

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III
AT NASHVILLE

CLATA RENEE BREWER, <i>et al.</i> ;)	
)	
<i>Petitioners,</i>)	
)	Case No. 23-0538-III
vs.)	
)	CONSOLIDATED
METROPOLITAN GOVERNMENT OF)	**controlling case**
NASHVILLE AND DAVIDSON COUNTY;)	
)	
<i>Respondent,</i>)	
)	
PARENTS OF MINOR COVENANT)	
STUDENTS JANE DOE AND JOHN DOE;)	
THE COVENANT SCHOOL; and)	
COVENANT PRESBYTERIAN CHURCH)	
)	
<i>Intervenors.</i>)	

**THE COVENANT SCHOOL PARENTS' LEGAL BRIEF IN SUPPORT OF LIMITED
PUBLIC DISCLOSURE**

Intervenors, the Parents of Minor Covenant Students Jane Doe and John Doe (the “Parents”), respectfully submit this legal brief on behalf of their children, who are the victims of one of the worst crimes in Tennessee history. The Parents contend that the writings of their children’s criminal assailant and anything else that is likely to inspire future attacks should never be publicly released because doing so will violate their rights as victims under the Tennessee Constitution and other applicable Tennessee law, is contrary to multiple exceptions to the Tennessee Public Records Act, Tennessee Code Annotated §§ 10-7-503 *et seq.* (“TPRA” or the “Act”), and will likely lead to future attacks and the unnecessary loss of additional innocent life.

Introduction

There are some words in our language that need no explanation. Columbine – Sandy Hook – Parkland – Uvalde – each of those words conjures visions of horror, of violence, and of the death of children, the most vulnerable people in our society. Now, after the events of March 27, 2023, the word Covenant carries that same connotation in Nashville and beyond. The events of that day have ripped apart the fabric of our community and have forever altered our sense of safety.

The new reality is especially present for the Parents, who will never tuck their children into bed again, or who must contend with children who cannot sleep, who cry without warning, who react to the slightest sound, who have nightmares and wet the bed, and who struggle through counseling as they seek to regain a sense of equilibrium. The Parents earnestly wish they and their children could go back to the lives they had on March 26. But they cannot. So, via their intervention in this case, the Parents press forward and seek to protect both their own children and the children of others, to do all they can to save not only the lives and well-being of their loved ones but also the lives and well-being of others who will be impacted now and in the future. Ultimately, the Parents seek a change, so that the word Covenant will come to symbolize something different. This case presents a unique opportunity to avoid publishing the shooter's writings and thereby protect the surviving children from abuse, harassment, and intimidation, and break the terrible cycle of violence in which the writings of one shooter inspire another, and death cycles and spirals through the years.

The parents seek to shield their children from further harm and trauma, including pain that would fester for the rest of their lives if the shooter, their assailant, is allowed to haunt them from beyond the grave. As victims of a crime, the children have a Tennessee Constitutional right to be free from abuse, harassment, and intimidation and a statutory right to be treated with dignity and

respect. Releasing and publicizing the writings of their criminal perpetrator will abuse and harass them and deny them dignity and respect. As a matter of law, the victims' constitutional rights trump any statutory right to public disclosure.

Worse yet, notoriety is what mass shooters often seek – to become a part of history via their homicidal suicides – so release will not only harm the children, it will also reward their assailant. In every other context of the criminal justice system the State aims to punish perpetrators and restore victims. Public disclosure of writings found during a criminal investigation should be no different. There is no compelling state interest in giving voice to a horrendous criminal.

To the contrary, in addition to the constitutional and statutory mandates to protect victims, there are other compelling reasons for the State to prevent release of the shooter's writings or any related documents that could inspire future events like the March 27 shooting. These include three separate statutory exemptions to the TPRA identified below, any one of which is a sufficient ground for this Court to rule against release. The exemptions all point to a well-known and common-sense reality – that one shooter's writings tend to inspire another.¹ There is ample ground to find that release of the shooter's writings will likely lead to another school shooting, in Tennessee or elsewhere, and that is reason enough to keep the shooter's writings quiet.

If through their intervention the Parents can save just one innocent child's life, then their efforts will have been worthwhile. This time can be different. Instead of death, the word Covenant can connote victim's rights and breaking the cycle of violence. This Court can make that happen. The Parents respectfully request that this Court find that the shooter's writings and all information about their children should be shielded from public release.

