

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, PART III  
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 in his )  
individual capacity; )

*Petitioners,* )

vs. )

METROPOLITAN GOVERNMENT )  
OF NASHVILLE AND DAVIDSON )  
COUNTY; )

*Respondent,* )

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

*Intervenors.* )

Case No. 23-0538-III  
CONSOLIDATED

**\*\*controlling case\*\***

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CHANCELLOR’S MEMORANDUM AND FINAL ORDER ON PETITION FOR ACCESS  
TO PUBLIC RECORDS

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PREAMBLE

In the wake of a tragic incident that shook the community of Nashville, Tennessee on March 27, 2023, the case of *Brewer, et al. vs. Metropolitan Government of Nashville, et al.*, emerges as a

pivotal examination of the rights of citizens to inspect governmental records in Tennessee, school safety and issues of first impression regarding the interplay between Tennessee state open records law and the supremacy of federal law. The procedural history includes appellate review and post hearing analysis all centered around the Tennessee Public Records Act.

In this matter, the Court is presented with a multifaceted legal issue that encompasses intricate aspects of both state and federal law, statutory interpretation, and public safety. The case at hand not only raises questions regarding the application and scope of established legal doctrines, but also necessitates a careful examination of the balance between individual rights and broader societal interests.

At the heart of this matter lies the challenge of reconciling conflicting legal frameworks, including federal and state statutes, constitutional protections, and judicial precedents. The parties have presented comprehensive arguments and new theories of law, requiring this Court to delve into the nuances of legislative intent, the evolving interpretations of legal standards, and the potential implications of this decision on future public records jurisprudence.

This Court has undertaken this complex analysis and review of the law in addition to reviewing numerous hours of content and materials recovered from the site of the incident, the home of the assailant, 911 communications and police investigative materials. The Court is mindful of the impact on the parties involved, the precedential value of this ruling, and the overarching principles of justice and fairness that both guide this Court and preserve our legal system. This Court has completed exhaustive research on the legal arguments presented to ensure it renders a ruling which is sound in the law. The resolution of this case and the twists and turns it has taken have required not only a thorough understanding of the pertinent legal principles but also a careful and judicious application of those principles in a manner that upholds the integrity of our judicial process.

The tragic events which led to this case and the sensitive nature of it are not lost on this Court. This Court is also aware of the wide-ranging sentiments and emotions regarding this case. Further, this Court is ever mindful of its duty to uphold the rule of law in a fair and impartial manner in every instance. Therefore, it is with a profound sense of responsibility and diligence that this Court has approached this significant yet nuanced legal issue, striving to render a decision that respects the legal framework and as well as the rights of all parties involved in this case.

### **I. BACKGROUND**

This case stems from a school shooting which occurred at the Covenant School, located on the campus of the Covenant Presbyterian Church. The assailant, Audrey Hale, also known as Aiden Hale, authored journals, photographs, artwork, writings, and videos which were received by the Metropolitan Nashville Police Department (“MNPd”) in the course of its investigation of the incident. Some materials were collected from the scene of the incident on March 27, 2023, while other content and materials were collected from Hale’s home and other sources via valid search warrants. The Respondent Metropolitan Government of Nashville (hereinafter known as “Respondent”, “Metro” or “Respondent Metro”) has also received and created several other documents as part of its investigation, all of which are subject to this Court’s analysis of the Tennessee Public Records Act (hereinafter known as the “TPRA”).

The outcome of this case depends on this Court’s interpretation of the TPRA, the numerous exceptions to the TPRA asserted by Respondent Metro, the analysis of what constitutes an open investigation verses a closed investigation, and the collective Intervenors’ arguments regarding copyright law, the application of additional state laws, school security exceptions, and the Victim’s Bill of Rights as outlined in the Tennessee Constitution.

This Court is particularly tasked with the determination of whether the TPRA allows public access to records that arise out of and are part of a criminal investigation in which the primary suspect is deceased and the records, which are not the work product of law enforcement, were gathered by law enforcement from other sources during their investigation of the case.

An additional nuance to this case is that the parents of the minor victims at the Covenant School, the Covenant School, and the Covenant Presbyterian Church have intervened to assert their rights in an effort to shield from disclosure the records in the possession of the Respondent. They argue in tandem that these rights exempt<sup>1</sup> certain records from public disclosure.

## **II. PROCEDURAL POSTURE**

The procedural history of this matter is lengthy and complex. On April 28, 2023, Petitioner Clata Renee Brewer filed a Verified Petition and Complaint for Access to Public Records, pursuant to the TPRA. Her petition sought records related to the Covenant School shooting after MNPDP denied her public records request<sup>2</sup> based on *Tennessee Rule of Criminal Procedure* 16(a)(2) (hereinafter known as “Rule 16”), a state law exception to the TPRA. MNPDP asserted this exception due to the existence of an “open case” and ongoing criminal investigation. Petitioners James Hammond and the Tennessee Firearms Association (collectively “TFA Petitioners”) filed a Petition for Access to Public Records on May 1, 2023, seeking records related to the Covenant School

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<sup>1</sup> The terms “exempt” and “except” are used interchangeably herein, in accordance with the use of the terms in *The Tennessean v. Metro. Gov’t of Nashville & Davidson Cty.*, 485 S.W.3d 857, 862-63 (Tenn. 2016).

<sup>2</sup> Petitioner Brewer had made a public records request to MNPDP seeking various documents regarding the incident on March 27, 2023, including: 1) all writings to include a manifesto of Aiden Hale recovered by MNPDP relating to the incident, 2) all records depicting or describing the writings of Aiden Hale recovered by MNPDP relating to the incident, 3) all records depicting or describing analysis of the writings of Aiden Hale recovered by MNPDP related to the incident, 4) all records of communications between MNPDP and the Office of the Director of Community Safety of Nashville, TN regarding the writings of Aiden Hale recovered by MNPDP relating to the incident, 5) all records of communications between MNPDP and the Office of the Mayor of Nashville, TN regarding the writings of Aiden Hale recovered by MNPDP relating to the incident, 6) all records of communications between MNPDP the Federal Bureau of Investigation (“FBI”) regarding the writings of Aiden Hale recovered by MNPDP relating to the incident, 7) all records of communications between the MNPDP and the White House regarding the writings of Aiden Hale recovered by MNPDP relating to the, and 8) all records, including emails, texts, and other communications to and from MNPDP mentioning or regarding the writings of Aiden Hale recovered by MNPDP relating to the incident.

shooting after MNPDP had denied their public records requests.<sup>3</sup> MNPDP again asserted as a basis for denial a Rule 16 exception. On May 3, 2023, that action was consolidated with Petitioner Brewer's case.

On May 10, 2023, Petitioners Michael Patrick Leahy and Star News Digital Media, Inc. (collectively, "Star News Petitioners") filed their Petition for Access to Public Records, also seeking records related to the Covenant School shooting after MNPDP denied their public records requests<sup>4</sup>. This lawsuit, filed in Circuit Court, was transferred and consolidated with this pending case on May 23, 2023 after an oral motion to consolidate was made on May 22, 2023.

On May 12, 2023, the Covenant Presbyterian Church filed a Motion to Intervene in this matter. A Motion to Intervene was also filed by the Covenant School on May 15, 2023. The final Motion to Intervene was filed by the Parents of the Minor Covenant Students John Doe and Jane Doe ("Parents") on May 17, 2023.

On May 17, 2023, The Tennessean, Rachel Wegner, and Todd Gardenhire (collectively, "The Tennessean Petitioners") filed the final Petition for Access to Public Records. The Tennessean Petitioners, like the other Petitioners, sought records related to the Covenant School shooting after

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<sup>3</sup> The TFA Petitioners had made multiple public records requests to MNPDP seeking: 1) the "manifesto" reportedly found in the home of Audrey Elizabeth Hall, 2) all email communications of MNPDP officials regarding the mass shooting committed by Audrey Hale, as well as MNPDP officials' text messages regarding the same, and copies of the "manifesto" reported left by Audrey Hale in her vehicle, 3) all MNPDP criminal police reports documenting this incident to include but not limited to: a) impound/evidence invoices, b) photographs, c) bodycam footage, d) coroner information, e) suspect toxicology/lab results, f) audio of calls for service, and g) school video footage of suspect and officers, 4) all MNPDP Force Investigation Team (FIT) internal administrative investigations/reports regarding this incident, 5) all MNPDP communications, to include but not limited to directives, orders, memos, emails and/or letters, concerning the release of the contents and/or copies of the aforementioned "manifesto" of the deceased female shooting suspect, 6) all MNPDP communications between the FBI, the U.S. Department of Justice, and/or the Office of the District Attorney, Nashville regarding the designation of the shooting as a "hate crime," and 7) all MNPDP criminal and/or field intelligence reports and/or received complaints involving Audrey Hale since January 1, 2020.

<sup>4</sup> Star News Petitioners had made multiple public records requests to MNPDP seeking: 1) all records and documents, including written manifestos, journals, written notes, memoirs, and school yearbooks obtained by MNPDP from search warrants executed on March 27, 2023 at the residence of Audrey Hale and the car driven by Audrey Hale and left at the Covenant School related to the investigation of the incident and 2) the autopsy report of Audrey Hale and the toxicology report from that autopsy.

MNPD had denied their public records requests.<sup>5</sup> MNPD again asserted Rule 16 as an exception to the TPRA due to the existence of an open investigation. After an oral motion on May 22, 2023, The Tennessean Petitioners' lawsuit was also consolidated with this pending case by Order dated May 23, 2023.

This Court conducted a hearing on the collective Motions to Intervene on May 22, 2023. Intervention was granted by the Court as to all of the intervening parties by Order dated May 24, 2023. This Court found, as its basis for intervention, that each of the intervening parties had a significant stake in the outcome of the instant proceedings.

The Show Cause hearing was set for June 8, 2023. The Court ordered Respondent Metro to file a list of any exceptions to the TPRA that it intended to rely upon at the hearing. Metro did so on May 24, 2023. Metro asserted that it would raise the following exceptions: (1) Rule 16(a)(2) exception for records related to open and ongoing criminal investigations, (2) *Tennessee Code Annotated* § 10-7-504(a)(29)(A), personally identifying information of any citizen of the state;<sup>6</sup> (3) *Tennessee Code Annotated* § 10-7-504(p) information, records, and plans that are related to school security; (4) *Tennessee Code Annotated* §10-7-504(t), information concerning the victim of a criminal offense who is a minor<sup>7</sup>; and (5) *Tennessee Code Annotated* § 38-7-110(c), medical records of deceased persons, law enforcement investigative reports, and photographs, video and other images

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<sup>5</sup> The Tennessean Petitioners had made multiple public records requests to MNPD seeking: 1) police reports with Audrey E. Hale named, 2) all calls for service (i.e., communications requesting police assistance) to Covenant School and to Hale's home, limited to past five years, 3) incident report for initial police response on March 27, 2023 to 3005 Brightwood Avenue, 4) incident report for second police response on March 27, 2023 to 3005 Brightwood Avenue, 5) all documents in Audrey Hale's possession immediately prior to Hale's death, including the car and home, including journals and hand-drawn maps, 6) copies of any search warrants filed on Hale's home, and 7) a copy of the manifesto and journals left by Audrey Hale prior to the shooting, and 8) copies of any search warrants filed on Hale's home.

<sup>6</sup> Petitioners agree that, to the extent any of the requested records contain personally identifying information, such information should be redacted by Metro.

<sup>7</sup> Petitioners agree that, to the extent any of the requested records contain information concerning a crime victim who is a minor, such information should be redacted by Metro.

of deceased persons.<sup>8</sup>

On May 30, 2023, Petitioner Brewer appealed this Court's decision granting intervention. On May 31, 2023, the remaining Petitioners joined Brewer in her appeal of this Court's decision to grant intervention to the Parents, Church and School. On June 8, 2023, this Court heard Petitioners' Motions to Stay Proceedings, instead of holding the previously scheduled Show Cause hearing. During the hearing for the Motions to Stay, counsel for assailant Hale's parents appeared and made an announcement that they, as surviving parents, would transfer any and all ownership rights in Hale's writings and intellectual property to the Intervenor Parents on behalf of the minor children, Jane Doe and John Doe. The Court denied Petitioners' Motions to Stay and reset the Show Cause hearing to July 12, 2023. On June 14, 2023, Mr. and Mrs. Hale filed an Assignment and Transfer of Legal and Equitable Title to Certain Personal and Intellectual Property Created by Audrey Elizabeth Hale into the court record, which set forth their intention to "irrevocably assign and transfer all of their equitable, legal, and other rights in the Writings and Intellectual Property Rights (including all tangible copies thereof) as a gift to the Parents in trust for the benefit of the Children." *Assignment and Transfer* ¶ 1.

