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IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

MEGHAN CONLEY,	)	
	)	
Plaintiff/Appellee,	)	Court of Appeals Docket No.
	)	E2020–01713–COA–R3–CV
v.	)	
	)	
KNOX COUNTY SHERIFF	)	Knox County Chancery Court
TOM SPANGLER,	)	Docket No. 197897–1
	)	
Defendant/Appellant.	)	

PETITION FOR REHEARING PURSUANT TO TENNESSEE RULE OF APPELLATE PROCEDURE 39

I. INTRODUCTION

Tennessee Rule of Appellate Procedure 39 permits a litigant to request reconsideration of the Court's decision as follows:

> In determining whether to grant a rehearing, the following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons that will be considered: (1) the court's opinion incorrectly states the material facts established by the evidence and set forth in the record; (2) the court's opinion is in conflict with a statute, prior decision, or other principle of law; (3) the court's opinion overlooks or misapprehends a material fact or proposition of law; and (4) the court's opinion relies upon matters of fact or law upon which the parties have not been heard and that are open to reasonable dispute.

Tenn. R. App. P. 39.

The Plaintiff/Appellee in this appeal, Professor Meghan Conley, a University of Tennessee professor and researcher, filed this litigation after she was illegally

thwarted by the Knox County Sheriff in her attempt to obtain records relating to her research on immigration policy. She prevailed in full on the merits of her claims under the Tennessee Public Records Act ("TPRA"), *Conley v. Knox County Sheriff*, No. E2020–01713–COA–R3–CV, slip op. at 17 (Tenn. Ct. App. Feb. 1, 2022), *aff'g* [Technical Record, "T.R.", Vol. 4, pp. 513–53]. Respectfully, Professor Conley urges the Court to rehear its decision vacating and remanding her trial attorney's fees, rejecting her request for attorneys' fees on appeal, and taxing her one half of the costs on appeal. This ruling is inimical to the letter, purpose, and policy of the TPRA, relies on the Sheriff's unsupported and unargued factual assertions contradicting the trial court's findings, and squarely conflicts with cases decided by the Tennessee Supreme Court and the Court of Appeals under the TPRA and other Tennessee statutory fee provisions. For the reasons presented below, Professor Conley requests that the Court rehear its decision.

II. ARGUMENT

A. THE OPINION OF THE COURT DENYING ALL APPELLATE ATTORNEYS' FEES, REMANDING FOR THE RECALCULATION OF TRIAL ATTORNEY'S FEES, AND SADDLING PROFESSOR CONLEY WITH ONE HALF OF THE COURT COSTS FOR AN APPEAL IN WHICH SHE PREVAILED ON THE MERITS, UNDERMINES THE LEGISLATURE'S PURPOSE AND INTENT IN ENACTING THE FEE PROVISON OF THE TPRA AND WILL DETER LAWYERS FROM LITIGATING AGAINST GOVERNMENT VIOLATORS OF THE TPRA, CONTRARY TO THE EXPRESS LANGUAGE OF THE ACT AND THE RULINGS IN STATUTORY FEE CASES DECIDED BY THE TENNESSEE SUPREME COURT AND THIS COURT.

There can be no dispute that Professor Conley won this case at trial and on appeal. She received full relief on the merits. After presiding over lengthy proceedings below, Chancellor Weaver awarded her a comprehensive package of relief, which was affirmed by this Court. This relief was designed to redress the

Sheriff's illegal policies and practices under the TPRA. Professor Conley defended the award of this cross-cutting relief in this Court, and the decision of the Chancellor was affirmed undisturbed.

The trial court's award of attorneys' fees and costs was also affirmed by this Court, though the determination of the trial attorney's fee was vacated and remanded to the Chancery Court for recalculation. In view of Professor Conley's successes both on the merits and in her fee request, the denial of *all* appellate fees and the imposition of substantial appellate costs is, with due respect, a perverse outcome that rests on misapprehensions of material facts and is at odds with the TPRA and prior Tennessee court decisions.