¹ See James N. Meindl & Jonathan W. Ivy, *Mass Shootings: The Role of the Media in Promoting Generalized Imitation*, 107 Am. J. Pub. Health 368 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5296697/>.

Statement of Position

Some Petitioners are seeking the *complete* release of Metro Nashville's ("Metro") *entire* case file. That request is absurd on its face and should be treated with the derision it deserves. For example, to the extent there are any photos of murdered or injured children or adult victims, there is simply no basis whatsoever to ever release that. At a minimum, to do so would flagrantly violate the rights of the children to have their identities shielded during the criminal justice process that this Court recognized in its opinion granting the Parents' Motion to Intervene. Tenn. Code Ann. § 37-1-153. This Court does not need the Parents to explain why photos of murder victims should never be made public. It is shocking that the Parents even need to write that last sentence, but given the broad request of some Petitioners for Metro's entire file, it must be said.

In contrast to the broad request of some Petitioners, the Parents urge this Court to adopt a moderate position that weighs the public interest in disclosure of facts uncovered in the investigation against 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. Fundamentally, the Parents believe that none of the shooter's writings should be released, nor should any photos or information about their children. But if this Court deems it appropriate, the Parents do not object, for example, to certain police reports, summaries, and other information being released so that law enforcement agencies, scholars, and the public will have sufficient information to learn from this attack in the hope of preventing another incident of this nature.² In fact, if there is a police summary of the shooter's motivations (or lack thereof), release of that may

² Because the investigation is ongoing, the Parents do not object if this Court decides that nothing should be released at all at this time until the investigation is complete. Though in that instance, the Parents would nonetheless still request that this Court determine the parameters of what should or should not be released upon completion of the investigation.

be a good way to inform the public without giving voice to a criminal and psychologically torturing the Covenant children for years to come.

In order to balance their interests with that of the public and to find a moderate position that will achieve the goals of both the TPRA and the Victim's Bill of Rights, the Parents contend:

- First, none of the shooter's writings or other documents created by the shooter should be released. The shooter's actual writings have no public value and will serve to only traumatize the families and their children. Victims are protected from abuse, harassment, and intimidation under the Tennessee Constitution, and release of the shooter's writings would allow the shooter to abuse, harass, and intimidate the children from beyond the grave, for the rest of their lives. The shooter's writings could also, very likely, be the source of inspiration for a future attack. While steps may be taken to inform the public broadly about the shooter's motivations and plans, there is no good that can come from release of the shooter's actual writings.
- Second, anything in Metro's file with information about the children themselves, such as the names and identities of children, photos of murdered, injured, frightened, or traumatized children, or any other such information about them, should never be released.³
- Third, anything related to the safety of Covenant School and Covenant Church should not be released, such as plans, drawings, security protocols, identities of security personnel, and related items.
- Finally – and without knowing if any such documents exist – the Parents ask this Court to exercise caution in releasing information about internet sites visited by the shooter or files downloaded by the shooter to the extent such information would implicitly give the shooter a voice with which to haunt her victims and potentially inspire troubled individuals to access those same sources. The Parents ask that any such records not be released.

Metro's file has been described as "voluminous," and the Parents have no doubt that the ongoing investigation has been and will continue to be exhaustive. Other than the four categories identified above, the Parents do not object to release of any other parts of Metro's file that this Court, in its discretion, and following *in camera* review, believes it is appropriate to release.

³ Likewise the Parents contend that the release of photos of adult victims would promulgate terrible images that would be forever available and add to the children's trauma, so the Parents request that this Court release no photos of dead bodies.

Because the Parents understand the record to be large, this means that the great majority of documents likely can be released without objection. The Parents believe that the large tranche of documents they do not object to will provide the public with the information needed to understand this horrific crime, but by preventing release of the shooter’s writings or other materials that might inspire further violence and the release of information related to their children or the School’s security, this Court will also protect their rights as victims and prevent the dissemination of records that might inspire more violence. It is a reasonable compromise that balances all of the competing factors and interests. The Parents respectfully request that this Court adopt their position.

