

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Christa Gail Pike,

Movant,

v.

State of Tennessee,

Respondent.

CAPITAL CASE
No. ~~M2026-00667-SC-UNK-CV~~
M2020-01156-SC-DPE-DD

Christa Gail Pike v. Jonathan Skrmetti et al.
Chancery Court for Davidson County
No. 26-0027-III

**Motion and Request to Appoint a Special Master
Pursuant to Tenn. Sup. Ct. R. 12(4)(E)**

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Introduction

The absence of transparency . . . is endemic in the application of the death penalty . . . the black hood that covered the head of the person carrying out the execution has grown to a cement silo that shields nearly all aspects of execution procedures. It is this siloed environment that breeds the errors and flawed practices that hobble lethal injections.

- Hon. David Duncan (ret.), Commissioner
Arizona Independent Death Penalty Review

Tony Carruthers' botched execution shed light on what was already known to counsel for the death-sentenced prisoners in Tennessee: despite their protestations and bald assertions, the Respondents do not know how to carry out an execution that comports with either the United States Constitution or the Tennessee Constitution; they do not have the qualified and trained medical personnel to ensure that prisoners do not experience superadded pain, terror, disgrace, or lingering death; and they refuse to admit it. The Respondents must be made to answer to the members of this Court, and to the citizens of Tennessee from whom they derive their authority. And they must be able to credibly say it will not happen again. They cannot do so.

The current protocol is flawed in many ways. It is deliberately vague and void of detail. The identity and background of the execution team is secret, as is the training required to be a member. They will not tell us where the drugs come from. They will not tell us if the drugs are expired. Secrecy breeds suspicion, erodes public trust, and allows error to creep in. It is past time to confront the harsh reality: the State of

Tennessee is not equipped to constitutionally carry-out executions. They cannot be permitted to do so here.

The Movant, Christa Gail Pike^{1,2} submits this motion pursuant to Tennessee Supreme Court Rule 12(4)(E) following the Court's dismissal without prejudice of *Pike v. Skrmetti, et al.*, Davidson County Chancery,

¹ Three decades ago, Christa Pike, a mentally ill eighteen-year-old girl, participated in the murder of Colleen Slemmer. The gruesome facts are well known and have absolutely no bearing on the relief requested here by Pike. Pike's two accomplices, seventeen-year-old Tadaryl Shipp and nineteen-year-old Shadolla Peterson, were charged with Slemmer's murder but only Pike received the death penalty for her role. In 1996, the execution of those 16 years or older at the time of the offense was permitted under the federal constitution. *Stanford v. Kentucky*, 492 U.S. 361 (1989). But in 2005, the United States Supreme Court ruled that the execution of offenders younger than eighteen violated the Eighth Amendment to the United States Constitution. *See Roper v. Simmons*, 543 U.S. 551 (2005). Since then, scientific advances in adolescent brain development definitively show that individuals between 18 and (*at least*) 21 exhibit a lack of maturity and underdeveloped sense of responsibility and are more susceptible to negative influences. *See, e.g. Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016). This Court should reconsider its denial of Pike's certificate of commutation given this new scientific evidence.

² The Respondent State of Tennessee includes, but is not limited to: Frank Strada, Commissioner of the Tennessee Department of Correction (TDOC). Strada will oversee Pike's execution. Kenneth Nelsen, Warden of Riverbend Maximum Security Institution (RMSI), where the execution of Pike will occur. Jordan Clark, Warden of the Debra K. Johnson Rehabilitation Center in Nashville, Tennessee, where Pike is held in custody under sentence of death and where she will be isolated prior to her execution. Each are state actors acting under color of state law in violation of Pike's constitutional rights.

Case No. 26-0027-III.³ This motion has two parts: **Part I** raises challenges to Tennessee’s current lethal injection protocol both generally and as applied to Pike; **Part II** raises challenges to Tennessee Supreme Court Rule 12(4)(E) and invites this Court to reconsider or amend the rule. In addition to the relief requested herein, Pike requests the appointment of a Special Master pursuant to Rule 12(4)(E) and Tennessee Rule of Civil Procedure 53.

PART I

Background

On December 27, 2024, the TDOC announced a new lethal injection protocol. The current protocol came following a review ordered by Governor Lee after discovering that TDOC had, for years, not complied with its prior protocol. The Report and Findings ordered by Governor Lee acknowledged those errors and identified others, including:

- The State of Tennessee never provided the pharmacy tasked with testing its lethal injection chemicals with a copy of the lethal injection protocol.
- No employee of the TDOC informed the pharmacy tasked with testing the lethal injection chemicals that it should conduct an endotoxin test until the eve of Oscar Smith’s scheduled

³ The statute of limitations does not apply to, or is not contemplated in, or is not clear under a Rule 12(4)(E) motion. In any event, Pike timely filed her Chancery Court lawsuit. To the extent the Respondents raise the statute of limitations as it may apply to this motion, Pike avails herself of the Savings Statute at Tennessee Code Annotated § 28-1-105.

execution.

- The pharmacy that tested Tennessee’s lethal injection chemicals only tested the chemicals for potency and sterility, not endotoxins, because the pharmacy followed United States Pharmacopeia testing guidelines, not Tennessee’s lethal injection protocol.
- The chemicals used in the execution of Billy Ray Irick in August 2018 were not tested for endotoxins, and the Midazolam used during Irick’s execution was not tested for potency.
- The chemicals to be used if Edmund Zagorski opted for lethal injection in November 2018 were not tested for endotoxins and failed potency testing.
- The chemicals used in the May 2019 execution of Donnie Edward Johnson were not tested for endotoxins.
- The chemicals to be used if Stephen West opted for lethal injection in August 2019 were not tested for endotoxins.
- The chemicals to be used if Lee Hall opted for lethal injection in December 2019 were not tested for endotoxins.
- The chemicals to be used if Nicholas Sutton opted for lethal injection in February 2020 were not tested for endotoxins.

