is fully aware of the nature of the suffering that awaits Ms. Pike.

## ARGUMENT

### I. If the Tennessee Department of Correction Executes Christa Pike as Planned, There Is a Substantial Risk She Will Feel and Believe That She Is Being Raped to Death.

#### A. The Nature of Traumatic Memory.

Many people are familiar with the term "flashback" as a symptom of post-traumatic stress disorder (PTSD), which conjures up a film reel playing back in the survivor's head. Much of the literature on trauma disorders refers to flashbacks as "traumatic memories."[2] But

[1] A complete list of *amici* appears in the Appendix.

[2] *See*, *e.g.*, Chris R. Brewin, *Key Concepts, Methods, Findings, and Questions About Traumatic Memories*, 38 J. Trauma. Stress, 771, 771 (2025) [hereinafter *Key Concepts*] ("Traumatic memories are often considered the essential element of



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characterizing relived trauma as a "memory" can be confusing. Conventionally, when we remember an event, we understand rationally that it occurred in the past. We may recall it fondly or with regret, it may summon feelings of anger or joy, of satisfaction or despair. But whatever emotions we attach to it, we understand that the experience is behind us. The memory is defined—and more importantly, it is *confined*—by the knowledge that that was then and this is now. Flashbacks, by contrast, are not experienced as events that took place in the past. Rather, they are involuntarily *relived*, or "involuntarily re-experienced" in the present.[3] Anke Ehlers, Ann Hackmann & Tanja Michael, *Intrusive Re-Experiencing in Post-Traumatic Stress Disorder: Phenomenology, Theory, and Therapy*, 12 Memory 403, 404 (2004) [hereinafter *Intrusive Re-Experiencing*]. When a trauma survivor has a flashback, they do not experience it as the memory of what was. Instead, they endure it in the

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posttraumatic stress disorder (PTSD).…Typically for clinicians, a traumatic memory refers to one's memory of an event that has traumatized a person (e.g., brought about a disorder such as PTSD)").

[3] B. Macdonald et al., *Prevalence of Pain Flashbacks in Posttraumatic Stress Disorder Arising from Exposure to Multiple Traumas or Childhood Traumatization*, 2 Can. J. Pain 48, 48 (2018) ("[Flashbacks] have a temporal component whereby they are re-experienced as if they were happening in the present (nowness), and the individual may behave as if the event were occurring in that moment.") (emphasis omitted); *see also Key Concepts*, *supra* note 2, at 772.



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present.[4] During a flashback, a survivor is not being raped or tortured or beaten in the physical world, but their body relives the trauma as if they were. In all the ways that matter to their experience of the event, the trauma *is* real.[5]

The fact that the trauma is not occurring in the physical world has given rise to a persistent confusion that when survivors suffer through a flashback, the torment is "all in their head." Survivors and their allies have struggled for more than a century to dispel this myth, which dates

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[4] Macdonald et al., *supra* note 3, at 53 ("During a traumatic event, encoding of contextual information is said to be impaired, which, in PTSD, leads to uninhibited sensory components and memories that are re-experienced rather than just remembered."); *see also* Birgit Kleim et al., *Capturing Intrusive Re-Experiencing in Trauma Survivors' Daily Lives Using Ecological Momentary Assessment*, 122 J. Abnorm. Psych. 998, 998 (2013) ("The intrusiveness of these memories, along with a 'here- and-now' quality, contributes to a sense of current threat, as the sensory memories from the trauma may be experienced, without realization that they are from a past event.") (internal citations omitted).

[5] As Ehlers and her co-authors put it:

> [Flashbacks] lack one of the defining features of episodic memories, the awareness that the content of the memory is *something from the past*. In a dissociative flashback the individual loses all awareness of present surroundings, and literally appears to relive the experience. The sensory impressions are re-experienced as if they were features of something happening right now, rather than being aspects of memories from the past.

*Intrusive Re-Experiencing*, *supra*, at 404 (emphasis in original); *see also*, *e.g.*, *Key Concepts*, *supra* note 2, at 772; Bessel Van Der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* 15 (2014); Judith Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* (1997).



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at least to the mid-19th century, when women who experienced flashbacks were diagnosed with "hysteria" and believed to be malingerers. Judith Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* 10 (1997). Decades ago, this Court itself noted how experiencing sexual assault as a young child can give rise to a "traumatic memory" that "may remain with the victim for life, perhaps to fester and manifest itself in as yet unknown manners." *State v. Harris*, 844 S.W.2d 601, 603 (Tenn. 1992).

Yet, traumatic memory remains misunderstood and the myth endures; in fact, the myth rears its head anew in this very case. The Attorney General took pains to stress that the Eighth Amendment does not protect defendants from "psychological harm alone," Expedited Transcript of the Evidence at 84, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. Aug. 13, 2026), and the Special Master made a finding that parroted this argument, as though the horror Ms. Pike will endure is somehow less real for the fact that she will not literally be raped on the gurney. Special Master's Findings of Fact and Conclusions of Law at 23, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. Aug. 20, 2026) ("mental suffering alone is not material to the Eighth Amendment



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inquiry unless accompanied by serious physical pain") (internal quotations and citations omitted).

Once again, the State and Special Master misunderstand the nature of flashbacks and relived trauma. The experience is emphatically ***not*** "all in the survivor's head," nor is it "mental suffering alone." Flashbacks are "powerful and uncontrollable re-enactments" of past trauma. Chris R. Brewin, *Re-Experiencing Traumatic Events in PTSD: New Avenues in Research on Intrusive Memories and Flashbacks,* 6 Eur. J. Psychotraumatol. 1, 1 (2015). Relived trauma is not limited to memories. During a flashback, survivors frequently experience the same "strong sensory impressions," including the sights, sounds, and smells that dominated the original event. *Id.* The physiological and neurochemical responses are exactly the same, including spikes in stress hormones, alterations in brain activity, changes in heartrate and breathing, etc. *See*, *e.g.*, Bessel Van Der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* 66-69 (2014).

The emotions associated with the original trauma are likewise re-experienced in the present, as are the "physical reactions and motor responses accompanying them." *Intrusive Re-experiencing*, *supra,* at 404.



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Even the pain of the trauma is often endured again. Research has documented "pain flashbacks," in which individuals with PTSD re-experience the pain associated with the original trauma.[6] "[T]he past experience of pain under torture may reappear in a conflict situation corresponding exactly to the body parts that were affected by the torture," as when a patient began to suffer from "a sudden pain below the armpit extending to his hips," which corresponded precisely to the torture he had endured many years earlier. Antje Gentsch & Esther Kuehn, *Clinical Manifestations of Body Memories: The Impact of Past Bodily Experiences on Mental Health,* 12 Brain Scis. 594, 597 (2022) (noting that in the case of one trauma survivor, "while his physical injuries had long healed and he was otherwise healthy, following a particularly stressful social conflict situation, his body memory seemed to produce pain symptoms from this past traumatic experience").

In short, because the survivor relives (rather than remembers) the trauma, their body can react in all the ways a body can react when the

[6] *See* Macdonald et al., *supra* note 3, at 49 (describing "pain flashbacks" as the re-experiencing of pain associated with a traumatic event and finding that individuals with PTSD reported experiencing physical pain when reminded of their trauma); *id.* at 53 ("Pain at the time of trauma was reported by 74% of the present sample of clients with PTSD, and 74% of these reported experiencing pain when reminded of their trauma.").



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trauma takes place in the physical world. To be sure, not all survivors react the same way during a flashback. Some survivors try to fight while others may freeze; sometimes, a survivor may fight during one flashback but flee during another. But these familiar terms—fight, flight, freeze—do not adequately capture the eruptions roiling a survivor's entire body and mind while she is reliving the torture she endured at an earlier time.

Finally, there is a suggestion in the record, seemingly endorsed by the Special Master, that any risk that Ms. Pike will experience a flashback during her execution is eliminated by the simple expedient of having female rather than male correctional officers bind her to the gurney. *See* Special Master's Findings of Fact and Conclusions of Law, *supra*, at 21–22. We discuss the execution protocol below, but here we point out simply that this suggestion once again misunderstands the nature of relived trauma. As advocates, experts, and survivors, *amici* agree with Dr. Brand that from Ms. Pike's perspective, and all other things being equal, it is probably preferable that she be restrained by women rather than men.[7] Still, the problem with this plan is that it

[7] There is an implicit suggestion in the record that *any* female correctional officer would be preferable to *any* male. To the extent this needs to be made explicit, we obviously do not agree with this suggestion; a woman is capable of cruelty and a man can be kind. Indeed, we note that one of the many people who abused Ms. Pike as a



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imagines flashbacks as a rational response to objectively similar conditions. This is simply not the case.

Survivors frequently try to narrow their world in order to avoid what they imagine to be the most obvious triggers; a woman who was attacked in a dark alley, for instance, may avoid traveling at night. As Dr. Brand noted, Ms. Pike has likewise attempted to shrink her world. For many years, she has tried to create a routine in prison that relies on seeing the same people and doing the same things, in the same place and in the same way. These attempts can be at least partially successful, at least some of the time, but survivors frequently discover that they are inadequate. Brushing her teeth, for instance, can still throw Ms. Pike back to time when Ernest Johnson raped her by forcing her to take his penis into her mouth. *See* Forensic Psychological Evaluation at 24, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. April 16, 2025).

Flashbacks, in other words, do not require obvious similarities between past and present. They can be triggered by a sensation, a sound, smell, or glance, a feeling in the air or a scent in the breeze. In one

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child was her aunt. This brief is written with the assumption that whoever participates in Ms. Pike's execution will treat her with dignity, compassion, and respect.



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reported case, for instance, a woman "who had been attacked by a bull saw a number plate with the letters 'MOO' at a petrol station. This triggered a flashback during which she re-experienced the impending attack and sprayed another customer with diesel fuel. At this time, she was totally unaware that what she was experiencing involved material from memory." *Intrusive Re-Experiencing*, *supra*, at 405. Though it is probably a good thing that the State may use women rather than men during Ms. Pike's execution, this does not remotely eliminate the risk that she will re-experience her long and undisputed history of sexual violence, to which we now turn.