Argument

I. The Tennessee Public Records Act Does Not Compel Disclosure of Every Document in Possession of the Metro Nashville Government

A. The Scope of the Tennessee Public Records Act Is Limited

Petitioners are wrong when they assert a First Amendment or other constitutional right to public records. To the contrary, “[t]here is no generally recognized state or federal constitutional right of access to public records.” *Abernathy v. Whitley*, 838 S.W.2d 211, 214 (Tenn. Ct. App. 1992) (citing *In re Black Panther Party v. Kehoe*, 39 Cal. App. 3d 900, 114 Cal. Rptr. 725 (1974), *vacated on other grounds*, 42 Cal. App 3d 645, 117 Cal. Rptr. 106; *In re Midland Publ’g Co., Inc.*, 420 Mich. 148, 362 N.W.2d 580 (1984)). To the extent that there is a right to examine public records, it is conferred by statute. *Id.* In Tennessee, the primary statute granting non-governmental parties access to public records is the TPRA.

The TPRA provides a broad definition of public records and for broad public release. “All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right

of inspection to any citizen, unless otherwise provided by state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A). A public record is defined as “all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A)(i).

But while these provisions may be broad, the statutory right to access public records is far from absolute. The Act explicitly states that “[i]nformation made confidential by state law shall be redacted whenever possible, and the redacted record shall be made available for inspection and copying.” Tenn. Code Ann. § 10-7-503(a)(5). Furthermore, as explained more fully below, there are numerous explicit and implicit exceptions to the TPRA under Tennessee law.

B. The Disclosure of The Documents Parents Seek to Protect Would Not Effectuate the Policy Motivating the Act

The vast majority of records requested under the TPRA are directed at the governmental entity that actually created the document. This case is different because it involves private documents created by a private person which, had the shooter not committed this horrendous crime, would never be available to anyone.⁴ Because the shooter’s writings and other items at issue in this case were collected by the police, they may meet the technical definition of public records because they were “received pursuant to law”⁵ during the investigation. But even if they meet the technical definition, the documents are subject to explicit and implicit state law

⁴ That is one reason that the Parents’ proposed compromise position, in which the Metro Police Department’s reports would be largely released while the shooter’s writings and other documents with the potential to inspire similar events are not, is consistent with both the intent of the TPRA and the general practice.

⁵ Tenn. Code Ann. § 10-7-503(a)(1)(A)(i).

exceptions to disclosure as explained below. Furthermore, their disclosure would not further the purpose of the Act, which is to “promot[e] accountability in government through public oversight of governmental activities.” *Memphis Publ’g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74-75 (Tenn. 2002) (citing *Forsberg v. Hous. Auth. of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984) (the purpose of Florida’s similar public records act is to “promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people”)); *see also Swift v. Campbell*, 159 S.W.3d 565, 570 (Tenn. Ct. App. 2004) (Koch, J.).

The records at issue, particularly the writings of the shooter, will not promote accountability by providing the public with meaningful insight into the conclusions of the Metro Government or the Metro Police Department in this matter. No governmental entity created these documents, nor are they material to understanding any particular government action. Given the nature of these materials, they likely contain the thoughts and motivations of the perpetrator of a mass shooting. Such documents would never have become public records absent the murders and attempted murders committed by their author. Rather than provide government accountability, the release of these records would reward the assailant by creating a legacy and a platform and providing – especially in the age of the internet – a megaphone for the perpetual delivery of these otherwise private thoughts to the general public, the victims of the crimes, and to other disturbed individuals contemplating similar acts of violence.

A comparison to a prior TPRA case illuminates why the policy motivating the Act does not apply here. In *Griffin v. City of Knoxville*, the Tennessee Supreme Court addressed records collected as part of the investigation into the death of a well-known State Representative who was being investigated for corruption. 821 S.W.2d 921, 921-22 (Tenn. 1991). The balancing test set

forth by the court, plus the very real public interest in the death of a potentially corrupt public official, illustrate key distinctions that show why the policy of the TPRA does not apply here.

In *Griffin*, the Tennessee Supreme Court held that the decedent's handwritten notes, found and seized at the scene of death by a police department during a homicide investigation, were public records under the TPRA, and subject to disclosure under the Act because there was no applicable exception. *Id.* The Court rejected the argument from the City and the public official's widow that the police took the notes merely for safe keeping and held that the determining question was "whether the notes were obtained by the police department in connection with the transaction of official business." *Id.* at 923. As relevant here, the Supreme Court articulated a "totality of the circumstances" balancing test for determining if writings found as part of a criminal investigation should qualify as public records pursuant to the stated policy rationale for the TRPA:

Application of this test requires an examination of the totality of the circumstances. We find that both officers arrived at the Miller home in response to an official call to investigate a shooting death, where they found the handwritten notes in plain view. White confirmed the handwriting was Miller's and *both officers considered the notes, along with the other physical evidence, in concluding that Representative Miller's death was a suicide* rather than a homicide. White, whose job it is to collect evidence, took into custody the shotgun, Representative Miller's wallet, and the three handwritten notes.

