

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

CLATA RENEE BREWER; JAMES HAMMOND; THE TENNESSEE FIREARMS ASSOCIATION, INC.;	)	
MICHAEL P. LEAHY; STAR NEWS DIGITAL MEDIA, INC.; THE TENNESSEAN; RACHEL WEGNER;	)	M2023-00788-COA-R3-CV
and TODD GARDENHIRE,	)	On Appeal from the
Petitioners-Appellants ,	)	Chancery Court for
	)	Davidson County
v.	)	
	)	Case Nos. 23-0538-III,
	)	23-542-III, 23-636-III,
	)	23-640-III
	)	
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	Chancellor I 'Ashea
Respondent -Appellee ,	)	Myles
	)	
and	)	
	)	
PARENTS OF MINOR COVENANT STUDENTS JANE DOE AND JOHN DOE; THE COVENANT SCHOOL ; and)	)	
COVENANT PRESBYTERIAN CHURCH	)	
Intervenors -Appellees .	)	

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**BRIEF AMICUS CURIAE OF FRANKLIN ROAD ACADEMY,  
MONTGOMERY BELL ACADEMY, OAK HILL SCHOOL, AND  
ST. PAUL CHRISTIAN ACADEMY  
IN SUPPORT OF INTERVENORS -APPELLEES**

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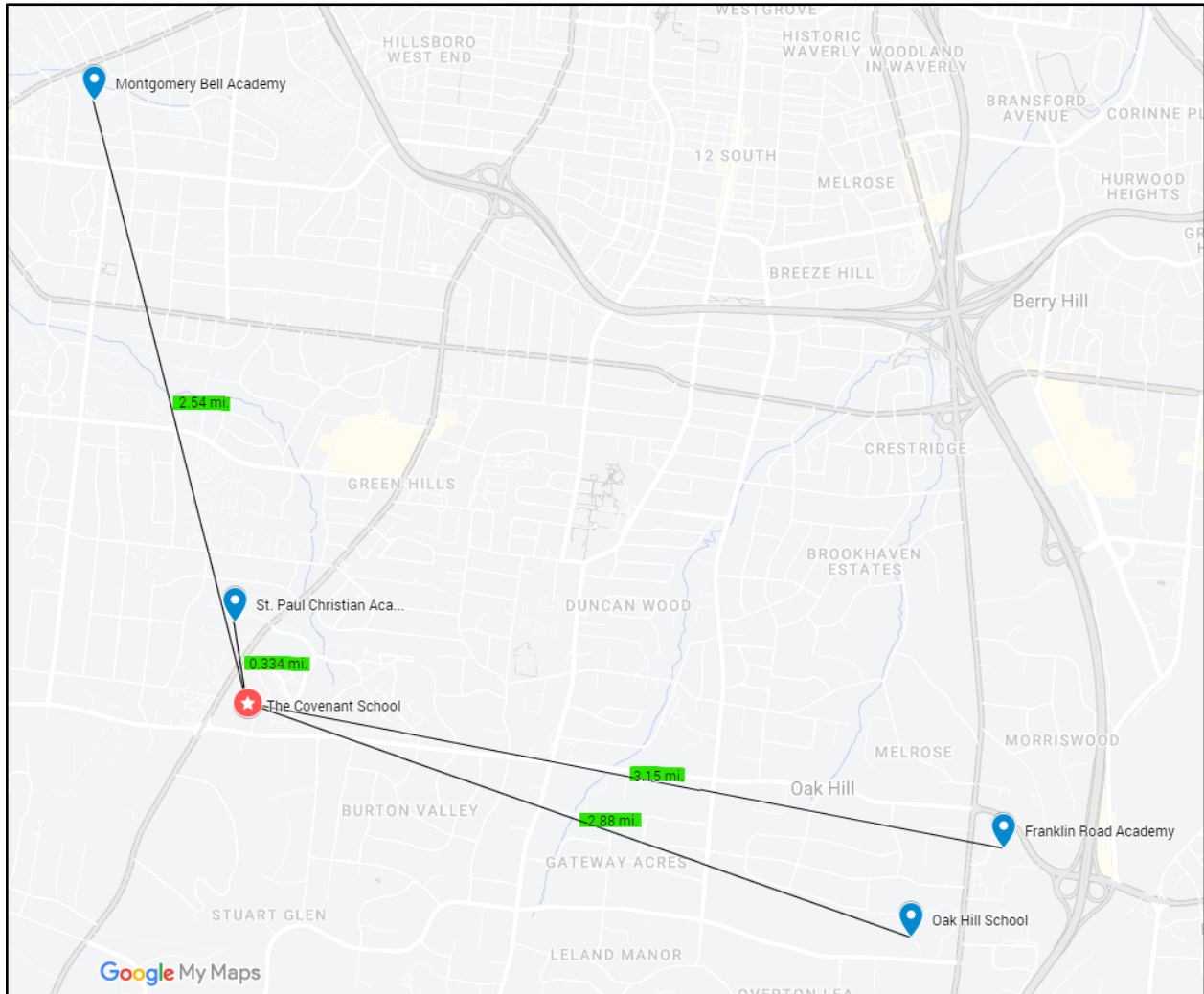
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## INTEREST OF AMICI CURIAE