The Court of Appeals granted an expedited appeal of this Court's ruling on intervention on June 21, 2023 and stayed the proceedings in this Court. On November 30, 2023, the Court of Appeals affirmed this Court's ruling on intervention and remanded this matter for further proceedings. On January 12, 2024, the Petitioners moved this Court to set the Show Cause hearing. The Court set the hearing for April 16, 2024, in order to allow for additional briefing from all parties. After the hearing,<sup>9</sup> the Court took this matter under advisement and entered a subsequent order on April 22,

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<sup>8</sup> Petitioners agree that, to the extent any of the requested records contain the statutorily specified information regarding a deceased person, such information should be redacted by Metro.

<sup>9</sup> The following counsel presented argument at the Show Cause hearing: Douglas R. Pierce for Petitioner Clata Renee Brewer; Richard L. Hollow for Petitioners The Tennessean, Rachel Wegner, and Todd Gardenhire; Nicholas R. Barry

2024 requesting additional documentation from Metro as well as post-hearing briefing from all parties on certain legal arguments raised during oral argument.

### **III. THE RECORDS REVIEWED BY THE COURT**

On May 29, 2023, this Court visited the headquarters of MNPD to begin its *in camera* inspection of the materials at issue in this case. Upon entrance to the room where the evidence was presented, the volume of materials, as laid out for the Court’s review, required this Court to take a different approach in order to be able to review and analyze the materials at issue in this case. Initially the Court planned to remain at MNPD headquarters from day to day until the analysis was complete, however it was apparent that due to the volume of evidence at issue in this case, that this method would be untenable. Thus, Respondent Metro produced materials to this Court for its *in camera* review on several hard drives. In preparation for this case, this Court reviewed countless hours of materials as provided by the Respondent in the following formats.

The Respondent provided the Court with the following hard drives for its *in camera* review:

1.) Scan disk 64 GB (57.2 GB of 64 GB); 2) Black hard drive (6.39 GB of 8 GB); 3) Data Stick Pro containing 2 PDFs (7.20 GB); 4) One Expansion Drive (1.81 TB); 4) Data Stick Pro (7.20 GB); 5) Data Stick Pro (14.3 GB of 14.4); 6) Data Stick Pro (14.3 GB of 14.4 GB); 7) Data Stick Pro (57.7GB); 8) Data Stick Pro (3.71 GB of 3.74 GB) and 9) Data Stick Pro (3.69 GB of 3.74 GB). The hard drives contained the following broad categories of content and documents.

Original Videos	Clip Art
Business Folders with Content	Receipts, Mail
911 Phone Communications	Medical Records
Email Communications	Screenshots of Video Content
MNPD Incident Reports	Search Warrants

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for Counsel for Petitioners Michael Patrick Leahy and Star News Digital Media, Inc.; T. Russell Nobile for Petitioners James Hammond and Tennessee Firearms Association, Inc.; Lora Fox for Respondent Metropolitan Government of Nashville & Davidson County; Eric G. Osborne for Intervenors Covenant School Parents; Rocklan W. King III for Covenant Presbyterian Church; and Peter F. Klett for The Covenant School.



MNPD History Reports	Complied Information
Original Writings	Original Photographs
News Content	Maps
Yearbook	Downloaded Content
Internal MNPD Documents	

While this Court understands that each criminal investigation and prosecution is unique, the materials provided to the Court, while voluminous, are the type of materials that one would expect to gather when investigating and pursuing a school shooting of this magnitude. Much of the material analyzed by the Court came from the assailant, compiled over many years. The Respondent also provided redacted versions of certain content for the Court’s *in camera* review. None of the materials produced to the Court were produced to any other party to this case.

#### **IV. LEGAL PRINCIPLES AND RULING**

##### ***A. The Tennessee Public Records Act***

##### ***1. Standard of Review and Burden of Proof***

The majority of issues before this Court are pure questions of law in which this Court is tasked with interpreting statutes. When interpreting a statute, the Court is directed to determine and give effect to the Legislature’s intent in adopting the statute without adding or taking away from its intended meaning or application. *The Tennessean v. Metro. Gov’t of Nashville & Davidson Cty.*, 485 S.W.3d 857, 862-63 (Tenn. 2016.)

Justice Brandeis of the United States Supreme Court once opined that, “Sunlight is said to be the best of disinfectants.” *Louis D. Brandeis, Other People’s Money and How Bankers Use It* 92 (2d ed. 1914). This adage reflects the spirit of the Tennessee Public Records Act.

For more than a century, Tennessee courts have recognized the public’s right to inspect governmental records. *Id.* In 1957, the General Assembly codified this right of public access by enacting the state’s first public records statutes. *Id. See also Swift v. Campbell*, 159 S.W.3d 565, 571

(Tenn. Ct .App. 2004) (citing *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996)). The TPRA has been amended over the years, but its intent has remained the same—to facilitate the public's access to government records. *Id.* The TPRA embodies a worthwhile purpose by providing a tool to hold government officials and agencies accountable to the citizens of Tennessee through oversight in government activities. *Id.*

In furtherance of this purpose, the Legislature has defined public records under the TPRA broadly to include “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 agency.” *Tenn. Code Ann.* §10-7-503(a)(1)(A). This means that information, held privately by an individual, may become a public record if it is *received pursuant to law* in connection with any transaction of official government business. In the present case, the Court must analyze the writings of a private individual which are at the center of official government business, a criminal investigation, to determine if they are public records pursuant to the plain language of the statute. The pivotal question is whether there are any exceptions to the TPRA which permit Respondent Metro to deny the Petitioners access to these public records.

To facilitate access to records, the Act requires that “all state, county and municipal records shall, at all times during business hours ... 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(2)(A). The Tennessee Supreme Court has held that there is a presumption of openness for government records. *Memphis Pub. Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994). Custodians of the records are directed to promptly provide for inspection any public record which is not exempt from disclosure. *Tennessean*, 485

S.W.3d at 864. The TPRA directs that courts construe the TPRA “so as to give the fullest possible access to public records.” *Id.* The statute presumes that records are open unless there is an applicable exemption which would prevent disclosure. *Id.*

However, the TPRA is not absolute, as there are numerous statutory exceptions to its disclosure. *Id.* 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.* The Tennessee Court of Appeals has held that:

Despite the fact that TPRA is to be construed broadly in favor of access to public records, a person does not have a constitutional right to examine such records. *Abernathy v. Whitley*, 838 S.W.2d 211, 214 (Tenn. Ct. App. 1992). It is within the power of the Legislature to create, limit, or abolish rights of access to public records. *Id.*; *see also Friedmann v. Corrections Corp. of America*, 310 S.W.3d 366, 378 (Tenn. Ct. App. 2009) (“[T]he General Assembly has reserved to itself the right to exempt documents from the coverage of the Public Records Act.”) The exceptions to TPRA recognized by state law reflect the Legislature’s judgment that “the reasons not to disclose a record outweigh the policy favoring disclosure.” *Allen v. Day*, 213 S.W.3d 244, 261 (Tenn. Ct. App. 2006) (quoting *Swift v. Campbell*, 159 S.W.3d 565, 571 (Tenn. Ct. App. 204)).

*Moncier v. Harris*, No. E201600209COAR3CV, 2018 WL 1640072, at \*5 (Tenn. Ct. App. Apr. 5, 2018); *see also Tennessean*, 458 S.W.3d at 865–66 (“State law” [providing exceptions to the TPRA] includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations.”) (citing *Swift v. Campbell*, 159 S.W.3d 565, 571–72 (Tenn. Ct. App. 2004) and *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 148 (Tenn.1993)).

When the TPRA was adopted in 1957, there were only two categories of records that were excepted from disclosure—medical records of patients in state hospitals and military records involving the security of the nation and state. *Tennessean*, 485 S.W.3d at 865. However, over the years, the General Assembly has added over forty (40) categories of records which are specifically excepted from disclosure. *Id.* Today, the once all-encompassing TPRA is narrower. *Id.* Notwithstanding the breadth of the TPRA’s 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*, 159 S.W.3d at 571.

Accordingly, the General Assembly provided two types of exceptions from disclosure under the public records statutes. *Id.* First, the General Assembly included specific exceptions from disclosure in the public records statutes themselves. *Id.* Second, it acknowledged and validated both explicit and implicit exceptions from disclosure found elsewhere in state law. *Id.* When this Court is called upon to interpret and apply the TPRA, its role is to determine whether state law either explicitly or implicitly excepts particular records or a class of records from disclosure. *Memphis Pub. Co.*, 871 S.W.2d 681, 684. This Court is guided, however, by the clear legislative policy favoring disclosure. *Id.* Thus, unless it is clear that disclosure of a record or class of records is excepted, we must require disclosure even in the face of “serious countervailing considerations.” *Id.* at 684.

In the seminal case of *Tennessean v. Metro. Gov't of Nashville*, our Tennessee Supreme Court shed considerable light on how this Court should construe the case before it and the state law exceptions to the Act. *See Tennessean*, 485 S.W.3d at 857. The Court stressed that *Tennessee Code Annotated* § 10–7–503(a)(2)(A) provides that governmental records shall be open for inspection and that the right of inspection shall not be denied “unless otherwise provided by state law.” *Id.* at 865.

“State law” includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations. *Id.* (citing *Swift*, 159 S.W.3d at 571–72 (citing *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 148 (Tenn. 1993); *Frye v. Blue Ridge Neuroscience Ctr., P.C.*, 70 S.W.3d 710, 713 (Tenn. 2002); *Emery v. S. Ry.*, 866 S.W.2d 557, 561 (Tenn. Ct. App. 1993); *Kogan v. Tenn. Bd. of Dentistry*, No. M2003–00291–COA–R3–CV, 2003 WL 23093863, at \*5–6 (Tenn. Ct. App. Dec. 30, 2003)). The *Tennessean* Court further held that the Rules of Criminal Procedure, including Rule 16, are also “state law” and operate as exceptions to the TPRA. *Id.* Furthermore, the burden of proof for justification of nondisclosure of records sought is placed upon the custodian of those records and the justification for the nondisclosure must be shown by a preponderance of the evidence. *Tenn. Code Ann.* § 10–7–505(c).

In this case, there is no question that the Petitioners are all citizens and/or entities in the State of Tennessee. Therefore, as a primary matter, each Petitioner falls within the class of persons who may have a right to access public records in the State of Tennessee pursuant to the TPRA. There is also no dispute that the materials were received by MNPD and thus became public records subject to the TPRA. Thus, the analysis for this Court is to determine if there are any available exceptions which will maintain the confidentiality of the records and prevent these Tennessee citizens from gaining access to the records held by Respondent Metro.

Secondly, if the Court finds that Respondent Metro withheld records that should have been disclosed, it must determine if Metro’s decision was willful. If this Court determines that the decision of Metro to withhold the records was in fact willful, a penalty will attach in the form of attorneys’ fees. However, if Metro’s decision to withhold the records was made in good faith, even if it was incorrect, no liability attaches in the form of fees. Each Petitioner in this case has requested

this Court to find that Metro’s decision to withhold the records was willful and in violation of the statute and thus award them each their attorneys’ fees for this litigation.

This Court now turns to the conduct of Respondent Metro in its decision to withhold the materials in its possession, the exceptions it has relied up and the arguments the Intervenors present to this Court as further exceptions to prevent disclosure.

