

Nos. 26-5696; 26A414
CAPITAL CASE

IN THE
Supreme Court of the United States

CHRISTA GAIL PIKE,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

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

SUPPLEMENTAL APPENDIX
TO THE PETITION FOR A WRIT OF CERTIORARI

EXECUTION SCHEDULED SEPTEMBER 30, 2026 AT 10:00 A.M. (Central)

FEDERAL DEFENDER
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Supplemental Appendix

Court Filings

2026.03.19	Defendants' Motion to Dismiss.....	SUPPL APP-002407
2026.03.19	Memorandum of Law in Support of Def's Motion to Dismiss.....	SUPPL APP-002410
2026.03.19	Ex 1 – Tennessee Supreme Court Rule 12.4(E) Order	SUPPL APP-002445
2026.04.13	Response to Motion to Dismiss	SUPPL APP-002450
2026.04.15	Reply to Response.....	SUPPL APP-002467

Transcripts

2026.04.17	Hearing	SUPPL APP-002479
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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

CHRISTA GAIL PIKE,	)	
	)	CAPITAL CASE
Plaintiff,	)	Execution: September 30, 2026
	)	
v.	)	No. 26-0027-III
	)	
JONATHAN SKRMETTI, <i>et al.</i>	)	Chancellor Myles
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS

Defendants, Attorney General Jonathan Skrmetti, Tennessee Department of Correction Commissioner Frank Strada, Riverbend Maximum Security Institution Warden Kenneth Nelsen, and Debra K. Johnson Rehabilitation Center Warden Jordan Clark, move to dismiss Christa Gail Pike's suit for injunctive and declaratory relief for lack of jurisdiction and failure to state a claim. *See* Tenn. R. Civ. P. 12.02(1), (6). Pike's claims for injunctive relief clash with the Tennessee Supreme Court's exclusive jurisdiction over the "method and timing" of her execution. Tenn. Sup. Ct. R. 12(4)(E). And Pike has failed to plead facts that could support injunctive or declaratory relief on any claim. In support of this motion, Defendants invite the Court to consider the accompanying memorandum of law.

Respectfully submitted,

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NOTICE OF HEARING

Defendants give notice pursuant to Local Rule 26.05(b) that their Motion to Dismiss will be heard on **Friday, April 17, 2026, at 9:00 a.m.** Failure to file and serve a timely written response to the motion will result in the motion being granted without further hearing.

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 19th day of March 2026, upon:

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

CHRISTA GAIL PIKE,	)	
	)	CAPITAL CASE
Plaintiff,	)	Execution: September 30, 2026
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	)	
JONATHAN SKRMETTI, <i>et al.</i>	)	Chancellor Myles
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

The Court should dismiss Christa Gail Pike's suit for injunctive and declaratory relief for lack of jurisdiction and failure to state a claim. *See* Tenn. R. Civ. P. 12.02(1), (6). Pike's claims for injunctive relief clash with the Tennessee Supreme Court's exclusive jurisdiction over the "method and timing" of her execution. Tenn. Sup. Ct. R. 12(4)(E). And Pike has failed to plead facts that could support injunctive or declaratory relief on any claim.

BACKGROUND

A. Legal Background

Both the United States Constitution and Tennessee Constitution bar the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII; 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 United States Supreme Court's Eighth Amendment framework. *West v. Schofield*, 519 S.W.3d 550, 568 n.16 (Tenn. 2017) (*West II*).

1. The U.S. and Tennessee Constitutions permit capital punishment.

The "Constitution allows capital punishment." *Bucklew v. Precythe*, 587 U.S. 119, 129

(2019). That 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 v. Gross*, 576 U.S. 863, 867–68 (2015). The Tennessee Supreme Court has also “repeatedly . . . upheld the death penalty as permissible under the Tennessee Constitution.” *West II*, 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). Select principles from the precedents are particularly relevant here.

To begin, “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*, 587 U.S. at 132–33 (citing *Glossip*, 576 U.S. at 869–70). 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*, 553 U.S. at 47 (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*, 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.” *Id.* at 130–31 (cleaned up).

To help draw that 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 United States 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) (emphasis in original). The 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, 444–49 (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 unwisely co-opt “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.

2. Method-of-execution claims face an “exceedingly high bar” to prevail.

The United States 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 facing method-of-execution claims like Pike’s apply a “two-prong test” under both the U.S. and Tennessee Constitutions. *West II*, 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 II*, 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 II*, 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 II*, 558 S.W.3d at 623.

3. Tennessee’s methods of execution have been uniformly upheld.

Tennessee historically executed “by hanging.” *Shipp v. State*, 172 S.W. 317, 318 (Tenn. 1914) (quoting Shannon’s Code § 6442). Although hanging was never declared unconstitutional, Tennessee eventually followed other States’ lead to replace it with electrocution. *Id.* Tennessee

used electrocution for decades, with the Tennessee Supreme Court holding—time and again—that this was not a “cruel and unusual punishment.” *State v. Caldwell*, 671 S.W.2d 459, 466 (Tenn. 1984) (collecting cases); *State v. Keen*, 926 S.W.2d 727, 743 (Tenn. 1994); *Black*, 815 S.W.2d at 178–79 (collecting cases); *State v. Barber*, 753 S.W.2d 659, 670 (Tenn. 1988); *State v. Adkins*, 725 S.W.2d 660, 664 (Tenn. 1987); *see also State v. Suttles*, 30 S.W.3d 252, 263–64 (Tenn. 2000) (collecting cases).

By the late 1990s, Tennessee once again followed the trend among many other States and adopted lethal injection as a method of execution, Tenn. Code Ann. § 40-23-114 (Supp. 1998), because it was widely touted as a “more humane” alternative to “electrocution.” *Adkins*, 725 S.W.2d at 664; *see Suttles*, 30 S.W.3d at 264 (citing 1998 Tenn. Pub. Acts ch. 982; 2000 Tenn. Pub. Acts ch. 2000). It later became the State’s default¹ method of execution and has remained so ever since. Tenn. Code Ann. § 40-23-114 (Supp. 2000); *State v. Morris*, 24 S.W.3d 788, 797 (Tenn. 2000). In 2004, the Tennessee Supreme Court upheld the use of lethal injection as a constitutionally permissible means of execution. *State v. Robinson*, 146 S.W.3d 469, 529 (Tenn. 2004) (appendix). But challenges to the particulars of the State’s lethal-injection protocols continued to proliferate.

Three-Drug Protocol. At first, Tennessee used a common three-drug protocol (using sodium pentothal, pancuronium bromide, and potassium chloride) to effectuate lethal injections. *Abdur’Rahman I*, 181 S.W.3d at 300. The drugs in that protocol “put[] the inmate to sleep,” then “stop[ped his] breathing,” then “stop[ped his] heart.” *Id.* The Tennessee Supreme Court has

¹ If lethal injection is held unconstitutional or lethal-injection chemicals are unavailable, then the method of execution shifts to electrocution. Tenn. Code Ann. § 40-23-114(e). Persons sentenced to death for offenses committed before 1999 may also choose to be executed by electrocution. *Id.* § 40-23-114(b).

repeatedly upheld three-drug protocols across multiple challenges. *See id.* at 297–98; *accord Abdur’Rahman II*, 558 S.W.3d at 610 (upholding protocol using midazolam, vecuronium bromide, and potassium chloride). The United States Supreme Court did the same in *Baze*, 553 U.S. at 63, and *Glossip*, 576 U.S. at 893.

But opponents of capital punishment continue to make lethal-injection methods difficult for States to pursue. States’ need for injectable drugs made them more dependent on drug manufacturers, who in turn were “lobbied” to cease participation in executions by “[a]nti-death-penalty advocates.” *Glossip*, 576 U.S. at 871. States like Tennessee faced “ongoing difficulty in obtaining” required drugs and continued revising their protocols accordingly. *Abdur’Rahman II*, 558 S.W.3d 611–12, 616; *see Glossip*, 576 U.S. at 869–72 (describing this widespread problem).

Single-Drug Protocol with Pentobarbital. In 2013, Tennessee adopted a single-drug protocol that was designed to cause sedation and death through the injection of pentobarbital. *See West II*, 519 S.W.3d at 552 (citing Tenn. Code Ann. § 40-23-114(c) (2012)). As used in executions, pentobarbital works to “repress[] the brain’s respiratory impulses, causing the body to become oxygen deficient and resulting in the cessation of cardiac activity.” *West II*, 519 S.W.3d at 556. But first it causes “a quick and complete loss of consciousness.” *Id.* at 557; *see id.* at 560–61.

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); *Abdur’Rahman II*, 558 S.W.3d at 612 (inmates cited single-dose pentobarbital as “alternative” preferred method). And Justices of the United States 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).

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 United States Supreme Court, federal circuit courts, and state courts of last resort. *See, e.g., Bucklew*, 587 U.S. at 148-49; *Whitaker v. Collier*, 862 F.3d 490, 499 (5th Cir. 2017); *Jones v. Comm’r*, 811 F.3d 1288, 1296 (11th Cir. 2016); *Zink v. Lombardi*, 783 F.3d 1089, 1102–03 (8th Cir. 2015); *Gissendaner v. Comm’r*, 779 F.3d 1275, 1283 (11th Cir. 2015); *West II*, 519 S.W.3d at 564–65; *State ex rel. Johnson v. Blair*, 628 S.W.3d 375, 389–90 (Mo. 2021); *Owens v. Hill*, 758 S.E.2d 794, 802–03 (Ga. 2014); *Valle v. State*, 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 II*, 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. 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.

Later and Current Protocols. The shifting availability of lethal-injection drugs has forced the Tennessee Department of Correction to change its lethal-injection procedures several times in the past decade. When pentobarbital became unavailable, TDOC had to revise procedures again, adopting a new three-drug alternative protocol using midazolam (a sedative in the benzodiazepine family of drugs) followed by vecuronium bromide (a paralytic agent) and potassium chloride (a heart-stopping agent). *Abdur’Rahman II*, 558 S.W.3d at 611, 616. In late 2018, TDOC adjusted

the protocol to make the three-drug alternative “the exclusive method of execution by lethal injection in Tennessee.” *Id.* at 611–12. And last year, the State returned to a single-drug pentobarbital protocol. Protocol, Ex. 2 to Compl.

Pike is not the first to challenge the current protocol. Last year, Harold Wayne Nichols filed suit in the United States District Court for the Middle District of Tennessee, arguing, among other things, that the protocol as applied to him would inflict cruel and unusual punishment in violation of the Eighth Amendment by causing pulmonary edema (fluid in the lungs). *Nichols v. Skrmetti*, No. 3:25-CV-442, 2025 WL 3299727, at *2 (M.D. Tenn. Nov. 26, 2025). Like Pike, Nichols argued that the State violated his equal protection rights by not offering the same litigation agreement extended to the plaintiffs in *King v. Strada*, No. 3:18-cv-01234 (M.D. Tenn.), and *Middlebrooks v. Strada*, No. 3:19-cv-01139 (M.D. Tenn.).

The district court summarily dismissed all Nichols’ claims. *Nichols*, 2025 WL 3299727, at *31. Relevant here, the court found that Nichols could not maintain a method-of-execution challenge under the U.S. or Tennessee Constitutions because he had not alleged facts to show a feasible and readily implemented alternative method of execution. *Id.* at *21–24. And the court rejected Nichols’ equal protection claim because he had not alleged facts to show that the defendants lacked a rational basis for treating him differently than the *King* and *Middlebrooks* plaintiffs. *Id.* at *10–12. For largely the same reasons, the Sixth Circuit denied an injunction and stay of execution. *Nichols v. Skrmetti*, No. 25-6095, 2025 WL 3523010, at *2 (6th Cir. Dec. 5, 2025), *cert. denied*, 2025 WL 3545586 (Dec. 11, 2025).

Despite the overwhelming history affirming the use of lethal injection generally and pentobarbital specifically as a humane method of execution, Pike now argues it constitutes a cruel and unusual punishment.

B. Factual and Procedural Background

Pike brutally murdered 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 kned Slemmer’s head, threw her to the ground, and repeatedly kicked her. *Id.* When Slemmer tried to flee, Pike cut 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 sliced 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 had also forced Slemmer to remove her blouse and bra, and they carved a pentagram into her chest. *Id.* at 909–10.

A Knox County jury convicted Pike of first-degree murder and sentenced her to death. *Id.* at 907. The Tennessee Supreme 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).

On September 30, 2025, the Tennessee Supreme Court set Pike’s execution for September 30, 2026. *State v. Pike*, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 20, 2025) (order). Two months later, the Court amended Tenn. Sup. Ct. R. 12(4)(E), which now says: “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), attached as Exhibit 1.

C. Pike's Current Suit

Ignoring the amendment to Rule 12(4)(E), Pike commenced this collateral litigation on January 8, 2026, with a complaint for declaratory and injunctive relief rather than a stay motion in the Tennessee Supreme Court. Compl. at 1. She presents four claims for relief:

Count I. Tennessee's lethal-injection protocol violates the Eighth Amendment and Article I of the Tennessee Constitution as applied to her due to three medical conditions: "small veins," thrombocytosis (a condition that causes excess platelets in her blood), and mental health conditions including bipolar disorder and post-traumatic stress disorder ("PTSD").

Count II. The protocol violates the Eighth Amendment and Article I of the Tennessee Constitution because it does not provide for resuscitation from a failed execution.

Count III. The protocol's fourteen-day watch period, which Pike characterizes as "isolation," is unconstitutional under a variety of interwoven theories.

Count IV. Pike's unequal treatment compared to inmates in *King v. Strada*, No. 3:18-cv-01234 (M.D. Tenn.), and *Middlebrooks v. Strada*, No. 3:19-cv-01139 (M.D. Tenn.) violates the Equal Protection Clause of the U.S. Constitution. Compl. at 20–26 ¶¶ 83–115.

Beyond seeking declaratory relief, Pike asks this Court to (1) "issue a permanent injunction against the use of the new lethal injection protocol against [her]," (2) "issue a temporary injunction preventing the Defendants from executing [her] prior to the completion of" unrelated capital litigation in *King v. Strada* and *Middlebrooks v. Strada*, and (3) otherwise alter the State's execution protocols. Compl. at 27–28.

LEGAL STANDARD

A complaint should be dismissed if a court "lack[s] . . . jurisdiction over the subject matter." Tenn. R. Civ. P. 12.02(1). "[S]ubject matter jurisdiction involves a court's lawful authority to adjudicate a controversy brought before it." *Northland Ins. Co. v. State*, 33 S.W.3d

727, 729 (Tenn. 2000). A court’s subject matter jurisdiction “depends upon the nature of the cause of action and the relief sought.” *State ex rel. Com’r of Dep’t of Transp. v. Thomas*, 336 S.W.3d 588, 602 (Tenn. Ct. App. 2010). When “a court’s subject matter jurisdiction is questioned, the first step is to ascertain the nature or gravamen of the case.” *Memphis Bonding Co., Inc. v. Crim. Ct. of Tenn. 30th Jud. Dist.*, 490 S.W.3d 458, 462 (Tenn. Ct. App. 2015). “[I]n order for a Court to have the jurisdiction to enter a decree in a particular case it must not only have the general jurisdiction over the subject matter involved and over the parties, it must also have the power to grant the particular relief decreed.” *Brown v. Brown*, 281 S.W.2d 492, 503 (Tenn. 1955). If a court lacks subject matter jurisdiction, dismissal is required. Tenn. R. Civ. P. 12.08.

Under Tenn. R. Civ. P. 12.02(6), a complaint should be also dismissed with prejudice if it fails to state a claim upon which relief can be granted. *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). “A motion to dismiss a complaint for failure to state a claim pursuant to Rule 12.02(6) admits the truth of all the relevant and material allegations contained in the complaint, but it asserts that the allegations fail to establish a cause of action.” *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005) (citation omitted). Although the court must take all factual allegations as true and give the plaintiff the benefit of all reasonable inferences, *Trau-Med*, 71 S.W.3d at 696, the “facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader’s right to relief beyond the speculative level.” *Webb v. Nashville Area Habitat for Human.*, 346 S.W.3d 422, 427 (Tenn. 2011). “[L]egal arguments or legal conclusions couched as facts are not taken as true.” *Est. of Haire v. Webster*, 570 S.W.3d 683, 690 (Tenn. 2019) (citation omitted).

ARGUMENT

I. Injunctive Relief is Not Available Because the Tennessee Supreme Court Has Exclusive Jurisdiction over the Method and Timing of Pike’s Execution.

“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 th[e] [Supreme] Court.” Tenn. Sup. Ct. R. 12(4)(E) (emphasis added). In other words, the Supreme Court has exclusive jurisdiction over its own execution orders, and trial courts may not interfere with the method or timing of execution unless the Supreme Court stays the execution. *See Black v. Strada*, 721 S.W.3d 223, 225 (Tenn. 2025) (vacating injunction that effectively stayed an execution). And yet, Pike commenced this collateral litigation—which seeks injunctive relief regarding the method and timing of her execution—without filing a stay motion in the Supreme Court. Because the Supreme Court retains exclusive jurisdiction over Pike’s scheduled execution, this Court lacks authority to grant her any injunctive relief.

Last summer, the Tennessee Supreme Court sent trial courts a strong message about the limits of their authority in method-of-execution suits like this one. Like Pike, Byron Black filed a suit seeking declaratory and injunctive relief against the State’s current lethal injection protocol. *Black*, 721 S.W.3d at 225. After the trial court granted Black injunctive relief, the Supreme Court swiftly vacated that order, holding that “[a] trial court does not have the authority to stay, modify, or condition this Court’s execution order.” *Id.* at 228. “Orders for executions are solely within the purview of th[e] [Supreme] Court.” *Id.* (citing Tenn. Sup. Ct. R. 12(4)). Thus, “[a]ny modification of an execution order of th[e] [Supreme] Court must come from th[at] Court.” *Id.*

Black dispels any doubt about this Court’s lack of jurisdiction over Pike’s request for injunctive relief. Pike’s execution order is solely within the purview of the Supreme Court. And this Court lacks authority to stay, modify, or condition that order. But that is exactly what Pike

seeks. She asks this Court to (1) “issue a permanent injunction against the use of the new lethal injection protocol,” (2) “issue a temporary injunction preventing the Defendants from executing [her] prior to the completion of” unrelated capital litigation in *King v. Strada* and *Middlebrooks v. Strada*, and (3) otherwise alter the State’s execution protocols. Compl. at 27–28. Because this Court “does not have the authority to stay, modify, or condition th[e] [Supreme] Court’s execution order,” *Black*, 721 S.W.3d at 228, this Court lacks jurisdiction to grant any injunctive relief.

Pike’s claims potentially affect the method and timing of her scheduled execution, so Rule 12(4)(E) required her collateral protocol litigation requesting injunctive relief to commence with a stay motion in the Supreme Court. Pike ignored this requirement to her detriment by filing a complaint in this Court rather than a stay motion in the Supreme Court. Under *Black* and Rule 12(4)(E), this Court should dismiss all requests for injunctive relief for lack of jurisdiction.

II. Pike’s As-Applied Challenge Fails to State a Claim (Count I).

Pike’s as-applied method-of-execution challenge should be dismissed because she has not alleged facts to show that the protocol is sure or very likely to cause superadded pain, even accounting for her unique medical conditions.

A. Pike has pleaded only speculation, not facts, about why she believes her small veins will lead to superadded pain.

Pike has not met her burden to plead a factual basis for her allegations that the protocol will cause superadded pain because of her small veins. She offers only speculation and legal conclusions, which are insufficient to survive a motion to dismiss.

It bears repeating that “[t]he Constitution allows capital punishment.” *Bucklew*, 587 U.S. at 129. Only punishments that are “cruel and unusual” are unconstitutional. U.S. Const. amdt. 8; Tenn. Const. art. I § 16. If Pike wants to show that Tennessee’s pentobarbital protocol crosses this line, she must plead facts to “establish that the Protocol presents a risk that is sure or very likely to cause serious

illness and needless suffering, and give[s] rise to sufficiently imminent dangers.” *West II*, 519 S.W.3d at 568 (quoting *Glossip*, 576 U.S. at 877) (cleaned up).

But Pike has not pleaded facts to show that her allegedly small veins carry any enhanced risk of pain. She merely alleges unspecified “difficulty” with blood draws and “needle insertions,” but she does not even say that such “difficulty” resulted in pain. Compl. at 15 ¶ 58. She alleges that medical providers have used butterfly needles of an unspecified gauge because her veins are “difficult to access,” but she does not say that standard needles were ineffective or painful. *Id.* She says her small veins will “make it significantly more difficult to achieve and/or maintain the peripheral IV access” needed to inject pentobarbital. *Id.* She posits “a substantial risk that she will be subjected to unnecessary and serious pain as the Defendants attempt to achieve peripheral IV access.” *Id.* at 15–16 ¶ 59. And she says that, in turn, will “interfere with the proper delivery of the pentobarbital” and result in “vein damage or leakage.” *Id.* at 16 ¶¶ 59–60.

This is mere speculation sprinkled with legal conclusions. It is well-settled that “speculation cannot substitute for evidence” that Pike’s conditions are “*sure or very likely* to cause serious illness and needless suffering.” *Brewer v. Landrigan*, 562 U.S. 996 (Mem.) (2010) (emphasis in original). And the Court should reject all legal conclusions couched as facts. *Est. of Haire*, 570 S.W.3d at 690. Thus, when the Court looks to the properly pleaded facts, there is simply no bridge across the chasm between Pike’s small veins and any risk of superadded pain because of the protocol.

Essentially, Pike alleges that bad things *could* happen because of her small veins. But “[s]imply because an execution method may result in pain . . . by accident” does not make it cruel and unusual. *Baze*, 553 U.S. at 50. And her allegations about vein leakage are “hypothetical and speculative and do not constitute a justiciable controversy.” *West v. Schofield*, 460 S.W.3d 113,

131 (Tenn. 2015) (*West I*). Indeed, allegations concerning “the pain that an inmate would feel if [lethal injection chemicals] infiltrated into the tissue” constitutes a “mere possibilit[y]” which is “not sufficient to satisfy the Plaintiffs’ burden to establish a substantial risk of severe pain.” *West II*, 519 S.W.3d at 564 (emphasis in original).