Amici Curiae Franklin Road Academy, Montgomery Bell Academy, Oak Hill School, and St. Paul Christian Academy (“Amici”) are independent schools in Nashville, all located a short distance from The Covenant School.



The armed attack on The Covenant School on March 27, 2023, is of utmost concern to the children, parents, and staff of Amici schools. Collectively, Amici educate more than 2,500 students in preschool through the twelfth grade and employ more than 450 teachers, faculty, and staff. While each school educates and cares for a different subset of Nashville’s school children, all Amici have an ongoing fundamental interest in school

safety and security. The horrific events at Covenant have heightened this interest.

Petitioners-Appellants' opposition to intervention by The Covenant School, Covenant Presbyterian Church, and the Parents of Minor Covenant Students Jane Doe and John Doe also implicates Amici's interests as independent schools. Petitioners seek not only to silence the voices of the victims, but also preclude intervention by third parties in any Tennessee Public Records Act matter. Amici come together to express their specific perspective on the permissibility and importance of intervention by independent schools and their stakeholders when school security is implicated in an action under the Tennessee Public Record Act.

## STATEMENT OF THE ISSUES

1. Whether the trial court properly exercised its discretion when it held that Intervenor-Appellees can and should be allowed to intervene in this Tennessee Public Records Act case.

## SUMMARY OF ARGUMENT

On the morning of March 27, 2023, a brutal armed assault on The Covenant School took the lives of six victims, including three children under the age of ten.<sup>1</sup> As news of the assailant's<sup>2</sup> attack trickled out, students and faculty across Nashville felt waves of fear, sadness, anger, and grief, along with concerns for their own safety and security. The attack thrust Nashville and its school communities to the center of the national discussion about school safety and active shooter attacks. Nashvillians, Tennesseans, and Americans of all stripes rallied in support of the families of the victims and The Covenant School. At the same time, Petitioners<sup>3</sup> sued the Nashville Metropolitan Government under the Tennessee Public Records Act ("TPRA") to compel disclosures from the ongoing law enforcement investigation, particularly seeking the assailant's writings that were seized during the investigation.

The trial court permitted The Covenant School ("Covenant"), Covenant Presbyterian Church ("CPC"), and the Parents of Minor Covenant Students Jane Doe and John Doe ("Parents") to intervene in this TPRA action. Petitioners have appealed that decision, seeking to silence the voices of the victims of the attack. Amici argue alongside Respondent and Intervenors that the trial court properly permitted Covenant, CPC, and Parents to intervene in a TPRA action that implicates their parental, fiduciary, constitutional, statutory, and ownership rights. The voices of the victims in this TPRA matter

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<sup>1</sup> The assailant also died that day.

<sup>2</sup> Amici purposefully omit the assailant's name. Per experts in the field, minimizing posthumous notoriety discourages copycats aspiring to the same infamy.