## ***2. Exceptions To The Tennessee Public Records Act***

### ***a. The State Law Exception of Criminal Rule of Procedure 16(a)(2)***

In its response to each request for records from the Petitioners, Respondent Metro stated that Tennessee Rule of Criminal Procedure 16(a)(2) exempted the records that it withheld from disclosure. Metro has consistently maintained, via affidavit,<sup>10</sup> and has argued to this Court that the basis for its denial of access to the records in this case is the existence of a pending criminal investigation. At the Show Cause hearing, Metro asserted that, although the primary assailant in its investigation is deceased, this case is still an open investigation, and that this investigation may lead to a contemplated criminal action. However, Metro also stated at the Show Cause hearing that certain portions of the requested records may be released without compromising the open criminal investigation.

Rule 16(a)(2) of the Tennessee Rules of Criminal Procedure states:

*(2) Information Not Subject to Disclosure.* Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize the 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. Nor does this rule authorize discovery of statements made by state witnesses or prospective state witnesses.

*Tenn. R. Crim. P. 16.* A look into the history and jurisprudence on the interplay between Rule 16 and

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<sup>10</sup> Respondent Metro filed the following affidavits from MNPd personnel to support its position that an investigation in this matter remains open and active: Declaration of Assistant Chief Mike Hagar dated May 17, 2023, Declaration of Lieutenant Alfredo Alvarez dated June 14, 2024, and Declarations of Lieutenant Brent Gibson dated May 17, 2023, May 24, 2023, May 30, 2023, March 1, 2024, and March 25, 2024.

the TPRA is informative to this Court's analysis.

In *Memphis Publishing Co. v. Holt*, the Tennessee Supreme Court addressed the issue of whether a closed investigative file of the Memphis Police Department was available for inspection by the media and the public pursuant to the TPRA. *Memphis Publishing Co.*, 710 S.W.2d 513, 515 (Tenn. 1986). That case involved a newspaper reporter who requested access to a police file relating to an investigation that had been closed for twenty-two (22) months. *Id.* There was no pending criminal proceeding nor any contemplated proceedings at the time the request was made. *Id.* The Police Department argued, in part, that Rule 16 protected the closed investigative records from disclosure. *Id.* at 517. The Supreme Court determined otherwise and held that because the police department's investigative file was a closed file *and* was not relevant to any pending or contemplated criminal action, Rule 16 was inapplicable, and the investigative file was subject to disclosure. *Id.*(*emphasis added*).

In *Appman v. Worthington*, the Tennessee Supreme Court considered the issue of whether the TPRA made investigative records concerning the death of an incarcerated individual available for inspection by the defendants accused of the individual's death. *Appman v. Worthington* 746 S.W.2d 165 (Tenn. 1987). The State denied the request, and the trial court held that Rule 16 prevented disclosure. *Id.* The Court of Appeals disagreed and reversed the trial court, holding that "Rule 16 relates only to the rights and duties of parties to a criminal case as to discovery from each other, and not the rights of citizens to access to public records." *Id.* at 166. In reversing the Court of Appeals, the Supreme Court held that the Tennessee Rules of Criminal Procedure carry the force of law, and therefore, constitute an exception to the TPRA. *Id.* The Supreme Court set forth the test for whether the Rule 16 exception to disclosure of a public record applies to an investigative file. "This exception to disclosure and inspection does not apply to investigative files in possession of state

agents or law enforcement officers, where the files have been closed and are not relevant to any pending or contemplated criminal action but does apply where the files are open and are relevant to pending or contemplated criminal action.” *Id.* The Court further held that “the disclosure and inspection granted by the rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by . . . state agents or law enforcement officers in connection with the investigation or prosecution of the case . . . .” *Id.* Where the files are both closed and are not relevant to any pending or contemplated criminal action, Rule 16 is inapplicable; however, Rule 16 “...does apply where the files are open and are relevant to pending or contemplated criminal action.” *Id.* (*emphasis added*).

In *Swift v. Campbell*, the Court of Appeals dealt with the public records request of Phillip Workman, who had been convicted of murder. *Swift v. Campbell*, 159 S.W.3d 565, 568 (Tenn. Ct. App. 2004). Workman filed a petition for a writ of habeas corpus in the federal district court, collaterally attacking the result of his unsuccessful state court writ of error coram nobis proceeding. *Id.* at 569. Workman’s attorney submitted a request for Access to Public Records to the District Attorney, requesting to inspect all documents regarding the State’s defense of Workman’s petition for writ of error coram nobis. *Id.* The request was denied. *Id.* The Court of Appeals, relying on Rule 16’s application in post-conviction proceedings, held that documents covered by Rule 16(a)(2) are not subject to a Public Records Act request when the requested documents relate to a criminal conviction that is being collaterally attacked. *Id.* at 575–76. Thus, the *Swift* court held that documents enumerated in Rule 16(a)(2) “are among the class of records excepted by state law.” *Id.*

The petitioners in *Schneider v. City of Jackson* were newspaper reporters requesting access to police officers’ field interview cards. *Schneider v. City of Jackson*, 226 S.W.3d 332 at 334–35 (Tenn. 2007). These cards had been created over several years to “memorialize the contact an officer



has 'while conducting some kind of investigation with a citizen.' The cards are intended to be a 'central repository for information' the officers acquire while on patrol....” *Id.* at 337. The City of Jackson attempted to assert a common law privilege for law enforcement investigations as an exception to the TPRA. *Id.* at 340. The Supreme Court held that there was no law enforcement privilege in Tennessee and remanded the case for the trial court to determine whether any of the records at issue were part of a pending, open, or ongoing criminal investigation, and therefore, exempt from disclosure. *Id.* at 344-45. Remand was necessary because the City of Jackson had failed to review the interview cards to determine which cards, or portions of cards, contained information relevant to an ongoing criminal investigation. *Id.* at 345. Such cards, or portions of cards, which contained information relevant to an ongoing criminal investigation “would clearly have been exempt from disclosure under Rule 16(a)(2).” *Id.* The Supreme Court also stressed that “harmful and irreversible consequences could potentially result from disclosing files that are involved in a pending criminal investigation.” *Id.* at 345–46.

The importance of this Rule 16 exception to the TPRA has been well established by our Tennessee Supreme Court. As Justice Kirby set forth in her concurring opinion in the seminal case of *Tennessean v. Metro. Gov't of Nashville*:

...The dissent in this case would throw open police files on pending investigations and criminal prosecutions, not only to responsible media sources, ... to ...anyone. As outlined in the majority opinion, such a ruling could have catastrophic consequences for all involved in the criminal justice system. Citizens who report crimes privately could be outed. Confidential police information sources could be revealed. Police efforts to keep the details of a crime and its investigation secret until the perpetrator is apprehended would be for naught. The identity of persons suspected of a crime but later exonerated could be made public. Inflammatory and inadmissible information about criminal defendants could taint the jury pool and compromise defendants' right to a fair trial. It is hard to overstate the damage to our justice system that could result from adoption of the dissent's position.

*Tennessean*, 485 S.W.3d at 874. Like in the present case, in the *Tennessean*, a group of media organizations and a citizens group made a TPRA request to inspect the police department's files regarding its investigation of an alleged sexual assault. *Id.* at 859. Metro Government denied the request on the grounds that the records sought were part of an open criminal investigation or pending prosecution, thus exempt from public disclosure pursuant to Rule 16(a)(2). *Id.* at 860. The trial court held that those records that were not developed internally and that did not reflect the reconstructive and investigative work of the police were public records and not protected from disclosure by Rule 16(a)(2). *Id.* at 862. The Court of Appeals reversed, holding that all the materials requested were relevant to a pending or contemplated criminal action and exempt from public disclosure under Rule 16(a)(2). *Id.* The Supreme Court framed the specific question before it as follows:

In this case, we must determine whether the Public Records Act applies to allow public access to investigative records that arise out of and are part of a criminal investigation resulting in a pending prosecution, are not the work product of law enforcement under Rule 16(a)(2), were gathered by law enforcement from other sources in their investigation of the case, and are requested by entities that are not parties to the pending criminal case.

*Id.* at 870.

Ultimately, the Supreme Court held that the requested investigative records did not have to be disclosed by Metro Government. *Id.* “There is no provision in Rule 16 for release of discovery materials to the public. This case raises the same concerns that counseled in favor of our remand to the trial court in *Schneider*—the ’harmful and irreversible consequences [that] could potentially result from disclosing files that are involved in a pending criminal investigation.’” *Id.* at 871 (quoting *Schneider*, 226 S.W.3d at 345–46).

In the present case, the Petitioners do not disagree with Respondent Metro’s legal argument that Rule 16(a)(2) precludes the release of records that are in an open investigative file and are relevant to a pending or contemplated criminal action. However, they collectively argue that because

the known assailant was pronounced deceased at the scene of the incident, there can be nothing for MNPD to continue to investigate, and thus the criminal investigation must be over and Rule 16 can no longer provide a basis for withholding the requested records. This Court disagrees.

While the Court is mindful of Petitioners' argument that if a court were to blindly accept a bare, unsupported assertion that some amorphous investigation is ongoing, this could lead to abuse of the Rule 16 exception. However, that is not what Metro has claimed or asserted in this case. Metro has not asked the Court to simply take its word that there is an open investigation and contemplated or pending criminal proceedings while offering no evidence in support of that claim. Police Lieutenant Brent Gibson offered sworn testimony that the police are investigating specific points – whether the assailant received any assistance with planning the attack or with weapons purchases, and whether there were any co-conspirators. (Fourth Declaration of Lieutenant Gibson, March 1, 2024, ¶¶ 6, 11). Gibson further stated under oath that he anticipated the investigation would take about four more months to conclude. (*Id.* ¶ 11.) This is a far cry from a scenario in which the police might state only that “something” is being investigated, and that such investigation might continue indefinitely.

Given the position of Metro and the officers working on this case that there is still an open investigation, this Court cannot give license to “throw open police files on pending investigations .... not only to responsible media sources, but also to suspected perpetrators under investigation and their allies, ...[or] anyone.” *Tennessean*, 485 S.W.3d 857, 874. In the words of Justice Kirby in her concurrence, and as outlined in the majority opinion in *Tennessean*, “such a ruling could have catastrophic consequences for all involved in the criminal justice system.” *Id.* This Court cannot overstate the damage that could be unleashed upon our overall criminal legal system should this Court open records while an investigation is pending, no matter the stage of the investigation. This

Court is well aware that the prime assailant is deceased; however, the death of an investigation's primary suspect alone does not necessarily extinguish an investigation. Given the proof presented, the Court concludes that Respondent Metro has carried its burden by a preponderance of the evidence to demonstrate the existence of an open investigation and contemplated proceedings related to this tragic incident, and thus, has established that the Rule 16 exception to the TPRA applies to the records requested by the Petitioners. Therefore, Respondent Metro was correct in denying Petitioners' requests on this basis.

***b. The Other State Law Exceptions of School Safety and The School Security Act of 1981***

Regarding school security issues, Respondent Metro takes the position that any concerns related to school security found in the writings and materials from Hale can be redacted, and records with those redactions produced at the close of the investigation. The Petitioners, on the other hand, assert that any contagion from the writings and materials authored and compiled by Hale has long expired, and thus, there is no longer an active risk to school security. The Petitioners argue that the writings and other requested materials should be released and that much knowledge can be gleaned by way of analysis and understanding school shootings should Hale's materials be released.

The collective Intervenors assert, on the other hand, that the voluminous writings and other materials authored, created and compiled by Hale should never be released, as they would cause a threat to school security both here and at other schools across the country by way of inspiration and copycat attacks. The collective Intervenors further argue that the following broad categories of documents, if in the possession of the Respondent, should also be exempt from disclosure:

1. Any items contained in the police investigative file which may implicate the safety of the Covenant School or Covenant Church,

2. Any items which have come into the possession of the Respondent with information about the minors Jane and John Doe, such as the names and identities of minors Jane and John Doe, photos of deceased, injured, frightened, or traumatized minors, or any other such personal information about them, and
3. Any information such as plans, drawings, security protocols and related security items regarding their facilities.

*i. The School Security Act of 1981*

The Intervenor Parents rely on the School Security Act of 1981 (hereinafter known as “School Security Act” or “Act”), for the proposition that the General Assembly determined “to secure a safe environment in which the education of the students of this state may occur.” *Tenn. Code Ann.* § 49-6-4203(a). They assert the School Security Act also secures 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”). The Intervenor Parents further argue that the School Security Act also requires that threats of violence in schools be shielded from disclosure. They rely on *Tennessee Code Annotated* §49-6-2702, which provides in part 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.