Pike’s small-veins theory also fails because the protocol already addresses the risk of superadded pain from IV issues. The IV team’s job is to establish “properly functioning IV lines.” Protocol at 8, Ex. 2 to Compl. Members of this team must have medical training and must be “certified, licensed and/or qualified” to place IV lines. *Id.* at 11. They must insert a backup catheter. *Id.* at 20. Before any lethal injection chemicals are administered, the Special Operations Team Leader ensures that the IV catheters are “properly secured” and “properly connected to the IV lines.” *Id.* A flow of sterile solution is used to keep the lines open. *Id.* Any IV line failure “shall” be immediately reported to the Commissioner. *Id.* at 21. And the Commissioner is the only official who can authorize a deviation from the protocol. *Id.* at 5.

Finally, a physician is on hand to insert a central (as opposed to a peripheral) IV line, if needed. *Id.* This provision alone addresses Pike’s concerns, which are aimed at peripheral IV access; she does not allege that her veins would pose the same problem with a central IV. Compl. at 15–16 ¶ 59.

Reading these provisions together, the protocol as written will prevent the speculative IV problems Pike raises. Pike’s claim concerning this alleged medical condition must fail for lack of specificity and overreliance on legal conclusions and speculation.

B. Any risk of pain from Pike’s platelet condition is within constitutional bounds.

Second, Pike has a condition called thrombocytosis that causes too many platelets in her blood. *Id.* at 15 ¶ 53, 21 ¶¶ 84–86. This condition can lead to problems with bleeding and clotting, which Pike alleges *may* worsen any risk of pulmonary edema (fluid in the lungs that she believes will cause a

drowning sensation) that lethal injection *may* cause. *Id.* at 21 ¶¶ 85–87. Those speculative concerns, even if credited, pose no constitutional concerns under the controlling legal standard.

The problem for Pike is that the pain she alleges could result from pulmonary edema, even if enhanced by her condition, is not “objectively intolerable.” *Baze*, 553 U.S. at 50. 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*, 591 U.S. at 980 (cleaned up). It is “a mainstay of state executions” and “[h]as been used to carry out over 100 executions, without incident.” *Id.* Most importantly, whatever pain Pike could feel—if pulmonary edema occurred, *if* she was conscious—is not cruel and unusual. Even “sensations of drowning and suffocation . . . 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); *cf.* Compl. at 12 ¶ 40 (alleging a “drowning sensation”). And hanging—which often “caused death slowly” through suffocation over several minutes, *Bucklew*, 587 U.S. at 132 (2019)—“ha[s] been considered constitutional for as long as the United States have been united.” *In re Ohio Execution Protocol Litigation*, 946 F.3d at 290. In short, even taking all of Pike’s allegations as true and assuming a chain of contingencies occurs—leaving her conscious while she experiences pulmonary edema—the pain she will suffer is pain the Constitution has long tolerated.

In essence, Count I is based on speculative allegations about the sort of pain that “was virtually never questioned.” *Bucklew*, 587 U.S. at 132. Pike cannot show that pentobarbital will “intensif[y] the sentence of death with a (cruel) superaddition of terror, pain, or disgrace.” *Id.* at 133 (cleaned up). The speculative risk of pain alleged here does not compare to being “dragged to the place of execution,” “embowelled alive,” “beheaded,” “quartered,” “public[ly] dissect[ed],” or “burn[t] alive.” *Wilkerson*, 99 U.S. at 135. Count I therefore does not state a claim for infliction of cruel and unusual punishment on the basis of Pike’s platelet condition.

C. Any risk of Pike suffering from her own mental health conditions is disconnected from the protocol.

Third, Pike's alleged mental health conditions do not trigger any constitutional defects in the protocol. Pike says she has bipolar disorder of an unspecified variety as well as PTSD. Compl. at 21 ¶ 88. And she believes the "imminent threat of execution" will cause her mental health to "deteriorate," leading to "loss of agency and incompetency to withstand execution." *Id.* But she does not link these conditions to the protocol or even lethal injection. She links them only to "execution." *Id.* Pike's failure to make this link dooms her as-applied claim.

For one thing, "[p]sychological pain or mental suffering is a likely result of being sentenced to death and anticipating the execution, but that experience of psychological suffering could not by itself make a method of execution unconstitutional." *In re Ohio Execution Protocol Litigation*, 881 F.3d 447, 454 (6th Cir. 2018). That is because the relevant question is whether the condemned inmate can show that the method of execution is sure or very likely to cause superadded pain *during* the execution. *Id.*; *Bucklew*, 587 U.S. at 119. Whether the inmate feels psychological distress leading up to the execution is simply not relevant to the constitutional analysis.

For another thing, it is not clear "how a plaintiff could segregate anxiety from anticipated execution in general from anxiety about execution by a particular method." *In re Ohio Execution Protocol Litigation*, 881 F.3d at 450. While Pike may experience anxiety about being executed, she has not pleaded a sufficient factual basis to show that her anxiety is a unique product of the current pentobarbital protocol. Rather, taking her allegations at face value, *any* execution protocol would cause her the same psychological distress. Because Pike's allegations fail to peg the current protocol as the unique cause of any psychological distress, they do not state a viable Eighth Amendment claim.

Finally, Pike's suggestion that her mental conditions affect her competency is misplaced

in this suit. Compl. at 21 ¶ 88. If Pike wanted to contest her execution competency, she 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). Thus, this Court lacks jurisdiction to consider Pike’s execution competency and should ignore her attempts to raise this issue. *See* Tenn. R. Civ. P. 12.02(1), (6).

D. The protocol does not have to account for Pike’s conditions.

Finally, Pike falls short with her allegation that the protocol fails to address her medical conditions. Compl. at 22 ¶ 90. The protocol need not account for hypothetical injuries or every mishap a plaintiff can think of. *Jackson v. Danberg*, 594 F.3d 210, 227–28 (3d Cir. 2010). And it is “is not constitutionally infirm simply because it does not specify every step of the procedure in explicit detail.” *West II*, 519 S.W.3d at 565 (citation omitted).

For all these reasons, Count I does not allege superadded pain that is “sure or very likely” to occur due to any of Pike’s three alleged conditions, and it should be dismissed.

III. Pike’s Failure to Plead an Alternative Execution Method Dooms Her Method-of-Execution Claims (Counts I and II).

The Court should dismiss Counts I and II because Pike has not alleged any alternative execution method, which is an essential prerequisite. In fact, Pike has pleaded *accommodations* in the form of lethal injection by pentobarbital with a “butterfly needle” of unspecified size, or lethal injection under a protocol that includes a resuscitation provision. But those are not alternative *methods* of execution, which means that these claims must be dismissed at the pleading stage.

A. A butterfly needle is an equipment swap, not an alternative method of execution (Count I).

Pike has failed to allege an alternative method in support of Count I because a different kind of needle is not an alternative method of execution. Compl. at 20 ¶¶ 80–82. Pike’s failure to plead this “essential element” is fatal to this claim. *Abdur’Rahman II*, 558 S.W.3d at 616.

Any method-of-execution challenge must allege and establish 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 (emphasis added); see *West II*, 519 S.W.3d at 567–68. 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). Thus, Pike cannot show that a different type or size of needle is an alternative method of execution.

Pike really just wants to dictate the equipment used in her method of execution: a different kind of needle. Thus, Count I is an improper attempt to press this Court into service as a “board[] of

inquiry charged with determining best practices for executions.” *Bucklew*, 587 U.S. at 134. But Pike’s factual allegations are insufficient to do even that. The Court is left to wonder what she is after: would an 18-gauge needle do? What about a slightly larger 16-gauge? Or would it have to be a slightly smaller 20-gauge? She has not even alleged what size or type of needle TDOC intends to use in her execution, or why *that* needle poses a constitutional problem.

At the end of the day, even granting the inference that a butterfly needle is less likely to cause superadded pain, Pike has only pleaded a factual basis for a “slightly or marginally safer alternative.” *Abdur’Rahman II*, 558 S.W.3d at 615. Another way to describe it might be an “additional harness on the current method,” which also does not qualify as an alternative method of execution. *In re Ohio Execution Protocol Litigation*, 881 F.3d at 454.

Any way the court reads the Complaint, Pike has not pleaded facts to clear the bar of showing an alternative that “in fact significantly reduces a substantial risk of severe pain.” *Abdur’Rahman II*, 558 S.W.3d at 615 (quoting *Glossip*, 576 U.S. at 877) (alteration adopted). She has failed to allege an essential prerequisite for any method-of-execution claim, so Count I should be dismissed.

B. The U.S. and Tennessee Constitutions do not require the protocol to address resuscitation (Count II).

Pike’s proposed alternative for Count II, a protocol that includes a resuscitation provision like Arizona’s, fares no better. Compl. at 23 ¶¶ 99. The U.S. and Tennessee Constitutions do not require the protocol to address resuscitation after a failed execution attempt.

As a threshold matter, Count II invokes a dubious “lingering death” theory that the Tennessee Supreme Court has not recognized as a valid way to challenge a method of execution. *West II*, 519 S.W.3d at 567 n.14. The Court must analyze this claim under the prevailing *Glossip* standard. *Id.* Under that standard, Pike’s allegations are too speculative to state a claim because they depend on the remote possibility that she may survive the execution. Compl. at 22-23 ¶¶ 93–94, 100. But she

does not say why that is a likely outcome, or how it is sure or very likely to cause superadded pain. “The Eighth Amendment does not come into play” on such speculative, conclusory allegations. *Bucklew*, 587 U.S. at 134.

Turning to the second *Glossip* prong, Pike’s supposed alternative method suffers from the same flaws as the butterfly needle. A slightly edited protocol with a resuscitation provision is not a “method of execution” as recognized in state law or binding precedent. Pike does not propose that she be executed through some other means; again, she just wants to micromanage TDOC’s processes by rewriting the protocol to require TDOC to staff a “resuscitation team” with an independent physician and an “ICU ambulance.” Compl. at 22–23 ¶ 96. That does not qualify as an alternative means of causing her death through lethal injection; at best, it is an “additional harness” that cannot get past the pleading stage. *In re Ohio Execution Protocol Litigation*, 881 F.3d at 454.

This proposed alternative also fails because there is no constitutional requirement for an execution protocol to anticipate every far-fetched possibility. *Jackson*, 594 F.3d at 227–28. Consequently, a lethal injection protocol is not constitutionally suspect merely because “there may be some possibility that the inmate could be resuscitated after being declared dead.” *West II*, 519 S.W.3d at 567. In stark terms, the *West II* 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 its execution protocols.

Other courts have similarly doubted 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 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 Supreme Court precedent required).

Pike can point to no binding precedent that requires such a safeguard. Because the Tennessee Supreme Court has rejected the notion that the State must attempt revival, *West II*, 519 S.W.3d at 567, Pike’s proposed protocol revision is not feasible. On the contrary, it would undermine the purpose of the execution. *Id.* And Tennessee has no obligation to copy another State’s protocol. *Abdur’Rahman II*, 558 S.W.3d at 623. Thus, Pike has failed to allege an alternative method of execution to support Count II. This claim should be dismissed.

IV. Pike Has Failed to State a Conditions-of-Confinement Claim (Count III).

Count III is a conditions-of-confinement claim wherein Pike alleges that her confinement leading up to her execution will violate her constitutional rights. Because this claim does not directly challenge a method of execution, the Court must analyze it like any other First, Eighth, or Fourteenth Amendment claim. *See, e.g., In re Ohio Execution Protocol Litigation*, 906 F. Supp. 2d 759, 761 (S.D. Ohio 2012). The Court should dismiss the claim because Pike has not alleged facts to establish any constitutional violation, and her novel theory of liability has no basis in precedent.

In this claim, Pike blends two allegations. She first claims that the fourteen-day watch period under the lethal injection protocol is cruel and unusual punishment under the Eighth Amendment. Compl. at 24 ¶¶ 104–05. She then claims that “forcing” her to select electrocution as a method of execution violates her First Amendment right to freely exercise her religion. *Id.* ¶ 104. Pike then fuses these two allegations into a novel theory: the protocol necessarily forces her to select whether she will suffer an Eighth Amendment violation or a First Amendment violation. *Id.* Pike believes this “arbitrary[] and capricious[]” choice is a freestanding Fourteenth Amendment violation. *Id.*

But the watch period is not cruel or unusual because Pike will have enhanced access to visitors. And she will not be forced to elect any method of execution, so her free exercise right is

intact. Finally, Pike has not stated a viable Fourteenth Amendment claim because she will not have to choose between two constitutional violations.

A. The fourteen-day watch period is not cruel or unusual.

Pike alleges that the new lethal injection protocol violates “her Eighth Amendment right against isolation for fourteen days.” *Id.* But she will not have to endure anything close to “isolation,” and her conditions of confinement will fall well short of cruel and unusual punishment.

“[T]he unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” *Hudson v. McMillian*, 503 U.S. 1, 5 (1992). As to the conditions of an inmate’s confinement, “only those deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to form the basis of an Eighth Amendment violation.” *Id.* at 9. These necessities are “reasonably adequate food, clothing, shelter, sanitation, recreation, and medical care.” *Vick v. Core Civic*, 329 F. Supp. 3d 426, 451 (M.D. Tenn. 2018).

Segregation from the general population does not constitute cruel and unusual punishment. *Hutto v. Finney*, 437 U.S. 678, 685–86 (1978). For this claim to survive, Pike must allege facts to show that the specific *conditions* of 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). Unlike a method-of-execution challenge, a conditions-of-confinement claim includes subjective and objective components: the court must determine whether the “alleged wrongdoing was objectively harmful enough to establish a constitutional violation” and if prison officials acted with “a sufficiently culpable state of mind.” *Hudson*, 503 U.S. at 8. The objective component requires a showing of extreme deprivation. As noted above, only deprivations denying “the minimal civilized measure of life’s necessities” will suffice. *Id.* (cleaned up). The subjective component requires Pike to show that Defendants acted with deliberate

indifference to her health or safety. *Wilson*, 501 U.S. at 302–03. 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 fails to state a claim because she does not allege that she has been denied reasonably adequate food, clothing, shelter, sanitation, recreation, or medical care. Nor could she. The protocol specifies that these conditions will be maintained. For example, the protocol requires that Pike will receive standard meals “consistent with the unit feeding schedule.” Protocol at 42, Ex. to Compl. She will regularly receive clean clothes when she returns to her cell. *Id.* at 43. She can shower and get cleaning supplies “upon request.” *Id.* at 42. And she will have one hour of outdoor recreation five days a week. *Id.* The recreation requirement matches what federal courts consider constitutionally valid. *Vick*, 329 F. Supp. 3d at 452 (citing *Rodgers v. Jabe*, 43 F.3d 1082, 1087–88 (6th Cir. 1995)). More than that, Pike will receive daily clinical services to address her medical needs. Protocol at 43, Ex. 2 to Compl.

Rather than alleging extreme deprivation of necessities, Pike merely complains that she will be “isolated.” These allegations are conclusory at best. Compl. at 24 ¶ 104 (“[T]he new protocol leaves [Pike] no choice other than to select a method of execution to assert her Eighth Amendment right against isolation for fourteen days.”); *id.* at 10 ¶ 27 (“The isolation of [Pike] for fourteen days is cruel and unusual punishment given her specific medical conditions as set forth below.”). But, 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.”). Pike does not state an Eighth

Amendment claim by complaining that she will be segregated from other members of the prison population. *See Harden-Bey v. Rutter*, 524 F.3d 789, 795 (6th Cir. 2008).

In any case, Pike will not be isolated. Although she will be the only inmate in her unit, she is “permitted routine use of the telephone.” Protocol at 43, Ex. 2 to Compl. Her personal property will transfer to her cell, and she can buy things from the commissary. *Id.* Crucially, she has no limit on visits, so long as visit requests are “in writing and approved by the Warden.” *Id.* In contrast to standard prison policies, Pike would be able to receive visitors every day and at extended hours. That is a far cry from “isolation.” Further, 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, 2003 WL 22495834, at *2 (6th Cir. Oct. 30, 2003).

Bottom line, Pike is not being deprived of any necessities. She has 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). She does not attempt to explain how her bipolar disorder or PTSD will cause “superadded pain and suffering” when she will have greater access to the telephone and to visitors than standard inmates, and daily access to healthcare. Protocol at 43, Ex. 2 to Compl. Her allegations about the conditions of her confinement do not amount to the extreme deprivation required to state a claim for a violation of the Eighth Amendment.

B. The option to elect a method of execution is not a violation of the First or Eighth Amendment.

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.

Tennessee gives certain inmates a choice of two lawful, historically-accepted 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. If an eligible inmate refuses to choose and does not sign the waiver, then the default method of execution by lethal injection applies. Protocol at 25, Ex. 2 to Compl.

Pike thinks this procedure violates her constitutional rights under the First and Eighth Amendment. But she does not have to choose her method of execution 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 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 cannot use this theory to claim a constitutional violation.

C. Pike has not articulated a violation of the Fourteenth Amendment.

Without any underlying First or Eighth Amendment violations, it is no surprise that Pike's Fourteenth Amendment theory also fails. She asserts that the protocol "arbitrarily and capriciously force[s] [her] to sacrifice one constitutional protection to enforce another and serves no legitimate purpose." Compl. at 24 ¶ 104. In other words, Pike claims that forcing her to pick between her Eighth and First Amendment rights creates a due process violation. *Id.* As explained above, no such violations exist under the protocol, so this claim necessarily fails.

To sum up, Pike has not alleged a deprivation of life's necessities, nor has she tried to explain how the protocol's permissive visitation policy violates her Eighth Amendment rights. Her First Amendment claim fails because she is not required to pick a method of execution. And because Pike is not required to choose between two different constitutional violations, her Fourteenth Amendment theory in Count III should be rejected.

V. Pike's Equal Protection Claim is Barred by Sovereign Immunity and Fails Because She Cannot Force the Attorney General to Agree to a Stay of Execution. (Count IV).

The Court should dismiss Count IV, a class-of-one equal protection claim based on a litigation agreement with other inmates, because sovereign immunity bars the injunctive relief Pike seeks from Attorney General Jonathan Skrmetti. The claim is also doomed because Pike has not alleged sufficient facts to show that she has been singled out for unequal treatment, or that any Defendant lacked any rational basis to treat her differently from other inmates.

A. General Skrmetti is shielded by sovereign immunity.

General Skrmetti must be dismissed as a party because Pike's class-of-one equal protection claim is the only claim aimed at him, and it fails because sovereign immunity bars the mandatory relief she asks for. The Court should rule on General Skrmetti's sovereign immunity before it reaches the merits of any claim against him because sovereign immunity is a jurisdictional bar, not

merely an affirmative defense. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 851 (Tenn. 2008); *Pichiorri v. Burghes*, 162 F.4th 745, 752 (6th Cir. 2025).

Pike is displeased that General Skrmetti entered the *King/Middlebrooks* litigation agreement and has refused to enter a similar one with her. Compl. at 25–26 ¶¶ 108–112. She asks this Court to force General Skrmetti to enter an agreement with her. *Id.* at 27–28 ¶¶ D–E.

This demand must be denied because the State has not waived sovereign immunity against the relief Pike seeks. Under article I, section 17 of the Tennessee Constitution, “suits cannot be brought against the State unless explicitly authorized by statute.” *Colonial Pipeline*, 263 S.W.3d at 849. A suit against a state officer in his official capacity is a suit against the State. *Simmons v. Gath Baptist Church*, 109 S.W.3d 370, 374 (Tenn. Ct. App. 2003). The State has not waived immunity against suits seeking declaratory or injunctive relief to require state officials to take affirmative acts. *See Colonial Pipeline*, 263 S.W.3d at 853 (holding that a chancery court may issue injunctive relief in an individual-capacity suit against a state official “so long as the court’s judgment is tailored to *prevent the implementation* of unconstitutional legislation”) (emphasis added). And mandatory relief is generally not available to require state officials to perform discretionary acts, such as negotiating litigation agreements. *Tusant v. City of Memphis*, 56 S.W.3d 10, 18 (Tenn. Ct. App. 2001). Moreover, Pike does not allege that General Skrmetti is enforcing an unconstitutional statute, which is a “threshold requirement” to remove sovereign immunity. *Payne v. Carpenter*, No. M2014-00688-COA-R3-CV, 2016 WL 4142485, at *3 (Tenn. Ct. App. Aug. 2, 2016).

The truth is that Pike demands relief against the State by way of General Skrmetti. But well-weathered precedent blocks that path because it would “require” General Skrmetti’s official “action,” improperly granting mandatory relief against the State itself. *TransAmerica Assur. Corp. v. Settlement Cap. Corp.*, 489 F.3d 256, 260 (6th Cir. 2007) (quoting *Larson v. Domestic & Foreign Com. Corp.*,

337 U.S. 682, 688 (1949)); *see Hawaii v. Gordon*, 373 U.S. 57, 58 (1963) (per curiam). That relief is off-limits because it has long been “well settled” “that a suit . . . to compel [state officers] to do [certain] acts . . . is, in effect, a suit against the state” and thus barred by sovereign immunity. *Pennoyer v. McConnaughy*, 140 U.S. 1, 9 (1891). The Court may not “require[]” General Skrmetti “to . . . do[] and perform[]” acts in his official capacity. *Hagood v. Southern*, 117 U.S. 52, 67 (1886). That would make the State “not only the real party to the controversy, but the real party against which relief” effectively issued. *Id.*; *see TransAmerica*, 489 F.3d at 262.

For these reasons, sovereign immunity bars the relief sought in Count IV against General Skrmetti. Since that is the only claim directed at him, he must be dismissed from this lawsuit.