Id. at 924 (emphasis added). The police in *Griffin* noted in their report that the evidence supporting the finding of a suicide included the physical conditions at the scene and the handwritten notes of the victim. *Id.* at 922.

In *Griffin*, the disclosure of the records furthered the purpose of Act because the notes allowed the public to evaluate the officers' conclusion that the shooting was a suicide and not foul play directed at a State Representative who was under criminal investigation on corruption charges. *Id.* at 923 (citing the Chancery Court's opinion). Given the high-profile nature of Mr.

Griffin's position and the investigation into his corruption, the question of suicide versus foul play was a particularly important topic of public concern.

Those circumstances are not present here. Although the materials at issue here may have been taken by police conducting official business, unlike the records in *Griffin*, their *content* does nothing to further public oversight of police actions in this investigation where there is no dispute over the shooter's identity or who committed the mass murder. Unlike in *Griffin*, both the crime committed and the identity of the deceased perpetrator – the author of the writings the Parents contend should not be released – were known well before the writings were found. The suicide notes in *Griffin* supported the police determination that there was no foul play involved in that death. Here, that determination is wholly unnecessary.

Accordingly, although these records may meet the letter of the definition of public records under the TPRA, their public disclosure would not fulfill the spirit and purpose of the Act as articulated in the Act itself and as framed by the Supreme Court in *Griffin*. Moreover, as explained below, multiple exceptions apply to foreclose disclosure under the TPRA in this case and prevent the dissemination of the murderer's thoughts and ideas to the victims and other potential mass shooters.

II. As Victims of a Crime, Jane Doe and John Doe Have Constitutional and Statutory Protections Against Certain Disclosures Under the TPRA

As noted above, the definition of a public record under the TPRA is exceedingly broad. In light of that, the State has balanced the broad definition with over 700 separate exceptions that limit the disclosure requirements of the Act. Some of these exceptions are set forth in the Public Records chapter of the Tennessee Code itself. *See* Tenn. Code Ann. § 10-7-504. Others are found (explicitly or implicitly) elsewhere in Tennessee constitutional, statutory, regulatory, and common

law, and are known as state law or catch-all exceptions. Exceptions of both types apply to the materials at issue here.

A. The Records at Issue Fall Under the School Security and Tennessee Rule of Criminal Procedure 16(a)(2) Exceptions

Tennessee Code Annotated Section 10-7-504(p) provides, in relevant part, “*Information, records, and plans that are related to school security, the district-wide school safety plans or the building-level school safety plans shall not be open to public inspection*” (emphasis added). For effectively the same reasons as set forth in the briefs of the Covenant Church and the Covenant School, this explicit exception applies to the records the Parents seek to protect from public disclosure. In an effort to be efficient and preserve the Court’s time and resources, the Parents expressly incorporate the arguments of Covenant Church and Covenant School as to school security as if fully set forth herein.

The materials also fall under the Tennessee Rule of Criminal Procedure 16(a)(2) exception as argued by the Metro Government. Rule 16(a)(2) bars “discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case.” The Parents incorporate the arguments made in Metro Nashville’s brief in support of this exception as if fully set forth herein.

B. Multiple State Law Exceptions Shield the Records at Issue from Disclosure Under the TPRA

1. *The Parameters of the State Law/Catch-All Exception to Public Disclosure*

In addition to explicit statutory exceptions, Tennessee law recognizes numerous additional exceptions to the TPRA. “Notwithstanding the breadth of the public records statutes’ disclosure requirements, the General Assembly recognized from the outset that circumstances could arise where the reasons not to disclose a particular record or class of records would outweigh the policy

favoring public disclosure.” *Swift*, 159 S.W.3d at 571. In addition to the explicit exceptions from disclosure listed by the General Assembly in Chapter 7 of Title 10, all three branches of the Tennessee Government have recognized that numerous explicit and implicit exceptions to public record disclosures are found elsewhere in state law, including the Tennessee Constitution, other State statutory and regulatory law, and the common law. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A) (requiring government offices to allow inspection of records “unless otherwise provided by state law”); *Swift*, 159 S.W.3d 565 at 571 (acknowledging “explicit and implicit exceptions from disclosure found elsewhere in state law”);⁶ Tennessee Comptroller of the Treasury, Open Records Counsel, *Exceptions to the Tennessee Public Records Act*, available at <https://comptroller.tn.gov/office-functions/open-records-counsel/open-meetings/exceptions-to-the-tennessee-public-records-act.html>. This is commonly referred to as the “state law,” or “catch-all” exception to public disclosure under the Act. *Tennessean v. Metro. Gov’t of Nashville*, 485 S.W.3d 857, 859, 872, 878 (Tenn. 2016) (Lee, C.J.; Wade, J., dissenting).