The Independent Review concluded that there was an “absence of adequate expertise, guidance, and counsel either enlisted by or provided to TDOC in connection with Tennessee’s lethal injection process. Instead, TDOC operated in a task-oriented, tunnel-vision manner that failed to

appreciate the interwoven nature of the lethal injection process as a whole.”⁴

The current protocol calls for a single drug pentobarbital 100 ml of a 50 mg/ml solution (a total of 5 grams). Pentobarbital is known to cause flash (acute) pulmonary edema causing a drowning sensation akin to waterboarding. The drowning sensation is “one of the most powerful, excruciating feelings known to man.”⁵ Pentobarbital injection is akin to “severe chemical burn to the esophagus if one were to drink bleach. . . made worse by injecting large quantities of pentobarbital.”⁶ “Death from pentobarbital injection is not instantaneous. Pulmonary edema will begin rapidly and be present even with some level of awareness on the part of the prisoner. It is false to claim that brief pain is not material.”⁷

Instead of addressing these serious concerns, TDOC has doubled down, concealing even more detail about the protocol and the drugs being used. The results have been predictable. Byron Black was executed on August 5, 2025. According to media witnesses, Black groaned for “several minutes” and told his spiritual adviser that he was “in pain.” Black’s

⁴ See App’x., Ex. 1, Tennessee Lethal Injection Protocol Investigation Report and Findings at p. 051A.

⁵ See App’x., Ex. 2, DOJ Review of Fed. Execution Protocol, at p. 193A (Jan. 2025).

⁶ See App’x., Ex. 3, Addendum Report of Joel B. Zivot, M.D. at p. 204A ¶ 5.

⁷ *Id.* at p. 205A ¶ 7.

autopsy showed that he developed pulmonary edema.⁸ Black’s heart also “showed sustained cardiac activity nearly two minutes after [he] was pronounced dead.”⁹ According to Dr. Zivot, “pulmonary edema requires a beating heart and could not have occurred simply as a post-mortem finding.”¹⁰

Harold Wayne Nichols was executed on December 11, 2025. According to witnesses at his execution: Nichols “took a very heavy breath and his whole torso rose up. He then took a series of short, huffing breaths that witnesses said sounded like snorting or snoring. Nichols’ face turned red and he groaned. His breathing then appeared to slow, then stop, and his face became purple before he was pronounced dead.”¹¹ Nichols’ autopsy also showed the presence of pulmonary edema: “The cut surfaces of his lungs revealed the presence of extensive pulmonary edema. This could not have been present prior to execution.”¹² And, as

⁸ App’x., Collective, Ex. 4A, Catherine Sweeney, *Autopsy sheds light on Byron Black’s painful execution*, WPLN News (Sept. 11, 2025).

⁹ Ex. 4B, Travis Loller, *Attorneys say electrocardiogram at Tennessee execution was active after inmate was pronounced dead*, Associated Press (Oct. 24, 2025).

¹⁰ Ex. 3 at p. 204A ¶ 3.

¹¹ Ex. 4C, Travis Loller, *Tennessee executes Harold Wayne Nichols by lethal injection for killing college student in 1988*, Associated Press (Dec. 11, 2025).

¹² Ex. 3 at p. 204A ¶ 4.

relevant here, witnesses noted bleeding near Nichols' injection site, indicating that issues securing IV access are not isolated, or flukes.¹³

On May 21, 2026, the State of Tennessee attempted to locate a vein on Tony Carruthers for more than an hour. The Respondents could not establish a backup line as required by the current protocol and attempts to insert a central line failed because the doctor hired by the Respondents was not qualified to do so. According to witnesses, Carruthers winced and groaned as members of the execution team repeatedly stabbed him. "There was a lot of blood."¹⁴

Relevant Facts

Pike suffers from unique, individual physical, medical, and psychological conditions that the current protocol and execution team are not equipped to address, including thrombocytosis, bipolar disorder, Post Traumatic Stress Disorder, hyperlipidemia, and small, compromised veins.¹⁵ Pike's medical conditions pose a specific challenge for the Respondents as they attempt to execute her. None are remedied by the current protocol. The current protocol fails to account for any of Pike's

¹³ Ex. 4C, Travis Loller, *Tennessee executes Harold Wayne Nichols by lethal injection for killing college student in 1988*, Associated Press (Dec. 11, 2025).

¹⁴ Ex. 4D, Travis Loller, *Tennessee fails to execute Tony Carruthers after IV difficulties. State won't try again for a year*, Associated Press (May 21, 2026).

¹⁵ App'x, Ex. 5, Report of Joel B. Zivot, M.D. at p. 218A ¶ 7.

unique physical characteristics that may affect the efficacy or risk of harm caused by the protocol. The protocol also fails to account for any of Pike's unique psychological or mental characteristics that may affect the efficacy or risk of harm caused by the current protocol.

I. Pike's thrombocytosis makes it sure or very likely that she will drown on her own blood during execution.

Pike's thrombocytosis makes it sure or very likely that there is a substantial risk that she will experience unnecessary and superadded pain and suffering, terror, and disgrace. Thrombocytosis is a blood condition "characterized by a marked elevation in platelet levels."¹⁶ This medical condition poses two problems as the Respondents attempt to execute Pike. First, blood clotting is likely to occur at injection sites. This will not only make it more difficult to achieve and maintain peripheral access on Pike, but it could delay or prevent the delivery of pentobarbital into Pike's bloodstream, requiring higher or multiple doses of pentobarbital.

Second, a high platelet count can "lead to dangerous bleeding as the excess circulating platelets consume another critical blood-clotting component known as the von Willebrand Factor."¹⁷ Pike's thrombocytosis is due to a rare form of blood cancer called myeloproliferative disorder.¹⁸

¹⁶ Ex. 5 at p. 219A ¶ 8.

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 9.

Because of this severe medical condition, executing Pike by pentobarbital will “very likely produce an even more severe patter of bloody froth in the lungs. In other words, this is death by drowning in one’s own blood.”¹⁹

II. Pike’s psychological conditions, including her complex PTSD make it sure or very likely that she will be tortured and disgraced, or decompensate prior to her execution.