<sup>3</sup> For ease of reference: - Petitioners-Appellants are referred to as "Petitioners";  
- Respondent-Appellee is referred to as "Respondent" or "Nashville Metropolitan Government"; and  
- Intervenors-Appellees are referred to as "Intervenors."



or any other similar action should not be silenced; intervention in TPRA matters is permissible and, in this case, essential.

## ARGUMENT

### **I. Intervention in Tennessee Public Record Act Cases Is Permissible .**

Intervention in TPRA matters is not new. See, e.g., *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 858 (Tenn. 2016) (intervention permitted in TPRA case by Jane Doe victim and local district attorney). Yet Petitioners raise a novel argument that the TPRA “does not contemplate intervention,” seeking to prohibit TPRA intervention whole cloth. (Appellant Br. 19.)

Respectfully, this Court should reject Petitioners’ interpretation of the TPRA and refuse to silence the voices of victims and private parties whose parental, fiduciary, constitutional, statutory, and transactional rights are implicated in TPRA matters. This is particularly so regarding parents and schools in TPRA matters implicating the statutory school security exception. First, intervention in TPRA matters is a regular practice that has been repeatedly welcomed by the Tennessee Supreme Court and this Court. Second, applying principles of statutory interpretation, the TPRA does not prohibit intervention. Third, adopting Petitioners’ interpretation of the TPRA’s procedural parameters creates a new separation-of-powers conflict that this Court should avoid.

#### **A. Intervention in TPRA matters is a regular practice .**

The TPRA codified Tennessee’s century-old commitment to public inspection of government records. See *Tennessean*, 485 S.W.3d at 864. (citations omitted). Moreover, “[t]he Public Records Act has a noble and worthwhile purpose by providing a tool to hold government officials and

agencies accountable to the citizens of Tennessee through oversight in government activities.” Id.

With a blinkered view on the TPRA’s procedural language, Petitioners argue that TPRA actions are a bilateral affair, leaving “no room” for “intervening parties.” (Appellant Br. 24.) Yet Tennessee courts regularly find “room” for intervenors. *Tennessean*, 485 S.W.3d at 858 (intervention in TPRA case permitted to Jane Doe victim and local District Attorney); *Gautreaux v. Internal Med. Educ. Found., Inc.*, 336 S.W.3d 526, 527 (Tenn. 2011) (limited intervention in TPRA case permitted at trial court level for doctors whose documents were requested); *Griffin v. City of Knoxville*, 821 S.W.2d 921, 921 (Tenn. 1991) (intervention in TPRA case permitted to widow of deceased state representative whose papers were the subject of the action); *Henderson v. City of Chattanooga*, 133 S.W.3d 192, 196 (Tenn. Ct. App. 2003) (intervention in TPRA case permitted to several parties for and against disclosure of police photographs).<sup>4</sup>

In a recent seminal TPRA cases, the Tennessee Supreme Court unanimously found room for intervenors. In *Tennessean*, a “coalition of media groups and a citizens organization” filed a TPRA action against the Nashville Metropolitan Government to inspect its police department’s investigative file in connection with a high-profile investigation into the rape of a Vanderbilt University student by Vanderbilt football players. 485 S.W.3d at 859. The Tennessee Attorney General intervened on behalf of the State and the District Attorney General to oppose disclosure. Id. at 860. And the victim, filing pseudonymously as Jane Doe, intervened in the TPRA action

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<sup>4</sup> Parties like *The Tennessean* have also been permitted to intervene in other matters in order to assert TPRA claims over court records. See *Doe v. Briley*, No. 373-6971, 2007 WL 1345386, at \*1 (M.D. Tenn. May 7, 2007); *Ballard v. Herzke*, 924 S.W.2d 652, 657 (Tenn. 1996); *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 360 (Tenn. Crim. App. 1998).

“to prevent disclosure of the investigative file, and particularly photographs and video images of the alleged assault.” *Id.* at 859. Throughout its opinion, the Tennessee Supreme Court listened to the intervenor-victim’s voice, noting Ms. Doe’s privacy concerns and arguments. *Id.* at 859, 873-74.