**B. Undisputed Facts.**

The parties to this litigation agree, and the Special Master found, that Christa Pike suffers from post-traumatic stress disorder. Special Master's Findings of Fact and Conclusions of Law, *supra*, at 22. Given her exceptionally well-documented history, none of us is the least surprised by this diagnosis. As Dr. Bethany Brand noted in her report of July 29, 2023, "the level of trauma [Ms. Pike] was subjected to as a preschooler though her 18th year, when she was arrested, is almost impossible to grasp because it is so severe." Forensic Psychological



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Evaluation, *supra*, at 2. We do not recount this entire history, both because Dr. Brand has described it in detail in several reports[8] and in her testimony before the Special Master, and because the State does not dispute it.[9] For us, it is enough to recount three aspects of her history that bear most directly on the grave risk that Ms. Pike will relive her rapes as she is being executed.

First, Ms. Pike was sexually abused and raped throughout her childhood. The sexual violence began when she was a small child and continued until she was 17, almost exactly a year before the crime that landed her on death row. The first person to rape her was her grandmother's boyfriend, Ernest Johnson, who repeatedly forced his

[8] Dr. Brand concluded that Ms. Pike suffers from eight serious psychological disorders: Bipolar I Disorder, complex Posttraumatic Stress Disorder, Dissociative Amnesia, Depersonalization/Derealization Disorder, Panic Disorder, Obsessive Compulsive Disorder, Hoarding Disorder (hoarding food), and Specific Phobia (Spiders). Forensic Psychological Evaluation at 2, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. April 16, 2025). Though the Special Master found only that she suffered from PTSD and bipolar disorder, the State does not dispute any of these diagnoses, nor does it challenge any of the history or clinical testing on which the diagnoses are based.

[9] "The State does not dispute the terrible things that Ms. Pike suffered. I think everybody in this courtroom wishes that those things had never happened to Ms. Pike. I think we all wish that we were not here today and that she was not on death row…. And so it's certainly not the State's intention to try to minimize the suffering that Ms. Pike has experienced." Expedited Transcript of the Evidence at 82–83, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. Aug. 13, 2026).



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penis into her small mouth. These rapes began even before Ms. Pike could walk and continued until she was in kindergarten. This man coerced Ms. Pike into silence by threatening her, her pets, and her grandmother if she told anyone, and by forcibly locking her in a dark chicken coop. Even decades later, Ms. Pike cannot recount these rapes without recoiling in horror at the smell of his genitals. Forensic Psychological Evaluation, supra, at 9–10. To this day, she regularly gags when she has objects in her mouth, such as a toothbrush. *Id.* at 24.

Ms. Pike was raped again when she was 11, this time by Claude Davis, a neighbor. Though Ms. Pike developed an infection as a result of this attack, her own mother did not believe that she had been raped. It was not until a teacher noticed her crying and Ms. Pike told school officials that she had been assaulted that the man was arrested, prosecuted, and convicted. The sexual violence continued as Ms. Pike entered her teens. One of her mother's many boyfriends made a frequent game of wrestling with the young Ms. Pike, during which he would "cop feels and twist my nipples." *Id.* at 13. Of all the people who violated her over the years, Ms. Pike said this man was "the worst." *Id.* He was also



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an avid consumer of pornography, which he stacked in boxes throughout the house. "He was disgusting." *Id.*

Ms. Pike was raped yet again when she was 17. A stranger grabbed her as she walked to a store, dragged her into the woods, tore her pants off, and raped her. The assault was interrupted by a passing car, and Ms. Pike was able to hit her attacker and flee to safety. She ran to the home of a friend, who took her to a hospital. Ms. Pike later gave a statement to the police describing her attacker, but he was never apprehended.

Second, the sexual violence inflicted on Ms. Pike was accompanied by repeated physical abuse. Sometimes, she was beaten by men charged with her care; sometimes by women. One of her most abusive caretakers, for instance, was an aunt, who was known to drag Ms. Pike around by the hair, confine her in an ice bath for hours, and force her to defecate on herself. At the time, Ms. Pike was not yet seven. *Id.* at 11.

Third, and perhaps most importantly, this sexual and physical violence did not occur in a vacuum. Instead, it took place during a childhood almost uniquely distinctive for its brutality and upheaval. Dr. Brand concluded that Ms. Pike endured an astounding nine (out of a possible ten) "adverse childhood experiences," including:



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verbal/emotional abuse; physical abuse; sexual abuse; emotional neglect; physical neglect; parental separation or divorce; a household member with a drinking or drug problem; a household member with a mental health problem; and witnessing violence between parents. *Id.* at 21-22. And Ms. Pike did not suffer through these experiences a single time, but again and again, usually at the hands of people charged with her care and who claimed to love her. Dr. Brand describes these many adverse experiences in great detail, and notes that Ms. Pike "experienced more ACEs than 99.3% of the population." *Id.* at 22 (emphasis omitted).

For our purposes, it is important to understand how these experiences, taken together, amplify and magnify the effect of Ms. Pike's repeated sexual victimization. As Dr. Brand concluded, Ms. Pike does not merely suffer from PTSD; she suffers from complex PTSD. The former can emerge from a single event—a traffic accident, for instance—but the latter is only diagnosed in the presence of long-term, repeated trauma, often of varied forms, where escape is repeatedly thwarted or impossible. Because of Ms. Pike's entire history, and by this we mean the *cumulative effect* of all that she has endured, Dr. Brand found that Ms. Pike's PTSD symptoms are "severe" and "severely disruptive." *Id.* at 23. She is



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exquisitely subject to the intrusive symptoms, including flashbacks, that distinguish the most destructive forms of PTSD, including "disturbing memories" of her torture and "strong, physical reactions" when something reminds her of the trauma she has endured. *Id.* at 23-24.

Just as Ms. Pike's personal and psychological history are undisputed, so too is the plan by the Tennessee Department of Correction for her execution. Approximately 24 hours before she is scheduled to be executed, a team of correctional officers will remove her from her current cell in the facility where she has lived for many years and where she knows the staff and surroundings. They will transfer her in shackles to the men's prison at Riverbend Maximum Security Institution, the home of Tennessee's death row. The State has said that it will try to ensure that the correctional officers involved in the transfer will be women, but there is no guarantee. In this new environment, Ms. Pike will be monitored closely by a different set of correctional officers. Again, while the State promised to try to maximize the number of women involved, they have not guaranteed that all of them—or even most of them—will be women.



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At some point before her execution, a team of correctional officers will restrain her, extract her from her cell, and escort her to the execution chamber, where she will be placed on a gurney. Correctional officers will then hold her down while straps are placed around her head, arms, and legs. The State has provided no information about the number of women trained to participate in this protocol, or how many will be available and willing to participate in Ms. Pike's execution. Once she is restrained and immobilized, a man will try to find a vein in Ms. Pike's arm through which he will inject the poison that will kill her. If he cannot find a vein in her arm, the expectation is that he will attempt to inject the poison near her groin.

### C. There Is a Substantial Risk Ms. Pike Will Relive Her Childhood Rapes as She Is Executed.

Based on this undisputed history, Dr. Brand concluded as follows:

> The execution that now awaits [Ms. Pike], the transfer to a men's prison, the isolation, the physical restraint…, will, for this woman with this particular history, constitute a form of suffering that goes far beyond what any sentence requires. She will not simply be put to death. Christa will be returned, in her final hours, to the terror that defined her life. What awaits her is not only death. It is, for Christa, a form of dying that is uniquely and needlessly cruel. And it is avoidable.



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Forensic Psychological Addendum, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. June 1, 2026).

*Amici* agree. From their long work with survivors and the undisputed record of what Ms. Pike endured in the first eighteen years of her life, along with the undisputed way the Tennessee Department of Correction intends to execute her, *amici* believe there is—at the very least—a substantial risk that Ms. Pike will re-experience the rapes and sexual violations that she endured as a girl and teenager. Indeed, any other conclusion is irresponsible. She will relive the sounds, the smells, and the pain. She will feel it now as she did then. And it will be as horrific for her now as it was then.

Survivors of sexual trauma can experience posttraumatic reactions when circumstances replicate, or even evoke, features of their prior victimization.[10] Invasive procedures, physical pain, exposure or removal of clothing, restraint, vulnerable positioning, loss of bodily autonomy,

[10] *See* ACOG Comm. Op., *Caring for Patients Who Have Experienced Trauma*, 137 O. & G. e94, e96–97 (2021) (explaining that re-traumatization can result when circumstances replicate dynamics of loss of power, control, or safety associated with prior trauma); Erica Sharkansky, *Sexual Trauma: Information for Women's Medical Providers*, U.S. Dep't of Veterans Affs.: Nat'l Ctr. for PTSD (Mar. 25, 2025), https://www.ptsd.va.gov/professional/treat/type/sexual_trauma_women.asp#one.



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and extreme power differentials can trigger flashbacks to the original trauma.[11] For survivors of sexual assault, restraints can trigger survivors to re-experience the time when they were held down and forcibly raped.[12] Even one of these trauma reminders could trigger a flashback, but all of them together—as will be the case if Tennessee executes Ms. Pike as planned—create an exponentially greater risk that Ms. Pike will relive her experiences of child sexual abuse and rape.

When we consider what Ms. Pike has endured and what will happen when she is executed—that is, when we reflect on her clinical history and combine it with the experience of forcibly upending her routine and transferring her in shackles to a new cell in a new prison, where she has never been and where she knows no one, where she will

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[11] *See* Sharkansky, *supra* note 10 (identifying invasive procedures, touch, removal of clothing, power differentials, and bodily pain as potential trauma reminders for sexual trauma survivors and discussing re-experiencing, dissociation, and hyperarousal); ACOG Comm. Op., *supra* note 9, at e96–97 (identifying physical touch, removal of clothing, invasive procedures, vulnerable positioning, and power differentials as potential sources of re-traumatization); *see also* U.S. Dep't of Veterans Affs., *Post-Traumatic Stress Disorder: Implications for Primary Care* 119 (2002) (identifying restraint, physical pain, confinement, removal of clothing, invasive procedures, and power differentials as potential trauma reminders).

[12] *See, e.g.*, Sharyl Brase Smith, *Restraints: Retraumatization for Rape Victims?*, 33 J. Psychosoc. Nurs. Ment. Health Servs. 23, 25 (1995); Ruth Gallop et al., *The Experience of Hospitalization and Restraint of Women Who Have a History of Childhood Sexual Abuse*, 20 Health Care for Women Int'l 401, 411 (1999).



