

NO.
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

**PETITION FOR A WRIT OF CERTIORARI
EXECUTION SCHEDULED SEPTEMBER 30, 2026 AT 10:00 A.M. (Central)**

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CAPITAL CASE

QUESTIONS PRESENTED

- I. This Court has never endorsed mental suffering and psychological terror as cognizable in a methods of execution challenge under the Eighth Amendment. The Circuit Courts and state courts are divided on this issue. Christa Pike, a female prisoner diagnosed with post-traumatic stress disorder from her rapes starting as a toddler, is *sure or very likely* to experience severe mental suffering and superadded psychological terror under Tennessee's lethal injection protocol. Is her claim of mental suffering and psychological terror cognizable under the Eighth Amendment to the United States Constitution?
- II. Contrary to this Court's precedents, the United States Constitution, and the Tennessee Constitution, Tennessee Supreme Court Rule 12(4)(E) extinguishes a prisoner's right to challenge methods of execution in Tennessee and brings under that court's purview the sole authority to screen and weed-out challenges to the State of Tennessee's method of execution. Does Tennessee Supreme Court Rule 12(4)(E) violate this Court's precedents, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Tennessee Constitution?

LIST OF PARTIES TO THE PROCEEDINGS

The Petitioner, movant below, is Christa Gail Pike, the only female residing on Tennessee's death row. Christa will be the first female executed in the State of Tennessee in more than 200 years.¹

The Respondent, respondent below, is the State of Tennessee.

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 also David V. Baker, *Women and Capital Punishment in the United States: An Analytical History*, 132 (McFarland, 2015).

LIST OF PROCEEDINGS

1. *State v. Pike*, No. 03C01-9611-CR-00408, 1997 WL 732511 (direct appeal)
2. *State v. Pike*, 978 S.W.2d 904 (Tenn. 1998) (rehearing denied)
3. *Pike v. Tennessee*, 526 U.S. 1147, 119 S. Ct. 2025 (Mem 1999) (petition for writ of certiorari denied)
4. *Pike v. State*, E2002-00766-CCA-R3-PD, 2004 WL 1580503 (Criminal Court for Knox County No. 68280 appealing the denial of the motion to reinstate a petition for post-conviction relief)
5. *Pike v. State*, 164 S.W.3d 257 (Tenn. 2005) (vacating withdrawal of post-conviction petition)
6. *State v. Pike*, M2005-00738-CCA-R3-CD, 2006 WL 547997 (appeal conviction for Attempted 1st Degree Premeditated Murder of Patricia Jones)
7. *Pike v. State*, E2009-00016-CCA-R3-PD, 2011 WL 1544207 (application for permission to appeal denied by Supreme Court Nov. 15, 2011, direct appeal from the Crim Court Knox Co. No. 68280)
8. *Pike v. Tennessee*, 568 U.S. 827, 133 S. Ct. 103, Oct. 1, 2012 (Mem) (petition for writ of certiorari to TCCA denied)
9. *Pike v. State*, M2012-01640-CCA-R3-PC, 2013 WL 5459647 (application for permission to appeal denied by Supreme Court Feb. 13, 2014, appeal from CCA Davidson Co. No. 2002-D-2294)
10. *Pike v. Johnson*, No. 1:12-cv-35, USDC EDTN, 2013 WL 2457718 (June 6, 2013) (motion for discovery granted in part and denied in part)
11. *Pike v. Freeman*, No. 1:12-cv-35, USDC EDTN, 2016 WL 1050717 (March 11, 2016) (petition for habeas corpus relief denied)
12. *Pike v. Gross*, 936 F.3d 372 (2019) rehearing *en banc* denied
13. *Pike v. Gross*, 590 U.S. 978, 141 S. Ct. 86, June 8, 2020 (Mem), cert denied

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OPINIONS AND ORDERS BELOW

State of Tennessee v. Christa Gail Pike, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 23, 2026).

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked under Title 28, United States Code, Section 1257 following the denial of Christa Pike's motion to the Tennessee Supreme Court under Tennessee Supreme Court Rule 12(4)(E). The state court decision denies her rights and privileges under the Eighth and Fourteenth Amendments to the United States Constitution and the Tennessee Constitution.

