

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

<b>CLATA RENEE BREWER,</b>	)	
<b>JAMES HAMMOND, THE</b>	)	
<b>TENNESSEE FIREARMS</b>	)	
<b>ASSOCIATION INC., MICHAEL</b>	)	
<b>P. LEAHY, STAR NEWS</b>	)	
<b>DIGITAL MEDIA, INC., THE</b>	)	<b>No. M2023-00788-COA-R3-CV</b>
<b>TENNESSEAN, RACHEL</b>	)	
<b>WEGNER, and TODD</b>	)	
<b>GARDENHIRE</b>	)	
	)	
<b>Petitioners-Appellants,</b>	)	
	)	
	)	
<b>v.</b>	)	
	)	
<b>METROPOLITAN</b>	)	
<b>GOVERNMENT OF NASHVILLE</b>	)	
<b>AND DAVIDSON COUNTY,</b>	)	
	)	
<b>Defendant-Respondent,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>PARENTS OF MINOR</b>	)	
<b>COVENANT STUDENTS JANE</b>	)	
<b>DOE AND JOHN DOE; THE</b>	)	
<b>COVENANT SCHOOL, and</b>	)	
<b>COVENANT PRESBYTERIAN</b>	)	
<b>CHURCH,</b>	)	
	)	
<b>Intervenors-Appellees.</b>	)	

Rule 3 Appeal from Final Judgement of the Chancery Court for  
Davidson County, Case No. 23-0538-III

Document received by the TN Court of Appeals.

---

**BRIEF OF INTERVENORS-APPELLEES  
PARENTS OF MINOR COVENANT STUDENTS  
JANE DOE AND JOHN DOE**

---

Eric G. Osborne (#029719)  
William L. Harbison (#007012)  
Christopher C. Sabis (#030032)  
C. Dewey Branstetter (#009367)  
Ryan T. Holt (#030191)  
Micah N. Bradley (#038402)  
Frances W. Perkins (#040534)  
Hunter C. Branstetter (#032004)  
William D. Pugh (#037616)  
SHERRARD ROE VOIGT & HARBISON, PLC  
150 3<sup>rd</sup> Avenue South, Suite 1100  
Nashville, TN 37201  
Telephone: (615) 742-4200  
eosborne@srvhlaw.com  
bharbison@srvhlaw.com  
csabis@srvhlaw.com  
dbranstetter@srvhlaw.com  
rholt@srvhlaw.com  
mbradley@srvhlaw.com  
fperkins@srvhlaw.com  
hbranstetter@srvhlaw.com  
wpugh@srvhlaw.com

Edward M. Yarbrough (#004097)  
Sara D. Naylor (#037533)  
SPENCER FANE LLP  
511 Union Street, Suite 1000  
Nashville, TN 37219  
Telephone: (615) 238-6300  
eyarbrough@spencerfane.com

snaylor@spencerfane.com

Hal Hardin (#003101)  
HARDIN LAW OFFICE  
211 Union Street, Suite 200  
Nashville, TN 37201  
Telephone: (615) 369-3377  
hal@hardinlawoffice.com

*Counsel for Intervenors-Appellees*

## TABLE OF CONTENTS

STATEMENT OF ISSUES.....	8
STATEMENT CONCERNING ORAL ARGUMENT .....	8
INTRODUCTION.....	8
STATEMENT OF THE CASE .....	13
STATEMENT OF FACTS .....	18
STANDARD OF REVIEW.....	23
SUMMARY OF ARGUMENT.....	24
ARGUMENT .....	26
A. THE PARENTS HAVE RAISED COGNIZABLE LEGAL CLAIMS PERMITTING INTERVENTION.....	27
1. The Parents Have an Interest in Asserting their Rights Under Article I, Section 35 of the Tennessee Constitution .....	27
2. The Chancery Court Correctly Determined that the Parents May Intervene to Argue that Article I, Section 35 of the Tennessee Constitution and other State statutes Provide an Implicit Exception to TPRA Disclosure in this Case.....	30
3. The Parents Now Own the Shooter’s Writings and Have an Interest in Asserting and Protecting Those Property Rights .....	38
4. The Parents Have a Personal Interest in Arguing the Applicability of the School Safety Exception to the TPRA.....	40
5. Portions of the Information Sought By Petitioners Is Protected From Disclosure By Tennessee Code Section 10-7-504(t).....	41
6. The Parents Have a Right to Argue for Application of Tennessee Rule of Criminal Procedure Rule 16(a)(2) .....	42
B. THE TPRA DOES NOT BAR INTERVENTION .....	43
C. METRO NASHVILLE DOES NOT ADEQUATELY REPRESENT THE PARENTS’ INTERESTS.....	47
CONCLUSION .....	51
CERTIFICATE OF COMPLIANCE.....	53
CERTIFICATE OF SERVICE.....	54

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Abernathy v. Whitley</i> , 838 S.W.2d 211 (Tenn. Ct. App. 1992) .....	28
<i>Arnold v. State</i> , No. M2018-00710-CCA-R3-PC, 2020 WL 569928 (Tenn. Ct. App. Feb. 5, 2020) .....	31
<i>Ballard v. Herzke</i> , 924 S.W.2d 652 (Tenn. 1996).....	24, 49, 50
<i>Eldridge v. Eldridge</i> , 42 S.W.3d 82 (Tenn. 2001).....	25
<i>In re Est. of Hendrickson</i> , No. M2008-01332-COA-R9-CV, 2009 WL 499495 (Tenn. Ct. App. Feb. 25, 2009) .....	49
<i>In re Estate of Lucy</i> , No. W2007-02803-COA-R3-CV, 2008 WL 3861987 (Tenn. Ct. App. Aug. 20, 2008) (unpublished).....	31, 32
<i>Flying J Inc. v. Van Hollen</i> , 578 F.3d 569 (7th Cir. 2009).....	31
<i>Griffin v. City of Knoxville</i> , 821 S.W.2d 921 (Tenn. 1991).....	<i>passim</i>
<i>Metro. Gov't of Davidson Cnty. v. Tatum</i> , No. M2007-0279-COA-R-3CV, 2008 WL 4853073 (Tenn. Ct. App. Nov. 7, 2008).....	25
<i>Rich v. Tennessee Bd. of Med. Examiners</i> , 350 S.W.3d 919 (Tenn. 2011).....	45

<i>State v. Brown &amp; Williamson Tobacco Corp.</i> , 18 S.W.3d 186 (Tenn. 2000).....	24
<i>State v. Brown</i> , 29 S.W.3d 427 (Tenn. 2000).....	31
<i>State v. Hill</i> , 598 S.W.2d 815 (Tenn. Crim. App. 1980).....	31
<i>Swift v. Campbell</i> , 159 S.W.3d 565 (Tenn. Ct. App. 2005) .....	29, 30
<i>Tennessean v. Metro Government of Nashville</i> , 485 S.W.3d 857 (Tenn. 2016).....	<i>passim</i>
<i>United States v. Michigan</i> , 424 F.3d 438 (6th Cir. 2005).....	24
<i>United States v. Union Elec. Co.</i> , 64 F.3d 1152 (8th Cir. 1995).....	47

**Statutes**

Freedom of Information Act.....	47
School Security Act.....	37, 38, 39
Tenn. Code Ann. § 10-7-503(a)(1)(A)(i) .....	28
Tenn. Code Ann. § 10-7-503(a)(2)(A).....	28, 29
Tenn. Code Ann. § 10-7-503(a)(5) .....	29
Tenn. Code Ann. § 10-7-504(a)(29)(A).....	49, 51
Tenn. Code Ann. § 10-7-504(p).....	26, 42
Tenn. Code Ann. § 10-7-504(t) .....	15, 26, 43
Tenn. Code Ann. § 10-7-505(b) and (d) .....	45
Tenn. Code Ann. § 40–38–102(a)(1).....	32, 33, 35

Tenn. Code Ann. §§ 40-38-101 ..... 32

Tenn. Code. Ann. § 40-38-301 ..... 31

Tenn. Code Ann. § 49-6-1601(c)(7)..... 38

Tenn. Code Ann. §49-6-2702(d)..... 38

Tenn. Code Ann. § 49-6-4203(a)..... 38

Tenn. Code Ann. § 49-6-4203(b)..... 39

Tennessee Public Records Act..... *passim*

Victims Right’s Act..... 49

**Other Authorities**

Alia Lyerly Smith, Civil Procedure, 67 Geo. Wash. L. Rev.  
852, 853 (1999)..... 48

**Rules**

Supreme Court Rule 46 § 3.02 ..... 53

Tennessee Rule of Civil Procedure 24(b) ..... 48

Tennessee Rule of Civil Procedure 24.01..... 14, 16

Tennessee Rule of Civil Procedure 24.02..... 14, 16, 24, 27

Tennessee Rule of Criminal Procedure 16(a)(2)..... *passim*

**Constitutional Provisions**

The Constitution of the State of Tennessee..... *passim*

## STATEMENT OF ISSUES

The only issue before this Court is whether the Chancery Court’s ruling allowing Intervenors-Appellees the Parents of Minor Covenant Students Jane Doe and John Doe (the “Parents”) to intervene was an abuse of discretion.

## STATEMENT CONCERNING ORAL ARGUMENT

The Parents contend that they clearly meet the standard for intervention and that this Court should affirm the ruling below and remand this case to the Chancery Court. The Parents, therefore, do not believe oral argument is necessary.