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be monitored more or less continuously by officers she does not know until she is finally brought, again in shackles, to a room where she has never been and forced onto a narrow gurney, where different officers she does not know restrain her while she is strapped to the board at the head, arms, and legs, all with the knowledge that a man she does not know waits to penetrate her with his needle and inject her with poison (if need be, near her groin), while she is forcibly restrained and powerless to resist—*amici* have very little doubt that this experience will force her to relive the horror of the sexual violence she has endured.[13]

In short, *amici* have very little doubt that Christa Pike will go to her death believing and feeling that she is being raped yet again.

### D. Amici Urge This Court to Issue a Certificate of Commutation for Ms. Pike.

No party to this litigation disputes what was done to Ms. Pike as a child and adolescent. Ernest Johnson, Claude Davis, and John Doe[14] were

[13] Tania D. Strout, *Perspectives on the Experience of Being Physically Restrained: An Integrative Review of the Qualitative Literature*, 19 Int'l J. Ment. Health Nurs. 416, 423 (2010) ("One participant with a history of childhood sexual abuse stated: 'It brought it all back. I felt – I actually physically felt like I was being raped that whole night long'").

[14] The name of the man who raped Christa when she was 17 is unknown, but what he did and the damage he caused are undisputed.



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criminals who preyed on a vulnerable girl and destroyed her life. Under Tennessee law, Johnson could face the death penalty and Davis a lengthy prison term if they did the same things today. Tenn. Code Ann. § 39-13-531 (2025). Similarly, no one disputes the profound and permanent damage caused by child sexual abuse and rape. As Tennessee Senator Ken Yager noted recently, "[t]he brutal rape, torture or sexual abuse of a child permanently destroys innocent lives and leaves unimaginable scars. These are among the most depraved offenses imaginable." Ken Yager, *Why Tennessee's Death Penalty Remains Necessary,* The Indep. Herald (Aug. 3, 2026), https://independentherald.net/yager-why-tennessees-death-penalty-remains-necessary/.

Yet Ms. Pike's jury did not hear the evidence recounted in this brief and in the reports of Dr. Brand. Inexplicably, her defense counsel never presented the police reports and court records that documented the arrest and prosecution of Claude Davis, or the hospital records that documented the savagery of the rape committed by John Doe. Defense counsel also failed to present available expert testimony about the impact of those rapes on Ms. Pike's development and mental health.



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We are deeply troubled that the post-conviction court decided that Ms. Pike's lawyers were justified in withholding this evidence from the jury because Ms. Pike's mother and sister did not "believe[] her when she had told them about these events." Supplemental Briefing on Remaining Issues at 34, Tennessee v. Pike, No. M2020-01156-SC-DPE-DD (Tenn. Sep. 3, 2026). This finding, made in 2008, reflects the trial court's own lack of understanding of a common dynamic in cases of child sexual abuse. Parents and other caregivers often struggle to accept that children are telling the truth when they report sexual abuse. *See* Elizabeth L. Jeglic, *When Survivors of Child Sexual Abuse are Disbelieved*, The Resilience Ctr. Hou. (Nov. 15, 2024), https://www.resiliencecenterhouston.com/post/when-survivors-of-childhood-sexual-abuse-are-disbelieved. And in many cases, doubts about survivors' credibility persist into the courtroom. *See generally* Emily Denne et al., *Assessing Children's Credibility in Courtroom Investigations of Alleged Child Sexual Abuse: Suggestibility, Plausibility, and Consistency*, 25 Child Maltreatment 224 (2019). Yet in this case, a qualified expert was available to explain this dynamic, and readily



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available records would have corroborated Ms. Pike's accounts of sexual violence.

Typically, this Court issues a certificate of commutation only when there are extenuating circumstances "based upon facts contained in the record of the judicial proceedings" or a "combination of record facts and new evidence that is uncontroverted." *Workman v. State*, 22 S.W.3d 807, 811 (2000) (Drowota, J., concurring); Tenn. Code Ann. § 40-27-106. This is such a case. Based on the undisputed record, the State candidly expressed the "wish" that "[Ms. Pike] was not on death row." *Supra* n.9. The way to achieve this shared desire is to grant a certificate of commutation.

## CONCLUSION

Amici respectfully urge this Court to grant the relief Ms. Pike has requested in her Supplemental Briefing, including a certificate of commutation.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

In accordance with Tenn. R. App. P. 30(e) of Tenn. Sup. Ct. R. 46 § 3.02, the total number of words in this supplemental briefing, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, Attorney Signature Block, and this Certificate of Compliance is 4,752. This word count is based upon the word processing system used to prepare this brief.

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## APPENDIX

## List of Amici

**Coalition Against Trafficking in Women (CATW)**

The Coalition Against Trafficking in Women (CATW) is one of the oldest international organizations dedicated to preventing and ending the trafficking, sexual exploitation and sexual violence against women and girls as forms of gender-based violence, discrimination, and violations of fundamental human rights. CATW is guided by the principle that every woman and girl has the right to live with dignity, free from violence, and to have the tools to reach her full potential. Since 1988, CATW thrives to reach its goals by advocating for strong laws and policies, raising public awareness, and supporting survivor leadership in the U.S. and globally. As experts in the lifelong and devastating trauma that sexual violence inflicts on survivors of gender-based violence, we have a keen interest in the case of *State of Tennessee v. Christa Gail Pike*.

**Just Solutions, PLLC**

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domestic violence and sexual assault, trauma, racial and gender justice, equity, restorative justice and law enforcement reform.

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across the country on domestic and sexual violence, trauma and complicated family law/domestic violence litigation strategies and techniques. Life Span engages in systemic and policy advocacy aimed at improving meaningful access to legal remedies and legal relief for victims of domestic and sexual violence. Based on decades of work to positively impact the treatment of survivors in the civil and criminal legal systems, Life Span has a strong interest in this case.

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preserving the rights, safety, and dignity of all survivors and advancing OAESV's vision of an Ohio free from sexual violence. Through this work, OAESV has substantial experience and expertise concerning sexual violence, the traumatic effects of sexual victimization, and the ways trauma can affect survivors' behavior, responses, decision-making, and interactions with legal and other systems. OAESV has an interest in ensuring that courts have access to accurate and trauma-informed information regarding the effects of sexual violence.

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supports, services, and rights that are critical for achieving safety and wellbeing.

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trauma can have lasting and often profound effects on survivors' physical, psychological, and emotional well-being, including the ways in which experiences of violence can continue to shape survivors' responses long after the violence has ended.



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**IN THE SUPREME COURT OF TENNESSEE**
**AT NASHVILLE**

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| **STATE OF TENNESSEE,** | ) | |
| | ) | |
| ***Respondent,*** | ) | |
| | ) | **No. M2020-01156-SC-DPE-DD** |
| **v.** | ) | **Knox County Case No. 58183A** |
| | ) | **Special Master W. Mark Ward** |
| **CHRISTA GAIL PIKE** | ) | |
| | ) | |
| ***Movant.*** | ) | |

## MOTION FOR LEAVE TO PROCEED AS *AMICI CURIAE*

Comes the undersigned counsel and moves this Court under Rule 31 of the Tennessee Rules of Appellate Procedure to grant leave for individuals and nonprofit organizations serving victims of sexual violence, abuse, and human trafficking to participate in this matter as *amici curiae*.[1] In support of this motion, counsel states as follows:

1. One of the issues before this Court involves the Petitioner Christa Gail Pike's history as a victim of abuse and sexual violence and the impact of that history on her scheduled execution. The proposed

[1] The proposed list of *amici* victim's rights and support organizations is included in the Appendix to this motion.





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*amici* are organizations with a longstanding interest and expertise in such issues, including services to such victims.

2. The twelve nonprofit organizations seeking *amici* status to file a single combined brief study, support, and offer services to victims of domestic abuse, sexual violence, human trafficking, and exploitation. These services include advice on the legal rights of survivors, as well as shelter, recovery, and support services.

3. *Amici* share a common view that victims of sexual violence suffer complex and long-lasting psychological injuries, which bear great relevance to understanding and adjudicating their culpability for subsequent behavior and experience of the world. As scholars, social workers, and lawyers whose work centers on the rights and responsibilities of such victims, they have a strong interest in one of the issues before this Court: namely, whether the Movant Pike's history as a victim of sexual violence and resulting PTSD affects her likely experience of execution procedures and those procedures' compliance with Tennessee and Federal law.





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4. The specialized expertise of the proposed *amici* will aid the Court in understanding the impact of PTSD and sexual violence on a survivor as it decides the critical questions presented in this proceeding.

Wherefore, the proposed *amici* respectfully move under Rule 31 for leave to participate as *amici curiae* in this matter and for entry of an order granting permission to proceed in the filing of a brief.

Respectfully submitted,

***/s/ Gary C. Shockley***
Gary C. Shockley (TN BPR #010104)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
1600 West End Avenue, Suite 2000
Nashville, TN 37203
Telephone: 615.726.5600
Facsimile: 615.726.0464
gshockley@bakerdonelson.com





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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed and served via the Court's electronic filing system on the 10th day of September 2026.

*/s/ Gary C. Shockley*
Gary C. Shockley

## CERTIFICATE OF REDACTION COMPLIANCE

In accord with Tenn. R. App. P. 20B, undersigned counsel certifies this this filing complies with the omission and redaction requirements of Rule 20B. This certification is made per review on September 9, 2026. Specifically, discussion regarding sexual offenses and victims is based on the official state court record of this proceeding, including the transcript, exhibits, and prior filings of Movant Ms. Pike.

*/s/ Gary C. Shockley*
Gary C. Shockley





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## Appendix: List of Amici

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**ORDER**

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This matter is before the Court upon a motion by organizations supporting victims of sexual violence and abuse to participate in this matter as *amici curiae*. Upon good cause shown, it is hereby ordered that the motion is GRANTED.

Entered this the _____day of September, 2026.