PRAYER FOR RELIEF

The Petitioner, Christa Gail Pike, respectfully prays that a stay of her execution be entered and a writ of certiorari issue to review the order of the Tennessee Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.
- (2) The Due Process Clause of the Fourteenth Amendment provides, in pertinent part: No state “shall . . . deprive any person of life, liberty, or property without due process of law.” U.S. Const. amend. XIV § 1.
- (3) Article VI, section 2 of the Tennessee Constitution provides that the jurisdiction of the Tennessee Supreme Court is “appellate only.” Tenn. Const., art. VI, § 2.
- (4) Article I, section 17 of 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.
- (5) Tennessee Supreme Court Rule 12(4)(E) provides, in pertinent part:

After a date of execution is set, *any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court.* Any response to the motion must be filed within five (5) days of the motion, unless a different response time is ordered by the Court. If the collateral litigation may involve fact-finding, the moving party must request the appointment of a special master, consistent with the procedures outlined in Tennessee Rule of Civil Procedure 53. Any response in opposition to the motion for a special master must be filed within five (5) days of the motion, unless a different response time is ordered by the Court. If the Court grants the motion for a special master, the Court may appoint a special master, consistent with the procedures outlined in Rule 53. Any objection to the findings of the special master shall be by motion filed in this Court not later than five (5) days after being served with notice of the filing of the report, unless a different response time is ordered by the Court.

STATEMENT OF THE CASE AND FACTS

The rapes began before she could talk. Throughout her childhood, Christa Pike was repeatedly verbally, physically, and sexually abused by men—usually the boyfriends or husbands of her mother and grandmother. The first man, Ernest Johnson, stuck his penis in Christa’s mouth and threatened to kill her or hurt her grandmother or her pets if she said anything. (Cert. Pet. App. at 001898). The abuse continued through kindergarten. Like many sexual abuse survivors, “she thought it was her fault and she kept it to herself.” (Cert. Pet. App. at 001898). When Christa was 11, a neighbor named Claude Davis grabbed her after she got off the school bus, pinned her down, and inserted objects into her vagina. (Cert. Pet. App. at 001899). One man, Steve Kyaw, groped Christa, twisted her nipples, and exposed her to pornography, which she took to school. Another, Danny Thompson, had a “special whip that he had hanging on the wall to threaten her and whip her with.” (Cert. Pet. App. at 001901). On January 14, 1994, at age 17 while walking to a convenience store in Carrboro, North Carolina, a stranger threw her to the ground, pinned her, and violently raped her. (Cert. Pet. App. at 001899). One year later on January 12, 1995, when she was only eighteen, Christa committed this awful crime.²

² Psychologist Dr. Bethany Brand explains the significance of that date: “The proximity of these two dates—separated by less than 48 hours across calendar years—is clinically significant and consistent with the broader pattern of traumatic reenactment . . . It is my opinion that Christa’s violent behavior on January 12, 1995 was not only the product of situational triggers present that night, but was also shaped by two converging vulnerabilities: the psychological weight of the approaching anniversary of her rape—a date her nervous system, if not her conscious mind had reason to remember—and the irritable bipolar emotionally reactive state she was experiencing that same day. (Brand Addendum Report, at Cert. Pet. App. at 002331).

Christa Pike currently sits in solitary confinement at Tennessee’s prison for women (where she was kept in solitary confinement for three decades prior) because Tennessee’s lethal injection protocol mandates fourteen days of solitary confinement for any prisoner executed by lethal injection.³ Approximately twenty-four hours before her scheduled execution she will be transferred from the women’s prison, the only place she has ever known, to the men’s prison, where she will be kept in a cell and continuously observed in the final hours before she is killed.

Before her execution, Christa will be forcibly extracted from her cell. The warden will “[stand] in front of [the] cell” and announce that guards will be entering her cell, (Cert. Pet. App. at 001705); then four or five guards “all dressed in black” will stand “shoulder to shoulder” with “their hands on the shoulder in front of them” and announce with “very loud commands” that they are entering her cell, (Cert. Pet. App. at 001706); then they will order her “to kneel on the bunk, place [her] forehead on the wall, and then [restrain her] in the cell,” (Cert. Pet. App. at 001706). Next, they will shackle her “belly, hands, and feet,” “stand behind” her, and “lift [her] onto the gurney.” (Cert. Pet. App. at 001706). Then they will strap her down. (Cert. Pet. App. at 001706). It will take a “considerable amount of time securing all of the straps.” (Cert. Pet. App. at 001706). Then they will “roll [her] in to the execution chamber.” (Cert. Pet. App. at 001706). Once in the execution chamber, they will secure “the gurney to the floor.” (Cert. Pet. App. at 001707). Next, they will “put the arms on the

³ Tennessee arbitrarily imposes a mere three-day isolation period for prisoners being executed by electrocution. Tennessee has not—and cannot—explain that discrepancy. In any event, it has no rational relation to any legitimate governmental purpose should one exist.

gurney. Each side of the arm. The left side and the right side,” and they will unhandcuff her and then outstretch her arms along the gurney. (Cert. Pet. App. at 001707). Then they will attempt to inject her body with pentobarbital.