## INTRODUCTION

The Parents have intervened on behalf of their children—the victims of one of the worst crimes in our state’s history—to assert compelling interests. Given the pain and trauma suffered by their children, the Parents seek to protect them to the greatest extent possible from a lifetime of psychological harm that will follow if the shooter’s writings are released to the Petitioners-Appellants. For the Parents know that the overwhelming evidence from past shootings shows that surviving children cannot avoid reading their assailants’ writings,<sup>1</sup> which

---

<sup>1</sup> Nor is the Parents’ concern about publication and dissemination hypothetical. Just last week, during the pendency of this appeal, a fringe publication requested the autopsy reports of the dead children—which are public and were never a part of this case—and wrote an article that details the number of bullet wounds, how bullets entered bodies, and

can cause significant harm, including the risk of suicide. T.R. Vol. VIII, 1057, 1070. The Parents also seek to protect other children from the violence of copycat shootings that the writings could inspire, ensure the safety of the school itself to the extent possible, and ensure the adequacy of the Metropolitan Government of Nashville and Davidson County (“Metro Nashville”)’s investigation to catch any potential accomplices or identify other threats.

This appeal involves a narrow procedural question: Was it an abuse of discretion for the Chancery Court to allow the Covenant Parents to intervene? Under Tennessee law, the Chancellor’s order permitting intervention should not be set aside unless the decision was devoid of any basis in law or fact. The Chancellor’s decision to allow intervention was correct. The Parents assert five separate legal claims, all of which have been expressly recognized in some form by the Tennessee Constitution, statutes, or courts, and any one of which is sufficient to support permissive intervention.

First, the Parents assert their children’s constitutional rights as victims of a crime to be free from abuse, harassment, and intimidation at the hands of their criminal assailant as explicitly provided for in Article I, Section 35 of the Tennessee Constitution. That legal claim was considered by the Tennessee Supreme Court in the context of an

---

other gory and graphic details to describe exactly how the killings took place. The Parents do not wish to dignify the article with a citation or do anything to further publicize it. If this Court wishes, the Parents are happy to provide a copy under seal.

intervention in a Tennessee Public Records Act (“TPRA”) case in *Tennessean v. Metro Government of Nashville*.<sup>2</sup> Although the majority did not reach the issue, one Justice specifically wrote that the legal right exists. The fact that the victim’s intervention was permitted in that case, coupled with the Court’s holding and the dissent’s illumination of the victim’s constitutional and statutory rights, is reason enough for this Court to hold the Chancery Court did not abuse its discretion in permitting the Parents to intervene and make their arguments.

Second, the Parents assert their children’s rights as equitable owners of the shooter’s writings under the balancing test set out in *Griffin v. City of Knoxville*.<sup>3</sup> In *Griffin*, too, the Tennessee Supreme Court expressly considered the argument of an intervenor (a widow) in a TPRA action. *Griffin* is additional authority that intervention in a TPRA action is proper, as the Tennessee Supreme Court has twice exercised subject matter jurisdiction over prior TPRA intervenors’ claims. This Court is bound by those precedents.

Third, the Parents assert that the school safety exception to the TPRA, which is an explicit statutory exception to protect school safety and which provides that documents that implicate school safety shall not be produced, exempts the release of certain materials at issue in this case. The Parents intend to offer factual information that pertains to this exception, which is a sound basis for permissive intervention.

---

<sup>2</sup> 485 S.W.3d 857 (Tenn. 2016).

<sup>3</sup> 821 S.W.2d 921 (Tenn. 1991).

Fourth, the Parents assert the statutory exception to the TPRA that protects private information about minors from disclosure. In their brief to this Court, *the Petitioners concede this issue* when they note that the Parents’ objection to the production of photographs of deceased children is correct. *See* Opening Brief at 44, n. 12 (admitting that one of the Petitioners requested the photographs but saying it is “undisputed” that they are exempt from disclosure).

Finally, the Parents assert a right to intervene pursuant to Rule 16 of the Rules of Criminal Procedure, as they seek to protect an ongoing investigation that is central to their children’s safety and the interests of justice for their children from being tainted by a premature release of documents. Thus, the Parents have five separate grounds, any one of which justifies permissive intervention.

In dismissing the Parents’ legal interests, the Petitioners argue that the TPRA precludes any intervention at all, by anyone. But the Petitioners do not cite any specific statutory provision to support that proposition, because there is none. They do not cite any case law that has held that the TPRA precludes intervention—once again, because there is none. To the contrary, the *Griffin* and *Tennessean* cases teach exactly the opposite. The Petitioners thus ask this Court to write something into the TPRA that is not there. This argument finds no support in the law and would create new law that has no historical basis, all in the face of existing Supreme Court precedent.

The potential repercussions of Petitioners’ position are equally extreme. If the Petitioners’ argument is accepted, then Tennessee citizens, including the victims of violent crimes, will have no recourse to

assert their rights in the face of an open records demand, no matter how private or sensitive the information or whether there is any legitimate basis for its release. For example, if Petitioners are correct, then no one could ever argue that, under the *Griffin* balancing test, a document is a private document in government possession as opposed to one subject to public release because they would be unable to intervene in the TPRA case. Petitioners' argument that no one can intervene in a TPRA action would effectively overrule the Supreme Court's decision in *Griffin*.

Moreover, Petitioners misstate key facts and inaccurately portray the nature of the underlying case and the ability (or willingness) of Metro Nashville to speak for the Parents and their children. Metro Nashville's stated position is that the writings should be released, though in a redacted form. This is contrary to the Parents' position that certain materials should not be made public in any form. Accordingly, the Parents must intervene in order to advance this argument. Yet the Petitioners argue that the Parents cannot even have a say to protect their children—at all.

The potential release of the documents at issue in this case is too important to deny intervention and cut off the Chancery Court's full analysis of the subject materials in light of the factual record. The record includes undisputed expert and other testimony that the Parents' children are at significant risk of suicide and other harm if the shooter's writings are released and, for example, are posted on the Internet for all

to read.<sup>4</sup> These are serious issues that implicate substantive legal interests that the Parents have the right to assert on behalf of their children.<sup>5</sup> The Chancery Court correctly found that intervention was proper. Petitioners, by contrast, seek an extreme result that is contrary to law. This Court should affirm the Chancellor's decision to allow intervention and remand to allow the Chancellor to conduct the show cause hearing contemplated by the TPRA.

### STATEMENT OF THE CASE

This is an appeal from the Chancery Court's order granting Intervenor-Appellees' motion to intervene in a petition for the release of certain records pursuant to the TPRA. On April 28, 2023, Petitioner-Appellant Clata Brewer filed a broad petition seeking most of the records in the possession of the Metro Nashville Police Department relating to

---

<sup>4</sup> There is also expert and other substantial evidence that the writings will inspire copycat shootings, including sworn testimony from law enforcement, such as former FBI agents and the former Director of the Tennessee Bureau of Investigation, T.R. Vol. VIII, 1137, 1143, 1147. Although that issue is contested, as the Petitioners have put forward a purported expert who disagrees with the Parents' expert and the FBI and TBI officials. By contrast, the Petitioners did not put forward any evidence or argument at all to contest the Parents' contention that the writings will cause severe psychological trauma, including suicidal ideation, to the children.

<sup>5</sup> In fact, the Parents argued below, and continue to assert, that they qualify for intervention as of right under Rule 24.01. But the Chancellor chose instead to grant intervention under the much more permissive standard of Rule 24.02.

the March 27, 2023 shooting at The Covenant School. T.R. Vol. II, 207. Other petitions then followed, including the petition of James Hammond and the Tennessee Firearms Association, Inc., which sought essentially Metro Nashville’s entire police record. T.R. Vol I., 13-19.<sup>6</sup>

In the days leading up to the Parents’ Motion to Intervene, the Covenant School and Covenant Church each also filed motions to intervene. T.R. Vol. II, 245-47, 255-58. Petitioners originally consented to those motions. T.R. Vol. II, 252-53, 261-63. On May 17, 2023, the Parents filed their intervention motion and an accompanying memorandum. T.R. Vol. II, 291-303. The Parents moved the Court under both Rule 24.01, intervention as of right, and Rule 24.02, permissive intervention. T.R. Vol. II, 298-99. The Court scheduled a hearing on the motions to intervene for May 22, 2023. T.R. Vol. III, 304-05. By the date of the

---

<sup>6</sup> Petitioner James Hammond on behalf of the Tennessee Firearms Association, Inc., requested Metro Nashville’s entire police file, which would include photographs of the deceased children. In oral argument on intervention and in their merits brief in the Chancery Court, the Parents pointed to a statutory exception to the TPRRA that would prevent the release of the photographs Ms. Brewer requested. *See* Tenn. Code Ann. § 10-7-504(t). The exception for photographs and other information concerning minors is another legal ground to justify the Parents’ intervention. Now, on appeal, the Petitioners admit that one of them requested photographs, but Petitioners specifically state in their brief to this court that it is “undisputed” that those photographs are exempt from disclosure. Op. Br. at 44, n. 12. It therefore appears that Petitioners have dropped their request for the photographs, and they should be judicially estopped from renewing that request. But dropping the request for photographs does not moot that issue because the Petitioners still seek other information about the minor children protected under Section 10-7-504(t).