_____
JUSTICE

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FILED
09/23/2026
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**STATE OF TENNESSEE v. CHRISTA GAIL PIKE**

**Criminal Court for Knox County**
**No. 58183A**

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**No. M2020-01156-SC-DPE-DD**

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**ORDER**

On January 11, 1995, Christa Gail Pike, a student at the Job Corps Center in Knoxville, told a friend that she intended to kill fellow student Colleen Slemmer because she "just felt mean that day." *State v. Pike*, 978 S.W.2d 904, 908 (Tenn. 1998), *cert. denied*, 526 U.S. 1147 (1999). The next day, Ms. Pike killed Ms. Slemmer by cutting her throat six times, striking her in the back with a meat cleaver, beating her, and throwing a piece of asphalt at her head. *Id.* Ms. Pike carved a pentagram into Ms. Slemmer's forehead and chest and kept a piece of her skull as a souvenir. *Id.* In 1996, a jury convicted Ms. Pike of first-degree murder and sentenced her to death based on two aggravating circumstances. *Id.* at 913–14.[1] This Court affirmed her conviction and sentence on direct appeal. *Id.* at 914. The Court of Criminal Appeals affirmed the denial of state post-conviction relief, *Pike v. State*, No. E2009-00016-CCA-R3-PD, 2011 WL 1544207, at *1 (Tenn. Crim. App. Apr. 25, 2011), *cert. denied*, 568 U.S. 827 (2012), and the United States Court of Appeals for the Sixth Circuit affirmed the denial of federal habeas relief, *Pike v. Gross*, 936 F.3d 372, 374–75 (6th Cir. 2019), *cert. denied*, 590 U.S. 978 (2020). On September 30, 2025, this Court issued an order setting Ms. Pike's execution for September 30, 2026. Order, *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 30, 2025).

On January 6, 2026, Ms. Pike filed a complaint in Davidson County Chancery Court raising, among other claims, facial and as-applied constitutional challenges to Tennessee's lethal injection protocol. Given Ms. Pike's impending execution date, the chancery court transferred the case to this Court, citing Tennessee Supreme Cout Rule 12(4)(E).

[1] The jury found: "(1) '[t]he murder was especially heinous, atrocious or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death;' and (2) '[t]he murder was committed for the purpose of avoiding, interfering with or preventing a lawful arrest or prosecution of the defendant or another.'" *Pike*, 978 S.W.2d at 913 (alterations in original) (quoting Tenn Code Ann.§§ 39-13-204(i)(5), (i)(6) (1997).

Chancellor's Order Transferring Case to the Tennessee Supreme Court, *Pike v. Skrmetti*, No. 26-0027-III (Davidson County Chancery Court, May 6, 2026). Because Rule 12(4)(E) "contains no provision for the transfer of such cases to this Court," we concluded that the chancery court had erred in transferring the case and dismissed the transferred case "without prejudice to filing a motion that comports with Tennessee Supreme Court Rule 12(4)(E)." Order, *Pike v. Skrmetti*, No. M2026-00667-SC-UNK-CV (Tenn. May 12, 2026).

On June 12, 2026, Ms. Pike filed a "Motion and Request to Appoint a Special Master Pursuant to Tenn. Sup. Ct. R. 12(4)(E)." Ms. Pike's motion asserted facial and as-applied challenges to Tennessee's lethal injection protocol and requested the appointment of a special master "to develop the facts to support these claims." Ms. Pike further argued that Rule 12(4)(E) is unconstitutional or otherwise unlawful and asked the Court to amend the rule. Although Ms. Pike did not specifically ask this Court to stay her execution, we construed her request for injunctive relief as a motion for stay of execution pursuant to Rule 12(4)(E) and appointed a special master. Upon our review of the special master's findings of facts and conclusions of law and the parties' briefs, we conclude that Ms. Pike failed to demonstrate a likelihood of success on the merits of her claims. Accordingly, her stay motion is denied. We also reject Ms. Pike's challenges to Rule 12(4)(E).

## I. BACKGROUND

Tennessee Supreme Court Rule 12(4)(E) provides in pertinent part that after an execution date is set, this Court will not grant a stay pending resolution of collateral litigation in state court "unless the prisoner can prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E) (2025). The rule further provides that after an execution date is set, "any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court." *Id.* "If the collateral litigation may involve fact-finding, the moving party must request the appointment of a special master, consistent with the procedures outlined in Tennessee Rule of Civil Procedure 53." *Id.*

Because a motion filed under Rule 12(4)(E) must incorporate a motion for stay of execution, *see* Order, *Pike v. Skrmetti*, *supra*, and because Ms. Pike asked this Court to permanently enjoin state officials from carrying out her execution pursuant to the current lethal injection protocol, this Court construed Ms. Pike's motion as a motion for stay of execution and a request to appoint a special master on the issues raised in the motion.

On July 10, 2026, this Court appointed a special master to conduct an evidentiary hearing and make findings of fact and conclusions of law on the following issues raised by Ms. Pike's as-applied challenges to the constitutionality of Tennessee's current single-drug pentobarbital lethal injection protocol:

(1) Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "*sure or very likely*" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));

(2) Given Ms. Pike's cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder ("PTSD"), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id*.;

(3) Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering," *see id*.;

(4) Whether Ms. Pike's proposed alternative methods of execution would "significantly reduce a substantial risk of severe pain," *id*. at 52; and

(5) Whether TDOC [Tennessee Department of Correction] is required to permit or would be willing to permit Ms. Pike to have a clergy member or spiritual advisor in the execution chamber during her execution.

Order, *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. July 10, 2026).

The special master conducted an evidentiary hearing on August 11–13, 2026, and received testimony from eleven witnesses. The special master issued its report on August 20, 2026. The report concluded that Ms. Pike had failed to prove by a preponderance of the evidence that her diagnosis of thrombocytosis, her history of sexual assault and diagnosis of Post Traumatic Stress Disorder ("PTSD"), or her small veins would make it sure or very likely that Tennessee's lethal injection protocol would cause her serious illness and needless suffering. The report further concluded that Ms. Pike had not established by a preponderance of the evidence that her proposed alternative methods of execution—placement of a central line or hanging—would significantly reduce a substantial risk of severe pain. Finally, the special master approved the parties' stipulated dismissal of the fifth issue concerning whether a clergy member would be allowed in the execution chamber

based on TDOC's agreement to certain accommodations.[2] Ms. Pike filed objections to the report on August 27, 2026. The State filed a notice that it had no objections to the report. The parties also submitted additional briefing regarding Ms. Pike's constitutional challenges to Rule 12(4)(E) and issues related to Ms. Pike's challenges to the lethal injection protocol that were not referred to the special master.

## II. ANALYSIS

We begin by addressing whether Ms. Pike is entitled to a stay of execution based on her constitutional challenges to Tennessee's lethal injection protocol. To obtain a stay of execution based on pending collateral litigation in state court, an inmate must "prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E); *see also State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018). To satisfy that standard, an inmate "must show more than a mere possibility of success." *Irick*, 556 S.W.3d at 689 (quoting *Six Clinics Holding Corp. II v. Cafcomp Sys.*, 119 F.3d 393, 402 (6th Cir. 1997)). We first consider whether Ms. Pike established a likelihood of success on the merits with respect to the as-applied challenges that were referred to the special master. We then consider whether any of Ms. Pike's remaining facial challenges to the lethal injection protocol entitle her to a stay of execution.

We also address Ms. Pike's constitutional challenges to Rule 12(4)(E). Ordinarily, challenges to this Court's rules should be "made in a proper petition filed in this Court." *State ex rel. Carden v. Fones*, 539 S.W.2d 810, 811 (Tenn. 1976). In the interest of efficiency, we construe the challenges to Rule 12(4)(E) raised in Ms. Pike's motion as such a petition. But we reiterate that such challenges are properly instituted by filing a separate petition.

### A. Method-of-Execution Challenges

"[I]t is settled that capital punishment is constitutional." *Glossip v. Gross*, 576 U.S. 863, 869 (2015). 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 v. Precythe*, 587 U.S. 119, 134 (2019) (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.'" *Id.* (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

[2] Given the parties' stipulated dismissal of this claim, we do not address it.

the punishment 'superadds' pain well beyond what's needed to effectuate a death sentence." *Id.* 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 gives rise to 'sufficiently imminent dangers,'" *Glossip*, 576 U.S. at 877 (citation modified) (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 as-applied method-of-execution challenges. *Bucklew*, 587 U.S. at 134–40. 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 v. Schofield*, 519 S.W.3d 550, 567–68 (Tenn. 2017) (citing *Glossip*, 576 U.S. at 877; *Baze*, 553 U.S. at 50, 52); *State v. Brimmer*, 876 S.W.2d 75, 88 (Tenn. 1994).

A claim that a method of execution violates the Eighth Amendment "faces an exceedingly high bar." *Barr v. Lee*, 591 U.S. 979, 980 (2020) (per curiam). To obtain a stay of execution, a "prisoner must present more than 'competing expert testimony' on the question whether the government's chosen method is very likely to cause needless suffering." *In re Fed. Bureau of Prisons' Execution Protocol Cases*, No. 21-5004, 2021 WL 164918, at *1 (D.C. Cir. Jan. 13, 2021) (Katsas, J., concurring) (quoting *Lee*, 591 U.S. at 981)). "Last-minute stays" of executions "should be the extreme exception, not the norm." *Lee*, 591 U.S. at 981 (quoting *Bucklew*, 587 U.S. at 150).

### 1. Issues Referred to the Special Master[3]

*a. Given Ms. Pike's diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it sure or very likely that the challenged protocol will cause Ms. Pike serious illness and needless suffering.*

The medical testimony presented at the hearing established that thrombocytosis is a medical condition that causes a person to have an elevated platelet count, which in turn can cause issues with clotting, and paradoxically, bleeding in some circumstances. The medical

[3] Ms. Pike objects to the special master's rulings prohibiting pre-hearing discovery. Given the expedited nature of the hearing and its limited scope, the special master did not abuse its discretion by prohibiting discovery.

testimony also established that Ms. Pike suffers from essential thrombocytosis. The testimony conflicted, however, as to the extent the potential clotting issues might interfere with the insertion of an IV line. Neither Ms. Pike nor any medical witness testified that Ms. Pike has experienced any difficulty or serious pain in the past with vein access.

Ms. Pike presented testimony from Dr. Joel Zivot and Dr. Gail Van Norman, both experts in the field of anesthesiology. Dr. Zivot and Dr. Van Norman testified that the introduction of the IV catheter could cause the body to clot around it because the body would regard the catheter as "an invader." Dr. Zivot explained that although thrombocytosis would not prevent intravenous access, the condition could make it "difficult to find a vein . . . that's patent and able to accommodate an intravenous catheter," and access "may not last long." The special master ultimately assigned little weight to Dr. Zivot's testimony.