“What awaits her,” according to Dr. Bethany Brand, “is not only death. It is, for Christa, a form of dying that is uniquely and needlessly cruel.” (Brand First Addendum, Cert. Pet. App. at 002333.).

To avoid that needlessly cruel outcome, Christa filed a complaint in the Davidson County Chancery Court on January 8, 2026⁴—more than eight months before her scheduled execution—alleging Tennessee’s new lethal injection protocol was unconstitutional as it would be applied to her. (Cert. Pet. App. at 000001). One month earlier, without notice or comment, the Tennessee Supreme Court promulgated an amendment to its Rule 12, restricting the fundamental right of prisoners to challenge the State’s method of execution. After the Chancery Court found it lacked jurisdiction under the new rule, it transferred the case to the Tennessee Supreme Court, which subsequently dismissed the complaint without prejudice subject to filing a Rule 12(4)(E)⁵ motion, which Christa did on June 12,

⁴ The complaint was timely filed, consistent with the Tennessee Rules of Civil Procedure, the Tennessee and United States Constitutions, and the state 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. Respondents below did not raise any objections to the statute of limitations.

⁵ The Rule provides, in relevant part:

2026—thirty days after the Tennessee Supreme Court’s dismissal of her state court complaint. (Cert. Pet. App. at 000359).

One month later, the Tennessee Supreme Court appointed a special master to “conduct an evidentiary hearing and any other additional hearings the Special Master deems appropriate on the matters specifically referred by this order.” (Cert. Pet. App. at 000777a). The Court referred five issues to the special master, and held the others in abeyance:

(1) Given Ms. Pike’s diagnosis of thrombocytosis, whether achieving peripheral IV access pursuant to the current lethal injection protocol would make it “*sure or very likely*” that the challenged protocol will “cause [Ms. Pike] serious illness and needless suffering,” *see Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993));

(2) Given Ms. Pike’s cited history of sexual assault and asserted diagnosis of Post Traumatic Stress Disorder (PTSD), whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution, would make it “sure or very likely” that

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.

Tenn. Sup. Ct. R. 12(4)(E).

the challenged protocol will “cause [Ms. Pike] serious illness and needless suffering”;

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

(4) whether Ms. Pike’s proposed alternative methods of execution would significantly reduce a substantial risk of severe pain.; and

(5) whether TDOC is required to or would permit a spiritual advisor to be present in the execution chamber during Ms. Pike's execution.

(Cert. Pet. App. at 000777b-c).

The issues as framed by the Tennessee Supreme Court under its self-proclaimed authority unnecessarily, arbitrarily, unreasonably, and—at least in one instance—incorrectly⁶ framed the issues for the special master. The entire process was chaotic, rushed, and opaque. From the start, counsel was not told in which court to file documents like hearing subpoenas: the Tennessee Supreme Court or the Knox County Criminal Court. The special master did not meet with the parties until the morning of the hearing and left it up to the parties to determine the schedule of proceedings. When the parties could not agree on a process for discovery (the

⁶ Issue 2 was framed as so: “whether the movement of Ms. Pike to Riverbend Maximum Security Prison before the execution, where she would be observed by male prison officials for two weeks prior to the execution” However, the protocol plainly states that Christa would not be moved to the men’s prison until 48 hours before her execution. The parties agree on this point and that is how the claim was pled in the Rule 12 motion: “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.” (Cert. Pet. App. at 000777b). This point is important because the special master’s evidentiary rulings were based on the fundamentally incorrect framing of the issue by the Tennessee Supreme Court.

Respondent took the absurd position that Rule 12(4)(E) does not contemplate discovery, despite the order calling for an “evidentiary hearing”), counsel filed a motion to compel limited discovery: a mere thirteen interrogatories and eleven requests for admission. (Cert. Pet. App. at 000778). It was denied. The special master entered a protective order over objections that prejudicially favored the Respondent’s overly broad interpretation of the limitations placed on the proceedings and their own interpretation of execution secrecy provisions.⁷ (Cert. Pet. App. at 001066).

