

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

**CLATA RENEE BREWER,  
JAMES HAMMOND, THE  
TENNESSEE FIREARMS  
ASSOCIATION INC., MICHAEL  
P. LEAHY, STAR NEWS  
DIGITAL MEDIA, INC., THE  
TENNESSEAN, RACHEL  
WEGNER, and TODD  
GARDENHIRE**

**Petitioners-Appellants,**

**v.**

**METROPOLITAN  
GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY,**

**Respondent-Appellee,**

**and**

**PARENTS OF MINOR  
COVENANT STUDENTS JANE  
DOE AND JOHN DOE; THE  
COVENANT SCHOOL, and  
COVENANT PRESBYTERIAN  
CHURCH,**

**Intervenors-Appellees.**

**No. M2023-00788-COA-R3-CV**

---

**BRIEF OF INTERVENOR-APPELLEE  
COVENANT PRESBYTERIAN CHURCH**

---

## TABLE OF CONTENTS

STATEMENT OF ISSUES.....	6
STATEMENT CONCERNING ORAL ARGUMENT .....	6
INTRODUCTION AND SUMMARY OF ARGUMENT .....	6
STATEMENT OF FACTS AND OF THE CASE .....	8
STANDARD OF REVIEW.....	12
ARGUMENT .....	13
I. The Trial Court Did Not Abuse Its Discretion When It Permitted the Church to Intervene. ....	13
A. The Church’s claims presented in its Motion to Intervene share a common question of law or fact in the main action.....	13
B. The Church may raise the statutory exceptions to the TPRA as its claim to form a basis for intervention. ....	15
C. The trial court properly concluded that the Church had a personal stake in the outcome of the main action to confer standing to intervene.....	17
D. Metro’s opposition to the Petitioners’ TPRA requests did not divest the trial court of its discretion to grant intervention. ....	19
II. The TPRA Does Not Bar the Church’s Intervention. ....	20
A. The TPRA’s text does not preclude intervention. ....	21
B. Tennessee’s common law permits intervention in TPRA litigations.....	22
C. Petitioners improperly rely on Freedom of Information Act to support its claim that the TPRA does not permit intervention. ....	25
CONCLUSION .....	26
CERTIFICATE OF COMPLIANCE.....	28

CERTIFICATE OF SERVICE.....29

## TABLE OF AUTHORITIES

### Cases

<i>Ballard v. Herzke</i> , 924 S.W.2d 652 (Tenn. 1996).....	7, 12, 13
<i>Beard v. Bd. of Prof'l Responsibility</i> , 288 S.W.3d 838 (Tenn.2009) .....	12
<i>Bravo v. Sumner Reg'l Health Sys., Inc.</i> , 148 S.W.3d 357 (Tenn. Ct. App. 2003).....	19
<i>Chrysler Corp. v. Brown</i> , 441 U.S. 281 (1979) .....	26
<i>Coleman v. Olson</i> , 551 S.W.3d 686 (Tenn. 2018).....	21
<i>Griffin v. City of Knoxville</i> , 821 S.W.2d 921 (Tenn. 1991) .....	passim
<i>Henry v. Goins</i> , 104 S.W.3d 475 (Tenn. 2003) .....	12
<i>Jones v. Smith &amp; Nephew Inc.</i> , No. W202100426COAR3CV, 2022 WL 767709, at *4 (Tenn. Ct. App. Mar. 14, 2022) .....	21, 22
<i>Metropolitan Air Research Testing Auth. (MARTA) v. The Metropolitan Gov't of Nashville</i> , 842 S.W.2d 611 (Tenn. App. 1992) .....	17
<i>Myint v. Allstate Ins. Co.</i> , 970 S.W.2d 920 (Tenn. 1998) .....	12
<i>Overstreet v. Shoney's, Inc.</i> , 4 S.W.3d 694 (Tenn. Ct. App. 1999) .....	12
<i>Penley v. Honda Motor Co., Ltd.</i> , 31 S.W.3d 181 (Tenn. 2000) .....	21
<i>Reliant Bank v. Bush</i> , 631 S.W.3d 1 (Tenn. Ct. App. 2021).....	25
<i>Schneider v. City of Jackson</i> , 226 S.W.3d 332 (Tenn. 2007) .....	16, 25
<i>Shelby Cnty. Deputy Sheriff's Ass'n v. Gilless</i> , 972 S.W.2d 683 (Tenn. Ct. App. 1997) .....	11, 17, 18
<i>State ex rel. Jones v. Looper</i> , 86 S.W.3d 189 (Tenn. Ct. App. 2000).....	12
<i>State v. Brown &amp; Williamson Tobacco Corp.</i> , 18 S.W.3d 186 (Tenn. 2000) .....	7, 13, 15, 19
<i>State v. Carter</i> , 890 S.W.2d 449 (Tenn. Crim. App. 1994).....	13