*Tennessee Code Annotated* § 49-6-2702(d). The Intervenor Parents state that the School Security Act stands as a state law which can serve as a basis to keep the records at issue in this case confidential. While the Intervenor Parents concede that the requirements of the School Security Act are limited to public schools, they still argue that it is the General Assembly’s intent to provide for the safety of all students, regardless of the type of school they attend, through this particular Act. This Court must interpret statutes “as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.” *Culbreath v. First Tennessee Bank Nat. Ass’n*, 44 S.W.3d 518, 524 (Tenn. 2001). Where the words of the statute are unambiguous, the judicial inquiry is at an end and the plain meaning of the text must be enforced because “courts must presume that a legislature says in a statute what it means and means in a statute what it says.” *Id.*

In analyzing the plain language of the School Security Act, and particularly the sections relied upon by the Intervenor Parents, this Court finds that the School Security Act and the confidentiality provisions within it apply to schools as defined within the Act. The Legislature defined school, for purposes of this particular Act as all public schools that conduct classes in any grade from kindergarten through grade twelve (K-12). *Tenn. Code Ann.* § 49-6-4202. The Covenant School is not nor has it ever been a “public school” as defined in the Act. Therefore, the minor victims, Jane Doe and John Doe, did not attend a public school as defined in the statute. This Court is not at liberty to construe an unambiguous statute in a way which would give a definition that the Legislature did not intend. Therefore, this Court holds that the Intervenor Parents’ assertion that the School Security Act applies as a state law exception to the TPRA is contrary to the plain language of the statute. The School Security Act of 1981 applies only to public schools, which the Covenant School is not.

***ii. The School Security Exception in the Tennessee Public Records Act  
Tennessee Code Annotated §10-7-504 (p)(1), (2)(A)***

While the School Security Act of 1981 does not apply as a state law exception to this case, the plain language of the TPRA contains a specific exemption to disclosure of public records which are related to school security. At the time that Petitioners filed their requests and this litigation, this exemption stated that the following records shall be treated as confidential and not open for disclosure:

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). After this case was filed, the statute was amended to add the following language:

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), as amended by Public Chapter 367 (H. B. 322). In asserting their arguments related to the applicability of *Tennessee Code Annotated* § 10-7-504(p), Petitioners, Respondent, and Intervenors Covenant Parents and Church point to the language of the statute as it existed at the time Petitioners made their public records requests. Respondent Metro specifically noted its reliance on *Tennessee Code Annotated* § 10-7-504(p) in its brief as an exception to disclosure. *See March 25, 2023 Brief of Respondent*, page 6. However, Intervenor Covenant School relies upon the amended statute's specific reference to "threats," arguing that "[t]here can be no greater threat against the schools' safety and security and therefore the shooter's writings about her plan to commit such a horrendous criminal attack should not be publicized...." *May 30, 2023 Brief of Intervenor Covenant School*, page 4. In order to evaluate the arguments of Intervenor Covenant School, the Court must first determine whether the 2023 amendment, as set forth in *Tennessee Code Annotated* § 10-7-504(p)(2)(A) applies retrospectively or prospectively.

Generally, amendments to statutes apply prospectively. *Nutt v. Champion Int.'l Corp.*, 980 S.W.2d 365, 368 (Tenn. 1998). A basic rule of statutory construction provides that statutes are to be applied prospectively, unless the legislature clearly indicates a contrary intent. *Shell v. State*, 893 S.W.2d 416, 419 (Tenn. 1995). Article I, section 20 of the Tennessee Constitution dictates that “no retrospective law, or law impairing the obligations of contracts, shall be made.” *Tenn. Const. Art. I, § 20*. The Tennessee Supreme has held that this prohibits laws “which take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed.” *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999). However, there is an exception for statutes which are remedial or procedural in nature. *Kee v. Shelter Ins.*, 852 S.W.2d 226, 228 (Tenn. 1993). When a statute is deemed to be remedial or procedural it will apply retrospectively, not only to causes of action arising before such acts become law, but also to all suits pending when the legislation takes effect, unless the legislature indicates a contrary intention or immediate application would produce an unjust result. *Saylor v. Riggsbee*, 544 S.W.2d 609, 610 (Tenn. 1976). In contrast, retroactive application of a substantive statute is constitutionally forbidden if it takes away a vested right or impairs contractual obligations. *Id.* (internal citations omitted).

To determine if a statute is remedial, procedural or substantive this Court looks to whether the statute is one that affects the vested rights or liabilities of the parties. *Id.* A statute is deemed to be procedural or remedial when it seeks to address the mode or proceeding by which a legal right is enforced. *Saylor*, 544 S.W.2d at 610 (citing *Jones v. Garrett*, 386 P.2d 194, 198–199 (1963)). *See also Nutt*, 980 S.W.2d at 368. “Statutes that create a new right of recovery or change the amount of damages recoverable are, however, deemed to have altered the parties vested right and thus are not considered remedial.” *Id.* (citing *Anderson v. Memphis Hous. Auth.*, 534 S.W.2d 125, 127–28 (Tenn.



Ct. App. 1975)). To determine if a statute impairs a vested right if applied retrospectively, the Court must consider multiple factors, none of which are dispositive. *Sundquist*, 2 S.W.3d at 924. In *Sundquist*, the Tennessee Supreme Court found it beneficial to use a multi-factor analysis as enunciated in *Ficarra v. Department of Regulatory Agencies*, 849 P.2d 6 (Colo. 1993). *Id.* The most important considerations for the Court are: (1) whether the public interest is advanced or retarded, (2) whether the retroactive provision gives effect to or defeats the bona fide intentions or reasonable expectations of affected persons, and (3) whether the statute surprises persons who have long relied on a contrary state of the law. *Id.* See also *Ficarra*, 849 P.2d at 16. The Tennessee Supreme Court subsequently added one additional factor, as previously discussed: the extent to which a statute appears to be procedural or remedial. *Id.*

In considering the first factor, this Court finds that the amendment adding additional language as set forth in *Tennessee Code Annotated* § 10-7-504(p)(2)(A) advances the public interest by specifically shielding from disclosure things like threats to schools that come into the hands of law enforcement or which may be subject to an open records request. The Court further finds this particular amendment to the exemptions to the TPRA was enacted to achieve a legitimate goal, which the General Assembly found to be in the public interest, the safety of children in schools from threats. The Court's analysis, however, does not stop here. "The second and third factors – the intentions or reasonable expectations of affected persons, and the surprise to persons who had relied on a contrary state of the law – are obviously related to some degree." *Sundquist*, 2 S.W.3d at 924. This instant lawsuit was filed on April 28, 2023, one month after the events giving rise to this claim. This Court therefore finds that the scope of the School Security Exception, and the public's right to access public records with regard to this exception, had already been established by the language of *Tennessee Code Annotated* § 10-7-504(p) as it existed at that time. It is undeniable that the inclusion of an entire

new subsection in the exception significantly altered the extent of the public's access to records in certain cases. Consequently, this amendment changed the public's established interest in accessing certain records at that time.

The Petitioners in this case made their requests based on the legal framework and record accessibility in existence when they submitted their requests and filed this litigation. If this Court were to hold that the new statutory amendment applied retroactively, it would impact the rights of petitioners not only in this instant lawsuit but in other pending TPRA cases at that time. Therefore, this Court holds that in analyzing the applicability of *Tennessee Code Annotated* 10-7-504(p), the School Security Exception, it must look to the statute as it stood at the time of this action. This Court is further of the opinion that the retroactive application of *Tennessee Code Annotated* § 10-7-504(p)(2)(A) would come as a surprise to the Petitioners in this case. Additionally, when analyzing the plain language of the statute the Court finds that the General Assembly set an enactment date for the new amendment of July 1, 2023, which was well after this litigation began. Therefore, should this Court apply Section (p)(2)(A) retroactively to the case at bar, it would not only come as a surprise to the Petitioners, but also would defeat their reasonable expectations that this newly enacted exception would not apply to this pending litigation. Therefore, this Court disagrees with the Covenant School, and finds that *Tennessee Code Annotated* § 10-7-504(p)(2)(A) does not apply as a valid exemption in this matter.

Having found that the newly enacted amendment to the TPRA at *Tennessee Code Annotated* § 10-7-504(p)(2)(A) does not apply to this instant litigation, this Court now turns to the plain language of the TPRA as set forth in *Tennessee Code Annotated* § 10-7-504(p), which was duly

enacted at the time of the events giving rise to this case and at the filing of this instant litigation.<sup>11</sup>

*Tennessee Code Annotated* § 10-7-504(p) provides that:

[i]nformation, 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) (prior statute). This Court’s “essential duty” is ‘to ascertain and carry out the legislature’s intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.’” *Lavin v. Jordon*, 16 S.W.3d 362, 365 (Tenn. 2000) (quoting *Premium Fin. Corp. of Am. v. Crump Ins. Servs. of Memphis, Inc.*, 978 S.W.2d 91, 93 (Tenn.1998)). The Court’s construction of a statute is more likely to conform with the General Assembly’s purpose when the statute is approached with the presumption that the General Assembly chose its words purposely and deliberately. *Tidwell v. Servomation–Willoughby Co.*, 483 S.W.2d 98, 100 (Tenn.1972). Therefore, this statute must be construed as it was found. *Jackson v. Jackson*, 210 S.W.2d 332, 334 (Tenn. 1948). When the language of a statute is clear and unambiguous, “legislative intent is to be ascertained from the plain and ordinary meaning of the statutory language used.” *Gragg v. Gragg*, 12 S.W.3d 412, 415 (Tenn. 2000). “Where words or phrases are not defined in the statutory text, courts may utilize dictionary definitions in interpreting statutes.” *Johnson v. Uhs of Lakeside, LLC*, No. W201501022COAR3CV, 2015 WL 9426034, at \*6 (Tenn. Ct. App. Dec. 23, 2015) (citing *State v. Majors*, 318 S.W.3d 850, 859 (Tenn. 2010) (quoting *State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985))).

When analyzing this exemption, this Court finds that the Legislature gave a broad exception, which would cover any information, records and plans which are related to three separate categories: 1) school security; 2) the district-wide school safety plan or 3) the building-level school safety plan.

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<sup>11</sup> This language and exemption did not change in the 2023 amendment. The General Assembly made the prior section part one of a now two-pronged exception.

Unlike the School Security Act of 1981, “school” is not defined in the TPRA, nor is the term “security.” Merriam Webster’s Dictionary defines the word “school” as an organization that provides instruction, such as an institution for the teaching of children. (Merriam-Webster 2024). Security is defined as the quality or state of being secure. *Id.* In this section of the exceptions, the General Assembly did not include any qualification or limitation for the type of school security information, records and plans which are subject to this exception. Instead, the exception is left with a broad construction to encompass all information related to the security of any school. The Court of Appeals has further instructed that the term “related to” and other similar phrases also carry a broad meaning as well. *Cordell v. Cleveland Tennessee Hosp., LLC*, 544 S.W.3d 331, 338 (Tenn. Ct. App. 2017). That meaning should not be twisted beyond its ordinary and common understanding. *Id.* Something is “related to” something if it is “connected.” *Black’s Law Dictionary* 1288 (6th ed. 1990). Indeed, to “relate to” something is “to bring into association with or connection with.” *Black’s Law Dictionary* 1288 (6th ed. 1990). The Legislature intentionally omitted defining the sources or providers of information, records, and plans concerning school security. This deliberate choice was made to encompass a broad range of information and plans pertaining to school security that may be in the possession of or come into the possession of the government. Further, the General Assembly’s use of the word “or” in this exception, which is used to separate the blanket and non-descript information, records and plans from the other sources of school security plans listed in the exception, is further indicative of the intent to cast a broad net on things which are related to school security. This approach is logical as it is not always feasible to pinpoint the origin and/or perpetrator of information, plans or actions which may be related to school security. In our society, such information and plans often emerge in hindsight, after an incident has occurred. Moreover, if such information happens to be intercepted before an incident, it would be counterproductive to

subsequently make it publicly accessible to anyone.