At the hearing itself, the special master erroneously excluded relevant evidence about: post-IV access, the placement of and qualifications required to place a central line as contemplated by the protocol, and the attempted execution of Tony Carruthers. The special master limited the relevant testimony of Dr. Gail Van Norman⁸ and Dr. Bethany Brand. He erroneously cast Dr. Joel Zivot’s scientifically supported conclusions as “evasive” or “unsupported,” while fully crediting the scientifically dubious opinions of the Respondent’s expert Dr. Joseph Antognini. He

⁷ For example, it is not a secret that the State of Tennessee famously employs a family physician as its execution physician. The parties made great efforts to protect and conceal the identity of the physician at the hearing pursuant to the protective order. The special master excluded any evidence related to the physician’s incompetence in placing a central line during Tony Carruthers’ execution even though he would be called to do so during Christa’s and Christa pled the placement of a central line by a qualified physician as an alternative. Less than 24 hours after the hearing, he made public statements to news outlets that he would participate in Christa’s execution. Doctor who oversaw failed Tennessee procedure to handle Christa Pike’s execution, Fox17 News (*available at* <https://fox17.com/news/local/doctor-who-oversaw-failed-tennessee-procedure-to-handle-christa-pikes-execution>). When Christa sought to reopen the hearing to adduce evidence of that physician’s incompetence to place a central line, it was denied. (Cert. Pet. App. at 001217, 001274).

⁸ The special master referred to her literature review as a “book report,” (Cert. Pet. App. 0001742), while crediting the literature review of the Respondent’s expert.

erroneously made adverse credibility findings against Dr. Scott Goldstein even though the Respondent's expert testified to substantially the same information. And he precluded offers of proof on the evidence he erroneously excluded. *See generally* (Cert. Pet. App. at 001363).

In short, Rule 12(4)(E) created a rushed and sham hearing, without affording Christa the benefits of discovery, in front of a biased judge selected by the Tennessee Supreme Court who not only got the facts wrong but got the law wrong as well. The Tennessee Supreme Court opinion below not only endorses those flawed findings, but doubles down on the constitutionality of Rule 12(4)(E) despite the fact that the rule contains no standards of review (the Tennessee Supreme Court has grafted the standards for a stay onto a methods of execution challenge), contains no provision or process for discovery, and provides no provision or process for how a death row prisoner in Tennessee may vindicate their constitutional right to challenge the State's method of execution.

Christa was not afforded a meaningful opportunity to be heard, adequate time for preparation and meaningful access to discovery, nor a neutral decision-maker applying consistent evidentiary and legal standards.

REASONS FOR GRANTING OF THE WRIT

- (1) The Tennessee Supreme Court, Tennessee's state court of last resort, has decided an important question of federal law that has not been, but should be, settled by this Court, and that conflicts with this Court's well-established precedent resulting in the unconstitutional execution of Christa Gail Pike.
- (2) The Tennessee Supreme Court, Tennessee's state court of last resort, has decided an important federal question in a way that conflicts with decisions of the United States Courts of Appeal for the Fifth, Sixth, Ninth, and Eleventh Circuits and various state courts.

ARGUMENT

I. The mental suffering and psychological terror that Christa will suffer under Tennessee’s lethal injection protocol is cognizable under the Eighth Amendment.

The Eighth Amendment’s Cruel and Unusual Punishments Clause prohibits punishments that are “unduly harsh in light of longstanding prior practice.” John F. Stinneford, *The Original Meaning of “Cruel,”* 105 Geo. L. J. 441, 493 (2017). All capital punishments necessarily cause pain, but this Court’s jurisprudence differentiates between “necessary” pain and “unnecessary” pain. *See Baze v. Rees*, 553 U.S. 35, 49 (2008) (“Punishments are cruel when they involve torture or a lingering death.”) (citing *In re Kemmler*, 136 U.S. 436, 447 (1890)). *See also Wilkerson v. Utah*, 99 U.S. 130, 135 (1878). Under the original meaning of the Eighth Amendment, the mental suffering and psychological terror that Christa will suffer under Tennessee’s lethal injection protocol is cruel and unusual punishment.