Court's hearing, 100 out of the 112 victim families of the shooting had signed on as proposed intervenors.<sup>7</sup>

At the hearing, the Parents explained their bases for intervention. The Parents also specifically noted that in the *Tennessean* case, the intervenor was allowed to intervene and did not have to file a complaint, supporting the procedures that the Parents have followed. T.R. Vol. IX, 856. Petitioners opposed all intervention motions.

On May 24, 2023, the Chancery Court issued its order permitting the Parents to intervene. T.R. Vol. III, 385-91. The Chancellor allowed the Parents to file on behalf of their children using pseudonyms. T.R. Vol. III, 386-87. In granting intervention, the Chancellor had the benefit of access to many of the documents at issue, including the shooter's writings, for *in camera* review. T.R. Vol. III, 394-95. The Chancery Court concluded that the Parents' asserted claims regarding the application of the TPRA to documents and materials in MNPD's possession that "hinge on the interpretation of the Victim's Bill of Rights and Article I, § 35 of the Tennessee Constitution, which implicate common questions of law and fact to the parties in the present action regarding the requested disclosure of the contents of the MNPD file." T.R. Vol. III, 389. The Chancery Court recognized, *inter alia*,

---

<sup>7</sup> The actual number now involved is less because the Chancellor held that only those Parents who had children enrolled and present at the school that day were victims who could intervene. Thus, the families whose children were absent that day are not an official part of the class of The Parents of Covenant Students Jane Doe and John Doe, even though they had originally opted to join this intervention.

(1) That because of the open police investigation on behalf of the children, the Parents could intervene to preserve any rights they might have related to that investigation under Tenn. R. Crim. P. 16. T.R. Vol. III, 388.

(2) That Article I, Section 35 of the Tennessee Constitution, and victim rights as articulated by Justice Wade in *Tennessean* is “an open question of law” and “warrants consideration.” T.R. Vol. III, 389.

The court also determined that the Parents asserted a “palpable and distinct injury” should certain files, documents, or materials be released and that the injury could be redressed by the Chancery Court’s determination in this action. T.R. Vol. III, 389. Therefore, the court ordered that the Parents file a brief setting out their position to which the Petitioners would then be able to respond to. T.R. Vol. III, 390. Finally, in a separate filing, the Court satisfied the requirement to avoid undue delay by ordering the Parents to file their brief just five days after she granted intervention. T.R. Vol. III, 393-97. In that same order, the Court did not move the Show Cause hearing at all. *Id.*

Over the next nine days the Parents, T.R. Vol. IV, 471, Metro Nashville, *id.* at 456, the School, *id.* at 491, and the Church, T.R. Vol. III, 428, all filed their briefs as ordered, and Petitioners filed their briefs in response. T.R. Vol. IV, 590; T.R. Vol. V, 697, 720.<sup>8</sup> Amici the District Attorney General and various private schools located near the Covenant School also filed in support of the Parents. T.R. Vol. VI, 860-91.

---

<sup>8</sup> One Petitioner requested and was granted an additional week. T.R. Vol. IV, 585.

Petitioner-Petitioners filed their Notice of Appeal on May 30 and June 1, 2023. T.R. Vol. IV, 505, 515, 520, 525.

The Petitioners then moved the Chancery Court to stay proceedings until this appeal is complete. T.R. Vol. V, 736. On the day the Motion to Stay was argued, counsel for Norma and Ronald Hale, the parents of the shooter, appeared in Chancery Court and announced that the Hales had decided to transfer ownership of the shooter's writings to the Parents. T.R. Vol. X, 1001. Counsel for the Hales filed a special appearance and provided the Chancery Court with the document transferring ownership. T.R. Vol. VI, 838, 898. Ownership of the shooter's writings was transferred to the Parents, in trust for the benefit of their children, and for the specific purpose of preventing the release and dissemination of the writings. T.R. Vol. VII, 903-05. Thus, since June 13, 2023, the Parents have held equitable ownership of the writings. *Id.*<sup>9</sup>

The Chancellor denied the Motion to Stay and ordered the parties to submit their proof. *Id.* at 829-35. On June 21, 2023, this Court ordered that the proceedings at the Chancery Court be stayed pending this appeal. At the time of the stay order, the record was developed as set forth in the Statement of Facts below.

---

<sup>9</sup> The documents are in the actual possession of the Metro Nashville police. Possessory ownership of the documents will not be finalized until after the shooter's estate is settled and the police's investigation is complete, at which point the document should be put into the possession of the Parents.

## STATEMENT OF FACTS

On March 27, 2023, an incomprehensible tragedy struck our State and the City of Nashville when a shooter walked into The Covenant School, killed three adults and three young children, and attempted to kill many others. The repercussions of that act will continue to reverberate for years to come.

Words are inadequate to describe the agony and grief of the families who lost loved ones. Nevertheless, those families are a part of this lawsuit, and multiple families have submitted public declarations that attempt to explain to others what it is like to have a young child go to school on a Monday morning and never come home, or to see a beloved father's life cut short and miss the joy of time with his children in the prime of life. *See* Declaration of Erin Kinney, T.R. Vol. VII, 964; Declaration of the Dieckhauses, *id.* at 951; Declaration of Marquita Oglesby, *id.* at 1023.

The surviving children of the Covenant tragedy are also suffering. Since the shooting, they have, among other things:

- Stopped sleeping through the night, T.R. Vol. VII, 935-71; 1002-16; 1025-44;
- Refused to sleep unless their parents are by their side, *id.*;
- Begun wetting the bed, *id.*;
- Developed a fear of loud noises, *id.*;
- Developed a fear of being near windows, *id.*; and
- Blamed themselves for the deaths of their friends, *id.*

The Parents respectfully refer the Court to the public declarations filed in this case so it can fully appreciate the nature of the Parents' interest in intervening in this case. T.R. Vol. VII, 935-71; 1002-16; 1025-44.

In their brief to the Chancery Court, the Parents raised many of the same arguments they raise now. *See* T.R. Vol. IV, 471-90.<sup>10</sup> The Parents conceded that some information should be released so that the public can be fully informed about the attack and the shooter's motives. *Id.* at 474. This even includes police summaries of what the shooter had to say. *Id.* at 474-75. But what the Parents do not want is for personal information about their minor children, information related to the safety of the school, information that would hinder the ongoing investigation, or the shooter's actual writings to be released. *Id.* at 475. The Parents describe this as a middle position that balances the need for transparency with the constitutional imperative to protect victims from abuse. *Id.* at 474.

Before the stay of proceedings at the Chancery Court, the parties submitted briefing and written statements from fact and expert witnesses in anticipation of the show cause hearing scheduled by the Chancellor. Petitioners submitted one putative expert report, which admits that a shooter's writings inspire copycat shootings—so there is no real dispute about that fact—but argues that the copycat phenomena applies for only about two weeks after a shooting. T.R. Vol. VII, 986.

---

<sup>10</sup> In their brief, the Parents argued under *Griffin* that the shooter's writings are not public records, but at the time they filed their brief, the Parents did not yet own the shooter's writings. That development occurred about a week later.

Petitioners' expert said nothing about the harm and trauma children suffer if a shooter's writings are released. *See generally id.* at 983-87.

The Parents, by contrast, submitted a great deal of evidence in support of their position. In addition to the statements of many of the parents themselves cited above, the Parents submitted a report from Dr. Erica Felix, a leading expert on the trauma of childhood shooting victims, and factual declarations from prior victims of school shootings and law enforcement officials.

The law enforcement officials primarily testified that it is well-known to law enforcement that the release of writings like those at issue here will lead to copycat shootings. T.R. Vol. VIII, 1137; 1143; 1147. Dr. Felix also testified to the same copycat phenomena. *Id.* at 1069 (“The release of the Covenant shooter’s writings would create an unnecessary risk of inspiring a copycat attack, whether in Nashville or another community.”).

The Parents also submitted copious amounts of un rebutted evidence regarding the psychological harm that release of these materials could cause to their children. First, Dr. Felix, in her expert report, cited multiple studies in support of her conclusion that “[t]he release of the Covenant shooter’s writings would likely cause psychological harm to the survivors of the shooting, including the children, their parents, and the broader community also affected by the tragedy.” *Id.* For example, Dr. Felix noted that:

The adolescents who lived in a community affected by an episode of mass violence reported stronger emotional reactions to the media coverage of other mass violence events,

felt more personal threat after viewing the coverage, and reported more examination of their beliefs about the world and others. For all adolescents in the study, these thoughts, emotions, and beliefs increased risk for anxiety and depression. *Id.* at 1070.

And that:

The children who survived this mass shooting, and other children in the community, have access to smartphones, computers, and other devices where they can be exposed to the shooter's writings and comments about it, at an incredibly young and tender age, which can expand the potential for harm. Once on the Internet, those materials live forever, and there is a real risk that the children will read them years or even decades in the future, risking future harm. *Id.*

Dr. Felix's testimony was buttressed by others who have confronted the horrors of prior mass shootings. For example, Dr. Scott Scherr, who was in charge of the emergency room at a hospital that dealt with over 230 victims—of whom 12 died—during the Las Vegas shooting in 2017 testified,

Traumatic events like this affect first responders alongside the survivors. I still remember that security guard struggling to process what he had seen. I'm grateful for my colleagues who endured the unthinkable to do their jobs. Every clinician on duty that night was given access to counseling. But some experiences are too visceral. We all will be left with horrific memories for the rest of our lives. *Id.* at 1052.