Pike was raped on multiple occasions by multiple men from the time she was a toddler to age 17. One man, Ernest, raped her repeatedly as a toddler by forcing his penis into her mouth.²⁰ When she was 11, Pike was held to the ground, raped, and vaginally penetrated with sticks by Claude Davis. At 17, she was thrown to the ground and raped by a stranger while walking in Carrboro, North Carolina. She was able to escape her attacker and ran to a friend’s house, who took her to the hospital. A rape kit was collected but the perpetrator was never identified. Medical records from the hospital describe a tearful and upset Pike as she recounted the rape. In addition to her sexual assaults, Pike was serially physically assaulted by her mother, father, a boyfriend of her mother’s, and her maternal grandmother throughout her lifetime. Due to her history of sexual and physical assault, Pike developed complex PTSD. Pike’s PTSD and other severe mental illness make it sure or very likely that she will decompensate “to the point of a loss of agency and be unable

¹⁹ *Id.* at ¶ 10.

²⁰ App’x, Ex. 6, Addendum Report of Bethany Brand, Ph.D. at p. 226A. *See also* Report of Bethany Brand, Ph.D. Ex. 10 p. 324A.

to undergo an execution on that basis.”²¹ She also suffers from bipolar disorder.²² TDOC records confirm both diagnoses.

Pike’s execution, and the events leading up to it, will profoundly trigger Pike’s mental state.²³ Specifically, Pike will be isolated and observed by men for nearly two weeks at the women’s prison; she will be forcibly removed to the men’s prison; then, she will be observed by men during her death watch; she will be forcibly restrained prior to her execution; she will be forcibly stabbed all over her body as the execution team struggles to locate a vein or install a central line; and she will be executed by men. Placing Pike, as the lone female in a vulnerable position surrounded by male corrections officers during the last days of her life will trigger her PTSD and result in a tortuous execution or mental decompensation to the point she will be incompetent to be executed.

The psychological torture Pike will experience in the days leading up to her execution rises to the level of cruel and unusual punishment and violates her rights to humane treatment and to not be treated with unnecessary rigor. *See Grayson v. Comm’r, Ala. Dep’t of Corr.*, 121 F.4th 894, 900 n. 3 (11th Cir. 2024) (there “may exist a form of execution that induced psychological terror or pain that is severe enough to support an Eighth Amendment claim.”).

²¹ Ex. 5 at p. 223A ¶ 20.

²² *Id.*

²³ *Id.*

III. Pike's small and compromised veins make it sure or very likely that she will experience unnecessary and superadded pain and suffering, terror, and disgrace.

Pike has a historical difficulty with blood draws due to her small, compromised veins. Pike's medical condition makes it significantly more difficult to achieve and/or maintain the peripheral IV access needed to ensure proper delivery of the pentobarbital as she is executed. Attempts to place an IV line on Pike will be unsuccessful and will result in her torture as she is repeatedly stabbed.

In fact, qualified and trained medical staff—qualifications not carried by members of the execution team—use a 23-gauge butterfly needle to perform blood draws on Pike. A 23-gauge needle is commonly used on small children and infants because their veins are small and difficult to access.²⁴ The current protocol does not allow deviation or accommodation for Pike's medical condition. Without proper training on the use of a 23-gauge butterfly needle, the execution team will be unable to achieve peripheral IV access on Pike to ensure proper delivery of the pentobarbital.

Attempts to locate suitable veins in Pike's extremities will also have deleterious effects. For one, the farther the extremity from Pike's heart, the less likely the pentobarbital is to render Pike unconscious immediately and the longer it takes the pentobarbital to have its

²⁴ For reference, 21-gauge needles are the most common needles used for routine blood draws. During a recent blood draw, one nurse remarked "I don't know how they are going to be able to do this," when Pike questioned her about her veins.

intended effect. It is likely that Pike will require multiple doses, or that the time for death contemplated in the protocol (5 minutes), will be grossly underestimated and result in a lingering death. *See In re Kimmner*, 136 U.S. 436, 447 (1890). For another, attempts to achieve vein access in Pike's hands or feet will trigger the PTSD from her rapes and cause her to decompensate prior to her execution. *See Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930, 932 (2007). Treating Pike's mental health condition "to make her fit for execution is a gross ethical violation of the practice of medicine and cannot take place."²⁵

Even if the execution team can achieve peripheral IV access on Pike, her small and compromised veins will make it nearly impossible to maintain IV access for the duration of the execution. Additionally, Pike's thrombocytosis is likely to lead to clotting around the IV sites. Pike's veins are also likely to be compromised as the pentobarbital is injected into her body, causing the drugs to leak into Pike's tissue and muscles. Pike will not be rendered unconscious as the drugs pulsate through her body until she suffocates to death or, the Respondents will be required to administer multiple doses. The result will cause excruciating pain, suffering, and prolonged or lingering death that Pike will consciously experience.

Pike's 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 as the Respondents attempt to achieve peripheral IV

²⁵ Ex. 5 at p. 223A ¶ 20.

access on her prior to her execution. The results will be worse than the recent botched execution of Carruthers, who had no prior reported history of difficult blood draws. If the Respondents can achieve peripheral IV access on her, Pike's individual physical characteristics make it sure or very likely that there is improper delivery of pentobarbital including but not limited to compromised veins and leakage. Improper delivery of pentobarbital presents a risk that is sure or very likely to cause serious illness, needless suffering, and/or prolonged or lingering death in violation of the United States and Tennessee constitutions.

Argument

The current protocol as applied to Pike and her unique medical and psychological conditions is unconstitutional under the United States Constitution and the Tennessee Constitution and is sure or very likely to result in unnecessary and superadded pain and suffering, terror, and disgrace. Tennessee's execution protocol further violates the Eighth Amendment because it fails to provide a contingency plan for emergency medical services on-site in the event of a botch. This violation applies to electrocution as well as lethal injection. Finally, the protocol violates Pike's rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, 19, and 32, including her rights to humane treatment and to not be treated with "unnecessary rigor."

I. The requirement to plead an alternative method of execution.

Because a motion under Rule 12(4)(E) is not a “pleading” as contemplated by Tennessee Rule of Civil Procedure 3, and because this Court does not have original jurisdiction over civil actions, Pike is not required to plead an alternative method of execution. *See* Tenn. Const., art. VI, § 2 (jurisdiction of the Tennessee Supreme Court is “appellate only”). Furthermore, Tennessee’s adoption of the execution secrecy provisions in Tennessee Code Annotated § 10-7-504(h) and the Respondent’s unlawful and unconstitutional application of the law impairs Pike’s ability to allege and prove alternate execution methods and procedures.