*Swift v. Campbell*, 159 S.W.3d 565 (Tenn.Ct.App.2004)..... 13

*Tennessean v. Metro. Gov’t of Nashville*, 485 S.W.3d 857 (Tenn. 2016)  
..... passim

*White v. Vanderbilt Univ.*, 21 S.W.3d 215 (Tenn. Ct. App.1999)..... 12, 15

**Statutes**

Tenn. Code Ann. § 10-7-503 ..... 14

Tenn. Code Ann. § 10-7-503(a)(2)(A)..... 14

Tenn. Code Ann. § 10-7-504 ..... 14

Tenn. Code Ann. § 10-7-504(p)..... 10, 11, 14

**Rules**

Tennessee Rule of Criminal Procedure 16..... 8, 10, 11

Tennessee Rule of Civil Procedure 24.01..... 8, 22

Tennessee Rule of Civil Procedure 24.02..... passim

## **STATEMENT OF ISSUES**

Tennessee Rule of Civil Procedure 24.02 vests the trial court with discretion to grant intervention when the movant's claims share a common question of law or fact with the main action. The Covenant Presbyterian Church ("Church") moved to intervene based on claims that the exceptions to the Tennessee Public Records Act ("TPRA") barred Petitioners' records requests. The Church's claims share a common question of law and fact with the resolution of the TPRA lawsuit. Did the trial court abuse its discretion when it granted the Motion to Intervene?

## **STATEMENT CONCERNING ORAL ARGUMENT**

The Church requests oral argument. Petitioners make the extraordinary request that the TPRA does not permit third parties to intervene when the text of the TPRA contains no such prohibition, and the Tennessee Supreme Court has permitted intervention in TPRA litigations. Thus, Petitioners seek a drastic departure from existing precedent. Oral argument is appropriate to address Petitioners' arguments as the resolution of this case will not only impact this TPRA litigation but will also impact how future TPRA litigations are handled.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Abuse of discretion. That is the sole issue before this Court: whether the trial court abused its discretion when it permitted the Church to intervene under the permissive intervention standard in Tennessee Rule of Civil Procedure 24.02. That rule vests the trial court with discretion to grant permissive intervention when the movant raises a claim or defense that shares a common question of law or fact with the main action.

When the predicate requirements of Rule 24.02 are satisfied, the decision to grant permissive intervention is “entrusted to the trial court’s discretion.” *Ballard v. Herzke*, 924 S.W.2d 652, 658 (Tenn. 1996). To reverse the trial court requires Petitioners to demonstrate that the trial court abused its discretion when granting permissive intervention. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191 (Tenn. 2000). To sustain this burden, the Petitioners must firmly convince this Court that the trial 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.” *Ballard*, 924 S.W.2d at 661.

Here, the record is devoid of evidence that the trial court’s decision has no basis in law or in fact. Rather, the record demonstrates that the trial court applied the proper standard under Rule 24.02 and that the claims the Church raised in its Motion to Intervene shared common questions of law and fact with the main action. After finding the requirements of Rule 24.02 were satisfied, the trial court then exercised its discretion to permit intervention. Thus, contrary to Petitioners’ arguments, the trial court’s decision is firmly rooted in precedent, and its entrusted discretion should not be overturned.

Petitioners’ dissatisfaction with the trial court’s decision is not a basis for overturning its decision to permit intervention. While Petitioners try to recast the legal issues to avoid the abuse of discretion standard, that standard’s application is unavoidable. Indeed, to accept the Petitioners’ arguments would require this Court to ignore precedent

from the Tennessee Supreme Court, rewrite the TPRA, and bar any third-party from ever intervening in a TPRA dispute.

Such a drastic outcome departs from existing Tennessee law that has permitted third parties to intervene in TPRA disputes. Neither the precedent from the Tennessee Supreme Court nor the express text of the TPRA lends support to Petitioners' arguments. Thus, likewise, this Court should find no support for Petitioners' extreme requests and affirm the trial court's decision to permit intervention.

### **STATEMENT OF FACTS AND OF THE CASE**

Petitioners submitted requests to the Metropolitan Government of Nashville and Davidson County ("Metro") seeking the release of records relating to the March 27, 2023 shooting. (See R1. 132 and 136). Metro declined to produce the records, citing Rule 16 of the Tennessee Rules of Criminal Procedure and pursuant to *Tennessean v. Metropolitan Government of Nashville and Davidson County*, 485 S.W.3d 857 (Tenn. 2016). (See R1.134 and 138). Petitioners then sued Metro under the TPRA. (R1. 21, 51, 116; R2. 167). Both the Church and the Covenant School ("School") filed a motion to intervene as a matter of right under Tennessee Rule of Civil Procedure 24.01. (R2. 245-246, 255-256). The Parents of Covenant Students ("Parents") filed a motion to intervene as of right or by the court's permission under Rule 24.02. (R2. 291-292, 295-300).