B. The weight of authority is against Pike’s class-of-one equal protection claim, which lacks factual foundation.

In any event, Count IV cannot proceed because Pike has not pleaded sufficient facts to establish that she was treated unequally, or that any Defendant lacked a rational basis for not striking a deal with her. Without this factual basis, Pike has failed to state a claim based on a class-of-one equal protection theory.

More factual background will reveal the problems with this claim. After Governor Lee paused executions through 2022, TDOC officials moved to stay proceedings in two consolidated challenges to the State’s then-current execution protocol. *See King*, No. 3:18-cv-01234; *Middlebrooks*, No. 3:19-cv-01139. Along with the stay of litigation, the parties also agreed that, during the life of those suits, the defendants would not oppose a motion for stay of execution for King or Middlebrooks and, that if such motion was denied, the defendants would advocate for a reprieve from the Governor.

Pike thinks the Equal Protection Clause entitles her to the same agreement. But she has no constitutional right to force a litigation position because her suit is not at all in the same posture or factual context as the suits of *King* or *Middlebrooks*.

The Equal Protection Clause provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The relevant provisions of the Tennessee and United States Constitutions confer essentially the same protection[.]” *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993). Thus, when analyzing equal protection claims, Tennessee courts follow “the framework developed by the United States Supreme Court[.]” *Id.* at 153.

The idea behind the Supreme Court’s equal-protection jurisprudence “is to secure every person within the state’s jurisdiction against intentional and arbitrary discrimination[.]” *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U.S. 350, 352 (1918). To that end, the Equal Protection Clause is understood to bar governmental discrimination that “burdens a fundamental right, targets a suspect class, or intentionally treats one differently than others similarly situated without any rational basis for the difference.” *TriHealth, Inc. v. Bd. of Comm’rs*, 430 F.3d 783, 788 (6th Cir. 2005) (citation omitted).

Pike alleges that Defendants run afoul of this principle by not extending the benefit of the *King/Middlebrooks* agreement to her. Thus, her claim rests on a “class of one” theory. Compl. at 26 ¶ 110. To gain any traction, Pike must show that she “(1) . . . ‘has been intentionally treated differently from others similarly situated’; and (2) ‘there is no rational basis for the difference in treatment.’” *United States v. Green*, 654 F.3d 637, 651 (6th Cir. 2011) (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

But Pike cannot show that Defendants are treating her differently than others who are similarly situated. To show as much, Pike and her comparators “must be alike ‘in all relevant respects.’” *Reform*

Am. v. City of Detroit, 37 F. 4th 1138, 1152 (6th Cir. 2022) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). This requires “relevant similarity” but not “exact correlation[.]” *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 987 (6th Cir. 2012) (citation omitted). Although Pike, Middlebrooks, and King all await death sentences, the similarities stop there. When it comes to the challenged conduct—the decision whether to oppose a stay of execution—there are material differences.

Specifically, the State entered the *King/Middlebrooks* agreement in a unique context that has come and gone. At the time of that agreement, several unknowns existed, including: (1) the duration of Governor Lee’s pause on executions, (2) the results of an independent investigation, (3) whether and to what extent the execution protocol would be amended, (4) what new staff, training, or resources might be needed to implement any changes to the protocol, and (5) what legal challenges a new protocol might face. But Defendants have answers to those questions now. And in *King/Middlebrooks*, the defendants faced the pressure of continued litigation and potentially intrusive discovery over a protocol that might never have been used again if they could not agree on a stay. Pike has no such leverage. The timing, factual record, and procedural posture of this case differs vastly from past cases. Thus, Pike cannot show that she is similarly situated to King and Middlebrooks in all material respects.

These differences also show why there is a rational basis for treating Pike differently from King and Middlebrooks. Thus, even if Pike were similarly situated, her equal protection claim would never get off the starting line. That is because the Supreme Court has recognized that “[t]here are some forms of state action . . . which by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments.” *Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 603 (2008). In those situations, such as litigation agreements, “treating like individuals differently is an accepted consequence of the discretion granted.” *Id.*

Applying *Engquist*, it is not hard to see that Tennessee’s “subjective and individualized” litigation strategy “rest[s] on a wide array of factors that are difficult to articulate and quantify.” 553 U.S. at 604. The decision not to oppose a stay of execution requires broad discretion. “Allowing a challenge based on the arbitrary singling out of a particular person” in such context “would undermine the very discretion that such state officials are entrusted to exercise.” *Id.* at 603. Tennessee agreed not to oppose a stay of King’s and Middlebrooks’ executions based on the unique posture of those cases at the time. Pike cannot successfully challenge the broad discretion behind this highly “subjective, individualized decision.” *Id.* at 604. It is rational for Defendants to take a different position in this case than the one taken years ago in *King* and *Middlebrooks*.

The Sixth Circuit and the United States District Court for the Middle District of Tennessee agree. Both courts recently rejected class-of-one equal protection claims based on the *King/Middlebrooks* agreement brought by Harold Wayne Nichols. Like Pike, Nichols argued that his rights were violated when General Skrmetti refused to enter a *King/Middlebrooks*-style agreement with him. This argument failed at the pleading stage because it was unsupported by sufficient factual allegations. Like Pike’s complaint, Nichols’ complaint merely alleged “that he did not receive (and wishes to receive) the benefit of the Agreement into which Defendants entered with the plaintiffs in *King* and *Middlebrooks* because he is a similarly situated person to the plaintiffs in *King* and *Middlebrooks*.” *Nichols*, 2025 WL 3299727, at *11–12 (quotation marks omitted). The district court found that Nichols failed to state a class-of-one equal protection claim because he did not set forth factual allegations to show that the defendants lacked a rational basis for not entering into an agreement with him. *Id.*

Nichols fared no better when he sought a stay and injunction pending appeal. The Sixth Circuit found he was not likely to succeed on the equal protection claim because his complaint failed

to grapple with how he was similarly situated with King and Middlebrooks or why the State's reasons for treating him differently lacked a rational basis. *Nichols*, 2025 WL 3523010, at *1.

This Court should reach the same result and hold that Pike fails to state a claim for an equal protection violation. Like Nichols, she has not alleged sufficient facts to show that she is similarly situated to King or Middlebrooks, or that any Defendant lacked a rational basis to refuse a similar agreement with her. Count IV should be dismissed.

CONCLUSION

This lawsuit suffers from multiple pleading deficiencies. Most fundamentally, this Court lacks jurisdiction to enter any of the injunctive relief requested. And Pike has failed to plead enough of a factual basis to state a claim for relief under any theory. The Court should dismiss Pike's suit in full.

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 via the Court's electronic filing system on the 19th day of March 2026, upon:

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Exhibit 1

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

12/05/2025

Clerk of the
Appellate Courts

IN RE: AMENDMENT OF TENNESSEE SUPREME COURT RULE 12.4(E)

No. ADM2025-01930

ORDER

Upon due consideration, the Court hereby amends Rule 12.4(E) of the Rules of the Tennessee Supreme Court in the form set out in the appendix to this Order. Rule 12.4(E), as amended by this Order, shall be effective upon the filing of this Order.

The Clerk shall provide a copy of this Order to LexisNexis and to Thomson Reuters. In addition, this Order shall be posted on the Tennessee Supreme Court's website.

PER CURIAM

APPENDIX

AMENDMENT TO TENN. SUP. CT. R. 12.4(E)

**[Deleted text is indicated by overstriking,
and new text is indicated by underlining.]**

Rule 12.4. Setting Execution Date at Conclusion of Standard Three-Tier Appeals Process

. . .

(E) Date of Execution/Stays and Reprieves.

Upon the grant of a State's motion to set an execution date, the Court shall set the date of execution no less than thirty (30) days from the date of the order granting the State's motion. Where the date set by the Court for execution has passed by reason of a stay or reprieve, this Court shall sua sponte set a new date of execution when the stay or reprieve is lifted or dissolved, and the State shall not be required to file a new motion to set an execution date. In the latter event, any new date of execution shall be no less than seven (7) days from the date of the order setting the new execution date.

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.

The State Attorney General shall provide a copy of any judicial or executive order staying the execution or granting a reprieve to the Office of the Clerk of the Appellate Courts in Nashville. The Clerk shall expeditiously furnish a copy of the order to the Warden of the Riverbend Maximum Security Institution. In addition, the State Attorney General shall expeditiously provide a copy of any judicial or executive order lifting or dissolving the stay or reprieve to the Office of the Appellate Court Clerk in Nashville.

[As amended by order filed November 25, 1987; by order filed June 1, 1992; by order filed October 2, 1996; by order filed October 29, 1997; by order filed May 27, 1999; by order filed October 27, 2000; by order filed March 5, 2003; and by order filed December 20, 2013, effective January 1, 2014; and by order filed March 25, 2015 effective July 1, 2015].

Explanatory Comment:

Section 4(E) was amended to set forth the procedures for state court collateral litigation potentially affecting the method or timing of execution that is filed after a date of execution is set.

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

CHRISTA GAIL PIKE,	)	
	)	
Plaintiff,	)	CAPITAL CASE
	)	Execution:
v.	)	September 30, 2026
	)	
JONATHAN SKRMETTI, <i>et al.</i>	)	No. 26-0027-III
	)	
Defendants.	)	Chancellor Myles
	)	

RESPONSE TO MOTION TO DISMISS

200 years ago, the State of Tennessee executed a Black woman whom they thought so insignificant they did not record her name.¹ It was the last execution of a woman in Tennessee. Now, the State seeks to reignite that disgraceful past by executing Christa Gail Pike, a victim of multiple rapes as a child, who was eighteen years old when she committed the crime for which Tennessee seeks to kill her. Public support for the death penalty is at historic lows (52% according to latest Gallup

¹ See <https://www.acrosswalls.org/datasets/executions-us> (database drawn primarily from Espy reflecting only 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, the Espy database appears to have incorrectly included Eve Martin, who was the victim of a homicide, not an accessory. See David V. Baker, *Women and Capital Punishment in the United States: An Analytical History*, 132 (McFarland, 2015).

polling)²; and the only reason that 52% still support the death penalty is because they do not know what goes on behind the curtain. Tennessee intends to keep it that way.

In 2011, to combat bad press over botched executions, and to blunt the momentum of abolition advocates, states began enacting secrecy statutes to shield certain information about how lethal injection drugs were procured, from and by whom, how often, and at what cost. Tennessee followed suit and enacted its own execution secrecy law aimed at protecting the identity of individuals involved in the execution process. Tenn. Code Ann. § 10-7-504(h)(1). Tennessee Department of Correction officials—receiving their marching orders from some of the Defendants in this lawsuit—use the law not only to shield the identity of those involved in executions, but to bludgeon anyone that seeks *any* information on how executions are conducted in Tennessee. *See Kerrigan v. Newport*, No. E2025-01974-COA-R10-CV (Tenn. Ct. App.).

Four months ago, under the same shroud of secrecy that plagues Tennessee’s execution process, the Tennessee Supreme Court tightened its grip on the way that prisoners challenge the way the State of Tennessee intends to carry out its state sponsored killing in an unconstitutional power grab. The Tennessee Supreme Court promulgated Rule 12.4(E) without notice, without comment, and without feedback from stakeholders, including the death row prisoners themselves, the hundreds of capital certified lawyers in Tennessee, nor the three government-funded

² Gallup Historical Trends, Death Penalty <https://news.gallup.com/poll/1606/death-penalty.aspx>.

organizations that exclusively represent capital prisoners. The results have been predictable: uncertainty about when the rule applies and when it does not; whether it has the power to toll any statute of limitations; whether the motion must be an initiating pleading, or whether it can be filed at any point prior to an execution; or whether the Tennessee Supreme Court can deny the motion, choosing instead to deny prisoners their fundamental rights of access to the courts before they even reach the courthouse doors.

Now, the State of Tennessee seeks to take away Christa Pike's ability to challenge the way Tennessee intends to kill her. Rule 12.4(E) goes hand-in-hand with the Defendants' misuse of the execution secrecy provisions in the Tennessee Public Records Act to suffocate due process and chill the exercise of constitutional rights. The Motion to Dismiss must be denied or, alternatively, this matter must be transferred so that Christa Pike can exercise the last constitutional right she has: to be free from the certain tortuous murder she faces at the hands of the State of Tennessee.

Argument

I. Tennessee Supreme Court Rule 12.4(E) is unlawful and unconstitutional.

On December 5, 2025, the Tennessee Supreme Court amended Rule 12.4 of its Rules to restrict the fundamental right of prisoners to challenge the State's method of execution. It provides, in relevant 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.

The Rule was promulgated with no notice, comment, or input from stakeholders. That itself was outside the norm of how the Tennessee Supreme Court amends its substantive rules. For example:

- On January 17, 2025, the Court solicited public comments on amendments to Sections 16.4(c) and 33.1 of Rule 9. The comment period ended March 3, 2025 and the Court published its order amending the rule on March 7, 2026.
- On April 28, 2025, the Court solicited comments on Rule 21, making substantial changes to CLE requirements. The comment period ended on June 27, 2025 and the Court adopted the proposed changes in a published order on October 10, 2025.
- On August 14, 2025, the Court solicited comments on Rule 9, Section 10.1 regarding the information the Board of Professional Responsibility could submit to the Tennessee Bar Association. The comment period ended on October 13, 2025 and the Order denying the proposal was published on December 3, 2025.

- On August 22, 2025, the Court solicited comments on proposed amendments to the Rules of Criminal, Civil, and Appellate procedure. The comment period ended on November 20, 2025 and an order adopting the changes was entered on January 14, 2026.
- On September 16, 2025, the Court solicited comments on significant regulatory reforms. The comment period is still open.
- On October 20, 2025, the Court solicited comments on amendments to Rule 21, changing CLE requirements. The comment period ended on December 19, 2025 and the Court denied the proposed changes on January 22, 2026.

The Tennessee Supreme Court regularly seeks comments on substantial changes to the way in which lawyers practice law in Tennessee—whether it is just continuing legal education (CLE) or the rules of procedure. Changing the process by which death row prisoners must vindicate their Eighth Amendment rights under the United States Constitution deserves the highest scrutiny. Ms. Pike challenges the illegal and unconstitutional manner in which the Tennessee Supreme Court has restricted her fundamental right of access to the courts under the Tennessee and United States Constitutions.

A. Rule 12.4(E) violates the United States and Tennessee Constitutions.

Rule 12.4(E) violates the Tennessee Constitution. Specifically, Article VI, section 2 expressly provides that the jurisdiction of the Tennessee Supreme Court is “appellate only.” Tenn. Const., art. VI, § 2. *See Ruckart v. Schubert*, 443 S.W.2d 466 (Tenn. 1969) (jurisdiction can only be exercised upon questions and issues tried and

adjudged by inferior courts); *State v. Bank of East Tenn.*, 37 Tenn. 573 (Tenn. 1858); *State ex rel. Conner v. Herbert*, 154 S.W. 957 (Tenn. 1912) (Tennessee Constitution deprives supreme court of all original jurisdiction, and the General Assembly has no power to confer such jurisdiction upon it); *Moore v. Love*, 107 S.W.2d 982, 987 (Tenn. 1936). In fact, attempts by the Tennessee Supreme Court to award itself original jurisdiction have been previously held unconstitutional. See *State ex rel. Kain v. Hall*, 65 Tenn. 3, (Tenn. 1873).

Article VI, section 2 provides two exceptions to the “appellate jurisdiction” limitation, but neither applies here. First, “restrictions and regulations . . . prescribed by law,”— i.e., passed through the General Assembly. But Rule 12.4(E) expressly violates the statutory authority conveyed on the Court by the General Assembly. Specifically, Tennessee Code Annotated § 16-3-403 provides that a rule prescribed by the Tennessee Supreme Court “shall not abridge, enlarge or modify any substantive right, and shall be consistent with the constitutions of the United States and Tennessee.” Rule 12.4(E) essentially eliminates a prisoner’s substantive right to challenge a method of execution. Second, the phrase “other jurisdiction as is now conferred by law on the present Supreme Court” refers to the powers of the court at the time of the 1870 adoption of Article VI, section 2.

Both Article I of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution protect the fundamental right of access to the courts. The Tennessee Constitution provides that “all courts shall be open,” and that “every man . . . shall have remedy by due course of law.” Tenn. Const., art. I, § 17.

That section also provides that suits against the State of Tennessee “may be brought . . . in such manner and in such courts as the Legislature may by law direct.” *Id.* The General Assembly has not conferred power on the Tennessee Supreme Court to usurp this Court’s original jurisdiction nor to promulgate any rules portending to do so.

The Fourteenth Amendment similarly provides a fundamental right of access to the courts. A right is fundamental when it is “explicitly or implicitly guaranteed by the Constitution.” *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 33–34 (1973). An infringement of a fundamental right need not be direct. Mere interference is enough if it “substantially deters the exercise of the right or makes the exercise of the right materially more difficult.” *Att’y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986). The United States Supreme Court has endorsed this fundamental right. *See Griffin v. Illinois*, 351 U.S. 12, (1956); *Douglas v. California*, 372 U.S. 353 (1963); *Ross v. Moffitt*, 417 U.S. 600 (1974); *Ake v. Oklahoma*, 470 U.S. 68 (1986); *Boddie v. Connecticut*, 401 U.S. 371 (1971).

The Tennessee Supreme Court’s promulgation of a rule that strips Ms. Pike—or anyone—of their right of fundamental access to the courts is unconstitutional, and the motion to dismiss should be denied.

B. Rule 12.4(E) is an unlawful amendment to Tennessee Rule of Civil Procedure 3.

Tennessee Rule of Civil Procedure 3 provides that civil actions “are commenced by filing a complaint with the clerk of court.” Tenn. R. Civ. P. 3. That rule also provides that an action must be commenced “within the meaning of any statute of

limitations.” *Id.* Amendments to the Rules of Civil Procedure must be presented to, and approved by, the Tennessee General Assembly. Tenn. Code Ann. § 16-3-404. Tennessee Supreme Court Rule 12.4(E) circumscribes this process and constitutes an unlawful amendment to the Tennessee Rules of Civil Procedure because it creates a new and exclusive mechanism to “commence an action.” In other words, Rule 12.4(E) effectively repeals Tennessee Rule of Civil Procedure 3 or, at best, creates an exception for one type of case.

Ms. Pike filed her complaint, consistent with the Tennessee Rules of Civil Procedure, the Tennessee and United States Constitutions, and this Court’s jurisdiction under Tennessee Code Annotated §§ 29-14-103 and 113 within one year of the date she received a copy of Tennessee’s new lethal injection protocol. Rule 12.4(E) provides no guidance for whether a motion in the Tennessee Supreme Court complies with or tolls the statute of limitations. Accordingly, Ms. Pike would have had no recourse to later challenge the execution protocol or bring any of her claims to vindicate her constitutional rights had she not filed in this Court.

The unlawful amendment to the Tennessee Rules of Civil Procedure seeks to strip Ms. Pike of her constitutional rights. It is unconstitutional based on the authority prescribed to this Court by the Tennessee and United States Constitutions and the express statutory authority granted to this Court by the General Assembly.

C. Rule 12.4(E) violates due process because it is unconstitutionally vague.

The Rule also violates Article I of the Tennessee Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it is unconstitutionally vague. *See Lanzetta v. State of N.J.*, 306 U.S. 451, 452 (1939) (vague statutes are “repugnant to the due process clause of the Fourteenth Amendment”). A law is unconstitutionally vague when it “(1) ‘fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits’ or (2) ‘authorizes or even encourages arbitrary and discriminatory enforcement.’” *Platt v. Bd. of Commr’s on Grievances and Discipline*, 894 F.3d 235, 246 (6th Cir. 2018) (citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000)). The standard must be strictly applied where, as here, certain fundamental rights are imperiled by the vague statute. *See Vill. of Hoffman Ests. V. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498–99 (1982).

The Tennessee General Assembly and the Tennessee Rules of Civil Procedure expressly provide for the process by which citizens of Tennessee can bring lawsuits. The Tennessee Supreme Court’s end-around of the express process provided by the legislature is unconstitutional.

The Defendants’ argue that Ms. Pike “ignored” Rule 12.4(E) and “commenced this collateral litigation”—a requirement for Rule 12.4(E) to apply. But Rule 12.4(E) is vague as to what *is* collateral. In *Heck v. Humphrey*, 512 U.S. 477, 481 (1994), the United States Supreme Court held that § 1983 could not be used to challenge the validity of a prior conviction or sentence to seek release or monetary damages because

such a lawsuit would be a collateral attack on the conviction. But Ms. Pike is not challenging the validity of her conviction or sentence—only the manner in which the State intends to carry it out. The relief is prospective and, thus, *not* collateral. See *Olivier v. City of Brandon*, 146 S. Ct. 916 (Mar. 20, 2026).

Not only is Rule 12.4(E) vague as to which claims it applies—claims challenging the execution protocol versus claims challenging the protocol on other grounds (like the First Amendment)—it is also vague as to the specific sequence a challenge must take. Can a plaintiff file a complaint and a motion? Does a motion carry the same force as a complaint? Can the Tennessee Supreme Court deny the motion outright? What effect does the motion have on the statute of limitations? Rule 12.4(E) is also vague because it does not say how a case will be litigated. In short, it provides no standard, burden of proof, or what a litigant must do to prevail. The arbitrariness that the rule invites is unconstitutional. See *Dambrot v. Cent. Michigan Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995) (Such an “unrestricted delegation of power . . . invites arbitrary, discriminatory and overzealous enforcement.”).

The rushed and secretive nature of the amendment to Rule 12.4(E) provides a vague process not vetted by the General Assembly, void of public comment or input from stakeholders, and stands in direct contradiction with the express jurisdiction of this Court as provided by the legislature, by statute, and by the Rules of Civil Procedure.

D. Rule 12.4(E) is an unconstitutional taking and violates due process because it extinguishes an already vested cause of action.