Dr. Scherr also testified about the danger of copycat attacks and voiced his sincere desire that the Covenant shooter's writings not be the impetus for more horror along the like of what he experienced. *Id.* at 1053.

Dr. Scherr's experience and Dr. Felix's expert testimony was further confirmed by the Alhadeffs, two parents who lost a daughter and had two surviving children from the mass shooting in Parkland, Florida. Dr. Alhadeff testified at length about the harm to his surviving children, and he noted how one student at the school could not stop perseverating on the shooting and eventually committed suicide. *Id.* at 1057.

All of this was in the record at the time this Court issued its stay. There is, essentially, an uncontroverted record that if the shooter's writing are released, it will cause immense harm to the surviving children. And yet the Petitioners insist that this Court should deny the Parents' intervention and thereby deny them any say to protect their children from known dangers.

Finally, the Parents submitted evidence that Article I, Section 35 of the Tennessee Constitution and accompanying statutes were meant to apply in this instance. The Declarations of both Victor Johnson, District Attorney General in Nashville at the time of the amendment's ratification, and Mark Gwyn, retired head of the Tennessee Bureau of Investigation, confirm their work to pass the victim's rights laws and that the laws were meant to apply to a broader context than just criminal prosecutions, as Petitioners argue. *Id.* at 1137 ("I remember when the Victim's Bill or Rights, which is now Article I, Section 35 of the Tennessee Constitution, was approved and ratified. The intent of the constitutional amendment was to afford victim's rights and protections through all

parts of the criminal justice system... not just in criminal prosecutions.”) (Decl. of Mark Gwyn); *id.* at 1139 (“The intent of the constitutional amendment was to afford victim’s rights and protections through all parts of the criminal justice system, which includes police investigations, post-conviction proceedings, and corrections, not just criminal law cases.”) (Decl. of Victor Johnson).

The day after all proof was submitted and the record was complete, this Court issued its order staying the proceedings. This appeal followed.

### STANDARD OF REVIEW

To intervene with permission, the Parents need merely show that there is a single “common question of law or fact between an intervenor’s claims and the underlying action.” *Ballard v. Herzke*, 924 S.W.2d 652, 658 (Tenn. 1996); *see also United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005) (noting that under the analogous federal rule there must be just one common question or law or fact). Once a common question is established, the decision to allow intervention is entrusted to the trial court’s discretion and should not be reversed unless there is a showing that the trial court abused its discretion. *Ballard*, 924 S.W.2d at 658.

Thus, when reviewing a trial court’s order allowing permissive intervention under Rule 24.02, this Court applies the abuse of discretion standard. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191 (Tenn. 2000). Under the abuse of discretion standard, this Court should not overturn the trial court’s order unless this Court is “firmly convinced that the lower court has made a mistake in that it affirmatively appears that the lower court’s decision has no basis in law or in fact and

is therefore arbitrary, illogical, or unconscionable.” *Id.*; see also *Ballard*, 924 S.W.2d at 661. “The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court.” *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). Thus, “appellate courts should permit a discretionary decision to stand if reasonable minds can differ concerning its soundness.” *Metro. Gov’t of Davidson Cnty. v. Tatum*, No. M2007-0279-COA-R-3CV, 2008 WL 4853073, at \*7 (Tenn. Ct. App. Nov. 7, 2008).

## SUMMARY OF ARGUMENT

The Parents have raised five legal claims, any one of which is sufficient for this Court to hold that the Chancery Court did not abuse its discretion in permitting them to intervene.

**First**, the Parents assert their children’s explicit right under Article I, Section 35 of the Tennessee Constitution to be free from abuse, harassment, or intimidation throughout the criminal justice system. This right, and its applicability in the TPRA context, was recognized by Justice Wade in *Tennessean v. Metro Government of Nashville*, 485 S.W.3d 857, 881-82 (Tenn. 2016), and no Justice of the Court wrote anything to suggest that the victim rights analysis was incorrect.<sup>11</sup>

---

<sup>11</sup> The other justices did not adopt Justice Wade’s victim rights argument in the *Tennessean* case, but neither did they disagree with his view. Rather the Supreme Court’s majority decided that case in favor of the wishes of the intervening victim but on the ground that Rule 16 of the Rules of Criminal Procedure created an exception to the TPRA. *Id.* at 867-73. Justice Wade, by contrast, would have held against the Rule 16

**Second**, the Parents assert their children’s rights as the equitable owner of the shooter’s writings. During the proceedings below, the parents of the shooter transferred ownership of the shooter’s writings to the Parents, in trust, and for the express purpose of protecting the children. T.R. Vol. VII, 903-10. In *Griffin v. City of Knoxville*, the Tennessee Supreme Court recognized the rights of a document’s owner in a public records request case when it adopted our state’s balancing test for determining if a record is a public record or a private record in police possession. 821 S.W.2d 921 (Tenn. 1991).

**Third**, the Parents assert the school safety exception to the TPRA. That is a statutory exception expressly recognized in Tennessee law, which mandates that documents which implicate the exception “shall not be open to public inspection.” Tenn. Code Ann. § 10-7-504(p). It was not an abuse of discretion for the Chancellor to agree that the Parents should be permitted to present argument and facts related to protecting the safety of the school their children attend.

**Fourth**, the Parents have a legal interest to protect their children’s personal information from disclosure, given that the Petitioners have requested the entire police file, which almost certainly contains information about the minor victims. Tennessee Code Section 10-7-504(t) protects the personal information of minors from disclosure, and the Petitioners have conceded to this court that the exception applies. Op. Br. at 44, n.12 (acknowledging that it is undisputed that photographs are

---

argument while affording some relief to the victim under Article I, Section 35. *Id.* at 878-81.

exempt from disclosure). The Chancellor correctly found that exception to be another ground for permissive intervention.

*Fifth*, the Parents have a legal interest under Rule 16 as identified in the *Tennessean* case. Just as the victim in that case had an interest in a full investigation and potential prosecution, so too the Parents have an interest on behalf of themselves and their children in protecting documents from disclosure so that the authorities can complete a comprehensive and fulsome investigation to ensure that anyone associated with this heinous crime is brought to justice.

Furthermore, Petitioners' arguments that the TPRA bars intervention and that Metro Nashville can adequately represent the interests of the Parents in this case are incorrect as a matter of law and fact. Simply stated, the Chancellor's decision was not an abuse of discretion that was devoid of any legal basis. The Parents have at least five legal claims, and the Chancellor properly allowed their intervention.<sup>12</sup>

## ARGUMENT

This Court should uphold the Chancery Court's decision to permit the Parents to intervene pursuant to Tenn. R. Civ. Pro. 24.02 because the

---

<sup>12</sup> This case will likely return to this Court after a merits determination by the Chancellor, at which point this Court will have to determine the contours of victim rights under the Tennessee Constitution and whether the writings at issue here qualify as public records under *Griffin*, but those merits questions are for a later day. The question before the Court now is only whether the Chancery Court abused its discretion by permitting the Parents to raise these arguments.

Parents have asserted legal claims that present common questions of law to Petitioners' underlying action against Metro Nashville.

**A. THE PARENTS HAVE RAISED COGNIZABLE LEGAL CLAIMS PERMITTING INTERVENTION**

1. The Parents Have an Interest in Asserting their Rights Under Article I, Section 35 of the Tennessee Constitution

“There is no generally recognized state or federal constitutional right of access to public records.” *Abernathy v. Whitley*, 838 S.W.2d 211, 214 (Tenn. Ct. App. 1992) (citing *In re Black Panther Party v. Kehoe*, 39 Cal. App. 3d 900, 114 Cal. Rptr. 725 (1974), vacated on other grounds, 42 Cal. App. 3d 645, 117 Cal. Rptr. 106; *In re Midland Publ’g Co., Inc.*, 420 Mich. 148, 362 N.W.2d 580 (1984)). To the extent that there is a right to examine public records, it is conferred by statute. *Id.* In Tennessee, the primary statute granting non-governmental parties access to public records is the TPRA.

The TPRA provides a broad definition of public records and for broad public release. “All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A). A public record is defined as “all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output,

films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A)(i).

While these provisions may be broad, the statutory right to access public records is far from absolute. The Act explicitly states that “[i]nformation made confidential by state law shall be redacted whenever possible, and the redacted record shall be made available for inspection and copying.” Tenn. Code Ann. § 10-7-503(a)(5). In addition to the Act’s explicit statutory exceptions, Tennessee law recognizes numerous other exceptions to the TPRA.