Despite sharp disagreement, with Justice Kirby, concurring, and Justice Wade, dissenting, both listened to the voice of the victim. Justice Kirby emphasized that “witnesses and crime victims—including children, the mentally incompetent, the financially destitute” must not be left “to fend for themselves in the wake of public records requests seeking their personal information, agonizing photos and videos, and other sensitive information.” *Id.* at 876 (Kirby, J., concurring). These third-party, nongovernment interests were important because TPRA “requests could be made by anyone, including perpetrators and their consorts, or others who might seek to exploit or threaten them.” *Id.* Justice Kirby also noted that victims may not “even learn of any records requests when they are made.” *Id.* And though Justice Wade’s dissent took a different view of the Court’s statutory interpretation approach, he noted that there was no question that Ms. Doe had “intervened . . . to assert her statutory and constitutional protections against disclosure under the TPRA,” and was “entitled to ‘be treated with dignity and compassion,’ and ‘to be free from intimidation, harassment and abuse throughout the criminal justice system.” *Id.* at 881 (Wade, J., dissenting) (quoting Tenn. Const. art. I, § 35; Tenn. Code Ann. § 40-38-102(a)(1)). In Justice Wade’s view “the victim’s claim” as an intervenor seeking to prevent disclosure under the TPRA “warrant[ed] consideration” and that the victim-intervenor was “entitled to an adjudication of her claim that public disclosure of the police records would violate her statutory and constitutional rights.” *Id.*

at 877, 881. In sum, the Supreme Court found plenty of room for an intervenor in the TPRA action.

So did this Court. On first review, this Court heard argument on the issues raised by the TPRA petitioner, the Nashville Metropolitan Government, and “Intervenors,” including the victim, Ms. Doe. *Tennessean v. Metro. Gov’t of Nashville*, No. M2014-00524-COA-R3CV, 2014 WL 4923162, at \*1 (Tenn. Ct. App. Sept. 30, 2014). Ultimately, this Court found that its holding on other matters resolved the intervenor-victim’s unique TPRA arguments. *Id.* at \*4. Yet Judge McBrayer, dissenting, insisted that “the trial court should have addressed all potential exceptions brought to its attention by Metro and the victim,” acknowledging an intervenor’s place in a TPRA action. *Id.* at \*6 (emphasis added). After all, deferring these determinations to another court, “for consideration at a later date presents the unacceptable potential for public release of materials adversely impacting the victim’s rights under Article 1, § 35 of the Tennessee Constitution and Tennessee Code Annotated sections 40-38-101 through 506 . . .” *Id.*

Petitioners’ novel argument overlooks the regular practice of the Tennessee Supreme Court, this Court, and trial courts to permit intervention in TPRA matters. Accordingly, this Court should affirm the Chancellor’s intervention order.

**B. Applying principles of statutory interpretation, the TPRA does not prohibit intervention.**

Leaning on the unique nature of the TPRA, Petitioners argue that certain variations in procedural mechanics imply that TPRA matters may only be a “bilateral” affair, leaving “no room” for “intervening parties.” (Appellant Br. 21-24.) This is incorrect as a matter of statutory interpretation.

First, the General Assembly’s silence on TPRA intervention does not manifest a prohibition. Petitioners advocate that the TPRA “imposes its own procedural regimen that dispenses with large swathes of the ordinary litigation process,” including intervention under Tennessee Rule of Civil Procedure 24.02. (Appellant Br. 20.) In other words, because the TPRA does not speak to intervention, Petitioners argue that the General Assembly has barred the procedural mechanism—prohibition by omission. When interpreting statutes, Tennessee courts “must determine and give effect to the Legislature’s intent in adopting the statute without adding or taking away from its intended meaning or application.” *Tennessean*, 485 S.W.3d at 863 (emphasis added). The plain language of the TPRA does not prohibit intervention. Petitioners’ reading requires the Court to presume that the General Assembly prohibited intervention through its silence. But “not every silence is pregnant.” *Burns v. United States*, 501 U.S. 129, 136 (1991) (abrogated on other grounds) (citing *State of Ill., Dep’t of Pub. Aid v. Schweiker*, 707 F.2d 273, 277 (7th Cir. 1983)). Tennessee courts have regularly refused to infer legislative action from statutory silence on matters not addressed in the statute. See *State v. Collier*, 411 S.W.3d 886, 897 (Tenn. 2013) (“[s]ilence in a statute is not affirmative law” (citations omitted)); see, e.g., *Northland Ins. Co. v. State*, 33 S.W.3d 727, 730-31 (Tenn. 2000) (refusing to adopt an inference “drawn from statutory silence” regarding waiver of sovereign immunity where the General Assembly did not otherwise speak to the issue).

