IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BYRON BLACK,	)	
	)	**DAVIDSON COUNTY**
Appellee,	)	**No. M2025-01095-SC-RDO-CV**
	)	
v.	)	**CAPITAL CASE**
	)	
FRANK STRADA, in his official capacity as Commissioner of the Tennessee Department of Correction, and	)	**Execution: August 5, 2025**
KENNETH NELSEN, in his official capacity as Warden of Riverbend Maximum Security Institution,	)	
Appellants.	)	

STATE OF TENNESSEE'S RESPONSE IN OPPOSITION TO APPELLEE'S MOTION TO STRIKE

Black's motion to strike is rife with factual and legal inaccuracies. Time (and the need to respond to an onslaught of meritless filings) necessitate that the State address only a few.

1. *The Court should consider the State's supplemental declaration.* Rule 10(c) allows the State's "application" to "be supported by affidavits or other relevant documents." Tenn. R. App. P. 10(c). Black does not dispute as much; his only gripe is with timing. Mot. to Strike at 2. But Rule 10's statement that supporting materials should be included in an

"appendix" doesn't graft an atextual time limitation on the rule; supplemental appendices are commonplace in litigation. It makes no sense—and will handicap this Court's review in future emergency proceedings—to hold that pertinent developments in time-sensitive litigation cannot be presented to this Court. And if that is the rule, then it should be suspended for good cause and for the interest of expediting decision under Tenn. R. App. P. 2. *See Dinovo v. Binkley*, 706 S.W.3d 334, 336 (Tenn. 2025).

2. *The State did not submit an "inaccurate" declaration.* Mot. to Strike at 7. Quite the opposite. After it was wrongly enjoined, the State candidly notified the trial court of its efforts (and inability) to comply. Appx. 7 at 16-17. As the State has noted, though, the trial court's order gave "third-party medical providers an effective veto power over Black's execution." Rule 10 App. at 32. Predictably, the third parties exercised that power—and the State informed this Court. The State has been fully transparent with the courts at all times.

3. *These factual developments show why courts must adhere to the governing standard.* The U.S. Supreme Court has been clear that it is capital inmates—not the State—that bear the burden of "show[ing] a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). And these events only show the risk of having judges impose their view of "best practices for

executions" with a how-hard-could-it-be approach. *Id.* Black has offered no evidence—none—as to the feasibility of his proffered alternative. That absence of proof is dispositive. But even if the State did bear the burden, the evidence shows that ICD deactivation—in addition to not being necessary—is not feasible or readily available.

The Court should deny Black's motion to strike.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General & Reporter

J. MATTHEW RICE
Solicitor General

s/ Nicholas W. Spangler

NICHOLAS W. SPANGLER
Associate Solicitor General

EDWIN ALAN GROVES, JR.
Assistant Attorney General

P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-3486
Nick.Spangler@ag.tn.gov
B.P.R. No. 027552