Therefore, this Court finds that *Tennessee Code Annotated* § 10-7-504(p) creates a valid and applicable exemption from disclosure for any information, records, and plans that are related to school security, produced by any person, entity or source. This Court would be hard pressed to find that the original and complied writings, photos, video content, information, original and assumed plans and artwork of an individual whose intent and plan was to cause and inflict harm on the innocent in a school setting would not be related to school security and thus exempt from disclosure.

Having determined that *Tennessee Code Annotated* § 10-7-504(p) creates a valid exemption from disclosure, this Court must analyze if this exemption should apply to all documents and information in the possession of Metro or only certain documents and information. Respondent Metro asserts that redacted versions of certain information and materials can be released without implicating school security, while the other documents at issue do not fall under this particular exception and at the close of the investigation and any contemplated criminal proceedings may be released *in toto*. The Intervenors, on the other hand, argue that all of the material and information held by Respondent in this matter relate to school security and should be exempt from disclosure completely, as the release of any information will inspire copycat attacks and thus all of the information is related in some form to school security.

In presenting their arguments regarding the applicability of *Tennessee Code Annotated* § 10-7-504(p), Petitioner Brewer and Intervenor Parents both rely upon competing experts which have diametrically opposed views on the long- and short-term contagion effects of the writings, material and content of persons who commit crimes such as the ones at issue in this case. Petitioner Brewer relies upon the expert report of Dr. Katherine Kuhlman, filed with this Court on June 20, 2023 and her supplemental report, filed on March 18, 2024. Dr. Kuhlman is a licensed psychologist who is

Board Certified in police and public safety psychology. *Exhibit A to June 20, 2023 Declaration of Dr. Katherine Kuhlman*. Dr. Kuhlman supports the release of all requested information. She opined that the release and study of assailant Hale’s writings could assist in the understanding of a shooter’s pathway to violence and in the prevention and mitigation of targeted violence. *June 20, 2023 Declaration of Dr. Katherine Kuhlman*. She also stated that “the research concerning whether the release of information about a shooter, including his or her writings, will create a contagion that could cause a ‘copycat’ killer is mixed and uncertain” and that any such possible contagion is highest in the short term, about fourteen (14) days after a shooting incident. *Id.* She opined that releasing information will be helpful for school security by way of prevention.

The Intervenor Parents rely upon a report from Dr. Erika Felix. The Parents filed an unverified expert report of Dr. Felix on June 20, 2023 and on April 24, 2024 filed it again with the proper verification. Dr. Felix is a licensed psychologist and a professor at the University of California Santa Barbara. *April 24, 2024 Declaration of Dr. Erika Felix*.<sup>12</sup> She opined that the release of assailant Hale’s writings would cause psychological harm to the survivors of the shooting and to the broader community and that such release would also create a risk of inspiring copycat attacks. *Id.* Dr. Felix thus concluded that the release of information would have the opposite effect of that suggested by Dr. Kuhlman.

The standards governing the qualification of experts are found in Tennessee Rule of Evidence 702, which states, “If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.” *Tenn. R. Evid.* 702. In general, questions regarding the admissibility, qualifications,

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<sup>12</sup> The CV of Dr. Felix is incorporated in her Declaration.

relevancy and competency of expert testimony are left to the discretion of the trial court. *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257, 263 (Tenn. 1997). The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. *Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 273–74 (Tenn. 2005). The trial court, therefore, must determine that the expert testimony is reliable and that the evidence will substantially assist the trier of fact to determine a fact in issue and that the underlying facts and data appear to be trustworthy. *Id.*

Having reviewed the *curriculum vitae* of both of these experts as well as their reports, this Court concludes that they both, as psychologists dealing with the impact of school shootings, are qualified by knowledge, skill, experience, training, and education to offer expert opinions in this case. Their specialized knowledge, skill and training is helpful to the Court in its determination of whether or not the content held by Respondent are related to school security. Thus, the Court has considered both reports in its determination of how the content held by Respondent should be viewed as it relates to school security.

This Court has also reviewed and analyzed firsthand the materials, compilations, information, journals, writings, plans, photos and videos both authored by and compiled by the assailant. Some information, which the Court finds most concerning, in relation to school security, is the detailing of specific plans and specified places and persons that assailant Hale intended to succumb to injury upon plan implementation. Of grave concern to this Court is that the assailant in this incident relied on similar past events across the United States as a blueprint to accomplish and carry out the events on March 27, 2023. Hale studied the plans, writings and video content, inclusive of news coverage footage, of past assailants and idolized how prior terror events were conducted and implemented and the outcomes for both the victims and assailants. Hale used the writings of other perpetrators in

similar crimes to guide how this plan was constructed and accomplished, mimicking some not only in their methodology, but also choice of weapons and targets. Hale even held past perpetrators out as heroes in their attacks, idolizing them.

Given the expert reports and the actual documentation analyzed, this Court finds that the contagion and risk of copycat behavior to be real, present and credible long after any fourteen (14) day period. The information analyzed by this Court shows an assailant who depended on, researched and imitated the plans set forth by others in their school shootings, years after their massacres occurred. Considering both expert opinions, this Court finds the Intervenor Parents' expert more persuasive, especially in consideration of the materials analyzed by the Court, regarding the effect on school security that the potential release of the assailant's materials and the incentivization of copycat actors.

Finally, in finding that the plain language of *Tennessee Code Annotated* § 10-7-504(p) excepted from disclosure any information related to school security, this Court finds that there are no limitations in the exception regarding the type of information, who created the information, where it came from, nor for whom it was intended. While the Court is aware of the policy favoring disclosure, there is a valid exception for records that relate to school security. Accordingly, this Court concludes that there need not be a retrospective application of the *Tennessee Code Annotated* § 10-7-504(p)(2)(A) in order for the school security exception in the TPRA to apply in this case. *Tennessee Code Annotated* § 10-7-504(p) created an exception from disclosure for anything related to school security. Consequently, this Court concludes that materials and content created and/or compiled by Hale as she studied and devised her plan, not only against this school but others, is information related to school security. This Court finds the possibility that these materials could be used by a copycat shooter, as was the case with Hale, to be a real security concern for schools here



in Tennessee and across this nation. Therefore, pursuant to *Tennessee Code Annotated* § 10-7-504(p)(1), such documents are exempt from disclosure.

## **B. FEDERAL LAW AND PREEMPTION OF THE TENNESSEE PUBLIC RECORDS ACT**

### ***1. Copyright as an Exception to the Tennessee Public Records Act: The Intervenor Parents' Argument Against Release of Any Documents***

#### ***a. The Supremacy Clause and the Federal Preemption of State Law***

The Intervenor Parents have asserted that any original works, in any form, created by assailant Hale are exempted from disclosure because they, on behalf of their minor children, Jane Doe and John Doe, are the rightful owners of the copyrights to those original works of authorship and original materials held by the Respondent in this case. The Parents assert that although they have not sought copyright registration for any such works, their ownership rights prevent disclosure by the Respondent. They further assert that Metro's release of any of the copyright materials pursuant to the TPRA would violate the federal Copyright Act and their exclusive rights under federal law. In essence, the Parents assert that as the supreme law of the land, federal law preempts the TPRA.

The Petitioners counter this assertion in various arguments. First, the Petitioners argue that the Intervenor Parents lack the requisite standing to assert a copyright claim. Second, the Petitioners argue that even if the Intervenor Parents did have standing, they failed to register the copyrights with the copyright office. Third, the Petitioners argue that they have the right to fair use of any works protected by copyright as news media outlets and for educational purposes, therefore, federal copyright is not a bar to disclosure under the TPRA. Whether a valid copyright is an exemption to the TPRA is a matter of first impression in Tennessee.

#### ***i. Standing of the Intervenor Parents to Assert a Copyright Argument on Behalf of the Covenant Children's Trust***

Before delving into the arguments of the Petitioners, this Court must first address the standing of the Intervenor Parents, on behalf of the minor children, to assert a copyright argument in this matter. The ownership rights to some of the records at issue in this case have been transferred via the *Assignment and Transfer of Legal and Equitable title to Certain Personal and Intellectual Property Created by Audrey Elizabeth Hale from Norma and Ronald Hale*. As noted earlier, this Assignment operated to “irrevocably assign and transfer all of their equitable, legal, and other rights in the Writings and Intellectual Property Rights (including all tangible copies thereof) as a gift to the Parents in trust for the benefit of the Children.” *See Assignment and Transfer* ¶ 1. This Assignment also stated, “the name of the trust created by this assignment and transfer shall be the "Covenant Children's Trust" and it appointed “Brent Leatherwood as the representative of the Parents in the legal proceedings as the initial trustee of the Covenant Children's Trust.” *Id.* at ¶¶ 2-3.

**Whereas** Ronald and Norma Hale (the “Hales”) are the parents of Audrey Elizabeth Hale (“Ms. Hale”), and

**Whereas**, during her lifetime, Ms. Hale created, selected, organized and/or compiled, electronic and/or tangible writings, papers, drawings, photos, graphs, maps, images, impressions, and other media, and further including records, compilations and databases of electronic searches conducted by Ms. Hale that may be stored on various electronic devices and systems, all of which are now in the possession of and/or are accessible by the Metropolitan Government of Nashville and Davidson County and/or other government authorities (collectively the “Writings”), and

**Whereas**, the Writings constitute copyrighted works and/or confidential information owned by Ms. Hale during her lifetime (collectively the “Intellectual Property Rights”)

**Whereas** Ms. Hale died on March 27, 2023 during the events that took place at the Covenant School, and

**Whereas** the Hales are not aware of any will or other valid testamentary instrument executed by Ms. Hale that prevents their ability to disposite of the Writings, and

**Whereas**, in the absence of a valid testamentary instrument executed by Ms. Hale, all of Ms. Hale’s property transfers to her closest next-of-kin, and

**Whereas**, under Tennessee intestate law, with Ms. Hale having no spouse (living or otherwise) or descendants (living or otherwise), the first beneficiaries would be Ms. Hale’s parents; and thus, the Hales are Ms. Hale’s closest next-of-kin,

**Whereas** the Hales therefore own equitable title to the Writings and anticipate owning possession and legal title of the Writings following probate of Ms. Hale’s estate. and

**Whereas** the parents of the Children have organized themselves and intervened in a pending legal dispute to prevent dissemination of the Writings to prevent further harm that may come from dissemination of the Writings to the Children and/or any other person in the world, and

**Whereas** the Davidson County Chancery Court, Division III, has permitted the Parents of Minor Covenant Students Jane Doe and John Doe (the "Parents") to intervene pseudonymously on behalf of the Children in the matter of *Clata Brewer, et. al. v. Metro*, No. 23-0538-III, and

**Whereas** the composition and identities of the parents and the Children has been set by order of the Chancery Court and is known only to the Chancellor and the Parents' legal representatives, and

**Whereas** Counsel for the Hales is satisfied that the "Parents" – and no others – are truly representative of the "Children" the Hales wish to protect, and

**Whereas** the Hales wish to protect the privacy of the Children by conveying their rights to a trust, and

**Whereas** the Hales wish to ensure that the trust created by this gift will be used for the purpose of (1) preventing the dissemination of the Writings, (2) preventing the copying, distribution, publication, or unauthorized use of any of the Writings, and (3) for the purpose of seeking damages on behalf of the Children caused by any infringement, misappropriation, or unauthorized use of any of the Intellectual Property Rights, and

Now, therefore, the Hales hereby:

1. Irrevocably assign and transfer all of their equitable, legal, and other rights in the Writings and Intellectual Property Rights (including all tangible copies thereof) as a gift to the Parents in trust for the benefit of the Children, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement or misappropriation of any of the

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Intellectual Property Rights, for the express purpose of preventing harm to the Children including preventing dissemination of the writings and to pursue all legal rights and remedies available at law to recover damages on behalf of the Children for the harm they will suffer.

2. State that the name of the trust created by this assignment and transfer shall be the "Covenant Children's Trust,"

3. Appoint Brent Leatherwood as the representative of the Parents in the legal proceedings as the initial trustee of the Covenant Children's Trust.