A method of execution violates the Eighth Amendment if it is “‘sure or very likely to cause serious illness and needless suffering,’ and give rise to sufficiently imminent dangers.” *Baze*, 553 U.S. at 50 (2008); *Glossip v. Gross*, 576 U.S. 863, 877 (2015). The Eighth Amendment encompasses all forms of sufficiently severe “needless suffering,” including “terror, pain, or disgrace” that is superadded to the sentence of death itself. *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019). To establish an Eighth Amendment violation, a prisoner must show that the challenged method presents a “substantial risk of serious harm”—that is, a risk that is “sure or very likely” to materialize, not merely speculative or remote. *Glossip*, 576 U.S. at 877. At the same time, the Eighth Amendment prohibits methods of execution that “superadd” “terror,

pain, or disgrace” to the punishment of death beyond what is necessary to carry out the sentence. *Bucklew*, 587 U.S. at 133. This Court has never recognized mental suffering or psychological terror alone as cognizable under the Eighth Amendment. This case presents this Court the opportunity to say so clearly: the mental suffering and psychological terror that Christa will experience is superadded “terror, pain, or disgrace” beyond what is necessary to execute her and is cognizable under the Eighth Amendment.

In *Robinson v. California*, 370 U.S. 660, 666 (1962) this Court held, for the first time, that the criminalization of mental illness was cruel and unusual punishment under the Eighth Amendment. In his concurrence, Justice Douglas cited Sir Edward Coke’s conclusion that “the execution of a madman ‘should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others.’” *Id.* at 676 (Douglas, J., concurring) (citing 6 Coke’s Third Inst. (4th ed. 1797), p. 6). According to Justice Douglas, “Blackstone endorsed this view of Coke.” *Id.* (citing 4 Commentaries (Lewis ed. 1897), p. 25). Nevertheless, this Court’s methods of execution jurisprudence goes no further. That lack of clarity has split appellate courts and created a jurisprudential hole that this Court must fill.

Start with *Grayson v. Comm’r*, 121 F.4th 894 (11th Cir. 2024). In that case, the Eleventh Circuit disputed the district court’s findings that mental suffering and psychological pain alone were unsupported by the Eighth Amendment and noted that “[t]here may exist a form of execution that induces psychological terror or pain that is severe enough to support an Eighth Amendment claim.” *Id.* at 900 n. 3. But, lacking

guidance from this Court, went no further. The district court in *Grayson* cited *In re Ohio Execution Protocol Litig.*, 881 F.3d 447 (6th Cir. 2018) to support its finding that mental suffering and psychological pain alone were unsupported by the Eighth Amendment. In that case, the Sixth Circuit found that psychological pain or mental suffering “could not by itself make a method of execution unconstitutional.” *Id.* at 450. Rather, the Circuit Court found that all prisoners under sentence of death were likely to experience some level of mental suffering and psychological pain, and so a prisoner could only raise a claim of psychological pain coupled with physical pain. *Id.*

The Ninth Circuit, using the standard for conditions of confinement in a methods of execution claim, has held that a prisoner must show that the infliction of “severe psychological pain” was “unnecessary and wanton” to establish an Eighth Amendment violation. *Creech v. Tewalt*, 84 F.4th 777, 792 (9th Cir. 2023). According to that Circuit Court, “the mental state required to establish wantonness under the Eighth Amendment ‘varies according to the nature of the alleged constitutional violation.’” *Id.* Then, the court stated that a showing of “deliberate indifference” was sufficient under that standard. In *McKenzie v. Day*, 57 F.3d 1461, 1466 (9th Cir. 1995), the Ninth Circuit held that a claim may rise to an Eighth Amendment violation for mental suffering or psychological terror if a state “set up a scheme to prolong the period of incarceration” or “rescheduled [an] execution repeatedly in order to torture” the prisoner.

Last year, in *Hoffman v. Westcott*, 131 F.4th 332, 336 (5th Cir. 2025), the Fifth Circuit reversed a holding from the district court that the plaintiff had “shown that

nitrogen hypoxia superadds psychological pain, suffering, and terror to his execution when compared to execution by firing squad.” In doing so, the Circuit Court dismissed the notion of psychological terror altogether, explaining that the Constitution “only forbids the ‘superaddition’ of terror that is greater than an alternative method of execution.” *Id.* (citing *Bucklew*, 587 U.S. at 133). The court ultimately found that the plaintiff in that case had “presented no such evidence of superadded terror to the court,” and because “surely *every* method of execution necessarily involves some measure of psychological terror,” *id.*, reversed the district court. These cases illustrate both an absence of guidance on whether mental suffering and psychological terror are cognizable under the Eighth Amendment, and the standards that apply.