Accordingly, in interpreting the TPRA, a court’s “role is to determine whether state law either explicitly or implicitly excepts particular records or a class of records from disclosure under the public records statutes.” *Swift*, 159 S.W.3d at 572. While the court must be “guided by the clear legislative policy favoring disclosure” absent a clear exception, disclosure is not required when an explicit or implicit exception exists anywhere in state law such that the reasons not to

⁶ The original public records statute provided for two specific exceptions and others “provided by law or regulations made pursuant thereto.” *Swift*, 159 S.W.3d at 571. Over many years, the General Assembly enacted additional specific exceptions but, in 1984, “narrowed [law or regulations] exception to apply only to records made confidential by ‘state statute.’” Seven years later, the legislature amended this exception by replacing “state statute” with “state law,” and thereby “broadened the permissible sources of exceptions from disclosure to include not only statutes, but also the Constitution of Tennessee, the common law, the rules of court, and administrative rules and regulations because each of these has the force and effect of law in Tennessee.” *Id.* at 571-72.

disclose “outweigh the policy favoring public disclosure.” *Id.* at 571, 572. An examination of Tennessee law reveals multiple sources of explicit and implicit exceptions applicable to the materials at issue here.

2. *State Law Explicitly and Implicitly Exempts These Records From Disclosure*

Numerous provisions of Tennessee law—both independently and explicitly, and implicitly working in concert—protect the materials at issue from public disclosure under the Act. While some of these legal requirements are found in statute like the TPRA itself, the Parents, on behalf of their children, also invoke their rights under the Tennessee Constitution in opposing the release of these records. The Tennessee Constitution specifically protects victims of crime from further injury, and the General Assembly has reaffirmed this policy through numerous statutes, both generally and specifically relating to minors attending Tennessee schools. Accordingly, Tennessee law exempts the records the Parents seek to protect from disclosure under the TPRA.

The primary state law exception to the TPRA applicable in this case is Article I, Section 35 of the Tennessee Constitution, which was ratified by the people of Tennessee during the November 3, 1998 General Election,⁷ and which states that “To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights . . . (b) The right to be free from intimidation, harassment and abuse throughout the criminal justice system” Article I, Section 35 explicitly grants victims of crime the right to be free from the intimidation, harassment, and abuse that would come from release of the shooter’s writings and the other documents identified by the Parents.⁸ This constitutional right is the paramount consideration in this case and should trump Petitioners’ general statutory right to public records.

⁷ See Tenn. Code. Ann. § 40-38-301.

⁸ As ordered by this Court, the Parents intend to put on proof in support of their Constitutional claim at the Show Cause hearing scheduled for June 8-9.

See State v. Brown, 29 S.W.3d 427, 433 (Tenn. 2000) (“the constitutional right to present a defense has been held to ‘trump’ a number of other state and federal rules of procedure and evidence, including rape shield statutes”); *Arnold v. State*, No. M2018-00710-CCA-R3-PC, 2020 WL 569928, at *34 (Tenn. Ct. App. Feb. 5, 2020) (same); *State v. Hill*, 598 S.W.2d 815, 819 (Tenn. Crim. App. 1980) (constitutional right of confrontation takes precedence over other statutory protections).

The General Assembly has enacted multiple statutes that independently and in conjunction with the Tennessee Constitution exempt these records from public disclosure. The most similar to Article I, Section 35 is the Tennessee Victims’ Bill of Rights, Tennessee Code Annotated §§ 40–38–101, *et seq.*, which recognizes, *inter alia*, the right of crime victims to “[b]e treated with dignity and compassion[.]” Tenn. Code Ann. § 40–38–102(a)(1). As this Court has acknowledged, the extent to which these provisions apply in cases such as this is an open question of Tennessee law, and at least one Tennessee Supreme Court justice, Justice Wade, has opined that materials similar to those at issue in this case “qualify for protection under the victims’ rights provisions—which apply both during and after the prosecution.” *Tennessean*, 485 S.W.3d at 882 (Wade, J. dissenting).⁹