“Notwithstanding the breadth of the public records statutes’ disclosure requirements, the General Assembly recognized from the outset that circumstances could arise where the reasons not to disclose a particular record or class of records would outweigh the policy favoring public disclosure.” *Swift v. Campbell*, 159 S.W.3d 565, 571 (Tenn. Ct. App. 2005) (Koch, P.J.). In addition to the explicit exceptions from disclosure listed by the General Assembly in Chapter 7 of Title 10, all three branches of the Tennessee Government have recognized that numerous explicit and implicit exceptions to public record disclosures are found elsewhere in state law, including the Tennessee Constitution, other statutory and regulatory law, and the common law. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A) (requiring government offices to allow inspection of records “unless otherwise provided by state law”); *Swift*, 159 S.W.3d at 571 (acknowledging “explicit and implicit exceptions from disclosure

found elsewhere in state law”);<sup>13</sup> Tennessee Comptroller of the Treasury, Open Records Counsel, [Exceptions to the Tennessee Public Records Act](#), (last visited Aug. 1, 2023). This is commonly referred to as the “state law,” or “catch-all” exception to public disclosure under the Act. *Tennessean*, 485 S.W.3d at 859, 872, 878 (Lee, C.J.; Wade, J., dissenting).

Accordingly, in interpreting the TPRA, a court’s “role is to determine whether state law either explicitly or implicitly excepts particular records or a class of records from disclosure under the public records statutes.” *Swift*, 159 S.W.3d at 572. While the court must be “guided by the clear legislative policy favoring disclosure” absent a clear exception, disclosure is not required when an explicit or implicit exception exists anywhere in state law such that the reasons not to disclose “outweigh the policy favoring public disclosure.” *Id.* at 571-72. An examination of Tennessee law reveals that there are multiple sources of explicit and implicit exceptions that the Parents have an interest in arguing are applicable to the materials at issue here.

---

<sup>13</sup> The original public records statute provided for two specific exceptions and others “provided by law or regulations made pursuant thereto.” *Swift*, 159 S.W.3d at 571. Over many years, the General Assembly enacted additional specific exceptions but, in 1984, “narrowed [law or regulations] exception to apply only to records made confidential by ‘state statute.’” Seven years later, the legislature amended this exception by replacing “state statute” with “state law,” and thereby “broadened the permissible sources of exceptions from disclosure to include not only statutes, but also the Constitution of Tennessee, the common law, the rules of court, and administrative rules and regulations because each of these has the force and effect of law in Tennessee.” *Id.* at 571-72.

2. The Chancery Court Correctly Determined that the Parents May Intervene to Argue that Article I, Section 35 of the Tennessee Constitution and other State statutes Provide an Implicit Exception to TPRA Disclosure in this Case

The primary state law exception to the TPRA that the Parents assert is Article I, Section 35 of the Tennessee Constitution, which the people of Tennessee ratified during the November 3, 1998 General Election,<sup>14</sup> and which states in relevant part that “To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights . . . (b) The right to be free from intimidation, harassment and abuse throughout the criminal justice system.” Article I, Section 35 explicitly grants victims of crime the right to be free from the intimidation, harassment, and abuse that would come from release of the shooter’s writings and the other documents identified by the Parents.<sup>15</sup> This constitutional right is the paramount consideration in this case and should trump Petitioners’ general statutory right to public records. *See State v. Brown*, 29 S.W.3d 427, 433 (Tenn. 2000) (“the constitutional right to present a defense has been held

---

<sup>14</sup> *See* Tenn. Code. Ann. § 40-38-301.

<sup>15</sup> Again, the only question before the Court is whether the Chancery Court properly granted the Parents’ motion to intervene. The Parents were in the process of providing the Chancery Court with evidence in support of their Constitutional claim when proceedings in that court were stayed.

to ‘trump’ a number of other state and federal rules of procedure and evidence, including rape shield statutes”); *Arnold v. State*, No. M2018-00710-CCA-R3-PC, 2020 WL 569928, at \*34 (Tenn. Ct. App. Feb. 5, 2020) (same); *State v. Hill*, 598 S.W.2d 815, 819 (Tenn. Crim. App. 1980) (constitutional right of confrontation takes precedence over other statutory protections).<sup>16</sup>

The General Assembly has enacted multiple statutes that independently and in conjunction with the Tennessee Constitution exempt these records from public disclosure. The most similar to Article I, Section 35 is the Tennessee Victims’ Bill of Rights, Tenn. Code Ann. §§ 40–38–101, *et seq.*, which recognizes, *inter alia*, the right of crime victims to “[b]e treated with dignity and compassion[.]” Tenn. Code Ann. § 40–38–102(a)(1). As the Chancery Court acknowledged, the extent to which these provisions apply in cases such as this is an open question of Tennessee law, and the Parents have an interest in arguing that materials similar to those at issue in this case “qualify for protection under the victims’ rights provisions—which apply both during and after the prosecution.” *Tennessean*, 485 S.W.3d at 882 (Wade, J. dissenting). The Chancery Court’s determination warrants even more deference given

---

<sup>16</sup> Petitioners’ citations to *In re Estate of Lucy*, No. W2007–02803–COA–R3–CV, 2008 WL 3861987, at \*3 (Tenn. Ct. App. Aug. 20, 2008) (unpublished) and *Flying J Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009), are inapposite. Even assuming “[i]ntervention is concerned with something more than standing,” a proposition for which *In re Estate of Lucy* cites no binding Tennessee law, the Parents assert specific constitutional and statutory rights in the subject matter of this case, not merely undefined interests untethered to concrete rights.

that it had access to many of the disputed materials *in camera* when it issued her ruling, putting it in the best position to evaluate the interests of the Parents in this case.

The *Tennessean* case guided the Chancery Court’s decision to permit the Parents to intervene. In *Tennessean*, a group of media organizations and a citizens group made a request under the TPRA for Metro Nashville Police Department files regarding its investigation of an alleged rape. *Id.* at 859. The Chancery Court granted motions to intervene by the victim, identified as “Jane Doe,” and the State of Tennessee. *Id.* at 860.

Metro Nashville and the State argued that the requested records were exempt from disclosure under the TPRA pursuant to Tenn. R. Crim. P. 16(a)(2). *Id.* The Supreme Court agreed, holding that Metro Nashville was not required to disclose the investigative materials under the TPRA because they fell under the state law exception. *Id.* at 870. Because it held that the records were exempt pursuant to Rule 16 and the state law exception to the TPRA, it did not reach the constitutional, statutory, and privacy issues raised by Ms. Doe, though it noted that its holding “protects Ms. Doe’s privacy concerns by shielding all of the investigative records from disclosure during the pendency of the criminal proceedings and any collateral challenges to any convictions.” *Id.* at 873.

Justice Wade dissented. Arguing that Rule 16 did not shield the investigative records from TPRA disclosure, he went on to consider the intervenor-victim’s arguments. In doing so, he opined that “the constitutional and statutory rights afforded to victims are broader in

scope than the work-product exception of Rule 16(a)(2).” *Id.* at 881. Noting Ms. Doe’s arguments that, “[a]s the victim of a crime, she entitled [sic] to ‘[b]e treated with dignity and compassion,’ Tenn. Code Ann. § 40–38–102(a)(1), and ‘to be free from intimidation, harassment and abuse throughout the criminal justice system,’ Tenn. Const. Art. I, § 35,” and that these provided a basis for a state law exception to the TPRA, Justice Wade concluded that the records at issue “qualify for protection under the victims’ rights provisions—which, as indicated, apply both during and after the prosecution.” *Id.* at 881-82.

While the majority of the Court did not reach the intervening victim’s constitutional and statutory arguments, nothing in the *Tennessean* holding is inconsistent with the application of Article I, Section 35, or the Tennessee Bill of Rights in this context. Indeed, concurring in the majority opinion, Justice Kirby criticized the dissent for providing *too little* protection for victims in TPRA proceedings, not too much. *See id.* at 876 (“The ruling urged by the dissent would leave witnesses and crime victims—including children, the mentally incompetent, the financially destitute—to fend for themselves in the wake of public records requests seeking their personal information, agonizing photos and videos, and other sensitive information.”). In light of the opinions in *Tennessean*, the Chancellor’s decision to permit the Parents to intervene and assert their rights was correct.

Petitioners maintain that Article I, Section 35 does not apply in TPRA cases because it is limited to proceedings in the criminal justice system. App. Br. at 39. But the only reason that Metro Nashville has the records at issue is due to police activity in a criminal investigation – the

very activity that Plaintiffs now rely on to render these materials public records. Indeed, the materials are in the custody of the Metro Police Department, which is a department within the Metropolitan Nashville Government. To claim a right to the records because they were seized during a criminal investigation, while claiming that constitutional protections afforded to victims of those crimes are inapplicable because of the type of courtroom a TPRA case is filed in, strains credulity. The constitutional rights of victims are not relegated to the trash bin at the close of an investigation or after a jury verdict, particularly when the case is inextricably intertwined with the investigation or prosecution. This point is further demonstrated by the fact that Tenn. Code Ann. § 40–38–102(a)(1) (a provision of the Tennessee Victims’ Bill of Rights implementing Article I, Section 35) guaranteeing victims’ right to “[b]e treated with dignity and compassion” is in no way limited to the criminal justice system. *See Tennessean*, 485 S.W.3d at 882 (Wade, J. dissenting). Indeed, Part 3 of Title 40 defines terms such as *Critical stages of the criminal justice process*. Had the General Assembly wished to limit Section 40–38–102(a)(1) protections to criminal investigations or proceedings, it could have done so. It did not.