This case is different. Christa Pike’s PTSD is the result of the extreme, chronic, and repeated sexual abuse she experienced as a young girl. Tennessee’s lethal injection protocol, as applied to Christa, will neurobiologically simulate her rapes and profoundly trigger her PTSD resulting mental suffering and psychological terror that is superadded to her sentence:

It will be highly triggering for Christa Pike. She will experience being held down and then being tied down, very similar to how she experienced being pinned and trapped and raped. She won't be able to escape like she couldn't escape back then. That is likely to precipitate her having a flashback where she will lose all sense of current reality, and as I explained earlier, she'll be transported in her mind back to times when she was being raped, feeling the full emotional and physical force and sensations of that time.

(Cert. Pet. App. at 001912).

Anyone facing an execution would experience some level of mental suffering and psychological terror. “[B]ut for somebody who has her history and is being

strapped down and undergoing all this as I've described . . . her brain is very likely to go into fight or flight, then tonic immobility, and then full shutdown with possibly throwing up, losing consciousness. The whole cascade is extremely psychologically harmful." (Cert. Pet. App. at 001923).

This Court has never before had the opportunity to consider whether the mental suffering and psychological terror experienced by a female victim of rape during her execution is cognizable under the Eighth Amendment. Evidence adduced at the hearing confirms that Tennessee's lethal injection protocol will do precisely that. For one, the observation of Christa during the solitary confinement period is very psychologically harmful and likely to trigger a traumatic response, particularly after she is moved to the men's prison when she is away from everything familiar, because sexual assault survivors find comfort in control and familiarity. (Cert. Pet. App. at 001909). In addition to Christa's isolation and observation, Dr. Brand testified that the mental suffering and psychological terror she will experience prior to and during her execution will be beyond what a regular death row prisoner would experience: "It will be very, very distressing to her, more than for the average person." (Cert. Pet. App. at 001909). Christa will be extracted from her cell, physically restrained, placed on a gurney, transported to the execution chamber, and strapped down for intravenous line placement. Each step involves physical contact and restraint by correctional staff—predominantly by male officers. These steps are the central traumatic trigger for her and cannot be ameliorated under the current protocol.

Dr. Brand testified that the protocol will surely or very likely force Christa to relive her past trauma in real time through sensory experience—not just memory. (Cert. Pet. App. at 001904-06) Because her assaults involved being physically overpowered and immobilized by men, the execution protocol’s requirement that she be physically restrained to a gurney constitutes a near-perfect replication of the sensory conditions of her rapes. Thus, being strapped to a gurney while the IV Team inserts intravenous lines into her body would precipitate a full traumatic flashback, including loss of touch with present reality, and would likely activate the involuntary fight/flight/freeze/immobility survival response. (Cert. Pet. App. at 001912). Stated another way, the mental suffering and psychological terror that Christa will experience before she is even executed is “superadded” pain, terror, and disgrace. *Bucklew*, 587 U.S. at 133.

Without specifically endorsing the special master’s incorrect factual findings and flawed legal conclusions, the Tennessee Supreme Court tacitly accepts them, and then claims that “even assuming that psychological pain alone can support an Eighth Amendment claim,” the evidence presented at the hearing did not support one. (Cert. Pet. App. at 001552). Not true. Then, in a footnote, the court wipes away Christa’s claims that her extraction and restraint will profoundly trigger her PTSD without acknowledging that the specific question referred to the special master by the court itself excluded evidence of the extraction and restraint, or that the special master limited that evidence at the hearing. In any event, the record is clear that Christa will experience mental suffering and psychological terror beyond what is necessary

to effectuate her death.

Under the original meaning of the Eighth Amendment, a punishment that heightens the risk of severe, unjustified harm beyond the baseline risk established by longstanding prior practice is cruel and unusual—even if the government seeking to carry out the execution does not foresee that harm and does not intend it. The mental suffering that Christa will experience because of her PTSD is sufficiently severe “needless suffering,” and “terror, pain, or disgrace” that is superadded to her sentence of death itself. *Bucklew*, 587 U.S. at 133. This Court should issue a stay of execution and grant certiorari to resolve this issue once and for all.

II. Tennessee Supreme Court Rule 12(4)(E) is an unconstitutional limitation on a prisoner’s right to challenge methods of execution.