Pike also asserts that any requirement that she plead an alternative method of execution violates the Eighth Amendment because there was no such requirement when the Eighth Amendment was ratified in 1791 nor when the Fourteenth Amendment was ratified in 1868, and thus no such requirement can, or does, exist now. Additionally, Pike asserts that any alternative method pleading requirement violates the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8 and 17 because imposition of such a requirement in a free nation shocks the conscience and offends principles of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental, where no such requirement existed at common law or at the founding of the Nation.

Furthermore, Pike asserts that the alternative method pleading requirement violates her rights to conscience and/or to the free exercise of religion under the First Amendment of the United States Constitution, Article I, § 19 of the Tennessee Constitution, the Religious Freedom Restoration Act of 1993 (RFRA), the Tennessee Preservation of Religious Freedom Act codified at Tennessee Code Annotated § 4-1-407, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), because she is Buddhist and the requirement that she plead an alternative method violates her sincerely held religious beliefs against participating in any process leading to her own death. The requirement to plead an alternative method of execution does not further a compelling governmental interest and is not the least restrictive means for the government to accomplish its stated interest.

Nor is Pike able or qualified to constitutionally allege an alternative method or manner of execution because she is insufficiently competent to be able to knowingly and willingly instruct the Respondents on how to kill her or, in the alternative, is insufficiently competent to assist her attorneys in identifying an alternative method or manner of execution because she has insufficient medical training and knowledge to be able to identify such an alternative or because her mental health impairments or cognitive deficiencies or intellectual disabilities render her unable to do so.

Nevertheless, in *Glossip v. Gross*, the United States Supreme Court held that to show 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). In *Bucklew v. Precythe*, 587 U.S. 119, 139–40 (2019), the Court held that an alternative does not need to be codified into state law for a prisoner to allege it as an alternative. Pike alleges that the following alternatives are feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain as compared to the current protocol.

A. Alternative 1: Use of 23-gauge butterfly needle or central line.

Because of Pike’s small and compromised veins and documented difficulty with blood draws and needle insertion, trained and qualified medical staff must be employed to achieve peripheral IV access on Pike using a 23-gauge butterfly needle and to monitor Pike to maintain peripheral IV access. The current protocol does not provide for the use of a 23-gauge butterfly needle to achieve and/or maintain peripheral IV access nor the trained and qualified medical staff capable of achieving and/or maintaining peripheral IV access using the same.

Pike’s physical characteristics will make it significantly more difficult to achieve and/or maintain the peripheral IV access needed to ensure proper delivery of the pentobarbital. Use of a 23-gauge butterfly needle, inserted by qualified and trained medical staff, is a feasible and readily implemented alternative that significantly reduces the substantial risk of unnecessary pain and suffering posed by the current protocol.

The Respondents possess or have within their control, or could readily obtain, the medical equipment and trained and qualified medical personnel necessary to achieve and/or maintain peripheral IV access with a 23-gauge butterfly needle because the medical staff currently use a 23-gauge butterfly needle on Pike. Use of a 23-gauge butterfly needle will significantly reduce a substantial risk of unnecessary and severe or superadded pain, terror, and disgrace when compared to the current protocol.

Alternatively, even though pentobarbital causes pulmonary edema and placement of a central line does not mitigate that outcome, placement of a central line for the direct delivery of pentobarbital makes it less likely that Pike's execution will be a prolonged botch as happened in Carruthers' attempted execution. The central line must be placed by a qualified, trained, and certified medical doctor who has placed a central line this decade.

B. Alternative 2: Hanging.

Tennessee historically executed "by hanging." *Shipp v. State*, 172 S.W. 317, 318 (Tenn. 1914). In fact, the last woman killed by the State of Tennessee was a Black woman executed by hanging.²⁶ Tennessee can

²⁶ 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).

execute the first woman in more than 200 years in the same way it hanged enslaved women before the Civil War. Hanging was the predominant method of execution at the Founding and for decades after. *Glossip*, 576 U.S. at 867. Neither this Court nor the United States Supreme Court have ever declared hanging unconstitutional. See *Bucklew*, 587 U.S. at 134 (listing hanging as a “traditionally accepted” method of execution). The United States Supreme Court has observed that the risk of pain involved in hanging is “unfortunate but inevitable.” *Id.* at 131. Hanging significantly reduces a substantial risk of unnecessary and severe or superadded pain, terror, and disgrace when compared to the current protocol.

The degree of risk of pain and suffering to which Pike will be subjected by the current lethal injection protocol is unconstitutionally severe or serious and excessive when compared to the degree of risk of pain and suffering posed by the alleged alternatives. The level of pain and suffering to which Pike will be sure or very likely subjected by the current protocol is particularly unconstitutionally severe or serious and excessive when compared to the level of pain and suffering posed by each of the alleged alternatives. Pike, by alleging these alternatives, alleges only that the alternatives in question are available in all relevant respects and would subject her to substantially less risk of experiencing severe or serious pain and needless suffering than the risk posed by the current lethal injection protocol. The reduction in risk of severe or serious pain and suffering created by each alternative is clear and considerable in comparison to the level of risk of severe pain and suffering created by the current lethal injection protocol. Similarly, the reduction in level of

severity of pain and suffering created by each alternative is clear and considerable in comparison to the level of severity of pain and suffering created by the current lethal injection protocol. The pain and suffering inflicted by the current lethal injection protocol is more than necessary to carry out a death sentence and is therefore “superadded” pain and suffering that the United States Constitution and Tennessee Constitution forbid.

Pike requests the appointment of a Special Master consistent with this Rule to further develop these alternatives.

II. Tennessee’s current protocol is unconstitutional as applied to Pike given her serious medical conditions in violation of the Eighth Amendment to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, and 32.

The current protocol is unconstitutional in the way that it will be applied to Pike because of her serious medical conditions including, but not limited to, thrombocytosis, bipolar disorder, PTSD, hyperlipidemia, and small and compromised veins. Each condition, on its own and together, makes it sure or very likely that Pike will experience unnecessary and superadded pain and suffering, terror, and disgrace.

Pike suffers from thrombocytosis, a blood condition “characterized by a marked elevation in platelet levels.”²⁷ A high platelet count can “lead to dangerous bleeding as the excess circulating platelets consume another critical blood-clotting component known as the von Willebrand

²⁷ Ex. 5 at p. 219A ¶ 8.