As a primary matter, this Court will address the argument made by at least one of the Petitioners that the Intervenor Parents lack standing to assert intellectual property rights on behalf of

the Covenant Children’s Trust, owner of the materials created by Hale, as the Parents are neither the named Trust nor the Trustee.

Courts use the doctrine of standing to determine whether a litigant is entitled to pursue judicial relief as to a particular issue or cause of action. *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006). The proper focus of a determination of standing is a party's right to bring a cause of action. *City of Memphis v. Hargett*, 414 S.W.3d 88, 97 (Tenn. 2013). Every standing inquiry requires a “careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.” *Id.* (internal citations omitted). Our jurisprudence recognizes two categories of standing that govern who may bring a civil cause of action: non-constitutional standing and constitutional standing. *Id.* at 98. Non-constitutional standing focuses on considerations of judicial restraint, such as whether a complaint raises generalized questions more properly addressed by another branch of the government, and questions of statutory interpretation, such as whether a statute designates who may bring a cause of action or creates a limited zone of interests. *Id.* The second category of standing is constitutional standing. To establish standing, a party must show three “indispensable” elements “by the same degree of evidence” as other matters on which the plaintiff bears the burden of proof. *Am. C.L. Union of Tennessee v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006) (quoting *Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765, 767 (Tenn. Ct. App. 2002), *perm. app. denied* (Tenn. Sept. 9, 2002)). First, a plaintiff must show a distinct and palpable injury: conjectural or hypothetical injuries are not sufficient. *Id.* (citing *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49, 55-56 (Tenn. Ct. App. 2004)); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Standing also may not be predicated upon an injury to an interest that the party shares in common with all other citizens. *Id.* The second essential element of standing is a causal connection between the

claimed injury and the challenged conduct. *Id.* (internal citations omitted). A party may satisfy this element by establishing the existence of a “fairly traceable” connection between the alleged injury in fact and the defendant's challenged conduct. *Id.* (internal citations omitted). The third and final element necessary to establish standing is a showing that the alleged injury is capable of being redressed by a favorable decision of the court. *Id.*

In this case, this Court allowed the Parents of the minor children involved in the shooting on March 27, 2023 to intervene in this case on behalf of those minor children, who due to a lack of capacity could not petition this Court for any relief on their own. During the course of these proceedings, this Court asked for certification, via affidavit, that the class of Parents seeking to intervene in the case on behalf of the minor children had standing to assert claims because their children were present at the Covenant School during the incident. This Court accepted those certifications for *in camera* review in an effort to protect both the minor children and their parents from identification broadly and due to the sensitive nature of the case.

Petitioner The Tennessean argues specifically that the Intervenor Parents lack sufficient standing to assert a copyright interest on behalf of the Trust, as neither the Trust nor Trustee, Brent Leatherwood, are named parties to this action. Further, the Petitioners collectively argue that this Court lacks the required subject matter jurisdiction to consider any issues related to copyright. This Court disagrees with both arguments.

As previously stated, the Court created a class of persons for the sake of intervention. The Court certified the class of Parents moving on behalf of those affected minor children. Mr. Leatherwood was a member of this certified class of parents. *See June 23, 2023 Declaration of Brent Leatherwood and Meredith Leatherwood.* The Assignment from Norma and Ronald Hale was made to the class of Parents for the benefit of the minor Children, as certified by this Court, in trust. *See*

*Assignment and Transfer* ¶ 1. The Children, as beneficiaries of the trust, may sustain a distinct and palpable injury based upon the disclosure of certain materials for which they now hold the copyrights. This Court finds that there is a causal connection between the disclosure of certain materials and the injury that the Children would sustain as copyright owners via the Assignment. Finally, their potential injury is capable of being addressed by this Court, as this Court can make a determination as to whether or not federal copyright law preempts the TPRA and thus creates an exception to disclosure in this instance. Therefore, this Court finds that the Parents of the Minor Children Jane Doe and John Doe have standing to assert the copyright argument to this Court. Because the minor children are the beneficiaries of the Covenant Children’s Trust and the Intervenor Parents are the recipients of the rights under the Assignment, both may be harmed by the release of the copyrighted works. Therefore, neither the Trust itself nor the Trustee are required as named parties to this litigation.

***ii. Federal Copyright Law Creates an Exception to the TPRA and Thus Preempts State Open Records Law***

The legal basis for the doctrine of preemption is the Supremacy Clause of the United States Constitution, which mandates that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” *U.S. Const. art. VI, cl. 2*. Pursuant to the Supremacy Clause, any law enacted by Congress may preempt an otherwise valid state law, rendering it without effect. *Lake v. Memphis Landsmen, LLC*, 405 S.W.3d 47, 55 (Tenn. 2013). The United States Supreme Court has identified two fundamental principles that must guide any preemption analysis. First, no matter what type of preemption is at issue, “the purpose of Congress is the ultimate touchstone.” *Id.* at 56 (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, (1996))).

Second, in conducting any preemption inquiry, courts must “start with the assumption that the historic police powers of the States were not to be superseded by [federal law] unless that was the clear and manifest purpose of Congress.” *Id.* (quoting *Medtronic*, 518 U.S. at 485) (internal quotation marks omitted). Whether federal law preempts a state statute or common law cause of action is a question of law. *Wells v. Chattanooga Bakery, Inc.*, 448 S.W.3d 381, 387 (Tenn. Ct. App. 2014). Thus, the fundamental question in every preemption analysis is one of congressional intent. *Swift* 159 S.W.3d at 576. (internal citations omitted). Did Congress, by enacting the federal law, intend to exercise its constitutionally delegated authority to displace state law? *Id.* If that was the intent of Congress, the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, requires courts to follow federal rather than state law. *Id.* However, courts will not interpret federal law to preempt state law unless that is the clear and manifest purpose of Congress. *Id.* (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 230 (1947)). Where the federal law contains a clearly stated preemption clause, the plain meaning of the clause is the best evidence of Congressional preemptive intent. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 62–63 (2002). When explicit preemption language is absent, the court must assess whether the structure and objectives of the federal law indicate a discernible implicit intent for preemption. *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 31 (1996). Where there is no express preemption provision in a federal statute, a state law is implicitly preempted if that law *actually conflicts* with the federal law or if the federal law so thoroughly occupies the legislative field “as to make reasonable the inference that Congress left no room for the States to supplement it.” *Riggs v. Burson*, 941 S.W.2d 44, 49 (Tenn. 1997) (*emphasis added*). Courts recognize both express preemption, which occurs when Congress explicitly dictates that a federal law supplants contrary state law, and implied preemption, which typically falls into

one of three categories: (1) field preemption, (2) direct conflict preemption, or (3) purposes and objectives conflict preemption. *Memphis Landsmen, LLC*, 405 S.W.3d at 56.

Field preemption occurs when federal regulation of a field is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, (1947)). Direct conflict preemption arises from an inescapable contradiction between state and federal law—for example, where it is impossible to comply with both state and federal law. *Id.* (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372–73, (2000)). Purposes and objectives conflict preemption occurs when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law.” *Id.*

As the United States Supreme Court has cautioned, courts must remain mindful that it is Congress rather than the courts who has the authority to preempt state law; in keeping with this principle, courts must guard against implied preemption analysis devolving into a “freewheeling judicial inquiry into whether a state statute is in tension with federal objectives.” *Id.* at 56-57 (quoting *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 111 (1992))). Pursuant to 28 U.S.C.A. § 1338, subsection (a), federal courts possess exclusive jurisdiction to resolve patent and copyright disputes. However, this Court is not devoid of jurisdiction to determine whether or not a state law is preempted by a federal copyright law. While cases alleging pure a copyright infringement are reserved exclusively to the federal courts, “simply because an action is predicated on rights derived from the Copyright Act does not mean that the action is one for copyright infringement, or one ‘arising under’ the Copyright Act.” *Minor Miracle Prods. LLC v. Starkey*, No. M2011-00072-COA-R3-CV, 2012 WL 112593, at \*5 (Tenn. Ct. App. Jan. 12, 2012) (citing *Peay v. Morton*, 571 F. Supp. 108, 112-13 (M.D. Tenn. 1983)).



Therefore, this Court will analyze whether or not it is impossible for the Respondent to comply with both federal copyright law and the TPRA, creating a direct conflict, or whether or not the TPRA stands as an obstacle to the accomplishment of execution of the full purposes of the Copyright Act, thereby being preempted by federal law.

The federal Copyright Act is unusually broad in its assertion of federal authority. *Chattanooga Bakery, Inc.*, 448 S.W.3d at 387 (citing *Ritchie v. Williams*, 395 F.3d 283, 286 (6th Cir. 2005)). Rather than sharing jurisdiction with the state courts as is normally the case, the statute expressly withdraws from the state courts any jurisdiction to enforce the provisions of the Act and converts all state common or statutory law “within the general scope of copyright” into federal law to be uniformly applied throughout the nation. *Id.*

Congress set forth its intent on the broad and preemptive scope of the Federal Copyright Act when it penned Section 301:

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

[ ... ]

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106[.]

17 U.S.C.A. § 301. See *Chattanooga Bakery, Inc.*, 448 S.W.3d at 387. It is well-recognized that “the scope of the Copyright Act's subject matter is broader than the scope of the Act's protections.” *Id.* (citing *Wrench LLC v. Taco Bell Corp.*, 256 F.3d 446, 455 (6th Cir.2001)).

As a primary step in this preemption analysis, this Court must determine what, if any, of the materials currently in the possession of Respondent Metro are works in which the minors Jane Doe and John Doe hold a copyright interest. The Copyright Act states that copyright protection exists in “original works of authorship fixed in *any* tangible medium of expression ... from which they can be perceived, reproduced, or otherwise communicated....” 17 U.S.C.A. § 102(a) (*emphasis added*). The right automatically attaches as soon as the work is fixed in a tangible form of expression. 17 U.S.C.A. §§ 101, 102(a). “The subject matter of copyright as specified by section 102, includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.” 17 U.S.C.A. § 103(b). The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work and does not imply any exclusive right in the preexisting material. *Id.* The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material. *Id.*

The Intervenor Parents, on behalf of minors Jane and John Doe, as owners of the copyright, assert that some portions of the materials in the possession of Respondent Metro are the original works of authorship of assailant Hale. This Court agrees.

Copyright in a work protected in accordance with the Copyright Act vests initially in the author of the work. 17 U.S.C.A. § 201(A). Pursuant to 17 U.S.C.A. § 201(B), the ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law

and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession. *Id.* In this case, Hale’s intellectual property interests passed to her parents when she died without issue based upon the laws of intestate succession. *Tenn. Code Ann.* § 31-2-104(b)(2). As discussed previously, those rights were later assigned to the Covenant Children’s Trust.

The U.S. Copyright Act grants the owner of the copyright the exclusive right to do or authorize the doing of any of the following: (1) make copies of the work; (2) prepare derivative works based upon the work; (3) distribute copies of the work to the public by sale or other transfer of ownership or by rental, lease, or lending; (4) perform the work publicly; and (5) display the work publicly. *17 U.S.C.A.* § 106. The legislative history regarding the exclusive right to public display is informative to this analysis.

Clause (5) of section 106 represents the first explicit statutory recognition in American copyright law of an exclusive right to show a copyrighted work, or an image of it, to the public.... The bill would give the owners of copyright in “literary, musical, dramatic, and choreographic works, pantomimes, and on pictorial, graphic, or sculptural works,” including the individual images of a motion picture or other audiovisual work, the exclusive right “to display the copyrighted work publicly.

H.R. REP. 94-1476, 63, 1976 U.S.C.C.A.N. 5659, 5676. For the federal Copyright Act to preempt the TPRA and serve as an exemption, there are two requirements that must be satisfied: (1) the work must come within the scope of the “subject matter of copyright” as set forth in Section 102 and 103 of the Copyright Act; and (2) the rights granted under state law must be equivalent to any of the exclusive rights within the scope of federal copyright protection. *Chattanooga Bakery, Inc.*, 448 S.W.3d at 388 (citing *Stanford v. Caesars Entm’t, Inc.*, 430 F.Supp. 2d 749, 755 (W.D. Tenn. 2006) (citing *Stromback v. New Line Cinema*, 384 F.3d 283, 300 (6th Cir.2004))).