Before she could even begin, the Tennessee Supreme Court required Christa Pike to meet an unreasonable standard for a stay of execution without providing her any mechanism for discovery or to litigate her claims. Despite this Court’s clear dictates, the Tennessee Supreme Court has arbitrarily and unconstitutionally consolidated methods of execution challenges under its sole discretion. Worse still, they did so with no notice or comment. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978). *See also Borngne ex rel. Hyter v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 671 S.W.3d 476, 502 (Tenn. 2023)

(Campbell, J., concurring) (notice and comment “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. . . promulgating rules by ‘judicial fiat’ rather than the ordinary rulemaking process deprives the Court of meaningful input from all relevant stakeholders.”).

Tennessee Supreme Court Rule 12(4)(E) requires “state court collateral litigation that would potentially affect the method or timing of execution [to] commence with the filing of a motion in this Court.” It provides no other detail. The exact workings of the rule remain unclear, and the state court opinion below is silent on how the rule is supposed to operate. As best it can be understood, the amended rule requires prisoners to first file a motion with the Tennessee Supreme Court. The rule also requires prisoners to seek a “stay” of execution, whether they need one or not and for that reason, unconstitutionally grafts the standards for a stay of execution onto methods challenges in the first instance. If the collateral litigation involves fact-finding, the court *may* appoint a special master to conduct proceedings. It *may not*. If the court decides to appoint a special master, it will selectively, as here, refer some but not all the issues requiring fact-finding. The special master will then conduct a hearing and issue a report in which the parties may object. Then, the Tennessee Supreme Court will consider the findings of the special master and the objections of the parties and determine whether a petitioner has shown a likelihood of success on the merits—a standard imposed on prisoners at the *pleading* stage that they would not be required to meet in any court in Tennessee or the United States.

Whatever the wisdom in such a rule may be, in practice it functions to strip prisoners of their constitutional right to challenge methods of execution in Tennessee, it strips Tennessee state trial courts of the jurisdiction conferred onto them by statute and the Tennessee Constitution, and it confers unchecked power on the Tennessee Supreme Court to screen and weed-out methods challenges based on its own secretive, *ad hoc* process. *See Rogers v. Tennessee*, 532 U.S. 451, 467 (2001) (the rule places prisoners at risk of “the sort of unfair and arbitrary judicial action against which the Due Process Clause aims to protect.”).

The rule violates this Court’s precedents, the Tennessee Constitution, and the United States Constitution. Start with this Court’s precedents, which require courts to engage in fact-finding when federal constitutional claims are “plainly and reasonably made.” *Angel v. Bullington*, 330 US. 183, 188 (1947). *See Davis v. Wechsler*, 263 U.S. 22, 24–25 (1923) (states cannot create “unreasonable obstacles” to litigate constitutional claims that are “plainly and reasonably made”). *See also Harris v. Nelson*, 394 U.S. 286, 300 (1969) (“[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.”); *McNeal v. Culver*, 365 U.S. 109, 110 (1961) (state court must hold a hearing when constitutional violations are alleged); *Pennsylvania ex rel. Herman v. Claudy*, 350 U.S. 116, 119 (1956).

Christa’s state trial court complaint “plainly and reasonably” alleged violations

of the First, Eighth, and Fourteenth Amendments to the United States Constitution. (Cert. Pet. App. at 000001). When that was dismissed under Rule 12(4)(E), Christa properly raised those challenges in her Rule 12(4)(E) motion before the Tennessee Supreme Court. (Cert. Pet. App. at 000359). What resulted was a sham proceeding, before a biased judge, that not only prohibited Christa from seeking any discovery, but prejudicially excluded relevant evidence from the hearing that she needed to prove a likelihood of success on her claims—an onerous standard at the pleading stage.

The rule also violates this Court’s well-established precedent on the fundamental right of access to the courts. *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). 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). This Court has endorsed this fundamental right in methods of execution cases starting with *Hill v. McDonough*, 547 U.S. 573 (2006), which held that a prisoner had a constitutional right to challenge a method of execution and that such challenges fell exclusively under § 1983.