The State presented testimony from Dr. Richard Mansour, an expert in the fields of hematology, medical oncology, and internal medicine. Dr. Mansour opined that Ms. Pike has low risk essential thrombocytosis based on her past platelet counts. He also testified that Ms. Pike does not appear to be at risk for excessive bleeding, as her von Willebrand protein (a specific clotting component in the blood) and function are normal. Dr. Mansour explained that interference with the von Willebrand protein and function is a rare syndrome that usually takes place when platelet counts reach 1,500,000 to 2,000,000. Though there was some proof that Ms. Pike's platelet count had been around 1,000,000 at the time of diagnosis, subsequent platelet counts had been significantly lower. No medical proof was presented that Ms. Pike's platelet count reached the level where interference with the von Willebrand factor would occur. Therefore, he did not believe that Ms. Pike's elevated platelet count would interfere with the insertion of an IV line. Based on his review of Ms. Pike's medical records, Dr. Mansour observed that twelve blood draws from Ms. Pike were successful on the first try; only one draw required two sticks. And there was no evidence that removal of the needle caused problems. It was Dr. Mansour's opinion that Ms. Pike's veins are accessible. The special master credited Dr. Mansour's testimony.

Based on the evidence presented at the evidentiary hearing, the special master concluded that Ms. Pike had failed to prove by a preponderance of the evidence that her diagnosis of thrombocytosis creates a "substantial risk" that achieving peripheral IV access will cause "an objectively intolerable risk of harm." *West*, 519 S.W.3d at 563 (quoting *Glossip*, 576 U.S.at 877). Ms. Pike's thrombocytosis and elevated platelet counts, the special master reasoned, do not make it "sure or very likely" that she will experience abnormal clotting or excessive bleeding during IV access. *Baze*, 553 U.S. at 50. And the "mere possibilit[y]" that Ms. Pike may experience clotting due to her slightly elevated platelet count is "not sufficient to satisfy [her] burden to establish a substantial risk of severe pain." *West*, 519 S.W.3d at 564 (citing *Baze*, 553 U.S. at 62).

Ms. Pike objects to the special master's findings and conclusions on a couple of fronts. Ms. Pike first contends that the special master improperly limited her from introducing testimony about the general effects of pentobarbital and the potential for pentobarbital to cause flash pulmonary edema. She also faults the special master for "excluding all evidence concerning central line placement," including evidence concerning the attempted execution of Tony Carruthers.[4] These arguments appear to be premised on Ms. Pike's view that the issue referred to the special master "reaches the protocol's entire anticipated procedures relating to vein access, not merely the moment of needle insertion." But Ms. Pike is mistaken. The narrow issue referred to the special master is whether, due to Ms. Pike's thrombocytosis diagnosis, "*achieving peripheral IV access* pursuant to the current lethal injection protocol" would make it sure or very likely that Ms. Pike would experience severe pain and needless suffering. Order, *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. July 10, 2026) (emphasis added). Because evidence related to the general effects of pentobarbital and central line placement is not relevant to that narrow issue, the special master did not err by preventing Ms. Pike from introducing it. Nevertheless, the special master did allow Ms. Pike to introduce testimony about both the effects of pentobarbital and central line placement for the purpose of comparing the current protocol to her proposed alternative methods of execution.[5]

We agree with the special master's conclusion that Ms. Pike has not established a likelihood of success on her claim that, given her thrombocytosis diagnosis, establishing peripheral IV access pursuant to the current lethal injection protocol would violate the Eighth Amendment.

[4] The execution of Mr. Carruthers was called off when members of the execution team were unable to establish a backup IV line through either peripheral access or a central line as required by the protocol. Mr. Carruthers was granted a temporary reprieve from execution for one year. *Gov. Lee Grants Temporary Reprieve for Tony Von Carruthers* (May 21, 2026, at 13:12 CT), Off. of the Governor, https://www.tn.gov/governor/news/2026/5/21/gov--lee-grants-temporary-reprieve-for-tony-von-carruthers.html.

[5] The special master's exclusion of evidence concerning issues that arose during the attempted execution of Mr. Carruthers was not erroneous either. The only issue before the special master that required evidence regarding central line placement was whether Ms. Pike's proposed alternative of central line placement would substantially reduce any risk of severe pain caused by peripheral line placement. Thus, the special master was correct to limit evidence on that issue to central line placement generally rather than the details of Mr. Carruthers's attempted execution. For similar reasons, the special master did not err by denying Ms. Pike's emergency motion to reopen the hearing.

*b. Given Ms. Pike's cited history of sexual assault and asserted diagnosis of PTSD, whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it sure or very likely that the challenged protocol will cause Ms. Pike serious illness and needless suffering.*

The parties agreed at the hearing before the special master that, pursuant to the execution protocol, an inmate is transferred from their existing facility to Riverbend 48 hours before the scheduled execution, not two weeks as the referred question had suggested. The special master noted that TDOC had made accommodations for Ms. Pike's scheduled execution and that those accommodations had further altered the referred question. Specifically, TDOC had represented that female corrections officers will transport Ms. Pike to Riverbend no earlier than 24 hours before her scheduled execution; that Ms. Pike will be the only inmate in the Capital Punishment Unit at Riverbend the entire time she is there; that TDOC "will make every effort to assign only female staff to observe Ms. Pike" while she is at Riverbend; and that a privacy screen will be available to Ms. Pike when she is using the restroom or showering.

In light of these accommodations, the special master found that Ms. Pike will not be observed by male guards at Riverbend for two weeks prior to the scheduled execution. Instead, she will be observed by female guards for less than 24 hours. Accordingly, the special master found that the factual predicates assumed in the issue raised by Ms. Pike in her motion and referred by this Court—that Ms. Pike will be transported to Riverbend Maximum Security Prison two weeks before her execution and that she will be observed by male guards during that time—are inaccurate.

Ms. Pike presented the testimony of Dr. Bethany Brand that Ms. Pike suffers from PTSD and bipolar disorder. Dr. Brand believes that it would be very psychologically harmful for Ms. Pike to be observed while she is changing her clothes, washing, or toileting, regardless of the gender of the observer. Dr. Brand also opined that moving Ms. Pike to Riverbend, even for less than 24 hours, would make her feel out of control and would be highly triggering to her. She believes that strapping Ms. Pike to a gurney or inserting an IV near her chest or groin would also be highly triggering due to her history of abuse. Dr. Brand opined that, even if the execution occurred at Ms. Pike's current facility and she was never transferred to Riverbend, the protocol would still "constitute added and severe punishment."

The special master found that Ms. Pike suffers from PTSD and bipolar disorder. The special master further found, however, that TDOC's accommodations had "minimized the

potential for Ms. Pike" to experience significant triggering or anxiety. The special master discounted Ms. Brand's testimony for a couple of reasons. First, "there d[id] not appear to be any scenario by which Dr. Brand believes Ms. Pike would avoid mental suffering, absent no execution at all." Second, Dr. Brand had not spoken to Ms. Pike since 2023 and had indicated in her report written in 2023 that Ms. Pike had "the tools to control her emotions and deal with life's stressors."

The special master thus concluded that Ms. Pike had failed to prove by a preponderance of the evidence that, given her cited history of sexual assault and asserted diagnosis of PTSD, the movement of Ms. Pike from her current facility to Riverbend no more than 24 hours before her execution and her observation there by female prison officials would make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering." After considering Dr. Brand's testimony and report, the special master concluded that it was speculative whether Ms. Pike would suffer any harm from the transport and observation or whether her harm would be substantially greater than the harm posed by execution generally. We agree.

Part of Ms. Pike's claim is that any movement from her normal housing or observation by male guards, for any length of time, will cause significant deterioration in her mental state so as to constitute severe pain that violates the Eighth Amendment. But Dr. Brand, Ms. Pike's own psychological expert, testified that Ms. Pike has spent the past few decades being supervised and observed by male guards at the women's prison. Given that Ms. Pike is already being observed by male guards at her current facility, her argument that the involvement of any male guards during transport or observation would violate the Eighth Amendment is wholly without merit.

The special master further concluded that, in any event, "mental suffering" alone "is not material to the Eighth Amendment inquiry under *Baze* and *Glossip*" unless it is "accompanied by serious physical pain." *See In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 450 (6th Cir. 2018) (internal quotation marks and citations omitted). In her objections to the special master's report, Ms. Pike cites a recent federal appellate decision positing that "[t]here may exist a form of execution that induces psychological terror or pain that is severe enough to support an Eighth Amendment claim" even in the absence of serious physician pain. *Grayson v. Comm'r, Ala. Dep't of Corrs.*, 121 F.4th 894, 900 n.3 (11th Cir. 2024). But even assuming that psychological pain alone can support an Eighth Amendment claim, we agree with the special master that the evidence presented at the hearing does not establish that transporting Ms. Pike to Riverbend 24 hours before the scheduled execution and her observation there by female prison officials is *sure or very likely* to cause *serious pain or and needless suffering*. TDOC has sought to accommodate Ms. Pike's medical conditions to the extent feasible by shortening the observation period

at Riverbend and employing female prison officials and privacy screens. Ms. Pike is not entitled to a stay of execution based on this claim.[6]

*c. Given Ms. Pike's allegedly small and compromised veins, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it sure or very likely that the challenged protocol will cause Ms. Pike serious illness and needless suffering.*

According to the special master, Ms. Pike presented no proof from any medical professional that had examined her that she has small and compromised veins or that she has experienced any problems with peripheral vein IV access in the past. Ms. Pike presented testimony from Dr. Gail Van Norman, an expert in the field of anesthesiology. Dr. Van Norman had reviewed Ms. Pike's medical records but never personally examined Ms. Pike. Dr. Van Norman acknowledged that it does not appear from the medical records that Ms. Pike has experienced any trouble having her blood drawn. She further acknowledged that Ms. Pike's medical records make no mention of Ms. Pike having small veins, non-palpable veins, or non-visible veins. Dr. Van Norman speculated that Ms. Pike had small veins based on a notation in her medical records that a 23-gauge butterfly needle was used to draw blood from Ms. Pike and that access was gained through her hand.

Dr. Richard Mansour, one of the State's experts, also reviewed Ms. Pike's medical records. He observed that only one of the thirteen blood draws noted in Ms. Pike's records required more than one stick, and no problems were noted with removal of the needle. Another of the State's experts—Elizabeth Campbell, an expert in general nursing and vascular access—testified based on her review of Ms. Pike's medical records that she saw nothing indicating that Ms. Pike's veins would be difficult to access. She, too, observed that all but one of Ms. Pike's phlebotomy procedures were successful on the first attempt. Notably, the medical records also indicated that blood was drawn from the hand, the forearm, and the bend in the elbow. Ms. Campbell also testified that use of a 23-gauge needle to draw blood is common.