The legislative history is not to the contrary. The Parents submitted evidence in the Chancery Court that Article I, Section 35 of the Tennessee Constitution and accompanying statutes were meant to apply in this instance. The Declarations of both Victor Johnson, District Attorney General in Nashville at the time of the amendment’s ratification, and Mark Gwyn, retired head of the Tennessee Bureau of Investigation, confirm their work to pass the victim’s rights laws and that the laws were

meant to apply to a broader context than just criminal prosecutions, as Petitioners argue. T.R. Vol. VIII, 1137 (“I remember when the Victim’s Bill or Rights, which is now Article I, Section 35 of the Tennessee Constitution, was approved and ratified. The intent of the constitutional amendment was to afford victim’s rights and protections through all parts of the criminal justice system... not just in criminal prosecutions.”) (Decl. of Mark Gwyn); *id.* at 1139 (“The intent of the constitutional amendment was to afford victim’s rights and protections through all parts of the criminal justice system, which includes police investigations, post-conviction proceedings, and corrections, not just criminal law cases.”) (Decl. of Victor Johnson).<sup>17</sup>

---

<sup>17</sup> Petitioners argue that Representative Herron’s statements in the House Judiciary Committee support their limited view of these provisions. *See* App. Br. at 46. They fail to specify which of the tapes – Tape 1 or Tape 2 – from the Hearing on House Judicial Resolution 14 before the House Judiciary Committee they mean to cite – but they appear to be referring to the following statement:

There are a number of states that is not all of them that have addressed this issue and [and] it is the concern that persons would not be intimidated or harassed in the criminal justice system. I don’t think a reporter coming up and [and] interviewing someone is – I don’t think that reporter works for the criminal justice system it’s – they’re not a government official, they’re not employed by the government. And I would state to you and for the record that there’s nothing in there that’s intended to limit the 1st amendment rights that exist otherwise. But the intention is twofold. One, to make sure that the governmental forces and processes don’t intimidate or harass people. And

The applicable state law exceptions do not end there. Additional statutory provisions create implicit exceptions to the release of these records on their own and in conjunction with the explicit exceptions discussed above. This case involves not only a crime of violence, but a crime of violence perpetrated at a school. Multiple provisions of the Tennessee Code recognize the special significance of school safety and the importance of confidentiality of certain information relating to minors. For example, in enacting the School Security Act of 1981 (“School Security Act”), the General Assembly declared its intent “to secure a safe

---

secondly, that those persons who have committed crimes not be allowed to harass persons in this process. . The goals are twofold Mr. Chairman they are and [and] this is true in other states as well to make sure that those people who are the governmental processes those people who are employed by the government do not harass or intimidate or abuse people. And secondly to make sure that the persons who are the accused who are the convicted criminals do not intimidate, harass, or abuse victims.

While the statement uses the words “criminal justice system,” it adds nothing meaningful in support of Petitioners’ proposed narrow application of these provisions.

Petitioners also maintain that Victims’ Bill of Rights’ Senate Sponsor Tommy Burks “expressly noted” the statute “grew out of” an attempt to address hardship for crime victims during criminal prosecution, “particularly” those hardships “related to compelled interactions with criminal defendants”. App. Br. at 46. Rather than directly quoting this critical language, Petitioners generally cite six minute and forty-two seconds of commentary by Senator Burks, *see id.*, none of which lends meaningful support to Petitioners’ position.

environment in which the education of the students of this state may occur.” Tenn. Code Ann. § 49-6-4203(a). The School Security Act also secured the confidentiality of information relating to child abuse or sexual abuse, *see* Tenn. Code Ann. § 49-6-1601(c)(7) (schools shall designate a child abuse coordinator to, *inter alia*, “[m]aintain confidential files in accordance with §§ 37-5-107 and 37-1-612 regarding all reported suspicions of child abuse and child sexual abuse”).

Perhaps of most relevance here, the School Security Act further ordered that threats of violence in schools be shielded from disclosure. Tenn. Code Ann. §49-6-2702(d) provides that:

The threat assessment team shall certify to any agency or individual providing confidential information that the information will not be disclosed to any other party, except as provided by law. The agency providing the information to the threat assessment team shall retain ownership of the information provided, and such information remains subject to any confidentiality laws applicable to the agency. . . . Confidential information may be shared with the threat assessment team only as necessary to protect the safety of the individual or others. Nothing in this part compels an agency or individual to share records or information unless required by law.

The shooter’s writings fall under the threat of violence exception, and that statutory ground itself is an adequate and independent reason for those writings not to be released.

Although the requirements of the School Security Act are necessarily limited to public schools, the General Assembly's recognition of "the position of the schools in loco parentis and the responsibility this places on principals and teachers within each school to secure order and to protect students from harm while in their custody" is equally applicable to private schools. *See* Tenn. Code Ann. § 49-6-4203(b). These provisions implicitly exempt the release of records that would further risk the safety and security of Tennessee schools, public or private, and the students in attendance. And that continues to include the Parents' children, whether they remain at the Covenant School or move on to other public or private schools in Tennessee.

3. The Parents Now Own the Shooter's Writings and Have an Interest in Asserting and Protecting Those Property Rights

The record fully supports the Parents' intervention in this action as equitable owners of the shooter's writings. At the hearing on Petitioners' motion to stay the trial court proceedings, counsel for Norma and Ronald Hale, the parents of the shooter, appeared in Chancery Court and announced that the Hales had decided to transfer ownership of the shooter's writings to the Parents. T.R. Vol. X, 1001. The shooter's writings were transferred to the Parents, in trust for the benefit of their children, and for the specific purpose of preventing the release and dissemination of the writings. T.R. Vol. VII, 903-10. If there was any question that the Parents had a sufficient interest in the outcome of the litigation, there is no question now that the Parents have sufficient

standing to intervene and protect the disclosure of their property as the equitable owners of the shooter's writings. *See Griffin*, 485 S.W.3d at 857.

In *Griffin*, a widow desired to protect from public disclosure certain handwritten notes made by the decedent before he died. *See Appendix* at 002-04. The widow asserted her right to intervene as the owner of the "possessions and papers which [were] the subject of the [the] litigation." *See id* at 002, ¶ 3. Further, the widow asserted claims that the notes were not public records under the TPRA. *See id* at 002-03, ¶¶ 6-7. The Knox County Chancery Court permitted the widow to intervene in the underlying TPRA action between the news media outlet and the City of Knoxville. *See Appx.* at 001.

Not only was the widow permitted to intervene, but her arguments also formed the basis of the appeal in which the Tennessee Supreme Court established the balancing test to determine when material is "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency." *See Griffin*, 821 S.W.2d at 924 (Tenn. 1991). Thus, the *Griffin* case stands for two important propositions that support the Parents' intervention in this case. First, similar to the widow in the *Griffin* case who had standing to intervene as owner of the material at issue, the Parents now stand before the Court as the owner of the shooter's writings, an integral part of the materials subject to release. Second, also similar to the widow in *Griffin*, the Parents assert claims regarding whether the shooter's writings are

subject to release under the TPRA, a common question of law and fact to the underlying action.<sup>18</sup>

Therefore, *Griffin* shows that the Chancery Court's decision to permit intervention was logical and supported by the law. The Chancery Court had sufficient legal basis to permit intervention on two separate grounds, either one of which is reason to reject Petitioners' appeal.<sup>19</sup>

4. The Parents Have a Personal Interest in Arguing the Applicability of the School Safety Exception to the TPRA

Tennessee Code Annotated Section 10-7-504(p) provides, in relevant part, "*Information*, records, and plans that are *related to school security*, the district-wide school safety plans or the building-level school

---

<sup>18</sup> The Parents rely on the *Griffin* balancing test in their brief in the Chancery Court to support their initial claims regarding application and interpretation of the TPRA. T.R. Vol. IV, 478-80. While the Chancery Court did not rely on *Griffin* for purposes of determining the Parents' interest in the litigation because the Parents did not yet own equitable title to the documents at that time, their ownership of the documents is a part of the record before this Court and further lends support that permissive intervention was proper in this instance.

<sup>19</sup> It is worth noting that the Parents could have brought a declaratory judgment action against Metro Nashville asserting their victim rights argument under *Tennessean* and/or their ownership argument under *Griffin*. If they can bring a declaratory judgment action seeking a declaration of their legal rights, then, logically, they can intervene in a TPRA case that implicates those very rights because the same legal issues and same facts are at stake. In fact, the Parents already argued below and continue to contend now that they qualify for intervention as of right because disposition of this TPRA case will impede their ability to protect their legal interests.

safety plans shall not be open to public inspection” (emphasis added). The Parents’ interest in intervening in this case to argue the applicability of this exception is obvious. Their children will be returning to school in approximately two weeks. Many hope to someday return to the same school – to the same building – in which the shootings took place. As such, the Parents, particularly as representatives of their minor children, have a unique interest in arguing for their own personal safety.

If the Chancery Court were to do as Petitioners’ request and release the entirety of Metro Nashville’s investigatory file related to the shootings, it is highly likely that those files would include details regarding The Covenant School’s grounds and safety plans in place at the time of the shootings. At this stage, the Parents desire to assert the claim that this exception applies to halt Metro Nashville’s release of, at the very least, portions of the investigatory file. This legal claim presents a common question of law (the application of the TPRA to the documents and materials in MNPd’s possession) which the trial court acknowledged as one of the reasons for allowing the Parent’s to intervene. T.R. Vol. III, 389. Therefore, the Chancery Court’s decision to permit the Parents to intervene was not an abuse of discretion and should not be disturbed.