Rule 12.4(E) is also an unconstitutional “taking” in violation of Article I of the Tennessee Constitution, the Due Process Clause of the Fourteenth Amendment, and the Takings Clause of the Fifth Amendment to the United States Constitution. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (construing a taking to reach abstract rights). 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 Ms. Pike to comply with an opaque and vague process to vindicate her fundamental rights. Furthermore, the rule provides no guidance or instruction about whether a motion with the Tennessee Supreme Court can be denied without process, whether it complies or tolls the statute of limitations, and what or which claims apply under its mandate.

As such, the rule is unlawful and unconstitutional, and the motion to dismiss must be denied.

E. In the alternative, this Court has the authority to construe the complaint as a Rule 12.4(E) motion and transfer this case to the Tennessee Supreme Court with instructions to appoint a special master in the interests of justice.

Alternatively, if this Court finds that it lacks subject matter jurisdiction over Ms. Pike’s complaint, it has the authority to construe the complaint as a Rule 12.4(E) motion and transfer it to the Tennessee Supreme Court with instructions to appoint a special master. Tenn. Code Ann. §§ 16-1-102, 116. *See Owens v. Muenzel*, 2018 Tenn.

App. Lexis 752, *22 (Tenn. Ct. App. Dec. 21, 2018). Specifically, Tennessee Code Annotated § 16-1-116 provides that when a “state or county court of record” determines that it lacks jurisdiction, the court “*shall*, if it is in the interest of justice, transfer the action . . . to *any other such court* in which the action or appeal could have been brought at the time it was originally filed.” The Tennessee Constitution and the General Assembly have expressly conferred original jurisdiction on this Court. *See Norton v. Everhart*, 895 S.W.2d 317, 320 (Tenn. 1995). However, if this Court determines that Rule 12.4(E) controls to strip it of its original jurisdiction, it may transfer the case to “any other such court,” where the action could have been brought. Here, Rule 12.4(E) states that such an action shall “commence with the filing of a motion in [the Tennessee Supreme] Court.” Given the fundamental rights at stake, and the nature of death penalty litigation in general, the interests of justice weigh in Ms. Pike’s favor.

II. The Complaint does not fail to state a claim under Rule 12.02 and the motion to dismiss must be denied.

A Rule 12.02 motion to dismiss challenges only the “legal sufficiency of the complaint, not the strengths of the plaintiff’s proof or evidence.” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). This Court must “construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.” *Id.* Tennessee follows a “liberal notice pleading standard, which recognizes that the primary purpose of pleadings is to provide notice of the issues presented to the opposing party and court.” *Id.* Taking all factual allegations as true and giving Ms. Pike the benefit of all

reasonable inferences, her complaint plainly states a claim for which relief can be granted.

In *Glossip v. Gross*, the Supreme Court held that to prove a likelihood of success on the merits of an Eighth Amendment challenge, a plaintiff must show (1) that the protocol “creates a demonstrated risk of severe pain,” and (2) “that the risk is substantial when compared to the known and available alternatives.” 576 U.S. 863, 878 (2015). See *West v. Schofield*, 519 S.W.3d 550, 563–64 (Tenn. 2017). Ms. Pike’s complaint does exactly that.

The complaint alleges that Ms. Pike’s specific medical condition, including, specifically, her diagnosis of Thrombocytopenia/Thrombocytosis will “very likely produce an even more severe pattern of bloody froth in the lungs. This is drowning in one’s own blood.” (Compl. at 15, ¶ 54). Ms. Pike alleged that these individual physical characteristics “make it sure or very likely that there is a substantial risk that she will experience unnecessary and superadded pain and suffering, terror, and disgrace.” (Compl. at 15, ¶ 55). Ms. Pike alleged that her documented medical history of difficulty with blood draws and needle insertion will “make it significantly more difficult to achieve and/or maintain peripheral IV access . . . needed to ensure proper delivery of the pentobarbital,” and that these individual physical characteristics make it “sure or very likely that there is a substantial risk that she will be subjected to unnecessary and serious pain.” (Compl. at 15, ¶ 59). For support, Ms. Pike attached the declaration of Joel B. Zivot, M.D. (Compl., Ex. 7). That is not speculation.

So too does the complaint plead a known and available alternative: use of a butterfly needle by qualified and trained medical staff. (Compl. at 20, ¶ 80). The Defendants call this a mere “equipment swap.” But that proves the point: it is a known and available alternative. So too is the adoption of a resuscitation protocol. *Bucklew v. Precythe*, 587 U.S. 119 (2019) held that an alternative does not need to be codified into state law in order for a prisoner to allege it as an alternative. *Id.* at 139–40. The Defendants are free to put on proof that the alternatives are not readily available or able to be implemented. But at the pleading stage, the complaint satisfies Rule 12.02 muster.

Ms. Pike does not merely allege that bad things *could* happen. She alleges that bad things *did* happen in the executions of Byron Black and Harold Wayne Nichols. (Compl. at 13, ¶¶ 45–48; Exs. 5 and 6). And that the same thing will happen to her. Not only did Byron Black experience pulmonary edema, but the Defendants’ own equipment showed that his heart continued to beat for at least two minutes after the announcement of his death. (Compl. at 13, ¶47). And since the filing of the complaint in this case, the autopsy report of Harold Wayne Nichols was released confirming the presence of pulmonary edema. (See Addendum of Joel B. Zivot, M.D., attached as **Exhibit 1**). The complaint alleges, and the public record shows, that pulmonary edema is an “excruciatingly painful condition,” that “death from pentobarbital injection is not instantaneous,” and that “It is a virtual certainty that if Christa Pike is executed via the same method, she will experience the excruciating and cruel pain of pulmonary edema before she finally dies.” (Ex. 1, ¶¶ 6–8).

The Defendants intentionally confuse Ms. Pike's claim in Count III because they do not want to admit the flaw in their protocol: the lethal injection protocol requires a fourteen-day isolation; the electrocution protocol requires only three days. So, Ms. Pike is forced, against her rights under the First Amendment, to select death by electrocution to avoid a fourteen-day isolation. That is especially relevant here because Ms. Pike spent nearly 30 years in solitary confinement. *See Steven Hale, Court Settlement Ends Isolation for the Only Woman on Tennessee's Death Row*, Nashville Banner (Sept. 17, 2024). The choice is a Catch-22. Either Ms. Pike elects death by electrocution to avoid a fourteen-day isolation; or she subjects herself to the excruciating pain of lethal injection to avoid being electrocuted. That is the constitutional violation alleged.

Neither can the Defendants offer any defense for why Ms. Pike is being intentionally treated differently from other similarly situated death row prisoners in violation of the Equal Protection Clause. "A State may not make its judicial processes available to some but deny them to others. . . ." *Boddie v. Connecticut*, 401 U.S. 371, 389 (1971) (Brennan, J., concurring). A state violates the Equal Protection Clause when it makes distinctions that either "burden a fundamental right, target a suspect class, or intentionally treat one differently from others similarly situated without any rational basis for the difference." *Radvansky v City of Olmsted Falls*, 395 F.3d 291, 312 (6th Cir. 2005). Ms. Pike is a class-of-one and the Defendants cannot, and indeed have not, articulated any rational basis as to why she is to be executed, and similarly situated prisoners on death row in Tennessee will not be. *Willowbrook v. Olech*, 528

U.S. 562, 564 (2000) (citing *Sioux City Bridge Co. v. Dakota Cnty.*, 260 U.S. 441 (1923)). See also *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 602 (2008) (“When those who appear similarly situated are nevertheless treated differently, the Equal Protection Clause requires at least a rational reason for the difference”); *id.* at 602 (“Recognition of a class-of-one theory of equal protection [in] *Olech* was not so much a departure from the principle that the Equal Protection Clause is concerned with arbitrary government classification, as it was an application of that principle.”).

The motion to dismiss should be denied for all the grounds stated herein. Alternatively, this Court should transfer this case to the Tennessee Supreme Court in accordance with Tennessee Supreme Court Rule 12.4(E).

Respectfully submitted,

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Certificate of Service

I, Luke P. Ihnen, certify that on April 13, 2026, a true and correct copy of the foregoing was served via the Court's electronic filing system and certified mail to opposing counsel, Cody Brandon, Asst. Attorney General.

/s/ Luke P. Ihnen

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

CHRISTA GAIL PIKE,	)	
	)	CAPITAL CASE
Plaintiff,	)	Execution: September 30, 2026
	)	
v.	)	No. 26-0027-III
	)	
JONATHAN SKRMETTI, <i>et al.</i>	)	Chancellor Myles
	)	
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

The Court should grant Defendants' motion to dismiss. Plaintiff Christa Pike's response has not overcome any argument supporting dismissal of her claims against the State's execution protocols.

First, Pike's attacks on the constitutionality of Tenn. Sup. Ct. R. 12(4)(E), launched for the first time in her response, must be rejected because this Court lacks authority to invalidate a Supreme Court Rule. And she did not even attempt to rebut Defendants' argument based on binding precedent that this Court lacks jurisdiction to grant injunctive relief. *Second*, Pike has offered no more than speculation that she will suffer a substantial risk of superadded pain because of any medical condition, so her as-applied challenge fails. *Third*, she cites no precedent supporting her theory that an equipment swap or resuscitation provision qualifies as a feasible and readily implemented alternative method of execution, so her method-of-execution claims fail. *Fourth*, Pike has likewise cited no precedent supporting her conditions-of-confinement claim. *Fifth*, she has abandoned her equal-protection claim by conceding it is barred by sovereign immunity.

All told, there is no well-pleaded basis for any claim to advance. This lawsuit must be dismissed.

I. This Court Lacks Jurisdiction to Decide the Constitutionality of Tenn. Sup. Ct. R. 12(4)(E).

Instead of attempting to save her claims from dismissal, Pike springs a surprise attack on the constitutionality of Tenn. Sup. Ct. R. 12(4)(E). But this Court lacks jurisdiction to pass on the constitutionality of the Tennessee Supreme Court's Rules. Moreover, basic principles of jurisdiction and party presentation require the Court to pass over these arguments. And even if Pike is right about the Rule, this Court lacks authority to transfer this action to the Tennessee Supreme Court.

A. This Court cannot decide Rule 12's constitutionality.

The Court cannot entertain Pike's attack on Rule 12 because it lacks jurisdiction to invalidate any Tennessee Supreme Court Rule. This jurisdictional bar aside, Pike has not properly presented the issue for review.

Pike assails the constitutionality of Rule 12(4)(E) on several fronts: access to the courts, vagueness, and even a fanciful takings theory. Resp. at 3-11. But "only the Tennessee Supreme Court may determine the facial validity of its rules." *Long v. Bd. of Pro. Resp. of Supreme Ct.*, 435 S.W.3d 174, 184 (Tenn. 2014); see also *Petition of Tennessee Bar Ass'n*, 539 S.W.2d 805, 807 (Tenn. 1976) (stating that "no other Court in Tennessee has jurisdiction to review and charge or void any Rule promulgated by this Court"). Even intermediate appellate courts "are without authority to decide . . . constitutional challenges" to Supreme Court Rules. *Dotson v. State*, No. W201901059CCAR3PD, 2022 WL 860414, at *65 (Tenn. Crim. App. Mar. 23, 2022), *aff'd on other grounds*, 673 S.W.3d 204 (Tenn. 2023). It follows then that this Court lacks authority or jurisdiction to declare that Rule 12(4)(E) is unconstitutional.

But even if this Court possessed such power, Pike has not properly presented the issue for review. Like any other court, this Court's jurisdiction extends to cases or controversies between specific parties, even when the relief sought is declaratory. *Colonial Pipeline Co. v. Morgan*, 263

S.W.3d 827, 837-38 (Tenn. 2008). It may not exercise its judicial power to answer just any question; it is limited to the “role of neutral arbiter of matters the parties present.” *State v. Bristol*, 654 S.W.3d 917, 924 (Tenn. 2022) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). Accordingly, it is well-settled that parties are “confined to the case made in the pleadings.” *Randolph v. Meduri*, 416 S.W.3d 378, 384 (Tenn. Ct. App. 2011) (quoting *Am. Lead Pencil Co. v. Nashville, C. & St. L. Ry.*, 124 Tenn. 57, 134 S.W. 613, 615 (1911)).

The Court should reject Pike’s invitation to violate these bedrock principles. Pike has not pleaded any claim for relief from Rule 12(4)(E) in this lawsuit. Her Complaint says nothing about it. Instead, she raises the issue for the first time in her response, filed just four days before a motion hearing. Thus, Pike has failed to properly present the issue of Rule 12’s constitutionality for this Court’s review.

B. Dismissal is the only appropriate outcome; transfer to the Tennessee Supreme Court would be improper.

In a bid to avoid dismissal, Pike asks the Court to treat her Complaint as a Rule 12(4)(E) motion and transfer it to the Tennessee Supreme Court. Resp. at 11-12. But that course of action is off limits; dismissal is the only option.

Since the Court cannot decide the constitutionality of Rule 12, it must honor the Supreme Court’s exclusive authority over its own execution orders, which the Rule was amended to vindicate. See Rule 12 Explanatory Comment (“Section 4(E) was amended to set forth the procedures for state court collateral litigation potentially affecting the method or timing of execution that is filed after a date of execution is set.”); *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn.), *cert. denied*, 146 S. Ct. 59, 222 L. Ed. 2d 1185 (2025) (“Any modification of an execution order of this Court must come from this Court, subject only to review in appropriate cases by the United States Supreme Court.”).

Rule 12 does not contemplate transfer. It provides only for “the filing of a motion.” Tenn. Sup. Ct. Rule 12(4)(E). No authority allows transfer of this action to the Tennessee Supreme Court under Rule 12, let alone with the instructions Pike demands. Resp. at 11-12. And Tennessee Rule of Civil Procedure 3 does not apply because it governs the procedure for commencing new “civil actions,” whereas Rule 12 governs procedures that could modify existing execution orders “[a]fter a date of execution is set.” Tenn. Sup. Ct. Rule 12(4)(E).

This collateral litigation seeks injunctive relief from the method or timing of Pike’s execution. Compl. at 27-28. It should have “commenc[ed] with” a motion in the Tennessee Supreme Court. Tenn. Sup. Ct. Rule 12(4)(E). Nothing prevented Pike from filing such a motion at the same time as this lawsuit, or even before. Because the Tennessee Supreme Court retains exclusive jurisdiction over Pike’s scheduled execution, this Court lacks authority to grant her injunctive relief. And without authority to transfer this action, the Court must dismiss for lack of jurisdiction.

II. Injunctive Relief is Not Available Because the Tennessee Supreme Court Has Exclusive Jurisdiction over the Method and Timing of Pike’s Execution.

For all Pike has to say about Rule 12(4)(E), she does not actually dispute that this lawsuit is collateral litigation that implicates the method and timing of her execution. While she complains that the Rule is vague as to what it means by “collateral,” she admits that she is challenging “the manner in which the State intends to carry [her sentence] out.” Resp. at 10. Thus, she has failed to address Defendants’ argument that this Court lacks jurisdiction over her claims for injunctive relief because trial courts may not interfere with the method or timing of executions. *See Black*, 721 S.W.3d at 225 (vacating injunction that effectively stayed an execution).

In fact, her response does not even mention *Black*. Thus, she has failed to respond to the second basis for Defendants’ argument that this Court lacks authority to grant injunctive relief because “[a] trial court does not have the authority to stay, modify, or condition this Court’s

execution order.” *Black*, 721 S.W.3d at 228. The Court should therefore dismiss all claims for injunctive relief for lack of jurisdiction.

III. Pike’s As-Applied Challenge Fails to State a Claim (Count I).

Pike’s response does not save her as-applied challenge to the State’s lethal injection protocol based on her medical conditions because she relies on nothing more than speculation, which cannot suffice to move these claims beyond the pleading stage.

A. Pike has abandoned her as-applied challenge based on her small veins and mental health conditions.

In the beginning, Pike’s as-applied challenge was based on three medical issues: small veins, a platelet disorder, and various mental health conditions. Compl. at 20-22. Defendants argued that Pike did not allege sufficient facts to state an as-applied challenge to the protocol based on any of these conditions. Mot. to Dismiss at 14-19. Pike’s response abandoned this claim insofar as it rested on two of these medical issues.

First, Pike abandoned her theory that her small veins will cause superadded pain. In response to Defendants’ argument that she relied only on improper speculation to support this theory, she gestured to a physician’s declaration attached to her Complaint. But that declaration does not help her because it says nothing about her small veins. Thus, Pike has abandoned her small-veins theory, which should be rejected for the reasons laid out in Defendants’ motion. Mot. to Dismiss at 14-16.

Second, Pike’s response abandoned her theory that the protocol will violate her constitutional rights because of her mental health conditions. She advanced not a single word of argument or authority in response to Defendants’ arguments against this theory. *See* Mot. to Dismiss at 18-19.

The Court should therefore conclude that Pike has abandoned these theories.

B. The Court should not consider the exhibit to Pike’s response.

The Court should disregard the exhibit filed with Pike’s response. It is not properly before the Court because “resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone.” *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). The addendum was not incorporated by reference into the Complaint, subject to judicial notice, or otherwise within the category of evidence that can properly be considered on a motion to dismiss. See *Indiana State Dist. Council of Laborers v. Brukardt*, No. M200702271COAR3CV, 2009 WL 426237, at *8 (Tenn. Ct. App. Feb. 19, 2009) (explaining this principle and listing examples).

Even if the Court considers this document, it cannot advance Pike’s claims because it consists of mere speculation. For example, the physician declarant muses that pentobarbital “likely” causes pulmonary edema (fluid in the lungs) because of “highly alkaline pH.” Zivot Decl. ¶ 5, Ex. 1 to Resp. He cites no studies or evidence to support this belief. He sensationalizes the injection of pentobarbital as “bleach-induced tissue destruction to the lungs,” again without anything cited in support. *Id.* And he offers nothing to support his belief that it is a “virtual certainty” that Pike will suffer from any pain caused by pulmonary edema. *Id.* ¶ 8. Finally, this declaration fails to connect the lethal injection protocol to Pike’s platelet condition. As such, it is an attack on execution by pentobarbital in general and therefore cannot inform the Court’s analysis of Pike’s as-applied challenge.

C. Pike offers only speculation to support her as-applied claim based on her platelet disorder.

Turning to the last remaining basis for Pike’s as-applied challenge, she cannot rely on speculation based on her own subjective fears, the autopsies of other executed inmates, or the unsupported musings of a physician to support this claim, insofar as it is based on her platelet disorder.

For this as-applied claim to survive, Pike must show that she has pleaded facts to “establish that the protocol presents a risk that is *sure or very likely* to cause serious illness and needless suffering, and give[s] rise to sufficiently *imminent* dangers.” *West v. Schofield*, 519 S.W.3d 550, 563 (Tenn. 2017) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (cleaned up) (emphasis in original). But “speculation cannot substitute for evidence” that her medical conditions are “*sure or very likely* to cause serious illness and needless suffering.” *Brewer v. Landrigan*, 562 U.S. 996 (Mem.) (2010) (emphasis in original).

Yet Pike relies exclusively on speculation and logical leaps to support this claim. She believes that since signs of pulmonary edema showed up in the autopsies of two other inmates, she will suffer the same because of her platelet condition. Resp. at 13-14. But this theory unravels once the Court discards the underlying conjecture.

First, just because other inmates’ bodies may have shown signs of pulmonary edema *after* death does not mean that Pike is sure or very likely to experience the same thing *before* death. There is no evidence that these other inmates experienced pulmonary edema before death and that they felt pain *because of* that condition and not something else. And even if they did feel pain, that does not suffice to show that Pike will experience the same thing. *See Grayson v. Hamm*, No. 2:24-CV-00376-RAH, 2024 WL 4701875, at *19 (M.D. Ala. Nov. 6, 2024), *aff’d sub nom. Grayson v. Comm’r, Alabama Dep’t of Corr.*, 121 F.4th 894 (11th Cir. 2024), *cert. denied sub nom. Grayson v. Hamm*, 145 S. Ct. 586, 220 L. Ed. 2d 227 (2024) (rejecting inmate’s evidence, which included expert testimony based on autopsy reports from executed inmates, as “a speculative parade of highly unlikely events”); *see id.* at *6 (recounting expert testimony that “pulmonary edema is a common, non-specific finding in autopsies, even in lethal injection cases”).

Second, Pike does not allege that any other inmate shared her platelet condition, or that

such condition contributed to any superadded pain. That glaring omission undermines Pike's theory that her platelet condition somehow makes her uniquely susceptible to pain that is objectively intolerable. At the end of the day, she fails to plead a sufficient link between this condition and any enhanced risk of pain that the Constitution would not condone.

The physician declaration attached to the Complaint does not cure this problem. The physician's opinion is based on his review of just three documents. Zivot Decl. ¶ 6, Ex. 7 to Compl. He speculates that Pike's platelet condition is "likely" due to a "rare form of blood cancer" without explaining the basis for this conclusion. *Id.* ¶ 9. He further speculates that Pike's "predisposition to abnormal clotting would very likely produce an even more severe pattern of bloody froth in the lungs." *Id.* ¶ 10. But he cites no studies, autopsies, or indeed any source at all to support this bare conclusion; thus, the declaration fails to raise Pike's claims for relief "beyond the speculative level." *Est. of Haire v. Webster*, 570 S.W.3d 683, 690 (Tenn. 2019).

Finally, Pike did not respond to Defendants' argument that the Constitution would not be violated even if she feels pain from pulmonary edema before she dies. Her burden was to plead facts to show that such pain would be "objectively intolerable"—in other words, outside the bounds of what the Constitution has allowed since the Founding. *Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality op.). But "sensations of drowning and suffocation . . . 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). And hanging "ha[s] been considered constitutional for as long as the United States have been united." *Id.* Thus, even if the Court credits the speculative projections of pain from Pike and her physician, she still has not stated a claim for relief on the basis of her platelet condition. Count I must be dismissed.