Second, the General Assembly’s inaction in the face of repeated intervention in TPRA matters creates a presumption that the General Assembly does not oppose the practice. As a first principle, “legislative inaction is generally irrelevant to the interpretation of existing statutes . . .”

Hardy v. Tournament Players Club at Southwind, Inc., 513 S.W.3d 427, 443 (Tenn. 2017) (quoting Freeman Indus., LLC v. Eastman Chem. Co., 172 S.W.3d 512, 519 (Tenn. 2005)). Thus, the General Assembly did not hide an elephant—usurpation of the rules of civil procedure—in a mousehole—designation of petitioner and respondent roles.

Even still, “[t]he doctrine of legislative inaction presumes that, had the legislature disagreed with a prior judicial construction of a statute, it would have amended the statute accordingly.” Hardy, 513 S.W.3d at 444. In 1991, Though intervention was permitted in high-profile TPRA cases, Griffin (1991) and Tennessean (2016), the General Assembly did not expressly prohibit of TPRA intervention when they amended the TPRA over four dozen times, including its procedural TPRA overhaul in 2008. See 2008 Pub. Acts Ch. 1179 (S.B. 3280); see also 2016 Pub. Acts Ch. 722 (H.B. 2082) (failing to amend a prohibition on intervention into the TPRA less than a month after the Tennessean decision); 2017 Pub. Acts Ch. 233 (H.B. 58) (same, a year after Tennessean). If the General Assembly objected to TPRA intervention, they would have amended the TPRA to say so in any one of the dozens of amendments enacted.

Third, reading usurpation of the Tennessee Rules of Procedure into the General Assembly’s silence leads to what Tennessee courts have called an “absurd result.” See *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000) (“[W]e will not apply a particular interpretation to a statute if that interpretation would yield an absurd result.”). “The Tennessee Rules of Civil Procedure . . . are ‘laws’ of this state, in full force and effect, until such time as they are superseded by legislative enactment or inconsistent rules promulgated by this Court and adopted by the General Assembly.” *State v. Hodges*, 815 S.W.2d 151, 155 (Tenn. 1991) (quoting *Tennessee Dep’t of Hum. Servs. v.*

Vaughn, 595 S.W.2d 62, 63 (Tenn. 1980)). Petitioners reason that: (1) because the TPRA judicial-review process was enacted after the promulgation of the Rules of Civil Procedure; (2) because the General Assembly knows the state of the law when it acts; and (3) because the TPRA does mention any party but a petitioner and respondent, the TPRA superseded the Tennessee Rules of Civil Procedure on intervention. (Appellant Br. 23-24.)

Petitioners' interpretation would mean that the General Assembly (through its silence) intended to silence parents when information about their children is requested from governmental agencies. This would mean that the General Assembly (through its silence) intended to deprive a rape victim of a voice when a TPRA request encompasses photos and videos of the assault if no convictions or guilty pleas are obtained. See *Tennessean*, 485 S.W.3d at 882 (Wade, J., dissenting). This Court need not imply such an interpretation. See *Ken Smith Auto Parts v. Thomas*, 599 S.W.3d 555, 567 (Tenn. 2020); *Spires v. Simpson*, 539 S.W.3d 134, 145 (Tenn. 2017); *Flemming*, 19 S.W.3d at 197 (“[W]e will not apply a particular interpretation to a statute if that interpretation would yield an absurd result.”).

In short, principles of statutory interpretation all point to one commonsense conclusion—the General Assembly did not prohibit TPRA intervention through silence. Tennessee courts should not add to a statute's intended meaning, *Tennessean*, 485 S.W.3d at 863, should presume the legislature speaks to judicial constructions with which it disagrees, *Hardy*, 513 S.W.3d at 444, and should refuse to apply interpretations that lead to absurd results, *Ken Smith*, 599 S.W.3d at 567; *Spires*, 539 S.W.3d at 145; *Flemming*, 19 S.W.3d at 197. This Court should not read a prohibition on intervention into the TPRA.