Based on this evidence, the special master concluded that Ms. Pike has failed to show by a preponderance of the evidence that, given her allegedly small and compromised veins, achieving peripheral IV access pursuant to the current lethal injection protocol would

[6] To the extent that Ms. Pike's claim is premised on allegations that being strapped to a gurney during the execution process will trigger memories of her sexual assaults, she has likewise failed to establish that this aspect of the protocol would "superadd[]" pain in a manner that violates the Eighth Amendment. *Bucklew*, 587 U.S. at 136–37.

make it "sure or very likely" that the challenged protocol will "cause [Ms. Pike] serious illness and needless suffering."[7] We agree that Ms. Pike has not shown a likelihood of success on this claim that would entitle her to a stay of execution. The record does not establish that Ms. Pike has small veins, let alone that this condition makes it sure or very likely that establishing peripheral IV access would cause Ms. Pike serious pain or needless suffering. At best for Ms. Pike, any risk of harm posed by her allegedly small veins is speculative. But "mere possibilities or hypotheticals . . . are not sufficient to establish a substantial risk of severe pain." Order, *State v. Hines*, No. M2025-00221-SC-DPE-DD, 2026 WL 2280854, at *5 (Tenn. Aug. 6, 2026) (per curiam).

*d. Whether Ms. Pike's proposed alternative methods of execution would significantly reduce a substantial risk of severe pain.*

When a prisoner asserts that the State's chosen method of execution cruelly "superadds" pain to the death sentence, "a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew*, 587 U.S. at 134 (citing *Glossip*, 576 U.S. at 877; *Baze*, 553 U.S. at 52). To be a "readily implemented" alternative, the inmate's proposal must be "sufficiently detailed to permit a finding that the State could carry it out relatively easily and reasonably quickly." *Id.* at 141 (citations omitted). The proposed alternative need not be one "presently authorized by" state law. *Id.* at 139–40. Rather, the inmate "may point to a well-established protocol in another State as a potentially viable option." *Id*. at 140. But it is not enough to argue for "a slightly or marginally safer alternative." *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 51). The "difference [in risk] must be clear and considerable." *Bucklew*, 587 U.S. at 143.

Ms. Pike initially raised two alternatives in her motion—hanging and use of a 23-gauge needle to establish peripheral IV access. She later withdrew the 23-gauge-needle alternative and asserted instead that TDOC could establish a central line instead of peripheral IV access. Thus, the only alternative methods before the special master were hanging and placement of a central line. Given our conclusion that Ms. Pike is unlikely to succeed on her claims that Tennessee's lethal injection protocol is sure or very likely to cause her severe pain given her thrombocytosis, history of sexual assault and PTSD, and small veins, it is unnecessary to consider the viability of her proposed alternative methods of execution. But even if we were wrong on that score, Ms. Pike still could not prevail on

[7] Ms. Pike objects to the special master's reliance on the uneventful blood draws to support a conclusion that IV access would likewise be uncomplicated. However, Ms. Pike presented no evidence to suggest that her medical conditions have caused any issues in the past with gaining peripheral vein IV access.

these challenges because her proposed alternatives would not significantly reduce any risk of severe pain.

***Central line.*** The medical testimony presented at the hearing established that central line access is accomplished through IV placement in the veins in the pelvis, belly, heart, chest, groin, or neck. Because these veins are located more deeply in the body, a longer catheter is used to access those veins. Additionally, because these veins are usually much larger, they are not difficult to access. Improper central line placements, however, can result in serious complications. Although improper IV placement in a peripheral vein will usually not put the person's life in danger, improper placement of a central line may do so. For example, improper central line placement could cause the rupture of a main vein or a collapsed lung. Based on this evidence that central line placement can cause complications that do not exist with peripheral access, the special master concluded that Ms. Pike had failed to prove by a preponderance of the evidence central line placement would "significantly reduce a substantial risk of severe pain." We agree with this conclusion. Because the record shows that placement of a central line would present serious risks that are not present with peripheral IV access, Ms. Pike cannot show that this alternative would reduce the risk of pain at all, much less that it would *significantly reduce* the risk. *See Glossip*, 576 U.S. at 877 (explaining that an inmate must prove something more than a "slightly or marginally safer alternative" (quoting *Baze*, 553 U.S. at 51)).

The special master also rejected this proposed alternative because it is not a distinct method of execution such as hanging or use of a firing squad. The special master observed that neither the United States Supreme Court nor this Court has held that carrying out a prescribed method of execution "with slightly different equipment or procedures" can suffice as an alternative method of execution. We agree with this conclusion as well. Allowing a plaintiff to satisfy the alternative-method requirement by pointing to minor variations in the existing protocol would make courts "boards of inquiry charged with determining 'best practices' for executions." *Bucklew*, 587 U.S. 119, 120 (quoting *Baze*, 553 U.S. at 51–52). But the Constitution does not permit this sort of judicial intrusion into a "State's choice of execution procedures." *Id.*

***Hanging.*** Ms. Pike presented testimony from Dr. Scott Goldstein, an expert in the field of emergency medicine. Dr. Goldstein testified that death by hanging can occur in one of two ways: instantaneous transection of the spinal cord or strangulation. In his report, Dr. Goldstein stated that "[h]anging involves substantial variability in outcome depending on the mechanics of the procedure. The variability is based on body habitus, weight, drop length and technique. Any variation of these can lead to strangulation instead of hanging." Dr. Goldstein opined that, if done properly, hanging causes instantaneous death. He also opined that both hanging and lethal injection are suitable methods of capital punishment but that "both carry risks of unintended complications that may result in prolonged dying

and potential suffering, if done incorrectly." Ms. Pike did not offer any detailed evidence regarding hanging protocols in other states or countries. Indeed, no state currently authorizes hanging as an approved method of execution. Dr. Goldstein testified that, if spinal cord transection is *not* achieved and strangulation occurs instead, that death would be more painful. He further testified that, in the event of strangulation, an individual would lose consciousness in 10 to 20 seconds and die in approximately one minute.

The State's expert on hanging, Dr. Karen Kelly, agreed that hanging causes death quickly, if not instantaneously, when the spinal cord is transected. But she also agreed that hanging resulting in strangulation "would be a significantly painful and anxious way to die." She testified that hangings do not always result in transection of the spinal cord. Rather, "the results and outcomes [of hanging] are variable and may lead to pain and suffering by strangulation/asphyxia."

Because determining whether a method of execution has "superadded" pain in violation of the Eighth Amendment requires a comparison of the proposed alternative to the existing method of execution, *see Bucklew*, 587 U.S. at 136, evidence was also adduced regarding the risk of pain from the administration of pentobarbital. Ms. Pike contends that lethal injection by pentobarbital creates "superadded" pain because the drug causes pulmonary edema—the accumulation of blood and other fluids in the lungs—that can make a person feel as if they are drowning. Ms. Pike's expert, Dr. Zivot, testified about the risk of pulmonary edema posed by pentobarbital. Dr. Zivot testified that the pulmonary edema happens "almost instantly" and occurs in 65 to 70% of inmates executed using pentobarbital. Dr. Zivot opined that given Ms. Pike's increased tendency to bleed given her thrombocytosis diagnosis, she could potentially face more serious pulmonary edema than someone without thrombocytosis. Given *Bucklew*'s instruction that the relevant question in a method-of-execution challenge is "how long [the inmate] will be capable of feeling pain," 587 U.S. at 147, the special master questioned Dr. Zivot regarding how long an inmate would remain conscious after being administered pentobarbital. Dr. Zivot surmised that an inmate could be conscious for minutes but also stated that "[n]o one knows the duration."

The State presented testimony from Dr. Joseph Antognini, an expert in the fields of general medicine and anesthesiology. Dr. Antognini testified that an individual may experience mild pain at the injection site when pentobarbital is administered but that the individual will be unconscious before any pulmonary edema causes pain. He testified that a person administered pentobarbital will generally become unconscious within 20 to 30 seconds. The special master specifically credited Dr. Antognini's opinion.

Based on all of this testimony, the special master found that hanging would cause far greater pain than lethal injection. The special master discredited Dr. Goldstein's

testimony that an individual would become unconscious in 10 to 20 seconds if hanging resulted in strangulation due to his inability to support that assertion in the materials he reviewed as well as his lack of experience with judicial—as opposed to self-inflicted—hanging. But the special master also found that, even assuming that unconsciousness would occur within 10 to 20 seconds during strangulation, Ms. Pike had failed to establish that hanging would substantially reduce the risk of severe pain as compared to a single-drug pentobarbital protocol. The special master found it unlikely that any hanging protocol could eliminate the risk of strangulation.[8]

Given the conflicting evidence regarding whether and for how long pentobarbital will cause severe pain and how that risk of pain compares to that caused by hanging, we agree with the special master that Ms. Pike has failed to prove that hanging will significantly reduce any risk of severe physical pain as compared to the single-drug pentobarbital protocol. *See, e.g.*, *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 2021 WL 164918, at *1 (Katsas, J., concurring) (requiring "more than 'competing expert testimony'" to establish an Eighth Amendment violation (quoting *Lee*, 591 U.S. at 981)).[9]

Because Ms. Pike did not offer a specific hanging protocol for comparison, the special master found it difficult to determine what psychological harm, if any, hanging would cause Ms. Pike and how that harm would compare to that potentially caused by lethal injection. The special master "assume[d] that under any hanging protocol it would be necessary to forcibly remove Ms. Pike from her cell, restrain her, force her to the execution chamber, force her up to the gallows, and restrain her movement." Based on this assumption, the special master concluded that any hanging protocol would be at least as stressful as lethal injection. Assuming, *arguendo*, that psychological harm alone could suffice to establish an Eighth Amendment claim, we agree that Ms. Pike has not established an alternative method of execution that would substantially reduce the risk of such pain.

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[8] The special master also concluded that hanging was not a feasible alternative that could be readily implemented because TDOC did not have "anyone on staff with experience in carrying out judicial hangings" or "the equipment to carry out a judicial hanging." Given our conclusion that Ms. Pike failed to show that hanging would substantially reduce the risk of severe pain, we need not address this alternative holding.