The Church reasoned that the records sought by Petitioners likely included information owned by the Church, including facilities security details and confidential information pertaining to its employees. (R2. 245-246). Further, the Church argued that it is "so situated that the



disposition of this action may impair or impede its ability to protect its interests and the privacy of its employees.” (R2. 246). Similarly, the School reasoned that the records sought likely included information owned by the School and implicated the privacy rights of its employees and students. (R2. 256). The School also argued that the release of these records prematurely could create security and safety issues to the school, its employees and students, and therefore, intervention by the School was warranted. (R2. 256). Metro had no opposition to the motions for intervention, and reasoned that the Church and School had important interests in whether the records are released to the public. (R2. 259).

The Petitioners opposed the motions for intervention, arguing that the Church and the School failed to state a statutory or state law basis to object to the disclosure of the records in Metro’s possession. (R2. 261-263). The Petitioners argued that the Intervenors are not authorized by statute to assert exceptions to the TPRA, and without specific authorization under the TPRA, the Intervenors did not have standing to intervene. (R2. 25, 27). The Petitioners also argued that the Intervenors should not be allowed to assert additional exceptions beyond Metro’s Rule 16 claim. (R3. 316-323). Finally, Petitioners alleged that the Intervenors’ interests are already represented by existing parties. (R3. 334-339).

On May 22, 2023, the trial court conducted a status conference and heard arguments on the motions to intervene. (See generally R9. 20-101). Intervenors argued that statutory exceptions to the TPRA applied in this matter. Specifically, the Intervenors argued that Tennessee law exempts from disclosure information, records, and plans that are related to school security, district-wide school safety plans, and building-level school

safety plans. (R9. 83-84). The Church and the School argued that any kind of commentary, details, or blueprint drawings that relate to the Church’s facilities, would be information that is related to school security or building-level school safety plans and should be exempted from production. (R9. 91). Because the School operates at the Church and uses the Church’s security systems, the Church argued that it has standing because the statutory exemption protects entities from disclosing information related to school security. (R9. 84, 91-92).

Petitioners argued that Metro should be estopped from raising any other exemption beyond Rule 16, because this was the only claim Metro raised in its denial. (R9. 58). Further, Petitioners argued that Metro failed to raise the school safety exemption under Tenn. Code Ann. § 10-7-504(p) in its denial, and therefore, neither Metro nor the Intervenors can raise the exemption. (See R9. 87-88).

Two days later, on May 24, 2023, the trial court entered two orders allowing intervention by all Intervenors. (R3. 376-379, 385-391). The trial court expressed it was “stirred” by both the Church’s and the School’s oral argument regarding confidential information collected during the course of the investigation to which the Petitioners would otherwise not have access to. (R3. 377). Moreover, the trial court recognized that the release of this information could result in potential “harmful and irreversible consequences” if done so prematurely. (R3. 377). The trial court held that both the Church and the School met the requirements for permissive intervention under Rule 24.02. (R3. 378).

The trial court outlined that permissive intervention may be permitted: (1) when a statute confers a conditional right to intervene or

(2) when a movant’s claim or defense shares a common question of law or fact with the main action. (R3. 377). Absent express statutory authority, citing *Shelby Cnty. Deputy Sherriff’s Ass’n v. Gilless*, the trial court reasoned it was to decide “whether a party has a sufficiently personal stake in the outcome of the controversy to warrant the exercise of the court’s power on its behalf.” 972 S.W.2d 683, 685 (Tenn. Ct. App. 1997) (R3. 377). The trial court found that the Church and the School “have a sufficient personal stake in the outcome of the litigation” granting the court the authority to permit intervention. (R3. 378). Further, the trial court found that the Church’s and the School’s claims that exceptions to the TPRA applied shared common questions of law and fact with the main action (R3. 378).

On May 30, 2023, the Church filed a brief articulating that because of the ongoing criminal investigation, Tennessee Rule of Criminal Procedure 16 applies and bars the public disclosure of records, or in the alternative, the school safety exception is applicable and limits public disclosure of the requested records. (R3. 428-436). The School also filed a brief citing the school safety exception and argued that because the requested documents are related to the School’s safety and security interests, these records are expressly exempt from public disclosure under Tenn. Code Ann. § 10-7-504(p). (R4. 471-487). Finally, the Parents filed a brief arguing that the school safety exception, Rule 16, and the Victim’s Bill of Rights prevents the release of the requested documents. (R4. 491-502).

## STANDARD OF REVIEW

To reverse a trial court's decision permitting intervention under Rule 24.02 requires Petitioners to demonstrate that the trial court abused its discretion. The abuse of discretion standard is deferential and, indeed, on matters of permissive intervention, the Tennessee Supreme Court has enshrined that deference by holding that once the predicate requirements of Rule 24.02 are satisfied, the decision to grant intervention is "entrusted" to the trial court. *Ballard*, 924 S.W.2d at 658.