Factor.”²⁸ Pike’s thrombocytosis is likely due to a rare form of blood cancer called myeloproliferative disorder.²⁹ Because of this severe medical condition, executing Pike by pentobarbital will “very likely produce an even more severe patter of bloody froth in the lungs. In other words, this is death by drowning in one’s own blood.”³⁰ Pike’s individual medical and physical characteristic of thrombocytosis makes it sure or very likely that there is a substantial risk that she will experience unnecessary and superadded pain and suffering, terror, and disgrace as she is repeatedly stabbed because the execution team cannot achieve peripheral IV access due to clotting or as she consciously drowns on her own blood.

Pike’s complex PTSD and bipolar disorder will be triggered by the current protocol in several ways. First, approximately 48 hours before her execution, Pike will be transferred from the Debra K. Johnson Rehabilitation Center to RMSI, a men’s prison where she will be observed constantly until she is executed. Placing Pike in a vulnerable position where she is isolated and observed constantly by male guards at the women’s prison, removed from the women’s prison and the only place she has lived in for the last thirty years, taken to the men’s prison, and again isolated and observed by male guards will trigger her PTSD and torture

²⁸ *Id.*

²⁹ *Id.* at ¶ 9.

³⁰ *Id.* at ¶ 10.

her in the two weeks before her execution. It is cruel and unusual punishment, and unnecessarily harsh, degrading, and dehumanizing:

She will spend the final days of her life as a stranger in a strange place, surrounded by men, cut off from every source of human familiarity she has. For a woman with [Pike]’s history, this is not administrative procedure. It is added and severe punishment, one nowhere reflected in her sentence.³¹

See Grayson, 121 F.4th at 900 n. 3 (there “may exist a form of execution that induced psychological terror or pain that is severe enough to support an Eighth Amendment claim.”). It is also likely to lead to her mental decompensation and incompetency to withstand execution. *See Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930, 932 (2007).

Second, the current protocol’s twelve-hour blackout period will cut Pike off from contact with family, friends, her spiritual advisor, or anyone else who may provide comfort. In other words, she will be completely alone and psychologically tortured. *See Grayson*, 121 F.4th at 900 n. 3. “For a woman who was abandoned, repeatedly sexually and physically violated, and unprotected throughout her childhood, who spent years in a system that failed to recognize how broken she was when she arrived, the deliberate withdrawal of human connection in her final hours is not neutral. It replicates, with harsh precision, the abandonment she has known her entire life.”³²

³¹ Ex. 6 at p. 229A.

³² *Id.*

Third, on the morning of her execution, a team of male corrections officers will forcibly enter Pike's cell, forcibly remove her, forcibly pin her on a gurney, and forcibly strap her down so she cannot move. She will be completely immobilized and triggered by the physical and sensory experiences that mirror her rapes.³³ "[T]raumatic memory is not recalled, it is *relived*."³⁴ What the State deems a routine procedure will, for Pike, be physical and psychological torture:

[Pike] was repeatedly held down by men and raped throughout her childhood and adolescence. She was unable to move. She was pinned. She was powerless. What the protocol describe as a routine restraint procedure will, for her, be experienced as a precise replication of the worst moments of her life. . . . Being physically restrained by a group of men, immobilized and unable to move, will not simply frighten her. It will return her, in full sensory and neurobiological force, to every violation she ever survived. She will die in the grip of her trauma, as she lived.³⁵

Fourth, the imminent threat of execution and the tortuous two weeks of solitary confinement is likely to cause Pike's mental health to deteriorate to the point of loss of agency and incompetency to withstand execution. *See Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v.*

³³ Even the seemingly innocuous act of placing a sheet over Pike will simulate the helplessness she faced as she was being repeatedly raped and subconsciously remind her that whatever abuses she experiences will be concealed and make her vulnerable once more.

³⁴ Ex. 6 at p. 229A.

³⁵ *Id.*

Quarterman, 551 U.S. 930, 932 (2007). Treating Pike’s mental health condition “to make her fit for execution is a gross ethical violation of the practice of medicine and cannot take place.”³⁶

Finally, Pike’s small, compromised veins make it sure or very likely that her execution will result in unnecessary and superadded pain and suffering, terror, or disgrace as the execution team struggles to find or maintain peripheral IV access. This is not an isolated issue. Finding a vein has been a persistent problem for executioners ever since the adoption of lethal injection as an execution method in 1982. In 2014, Oklahoma prisoner Clayton Lockett was subjected to a torturous hour of executioners trying to find a vein, until they eventually used a vein in his groin area. After that, it took 43 minutes after the injection of chemicals for Lockett to die of a heart attack.³⁷ In 2016, Georgia officials struggled to locate a vein for 45 minutes during the execution of Brandon Jones. In 2022, during Alabama’s gruesome execution of Joe Nathan James, it took executioners approximately 3 hours to set an IV, before attempting a “cut-down” procedure. An autopsy revealed injuries on his hands and wrists. A doctor who attended James’ autopsy said the execution team “was unqualified for the task in a most dramatic way.”³⁸ That same year,

³⁶ Ex. 5 at p. 223A ¶ 20.

³⁷ App’x. Collective, Ex. 7A, Eric Eckholm, *One Execution Botched, Oklahoma Delays the Next*, N.Y. Times (Apr. 29, 2014).

³⁸ Ex. 7B, Elizabeth Bruenig, *Dead to Rights*, The Atlantic (Aug. 14, 2022); Ex. 7C Amy Yurkanin & Joe Nathan, *James ‘Suffered a Long Death’ in Botched Alabama Execution, Magazine Alleges*, AL.com (Aug. 14, 2022).