[9] Ms. Pike objects to the special master's credibility determinations regarding Dr. Goldstein and Dr. Zivot. We see no reason to overrule those determinations. But even accepting both experts' testimony as credible, at best for Ms. Pike the record presents conflicting testimony on "scientific controversies beyond" the expertise of courts. *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 2021 WL 164918, at *1 (Katsas, J., concurring) (quoting *Glossip*, 576 U.S. at 882). The evidence therefore cannot surmount the "exceedingly high" bar for an Eighth Amendment claim. *Lee*, 591 U.S. at 980.

### 2. Issues Not Referred to the Special Master

Ms. Pike raised three facial challenges to the current lethal injection protocol that were not referred to the Special Master.

> *a. Whether the current protocol is unconstitutional because it does not provide for medical care or resuscitation of an inmate in the event of a failed execution, in violation of the Eighth Amendment to the United States Constitution and Article I, sections 8, 13, and 32 of the Tennessee Constitution.*

Ms. Pike is unlikely to succeed on her claim that a lack of a resuscitation provision in the lethal injection protocol violates the Eighth Amendment or sections 8, 13, or 32 of Article I of the Tennessee Constitution. "[T]he State is under no obligation to attempt revival" after an execution attempt. *West*, 519 S.W.3d at 567. It follows, therefore, that the State has no duty to provide for such efforts in its execution protocol. Moreover, Ms. Pike's argument that she may survive the execution are too speculative to show a likelihood of success on the merits. "Pentobarbital . . . [h]as been used to carry out over 100 executions, without incident," *Lee*, 591 U.S. at 980, and such speculative theories do not warrant Eighth Amendment relief. *See Bucklew*, 587 U.S. at 134, 151.

> *b. Whether the imposition of a 14-day isolation period prior to the date of execution is arbitrary and capricious in violation of the First and Fourteenth Amendments to the United States Constitution and Article I, section 19 of the Tennessee Constitution.*

Ms. Pike is also unlikely to succeed on her claim that the protocol's provision for a 14-day isolation period prior to execution amounts to cruel and unusual punishment. In considering a conditions-of-confinement claim, a court must first determine whether the "alleged wrongdoing was objectively harmful enough to establish a constitutional violation" and then determine whether prison officials acted with "a sufficiently culpable state of mind." *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (internal quotation marks and citation omitted). The first part of this test requires an objective showing of an "extreme deprivation[]" that denies the inmate "the minimal civilized measure of life's necessities." *Id*. at 9. The second, or subjective, part requires an inmate to show that the State acted with deliberate indifference to her health or safety. *Wilson v. Seiter*, 501 U.S. 294, 302–03 (1991).

Ms. Pike cannot show that she will be deprived of basic necessities such as "reasonably adequate food, clothing, shelter, sanitation, recreation, and medical care." *Vick*

*v. Core Civic*, 329 F. Supp. 3d 426, 451 (M.D. Tenn. 2018). The protocol provides that during the two weeks before her execution, Ms. Pike will receive standard meals "consistent with the unit feeding schedule." The protocol also provides that she will receive a new mattress, bedding, towels, and linens; can shower and have personal hygiene items; will have one hour of outdoor recreation five days a week; and will receive daily clinical services to address her medical needs. These conditions of confinement have been upheld as constitutional. *See Vick*, 329 F. Supp. 3d at 452 (citation omitted).

Ms. Pike's segregation from the general population does not amount to cruel and unusual punishment. Though she will not be housed with other inmates, the protocol provides that Ms. Pike will be permitted routine use of the telephone during these two weeks. She will also be permitted visitors upon written request and approval by the Warden. According to the accommodations made by TDOC, Ms. Pike will also be allowed contact with her spiritual advisor in the twelve hours before her execution and will have the spiritual advisor with her in the execution chamber. Accordingly, Ms. Pike cannot show that she is likely to succeed on the merits of an Eighth Amendment claim based on her short-term segregation.

*c. Whether the current protocol violates an inmate's right to petition for redress in violation of the First, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, sections 8, 13, 17, 19, and 32 of the Tennessee Constitution.*

Ms. Pike contends that counsel's inability to have "immediate access" to a phone on the day of her execution violates the First, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and sections 8, 13, 17, 19, and 32 of Article I of the Tennessee Constitution. Ms. Pike asserts that, during the attempted execution of Tony Carruthers, Mr. Carruthers's counsel "was not permitted to access the telephone in the execution chamber," the "telephone in the media room," or counsel's cell phone. She maintains that counsel instead had to use a phone outside the execution chamber. While the execution protocol requires state officials to confirm that the phones in the execution chamber are operational, it is silent as to whether counsel will be allowed to access those phones or any other phones. The State points out that Mr. Carruthers's counsel "made phone calls during his attempted execution" and that his attorneys "filed an emergency motion in this Court in the middle of the execution attempt." Although we are troubled by the State's failure to provide any assurance that Ms. Pike's counsel will have access to a phone within viewing distance of her client, we cannot conclude from the record before us that Ms. Pike is likely to succeed on her constitutional claims. *See West v. Schofield*, 460 S.W.3d 113, 131 (Tenn. 2015) ("[P]ublic officials in Tennessee are presumed to discharge their duties in good faith and in accordance with the law."). To prove her right-of-access

claim, Ms. Pike must show that denying her lawyer *immediate* access to a phone "actually prevents [her] from accessing the courts and that [s]he will specifically be prevented from bringing a colorable or viable underlying Eighth Amendment claim." *Arthur v. Comm'r, Ala. Dep't of Corrs.*, 680 Fed. App'x 894, 909 (11th Cir. 2017). Ms. Pike does not contend that she will be denied access to a phone altogether or that she will lack any means of contacting co-counsel or the courts during the execution. Nor has she shown that she is likely to suffer an Eighth Amendment violation that would necessitate access to the courts. She is therefore not entitled to relief on this claim.

**B. Rule 12(4)(E) Challenge**

Ms. Pike raises several constitutional challenges to Tennessee Supreme Court Rule 12(4)(E), which provides in pertinent part:

> After a date of execution is set, any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court. Any response to the motion must be filed within five (5) days of the motion, unless a different response time is ordered by the Court. If the collateral litigation may involve fact-finding, the moving party must request the appointment of a special master, consistent with the procedures outlined in Tennessee Rule of Civil Procedure 53. Any response in opposition to the motion for a special master must be filed within five (5) days of the motion, unless a different response time is ordered by the Court. If the Court grants the motion for a special master, the Court may appoint a special master, consistent with the procedures outlined in Rule 53. Any objection to the findings of the special master shall be by motion filed in this Court not later than five (5) days after being served with notice of the filing of the report, unless a different response time is ordered by the Court.
>
> After a date of execution is set, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in federal court. Likewise, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation.

Tenn. Sup. Ct. R. 12(4)(E).

Ms. Pike first argues that Rule 12(4)(E) violates Article VI, section 2, of the Tennessee Constitution because, in her view, it confers original jurisdiction on this Court. *See* Tenn. Const. art. VI, § 2. Article VI, section 2 provides that "[t]he jurisdiction of [the Supreme Court] shall be appellate only, under such restrictions and regulations as may

from time to time be prescribed by law; but it may possess such other jurisdiction as now conferred by law on the present Supreme Court." *Id.* According to Ms. Pike, Rule 12(4)(E) violates Article VI, section 2, because the procedures it establishes for state collateral proceedings once an execution date is set allow this Court to exercise original—rather than appellate—jurisdiction.

Ms. Pike is mistaken. As we recently explained, Rule 12(4)(E) "neither created a new procedural avenue" for litigating execution challenges "nor granted this Court original jurisdiction" to entertain any such claims. Order, *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Apr. 30, 2026). Rule 12(4)(E) applies narrowly to "state court collateral litigation that would potentially affect the method or timing of execution" after this Court has set a date of execution. Tenn. Sup. Ct. R. 12(4)(E). It requires that such litigation "commence with the filing of a motion in this Court" so that this Court can determine whether to "grant a stay or delay of [the] execution date pending resolution of [that] collateral litigation." *Id.* And "[i]f the collateral litigation may involve fact-finding," it allows this Court to appoint a special master to assist with that determination, which requires consideration of the prisoner's likelihood of success on the merits. *Id.*

The procedure established by Rule 12(4)(E) falls squarely within the jurisdiction conferred by Article VI, section 2. It is "well settled" that this jurisdiction includes the authority "to adopt all the rules and orders necessary and proper for carrying out and enforcing our judgments." *Newman v. Justices of Scott Cnty.*, 48 Tenn. (1 Heisk.) 787, 790 (1870); *see also State ex rel. Stall v. City of Knoxville*, 365 S.W.2d 433, 436 (Tenn. 1963) ("[T]here can be no doubt about the power and authority of this Court to take such action as it deems proper and appropriate to enforce its decrees and orders and to issue all necessary process to prevent interference therewith."); *Chaffin v. Robinson*, 213 S.W.2d 32, 33 (Tenn. 1948) ("These powers of the court are exercised only in *aid of its appellate powers*." (quoting *State ex rel. Conner v. Hebert*, 154 S.W. 957, 962 (Tenn. 1913)); *State ex rel. Kain v. Hall*, 65 Tenn. (6 Baxt.) 3, 7 (1873) (confirming that this Court possesses jurisdiction "auxiliary to its appellate power . . . as inherent and necessary to the exercise of its functions as a court of appellate jurisdiction"); Tenn. Code Ann. § 16-1-102 (2021) ("[E]very court has the power to . . . "[c]ompel obedience to its judgments, orders, and process" and "[c]ontrol its process and orders"). Moreover, "where it becomes necessary, in the exercise of [our] jurisdiction, to the proper enforcement of the orders, judgments or decrees of the Court, that facts should be ascertained," we also have the power "to have such facts ascertained." *Newman,* 48 Tenn. (1 Heisk.) at 791.

Orders setting execution dates "are solely within the purview of this Court." *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn. 2025). As the authorities discussed above make clear, we have jurisdiction to "adopt all the rules and orders necessary and proper" for ensuring that our order of execution is enforced. *Newman*, 48 Tenn. (1 Heisk.) at 790.