The abuse of discretion standard "envisions a less rigorous review of the lower court's decision and a decreased likelihood that the decision will be reversed on appeal." *Beard v. Bd. of Prof'l Responsibility*, 288 S.W.3d 838, 860 (Tenn.2009); *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 193 (Tenn. Ct. App. 2000). This standard of review contemplates that the decision being reviewed involved a choice among acceptable alternatives. *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 708 (Tenn. Ct. App. 1999). Thus, "this standard does not permit reviewing courts to second-guess the court below or to substitute their discretion for the lower court's." *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App.1999); *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

For permissive intervention, the trial court may exercise its discretion to permit intervention in two scenarios: "(1) when a statute confers a conditional right to intervene or (2) when a movant's claim or defense and the main action have a question of law or fact in common." Tenn. R. Civ. P. 24.02. To find that the trial court abused its discretion

when permitting a Rule 24.02 intervention, the trial court’s decision must have no basis in law or in fact. *See State v. Brown*, 18 S.W.3d 186, 191 (Tenn. 2000); *Ballard*, 924 S.W.2d 661; *State v. Carter*, 890 S.W.2d 449, 454 (Tenn. Crim. App. 1994).

## ARGUMENT

### **I. The Trial Court Did Not Abuse Its Discretion When It Permitted the Church to Intervene.**

The trial court did not abuse its discretion when it permitted the Church to intervene in the underlying TPRA litigation between Petitioners and Metro. Rule 24.02 vested the trial court with discretion to grant intervention so long as the Church’s claims share a common question of law or fact with the main action. Tenn. R. Civ. P. 24.02. That standard was satisfied and the trial court’s decision should not now be disturbed.

#### **A. The Church’s claims presented in its Motion to Intervene share a common question of law or fact in the main action.**

The trial court appropriately concluded that the Church’s claims presented in its motion for intervention share common legal and factual questions presented in the main action. The main action, here, focuses exclusively on whether the Petitioners were entitled to receive the public records they sought, or instead, did the TPRA exceptions apply to bar the Petitioners’ requests for records.

As this Court knows, the TPRA exists “to facilitate the public’s access to government records.” *Tennessean v. Metro. Gov’t of Nashville*, 485 S.W.3d 857, 864 (Tenn. 2016) (citing *Swift v. Campbell*, 159 S.W.3d 565, 571 (Tenn.Ct.App.2004)). While there is a presumption that

governmental records should be open to inspection, the statutory right to review governmental records is not absolute. *Id.* at 865.

Since its inception, the Tennessee General Assembly has passed several statutory exceptions to the TPRA. *See, e.g.*, Tenn. Code Ann. §§ 10-7-503, 504. Further, the General Assembly has included a general exception to the TPRA that provides for the non-disclosure of governmental records “as provided by state law.” Tenn. Code Ann. § 503(a)(2)(A). Through these legislative actions, a citizen’s statutory right to obtain governmental records has been narrowed. *See Tennessean*, 485 S.W.3d at 865 (holding that “[t]he once all-encompassing Public Records Act is now more narrow” because of legislative exceptions to the TPRA).

Included in these exceptions is the school-security exception and the personal identifying information exception. Under the school-security exception, school-security records shall not be disclosed when responding to TPRA requests. *See* Tenn. Code Ann. § 10-7-504(p). Similarly, a person’s personal identifying information must be redacted. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A). Here, the Church intervened because the Petitioners’ broad public records requests sought information pertaining to the Church’s security systems and its personnel. Because the School operates at the Church, the Church’s security systems are used by the School. Moreover, information related to Church personnel, including personal identifying information of Church employees was likely gathered in the police’s investigation following the March 27, 2023 shooting.

Here, the Church claimed that various exceptions to the TPRA applied. These claims share a common question of law and fact that the

trial court must resolve in this TPRA litigation. Thus, the commonality requirement of Rule 24.02 was satisfied.

With the requirements of Rule 24.02 satisfied, the trial court then enjoyed discretion to grant or deny the motion. Indeed, this discretion is entrusted to the trial court and should not be disturbed unless there is no basis in law or fact to support the trial court's conclusion. *Brown*, 18 S.W.3d at 191. That high burden is not met here. The Church's claims share common legal and factual questions with the main action. And, the trial court was well within its discretion to grant the motion to intervene.

The Petitioners ask this Court to question the trial court's discretionary decision. This Court, however, has declined to accept such invitations to "second guess" a trial court when the issue has been entrusted to the trial court's discretion. *White*, 21 S.W.3d at 223. The same outcome should occur here. The trial court appropriately applied Rule 24.02, and once the requirements of this rule were satisfied, it permitted intervention. The trial court's discretionary decision should not be disturbed.

**B. The Church may raise the statutory exceptions to the TPRA as its claim to form a basis for intervention.**

The Petitioners next argue that the Church should not be permitted to raise the statutory exceptions to the TPRA as a basis to support the Church's request to intervene. This Court should reject this argument because the Petitioners do not cite any legal basis to support this claim.