Arizona prison staff struggled for 25 minutes to insert the IV into Clarence Dixon's arms, eventually resorting to a cut-down procedure in the groin. A media witness observed the staff had to "wipe up a fair amount of blood."³⁹ Arizona prison staff also had to insert a catheter into Murray Hooper's femoral artery (in the groin area) after trying for 20 minutes to locate a vein in both of his arms.⁴⁰ In 2024, after 58 minutes of executioners' failed attempts at IV insertion, Idaho prisoner Thomas Creech was returned to his cell and the execution was called off.⁴¹

Last year, witnesses noted bleeding near Nichols' injection site,⁴² and Carruthers' execution was called off after the execution team could not locate a suitable vein after approximately 1.5 hours. Members of the execution team "quickly established a primary IV line; however, the team was unable to immediately establish a backup line pursuant to the lethal

³⁹ Ex. 7D, Equal Justice Initiative, *Arizona Executes a Blind, Disabled Man Previously Found Legally Insane* (May 11, 2022) (available at <https://eji.org/news/clarence-dixon-execution-arizona/>).

⁴⁰ Ex. 7E, Bob Christy & Jaques Billeaud, *Arizona executes man for 1980 killings of 2 people* (Assoc. Press, Nov. 16, 2022) (available at <https://apnews.com/article/arizona-executions-f999919f50df1158b8dc2f4c03915842>).

⁴¹ Ex. 7F, Death Penalty Information Center, *Botched Executions* (last updated Oct. 26, 2025) (available at <https://deathpenaltyinfo.org/executions/botched-executions>).

⁴² Ex. 4C, Travis Loller, *Tennessee executes Harold Wayne Nichols by lethal injection for killing college student in 1988*, Associated Press (Dec. 11, 2025).

injection protocol. . . [and] could not find another suitable vein.”⁴³ The team also unsuccessfully attempted to insert a central line.⁴⁴ Carruthers, unlike Pike, does not have a reported history of small veins or difficulty with blood draws. Unless stopped, Pike’s execution will result in a prolonged gruesome spectacle.

Pike’s severe medical conditions make it sure or very likely that her execution will result in unnecessary and superadded pain and suffering, terror, and disgrace. The current protocol makes no provision for Pike’s serious medical conditions in violation of the United States Constitution and the Tennessee Constitution.

III. Tennessee’s current protocol is unconstitutional because it does not provide for the provision of medical care, or the resuscitation of a prisoner in the event of a failed execution in violation of the Eighth Amendment to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, and 32.

All prisoners have the constitutional right to comprehensive medical care during their incarceration. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). That constitutional right continues to apply during any attempt to execute a prisoner. “If a prisoner survives an attempt at execution but suffers sub-lethal injuries that, without treatment, will or may lead to death or disability, that prisoner must receive medical care,

⁴³ Ex. 4D, Travis Loller, *Tennessee fails to execute Tony Carruthers after IV difficulties. State won’t try again for a year*, Associated Press (May 21, 2026).

⁴⁴ *Id.*

and the warden is under a duty to provide it.”⁴⁵ “If a prisoner survives an execution attempt, the duty requiring the delivery of necessary health care is revived, if it was ever set aside.”⁴⁶ This also applies to other execution methods, including the electric chair, that may involve a lingering death. *See In re Kimmner*, 136 U.S. 436, 447 (1890).

Accordingly, the United States Constitution and Tennessee Constitution require the Respondents to have in place the capacity to resuscitate a prisoner. A resuscitation team should include a physician “not in the employ of TDOC” with “unrestricted access to the technique of execution to plan all the necessary countermeasures for the best chance at reviving the prisoner.”⁴⁷ Additionally, an “ICU ambulance must be on hand to deliver the full measure of necessary resuscitative measures.”⁴⁸

The current lethal injection protocol does not provide for the provision of medical care or resuscitation in the event of a failed execution, whether it is by electrocution or lethal injection. Rather, the current protocol requires that the steps initiating the execution be repeated. The Respondents have no procedure to evaluate the cause of the failure of the first attempt. Nor does the protocol have a procedure to do so. Rather, in the event the first attempt fails to execute the prisoner,

⁴⁵ Ex. 5 at p. 220A ¶ 12.

⁴⁶ *Id.* at p. 221A ¶ 14.

⁴⁷ *Id.* at p. 221A ¶ 15.

⁴⁸ *Id.* at p. 221A ¶ 16.

the current protocol requires the preceding steps to be repeated. There is precedent for a contingency procedure in the execution protocol in the State of Arizona.⁴⁹

Considering the Respondents botched Carruthers' execution and that Black showed cardiac activity after he was pronounced dead, the implementation of medical care provisions are a necessity. Carruthers' execution could have gone far differently. Attempting to execute Pike without a procedure or mechanism to provide medical care or resuscitation makes it sure or very likely that her execution will result in unnecessary and superadded pain and suffering, terror, and disgrace or lingering death of the kind suffered by Black and Carruthers.

IV. The imposition of a fourteen-day isolation period is arbitrary and capricious and violates the First, Eighth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, 17, 19, and 32.

Requiring Pike to select a method of execution violates her rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, 17, 19, and 32. That violation is twofold here. The selection of electrocution results in an isolation or "death watch" period of three days. The selection of lethal injection results in an isolation period of fourteen days. If Pike refuses to choose a method of execution for any reason, the default method is lethal injection. The Supreme Court has held it is

⁴⁹ See App'x., Ex. 8, Ariz. Dep't of Corrs., Rehab. & Reentry, Dep't Ord. Manual, 710 Execution Procs. (May 20, 2025).

“intolerable that one constitutional right should have been surrendered in order to assert another.” *Simmons v. United States*, 390 U.S. 377, 394 (1968). But that is exactly what the current lethal injection protocol requires. Pike must select a method of execution in violation of some of her constitutional rights (First, Eighth, and Fourteenth Amendments) to assert her constitutional right not to be forced into isolation for fourteen days (Eighth Amendment).

The distinction itself is arbitrary and capricious, serves no legitimate purpose, has no rational relation to any government purpose, and violates her rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 16, 17, 19, and 32. It is “patently unconstitutional” for the government to take an action that has “no purpose or effect than to chill the assertion of constitutional rights by penalizing those who exercise them.” *United States v. Jackson*, 390 U.S. 570, 582 (1968).

The isolation of Pike for fourteen days is also cruel and unusual punishment given her unique medical conditions. Specifically, Pike’s bipolar disorder and PTSD make it sure or very likely that her isolation will result in unnecessary and superadded pain and suffering, terror, and disgrace. The protocol requires Pike to be placed in the vulnerable position of being isolated and observed constantly by male guards, removed from the women’s prison, taken to the men’s prison, and again isolated and observed by male guards. This forced and arbitrary isolation will trigger Pike’s PTSD and torture her in the two weeks before her execution and/or lead to mental decompensation. *See Grayson*, 121 F.4th at 900 n. 3 (there “may exist a form of execution that induced

psychological terror or pain that is severe enough to support an Eighth Amendment claim.”).