IV. Pike’s Failure to Plead an Alternative Execution Method Dooms Her Method-of-Execution Claims (Counts I and II).

Pike’s response produced no authority to show that she has properly pleaded an alternative method of execution, as she must if her method-of-execution claims in Counts I and II are to survive. Any such claim must allege and establish 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 v. Precythe*, 587 U.S. 119, 129 (2019).

As for Count I, Pike offers nothing to support the proposition that swapping out a single piece of medical equipment (a “butterfly needle”) qualifies as a feasible and readily implemented method of execution. Nor could she, because her allegations about potential “difficulty” with IV placement do not implicate the “objectively intolerable” level of pain that the Constitution forbids. *Baze*, 553 U.S. at 50. Even if Pike could clear that hurdle, such a minor change of a needle, which is a secondary detail *related* to the method of execution, could not reduce the risk of such pain in a way that is “clear and considerable.” *Bucklew*, 587 U.S. at 143. Thus, on these alleged facts, she cannot satisfy the applicable pleading standard.

Pike is correct that an alternative method does not have to be codified in state law, but that statement is not responsive to any argument in the motion. What Defendants did argue was that under Tennessee law and binding precedent, a method of execution is a distinct way of causing death. Tenn. Code Ann. § 40-23-114; *Bucklew*, 587 U.S. at 134. Pike had nothing whatsoever to say in response. Her failure to plead this “essential element” of a method-of-execution claim is therefore fatal to Count I. *Abdur’Rahman v. Parker*, 558 S.W.3d 606, 616 (Tenn. 2018).

Pike’s proposed alternative for Count II, a protocol that includes a resuscitation provision like Arizona’s, fares no better. The Tennessee Supreme Court has rejected the notion that the State must attempt revival after an execution. *West*, 519 S.W.3d at 567. Pike’s proposed protocol revision is

therefore not feasible. On the contrary, it would undermine the purpose of the execution. *Id.* And the State has no obligation to copy another State’s protocol. *Abdur’Rahman*, 558 S.W.3d at 623. Again, Pike’s response had nothing to say in response to these arguments. Thus, she has failed to allege an alternative method of execution to support Count II. This claim should also be dismissed.

In sum, Pike’s proposed alternatives are, at best, “marginally safer alternative[s]” with which she attempts to press this Court into service as a “board[] of inquiry charged with determining ‘best practices’ for executions.” *Abdur’Rahman*, 558 S.W.3d at 615 (quoting *Baze*, 553 U.S. at 51).

V. Pike Has Abandoned Her Conditions-of-Confinement Claim (Count III).

Pike’s response devoted just one paragraph to Count III, a conditions-of-confinement claim wherein she alleges that her confinement leading up to her execution will violate her constitutional rights. Resp. at 15. That paragraph contained no citations to any authority. Defendants will therefore not rehash their briefing on this claim; suffice it to say that they produced authority to show that Pike will not be “isolated” and that her conditions of confinement are constitutional; that she will not be forced to choose between constitutional violations; and that her due process rights are intact. Pike responded with nothing but a news article. This claim has been abandoned and should be dismissed.

VI. Pike Has Also Abandoned Her Equal-Protection Claim (Count IV).

Finally, Pike has also abandoned her equal-protection claim, wherein she alleged that her Fourteenth Amendment rights have been violated because Attorney General Skrmetti would not enter a litigation agreement with her.

Defendants’ motion argued that as a state officer sued in his official capacity only, General Skrmetti is shielded by sovereign immunity, which bars suits against the State without its consent. Mot. to Dismiss at 28-30. This claim is directed only at General Skrmetti; accordingly, it is a claim against the State that sovereign immunity bars. *Id.* Moreover, the motion presented binding precedent to support the argument that mandatory injunctive relief will not lie against General Skrmetti. *Id.*

Pike's response did not respond to these arguments. It did not even use the phrase "sovereign immunity." She has therefore conceded that this Court has no jurisdiction over this claim.

Nor did Pike respond to Defendants' arguments that she is not similarly situated to the inmates who entered the litigation agreements she envies. And she did not grapple with any of the specific reasons given by Defendants for why she is not entitled to a litigation agreement. Rather, she cited a handful of cases for general principles of equal-protection jurisprudence. Resp. at 15. She cited no authority to explain how she has properly pleaded any element of an equal-protection claim, and she utterly failed to confront the fact that the very arguments she raises fell flat when raised in federal court just last year in litigation brought by Harold Wayne Nichols.

CONCLUSION

Pike's response has narrowed the issues considerably. She abandoned two claims outright (Counts III and IV) and jettisoned another two theories in support of Count I. None of the remaining claims survive for the reasons discussed above. The Court should dismiss this action in full.

Respectfully submitted,

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SUPPL APP-002479

1 IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
2 TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY
3 CHANCELLOR MYLES
4

5 CHRISTA GAIL PIKE,
6 Plaintiff,

7 vs.

CAPITAL CASE

8 EXECUTION: SEPTEMBER 30, 2026

9 NO. 26-0027-III

10 JONATHAN SKRMETTI, ET AL,
11 Defendants.
12

13 HEARING
14

15 APRIL 17, 2026

16 12:06 p.m. (CT)

17 In-person Proceeding

18 Davidson County Chancery Court

19 1 Public Square

20 Nashville, Tennessee 37201
21

22 Lyndsay Kanher, 1132
23
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25

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18
19 Chancellor I'Ashea L. Myles;

20 Court Clerk;

21 Bailiff.
22
23
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HEARING

EXAMINATION

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By the Court

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1 The Hearing was taken at DAVIDSON COUNTY CHANCERY COURT,
2 1 PUBLIC SQUARE, NASHVILLE, TENNESSEE 37201, on FRIDAY,
3 APRIL 17, 2026, commencing at 12:06 p.m. (CT); said
4 hearing was taken pursuant to the TENNESSEE Rules of
5 Civil Procedure.
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1 THE COURT: Okay, prior to getting started, if
2 you all don't mind, the Court is going to take
3 about a five, ten minute recess. I'll let everyone
4 get refreshed and then we'll begin.

5 THE BAILIFF: All rise. Court is in recess.

6 (A recess was taken.)

7 THE COURT: All right. If you want to give me
8 a moment to pull up my documents. Okay. This is
9 the State's motion to dismiss for a lack of subject
10 matter jurisdiction. All right. I don't believe I
11 have any familiar faces, so if you would, introduce
12 yourselves to the Court. You all have at least
13 seen me today. I do ask questions, so please do
14 not take any of my questions as an indication of
15 any way that the Court is going to rule. I may ask
16 for some post-hearing briefing. We shall see.
17 Okay. I am ready.

18 MR. AYERS: Good afternoon, Your Honor. Will
19 Ayers on behalf of the State.

20 THE COURT: Mr. Ayers, it's nice to meet you.
21 Will you be arguing before the Court today?

22 MR. AYERS: Yes, Your Honor.

23 THE COURT: Okay. Who do you have with you?

24 MR. AYERS: I have with me David Wickenheiser
25 and Kate Creecy.

1 THE COURT: Okay. Very good. Thank you,
2 Mr. Ayers.

3 Okay. And for Ms. Pike?

4 MR. IHNEN: Your Honor, Luke Ihnen and Steve
5 Ferrell with the Federal Defender Services of
6 Eastern Tennessee, and we will both be arguing.

7 THE COURT: Okay. And your last name I did
8 not hear.

9 MR. IHNEN: It's Ihnen.

10 THE COURT: Ihnen?

11 MR. IHNEN: (No verbal response.)

12 THE COURT: Ihnen and Mr. --

13 MR. IHNEN: Ferrell.

14 MR. FERRELL: Mr. Ferrell.

15 THE COURT: Mr. Ferrell. All right.
16 Mr. Ayers, this is your motion. You may proceed.

17 MR. AYERS: Good afternoon, Your Honor. As
18 the Court stated, this is the State Defendant's
19 motion to dismiss for lack of subject matter
20 jurisdiction and failure to state the claim.

21 I will start by saying the briefing on this
22 motion has narrowed the issues somewhat. This is a
23 four-count constitutional challenge to Tennessee's
24 lethal injection protocol. And in response,
25 Plaintiff Christa Pike has effectively abandoned

1 two of those counts, Count III and Count IV. And
2 I'll speak in more detail to those counts in a
3 moment. The argument is going to proceed by
4 beginning on the plaintiff's comments on Rule 12,
5 Tennessee Supreme Court Rule 12, as well as the
6 jurisdictional issues, and then I'll proceed
7 through each count in order, I through IV.

8 THE COURT: And so are you asserting that
9 based on the response from the petitioner, the
10 remaining claims in her complaint have been waived
11 because she didn't formally respond?

12 MR. AYERS: Yes, as to Count III, Count IV,
13 and two theories underlying Count I.

14 THE COURT: All right. So let's deal with
15 that first.

16 Mr. Ihnen, Mr. Ferrell, do you all have a
17 position on that regarding your response?

18 MR. FERRELL: Yes, Your Honor. Our position
19 on that is we have abandoned nothing. That the
20 motion to dismiss is based on the sufficiency of
21 the complaint, not the sufficiency of the response,
22 therefore this Court must look at the allegations
23 contained in the complaint.

24 THE COURT: Okay. All right. And Mr. Ayers,
25 do you have a rebuttal to that?

1 MR. AYERS: If I could, Your Honor, I'll
2 address that in my discussion of the counts
3 themselves.

4 THE COURT: Okay.

5 MR. AYERS: But suffice it to say for now,
6 that in response to the motion to dismiss, it's
7 customary for a party to actually respond to the
8 authority argument raised against its claims. And
9 as to Count III and IV, that has not happened.

10 So I will say, just as by way of introduction,
11 that in terms of the jurisdictional issue, there is
12 no jurisdiction here to grant the injunctive relief
13 that Christa Pike asked for. Under Black v.
14 Strada, which was decided last year, the Tennessee
15 Supreme Court held that only it has jurisdiction to
16 modify execution orders. Moreover, this being a
17 collateral challenge to the method of Ms. Pike's
18 execution, it had to be filed in the Tennessee
19 Supreme Court under Rule 12.4(e), which was amended
20 last December. It was not. And so these requests
21 to prevent her execution or to modify the protocol,
22 are not properly before the Court.

23 But even if the Court did have jurisdiction to
24 modify the lethal injection protocol, all claims
25 are foreclosed by precedent. What Pike essentially

1 wants in this lawsuit is a painless execution. The
2 constitution doesn't guarantee that. She hasn't
3 alleged facts to show that her execution under the
4 current protocol will cause superadded pain that is
5 objectively intolerable under the governing Baze-
6 Glossip standard.

7 THE COURT: Mr. Ayers, do you think that you
8 can speak up a bit?

9 MR. AYERS: Yes.

10 THE COURT: It unfortunately was a bit
11 muffled.

12 MR. AYERS: Sorry. The microphone is a bit
13 far from me.

14 THE COURT: Yeah.

15 MR. AYERS: I'll try to lean down too.

16 THE COURT: I don't want you to have to lean
17 down. I'm not sure if you can --

18 MR. AYERS: Yes.

19 THE COURT: -- just speak up.

20 MR. AYERS: Sure.

21 THE COURT: I've asked Ms. Malone to turn it
22 up a bit.

23 MR. AYERS: Yes, Your Honor. I'll do my best.

24 THE COURT: Thank you.

25 MR. AYERS: In addition, besides failing to

1 allege superadded pain that's objectively
2 intolerable, she also has not alleged a feasible
3 ready and readily implemented method of execution,
4 and that is a pleading requirement under the Baze-
5 Glossip standard.

6 Now, in response, Ms. Pike had quite a bit to
7 say about Supreme Court for Rule 12, so I will
8 begin with that. Now, her arguments against Rule
9 12's constitutionality were raised for the very
10 first time in response to this motion. She has not
11 pleaded any claim for relief from Rule 12, and as
12 such, these arguments are not properly before the
13 Court.

14 THE COURT: But didn't she plead the
15 constitutionality of the execution altogether, and
16 isn't the Court to have a liberal construction of
17 complaints pursuant to Rule 8, which is in a notice
18 pleading?

19 MR. AYERS: Not in this context, Your Honor.
20 Because under Rule 12 and really any Supreme Court
21 rule, only the Supreme Court has authority to
22 modify its rules. That's governed by long-standing
23 precedence, which is the Long case cited in our
24 briefing. Interestingly, none of this precedent,
25 which is adverse and controlling, was cited in

1 Ms. Pike's response. So this Court lacks
2 jurisdiction to modify or invalidate any Supreme
3 Court rule. If Ms. Pike wanted to do that, she had
4 to file this action in the Supreme Court under Rule
5 12. She's not done that. She could still do that,
6 but she has chosen not to today. And under Rule 12
7 it deals with commencing an action by motion.
8 That's how Rule 12 operates. It is --

9 THE COURT: So does the State -- so let's take
10 a step back. I would like for you to give me a
11 10,000 foot view of modifications to the Supreme
12 Court rules, how those are done, and kind of what
13 the process is. Because when the Court looks at
14 this rule, Black v. Strada came out July 31st, it
15 looks like 2025.

16 This new Supreme Court rule came into effect,
17 I believe it was December timing of 2025; is that
18 correct?

19 MR. AYERS: Yes, Your Honor.

20 THE COURT: Okay. And I've had one case in
21 December, actually, I believe that this rule came
22 into question.

23 But if you could tell me, just from a 10,000
24 foot view, when rules are changed, what is that
25 process? Would you educate the Court, please?

1 MR. AYERS: Your Honor, I'm not familiar with
2 the Supreme Court's internal processes with how it
3 promulgates rules. I am familiar with the case law
4 stating that only it has the authority to
5 promulgate and amend those rules. And so if
6 Ms. Pike wants to challenge the constitutionality
7 of the Rule 12 or any rule, she must do it with the
8 Supreme Court. No trial court, no intermediate
9 appellate court, has that authority according to
10 the precedent that we cited in our motion.

11 THE COURT: And it's your contention that that
12 is for every rule, not just this rule?

13 MR. AYERS: Every Supreme Court rule, Your
14 Honor, yes.

15 THE COURT: Do you know, is there a
16 legislative check on rules implemented by the
17 Supreme Court?

18 MR. AYERS: Not to my knowledge, Your Honor.

19 THE COURT: And what about original
20 jurisdiction? Does the Supreme Court take cases of
21 original jurisdiction?

22 MR. AYERS: Well, under Rule 12, it has for
23 years. Rule 12 has provided for that for years,
24 and the amendment is no exception to that. It
25 hasn't changed that.

1 THE COURT: And what are the original
2 jurisdiction cases that the Supreme Court takes?

3 MR. AYERS: I do not have a full list of
4 those. But for purposes of this case, I can tell
5 you that if someone wants to challenge -- if
6 someone wants to commence collateral litigation
7 challenging the method or timing of an impending
8 execution, that must commence with a motion in the
9 Supreme Court.

10 THE COURT: And is it your argument before the
11 Court that collateral litigation is an original
12 jurisdiction claim? Are those synonymous with one
13 another? I'm just trying to get a very broad
14 understanding of the mechanism.

15 MR. AYERS: Yes, Your Honor. Broadly
16 speaking, when we read Rule 12 together with Black
17 and with its other jurisprudence on method of
18 execution claims, it's quite clear the Supreme
19 Court exercises exclusive control over the method
20 and timing of executions. It reiterated that in
21 Black. The message was reinforced with the
22 amendment of Rule 12. We believe that message has
23 been reinforced with the Court's -- stay of this
24 Court's order, the AP v. Strada case, and its
25 acceptance of the State's Rule 10 application for

1 extraordinary review. The message is, that trial
2 courts lack jurisdiction to issue orders of relief
3 that interfere with the method or timing of
4 executions.

5 THE COURT: But Associated Press v. Frank
6 Strada was different. That case, frankly, is in
7 regards to the press who is frankly not being
8 executed, and whether or not there is a timing or
9 visual issue as to what the press can see. And so
10 when the Court looked at the precedent set forth in
11 July 31, 2025, on Black v. Strada, that case was
12 specifically a condemned inmate challenging the
13 methodology of their execution, unlike the press,
14 that frankly is not on trial, not being executed,
15 and the question was in regards to what can be
16 seen. The Court finds that case to be
17 distinguishable from Rule 12 and Black v. Strada.
18 It is on appeal, so we will see what the Court of
19 Appeals says. We'll see what the higher courts say
20 about this Rule 12 and its application to entities
21 that are not condemned. It'll be interesting to
22 see.

23 But back to your argument, I want to make sure
24 that I'm understanding. It's your contention that
25 the Supreme Court has original jurisdiction in all

1 capital cases, correct?

2 MR. AYERS: No, Your Honor. That's not the
3 State's position.

4 THE COURT: Okay.

5 MR. AYERS: The State's position is just under
6 Rule 12.4(e), that is an instance where the Supreme
7 Court has original jurisdiction over these
8 collateral proceedings that attack a method or
9 timing of execution.

10 THE COURT: So if the Court looks at Rule
11 12.4(a), how does the Court -- 12.4(a) says, "The
12 Court will not delay setting an execution date
13 pending resolution of collateral litigation in
14 State Court unless the prisoner can prove a
15 likelihood of success on the merits in that
16 litigation." Rule 12.4(a) is still in effect.

17 How does the Court, then, square that rule
18 with the newly implemented 12.4(e)?

19 MR. AYERS: Well, Your Honor, that is a
20 question that has arisen and it's going to have to
21 be a question the Supreme Court answers. But it's
22 clear from the plain text of Rule 12.4(e), that
23 this kind of litigation, which is collateral, which
24 is challenging the method and timing of execution,
25 has to begin in the Supreme Court. And Rule

1 12.4(a) really has to do with the setting of an
2 execution date. Ms. Pike already has an execution
3 date set. It's been set since September of 2025.

4 THE COURT: Well, if I look, Rule 4 -- sorry,
5 Rule 12.4(a) contemplates that there will be
6 collateral litigation in State Court. It says by
7 its plain language that the Court will not stop or
8 delay the setting of an execution, so that is one
9 portion. But the new rule of 12.4(e) does not take
10 away the litigation in State Court. So I am just
11 wondering, when you have two rules that are
12 conflicting with one another, is it your argument
13 and your contention to this Court that the Supreme
14 Court, in and of itself, resolves its own rules
15 about its own --

16 MR. AYERS: Well, Your Honor, there is --

17 THE COURT: -- conflicts? Excuse me,
18 conflicts about its rules.

19 MR. AYERS: Well, Your Honor, there is no
20 conflict, because Rule 12.4(a) applies to those
21 inmates whose execution dates have not yet been
22 set. Rule 12.4(e) applies to those whose execution
23 dates have been set. That's a category that
24 Ms. Pike falls into, therefore that's why she has
25 to file a motion in the Supreme Court under Rule

1 12.4(e). So there's no conflict there.

2 But to answer the Court's question, to the
3 extent that there is a question about how these
4 rules interact, then yes, the Supreme Court itself
5 would have to answer that question.

6 THE COURT: Okay. You may continue.

7 MR. AYERS: Thank you, Your Honor. So again,
8 as the Supreme Court has stated, it retains
9 exclusive jurisdiction over its own unconditional
10 execution orders, and Ms. Pike's attempt to
11 litigate the constitutionality of Rule 12 is out of
12 place in this court. She's wasting her time. But
13 the State has another argument against jurisdiction
14 to grant injunctive duty, and that is under Black
15 v. Strada where the Supreme Court stated that,
16 again, only it has jurisdiction and authority to
17 modify the timing and method of executions.

18 This lawsuit, however, ignores all of these
19 clear signals from the Supreme Court. Ms. Pike
20 directly asked this Court to grant injunctive
21 relief and would place conditions on her execution.
22 She's asking for three things specifically. Number
23 1, she wants the Court to issue a permanent
24 injunction against the use of a new lethal
25 injunction protocol against her. Number 2, she

1 wants this Court to rewrite the State's execution
2 protocols to eliminate the 14-day watch period
3 under the lethal injection protocol and to add a
4 provision that requires the State to attempt
5 resuscitation. Number 3, she wants this Court to
6 force the attorney general to enter a litigation
7 agreement similar to the plaintiffs and to federal
8 court cases called King and Middlebrooks. Or in
9 the alternative, she asks this court to enjoin the
10 State from executing her until that litigation,
11 both of those cases are resolved.

12 But each one of these requests would place
13 conditions on an unconditional order of the Supreme
14 Court, which this Court lacks jurisdiction to do.
15 In that way, Ms. Pike is doing the same thing as
16 Mr. Black did last summer. The Supreme Court
17 clearly stated the trial courts lack jurisdiction
18 to grant that kind of relief.

19 As for that first request, what's plain on the
20 face, she's directly asking this Court to stay her
21 execution, which you cannot do. As for the second
22 request, that's going to affect the method and
23 timing of her execution, because she asked the
24 Court to rewrite the protocol. She's asking the
25 Court to force the Tennessee Department of

1 Correction to change its procedures, to add staff,
2 specifically a physician who could be on hand for
3 this resuscitation attempt. I believe she asked
4 for an ambulance and all kinds of other procedures
5 and personnel attendant to this resuscitation
6 provision that, again, would place conditions on
7 her execution. And then as for the third request,
8 there's no jurisdiction to force the attorney
9 general to enter this kind of litigation agreement
10 because he's shielded by sovereign immunity. And
11 I'll speak about that in more detail when I get to
12 Count IV. And so all of these requests for
13 injunctive relief were foreclosed by Black v.
14 Strada. The Court should deny these requests.

15 Now, even if the Court disagrees, Pike fails
16 to state a claim for relief for any of the counts.
17 And so I'll begin with Count I. This is an as-
18 applied constitutional challenge to the method of
19 Pike's execution, which is lethal injection with
20 pentobarbital. And she bases this challenge on
21 three different medical conditions that she alleges
22 will cause her to suffer cruel and unusual
23 punishment as the protocols apply to her.