Additionally, the Tennessee Supreme Court has twice permitted, and heard arguments from, intervenors in TPRA litigations. *Griffin v. City of Knoxville*, 821 S.W.2d 921, 923-24 (Tenn. 1991); *Tennessean*, 485



S.W.3d at 864. In both matters, the intervenors argued exceptions to the TPRA applied to bar the disclosure of public records. *Griffin*, 821 S.W.2d at 923; *Tennessean*, 485 S.W.3d at 864. This precedent demonstrates that it is appropriate for intervenors to rely upon the statutory exceptions to the TPRA to support a request for intervention, which is what the Church has done here.

Finally, the Petitioners ignore that the General Assembly has made a policy decision that public records containing personal identifying information and school-safety and security information shall not be disclosed. *See Schneider v. City of Jackson*, 226 S.W.3d 332, 344 (Tenn. 2007) (noting that the exceptions to the TPRA represent the General Assembly's policy-making prerogative). These exceptions to the TPRA protect the privacy of certain individuals and ensure security information for a school is not publicly disseminated. Simply said, these exceptions protect the Church from the disclosure of records that contain this exempted information. To argue, as the Petitioners do, that the Church cannot advocate for the protections afforded to it by these exceptions would ignore the clear intent of the General Assembly.

The Church properly relied upon the statutory exceptions of the TPRA to form a basis for its request to intervene in the TPRA litigation. The TPRA's statutory framework supports the Church's claim, and precedent from the Tennessee Supreme Court affirms that it is appropriate for an intervenor to rely upon the statutory exceptions when seeking intervention.



**C. The trial court properly concluded that the Church had a personal stake in the outcome of the main action to confer standing to intervene.**

The trial court did not apply the wrong legal standard when it concluded that the Church had a personal stake in the outcome of this TPRA action to convey standing for the Church to seek intervention. The Petitioners chastise the trial court for applying a personal stake analysis before determining whether intervention was proper. The trial court did not err, however, because the trial court was required to determine whether the Church had a “sufficiently personal stake in the outcome of the controversy to warrant the exercise of the court’s power on its behalf.” *Shelby Cnty. Deputy Sheriff's Ass'n v. Gillless*, 972 S.W.2d 683, 685 (Tenn. Ct. App. 1997) (citing *Metropolitan Air Research Testing Auth. (MARTA) v. The Metropolitan Gov't of Nashville*, 842 S.W.2d 611, 615 (Tenn. App. 1992)).

In *Gillless*, this Court examined whether it was an abuse of discretion to deny intervention to the Shelby County Deputy Sheriffs’ Association and individual named deputies in a fee petition dispute that the sheriff had initiated. *Id.* at 684. The intervenors conceded that the underlying statute that permitted the fee petition did not convey a right to intervene and, thus, Rule 24.02 applied. *Id.* at 685. This Court held that before considering whether intervention was proper, the trial court must determine whether the intervenor had a sufficient personal stake in the outcome of the case to warrant judicial intervention. *Id.*

The Court in *Gillless* found that the intervenors did not have a sufficient personal stake because there was no evidence to support a

claim that the sheriff mishandled the fee petition and the intervenors only had a mere expectancy, future interest as it pertained to wage increases. *Id.* at 686. The court concluded that “the loss of merely a hoped for, or expected, raise is not an infringement of a property right sufficient to support standing to intervene in the process.” *Id.* at 687.

Here, the Petitioners had challenged the Church’s standing to intervene in this dispute. (R2. 25, 27). Consequently, it was proper to assess whether the Church had a personal stake in the outcome of this litigation to warrant intervention. The trial court applied the proper legal standard and directly answered an issue that the Petitioners raised in their opposition.

And, the trial court’s conclusion was correct. The School operates at the Church and thus, any information collected from the Church relating to its security would be the same security-related information for the School. The Tennessee General Assembly has made a policy decision that school-security information and related documents “shall” remain privileged. Yet, the Petitioners have filed all-encompassing public records requests. Thus, the court’s decision that the Church has a personal stake in this matter to justify its standing was not in error.

Finally, after the trial court concluded that the Church had standing because of its personal stake, the trial court went on to assess permissive intervention by examining the Church’s claim:

At this juncture, the Church’s and School’s claims regarding the application of the Tennessee Public Records Acts (“TPRA”) and the various exceptions to the documents, files and materials at issue in this matter have common questions of

law and fact to the parties in the present action.  
(R3. 376-379).

This analysis is exactly what Rule 24.02 requires. A simple review of the trial court's Order demonstrates that the Petitioners are wrong when arguing that the trial court applied the wrong legal standard. When that Order is examined, the trial court conducted a proper standing analysis, appropriately applied Rule 24.02, and then exercised its discretion. There is no basis to overrule that holding.

**D. Metro's opposition to the Petitioners' TPRA requests did not divest the trial court of its discretion to grant intervention.**

The Petitioners next argue that Metro adequately represents the Church's interest in the underlying litigation, and thus, the trial court should not have permitted intervention. The Court should reject this argument because regardless of whether Metro adequately represents the Church's interest, the Petitioners' argument applies the wrong legal standard. Ironically, for the trial court to have applied this improper legal standard would have been an abuse of discretion. *See Bravo v. Sumner Reg'l Health Sys., Inc.*, 148 S.W.3d 357, 363 (Tenn. Ct. App. 2003) ("A trial abuses its discretion when it applies the wrong legal standard.") The Court should reject Petitioners' baseless argument.