The Court need not consider these arguments in a vacuum. Look at how the

rule operated in this case: the special master did not meet with the parties until the morning of the hearing and left it up to the parties to determine the schedule of proceedings; when the parties could not agree on a process for discovery, counsel filed a motion to compel limited discovery—it was denied; the special master entered a protective order that favored the Respondent’s overly broad interpretation of the limitations placed on the proceedings; the special master erroneously excluded relevant evidence about post-IV access, the placement of and qualifications required to place a central line as contemplated by the protocol, and the attempted execution of Tony Carruthers—without discovery Christa needed this information to show a likelihood of success on the merits; the special master limited the relevant testimony of Dr. Gail Van Norman and Dr. Bethany Brand; he erroneously cast Dr. Joel Zivot’s scientifically supported conclusions as “evasive” or “unsupported,” while fully crediting the scientifically dubious opinions of the Respondent’s expert Dr. Joseph Antognini; he erroneously made adverse credibility findings against Dr. Scott Goldstein even though the Respondent’s expert testified to substantially the same information; and he precluded offers of proof on the evidence he erroneously excluded. (Cert. Pet. App. at 001363).

These errors spanning nearly every stage of the proceedings deprived Christa of her rights under the Due Process Clause of the Fourteenth Amendment. *See Smith v. Hamm*, 144 S. Ct. 414, 416 (Jan. 25, 2025) (Sotomayor, J., dissenting) (“Smith should be allowed to complete discovery and litigate the merits of his claims challenging this new protocol in the ordinary course. The information is important

not only to Smith, who has an extra reason to fear the gurney, but to anyone the State seeks to execute after him using this novel method.”).

The rule also violates the Tennessee Constitution. In its opinion below, rather than clarify how the rule *should* operate, the Tennessee Supreme Court chose to double-down and faintly address the state constitutional arguments raised. For example, Article VI, section 2 of the Tennessee Constitution expressly provides that the jurisdiction of the Tennessee Supreme Court is “appellate only.” Tenn. Const., art. VI, § 2. In the opinion below, the court merely restates what the rule already says, that litigation “commence with a filing of a motion in this Court,” but provides no more clarity on how a prisoner may seek to challenge a method of execution in the state. Then, the court declared that the rule “falls squarely within the jurisdiction” conferred by the Tennessee Constitution because it allows the Tennessee Supreme Court to adopt rules.

There is no dispute that the Tennessee Supreme Court has the “inherent power to promulgate rules governing the practice and procedure of the courts of [the] state.” *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). But it also must do so consistent with the federal constitutional guarantees of due process. *Angel v. Bullington*, 330 U.S. 183, 188 (1947) (“The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution.”). See *Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 681–82 (1930) (“[W]hile it is for the state courts to determine the adjective as well as the substantive law of the

state, they must, in so doing, accord the parties due process of law.”).

Next, the Tennessee Supreme Court sweeps away the arguments that Rule 12(4)(E) unlawfully eliminates a prisoner’s substantive right to challenge a method of execution under Tennessee Rule of Civil Procedure 3 and Tennessee Code Annotated § 16–3–403 (2021) (“The rules prescribed by the supreme court pursuant to § 16–3–402 shall not abridge, enlarge or modify any substantive right and shall be consistent with the constitutions of the United States and Tennessee”) by conferring original jurisdiction on the court because the arguments “are premised on Ms. Pike’s erroneous assertion that Rule 12(4)(E) grants this Court original jurisdiction.”

Fair enough. But then how should a prisoner proceed? Whatever understanding the Court believes Christa has, Rule 12(4)(E) functions to eliminate a prisoner’s substantive right to challenge a method of execution in the courts of this state. It did so here.

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 truth is that the Tennessee Supreme Court does not want to explain its rule because it does not want prisoners to bring methods of execution challenges. It does not want to explain why the standards for a stay of execution are grafted onto

prisoners at the pleading stage because it can continue to deny relief on those ostensible grounds. It does not want to—and does not have to—provide a process for prisoners to subsequently litigate their claims because the rule is intended to ensure that they do not get that far.

“The Eighth Amendment’s protection of dignity reflects the Nation we have been, the Nation we are, and the Nation we aspire to be.” *Hall v. Florida*, 572 U.S. 701, 708 (2014). The ability to challenge, litigate, and seek discovery on a state’s method of execution falls under that basic protection.

CONCLUSION

Undoubtedly, the response to this petition will claim that Christa Pike is seeking extraordinary relief. That this petition is a last-ditch effort to save her life. But she comes before this Court asking for the opportunity to litigate her case in the first instance. It is the same thing she asked for eight months ago when she first filed her complaint. The crisis of timing that the Respondents will inevitably raise is one of their own doing, assisted by the Tennessee Supreme Court.

Christa Pike is aware of this Court's reluctance to accept late-stage litigation. But the circumstances here warrant this relief. The Petitioner respectfully requests that this Court grant her motion for stay of execution and grant certiorari.

Respectfully submitted,

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