24 Now, I'll go through these medical conditions
25 one by one, but before I do, I'm going to review

1 some points that are relevant to the Court's
2 analysis for the governing case law. First of all,
3 the U.S. and Tennessee constitutions allow capital
4 punishment, and they allow capital punishment that
5 causes pain. Under Baze-Glossip, only pain that is
6 objectively intolerable poses a constitutional
7 problem, and every plaintiff who challenges a
8 method of execution, like Ms. Pike, has to show
9 cruel and unusual pain well beyond what's needed to
10 effectuate a death sentence. More than that, the
11 standard is that Ms. Pike has to show that the
12 method of execution presents a risk that is sure or
13 very likely to cause serious illness and needless
14 suffering, and give rise to sufficiently imminent
15 dangers, and that's language directly from West v.
16 Schofield, the Tennessee Supreme Court case. To
17 plead this kind of claim, she can't rely on
18 possibilities, hypotheticals, or speculation. But
19 that's all we have here.

20 Let's look at the first medical condition.
21 Pike alleges that she has small veins, and that
22 because of these small veins, that she may suffer,
23 what she calls, difficulty as the IV team attempts
24 to place an IV. Now, it's the State's contention,
25 she's abandoned this theory because in response to

1 the State's authority and arguments that it cited
2 in its motion, she came back with nothing. No
3 cases, no argument. All she did was point to a
4 declaration, that was attached as Exhibit 7 to her
5 complaint, by a physician, Dr. Zivot. But that
6 declaration said absolutely nothing about her
7 veins.

8 THE COURT: Yeah. But in paragraph 8 of that
9 declaration, Dr. Zivot asserts that he's talking
10 about pulmonary edema, and he says that it's
11 virtual certainty that if Ms. Pike is executed via
12 the same methodology as -- which would be the use
13 of a pentobarbital injection, that she will
14 experience excruciating and cruel pain of pulmonary
15 edema before she finally dies.

16 MR. AYERS: Yes, he does say that. And in the
17 complaint that is linked to the second medical
18 condition, which is Ms. Pike's platelet condition,
19 she does not link her small veins to any risk of
20 pulmonary edema. So to be clear, we're talking
21 about this first small veins theory. She does not
22 link that to this risk of edema. That's tied to
23 her platelet condition, and it's a very long word
24 that I will probably not be able to pronounce. I
25 can try. Thrombocytopenia, I believe, is the

1 condition's name. But that is a separate theory,
2 and I will get to that theory in just a moment.
3 But if I may flesh out the argument on the small
4 veins a bit further --

5 THE COURT: Sure.

6 MR. AYERS: -- again, her response had nothing
7 to say about this theory in response to the
8 arguments advanced by the State. And when we look
9 at the complaint, again, she does not even allege
10 that she will suffer pain because of small veins.
11 She alleges difficulty. There's no allegation that
12 the standard needles that the department would
13 normally use are painful, that those needles would
14 cause or would fail to work for some reason, or
15 that other inmates have also had problems with IV
16 insertion. All she alleges is that she might
17 experience some difficulty as IVs are placed.
18 That's not even close to enough to stating a claim
19 under Baze-Glossip. She produces --

20 THE COURT: So for that one factor, though --
21 but is the Court, should it have jurisdiction and
22 look at this as applied challenge further, is the
23 Court to take each medical issue that a condemned
24 inmate has and vet them under the two-pronged
25 standard, or is it simply, does the Court look at

1 the entire medical condition and what the
2 incarcerated individual is saying, and then apply
3 the two-pronged standard?

4 MR. AYERS: Under Baze-Glossip she has to
5 connect the specific medical condition to an
6 enhanced risk, assure a very likely risk, that she
7 will suffer superadded pain. She cannot just sort
8 of throw out a variety of theories and hope one
9 will stick. She has to show that she is at risk of
10 suffering this severe unconstitutional level of
11 pain because of this specific condition. Now she's
12 chosen to plead three. She's entitled to do that.
13 But the analysis must proceed condition by
14 condition.

15 THE COURT: Okay.

16 MR. AYERS: Now, it's important for the
17 Court's analysis to realize that, under the
18 constitution, even hanging is considered
19 constitutional. And as the case law states,
20 hanging could be very painful. It was a very
21 gruesome way of causing death. People who were
22 hanged would often take quite a long time to die,
23 whether because of strangulation or blunt trauma to
24 the neck. But if even that risk of pain is
25 constitutional, then surely there is no way that a

1 few extra needle sticks, even assuming that they
2 happen, is going to rise to a level of objectively
3 intolerable pain. And so this Court cannot
4 constitutionalize such a trivial risk, such as
5 speculative risk of pain.

6 In addition, the protocol is already written
7 to account for these IV risks that the small veins
8 theory implicates. And again, these are arguments
9 that Ms. Pike did not respond to. The protocol
10 requires every IV team member to be certified to
11 place IV lines in the state of Tennessee. It
12 requires backup IVs to be placed. It requires a
13 saline drip to be started to ensure that the fluid
14 is flowing into the veins properly. It requires a
15 physician to be on hand to place a central line,
16 should the lines in the arms fail or have problems.
17 But Pike hasn't explained why these provisions
18 eliminate these risks. She had nothing to say in
19 her response, and so the Court should find that she
20 has failed to state an as-applied challenge based
21 on her small veins theory.

22 Now the Court asked about her platelet
23 condition. That's the second condition. This is
24 the condition that she ties to pulmonary edema,
25 which is fluid in the lungs, and this is what her

1 physician, Dr. Zivot, is referring to in his
2 declaration. She fails to state a claim based on
3 this theory because it is based entirely on
4 speculation and supposition. Just because
5 autopsies of other inmates may show signs of
6 pulmonary edema postmortem does not translate into
7 a risk that she's going to suffer the same thing.
8 And the case that we've cited in our briefing show
9 why. I'll go through a few examples.

10 For example, the Jackson v. Danberg case,
11 which is a Third Circuit case, that was a method of
12 execution challenge in Delaware. And that Court
13 held that even documented failures by the Delaware
14 Department of Correction to administer the proper
15 amount of lethal injection chemical and to place
16 IVs properly in what was termed a botched
17 execution, that all of those were insufficient to
18 show that the same thing would happen in the
19 future. The Court rejected the plaintiff's
20 attempts to conjure up this risk of pain out of
21 what it called pure supposition. And that's what
22 we have here.

23 Cooley v. Strickland, a Sixth Circuit case we
24 cited in our briefing. The Sixth Circuit stated in
25 that case, speculations or even proof -- even proof

1 of medical negligence in the past or in the future
2 are not sufficient to render a facially
3 constitutionally sound protocol unconstitutional.
4 Workman v. Bredezen, another Sixth Circuit case,
5 said this, "At some level, every execution
6 procedure ever used contains risk that the
7 individual's death will not be entirely pain-free."

8 Now, if Ms. Pike evidenced or even alleged
9 that other inmates had suffered pain from pulmonary
10 edema before they lost consciousness, that would be
11 one thing. She makes no such allegation. And I
12 will stop at that to emphasize the point about what
13 time frame is relevant here in the execution. The
14 Supreme Court case of Bucklew v. Precythe clarifies
15 that the relevant inquiry isn't whether or not pain
16 might be felt all the way up until the moment of
17 death. The relevant inquiry is while the inmate is
18 conscious. Now, it's well- established in case
19 law, Supreme Court case law, Tennessee Supreme
20 Court case law such as West at the Supreme Court
21 level, such as Barr v. Lee, that pentobarbital is a
22 sedative and administered in the doses that it is
23 here, as in the protocol, it causes a loss of
24 consciousness within seconds.

25 Now, Dr. Zivot's declaration attempts to muddy

1 the waters by raising this possibility that there
2 could be pain at some point before death, or there
3 could be pulmonary edema at some point before death.
4 That's not the question. The question is, is
5 Ms. Pike going to suffer objectively intolerable
6 pain before she loses consciousness? All we have
7 for that here is speculation.

8 THE COURT: Mr. Ayers, you know, this case is
9 very interesting. When you look at the protocol,
10 when you look at persons who are able to observe
11 the dying, the timing of all of that, how would one
12 know? You definitely can't ask the condemned
13 inmate. So outside of the doctor, how would one
14 know if, let's say, pulmonary edema, I think that's
15 the issue that we're discussing now, and the
16 cocktail that is currently used, how would one know
17 for sure whether or not there is excruciating pain?

18 And this brings me back, and I hate to mix
19 cases, but the way that executions are currently
20 done, the only persons who observe, by and large,
21 the entire process are those persons who work for
22 the state. And so if the bar is while the inmate
23 is conscious, how does one really know? I would
24 love for you to broach that.

25 MR. AYERS: Yes. That's an excellent

1 question. I want to correct something. It is not
2 true that the only people who see or could see
3 evidence of pain work for the state, and that's
4 because the witnesses see everything. The
5 witnesses see the inmate before the pentobarbital
6 is administered. They see the inmate while the
7 pentobarbital is administered. They see it for a
8 period of time afterwards, after the inmate loses
9 consciousness. It's only at that point that the
10 curtains are lowered and then the physician enters
11 the room to declare death.

12 So all witnesses to an execution would be able
13 to tell if there were some signs of pain before the
14 inmate lost consciousness. There's no allegations
15 of that. Now, I will say that there was attempted
16 to be a manufactured sort of instance of this kind
17 of evidence with Byron Black's execution last
18 summer, where it was pointed out at a press
19 conference afterwards that he cried out in pain.
20 Well, it's in the record in Burns v. Strada,
21 another case in front of Davidson County Chancery
22 Court, that Mr. Black did not make that statement.

23 THE COURT: Well, Mr. Black was dead, wasn't
24 he?

25 MR. AYERS: Well, no. He made that statement

1 before the pentobarbital was ever administered.

2 THE COURT: Okay.

3 MR. AYERS: That's in the record of Burns v.
4 Strada. So there is no evidence or allegation that
5 there is any proof that these inmates suffered
6 objectively intolerable pain before they lost
7 consciousness. Now to go back to the Court's
8 question, how would one know? Well, it's fairly
9 obvious when someone is struggling with pain. If
10 their lungs are filled in with fluid, one could
11 listen for sounds of labored breathing, for sounds
12 of fluid in the lungs.

13 THE COURT: But if the standard is such that
14 you're looking for an excruciating type high level
15 of pain, I have looked at some of the methodology
16 that our United States Supreme Court has said is a
17 no-go, like disembowelment, flaying alive. In
18 these instances, let's take the Black v. Strada
19 case. And when you have conflicting tests of --
20 well, conflicting recounts after the fact, one
21 witness may say, "Well, their breathing was
22 labored," and another says it's not. How -- if the
23 standard is the pain while conscious, how does
24 labored breathing -- do you understand how it
25 becomes very, very subjective? And one person may

1 say, "Hey, this is excruciating," and the other
2 person says, "No, it's not." And so my question
3 really is, how does one really know, other than to
4 look at autopsies to have some type of medical
5 analysis after the fact, because we cannot ask the
6 person?

7 MR. AYERS: Yes, that is correct. And my
8 answer is that we know by observation. It's been
9 well- documented in other states, you know, so-
10 called botched executions and media reports, where
11 the inmate thrashes around or, you know, exhibits
12 severe signs of pain, such that it's not really
13 subject to conflicting accounts. But when we're
14 looking at Tennessee's method, again, we have to
15 remember, what does the Constitution tolerate?
16 It's anything up to and including hanging, which as
17 we know, is a very gruesome and painful way to die.
18 Now, is that what Tennessee's protocol is designed
19 to do? No, it is not.

20 It is designed to effectuate a sentence of
21 death in as humane manner as possible. Courts have
22 recognized this. Bucklew. Barr. You know,
23 Supreme Court cases going back decades. The state
24 is trying, along with other states, to improve
25 these procedures, not to make them more painful.

1 But that's what Pike has to show, is that this
2 procedure is intended to inflict superadded extra
3 pain beyond what will be required simply to end her
4 life.

5 And on that standard, she has not pleaded
6 sufficient facts, not for this condition, for the
7 plaintiff condition, not for any of her conditions.
8 But let's assume the Court accepts this
9 speculation. Let's assume the Court accepts that
10 she will in fact experience edema before she loses
11 consciousness. Even that fails to state a claim,
12 because the case law, for example, the Ohio
13 execution protocol litigation in the Sixth Circuit,
14 this is that Court's language. It said that that
15 kind of pain is -- I'm sorry.

16 I don't have the exact quote so I'm not going
17 to presume to quote from it. But essentially what
18 the Court said in that case is that even that
19 sensation, that drowning sensation that Dr. Zivot
20 describes, that is not sufficient to stay the plan,
21 her method of execution plan, because again, it
22 does not rise to that level of hanging, which is
23 pain the constitution tolerates. And as the
24 Supreme Court stated in Barr, in any event,
25 pentobarbital, it says, "widely conceded to be able

1 to render a person fully insensate and does not
2 carry the risks of pain that some have associated
3 with other lethal injection protocols."

4 Now, I want to make a point about an addendum
5 that Ms. Pike attached to her response to the
6 motion. That is not properly before the Court,
7 because as Counsel just said a moment ago, this
8 motion is decided on the pleadings, the allegations
9 and the pleadings, and those things that are
10 incorporated by reference into the pleadings. And
11 an addendum attached to a response to a motion does
12 not qualify, so the Court should not consider it.
13 But at any rate, even if we look at that addendum,
14 it doesn't actually connect the risk of pulmonary
15 edema to her platelet conditions specifically. And
16 as such, what she's really doing here with this
17 claim is she's trying to challenge pentobarbital
18 execution generally. She can't do that, because
19 West v. Schofield has already upheld the
20 constitutionality of a lethal injection by
21 pentobarbital in Tennessee. And so that puts to
22 rest this theory, this platelet theory of her as
23 applied claim.

24 Lastly, and again, we're still in Count I,
25 Ms. Pike pleads a theory that her mental health

1 conditions will cause her to suffer from unusual
2 punishment if she's executed under the protocol.
3 Now, this theory she said absolutely nothing about
4 in her response, not a word, and so she's abandoned
5 this theory as well. But even if we look at the
6 complaint, the allegations are even weaker than the
7 other two theories. She doesn't connect her mental
8 health conditions to the protocol at all. She
9 connects them to execution generally, but there's
10 nothing alleged to say that she wouldn't have the
11 same level of anxiety and mental suffering if she
12 were executed by any other method.

13 There's nothing about pentobarbital
14 specifically, which is what she's challenging in
15 this lawsuit, that would cause her to suffer any
16 more or less, given these mental health conditions.
17 And so having failed to connect it to her actual
18 condition, she can't state it as an applied claim
19 on this basis. Again, and this is a direct quote
20 from that Ohio execution protocol litigation case.
21 That court said, "the experience of psychological
22 suffering could not by itself make a method of
23 execution unconstitutional."

24 So that's Count I. Count I fails to state a
25 claim for the reasons I've just said, but there's

1 an additional reason that Count I has to fail, and
2 that Count II, which is also a method of execution
3 claim, has to fail. And that's because under the
4 base loss of pleading standard that I mentioned
5 earlier, Ms. Pike has not alleged a feasible and
6 readily implemented method of execution. She must
7 do that for these claims to proceed. Now, she has
8 to plead a method -- again, she has to situate this
9 method within that unconstitutional sort of pain,
10 objectively intolerable pain, and she has to allege
11 facts to allow inference that if this alternative
12 were used, that it would substantially reduce a
13 severe risk of that pain.

14 She can't do that. But even on the face of
15 it, a method of execution is a distinct way of
16 causing death. Tennessee law recognizes two:
17 electrocution and lethal injection. No Tennessee
18 court or the Supreme Court has ever held that a
19 plaintiff can state a claim under base lawsuit by
20 alleging just an equipment swap as an alternative
21 method of execution. At best, she's alleged an
22 alternative secondary detail that is related to her
23 method of execution, but that is not the same thing
24 as a method itself. And to be specific, what she's
25 asking for is a different type of needle, what she

1 calls a butterfly needle. And it's not even
2 entirely clear what that is. I think the Court can
3 safely assume that it's a different kind of needle
4 than what the department currently would use.

5 THE COURT: It's a needle for those with very
6 small veins. It makes the insertion a little bit
7 more palatable, especially if you were afraid of
8 needles, just so that you understand.

9 MR. AYERS: Right. And so this is her
10 proposed alternative for her small veins theory for
11 Count I. Now, there's a lot of pleading problems
12 with this alternative. As I mentioned earlier, she
13 hasn't actually alleged that the standard needle
14 would cause pain. She alleges difficulty. She
15 also hasn't alleged enough about the butterfly
16 needle for the Court to draw the inference that it
17 would substantially reduce the risk of pain. Under
18 the governing standard, that reduction has to be
19 clear and it has to be considerable. She hasn't
20 met that burden here because the complaint is just
21 so vague on this point.

22 Again, in response to the arguments raised in
23 the motion, the response said nothing; nothing at
24 all. It's remarkable. Now, for Count II, her
25 proposed alternative is a little different. Her

1 proposed alternative for Count II is to be executed
2 under the pentobarbital protocol, but with an added
3 resuscitation provision. At least that's the best
4 we read it. Now there's a couple of problems with
5 that as an alternative. Number one, it's not a
6 different method. In addition, the Tennessee
7 Supreme Court has rejected the idea that the
8 department is obligated to attempt resuscitation in
9 West v. Schofield. So based on that, this
10 alternative is not feasible. In fact, if we look
11 at that opinion, it would undermine the very
12 purpose of the execution.

13 In addition, she doesn't allege any facts to
14 show why this would reduce any pain or how it would
15 reduce any pain at all. So this fails to qualify
16 as a feasible and readily implemented alternative.
17 That knocks both Count I and II straight out.
18 Moving to Count III, this is a bit of a change of
19 gears. This is a conditions of confinement claim.
20 As with a couple of these theories I just
21 mentioned, Pike's response didn't cite a single
22 case in support of this theory. She's abandoned
23 this one as well. But even if the Court analyzes
24 the claim, she has failed to state a claim for
25 relief under the First, the Eighth, or the 14th

1 Amendment.

2 Now this claim is somewhat complicated, so
3 I'll try to lay it out as best I can. It's
4 basically a three-step claim. Step one is that
5 under the lethal injection program, there's a 14-
6 day watch period. Under the electrocution protocol,
7 there is a shorter watch period. And so she argues
8 that that 14-day period under the lethal injection
9 protocol is cruel and unusual punishment because
10 she would be isolated during that period. Step two
11 is that because she has a choice between
12 electrocution and lethal injection, forcing her to
13 make that choice will violate her First Amendment
14 free exercise rights. And then building on those
15 steps, step three is that because the department is
16 forcing her to make this choice, that's arbitrary
17 and capricious action which violates the 14th
18 Amendment. She's got three different Amendments at
19 play here, and it's kind of a hybrid claim, but it
20 fails at every step.

21 Start with step one, the watch period. The
22 Eighth Amendment requires the department to provide
23 Pike with the minimal civilized measure of life's
24 necessities, and that's food, clothing, shelter,
25 medical care, recreation, and sanitation. Under

1 Supreme Court precedent, just being separated from
2 the general prison population does not violate the
3 Eighth Amendment. So what she has to do to plead a
4 violation here is to allege facts to show that her
5 specific conditions of segregation are
6 unconstitutional. She hasn't done that.

7 First of all, she's not going to be isolated.
8 She uses that word repeatedly, but she has expanded
9 visitation privileges under the provisions of the
10 protocol. There's no limit on how many visitors
11 can -- she can receive. She also hasn't alleged
12 that she's going to lack any of life's necessities
13 such as food, clothing, medical care, sanitation,
14 any of those things. And her recreation time, as
15 we've argued in our review, comports with what
16 other courts have held be constitutional. So
17 there's just no basis for an Eighth Amendment
18 violation imposed by the protocol here. Again,
19 true to form, the response said absolutely nothing
20 to rebut these arguments.

21 Let's go to the next step; the choice, the
22 dilemma that she claims she's faced with that
23 violates her First Amendment rights. The authority
24 that we've cited shows that having to choose
25 between methods of execution does not violate her

1 First Amendment rights. She responded with nothing.
2 She simply has no authority to back this theory up.
3 In addition, as the protocol provides, she doesn't
4 have to make a choice. She is not forced to do
5 anything. She can decline to make a choice, in
6 which case the lethal injection protocol applies.
7 Now, some might say, well, that's a distinction
8 without a difference, but there is a difference,
9 because her whole claim hinges on the fact that she
10 is forced to make this choice that burdens her
11 First Amendment rights, but under the plain text of
12 the protocol, she doesn't have to make that choice.
13 It's made for her.

14 Now, as for the third step, the Fourteenth
15 Amendment piece, her theory is that because she has
16 to choose between the lesser of these two evils,
17 that's a due process violation. But this theory
18 fails because she doesn't have to choose between
19 constitutional violations. Her First Amendment
20 rights aren't at stake. Her Eighth Amendment
21 rights aren't at stake. There's simply nothing here
22 for this claim. And finally, come to Count IV.
23 This is an equal protection claim, and this is the
24 claim in which she asked this court to command
25 Attorney General Skrmetti to enter a litigation

1 agreement with her, like the ones in King and
2 Middlebrooks.

3 Now this is off the table, because General
4 Skrmetti was the only defendant sued for this claim
5 and sued in his official capacity, so it is a claim
6 against the state for injunctive relief that is
7 barred by sovereign immunity. That is a
8 jurisdictional bar. That argument must be
9 considered before all others, and there is no
10 exception that applies. She's not alleging that
11 General Skrmetti is enforcing an unconstitutional
12 statute against her. There's simply no basis for
13 relief here, once more, and the response has said
14 absolutely nothing in response to these arguments.
15 In addition, under Tennessee Supreme Court
16 precedent, mandatory relief that would require
17 General Skrmetti to do something affirmatively is
18 outside this court's jurisdiction to grant.