Because "state court collateral litigation that would potentially affect the method or timing of execution," Tenn. Sup. Ct. R. 12(4)(E), could prevent enforcement of our order of execution, Rule 12(4)(E) easily fits within this jurisdiction. Moreover, we have repeatedly held in similar method-of-execution challenges that a trial court lacks jurisdiction to stay, modify, or condition an order of execution from this Court. *Black*, 721 S.W.3d at 228 (citing *Coe v. Sundquist*, No. M2000-00897-SC-R9-CV, 2000 WL 36776154, at *1 (Tenn. Apr. 19, 2000) (holding in a method-of-execution challenge that "the order of the trial court enjoining and restraining the execution, which effectively amounted to a stay of the execution scheduled by this Court's order . . . exceeded the jurisdiction of the trial court")). Rule 12(4)(E) simply ensures that "[a]ny modification of an execution order of this Court" comes from this Court—the only court with jurisdiction to stay or modify its own judgment or order. *Black*, 721 S.W. at 228. We therefore reject Ms. Pike's challenge premised on Article VI, section 2.

Ms. Pike asserts two other challenges to Rule 12(4)(E) that are premised on her erroneous view that the rule permits this Court to exercise original jurisdiction over state collateral claims. First, she argues that Rule 12(4)(E) unlawfully amends Tennessee Rule of Civil Procedure 3 because it "creates a new and exclusive mechanism to 'commence an action.'" *See* Tenn. R. Civ. P. 3 (providing that civil actions "are commenced by filing a complaint with the clerk of the court"). Second, she argues that Rule 12(4)(E) unlawfully "eliminates a prisoner's substantive right to challenge a method execution in the court of this state" by granting this Court original jurisdiction over collateral litigation. *See* Tenn. Code Ann. § 16-3-403 (2021) ("The rules prescribed by the supreme court pursuant to § 16-3-402 shall not abridge, enlarge or modify any substantive right, and shall be consistent with the constitutions of the United States and Tennessee."). Because these arguments are premised on Ms. Pike's erroneous assertion that Rule 12(4)(E) grants this Court original jurisdiction, they likewise fail.

Ms. Pike next contends that Rule 12(4)(E) is not effective because the General Assembly has not approved it. *See* Tenn. Code Ann. § 16-3-404 (2021) (providing that this Court's rules "shall not take effect . . . until they have been approved by resolutions of both the house of representatives and the senate"). But section 16-3-404 has long been understood to require approval only of general rules of practice and procedure—i.e., the Rules of Civil Procedure, the Rules of Appellate Procedure, the Rules of Criminal Procedure, the Rules of Evidence, and the Rules of Juvenile Practice and Procedure—not the Rules of the Tennessee Supreme Court which govern practice before this Court. *See, e.g.*, S. Res. No. 78, 107th Gen. Assembly, Reg. Sess. (Tenn. 2012) (approving amendments to the Tennessee Rules of Civil Procedure); S. Res. No. 79, 107th Gen. Assembly, Reg. Sess. (Tenn. 2012) (approving amendments to the Tennessee Rules of Criminal Procedure); S. Res. No. 80, 107th Gen. Assembly, Reg. Sess. (Tenn. 2012) (approving amendments to the Tennessee Rules of Appellate Procedure); S. Res. No. 81,

107th Gen. Assembly, Reg. Sess. (Tenn. 2012) (approving amendments to the Tennessee Rules of Evidence); S. Res. No. 82, 107th Gen. Assembly, Reg. Sess. (Tenn. 2012) (approving amendments to the Tennessee Rules of Juvenile Procedure). The Tennessee Supreme Court Rules are not general rules of practice and procedure and therefore do not require legislative approval. Ms. Pike's argument misses the mark.

Ms. Pike further argues that Rule 12(4)(E) is unconstitutionally vague in violation of the due process guarantees of the Tennessee and United States Constitutions. Specifically, she claims:

> Rule 12(4)(E) is vague as to when it applies and when it does not; what effect it has on the statute of limitations, if any, for challenging a method of execution; whether it only applies to claims that may affect the timing and method of execution, or whether it applies to all claims a petitioner may raise when challenging a method of execution; whether the motion initiates a civil action; whether it can be filed at any point prior to an execution; or whether this Court can deny the motion outright even though it raises colorable claims of constitutional violations.
>
> Rule 12(4)(E) is also vague as to the specific sequence a challenge must take. It provides no standard of review, no process for how the case should proceed, no allocation of burden of proof, or what factors a petitioner must satisfy to have the motion granted or a Special Master appointed. That type of arbitrariness is unconstitutional.

A law will be deemed void for vagueness if it "fails either to give a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited or to provide sufficient standards for enforcement." *Moncier v. Bd. of Prof'l Resp.*, 406 S.W.3d 139, 152 (Tenn. 2013); *see State v. Crank*, 468 S.W.3d 15, 22 (Tenn. 2015) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.") (quoting *State v. Pickett*, 211 S.W.3d 696, 704 (Tenn. 2007)). The void-for-vagueness doctrine "rests on the twin constitutional pillars of due process and separation of powers." *United States v. Davis*, 588 U.S. 445, 451 (2019). Due process requires that laws "give people of 'common intelligence' fair notice of what the law demands of them." *Id.* (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)); *Crank*, 468 S.W.3d at 22–23 ("The primary purpose of the vagueness doctrine is to ensure that our statutes provide fair warning as to the nature of forbidden conduct so that individuals are not 'held criminally responsible for conduct which [they] could not reasonably understand to be proscribed'" (quoting *United States v. Harriss*, 347 U.S. 612, 617 (1954)). And separation-of-powers principles require that the legislature—not the judicial or executive branches—make conduct a crime. *Davis*, 588 U.S. at 451.

It is doubtful that Rule 12(4)(E)—a court rule establishing the procedure for adjudicating a motion for a stay of execution—implicates the void-for-vagueness doctrine at all. Applying the doctrine to Rule 12(4)(E) does not further the fair-warning purpose of the doctrine because Rule 12(4)(E) does not prohibit any substantive conduct. Nor does applying the doctrine here further separation-of-powers principles. The interpretation and enforcement of Rule 12(4)(E)—a rule of procedure established by this Court to govern procedures in this Court—presents no risk of judicial intrusion on legislative authority. We have previously questioned whether procedural Rules of the Tennessee Supreme Court implicate the vagueness doctrine. *See Moncier*, 406 S.W.3d at 152 (holding that "even if the void-for-vagueness doctrine is implicated in these circumstances," former Tennessee Supreme Court Rule 9, section 24.3, which governed the assessment of costs in attorney disciplinary proceedings, was not unconstitutionally vague). Ms. Pike's vagueness challenge therefore fails out of the gate.

Even assuming that Rule 12(4)(E) is subject to a vagueness challenge, it easily passes muster. "A law is not void for vagueness if an 'ordinary person exercising ordinary common sense' can sufficiently understand the law and comply with [it]." *Moncier*, 406 S.W.3d at 152 (quoting *Arnett v. Kennedy*, 416 U.S. 134, 159 (1974)). Rule 12(4)(E) sets out a straightforward procedure for an inmate wishing to seek a stay of execution based on pending state collateral claims. To the extent Rule 12(4)(E) leaves some questions unanswered, that does not mean it is unconstitutionally vague. *See Crank*, 468 S.W.3d at 23 (explaining that "criminal statutes do not have to meet the unattainable standard of 'absolute precision'" (quoting *State v. McDonald*, 534 S.W.2d 650, 651 (Tenn. 1976)). Any uncertainty at the edges can be resolved through judicial application of the rule and further amendments.

Finally, Ms. Pike argues that Rule 12(4)(E) is an unconstitutional taking in violation of Article I, sections 8 and 17 of the Tennessee Constitution; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and the Takings Clause of the Fifth Amendment to the United States Constitution. According to Ms. Pike, Rule 12(4)(E) "extinguishes an already-vested cause of action expressly provided by state and federal statute, the Tennessee Rules of Civil Procedure, and the Tennessee and United States Constitutions by forcing [her] to comply with an opaque and vague process to vindicate her fundamental rights."

The Takings Clause of the Fifth Amendment to the United States Constitution and Article I, section 21 of the Tennessee Constitution prohibit the government from taking private property for public use without just compensation. U.S. Const. amend. V. ("[N]or shall private property be taken for public use, without just compensation."); Tenn. Const. art. I, § 21 ("That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just

compensation being made therefor."); *see Phillips v. Montgomery Cnty.*, 442 S.W.3d 233, 238–39 (Tenn. 2014) (stating that the Takings Clause of the United States Constitution applies to the States through the Fourteenth Amendment).

To prevail on her takings claim, Ms. Pike must first establish that her "already vested cause of action" constitutes "property" under Tennessee law. *See Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998) ("Because the Constitution protects rather than creates property interest, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'" (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972))). She then must establish that Rule 12(4)(E) somehow "takes" that property for public purposes without just compensation. Even assuming that her state collateral claims constitute "property," she cannot show that Rule 12(4)(E) "takes" that property. Rule 12(4)(E) does not eliminate state collateral claims; it merely provides a procedure for this Court to determine whether a stay of execution is warranted so that the claims may be fully adjudicated on the merits. That is not an unconstitutional taking. In any event, the remedy for any unconstitutional taking would not be a repeal or amendment of the rule, which is the relief Ms. Pike seeks. *See First Eng. Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 314–15 (1987). So even if this claim had merit, it would provide no basis for amending the rule.

In sum, we reject Ms. Pike's challenges to Rule 12(4)(E) and deny her request to reconsider or amend the rule.

## III. CONCLUSION

For all these reasons, the Court concludes that Ms. Pike is unlikely to succeed on her facial or as-applied challenges to the lethal injection protocol. We therefore deny her motion for a stay of execution. We also reject Ms. Pike's challenges to Rule 12(4)(E) and deny her request that we amend the rule.

This 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.

As provided by this Court's order of September 30, 2025, the Warden of the Riverbend Maximum Security Institution, or his designee, shall carry out the execution of Christa Gail Pike in accordance with Tennessee law on the 30th day of September, 2026, unless a stay is entered by this Court or by a federal court. Counsel for Christa Gail Pike shall provide to the Office of the Appellate Court Clerk in Nashville a copy of any order of stay. The Clerk shall expeditiously furnish a copy of any stay order to the Warden of the Riverbend Maximum Security Institution. This order is designated for publication pursuant

to Rule 4 of the Rules of the Tennessee Supreme Court.

PER CURIAM

KYLE A. HIXSON, J., not participating.