Both Rule 24.02 and Tennessee courts interpreting that rule are clear that when assessing permissive intervention two factors must be examined: (1) does a statute provide a conditional right of intervention or (2) does the movant's claim or defense share a common question of law or fact with the main action. Tenn. R. Civ. P. 24.02; *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 191 (holding that permissive intervention

only requires a showing that the party seeking to intervene raises a common question of law or fact with the main action).

While Petitioners cite a federal district court case from the Northern District of Minnesota, they ignore that this case is in Tennessee and fail to identify any case law from Tennessee that would alter how the Tennessee Supreme Court has interpreted Rule 24.02. Precedent from the Tennessee Supreme Court governs.

When that precedent is applied, it is immaterial that Metro shares similar legal arguments with the Church. That is not the standard. Rather, the standard required the trial court to assess whether the Church's claims share a common question of law or fact with the main action. They did. And, once the trial court made that determination, the chancellor had discretion to grant the motion. The Petitioners' request to overturn that decision because the trial court followed precedent should be summarily rejected.

## **II. The TPRA Does Not Bar the Church's Intervention.**

The Petitioners next argue that the TPRA's text bars the Church's request for intervention. This argument, however, finds no support in the text of the TPRA or precedent. First, the TPRA's text does not require courts to ignore Rule 24. Rather, to accept the Petitioners' arguments would require this Court to write language into the TPRA that otherwise does not exist. Second, the Petitioners' argument ignores that the Tennessee Supreme Court has permitted intervenors to participate in TPRA litigations.

**A. The TPRA’s text does not preclude intervention.**

Petitioners argue that the TPRA’s text bars any third party from ever intervening in a TPRA litigation. This argument fails because it advances a strained interpretation of the TPRA that requires this court to rewrite the TPRA.

The Petitioners argue that in drafting the TPRA, the General Assembly left “no room” for intervenors and divested trial courts of the discretion they enjoy when considering intervention under Rule 24.02. (Brief at 24). This is a statutory interpretation argument, claiming that the statute precludes this type of third-party intervention. Yet, when a court reviews a statute, the “primary goal of statutory interpretation is to carry out legislative intent without expanding or restricting the intended scope of the statute.” *Coleman v. Olson*, 551 S.W.3d 686, 694 (Tenn. 2018). To do so, the court must “look to the text of the statute.” *Id.* Further, a court “cannot expand/rewrite the statute” to modify the statute. *See Jones v. Smith & Nephew Inc.*, No. W202100426COAR3CV, 2022 WL 767709, at \*4 (Tenn. Ct. App. Mar. 14, 2022), *appeal dismissed* (Jan. 25, 2023) (citing *Penley v. Honda Motor Co., Ltd.*, 31 S.W.3d 181, 184 (Tenn. 2000)).

For example, in *Smith & Nephew Inc.*, the plaintiff in a products liability action argued that the statute of repose did not apply to her claim because her injury was a latent injury. *Id.* at\*2. The court of appeals affirmed the dismissal of plaintiff’s action. Regarding application of the statute of repose, the court found that the plaintiff’s argument sought to modify and rewrite the statute of repose within the Product Liability Act.

*Id.* at 2-3. The court found that the General Assembly had only provided a limited number of statutory exceptions to the statute of repose and to accept plaintiff's argument would require the court to rewrite the statute to add a new exception. *Id.* Because the court concluded that its role is limited to reviewing the statute, and not rewriting it, it rejected the plaintiff's request to modify the statute of repose. *Id.* at \*4.

The same conclusion should be reached here. The General Assembly only modified discrete portions of the Tennessee Rules of Civil Procedure in TPRA litigations. Namely, it abolished the need to file an answer and provided for an expedited show-cause hearing to resolve the underlying action. The TPRA, however, makes no reference to Rule 24.01, Rule 24.02, or third-party intervention in its text.

The Petitioners ask this Court for the same type of judicial intervention as did the plaintiff in *Jones*: rewrite the TPRA to add a provision that Rule 24.01 and Rule 24.02 do not apply. If the General Assembly wanted to abolish any person's rights under Rule 24.01 and 24.02, it could have expressly stated that intervention was not permitted in TPRA litigations as it did when it stated that a respondent need not file a responsive pleading. The General Assembly, however, did not write such a limitation into the TPRA. And, this Court should reject Petitioners' invitation to rewrite the TPRA to include such an exception.