⁹ At the May 22, 2023 status conference, counsel for one of the Plaintiffs maintained that Article I, Section 35 does not apply because this proceeding is not happening within the criminal justice system. As discussed above, the only reason the Metro Government has these records is due to police activity in a criminal investigation – the very activity that Plaintiffs now rely on to render these materials public records. Indeed, the materials are in the custody of the Metro Police Department subdivision of the Metro Government. To claim a right to the records because they were seized during a criminal investigation while claiming that constitutional protections afforded to victims of those crimes are inapplicable because of the type of courtroom this case was filed in strains credulity. The constitutional rights of victims are not relegated to the trash bin at the close of an investigation or after a jury verdict, particularly when the case or controversy is inextricably intertwined with the investigation or prosecution. This point is further demonstrated by the fact that Tenn. Code Ann. § 40–38–102(a)(1) (a provision of the Tennessee Victims’ Bill of Rights implementing Article I, Section 35) guaranteeing victims’ right to “[b]e treated with dignity and

But the applicable state law exceptions do not end there. Additional statutory provisions create implicit exceptions to the release of these records on their own and in conjunction with the explicit exceptions discussed above. This case involves not only a crime of violence, but a crime of violence perpetrated at a school. Multiple provisions of the Tennessee Code recognize the special significance of school safety and the importance of confidentiality of certain information relating to minors. For example, in enacting the School Security Act of 1981 (“School Security Act”), the General Assembly declared its intent “to secure a safe environment in which the education of the students of this state may occur.” Tenn. Code Ann. § 49-6-4203(a). The School Security Act also secured the confidentiality of information relating to child abuse or sexual abuse, *see* Tenn. Code Ann. § 49-6-1601(c)(7) (schools shall designate a child abuse coordinator to, *inter alia*, “[m]aintain confidential files in accordance with §§ 37-5-107 and 37-1-612 regarding all reported suspicions of child abuse and child sexual abuse”).

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

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

compassion” is in no way limited to the criminal justice system. *See Tennessean*, 485 S.W.3d at 882 (Wade, J. dissenting). Indeed, Part 3 of Title 40 defines terms such as *Critical stages of the criminal justice process*. Had the General Assembly wish to limit Section 40–38–102(a)(1) protections to criminal investigations or proceedings in criminal court, it could have done so. It did not.

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

Although the requirements of the School Security Act are necessarily limited to public schools, the General Assembly’s recognition of “the position of the schools in loco parentis and the responsibility this places on principals and teachers within each school to secure order and to protect students from harm while in their custody” is equally applicable to private schools. *See* Tenn. Code Ann. § 49-6-4203(b). These provisions implicitly exempt the release of records that would further risk the safety and security of Tennessee schools, public or private, and the students in attendance.¹⁰ And that continues to include the Parents’ children, whether they remain at the Covenant School or move on to other public or private schools in Tennessee.

Conclusion

As this Court noted during the hearing in the Parents’ Motion to Intervene, we are in “uncharted waters” because we have a unique opportunity following a mass murder at an elementary school to prevent the shooter’s writings and anything else that is likely to inspire future attacks from being released and causing pain and suffering to the victims. But while the waters may be uncharted, there is a North Star to guide us – the rights of victims under the Tennessee Constitution, and Tennessee’s explicit statutory law, including the Victim’s Bill of Rights, the School Security Act, the exception in the TPRA for school safety, and Tennessee Rule of Criminal Procedure 16 addressing ongoing investigations all apply. This Court can shield Jane Doe and John Doe from a lifetime of abuse and harassment by the shooter from beyond the grave. This Court

¹⁰ As with their constitutional argument, the Parents intend to put on proof during the June 8-9, 2023 Show Cause hearing in support of these statutory exceptions and their contention that the writings of mass murderers such as happened here inspire additional shootings.

can squelch the release of writings that will likely cause copycats and thereby inspire future shootings. Simply put, this Court has the opportunity to make a huge difference, not only for the Covenant Parents and their children, but for all parents and all children in this world.

This Court should accept the moderate position promoted by the Parents and prevent release of the shooter' writings, any information identifying or depicting the child victims, information relating to the safety and security of the Covenant School and Church, and any material that may inspire future events like the attack on March 27, 2023.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served, via the method(s) indicated below, on the following counsel of record, this the **30th day of May, 2023**.

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