The two-week isolation period will traumatize Pike in another meaningful way: Pike spent nearly 30 years in solitary confinement.⁵⁰ A return to that form of isolation “goes far beyond what any sentence requires. She will not simply be put to death. [Pike] will be returned, in her final hours, to the terror that defined her life. What awaits her is not only death. It is, for [Pike], a form of dying that is uniquely and needlessly cruel. And it is avoidable.”⁵¹ It also makes it sure or very likely that her mental health will deteriorate to the point of loss of agency and incompetency to withstand execution. *See Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930, 932 (2007).

V. Tennessee’s current protocol discriminates against Pike based on her sincerely held religious beliefs in violation of the First and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, § 19.

States “have no license to declare . . . whether an adherent has correctly perceived the commands of his religion.” *Hoffman v. Wescott*, 145 S. Ct. 797 (Mar. 18, 2025) (Gorsuch, J., dissenting). The current protocol also discriminates against Pike based on her sincerely held

⁵⁰ See App’x., Ex. 9, Steven Hale, *Court Settlement Ends Isolation for the Only Woman on Tennessee’s Death Row*, Nashville Banner (Sept. 17, 2024).

⁵¹ Ex. 6 at p. 230A.

religious belief of Buddhism. Specifically, the current protocol prohibits clergy from being in the execution chamber during Pike's execution.⁵² The prohibition does not further any compelling governmental interest, nor is it the least restrictive means of furthering a compelling governmental interest should one exist.

The prohibition on clergy in the execution chamber places a substantial burden on Pike's religious exercise, discriminates against her exercise of religion and sincerely held religious beliefs, and creates an unreasonable limitation on her exercise of religion in violation of Pike's rights under the First Amendment of the United States Constitution, Article I of the Tennessee Constitution, the Religious Freedom Restoration Act of 1993 (RFRA), the Tennessee Preservation of Religious Freedom Act codified at Tennessee Code Annotated § 4-1-407, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and treats her unequally compared to other death-sentenced prisoners in violation of the Fourteenth Amendment.

VI. Tennessee's current protocol violates Pike's right to petition for redress under the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, §§ 8, 13, 17, 19, and 32.

As the Respondents were botching Carruthers' execution by repeatedly stabbing him in an attempt to place a second IV line, counsel

⁵² Spiritual advisors and clergy have been permitted to attend executions pursuant to the current protocol; however, no such offer has been made to Pike at any point during this litigation.

for Carruthers sought telephone access to alert co-counsel and the courts. According to first-hand reporting, counsel was not permitted to access the telephone in the execution chamber, nor the telephone in the media room. And neither the Warden nor counsel for the State permitted her to use the cellphones they were allowed to carry. Rather, the Respondents in a rushed and haphazard manner required counsel for Carruthers to access a phone hooked up in the midst of his botch. Fortunately, counsel for Carruthers wrote telephone numbers on her arm because she was not allowed to bring in any papers or a cellphone with her during the execution.

The right of access to the courts flows from the First, Eighth, and Fourteenth Amendments to the United States Constitution and Article I of the Tennessee Constitution, § 8, 13, 17, 19, and 32. Pike has a constitutional right to seek redress by asserting rights that she believes violate the Eighth Amendment up to, and during her execution. The violation of Pike's right against cruel and unusual punishment may not arise until the actual day, hour, or time of execution. Counsel must be able to gain immediate access to a telephone before and during Pike's execution so that they may contact the courts to protect her right against cruel and unusual punishment of the kind experienced by Carruthers. Counsel must also have access to the appropriate telephone numbers she will need to call. The current protocol makes no provision for immediate access to a telephone or use of a cellphone by the prisoner's counsel. As events in the Carruthers attempted execution show, assurances by the Respondents that counsel will have access are not enough. The restriction substantially burdens Pike's constitutional rights and serves no

legitimate government interest. Nor is the restriction narrowly tailored to serve a government interest, should one exist.

Conclusion

Accordingly, Pike requests that this Court:

1. Appoint a Special Master pursuant to Rule 12(4)(E) and Tennessee Rule of Civil Procedure 53 to develop the facts to support these claims.
2. Declare that the current protocol, as applied to Pike, is unconstitutional under the Tennessee Constitution and the First, Eighth, and Fourteenth Amendments to the United States Constitution and issue a permanent injunction against use of the current lethal injection protocol against Pike.
3. Declare that the Respondents must implement a contingency plan in the case that an execution is botched, and that life-saving medical procedures be administered if death does not result within five minutes of the beginning of the execution. This should apply to any form of execution, including electrocution and lethal injection.
4. Declare that the current lethal injection protocol, as applied to Pike, is cruel and unusual punishment under the Eighth Amendment and issue a permanent injunction against use of the current lethal injection protocol against Pike.
5. Declare that the fourteen-day isolation period is unconstitutional on its face and as applied to Pike under the

First, Fourteenth, and Eighth Amendments and issue a permanent injunction preventing the Respondents from imposing the same.

6. Declare that counsel for Pike be able to gain immediate access to a phone and all telephone numbers in the execution chamber or media room before, during, and after Pike's execution or, in the alternative, be able to bring a cellphone into the prison like the Warden and Assistant Attorney General.
7. Reconsider this Court's denial of Pike's request for a certificate of commutation and grant the request in light of the evidence presented in support of this motion.
8. Any other relief warranted in this Court's discretion.