**B. Tennessee's common law permits intervention in TPRA litigations.**

Petitioners also ignore precedent from the Tennessee Supreme Court that has twice permitted intervenors in TPRA litigations. Most recently, in *Tennessean v. Metro. Gov't of Nashville*, the Tennessee

Supreme Court addressed the argument of Jane Doe, an intervenor, in a TPRA litigation involving the request to disclose public records from a sexual assault investigation. There, Jane Doe intervened to “prevent the release of the police investigative file...” *Id.* at 873. The Tennessee Supreme Court did not ignore Jane Doe; it did not state that the TPRA does not permit her intervention; and it did not conclude that the TPRA deprived the Court from jurisdiction to hear from the intervenor. Rather, the Tennessee Supreme Court addressed her arguments and held that the exceptions to the TPRA applied “to protect the release of a victim’s private information and any photographic or video depictions...” *Id.*

A similar result occurred in *Griffin v. City of Knoxville*, 821 S.W. 2d 921 (Tenn. 1991). There, the police investigated the death of State Representative Ted Ray Miller. *Id.* at 922. During the investigation, the police discovered three notes written by the decedent, and the police took custody of those notes. *Id.* After determining that the decedent’s death was a suicide, a local reporter and news station requested the three notes. *Id.* The decedent’s widow intervened and argued, along with the police department, that the three notes taken from the scene were not public records. *Id.*

When the matter reached the Tennessee Supreme Court, the Court considered the arguments of not only the City of Knoxville, but the arguments the intervenor advanced. Specifically, the intervenor argued that the police did not take custody of the letters “in connection with transacting official business.” *Id.* at 923. As the Tennessee Supreme Court discussed, the intervenor “insist[ed]” that because the police



concluded that a suicide occurred before they took custody of the notes, no crime was committed, and thus, “there was no official business that could occur from that point in time forward.” *Id.* The intervenor argued that the letters were taken for “safekeeping purposes only and not for evidentiary purposes.” *Id.* Thus, the widow argued that the three letters were not public records when the investigation was closed. *Id.* The City of Knoxville made the same arguments. *Id.* While the Tennessee Supreme Court ultimately held that the three notes were public records, the Court considered the intervenor’s arguments before reaching its decision. *Id.* at 924.

Petitioners’ argument that the TPRA’s text excludes any intervention is contradicted in the Tennessee Supreme Court’s decision in *Tennessean* and *Griffin*. In both cases, the Tennessee Supreme Court not only permitted the intervenors to participate in the underlying TPRA litigation, but the Court squarely addressed the intervenors’ arguments. The manner our Supreme Court handled the intervenors’ arguments in *Tennessean* and *Griffin* undermines the argument that the TPRA does not permit intervention or does not convey jurisdiction to hear from intervenors. If that the was the case, the Tennessee Supreme Court had the opportunity, twice in the last thirty years, to make such holdings.

Indeed, when the Court issued its landmark decision in *Tennessean v. Metro. Gov’t of Nashville* just seven years ago, the Court made no reference that the TPRA deprived third parties from intervening in TPRA litigations. Nor did the Court reference that the TPRA limited a court’s jurisdiction to hear from third parties. While Petitioners try to



distinguish *Griffin* and *Tennessean* by arguing that no party challenged the court’s subject matter jurisdiction, this argument fails to appreciate that issues relating to subject-matter jurisdiction are so fundamental that any court may raise that issue on its own. *Reliant Bank v. Bush*, 631 S.W.3d 1, 6 (Tenn. Ct. App. 2021), *appeal denied* (June 11, 2021) (holding that any court may raise the issue of subject matter jurisdiction sua sponte).

To accept the Petitioners’ argument that no court has jurisdiction under the TPRA to permit intervention would mean that the Tennessee Supreme Court twice permitted parties to appear before it when there was no subject matter jurisdiction to permit the intervening parties to participate in the TPRA litigation. This is a cavalier argument and finds no support in either the text of the TPRA or precedent from our Supreme Court. Consequently, Tennessee’s established precedent of permitting third parties to participate in TPRA litigations through intervention supports the trial court’s decision to permit intervention in this case.

**C. Petitioners improperly rely on Freedom of Information Act to support its claim that the TPRA does not permit intervention.**

Petitioners argue that Intervenors have filed a “reverse public records” suit, and the TPRA does not permit such actions. But, Petitioners cite no case law from Tennessee supporting this point. Instead, the Petitioners rely on the United States Supreme Court’s interpretation of the Freedom of Information Act (FOIA).

Yet, the TPRA is not patterned on FOIA. *Schneider v. City of Jackson*, 226 S.W.3d 332, 343 (Tenn. 2007). Second, under the federal

Administrative Procedure Act, a third party, such as intervenors, has the ability to challenge an agency's decision to release public records. *Chrysler Corp. v. Brown*, 441 U.S. 281, 318, (1979). As Petitioners concede, Tennessee has no analogous administrative mechanism for a third-party to challenge a decision to release records in response to a public records request, even if an exception to the TPRA applies. Finally, and again, Petitioners ignore that the Tennessee Supreme Court has permitted intervenors to lodge objections to the production of public records, relying on the statutory exceptions. *Griffin*, 821 S.W.2d at 193; *Tennessean*, 485 S.W.3d at 864. Thus, Appellant's reliance on FOIA is misplaced and does not bar the Church from intervening in this action.