19 And it's not hard to see why. This same
20 argument was tried just last year by another
21 inmate. It completely failed. The Middle District
22 and the Sixth Circuit rejected this kind of equal
23 protection claim based on the same request for a
24 King-Middlebrooks style litigation. Because, like
25 Pike, that inmate failed to allege facts that

1 established that he was similarly situated to King
2 or Middlebrooks, or that there was no rational
3 basis to treat him differently. And the very same
4 is true. The state had ample reason not to
5 consider Pike as similarly situated. King and
6 Middlebrooks were involved in federal litigation at
7 a time when Tennessee's lethal injection protocol
8 was under review. Executions had been suspended.
9 He was uncertain what form any new protocol might
10 take, who were going to be the officials
11 implementing it, what kind of litigation might
12 challenge the new protocol, and so forth.

13 Well, those questions are answered now. We
14 are in a different stage of time. Moreover, King
15 and Middlebrooks were in federal court, where that
16 court had the authority to stay an execution. Pike
17 is not in the same position. And those same
18 reasons are why there's a rational basis to treat
19 her differently. And again, her response said
20 nothing whatsoever in response to these arguments,
21 the authority the state relies upon. Absolutely
22 nothing. All it cited was a few general
23 propositions of equal protection law that weren't
24 responsive to the arguments. And so that leaves
25 all claims disposed of. And it's worth noting that

1 neither the U.S. Supreme Court or the Tennessee
2 Supreme Court has ever struck down a method of
3 execution. With all these facts as alleged, this
4 court can't be the first.

5 THE COURT: Would you like time for rebuttal?

6 MR. AYERS: Yes, Your Honor.

7 THE COURT: Okay. Thank you, Mr. Ayers. Okay.
8 And Mr. Ihnen?

9 MR. IHNEN: Good afternoon, Your Honor.

10 THE COURT: Good afternoon. You've heard Mr.
11 Ayers' contentions in regards to Rule 12 and the
12 claims in regards to small vein, and then
13 thrombosis and the as-applied challenges, equal
14 protection challenges that your client has brought
15 forth. Typically, I do allow oral motions to
16 amend, but I am ready to proceed if you are.

17 MR. IHNEN: Your Honor, if Your Honor is okay
18 with it, I will be arguing the 12.4(e) issue and
19 Mr. Ferrell will be arguing the standard under
20 12.02 if you're okay with that.

21 THE COURT: Okay. I am ready for that
22 argument.

23 MR. IHNEN: I'd like to first return to a
24 question you asked the State, and the question was:
25 Is there any legislative check on the Tennessee

1 Supreme Court rules? And my friend couldn't
2 answer, but there actually is. It's found at
3 Tennessee code Annotated 16-3-404.

4 THE COURT: I'm sorry. 16-3-404?

5 MR. IHNEN: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. IHNEN: And that statute says, "The
8 Supreme Court shall fix the effective date of all
9 of its rules provided that the rules shall not take
10 effect until they have been reported to the General
11 Assembly by the Chief Justice at or at the
12 beginning of the regular session," et cetera, et
13 cetera.

14 The State, in their Motion to Dismiss, has not
15 provided any information that the rule was
16 compliant with this statute. Even the exhibit that
17 they attached where it lists the rule, the
18 amendments on the bottom of that exhibit do not
19 list that that has been reported. So to answer the
20 question, there is a legislative check on the rules
21 and the Tennessee Supreme Court has not complied in
22 this matter.

23 There are other reasons why we believe Rule
24 12.4(e) may not apply to this matter. There are
25 two clauses in the rule that says the litigation

1 must be collateral. The rule does not define what
2 collateral is. And I think Your Honor was getting
3 at some of the confusion over this. When there's
4 no public notice, when there's no comment, and
5 there's no input or feedback from anyone, it leads
6 to confusing questions like this.

7 But we can look to the United States Supreme
8 Court precedent of what constitutes a collateral
9 litigation. In Hill v. McDonough, and that's 547
10 U.S. 573, the Court held that Eighth Amendment
11 challenges to methods of executions are brought
12 under Section 1983. In Heck v. Humphrey, which is
13 cited in our response at 512 U.S. 477, the Supreme
14 Court held that Section 1983 could not be used to
15 collaterally attack a prior conviction or sentence.

16 The Court went on to hold that these claims
17 must be brought in post-conviction or habeas. And
18 just last month, in Olivier v. City of Brandon, the
19 Supreme Court held that suits brought under Section
20 1983 seeking prospective relief do not collaterally
21 attack a prior conviction over a judgment. And,
22 Your Honor, that cite is 2026 U.S. Lexus 1272.
23 That was at page 16.

24 So Rule 12.4(e) does not define what is
25 collateral litigation, but under Supreme Court

1 precedent, methods of execution challenges clearly
2 are not. But that's not the end of the confusion.
3 In Carruthers v. Tennessee, Death Row Inmate Tony
4 Carruthers, who has a May 21st execution date,
5 filed a 12.4(e) motion with the Tennessee Supreme
6 Court seeking to vindicate a claim under Brady v.
7 Maryland and for a new trial.

8 This is textbook collateral litigation, but
9 the Tennessee Supreme Court denied that motion. If
10 Carruthers' motion under 12.4(e) is not collateral,
11 and the Tennessee and the U.S. Supreme Court says
12 that methods of execution litigation is not
13 collateral, then how can 12.4(e) apply to bar
14 Pike's claims here?

15 The second clause of 12.4(e) states that "the
16 collateral litigation must potentially affect the
17 method or timing of execution," but Pike's suit
18 does neither. As the State just admitted, they
19 concede that that Pike is requesting a mere
20 equipment change by the use of a butterfly needle,
21 given her specific medical conditions.

22 THE COURT: But then how do I look at the
23 request that Ms. Pike is making juxtaposed to Black
24 v. Strada? In Black v. Strada, my colleague, the
25 ruling chancellor, asked for -- you know, if the

1 pacemaker could be, I believe, deactivated prior
2 to, and the Court took that to be, I suppose, an
3 overreach of his authority, because to do that
4 prior to execution may perhaps have affected time,
5 place, and manner.

6 So if I look at that Supreme Court precedence
7 and I look at this case, is it your contention that
8 the change of a needle and/or these other things
9 that Ms. Pike has requested won't, honestly, have
10 the same fate as Black v. Strada?

11 MR. IHNEN: Well, I think you hit on the point
12 there, Your Honor. You said it would change the
13 time, place, and manner of Mr. Black's execution.
14 The State is referring to this as an equipment
15 switch. So switching out the needles, the State
16 can still execute Christa Pike on September 30th by
17 lethal injection. That is not changing the manner
18 or timing of her execution.

19 And the same goes for the implementation of a
20 resuscitation protocol. These protocols are
21 regularly used in other states, and as we alleged
22 in our complaint, Ms. Pike has a constitutional
23 right to receive lifesaving measures. The only way
24 that --

25 THE COURT: But -- so, Mr. Ihnen, how does the

1 Court -- when a person is condemned and the
2 sentence is death, how does resuscitation fit
3 squarely within the sentence of death?

4 MR. IHNEN: Well --

5 THE COURT: If one is resuscitated, is the
6 sentence carried out?

7 MR. IHNEN: The United States Supreme Court
8 case Estelle v. Gamble said that prisoners have an
9 ongoing right to seek medical treatment and that
10 right extends beyond -- through a botched
11 execution. As we saw with Mr. Black, his heart
12 rate clearly showed activity after he was
13 pronounced dead by the State.

14 And so -- but even setting that aside,
15 implementing a resuscitation protocol does not
16 affect the timing of Ms. Pike's execution. The
17 State can still execute her on September 30th by
18 lethal injection. The only way that it would
19 affect the timing is if there is a botched
20 execution, which the State assures will not happen.

21 But I think the other issue that this Court
22 needs to consider is, if Rule 12.4(e) applies to
23 strip this Court of subject matter jurisdiction
24 over Ms. Pike's complaint, it strips this Court of
25 jurisdiction over all matters related to this case,

1 which means the Court cannot consider or grant the
2 Motion to Dismiss, and there's actually a Tennessee
3 precedent to support that. In Haynes --

4 THE COURT: Let's go back. Before you get
5 into this Court not having jurisdiction, frankly,
6 over anything, would you track with me on the plain
7 language of Rule 12.4(e)? The added language, "If
8 the Court grants the motion for a special master,
9 the Court may appoint a special master consistent
10 with the procedures of Rule 53," and then it talks
11 about objections and things of that nature.

12 The "if" and the "may," typically, when we
13 think about the Supreme Court, they do not take
14 every case that comes before them. So if this rule
15 is the only methodology for these types of cases,
16 is there any protection for a petitioner if the
17 Supreme Court declines to hear the case? What
18 happens then? I'd love to hear from you on that.

19 MR. IHNEN: I think that's one of the issues
20 we have with the rule, Your Honor. So the Hill v.
21 McDonough case that I cited earlier, the United
22 States Supreme Court said that prisoners have a
23 constitutional right to challenge methods of
24 execution under the Eighth Amendment. We cited in
25 our response a number of Tennessee constitutional

1 provisions regarding open courts. That's at
2 Tennessee Constitution Article 1, Section 17.

3 There's also the Tennessee Code Annotated
4 Section 16-3-403 says that "a rule of the Tennessee
5 Supreme Court shall not abridge, enlarge, or modify
6 any substantive right." That's exactly what this
7 rule does. And again, because there was no notice
8 to the public, there was no comment, and there was
9 no feedback from stakeholders, including
10 practitioners like those sitting at these desks
11 that do this type of work every single day, there's
12 no clear path on what this language actually means.

13 Back to my previous point, so if Rule 12.4 --
14 we argue that 12.4(e) does not apply for those
15 reasons just argued. However, if it does, it
16 effectively strips this Court of subject matter
17 jurisdiction. In Haynes v. Rutherford County, the
18 cite on that is 359 S.W. 585, the Tennessee Court
19 of Appeals held that "a court that lacks
20 jurisdiction over a case also lacks jurisdiction to
21 dismiss the case," and that was at page 589.

22 The Court went on to hold that, because that
23 was the case, the Court was then required to
24 transfer the case under the transfer statute. And
25 the transfer statute is at TCA Section 16-1-116,

1 and that provides "when an original civil action is
2 filed in a state or county court of record or a
3 general sessions court and such court determines
4 that it lacks jurisdiction, the Court shall, in the
5 interest of justice, transfer the action or appeal
6 to any such court in which the action or appeal
7 could have proceeded."

8 Haynes says that the date of the transfer
9 relates back to the date of the filing, and so
10 there's no issues of statute of limitations here.
11 Given the confusion over 12.4(e), Ms. Pike's
12 prudent path was to file on this Court to preserve
13 her statute of limitations, knowing that the matter
14 could have been transferred later.

15 And in the case Barger v. -- the State argues
16 that this Court has no power to declare a rule of
17 the Tennessee Supreme Court constitutional. And
18 the landmark case that held that is Barger v.
19 Brock. The cite on that is 535 S.W. 2d 337. Even
20 though the Court held that "inferior courts of the
21 state may not entertain any suit or action
22 challenging the validity of the rule of this
23 court," it specifically ordered the Chancery Court
24 in that case to transfer the matter to the
25 Tennessee Supreme Court and treat the pleadings as

1 a motion to vacate or modify under Rule 42.

2 So it's Ms. Pike's position and it's our
3 position that Rule 12.4(e) does not apply to this
4 matter because it was not reported to the
5 legislature in accordance to the Tennessee Supreme
6 Court's statutory mandate. This is not collateral
7 litigation as contemplated by the United States
8 Supreme Court. It does not affect the method or
9 timing for execution for the reasons I've cited,
10 but even if 12.4(e) applies to this case, this
11 Court -- and stripping this Court of its subject
12 matter jurisdiction over the complaint, it also
13 strips this Court over subject matter jurisdiction
14 of the defendant's Motion to Dismiss and the entire
15 matter must be transferred.

16 And Mr. Ferrell will address the merits of the
17 12.02 motions, Your Honor.

18 THE COURT: So going back to Barger v. Brock,
19 wasn't the Supreme Court actually sued in that
20 case?

21 MR. IHEN: Yes, Your Honor. That was a case
22 where a group of lawyers actually sued the
23 Tennessee Supreme Court over a rule that was
24 intended to consolidate the Tennessee Bar. So the
25 actual nature of that suit was a specific lawsuit

1 challenging the Tennessee Supreme Court. This is
2 obviously a different -- entirely different animal.

3 But I think the fundamental issue -- the
4 fundamental takeaway from that case is: Even if
5 this Court lacks jurisdiction to declare a rule of
6 the Tennessee Supreme Court unconstitutional, there
7 is precedent in the transfer statute and in this
8 case holding that, that the matter can be
9 transferred to the Court with proper jurisdiction.

10 THE COURT: Okay. So I've read these cases in
11 regards to the Supreme Court and its rules, and
12 typically, those cases are in regards to bar
13 associations, court rules, things of that nature.
14 Can you point me to a case, other than this one,
15 because frankly, this is a brand-new case, this is
16 a brand-new rule, in regards to a challenge to a
17 Supreme Court rule that does not involve lawyers
18 and/or the bar? Do you know of any?

19 MR. IHNEN: I don't know of any, Your Honor.
20 There is a -- and this might highlight the issue
21 you're getting to here. In the recent Tennessee
22 Supreme Court case, this is *Bornhne Ex Rel. Hyter*
23 *v. Chattanooga- Hamilton County Hospital*, and the
24 cite on that is 671 S.W. 3d 476. Justice Campbell
25 actually --

1 THE COURT: You said 476, correct?

2 MR. IHNEN: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. IHNEN: Justice Campbell actually authors
5 a concurrence in that case where she says that a
6 change of substantive law, not just a procedural
7 rule, should go through the normal public notice
8 and comment period. And I'll just quote from the
9 case, and this is at page 502.

10 This is from Justice Campbell's concurrence.
11 "Although this court has the inherent power to
12 promulgate rules governing the practice and
13 procedure of the courts of the state," citation
14 omitted, "we previously have expressed a preference
15 for adopting rule changes to the normal rulemaking
16 process rather than by judicial fiat in the limited
17 context of a single case.

18 "The normal rulemaking process is superior
19 because it provides for a broader discussion and
20 examination of the policies at issue and allows for
21 input from the advisory commission and members of
22 the bench, bar, and general public." That's the
23 closest thing I could find to the comparison Your
24 Honor is trying to make.

25 THE COURT: And that's 671 S.W. 3d 476,

1 correct?

2 MR. IHNEN: Yes, Your Honor.

3 THE COURT: Okay. You spent a copious amount
4 of time in your response going through recent rule
5 changes and the normal practice that the Supreme
6 Court takes when it implements those rule changes.
7 I think one rule change just occurred. I'd love to
8 hear your argument, if any, as to why this rule --
9 is it that the Supreme Court has to do notice and
10 public comment or is that discretionary to the
11 Court? I'd love to hear your thoughts on that, if
12 you have any.

13 MR. IHNEN: I believe that it's within the
14 Court's discretion to do that, but I think what you
15 see in those rules that we cited is that, anytime
16 the Tennessee Supreme Court wants to change a
17 substantive rule that changes the way people
18 practice in Tennessee, that changes the way that
19 Tennessee citizens can access the courts, that goes
20 through a notice and comment period for, I think,
21 the same reasons that Justice Campbell authored in
22 her concurrence.

23 And returning to the Barger case real quick,
24 the Court says, "After holding that inferior courts
25 of the state may not entertain any suit or action

1 challenging the ability of any rule of this court,"
2 the Court then goes on to say, "This is not to say,
3 however, that there can be no relief from a rule of
4 this court deemed to be arbitrary, illegal, or
5 improvident. We solicit advice, suggestions from
6 the bench and bar for their improvement.

7 "When any individual deems any rule of the
8 Court to be objectionable from any standpoint, it
9 is his privilege to petition the Court for its
10 elimination and modification. Indeed, it is the
11 duty of solicitors at the bar of this court to make
12 suggestions and recommendations on the orderly
13 administration of the appellate judicial process."
14 That obviously has not occurred here in the raising
15 the questions and issues that we brought before the
16 Court today.

17 THE COURT: And is it your contention that, in
18 those types of cases, the Supreme Court has
19 original jurisdiction over those, correct?

20 MR. IHNEN: Yes, Your Honor. I actually meant
21 to return to that. You asked that question to the
22 State. So the Constitution, Article 6, Section 2,
23 says that "jurisdiction of the Tennessee Supreme
24 Court shall be appellate only." And there's
25 actually a number of cases we cited in our response

1 where, when the Court tried to take original
2 jurisdiction over certain cases, it was then held
3 unconstitutional.

4 THE COURT: Who held it unconstitutional?

5 MR. IHNEN: The Tennessee Supreme Court later
6 held it unconstitutional.

7 THE COURT: Held itself?

8 MR. IHNEN: Yes. We cited those cases in our
9 brief.

10 THE COURT: Okay. Let me see if I have any
11 additional questions on that. Did you answer my
12 question when we're looking at the "ifs" and the
13 "may" and just how our Tennessee Supreme Court
14 works? So in practice, if the Court declines to
15 hear this matter for whatever reason, it's within
16 the Court's discretion to take up the case or not,
17 cases such as these, what happens? Do you go to
18 Federal Court or where is relief? Where can a
19 petitioner or potential plaintiff get relief?

20 MR. IHNEN: So I will say, Your Honor, the
21 only motion I've ever had granted in the Tennessee
22 Supreme Court was at my admission to the bar and
23 the state. And so it's purely discretionary. I
24 think the rule contemplates that the Court could
25 deny a motion under 12.4(e), thus expunging a

1 constitutional right to challenge the method of
2 execution.

3 I think it depends on, you know, the statute
4 of limitations in that case. I think for Ms. Pike,
5 if the motion were to be denied, even if she were
6 to refile in Federal Court, the AG would argue that
7 she had exceeded the statute of limitations. And
8 so I think, you know, you get one shot at these
9 things and there are, you know, repeated barriers.
10 I think my friend on the other side listed many of
11 the barriers that the United States Supreme Court
12 has put in front of them.

13 The Tennessee Supreme Court has put another
14 one in front of petitioners in this state, and it's
15 a way to, I think, quelch and expunge this
16 constitutional right to challenge methods of
17 execution.

18 THE COURT: What's the statute of limitations
19 on these cases as far as filing? I know her case,
20 I believe, was filed in November of 2025; is that
21 correct?

22 MR. IHNEN: So this case was actually filed in
23 January.

24 THE COURT: Sorry. January 8, 2025.

25 MR. IHNEN: And we calculated that statute of

1 limitations one year from the date that the
2 Tennessee lethal injection protocol was released to
3 the public, because that would've been the first
4 time that Ms. Pike would have had knowledge of the
5 claims that she could raise. And so in Section
6 1983 actions, you look to the statute of
7 limitations of the state, it's one year in
8 Tennessee.

9 THE COURT: So one year from the order setting
10 execution or one year from -- I'm sorry. You're
11 basing your statute of limitations on the lethal
12 injection --

13 MR. IHNEN: We based our statute of
14 limitations on the date of the discovery of the
15 method -- or the new method of execution. I think
16 that there is -- the Cooley case, for example, that
17 Opposing Counsel cited, there's actually a lot of
18 confusion over when the statute of limitations
19 start. Courts have held they're different for
20 facial challenges, so a general challenge to lethal
21 injection, for example, some courts have held that
22 you had to bring those the first time Tennessee
23 came out with lethal injection.

24 The as-applied challenge, which is the only
25 challenge that Ms. Pike has raised, it's generally

1 one year from the date of discovery of the
2 potential injury. And then that's a date that
3 we've calculated that's not something that, you
4 know, the State and we have agreed on that this is
5 the one-year date. They have not raised any issues
6 of statute of limitations in their Motion to
7 Dismiss.

8 THE COURT: Of course. I was just, for my
9 knowledge, wondering. Okay. Thank you so much,
10 Mr. Ihnen.

11 MR. IHNEN: Thank you, Your Honor.

12 THE COURT: Okay. Mr. Ferrell?

13 MR. FERRELL: Thank you, Your Honor. And as
14 Mr. Ihnen said, I'll be addressing the issues
15 concerning the numbered counts in our complaint,
16 but before getting into each count, I want to
17 emphasize that this hearing today is on a Motion to
18 Dismiss the Complaint under Rule 12, and that there
19 is a liberal pleading standard that what our duty
20 is is to provide notice of the claim and that a
21 Rule 12.26 challenges the sufficiency of the
22 complaint, and we take issue with the idea that
23 things not mentioned in the response or things not
24 talked about in the response somehow waives
25 allegations made in the complaint. We do not

1 abandon any of the four issues raised and believe
2 that we have sufficiently pled each and every one
3 of them.

4 So as a beginning point, looking at the
5 complaint and the attachments to the complaint are
6 essential to understanding why we have sufficiently
7 pled those claims, and also of note that must be
8 always considered by the Court and by the parties
9 is that allegations we have made in the complaint
10 in order to - - under consideration of Rule 12 for
11 dismissal must be taken as true and provable, and
12 those claims that we have made must be considered
13 as facts that are true before they can be
14 dismissed.

15 And a number of the things that the State has
16 contended that we failed to say, we did say. And
17 those -- we perhaps have not proved them yet
18 because we're at the very beginning of this case,
19 but we have alleged them and we have alleged them
20 sufficiently to state a claim. And I'll go to the
21 actual claim and the actual counts right now.

22 And the first one is that this method of
23 execution proposed by the State is unconstitutional
24 due to the individual characteristics of Ms. Pike.
25 One of the things that they have talked about is

1 the small veins, that we made no allegations of how
2 that could be connected with superadded pain or an
3 unconstitutional execution.