PART II

Introduction

There is no dispute that this Court has the “inherent power to promulgate rules governing the practice and procedure of the courts of this state.” *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). Typically, the Court goes through the normal rulemaking process because “it provides for a broader discussion and examination of the policies at issue and allows for input from the advisory commission . . . and members of the bench, bar, and general public.” *Borngne ex rel. Hyter v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 671 S.W.3d 476, 502 (Tenn. 2023) (Campbell, J., concurring). Indeed, promulgating rules by “judicial fiat’

rather than the ordinary rulemaking process deprives the Court of meaningful input from all relevant stakeholders.” *Id.*

Tennessee Supreme Court Rule 12(4)(E) was promulgated without notice, without comment, and without feedback from stakeholders, including the many capital certified lawyers in Tennessee, nor the three government-funded organizations that exclusively represent capital prisoners. The rule has led to confusion: uncertainty about when it applies and when it does not; what effect it has on the statute of limitations, if any, for challenging a method of execution; whether it only applies to claims that may affect the timing and method of execution, or whether it applies to all claims a petitioner may raise when challenging a method of execution; whether the motion initiates a civil action; whether it can be filed at any point prior to an execution; or whether this Court can deny the motion outright even though it raises colorable claims of constitutional violations.

At best, the rule is arbitrary or improvident. *See Barger v. Brock*, 535 S.W.2d 337, 342 (Tenn. 1976). At worst it is unlawful and unconstitutional. “When any individual deems any Rule of Court to be objectionable from any standpoint, it is his privilege to petition the Court for its elimination or modification. Indeed, it is the duty of the solicitors at the Bar of this Court to make suggestions and recommendations on the orderly administration of the appellate judicial process.” *Id.* This Court should reconsider or amend Rule 12(4)(E).

Argument

Rule 12(4)(E) restricts 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.

This Court regularly seeks comments on substantial changes to the way in which lawyers practice law in Tennessee. *See Borngne*, 671 S.W.3d at 502 (Campbell, J., concurring). A rule that restricts a death-sentenced prisoner's fundamental right of access to the courts under the Tennessee and United States Constitutions should be subject to the "broad discussions and examination" and "meaningful input" from all relevant stakeholders. *Id.*

I. Rule 12(4)(E) is unlawful and unconstitutional in violation of 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 this 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).

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. 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.

Additionally, rules adopted by this Court must be presented to and approved by the Tennessee General Assembly. Tenn. Code Ann. § 16-3-404. *See also Borngne*, 671 S.W.3d at 502. Rule 12(4)(E) has not and is not effective until so.

Furthermore, Rule 12(4)(E) alters the substantive rights of death row prisoners seeking to challenge a method of execution. Specifically, Tennessee Code Annotated § 16-3-403 provides that a rule prescribed by this 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) does the opposite: it eliminates a prisoner’s substantive right to challenge a method of execution in the courts of this state. 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 this Court to grant itself 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 rule is also unclear on whether prisoners must bring claims, like Pike does here, alleging violations of constitutional rights that do not affect the method or timing of an execution in a Rule 12(4)(E) motion, or if those claims may still be brought by filing a civil action. Methods of execution challenges impact more than just the method or timing of execution and may include claims of: First Amendment rights to the free exercise of religion or right of redress; Eighth Amendment rights to be free from a tortuous execution or the procedures (like isolation) surrounding it; Fourteenth Amendment rights of access to the courts, due process, and equal protection. A rule that strips a prisoner from vindicating a substantive right under the Constitution is unlawful and unconstitutional.

II. Rule 12(4)(E) is an unlawful amendment to Tennessee Rule of Civil Procedure 3.

The Rule also unlawfully amends Tennessee Rule of Civil Procedure 3. That rule provides that civil actions “are commenced by filing a complaint with the clerk of court,” “within the meaning of any statute of limitations.” Tenn. R. Civ. P. 3. Amendments to the Rules of Civil Procedure, like this Court’s rules themselves, must be presented to and approved by the Tennessee General Assembly. Tenn. Code Ann. § 16-3-404. Tennessee Supreme Court Rule 12(4)(E) circumscribed 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.

The unlawful amendment to the Tennessee Rules of Civil Procedure seeks to strip 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.

III. Rule 12(4)(E) violates due process because it is unconstitutionally vague.

The Rule also violates Article I of the Tennessee Constitution, §§ 8 and 17, and the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution because it is unconstitutionally vague. *See Pike 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. This Court's end-around of the express process provided by the legislature is unconstitutional.

Rule 12(4)(E) is vague as to when it applies and when it does not; what effect it has on the statute of limitations, if any, for challenging a method of execution; whether it only applies to claims that may affect the timing and method of execution, or whether it applies to all claims a petitioner may raise when challenging a method of execution; whether the motion initiates a civil action; whether it can be filed at any point prior to an execution; or whether this Court can deny the motion outright even though it raises colorable claims of constitutional violations.

Rule 12(4)(E) is also vague as to the specific sequence a challenge must take. It provides no standard of review, no process for how the case should proceed, no allocation of burden of proof, or what factors a petitioner must satisfy to have the motion granted or a Special Master appointed. That type of arbitrariness is unconstitutional. *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.”).

Furthermore, in *Hill v. McDonough*, 547 U.S. 573 (2006), the United States Supreme Court held that methods of execution challenges fell exclusively under § 1983. And in *Heck v. Humphrey*, 512 U.S. 477 (1994), the 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. Recently, in *Olivier v. City of Brandon*, 146 S. Ct. 916 (Mar. 20, 2026) the Court held that where the relief sought is prospective, the litigation is not collateral.

Rule 12(4)(E) upends three decades of Supreme Court precedent by making this Court the court of sole jurisdiction for methods of execution challenges. Those types of challenges properly sound in § 1983 and require the initiation of a civil action. Pike does not challenge the validity of her conviction or sentence. The relief she requests is prospective and, thus, *not* collateral. *See Olivier*, 146 S. Ct. 916 (Mar. 20, 2026). Additionally, Carruthers filed two motions with this Court under Rule 12(4)(E). Each would not only have affected the method or timing of his execution, a requirement under Rule 12(4)(E), but would have challenged the validity of his conviction—this is textbook collateral litigation. However, this Court denied both motions as improper.

This Court should reconsider or modify Rule 12(4)(E) to provide clarification on these issues.

IV. 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, §§ 8 and 17, 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 Pike to comply with an opaque and vague process to vindicate her fundamental rights.

As such, the rule is unlawful and unconstitutional, and this Court must reconsider or amend it.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Tenn. R. App. P. 30(e) of Tenn. Sup. Ct. R. 46 § 3.02, the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, Attorney Signature Block, and this Certificate of Compliance is 10,387. This word count is based upon the word processing system used to prepare this brief.

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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 12th day of June 2026.

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