**C. Reading a prohibition on intervention into the TPRA creates a separation-of-powers violation that this Court should avoid.**

Lastly, setting aside the history of TPRA intervention in the courts, Petitioners' novel interpretation of the procedural workings of the TPRA creates a new separation-of-powers conflict between the General Assembly and the judiciary where none has existed before. This Court can avoid the constitutional conflict through principles of constitutional avoidance.

**1. If the General Assembly precluded intervention in TPRA matters, the General Assembly violated the separation-of-powers doctrine.**

Petitioners advocate that the TPRA "imposes its own procedural regimen that dispenses with large swathes of the ordinary litigation process," including intervention under Tennessee Rule of Civil Procedure 24.02. (Appellant Br. 20.) But to hold that the General Assembly prohibited permissive intervention in TPRA actions is to hold that the General Assembly has violated the separation-of-powers doctrine.

The General Assembly, of course, has broad legislative power. See *State v. Mallard*, 40 S.W.3d 473, 480 (Tenn. 2001). But "any exercise of that power by the legislature must inevitably yield when it seeks to govern the practice and procedure of the courts." *Id.* "Only the Supreme Court has the inherent power to promulgate rules governing the practice and procedure of the courts of this state . . ." *Id.* at 480-81 (citing *State v. Reid*, 981 S.W.2d 166, 170 (Tenn. 1998) ("It is well settled that Tennessee courts have inherent power to make and enforce reasonable rules of procedure.")) (other citations omitted). As a result, "because the power to control the practice and procedure of the courts is inherent in the judiciary and necessary 'to engage in the complete performance of the judicial function,' . . . this power cannot be constitutionally exercised by any other branch of government." *Id.* at 481



(citing *Anderson Cty. Q. Court v. Judges of the 28th Jud. Cir.*, 579 S.W.2d 875, 877 (Tenn. Ct. App. 1978); Tenn. Const. art. II, § 2 (“No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.”)). In the practice and procedure of the courts, the Tennessee Supreme Court “is supreme in fact as well as in name.” *Id.* (citing *Barger v. Brock*, 535 S.W.2d 337, 341 (Tenn. 1976)).

Granted, the TPRA (and other contexts identified by Petitioners) vary procedurally from the typical civil matter. But these variations do not place procedure purely within the General Assembly’s purview—“it is impossible to preserve perfectly the ‘theoretical lines of demarcation between the executive, legislative and judicial branches of government.’ Indeed there is, by necessity, a certain amount of overlap because the three branches of government are interdependent.” *Mallard*, 40 S.W.3d at 481 (quoting *Petition of Burson*, 909 S.W.2d 768, 774 (Tenn. 1995)). With this practical reality in mind, Tennessee courts “have, from time to time, consented to the application of procedural or evidentiary rules promulgated by the legislature” to “foster a workable model of government.” *Id.*

In all events, “as the General Assembly can constitutionally exercise only the legislative power of the state, its broad ability to enact rules for use in the courts must necessarily be confined to those areas that are appropriate to the exercise of that power.” *Id.* The General Assembly’s enactment of rules for use by the courts in TPRA matters do not, as a matter of course, lead to the usurpation of the Rules of Civil Procedure, which, barring any stated exceptions, “shall govern procedure in the circuit or chancery courts in all civil actions.” Tenn. R. Civ. P. 1 (emphasis added).

While the General Assembly has broad legislative power, it cannot impede on the judiciary's governance of the practice and procedure of the courts. But Petitioners' reading of the TPRA does just that, taking the procedural reins out of the hands of the judiciary and ignoring the regular practice of intervention in TPRA matters embraced by the courts.