### CONCLUSION

The trial court's discretionary decision to permit intervention should not be disturbed. The Church's request to intervene raised common questions of law and fact with the main TPRA action. Thus, Rule 24.02 vested the trial court with discretion to permit intervention.

To now overturn the trial court's decision to permit intervention, Petitioners must demonstrate that the trial court's decision lacks any factual or legal basis. Such a showing is required to demonstrate that the trial court abused its discretion when granting permissive intervention. Petitioners have failed to carry this heavy burden, and instead, Petitioners ask this Court to substitute its judgment for that of the trial court. Unfortunately, for Petitioners, the abuse of discretion standard bars this request.

Petitioners are also wrong that the TPRA bars intervention. Neither the text of the TPRA nor precedent interpreting the TPRA

supports this strained argument. The Petitioners are correct that this case is about the “rules of litigation.” (Brief at 12). And, those rules, coupled with how this Court and the Tennessee Supreme Court has interpreted those rules, leads to the inescapable conclusion that the trial court appropriately applied Rule 24.02. Thus, the trial court’s decision should be affirmed.

Respectfully submitted,

/s/ Rocklan W. King III

Rocklan W. King III (BPR No. 30643)  
F. Laurens Brock (BPR No. 17666)  
Ashley H. Harbin (BPR No. 34746)  
1600 West End Avenue  
Suite 1400  
Nashville, Tennessee 37203  
Tel: (615) 259-1041  
Fax: (615) 259-1470  
rocky.king@arlaw.com  
larry.brock@arlaw.com  
ashley.harbin@arlaw.com

*Counsel for Covenant Presbyterian  
Church*

## **CERTIFICATE OF COMPLIANCE**

This brief complies with the requirements of the Rules of Appellate Procedure 30(e) and 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 5,595 words, exclusive of those parts of the brief exempted by 46 § 3.02.

DATED: August 3<sup>rd</sup>, 2023.

/s/ Rocklan W. King III  
Rocklan W. King III

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the forgoing has been served on counsel for the parties via electronic mail on the **3<sup>rd</sup> day of August, 2023** to:

Wallace W. Dietz  
Lora Fox  
Cynthia Gross  
Phylinda Ramsey  
Metropolitan Government of  
Nashville & Davidson County  
Metropolitan Courthouse  
1 Public Square, Suite 108  
Nashville, Tennessee 37210  
wally.dietz@nashville.gov  
lora.fox@nashville.gov  
cynthia.gross@nashville.gov  
phylinda.ramsey@nashville.gov

*Counsel for Metropolitan  
Government of Nashville &  
Davidson County*

John I. Harris III  
Schulman, Leroy & Bennett PC  
3310 West End Avenue  
Suite 460  
Nashville, TN 37201  
jharris@slblawfirm.com

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

Nicholas R. Barry  
America First Legal Foundation  
611 Pennsylvania Avenue  
Suite 231  
Washington, DC 20003  
nicholas.barry@aflegal.org

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

*Counsel for Michael Patrick  
Leahy and Star News Digital  
Media*

Douglas R. Pierce  
King & Ballow  
315 Union Street, Suite 1100  
Nashville, TN 37201  
dpierce@kingballow.com

*Counsel for Clata Renee Brewer*

Peter F. Klett  
Autumn L. Gentry  
Dickinson Wright PLLC  
424 Church Street, Suite 800  
Nashville, TN 37219  
pklett@dickinsonwright.com  
agentry@dickinsonwright.com

Nader Baydoun  
Stephen C. Knight  
Baydoun & Knight, PLLC  
5141 Virginia Way, Ste. 210  
Brentwood, TN 37027  
nbaydoun@baydoun.com

*Counsel for the Covenant School*

Richard L. Hollow  
Holland & Knight LLP  
P.O. Box 22578  
Knoxville, TN 37977  
rhollow@hollowlaw.com

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

Edward M. Yarbrough  
Sara D. Naylor  
Spencer Fane Bone  
McAllester, LLP  
511 Union Street, Suite 1000  
eyarbrough@spencerfane.com  
snaylor@spencerfane.com

DATED: August 3<sup>rd</sup>, 2023.

Eric G. Osborne  
William L. Harbison  
Christopher S. Sabis  
C. Dewey Branstetter  
Ryan T. Holt  
Micah N. Bradley  
Frances W. Perkins  
Hunter C. Branstetter  
William D. Pugh  
Sheppard Roe Voight &  
Harbison, PLC  
150 Third Avenue South  
Suite 1100  
Nashville, TN 37201  
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  
Hardin Law Office  
211 Union Street, Ste. 200  
Nashville, TN 37201  
hal@hardinlawoffice.com

*Counsel for Covenant  
School Parents*

/s/ Rocklan W. King III  
Rocklan W. King III