5. Portions of the Information Sought By Petitioners Is Protected From Disclosure By Tennessee Code Section 10-7-504(t)

Given that the Petitioners have requested the entire police file, the requested materials almost certainly contain information about the minor victims of this crime. Tennessee Code Annotated Section 10-7-

504(t) protects the personal information of minors from disclosure, including, *inter alia*, (1) names; (2) home, work, and email addresses; (3) telephone numbers; (4) social security numbers; and (5) photographic or video depictions of minor victims. The Petitioners have conceded that the exception applies. Op. Br. at 44, n.12 (acknowledging that it is undisputed that photographs are exempt from disclosure).

The Petitioners' concession that the exception applies all but acknowledges that the Chancery Court's decision to permit intervention was proper because the Chancery Court relied on the Parents' claims that certain exceptions to the TPRA applied to the materials and documents in the Metro Nashville Police Department's possession in determining that the Parents presented common questions of law and fact to the underlying action. T.R. Vol. III, 389.

6. The Parents Have a Right to Argue for Application of Tennessee Rule of Criminal Procedure Rule 16(a)(2)

The materials also fall under the Tennessee Rule of Criminal Procedure 16(a)(2) exception as argued by Metro Nashville. Rule 16(a)(2) bars "discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case." The Parents have a separate and unique interest in the proper application of Rule 16 to ensure that the investigation of the murders of their friends and family members is fulsome, thorough, and unimpeded by inappropriate disclosures of information relevant to the investigation.

The Supreme Court’s holding in *Tennessean* supports this interest. Not only did the Court address the intervenor-victim’s argument in that case, but it maintained that its holding applying the protections of Rule 16 “protect[ed the victim’s] privacy concerns by shielding all of the investigative records from disclosure during the pendency of the criminal proceedings and any collateral challenges to any convictions.” 485 S.W.3d at 873. Justice Kirby’s concurrence went even further in noting the importance of victim rights when she emphasized how important the Court’s Rule 16 holding was to protect “witnesses and crime victims—including *children*, the mentally incompetent, the financially destitute” who might otherwise have to “fend for themselves in the wake of public records requests seeking their personal information, agonizing photos and videos, and other sensitive information” if they had to rely on just the victim right’s provisions instead of also Rule 16. *Id.* at 876 (emphasis added). In other words, the majority went further to protect the intervenor-victim’s rights than proposed by the dissent protecting the investigation records under Rule 16.

## **B. THE TPRA DOES NOT BAR INTERVENTION**

The Chancery Court did not abuse its discretion in permitting intervention in this TPRA action because the TPRA permits intervention. Petitioners suggest the Court “[b]egin with the text” of the TPRA in arguing that the statute leaves no room for interveners, App. Br. at 20, but their argument turns the text on its head and actually asks the Court to write something into the statute that does not exist.

The TPRA expressly acknowledges and carves out the specific aspects of routine civil procedure it is suspending and what it requires. For example, it eliminates the requirement for a responsive pleading, it eschews the need for the court to allow time for a response to the petition, and it requires the court to provide written findings of fact and conclusions of law. *See* Tenn. Code Ann. § 10-7-505(b) and (d). The statutory scheme is silent as to the rules of intervention. If the General Assembly had wanted to bar intervention in TPRA cases, it could have done so and the language of Section 10-7-505 shows that it contemplated exceptions to the general rules of civil procedure and did not include intervention. Where the legislature has provided specific exceptions or changes to particular court proceedings, it is presumed that those not addressed remain intact. *See Rich v. Tennessee Bd. of Med. Examiners*, 350 S.W.3d 919, 927 (Tenn. 2011) (“Applying the canon of construction ‘expressio unius est exclusio alterius,’ which holds that the expression of one thing implies the exclusion of others, we infer that had the legislature intended to allow the additional exception asserted by the Board, it would have included specific language to that effect.”) (citing *Amos v. Metro. Gov’t of Nashville & Davidson Cnty.*, 259 S.W.3d 705, 715 (Tenn. 2008)).<sup>20</sup>

---

<sup>20</sup> Petitioners’ argument that “at some point the general rule must yield to the inconsistent requirements of a more specific one,” App. Br. at 23, while inapplicable in any discernable way to the procedural question, is ironic in that Petitioners ultimately seek to avoid the application of the more specific TPRA exceptions in favor of the more general TPRA disclosure requirement.

This makes sense because the rule Petitioners are asking this Court to write into the statute would lead to an absurd result. First, consider the *Tennessean* case in which the victim was permitted to intervene, following the same procedure employed by the Parents here, and whose argument was expressly considered by the courts (including the Tennessee Supreme Court, where the intervenor participated), just as the Parents seek here. *Tennessean*, 485 S.W.3d at 873. Justice Wade’s opinion in the *Tennessean* case, coupled with the other Justices’ comments about the importance of victim rights, as discussed *infra*, leaves only one logical conclusion: the TPRA permits intervention and asserting a legal claim under Article I, Section 35, as the Parents did here, provides a proper legal basis for intervention in a TPRA action.<sup>21</sup>

Second, the *Griffin* case presents another TPRA action in which a third-party was permitted to intervene and participate in the trial and appellate process. *See Griffin*, 821 S.W.2d at 921. Petitioners make light of *Tennessean* and *Griffin* because the third parties’ intervention in those

---

<sup>21</sup> Petitioners cite *Tennessean* for the proposition that “[t]here is no room afforded to intervening parties” under the TPRA, App. Br. at 24, but their citation does not support that proposition. The pages they cite describe the roles of a requestor and a custodian of records but say nothing about barring an intervenor. To the contrary, the Court noted that under the TPRA’s statutory scheme, “A citizens or media organization may still intervene in a criminal action to challenge the terms of a protective order blocking access to court records or proceedings.” *Tennessean*, 485 S.W.3d at 863. It would be absurd to allow such an intervention in a criminal case while barring a victim from having a voice in a related TPRA proceeding. *Cf. id.* at 873 (addressing the absurd effects that aspects of the dissent would have on the criminal justice system).

cases was not challenged. *See* App. Br. at 24 n.3. But the fact that the underlying court’s decision to permit intervention was unchallenged in no way supports the notion that the entire statutory scheme bars intervention.<sup>22</sup> To the contrary, the *Tennessean* and *Griffin* cases show the typical process with which to move forward once a third party with common questions of law and fact has intervened – consider the third parties’ claims in the course and scope of the ongoing litigation as the court considers the related claims of the original petitioner. Moreover, Petitioners’ alternative arguments related to subject matter jurisdiction and FOIA are equally unavailing.<sup>23</sup>

---

<sup>22</sup> Indeed, not only was the intervenor listed in the Supreme Court case caption, but the Court concluded its opinion by stating that the “costs of the appeal are taxed equally to the defendant City of Knoxville and the intervening complainant Carole S. Miller.” *Griffin*, 821 S.W.2d at 924.

<sup>23</sup> Petitioners’ effort to treat the TPRA like the federal Freedom of Information Act, App. Br. at 25-27, is another failed effort to alter the language of the TPRA, as the TPRA and FOIA are different statutes with very different text. Their argument that the Parents are trying to create a “reverse public records suit” presupposes an outcome in their favor regarding the intervention question. Moreover, their citation to *United States v. Union Elec. Co.*, 64 F.3d 1152, 1170 n.9 (8th Cir. 1995), as requiring an independent jurisdictional basis for intervention is inapposite. Not only is that language *dicta* even as federal precedent, as the court in that case held that the intervenors were entitled to intervene as of right, but most federal courts allow for a broader, more flexible application of federal permissive intervention when the intervenor asserts rights regarding case documentation. *See generally* Alia Lyerly Smith, Civil Procedure, 67 *Geo. Wash. L. Rev.* 852, 853 (1999) (“A majority of the circuits have broadened their interpretation of Rule 24(b) to encompass situations in which a third party seeks to intervene not on the merits, but only for the limited purpose of gaining access to sealed

Should this Court do what the Petitioners request and hold that the TPRA bars intervention of any type, then that calls into question important Tennessee Supreme Court precedent and abrogates portions of the Tennessee Rules of Civil Procedure with no basis in the text of the TPRA itself or in Tennessee law. Therefore, because the Parents assert valid legal bases for intervention of common questions of law to the underlying action, the Chancery Court did not abuse its discretion and the Court should decline to rewrite the TPRA statute as the Petitioners request.

**C. METRO NASHVILLE DOES NOT ADEQUATELY REPRESENT THE PARENTS' INTERESTS**

The Parents' interests are not adequately represented by Metro Nashville because the Parents seek protections from disclosure outside the scope of any claimed exception proffered by Metro Nashville. T.R. Vol. III, 382-83. Rule 24.02 does not expressly contemplate whether existing parties to the action adequately represent the interest of the potential intervenor. *See* Tenn. R. Civ. P. 24.02. However, courts can and do consider this factor when contemplating whether permissive intervention is proper. *See Ballard v. Herzke*, 924 S.W.2d 652, 657 (Tenn. 1996). Even where an existing party has a duty to represent the interests of the potential intervenor, a party may still be allowed to intervene

---

and protected documents. In fact, 'every circuit court that has considered the question has come to the conclusion that nonparties may permissively intervene for the purpose of challenging confidentiality orders.'"). Petitioners' arguments are an attempt to complicate a simpler question by forcing a square peg into a round hole.

under special circumstances and when there is a compelling interest that supports intervention. *See e.g., In re Est. of Hendrickson*, No. M2008-01332-COA-R9-CV, 2009 WL 499495, at \*5 (Tenn. Ct. App. Feb. 25, 2009) (discussing this concept under Tenn. R. Civ. P. 24.01(2)).