**2. The Court should avoid the constitutional conflict created by Petitioners' reading of the TPRA.**

Despite these separation-of-powers concerns, when a court “finds that (1) a statute can legitimately be construed in various ways, and (2) one of those constructions presents a constitutional conflict,” it becomes the court’s “duty to adopt a construction which will sustain the statute and avoid that constitutional conflict, if its recitations permit such a construction.” Mallard, 40 S.W.3d at 480 (quoting Marion Cty. Bd. of Comm’rs v. Marion Cty. Election Comm’n, 594 S.W.2d 681, 684-85 (Tenn. 1980)); see Jordan v. Knox Cty., 213 S.W.3d 751, 780 (Tenn. 2007). Here, the Court need not address the constitutional separation-of-powers conflict created by Petitioners’ interpretation of the TPRA for two reasons.

First, Petitioners’ reading can be rejected on principles of constitutional avoidance. Courts should construe statutes to avoid possible infringement on the inherent power of the judiciary. See, e.g., Petition of Burson, 909 S.W.2d 768, 776 (Tenn. 1995) (construing the General Assembly’s statute prescribing penalties for the unauthorized practice of law in a constitutional manner, even though such power was inherent to the judiciary). This Court should likewise “presume that the legislature did not intend to infringe upon the proper exercise of the judicial power in this state,” Mallard, 40 S.W.3d at 483, and decline to cause the constitutional conflict created by Petitioners’ interpretation of the TPRA.

Second, “[c]onflicts between provisions of the Tennessee Rules of Civil Procedure and Tennessee statutes which cannot be harmonized are resolved in favor of the Rules of Civil Procedure.” Ken Smith, 599 S.W.3d at 566 (quoting Pratcher v. Methodist Healthcare Hospitals, 407 S.W.3d 727, 736 (Tenn. 2013)). Even if Petitioners correctly read the TPRA to prohibit intervention, Tennessee Rules of Civil Procedure 24.01 and 24.02 must control, allowing for intervention.

At bottom, the TPRA leaves plenty of room for intervention in TPRA matters. This Court and the Tennessee Supreme Court have repeatedly recognized this, permitting intervention and hearing the voices of intervenors in TPRA matters. And finding that the TPRA precludes intervention through its silence would create an unworkable separation-of-powers conflict between the legislature and the judiciary that should be avoided. Intervention in TPRA matters is permissible.

## **II. Intervention in Tennessee Public Record Act Cases Is Essential .**

Intervention is not only permissible, but also essential. The “noble and worthwhile purpose” of the TPRA is to provide “a tool to hold government officials and agencies accountable to the citizens of Tennessee through oversight in government activities.” *Tennessean*, 485 S.W.3d at 864. Yet in certain contexts, private information and records come into the possession of the government, creating conflicting interests and implicating the rights of private parties. Intervention in TPRA cases arising from criminal acts is essential to ensure that victims’ voices may be heard and their unique rights under the state constitution protected. And intervention is essential for independent schools and their stakeholders in TPRA matters that implicate the TPRA’s school security exception.

### **A. Intervention in TPRA matters is essential so that victims’ voices are heard .**

Most prominently, TPRA intervention is essential when victims' rights are implicated, as in this case. See *Tennessean*, 485 S.W.3d at 859. Victims' rights are so important that they have been enshrined in our state constitution and codified in law. Tenn. Const. art. I, § 35; Tenn. Code Ann. § 40-38-102(a)(1). Victims of crime, like the Parents and Covenant, have a constitutional right "to be free from intimidation, harassment and abuse throughout the criminal justice system." Tenn. Const. art. I, § 35. Victims of crime, like the Parents and Covenant, are entitled to "[b]e treated with dignity and compassion." Tenn. Code Ann. § 40-38-102(a)(1). As Justice Kirby warned, the TPRA may make records available, "not only to responsible media sources, but also to suspected perpetrators under investigation and their allies, gang members, voyeurs, pornographers, anyone." *Tennessean*, 485 S.W.3d at 874 (Kirby, J., concurring). Thus, victims must have a voice through TPRA intervention to vindicate their constitutional and statutory rights.