4 In our complaint, we have alleged that the
5 fact of her veins being small leads to a greater
6 risk of vein damage or leakage, leading to a
7 potentially ineffective lethal injection. This is
8 an allegation that must be accepted as true, and
9 the plaintiff has offered, as an alternative, from
10 her own knowledge of her own medical history, that,
11 because she does have small veins that risk being
12 blown out, in other words, the needle going
13 completely through it and that the injection not
14 being effective, that the solution, the alternative
15 way to execute her under this protocol, is to
16 specify that it needs to be a butterfly needle.

17 And when they talk about possible far-fetched
18 scenarios, that's the word that I was looking for,
19 because that's what's in their Motion to Dismiss, I
20 cite to and I cited in our complaint the execution
21 of Clayton Lockett and Joseph Wood, both of which
22 were so- called botched executions, allegedly
23 because the veins were pierced and there was
24 infiltration rather than direct injection.

25 And as Dr. Zivot -- everyone is calling him

1 Dr. Zi-voh, and I understand why you would do that,
2 but his -- we talked with him and it's Dr. Zivot.
3 As he explained in his declaration, one of the
4 biggest problems with legal injection is that it's
5 an execution masquerading as a medical procedure.
6 It is not a medical procedure; it is an execution.
7 And one of the biggest problems is that it's using
8 medical equipment, medical terminology, and medical
9 apparatus to effectuate an execution by unqualified
10 people.

11 In talking -- in their protocol, in talking
12 about who is qualified to be on the team that could
13 be inserting the needle, they go all the way from
14 physicians to former military that have had some
15 training in doing this. I mean, that's a very
16 broad level of qualifications. And what we're
17 talking about here is someone who has a history --
18 a medical history of difficulty with her veins, and
19 in order to make sure that this is not a drawn-out,
20 botched execution, she has proposed that the State
21 adopt a butterfly needle to make sure that this
22 isn't the nightmare she fears it will be.

23 Another allegation made in the complaint that
24 must be accepted as true is that unresponsiveness
25 is not the same thing as unconsciousness. That

1 there are drugs that render the body incapable of
2 responding, even when the person, the mind, is
3 experiencing pain. That allegation has been made
4 and must be accepted as true, even when the State
5 says there wasn't thrashing, there wasn't calling
6 out -- that Byron Black wasn't calling out in pain
7 at the time before -- you know, at the time the
8 chemicals were being injected into him. That's a
9 question of fact, by the way.

10 We have alleged, and must be accepted as true,
11 that the electrocardiogram in Byron Black's case
12 showed that there was heartbeat two minutes after
13 he was declared dead. And this is very important
14 for the allegations, because there are times when
15 infiltration causes a delayed onset of death.
16 There are times when, for whatever reason, Byron
17 Black showed heartbeat two minutes after he was
18 allegedly dead.

19 As to Claim I, one thing about the mental
20 health that I think is very important, Christa Pike
21 was repeatedly raped as a toddler. She was raped
22 again at age 12. She was raped again at age 17.
23 This led to, and the State of Tennessee does not
24 dispute, or at least the prison system doesn't
25 dispute, a mental illness of complex post-traumatic

1 stress disorder. In talking about both Count I and
2 Count II, the protocol provides that she will be
3 isolated for 14 days, despite her severe mental
4 illness. At the end of those 14 days, this victim
5 of repeated sexual violence will be taken from the
6 women's prison to the men's prison. And on the day
7 of her execution, six members of the restraint team
8 will take -- and probably they will be men.

9 Certainly the protocol does not tell us that, but
10 it could very well be men, will take her out, strap
11 her down, and kill her. They won't kill her, but
12 the lethal injection chemical will be inserted into
13 her and will be killed -- and she'll be killed.

14 In talking about the isolation period and the
15 transfer to a men's prison, this is superadded pain
16 that is unnecessary to effectuate an execution,
17 particularly in consideration of this inmate's
18 history of severe mental illness.

19 THE COURT: So you are equating, you know --
20 when the case law talks about superadded pain, the
21 cases seem to suggest physical pain. But it is
22 your argument to this Court, and perhaps the
23 Supreme Court, that as we have evolved as a
24 society, mental anguish is a type of pain, and as
25 applied to her, this type of mental suffering

1 should be considered; is that correct?

2 MR. FERRELL: Yes, that is correct. And many
3 of these things that we're talking about, the small
4 veins, the isolation period, there are things that
5 the State of Tennessee can do to minimize those
6 things. And it's that callous disregard of the
7 inmate in question and the process that they are
8 putting her through that constitutes our claim.

9 THE COURT: So the State contends that on this
10 claim, you haven't offered any alternatives. Is it
11 your contention that we simply are at motion to
12 dismiss stage, you know, your alternatives? If the
13 Court is analyzing this as-applied challenge, you
14 know, they are not ready yet, that you still have
15 time?

16 MR. FERRELL: Well, we have delineated in our
17 response reasons why we don't believe we should
18 have to raise an alternative. In the alternative,
19 we have offered alternatives, such as the butterfly
20 needle, such as reducing the period of isolation
21 for this mentally ill inmate.

22 THE COURT: Have there been any cases, either
23 Tennessee or U.S. Supreme Court, or even broadly,
24 that have construed mental pain as a superadded
25 pain?

1 MR. FERRELL: No, not that I'm aware of, Your
2 Honor.

3 THE COURT: So at this juncture in 2026, we
4 are not considering, as a country, mental illness
5 as a part when we talk about pain?

6 MR. FERRELL: We have not, but there's always
7 got to be the first case. And I think that some of
8 the arguments we have raised, given our experience
9 with executions in this country, as the State
10 points out, there is an evolving body of knowledge
11 and understanding of what is going on here. And we
12 have to have, just as my colleague was talking
13 about -- there could be a situation where, based on
14 the new Rule 12(e), we have no opportunity to
15 present these arguments and this evidence. The
16 courts are set up for these things, even if they
17 ultimately reject them.

18 And of course, like I keep emphasizing, we are
19 at the place on a motion to dismiss. We are not
20 arguing the final merits of this case right now.
21 We are just at the beginning. And again, the idea
22 of a botched execution is not far-fetched. And the
23 fact that Byron Black showed activity after he was
24 executed highlights the need, under Count II, to
25 provide medical assistance if the execution is not

1 successful. Your Honor's questions are very well-
2 placed about, isn't the whole point here to make
3 sure that it's an execution? But sometimes
4 executions go wrong. Joseph Wood in Arizona, his
5 execution lasted more than two hours, I think.
6 Time enough for his attorneys to go to a judge and
7 argue that it be stopped.

8 Byron Black -- under the definition of death,
9 it means that you're not able to resuscitate
10 somebody, that there is irreversible cessation of
11 life. That is what the State of Tennessee has
12 adopted as its definition of death. Byron Black,
13 by showing a heartbeat, was not beyond
14 resuscitation. Now, I don't know exactly what
15 happened with him or what he may have been
16 experiencing. Eventually, obviously, he died. But
17 there was a time when the execution was not
18 effective. He hadn't died yet.

19 And one of the things that our expert talks
20 about as well is that when somebody -- when an
21 execution fails, and this is not so far-fetched
22 that the State of Tennessee hasn't planned for it.
23 The State of Tennessee has, as its backup, "we do
24 it again." As our expert says in his declaration,
25 that's not what doctors do when anesthesia fails.

1 They figure out why it failed. Because doing it
2 again is, sort of, that saying, when we say, what's
3 the definition of insanity? Doing the same thing
4 over again and expecting a different result.

5 So it's not so far-fetched that the State of
6 Tennessee hasn't thought about what they do if it
7 fails. But our allegations are that that backup
8 plan is ineffective, because it doesn't consider
9 what went wrong, and if you don't consider what
10 went wrong, you better have someone ready to take
11 care of the person who may be suffering horribly
12 through their death that's lingering, drawn out,
13 and painful, and that they're conscious of it.

14 THE COURT: But in Tennessee, isn't it
15 contemplated that inherent in every execution, it's
16 going to be painful? The question is, are we
17 crossing over to the Eighth Amendment, where it is
18 cruel and unusual superadded pain? So is the
19 argument that -- I don't think that in Tennessee,
20 that the argument can be that a condemned person
21 can expect no pain.

22 MR. FERRELL: Correct. And I agree with that,
23 Your Honor. But if an execution -- let's think
24 about Mr. Wood, who lingered for a couple of hours,
25 and Mr. Clayton, who lingered for, I want to say,

1 45 minutes, half an hour. Don't quote me on those
2 facts, but I know that those things have happened.
3 Or Mr. Black, who was alive at the end of it. If
4 an execution is unsuccessful, then the State of
5 Tennessee owes a constitutional right of medical
6 care to the person that they were unable to
7 execute.

8 THE COURT: But then, doesn't it cross over
9 into being cruel and unusual if you bring me back
10 to life and then you are going to do it again?

11 MR. FERRELL: You've got a -- and there have
12 been cases where a failed execution has been
13 repeated months or years later.

14 THE COURT: Repeated within -- right.

15 MR. FERRELL: No. Months or years later.
16 Because once again, as Dr. Zivot says in his
17 declaration, you've got to figure out what went
18 wrong. You can't just say, "well, let's just keep
19 doing this, because, you know, they aren't dead
20 yet, so let's just keep subjecting them to it." In
21 a medical setting, and like I said, this is very
22 much a pseudo-medical setting, you figure out what
23 went wrong. But that's true whether it's medicine
24 or any repair or any undertaking that you do. If
25 it didn't work, you've got to figure out why it

1 didn't work before you try it again.

2 THE COURT: Okay.

3 MR. FERRELL: And finally, on the equal
4 protection claim, the Sixth Circuit case cited by
5 the State was not based on sovereign immunity.
6 Sovereign immunity does not protect an attorney
7 general on prospective duties. An exception to
8 that doctrine are prospective duties that haven't
9 happened yet that the plaintiff is wishing to stop.
10 And most importantly, there is no rational basis
11 for differentiating Ms. Pike, Mr. Middlebrooks, and
12 Mr. King. Those plaintiffs were given an
13 opportunity that nobody else gets, of access to the
14 Court to challenge this lethal injection process,
15 and their executions are stayed while other inmates
16 basically become the guinea pigs, and so that Byron
17 Black gets to call out that he's in pain and may be
18 alive at the end of it. That is not a rational
19 basis for differentiating between these potential
20 plaintiffs.

21 THE COURT: Okay.

22 MR. FERRELL: All right. Thank you very much,
23 Your Honor.

24 THE COURT: Thank you. Anything else from the
25 petitioner?

1 MR. IHNEN: No, Your Honor.

2 THE COURT: Okay. All right. Mr. Ayers, do
3 you have rebuttal?

4 MR. AYERS: Yes, Your Honor. Just a few
5 things.

6 THE COURT: Okay.

7 MR. AYERS: To go back to the Rule 12
8 question, broadly speaking, let's assume they're
9 right about all the points they raised about why
10 Rule 12 was vague and unconstitutional for all of
11 it. The place to raise that is either in the
12 Supreme Court, or as they indicated, maybe with the
13 Supreme Court as a party. But they're wasting their
14 time in this Court, because only the Supreme Court
15 is going to be able to pass on the
16 constitutionality of its own rules.

17 THE COURT: What about their arguments that if
18 this Court finds that it does not have subject
19 matter jurisdiction, it would also thus lack the
20 ability to dismiss this case and this case should
21 be transferred? What do you say about that?

22 MR. AYERS: Right. That can't be taken
23 seriously, Your Honor. Courts dismiss for lack of
24 jurisdiction every single day, and Rule 12 does not
25 contemplate transfer. We can speculate about why

1 the Supreme Court has set up Rule 12.4 the way it
2 has. I believe one highly likely explanation, in
3 light of Black, is that the Supreme Court wants
4 trial courts to take its execution order seriously
5 and to not interfere with those orders with the
6 kinds of injunctive relief that Mr. Black had
7 requested.

8 So again -- and this also leads to something I
9 think that maybe we can offer some course
10 correction on. The Court had several questions
11 about whether this implicated original jurisdiction
12 in the Supreme Court. I actually don't believe it
13 does, because these execution orders are pertaining
14 to the underlying conviction and sentence, so as
15 such, there's already a proceeding that these
16 collateral proceedings would relate to. So
17 properly speaking, Rule 12 is not a matter of
18 original jurisdiction.

19 Now, it does talk about commencing an action,
20 but that's a collateral action pertaining to an
21 execution order, which itself pertains to a
22 conviction and a sentence of death. So I don't
23 think it's quite accurate to think of this in terms
24 of original jurisdiction or not.

25 THE COURT: So it's your contention when Mr.

1 Ihnen goes through the Supreme Court -- or sorry,
2 the U.S. Supreme Court cases defining collateral
3 litigation, it's your assumption that this is
4 collateral litigation, and thus squarely before the
5 Tennessee Supreme Court?

6 MR. AYERS: Yes. So we don't need to play
7 games with the meeting with collateral. I think we
8 can go with a plain meeting, which is basically a
9 secondary matter. We don't need to look to outside
10 sources to define that. And at any rate, the final
11 authority on what counts as collateral in the
12 context of Rule 12 is not the U.S. Supreme Court,
13 it's the Tennessee Supreme Court. Again, if
14 Christa Pike was serious about getting answers to
15 these questions, she would have filed a motion
16 there. She can still do that. But she's wasting
17 time in this court arguing about these sort of
18 questions when it's only the Supreme Court that can
19 answer them.

20 Now, I'll also add that the cases that she
21 cited as to the meeting of collateral were in
22 completely different contexts. As to their
23 argument that their proposed butterfly needle
24 accommodation does change -- or doesn't change the
25 method of her execution, it does just as much as

1 Byron Black's proposed ICD deactivation changed the
2 method of his execution and the timing of his
3 execution. That's what the Supreme Court found. I
4 believe the Supreme Court will find the same thing
5 if this Court were to order the department to use a
6 different needle, because that would be placing a
7 condition on an unconditional order. Again, it's
8 remarkable that their response did not even cite
9 Black.

10 Another point with regard to these alternative
11 methods, this is not a particularly hard thing to
12 do. Method of execution -- plaintiffs do this all
13 the time. They often select firing squad or
14 nitrogen hypoxia or other discrete methods of
15 causing death that are used in other states. And
16 as they pointed out correctly, just because
17 Tennessee hasn't codified it, doesn't mean it can't
18 qualify as an alternative method. And if Ms. Pike
19 were serious about these claims, if the issue here
20 is small veins and/or a platelet condition causing
21 problems with her execution, why not allege an
22 alternative that takes these out of the equation,
23 such as firing squad? We have no issues with veins
24 there, or platelet conditions. But that's not how
25 she chose to plead this complaint. The Court

1 should evaluate her based on what she's pleading.

2 She just hasn't satisfied this bar. And while
3 they are correct that Tennessee has a liberal
4 notice pleading standard, we're all aware of that,
5 they still have to play by the rules of the
6 substantive law, by Baze-Glossip, and that is very
7 much a pleading standard. You don't plead an
8 alternative method that's feasible and readily
9 implemented, your claim doesn't go forward.

10 Now, the Court did ask -- and I'm sorry I'm
11 jumping around here. But the Court did ask for a
12 case -- perhaps another case dealing with Supreme
13 Court rules that did not involve a bar association.
14 I was unable to look this case up just now, but I
15 would direct the Court to Dawson v. State, which is
16 cited in our briefing. That is a criminal case. I
17 cannot guarantee that it didn't involve a bar
18 association, but I'm pretty sure it didn't.

19 THE COURT: Well, I don't know. You lawyers
20 can be a little -- just kidding.

21 MR. AYERS: You're right. So I would direct
22 the Court there. I can't guarantee that, but it
23 came to mind.

24 Also, with respect to the pleading standard,
25 the Court does have to credit factual allegations.

1 It does not have to credit speculation. And so,
2 for an example of this, yes, the Court does have to
3 credit the allegation that Ms. Pike does in fact
4 have small veins. We're not arguing that point.
5 But where this veers into speculation and what the
6 Court does not have to credit is that these veins
7 will necessarily cause problems under the protocol.
8 Now, as to the leakage theory that they mentioned
9 just now, that's already been rejected in West, and
10 we brought that up in our argument. So the Supreme
11 Court has already said that is the very definition
12 of the kind of speculation that will not suffice to
13 move these claims along.

14 Another example of this is the resuscitation
15 provision that they're alleging. So for example,
16 if they allege that Byron Black's heart was
17 stopped, that's a factual allegation. The Court
18 accepts that as true in a motion to dismiss. But
19 it does not also follow that the Court has to
20 accept that this means he was in fact alive, and
21 that this means he could in fact have been
22 resuscitated, and that this means that Christa Pike
23 could be resuscitated. We can see how many layers
24 of speculation and supposition this requires, how
25 many layers they're asking the Court to jump

1 through to get to the result that they want.

2 As to the mental health conditions as a theory
3 for Count I, the specific allegations or the
4 specific connection that my colleague just
5 mentioned up here were not pleaded in the
6 complaint, and they're also not specific to this
7 protocol. It's not clear how, if Ms. Pike is taken
8 by male security guards to the Riverbend facility,
9 why that is connected to this protocol, not any
10 other method of execution. Again, her burden is to
11 plead a connection between her mental health
12 conditions and the pentobarbital protocol that she
13 is challenging. She cannot challenge the death
14 penalty generally, but that's essentially what
15 she's trying to do on this theory. And if I could
16 just confer with my co-counsel here briefly, I may
17 be done.

18 THE COURT: I have a question for you.

19 MR. AYERS: Yes.

20 THE COURT: I think I asked the same question
21 to Mr. Ihnen. When I look at the plain language at
22 12.4(e) and understanding of the Supreme Court's
23 discretionary ability to hear cases and/or not,
24 unlike a trial court that has to hear everything
25 that comes before it, the plain language of

1 12.4(e), it says, "If." There are a lot of ifs and
2 may's. Is there any guarantee that if a motion is
3 filed, as you suggest is required, that it will
4 actually be heard by the Supreme Court?

5 MR. AYERS: No, there's no guarantee. But I
6 fail to see why that matters --

7 THE COURT: Well, why --

8 MR. AYERS: -- to this jurisdiction.

9 THE COURT: So why that matters is if a
10 petitioner -- typically, in any case, the doors of
11 the Court are always open to the public, to
12 incarcerated individuals, to -- well, once they go
13 through their grievance process, you have the right
14 to come to court. So is it the State's position
15 that in this particular area, there is not that
16 right for a petitioner?

17 MR. AYERS: Well, the right is there, Your
18 Honor. They can file the --

19 THE COURT: They can file the petition, but it
20 may not be heard.

21 MR. AYERS: It may not be granted.

22 THE COURT: Which means that's it, they don't
23 get their opportunity in court to argue before
24 anyone as to why this particular methodology of LIC
25 protocol or electric chair protocol as applied to

1 them may be unconstitutional.

2 MR. AYERS: That may be true, Your Honor, but
3 that will depend on the merits of what they filed
4 with the Supreme Court. People have lawsuits
5 dismissed all the time because they don't plead
6 them properly, but that doesn't mean they've been
7 denied access to the courts.

8 THE COURT: But isn't that a bit different?
9 Because when you have a trial court -- I'm just
10 asking questions and would love to understand your
11 position. When you have a trial court, you at least
12 get to file your complaint, have a motion to
13 dismiss, get all the way to trial. The way that
14 12.4(e) is written and the way that the Tennessee
15 Supreme Court hears cases, period, is they do not
16 hear every case that comes to them. So I'll go
17 back to my question. Is it the State's position
18 that a petitioner who may have a grievance as to
19 how a protocol for LIC, electric chair, what have
20 you, as applied to them, breaches the Eighth
21 Amendment, they may not be able to be heard,
22 because there is no "the Court shall hear it,"
23 correct?

24 MR. AYERS: There is no language in the rule
25 to that effect, correct. However, the Supreme

1 Court is going to have to be the one to explain
2 whether or not that is the case. As we all know
3 here, this rule was recently amended. There are a
4 lot of questions surrounding the rule. I cannot
5 offer the Court a definitive answer because I don't
6 sit in the Supreme Court. They're going to have to
7 be the ones to explain whether or not there is an
8 access to courts issue. But again, this is not the
9 Court to do that. As came up earlier, it's also
10 feasible that a federal court could entertain that
11 kind of challenge. Ms. Pike has chosen not to go
12 that route. But again, under the authority we've
13 cited, this Court lacks jurisdiction to pass on the
14 constitutionality of that Supreme Court rule.

15 THE COURT: Okay. Thank you for answering my
16 question. Do you have anything further?

17 MR. AYERS: No, Your Honor. Thank you.

18 THE COURT: Okay. So thank you all so much
19 for your briefing and your argument before the
20 Court. This Court will -- seeing as how this is a
21 new rule and Black v. Strada is a recent case, this
22 amendment came into effect, I believe, in December,
23 the Court will issue its ruling on the papers and I
24 will bring it to the top of my case pile. That
25 way, you all know what you're doing. And I

1 understand that time is of the essence as there's a
2 September 30th deadline for this case. I do
3 appreciate good lawyering. I will say, I had some
4 challenging lawyering today, so when I have good
5 lawyers to come and argue eloquently before the
6 Court, the Court very much appreciates it. So
7 thank you all so much.

8 MR. FERRELL: Thank you, Your Honor.

9 THE COURT: All right. You're welcome. We
10 are adjourned for this case.

11 (Hearing concluded at 1:57 p.m. CT)
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CERTIFICATE OF REPORTER

STATE OF TENNESSEE

I do hereby certify that the hearing in the foregoing transcript was taken on the date, and at the time and place set out on the Title page hereof, by me and that the said matter was recorded digitally by me and then reduced to type written form under my direction, and constitutes a true record of the transcript as taken, all to the best of my skill and ability. I certify that I am not a relative or employee of either counsel, and that I am in no way interested financially, directly or indirectly, in this action.



LYNDSAY KANCHER,

CERTIFIED COURT REPORTER

LICENSE EXPIRATION DATE: 06/30/2026

SUBMITTED ON: 04/28/2026

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