While the TPRA contemplates that Metro Nashville must respond and show cause as the custodian of records, Metro Nashville has no obligation to advocate for the full extent of protection from public disclosure that the Parents believe to be warranted. At the time the Parents sought intervention in this action, Metro Nashville's only claimed exception to Petitioners' public records request was Rule 16. As laid out extensively above, the Parents' interests in this litigation and claimed exceptions to the TPRA span far beyond Rule 16. For that reason alone, the trial court's decision to permit the Parent's intervention based on their legal claims and interests under the Victims Right's Act and the Tennessee Constitution was proper because Metro Nashville did not raise these important interests to the Chancery Court. Additionally, even when Metro Nashville expanded its list of applicable exceptions to include Tenn. Code Ann. §§ 10-7-504(a)(29)(A), 504(p), 504(t), and § 38-7-110(c), in addition to Rule 16, its position is only temporary in nature and does not necessarily include protecting dissemination or public release of the shooter's writings. *See T.R. Vol. III, 382-83; see also Ballard*, 924 S.W.2d at 657-68 (permitting intervention and discussing the possibility that one party's interest pursuing public disclosure may end leaving the potential intervening party with no one to advocate their position or interest in the matter).

While Metro Nashville and the Parents' positions partially overlap in that both argue against disclosure of the full investigatory file, the Parents seek to protect a larger scope of documents and materials from public disclosure, namely the shooter's writings. Moreover, Metro Nashville's interest may be time-limited, in part, due to Rule 16. In *Ballard v. Herzke*, the Tennessee Supreme Court permitted the Tennessean and another media outlet to intervene in an action for the purpose of challenging an existing protective order and gaining access to certain discovery documents, among other things. 924 S.W.3d at 656. The Court explained that while the plaintiffs and the Tennessean both sought to overturn the protective order, the parties had different end goals: plaintiffs were motivated by their desire to prepare for trial while the Tennessean was motivated by being able to publicly disseminate the information through the media. *See id.* at 658. Notably, the Court determined that the Tennessean's intervention was proper because, despite the shared objective of overturning the protective order, the plaintiffs' interest would dissipate if they reached a settlement, while the Tennessean's interest would not be extinguished. *Id.* Therefore, intervention was proper because the plaintiffs' and the Tennessean's interest were not identical.

Here, similar to the plaintiffs and the Tennessean in *Ballard*, the Parents and Metro Nashville have shared interests but only to a certain point. Once Metro Nashville determines the criminal investigation is over, Rule 16 will no longer suffice to protect the investigatory files from disclosure. Moreover, even if the court determines that Tenn. Code Ann. §§ 10-7-504(a)(29)(A), 504(p), 504(t), and § 38-7-110(c), apply to protect

other documents and materials from public disclosure absent Rule 16, the Parents' legal claims regarding release of the shooter's writings will not be adequately represented. The Parents' present compelling evidence that public dissemination of the shooter's writings will inflict unimaginable pain and suffering on their children and potentially cause harm to the public at large. T.R. Vol. VII, 935-71; 1002-16; 1025-44. Even more, the Parents are now the equitable owners of the shooter's writing and have a unique position that is not represented by Metro Nashville or any other intervening party to this action. The special circumstances at issue in this case make the Parents' intervention proper, regardless of whether Metro Nashville may represent *some* of the Parents' interests *at this time*. Therefore, the record supports the Parents' intervention, and it was not an abuse of discretion to permit the Parents to intervene in this action.

## CONCLUSION

For the foregoing reasons, the Parents respectfully request that the Court affirm the order of the Chancery Court granting the Parents' motion to intervene and remand this case to the Chancery Court for the show cause hearing required by the TPRA.

Respectfully submitted,

/s/ Edward M. Yarbrough

Edward M. Yarbrough (#004097)

Sara D. Naylor (#037533)

SPENCER FANE LLP

511 Union Street, Suite 1000

Nashville, TN 37219

Telephone: (615) 238-6300

eyarbrough@spencerfane.com

snaylor@spencerfane.com

Eric G. Osborne (#029719)

William L. Harbison (#007012)

Christopher C. Sabis (#030032)

C. Dewey Branstetter (#009367)

Ryan T. Holt (#030191)

Micah N. Bradley (#038402)

Frances W. Perkins (#040534)

Hunter C. Branstetter (#032004)

William D. Pugh (#037616)

SHERRARD ROE VOIGT & HARBISON, PLC

150 3<sup>rd</sup> Avenue South, Suite 1100

Nashville, TN 37201

Telephone: (615) 742-4200

eosborne@srvhlaw.com

bharbison@srvhlaw.com

csabis@srvhlaw.com  
dbranstetter@srvhlaw.com  
rholt@srvhlaw.com  
mbradley@srvhlaw.com  
fperkins@srvhlaw.com  
hbranstetter@srvhlaw.com  
wpugh@srvhlaw.com

Hal Hardin (#003101)  
HARDIN LAW OFFICE  
211 Union Street, Suite 200  
Nashville, TN 37201  
Telephone: (615) 369-3377  
hal@hardinlawoffice.com

## CERTIFICATE OF COMPLIANCE

This brief complies with the requirements of Supreme Court Rule 46 § 3.02 because it is typed in fourteen-point Century Schoolbook font and, according to the word-count feature of Microsoft Word, contains 11,514 words, exclusive of those parts of the brief exempted by § 3.02(a)(1).

DATED: August 3, 2023

s/ Edward M. Yarbrough

Edward M. Yarbrough

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the forgoing has been served on counsel for the parties on the **3rd day of August, 2023** to:

Hand Douglas R. Pierce (#010084)  
 Mail KING & BALLOW  
 Fax 315 Union Street, Suite 1100  
 Fed. Ex. Nashville, TN 37201  
 E-Mail (615) 259-3456  
dpierce@kingballow.com

*Counsel for Petitioner, Clata Renee Brewer*

Hand John J. Harris III (#12099)  
 Mail SCHULMAN, LEROY & BENNETT, PC  
 Fax 3310 West End Avenue, Suite 460  
 Fed. Ex. Nashville, TN 37201  
 E-Mail (615) 244-6670  
jharris@slblawfirm.com

*Counsel for Petitioners, James Hammond  
and Tennessee Firearms Association, Inc.*

Hand Wallace W. Dietz, Director, Dept. of Law  
 Mail Lora Fox  
 Fax Cynthia Gross  
 Fed. Ex. Phylinda Ramsey  
 E-Mail METROPOLITAN GOVERNMENT OF  
NASHVILLE & DAVIDSON COUNTY  
Metropolitan Courthouse  
1 Public Square, Suite 108  
Nashville, TN 37210  
(615) 862-6341

wally.dietz@nashville.gov  
lora.fox@nashville.gov  
cynthia.gross@nashville.gov  
phylinda.ramsey@nashville.gov

*Counsel for Respondent*

<input type="checkbox"/> Hand	Rocklan W. King III
<input type="checkbox"/> Mail	F. Laurens Brock
<input type="checkbox"/> Fax	ADAMS AND REESE LLP
<input type="checkbox"/> Fed. Ex.	1600 West End Avenue, Suite 1400
<input checked="" type="checkbox"/> E-Mail	Nashville, TN 37203
	rocky.king@arlaw.com
	larry.brock@arlaw.com

*Counsel for Covenant Presbyterian Church*

<input type="checkbox"/> Hand	Peter F. Klett
<input type="checkbox"/> Mail	Autumn L. Gentry
<input type="checkbox"/> Fax	DICKINSON WRIGHT PLLC
<input type="checkbox"/> Fed. Ex.	424 Church Street, Suite 800
<input checked="" type="checkbox"/> E-Mail	Nashville, TN 37219
	pklett@dickinsonwright.com
	agency@dickinsonwright.com

Nader Baydoun  
BAYDOUN & KNIGHT, PLLC  
5141 Virginia Way, Suite 210  
Brentwood, TN 37027  
nbaydoun@baydoun.com

*Counsel for The Covenant School*

<input type="checkbox"/> Hand	Nicholas R. Barry
<input type="checkbox"/> Mail	America First Legal Foundation
<input type="checkbox"/> Fax	611 Pennsylvania Avenue, SE #231

( ) Fed. Ex. Washington, D.C. 20003  
(x) E-Mail nicholas.barry@aflegal.org

Paul J. Krog  
Bulso PLC  
155 Franklin Road, Suite 400  
Brentwood, TN 37027  
pkrog@bulso.com

*Counsel for Petitioners, Michael Patrick Leahy and Star News Digital Media, Inc.*

( ) Hand Richard L. Hollow  
( ) Mail Hollow & Hollow, LLC  
( ) Fax P.O. Box 22578  
( ) Fed. Ex. Knoxville, TN 37933  
(x) E-Mail rhollow@hollowlaw.com

*Counsel for Petitioners, The Tennessean, Rachel Wegner, and Todd Gardenhire*

DATED: August 3, 2023

*s/Edward M. Yarbrough*

Edward M. Yarbrough