*a. Hale's Original Works of Authorship Pursuant to 17 U.S.C.A. § 102 and § 103 and the Exclusive Rights Held by the Minor Children*

During the course of its investigation into the incident, the Respondent came into possession, via search warrant, of certain materials and original works of authorship in various mediums and forms, as well as compilations and derivative works found in the home and vehicle of the assailant Hale.

The Petitioners have requested the inspection and copies of several different categories of documents in the possession of the Respondent. After analyzing the documents in the possession of Respondent Metro, this Court is of the opinion that not every document requested by the Petitioners meets the subject matter required to be an original work of authorship as set forth in *17 United States Code Annotated* §§102 and 103. However, certain materials responsive to the Petitioners' requests are original works of authorship, compilations and derivative works in various mediums created by assailant Hale, including those works created by her in digital form and on various hard drives. The original content and works of authorship in the possession of the Respondent which was created and put in tangible form by Hale including writings, journals, photographs, art, compilations and video content, fall under the definition of an original work of authorship set forth in *17 U.S.C.A.* §§ 102 and 103.

Congress by way of the enactment of *17 United States Code Annotated* § 106 granted the owner of any copyright certain exclusive rights. The Act specifically grants the owner of the exclusive right to do or authorize any of the following:

- (1) make copies of the work;
- (2) prepare derivative works based upon the work;
- (3) distribute copies of the work to the public by sale or other transfer of ownership or by rental, lease, or lending;
- (4) perform the work publicly;
- and (5) display the work publicly.

*17 U.S.C.A.* § 106. A "state law right at issue is equivalent to any of the exclusive rights under § 106

if ‘the right defined by state law may be abridged by an act which in and of itself would infringe one of the exclusive rights.’” *Chattanooga Bakery, Inc.*, 448 S.W.3d at 389-90 (citing *Stanford v. Caesars Entm't, Inc.*, 430 F.Supp.2d 749, 758 (W.D. Tenn. 2006) (quoting *Stromback*, 384 F.3d at 301)).

***b. Conflict Preemption and the TPRA Right of Inspection and Copying***

Pursuant to the Supremacy Clause, when a state law is in conflict with a federal law, the state law is “without effect” and thus displaced by federal law or in other words preempted. *Cadence Bank, N.A. v. The Alpha Tr.*, 473 S.W.3d 756, 765 (Tenn. Ct. App. 2015) (internal citations omitted). This is known as conflict preemption. *Id.* In order to determine whether a state law is subject to conflict preemption, this Court must analyze whether it is impossible to comply with both state and federal law, or stated another way, whether this particular state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Id.*

This analysis begins with a close look at the express language and purpose of the TPRA and its impact on the exclusive rights of the minor Children, Jane Doe and John Doe, in Hale’s original works of authorship. Each Petitioner requested that Respondent Metro disclose, via either email or mail the actual copies of Hale’s materials, amongst other things to them. No Petitioner asked to come in to inspect the materials.

Send Results By:  Postal Mail  In Person  Email

**Photo copy of photo ID with address must be attached to this request.**

Note: Pursuant to T.C.A. § 10-7-503(a)(2)(B), “In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days: (i) Make the information available to the requestor; (ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or (iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.”

The plain language of *Tennessee Code Annotated* § 10-7-503 states in pertinent part that each Petitioner has the following rights and access to public records:

(2)(A) 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.**

(B) **The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure.** In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

- (i) **Make the public record requested available to the requestor;**
- (ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- (iii) Furnish the requester in writing, or by completing a records request response form developed by the office of open records counsel, the time reasonably necessary to produce the record or information...

*Tenn. Code Ann. § 10-7-503(a)(2)(A); (a)(2)(B)(i-iii) (emphasis added).* The Intervenor Parents argue that should Respondent Metro comply with the TPRA's disclosure requirement, and give the Petitioners the right to inspect and obtain copies of the original works created and compiled by Hale, such action by Respondent Metro would constitute the public display, distribution, and copying of protected documents without their consent in turn violating their exclusive federal copyrights and the protections set forth in the Copyright Act.

Congress has shed considerable light on what it means to "display" a work "publicly," which this Court finds to be instructive in its analysis. Congress has defined the "display" of a work as "to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially." 17 U.S.C.A. § 101. "Publication" is "the distribution of copies or phonorecords of a work *to the public* by sale or other transfer of ownership, or by rental, lease, or lending. *Id.* (*emphasis added*). The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. *Id.* A

public performance or display of a work does not of itself constitute publication.” *Id.* To...display a work “publicly” means... “(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.” *Id.*

While the Tennessee Supreme Court has stated that the TPRA 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, it has also said that the right is not absolute. *Tennessean*, 485 S.W.3d at 864. Yet, the question still remains, would the Respondent’s display, email, or mail distribution of Hale’s original works of authorship, no matter how repugnant they are, without the consent of the Children, conflict with their exclusive rights under federal law.

Based on the plain, unambiguous language of the TPRA and the plain, unambiguous language of the Copyright Act, setting forth the exclusive rights held by copyright owners, this Court holds as a matter of law that in this instance, *Tennessee Code Annotated* §§ 10-7-503(a)(2)(A) and 10-7-503(a)(2)(B)(i) are in direct conflict with the exclusive rights of copyright owners as set forth in federal Copyright Act at 17 *United States Code Annotated* § 106. The Respondent’s obligations under the TPRA abridge the exclusive rights held by the Intervenor Parents on behalf of the minor Covenant Children Jane Doe and John Doe. Therefore, compliance with the request of the Petitioners as to the original works of authorship, derivative works and compilations as set forth in 17 *United States Code Annotated* §§ 101, 102 and 103, created by Hale, would require the Respondent to infringe upon the exclusive federal copyright protections afforded to the copyright owners.

Therefore, this Court holds that conflict preemption renders the TPRA preempted by federal copyright law with regard to Hale's original works of authorship.

Petitioners have not provided any case to this Court to suggest that federal copyright law has not preempted state law on this issue. Rather, Petitioners focus their supplemental argument on the standing of the Intervenor Parents on behalf of the minor children, and the lack of their registration of the federal copyright. However, this Court has already addressed and found standing for the Intervenor Parents and Trust as set forth above, as all interested parties are in this litigation. Further, this case presents a unique set of facts and a unique procedural posture. The materials in which the Intervenor Parents, on behalf of the Children, have copyright ownership are in the exclusive possession of the Respondent as a result of a search warrant. The Children do not currently have physical possession of any original, derivative or compilation work, which hinders their ability to seek registration due to the open investigation. However, a lack of registration of the copyright does not extinguish the exclusive rights held by copyright owners. The United States Congress has stated that the copyright interest that an owner has in an original work is not dependent upon registration. 17 *U.S.C.A.* § 408 (“...registration is not a condition of copyright protection.”) Whether or not an original work of authorship has been registered with the federal copyright office is germane to the amount of recoverable damages in a copyright infringement action, but it has no bearing on whether or not this state law is preempted by federal copyright law.

The Petitioners rely on the federal Freedom of Information Act (“FOIA”) (5 *U.S.C.A.* § 552) and the Department of Justice's (hereinafter “DOJ”) procedure on the distribution of content which has been registered with the copyright office when responding to FOIA requests. However, this case and analysis are distinguishable. As a primary matter, TPRA is not patterned after FOIA. Any federal procedure employed by the DOJ is analyzed in a different manner than this state law. This analysis



hinges on the supremacy of federal law and the expansive reach of the Copyright Act. The Petitioners further seek to rely upon the defense of fair use and assert that their use of any materials protected by copyright would fall under the exception of the fair use doctrine. However, the fair use doctrine is a defense reserved for the federal courts in a copyright infringement action. The United States Supreme Court has held that the “promise of copyright would be an empty one if it could be avoided merely by dubbing the infringement a fair use ‘news report’ of the [work].” *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 557 (1985). These nuanced arguments lodged by the Petitioners regarding copyright exceptions are defenses to be brought in a federal copyright infringement action, and not arguments this Court for its analysis of state law.

The issue before this Court is purely one of the Supremacy Clause and preemption. The Supremacy Clause is a one-way street. *Swift*, 159 S.W.3d at 577. It would be a legal fallacy to argue that federal copyright law, with its expansive reach and federal law, as the supreme law of the land with its extensive authority, could not preempt a state law which by its plain and unambiguous terms is in direct conflict with the plain and unambiguous terms of the federal law. Such a conflict would necessitate the violation of certain protections exclusively granted to copyright owners.

The Petitioners have not cited any case, nor has this Court’s exhaustive research uncovered any case, in which a state law which impairs an exclusive federal right did not yield to federal law by way of conflict preemption. To comply with the TPRA and give the Petitioners the access and copies to Hale’s original works of authorship which they seek, would require the Respondent to violate rights exclusively protected by federal law.

This is an issue of first impression, therefore, Tennessee jurisprudence on this issue is scant to say the least. However, there is one case in which our Tennessee Court of Appeals has applied the Supremacy Clause of the United States Constitution to recognize a non-statutory exemption to

disclosure under the TPRA when disclosure would violate a different federal law. This Court has found that case to be instructive.

In *Seaton v. Johnson* the Court found that in order to receive federal funds, the Tennessee Department of Transportation (“TDOT”) was required to compile data regarding the safety of the railroad crossings in Tennessee. *Seaton v. Johnson*, 898 S.W.2d 232 (Tenn. Ct. App. 1995). Federal law stated that the required data “shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding.” *Id.* at 236. A lawyer who represented the estates of two children killed in a collision between a train and an automobile requested access to TDOT’s data pursuant to the Public Records Act. *Id.* at 233. Both the trial court and the Court of Appeals determined that the requested records were not subject to disclosure because of the federal law prohibiting their release. *Id.* at 236. While this present case is factually distinguishable from *Seaton*, the logic and analysis are comparable. There are certain exclusive rights that federal law grants to copyright owners. Among those rights is the owners’ exclusive control over who gets to see her work and when. The original works of the assailant here, which were collected by Respondent, much like the data collected by TDOT in the *Seaton* case, have protections afforded to them. This Court finds a salient basis to invoke conflict preemption based on the fact that, Respondent’s disclosure of the works under the TPRA would infringe upon the exclusive rights held by the copyright owners pursuant to federal copyright law. Tennessee would not be the first state to hold that certain copyrightable works, where the right is asserted, are exempt from disclosure pursuant to state public records laws. *See Caroff v. Rutgers, State Univ. of New Jersey*, No. A-3773-20, 2022 WL 3363911, at \*6 (N.J. Super. Ct. App. Div. Aug. 16, 2022) (finding that a state university’s video is exempt from disclosure under state public records act’s federal-law exemption because the video at issue “is a copyrightable work under the Copyright Act”); *Attorney IO News, LLC v. Regents of the University of California*, 2022 WL

1552234, at \*3-5 (Cal. Super. Apr. 21, 2022) (finding academic course materials, to which third-party faculty members owned a copyright, exempt from disclosure under state public records act’s federal-law exemption provision because state university could not disclosure the materials without infringing on the faculty members’ copyright to those materials); *Brancheau v. Demings*, 2010 WL 7971871 (Fla. Cir. Ct. Dec. 15, 2010) (explaining, in holding that “SeaWorld’s property interests in the Death Scene Videos provides a separate and independent basis for restricting disclosure of those videos” under the state’s public records act, that SeaWorld owns the copyright to the videos and thus copyright law prohibits defendants from making any copies of, or displaying/distributing, the videos “in any manner without SeaWorld’s authorization” and that to the extent Florida law conflicts with the federal copyright law, “the Supremacy Clause of the U.S. Constitution requires that federal law controls.”)