**B. Intervention in TPRA matters is essential for independent schools and their stakeholders when school security is implicated .**

Intervention is also essential for independent schools, like Covenant and Amici, and their stakeholders, like the Parents, when school security is implicated. Independent schools, like public schools, serve an important societal purpose—the education and development of future generations. While government agencies may have a direct line to public school administrators when TPRA actions implicate public school information, independent schools bear the responsibility to serve and protect their own students through TPRA intervention. At bottom, parties like Intervenors and Amici, must have a voice when it comes to their own school security.

Despite its breadth, the TPRA, “is not absolute, as there are numerous statutory exceptions to disclosure.” *Id.* at 865. One is the “school security” exception:

Information, records, and plans that are related to school security, the district-wide school safety plans or the building-level school safety plans shall not be open to public inspection.

Tenn. Code Ann. § 10-7-504(p) (2022). In the wake of the shooting at Covenant, the General Assembly added to the language above to include:

All school security reports, memoranda, plans, notes, threats, and procedures, including drafts that are incorporated in reports created or received by the department of safety must be treated as confidential and shall not be open for inspection by members of the public.

Tenn. Code Ann. § 10-7-504(p)(2)(A). The expanded school security exception took effect July 1, 2023.

As a public school caretaker, the government is in a strong position to preserve information that implicates school security in the face of TPRA actions seeking this information. Likewise, independent schools are in the best position to preserve any information implicating school security. As a result, when school security information for an independent school is in the hands of a government body and sought through a TPRA action, independent schools must have a voice to prevent improper disclosures. The stakes are simply too high to deny independent schools and their stakeholders the opportunity to preserve the security of their students and children.

And the amount of independent school security information in the hands of the government has grown and continues to grow. As an appropriate reaction to the events of March 27, the General Assembly enacted mandatory reporting requirements for school security plans for all

schools, including independent schools. This increase in the flow of information due to mandatory reporting under Tennessee law heightens the importance that independent schools and stakeholders have a voice when such information is requested through the TPRA.

Under the revised Schools Against Violence in Education Act (“SAVE Act”), “[e]ach private school<sup>5</sup> and each church-related school<sup>6</sup> . . . shall provide the school’s building-level school safety plan to each local law enforcement agency with jurisdiction” by October 1, 2023. Tenn. Code Ann. § 49-6-804(b). In other words, each independent school must annually provide detailed information about its “crisis intervention, emergency response, and emergency management” plans to government agencies. *Id.* Likewise, independent schools must annually conduct at least one armed intruder drill, incident command drill and emergency safety bus drill, making the results of these drills available to government agencies. Tenn. Code Ann. § 49-6-807(a)-(c). This flow of information is intended to bolster student safety. But it also increases the amount of information that could presumably be sought through the TPRA. Independent schools and their stakeholders must have a voice in TPRA actions implicating their school security.

At bottom, intervention is permissible in TPRA matters, as shown through the regular practice of Tennessee courts and the constitutional conundrums created by Petitioners’ novel reading of the TPRA to the

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<sup>5</sup> Independent schools are separated into “private schools” and “church-related schools” in the statute. A “Private school” means “a school accredited by, or a member of, an organization or association approved by the state board of education as an organization accrediting or setting academic requirements in schools, or that has been approved by the state, or is in the future approved by the commissioner in accordance with rules promulgated by the state board of education.” Tenn. Code Ann. § 49-6-804(b)(2)

<sup>6</sup> “Church-related school” means “a school operated by denominational, parochial or other bona fide church organizations that are required to meet the standards of accreditation or membership of” certain statutorily listed organizations. Tenn. Code Ann. §§ 49-6-804(b)(1), 49-50-801.

contrary. And intervention is essential so that victims may vindicate their constitutional and statutory rights and schools may preserve their security.

### **CONCLUSION**

For the reasons stated by Respondent and Intervenors, as affirmed by the perspectives of Amici, this Court should affirm the trial court's grant of intervention to Covenant, CPC, and Parents in this TPRA matter.

**CERTIFICATE OF COMPLIANCE**

This document complies with the requirements of Tenn. R. App. P. 30 and Tenn. Sup. Ct. R. 46, § 3.02 because it is typed in fourteen-point Century Schoolbook font and consists, according to the word-count utility on the software with which it was produced, of 4,616 words, excluding the sections exempted by Rule 30(e).

s/ Samuel P. Funk