While the control over the access to state or local government records is a central attribute of state sovereignty, this Court finds that in this case there is a clear and manifest conflicting federal law in the Copyright Act which vests certain rights in copyright owners exclusively. Respondent Metro is not the owner of any copyright in this case; therefore, it cannot usurp the exclusive rights held by the Intervenor Parents on behalf of the Children. This Court therefore holds, as a matter of law, that federal copyright law is an exception to the TPRA and shields works of original authorship from public disclosure. Requiring Respondent to allow public inspection, display or copying of the original materials created by Hale would violate and conflict with the exclusive federal rights granted to copyright owners pursuant to 17 *United States Code Annotated* §§ 102, 103 and 301. This Court therefore further holds that Petitioners’ requests for access to the public records under the TPRA would require the use, display, and publication of materials in which the Intervenor Parents, on behalf of the Children, have a protectable copyright interest. Accordingly, this Court finds that the

original writings, journals, art, photos and videos created by Hale are subject to an exception to the TPRA created by the federal Copyright Act, 17 *United States Code Annotated* §§ 102, 103, 106, and 301 *et seq.* Consequently, the Petitioners are not entitled to those materials.<sup>13</sup>

### C. TENNESSEE CONSTITUTION AND THE VICTIMS' BILL OF RIGHTS

As discussed previously, in addition to the specific statutory exceptions to the general rule of public disclosure (*see Tenn. Code Ann.* § 10–7–504(a)–(r)), there is also a catch-all exception exempting records protected from disclosure as “otherwise provided by state law.” *Tenn. Code Ann* § 10–7–503(a)(2)(A). The 1991 amendment by the General Assembly to *Tennessee Code Annotated* § 10–7–503(a), which replaced “state statute” with “state law,” was significant because it broadened the permissible sources of exceptions to disclosure to include not only statutes, but also the Constitution of Tennessee, the common law, the rules of court, as well as administrative rules and regulations because each of these has the force and effect of law in Tennessee. *Swift*, 159 S.W.3d at 571–72 (*internal citations omitted*).

The Intervenors not only rely upon the Supremacy Clause of the U.S. Constitution and federal law preemption, but also on this amendment to the TPRA, which allows this Court to look at other state laws and the Tennessee Constitution as a basis for exemption for the documents at issue in this case. To support this proposition, the Intervenor Parents argue that certain documents held by Respondent are excepted from disclosure based upon the Tennessee Constitution and the Victims' Bill of Rights, including the rights to dignity and compassion. The Intervenor Parents assert these rights on behalf of their minor children. The Parents further urge this Court to adopt “a moderate position” that weighs the public interest in disclosure of facts uncovered in the investigation against

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<sup>13</sup> This Court did not reach the defense of Fair Use because the Fair Use defense pursuant to 17 *U.S.C.A.* § 106 is a defense to a copyright infringement action, which this case is not. That defense, when applicable, is one raised in federal court, not relevant to these state court proceedings. 17 *U.S.C.A.* § 106

the Constitutional rights of victims to be protected from abuse and the compelling state interest in refusing to publicize writings that might inspire a future, similar attack.

In the November 3, 1998 general election, the voters of Tennessee ratified an amendment to the Tennessee Constitution regarding the rights of victims of crimes, which became Article I, Section 35. *See Tenn. Code Ann.* § 40–38–301. The General Assembly then enacted legislation to implement and make fully operational the provisions of Article I, Section 35. *Id.* Tennessee Constitution Article I, § 35 was authored to preserve and protect the rights of victims of crime to justice and due process. In implementing victims' rights, the Legislature provided that “victims and witnesses shall have certain rights in this state.” *Tenn. Code Ann.* § 40–38–101(a). Our Tennessee Constitution empowers victims with the following basic rights:

1. The right to confer with the prosecution.
2. The right to be free from intimidation, harassment and abuse throughout the criminal justice system.
3. The right to be present at all proceedings where the defendant has the right to be present.
4. The right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly.
5. The right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person.
6. The right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence.
7. The right to restitution from the offender.
8. The right to be informed of each of the rights established for victims. The general assembly has the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section.

*Tenn. Const. Art. I, § 35.* The Intervenor Parents argue that once a victim of crime, always a victim of crime, and thus the protections afforded to them pursuant to these Constitutional rights should extend to prevent the disclosure of certain documents permanently. For this proposition, the Intervenor Parents rely on *Tennessee Code Annotated* § 40–38–102(a)(1), which recognizes the right of crime victims to “[b]e treated with dignity and compassion[.]” *Tenn. Code Ann.* § 40–38–

102(a)(1). Both *Article I, section 35* and *Tennessee Code Annotated* § 40–38–102(a)(1) were enacted to insure broad protections to victims and pursuant to the 1991 amendment to the TPRA, both qualify as “state law” for purposes of the catch-all exception to disclosure. *See Swift*, 159 S.W.3d at 571–72. Exceptions must be recognized pursuant to the catch-all provision when there is a significant risk that the disclosure of documents will contravene rights guaranteed by provisions in the Tennessee Code and the Tennessee Constitution. *See Id.; Tennessean*, 485 S.W.3d at 881.

In his dissenting opinion in *Tennessean*, Justice Wade rightly concluded the following when he said,

...Exceptions must be recognized pursuant to the catch-all provision when, as here, there is a significant risk that the disclosure of documents will contravene rights guaranteed by provisions in the Tennessee Code and the Tennessee Constitution. *See id.*... Furthermore, the constitutional and statutory rights afforded to victims are broader in scope than the work-product exception of Rule 16(a)(2). When the criminal prosecution concludes, the protections of Rule 16 expire...

*Tennessean*, 485 S.W.3d at 882. As the victim in *The Tennessean* understood, once the investigation or criminal case concludes, absent any exceptions to the TPRA other than Rule 16(a)(2), the writings of Hale, along with the other contents of the police investigation file (if deemed public records) are subject to public disclosure, including photos and other data requested by these particular Petitioners and any other citizen of Tennessee. While the Petitioners in this case have waived their requests seeking certain portions of the police file which would include things like photos of minors Jane and John Doe, this issue will arise again when it comes to policies investigations and minor children.<sup>14</sup>

The plain language of *Tennessee Constitution Article I, § 35* focuses on the criminal legal

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<sup>14</sup> On April 11, 2024, all parties, including all Petitioners, Respondent Metro, and all Intervenors filed a joint stipulation agreeing that “Petitioners are not seeking and that no photos, videos, or other images of children or of any deceased persons should be released to the public. The parties respectfully request that this Court affirm in its final order that no such photos should be released.” The Court does so affirm and orders that no photos, videos, or other images of children or of any deceased persons may be released to the public in this matter.

system, the criminal process, and the treatment of crime victims while navigating investigation and prosecution and their dealings in that system. *Tenn. Const. Art. I, § 35*. While this Court acknowledges that the plain language of *Tennessee Code Annotated* §§ 40–38–102(a)(1) states that crime victims have the right to be treated with dignity and compassion, when the statute is read as a whole, it is limited to the treatment of victims of crime as they make their way through the criminal legal system. While the Intervenors may be correct that once a person has experienced a crime they are always a victim, they can point to no Tennessee law or case, and this Court has found none, which would shield victims of crime or offer them any protections outside of the rights afforded to them while involved in the criminal legal system. Therefore, this Court holds that neither *Tenn. Const. Art. I, § 35* nor *Tennessee Code Annotated* § 40-38-301, et seq. provides any exception to disclosure under the TPRA for the materials at issue in this particular case.

## **V. CONCLUSION**

School shootings and violence have unfortunately become commonplace in our society. Access to immediate information has also become a societal expectation which we all share. However, there are occasions when this immediate access to and demand for information must be balanced and moderated to safeguard the integrity of our legal system, particularly the criminal legal system. While responsible journalism depends on access to information and Tennessee citizens are rightly enabled to hold government officials accountable for their actions, these rights are tempered by both the Tennessee legislature and the supreme law of the United States Congress.

When there is a pending or contemplated criminal investigation, Tennessee courts have determined that unfettered access to every record at any time does not serve to uphold the system of justice that we all depend upon to ensure that the criminal legal system and investigations remain fair and impartial for every involved person. Therefore, the right to unencumbered access to public

records was tempered by certain exceptions which serve to keep certain information from disclosure as the risk of harm from disclosure is outweighed by the public's right to know. Further, where the United States Congress has spoken, as the supreme law of the land, even the laws enacted in Tennessee must yield to their supremacy.

In this case, the Tennessee General Assembly has set forth both state law exceptions and statutory which will prevent the disclosure of materials held by the Respondent not only to preserve the criminal legal system and the integrity of ongoing investigations but also to keep from public view information which is related to school security coming from any source.

Under the facts of this case, and the Supremacy Clause, federal Copyright Act at 17 *United States Code Annotated* §106 has preempted state law *Tennessee Code Annotated* § 10-7-503(a)(2)(A) and 10-7-503(a)(2)(B)(i) as they relate to Respondent Metro's disclosure of any work, compilation, and derivative of original authorship created by the assailant. *Tennessee Code Annotated* § 10-7-503(a)(2)(A) and 10-7-503(a)(2)(B)(i) is in direct conflict with the exclusive rights copyright owners possess under 17 *United States Code Annotated* §106. Compliance with both the TPRA and federal copyright law cannot be accomplished, therefore state law must cede to federal law. Therefore, the materials created by Hale are exempted from disclosure based on the federal Copyright Act. The release of the remaining documents which are not original, derivative or compilation works created by the assailant is further constrained by the exceptions to disclosure set forth by the General Assembly in *Tennessee Code Annotated* 10-7-504(p) and Rule of Criminal Procedure 16(2)(a). Pursuant to Rule 16, during the pendency of this investigation and any legal proceedings thereafter, the investigative files of the police and materials therein are not available to the Petitioners or the public. Pursuant to *Tennessee Code Annotated* 10-7-504(p), any documents, information or plans related to school security is shall not be disclosed at any time and the



Respondent is admonished to restrain access to that information to ensure the safety of both Tennessee schools and schools broadly.

Therefore, this Court holds the following:

1) Based upon Supremacy Clause and conflict preemption, the federal Copyright Act serves as a valid exemption to the Tennessee Public Records Act and thus preempts the disclosure of any original work of authorship in any form created by the assailant Hale which has been collected by Respondent Metro. The Petitioners have no right to any such requested information in the possession of Metro as the disclosure of any original work of authorship as set forth in 17 *United States Code Annotated* § 102 and 103 would violate the exclusive rights of the Children as set forth in 17 *United States Code Annotated* § 106. 2) The Court also holds that neither the School Security Act of 1981, *Tennessee Constitution Article I*, § 35, nor *Tennessee Code Annotated* § 40-38-301, *et seq.* create any exception to disclosure under the TPRA in this action. 3) This Court further holds that any materials which are related to school security, as set forth above, inclusive of the compiled and created plans and materials of Hale, are exempted from disclosure pursuant to *Tennessee Code Annotated* §10-7-504(p), the school security exception to the TPRA. 4) Based upon Tennessee Rule of Criminal Procedure 16(2)(a), Respondent Metro need not disclose any materials which are in its open investigative file and are relevant to any pending or contemplated criminal action until such investigation and any collateral criminal proceedings are complete. 5) Lastly, the Court finds Respondent Metro did not willfully decline the Petitioners' requests for the disclosure of documentation, materials and content it received pursuant to its investigation without an adequate basis in the law. The Respondent relied upon valid exemptions to disclosure as set forth in state law and exceptions as provided in statutes. Therefore, this Court declines to assess any costs or

attorneys' fees against the Respondent for its decision to withhold the documents. *See* Tenn. Code Ann. § 10-7-505.

Therefore, this Court has determined that no records held by the Respondent Metropolitan Government of Nashville shall be disclosed at this time.<sup>15</sup> This Court expressly determines that this Memorandum shall be a Final Order as this Court finds there is no just reason for delay. The costs of this matter are assessed to the Petitioners jointly for which execution may issue if necessary.

**IT IS SO ORDERED.**

*/s/ I'Ashea L. Myles*

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**HON. CHANCELLOR I'ASHEA L. MYLES,  
CHANCERY COURT PART III**

cc via U.S. Mail, e-filing or fax as applicable to:

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<sup>15</sup> This Court has created its own separate index and catalogue of the voluminous records it reviewed *in camera*. This Court is inclined to return the hard drives *in camera* to the Respondent and retain its index should this matter be remanded. A separate order dealing with post judgement logistics shall be penned at a later date with instruction.

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#### RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail or the Court's Electronic Filing System upon all parties or their counsel named above.

*s/Maria M. Salas*  
Clerk and Master

7/4/24  
Date