The Court's restrictive view of the TPRA is misplaced for several reasons. **First**, the Court's opinion fails to cite the Legislatures' admonition in Tenn. Code Ann. §10-7-505(d) that the TPRA, as a remedial statute designed to protect the rights of the public to access government records, "should be broadly construed so as to give the fullest possible public access to public records." By placing this rule of construction in the section of the TPRA governing remedies for violations of the Act, including the award of fees and costs, the Legislature contemplated that the award of fees was vital to the responsible enforcement of the TPRA and should be encouraged.

The Court's ruling on appellate fees and costs in this case undermines the Legislature's desire to compensate lawyers for their work on successful TPRA cases. The decision sends a clear, chilling message to citizens and lawyers who agree to represent citizens in litigation against a government agency with seemingly unlimited resources that their work will not be compensated and, indeed, the litigant will be punished for having brought (and won) the suit in the first place. This cannot be a fair and just result under the TPRA.

Second, by overriding the trial court, the Court's opinion also diminishes the language of the fee provision itself, Tenn. Code Ann. §10-7-505(g), which gives exclusive fee award discretion to the trial court. A TPRA petition must be heard by a chancery or circuit court. Tenn. Code Ann. §10-7-505(b). If that chancery or trial court

> finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and willfully refused to disclose it, *such court may, in its discretion*, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity.

Tenn. Code Ann. §10-7-505(g). This Court focused on the term "willfully" in this provision but failed to acknowledge that that the Legislature intended that "*all* reasonable costs," including *reasonable* attorneys' fees, be awarded *by the trial court*.

Critically, when a trial court finds a willful denial of requested records and awards attorney fees, that award extends to appeals "involved in the obtaining the record[s]" wrongfully denied. Here,

> [Professor Conley] had to file a lawsuit to obtain access to the requested public records, and this appeal was part and parcel of [her] efforts to vindicate [her] right of access. Indeed, absent the willful denial of access, [Professor Conley] would not have incurred any attorney's fees, appellate or otherwise. Thus, in our view, her appellate costs and attorney's fees are "costs involved in obtaining the record." Tenn. Code Ann. § 10–7–505(g).

Taylor v. Town of Lynnville, No. M2016–01393–COA–R3–CV, 2017 WL 2984194, at *8 (Tenn. Ct. App. July 13, 2017); *see The Tennessean v. City of Lebanon*, No. M2002–02078–COA–R3–CV, 2004 WL 290705, at *11 (Tenn. Ct. App. Feb. 13,

2004) (modifying trial court order to include "all reasonable fees and costs incurred by the newspaper in its quest for the disputed public records").[1]

An attorney's fee award is within the province of the trial court, which here conducted extensive proceedings on the issues of attorneys' fees and costs, and exercised its discretion by reducing the fee request by 24.6%. By rejecting all appellate fees and assessing costs against the successful Appellee, and remanding the fee award below for recalculation, this Court nullified the work of the court that held hearings, heard witnesses, knew the entire record of the case firsthand, and wrote a reasoned decision on the issue of fees. By failing even to mention the 24.6% reduction of fees in its opinion, this Court incorrectly omitted a "material fact," which in itself should justify reconsideration. The opinion's exercise of discretion to deny appellate attorney fees, reduce trial fees, and impose costs on Professor Conley, contrary to the trial court's award of fees and costs, is unmoored from the plain language of § 10-7-505(g) and its prior decisions.

Third, the two cases cited by the Court in Section C of its opinion to support its blunt exercise of discretion, moreover, *support* the award of fees and costs to Professor Conley. In both *Schneider v. City of Jackson*, 226 S.W.3d 332 (Tenn. 2007), and *Friedmann v. Corrections Corp. of America*, No. M2012–00212–COA–R3–CV, 2013 WL 784584 (Tenn. Ct. App. Feb. 28, 2013), the Tennessee Supreme Court and this Court, respectively, found that an award of appellate fees is proper in TPRA cases strikingly similar to the case at bar. Further, both Courts remanded the cases to the trial court for calculation of fees and costs. *Schneider*, 226 S.W.3d at 348; *Friedmann*, 2013 WL 784584, at *12.

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[1] The only exception permitting denial of appellate fees is when the successful petitioner fails to include appellate fees as an issue on appeal. *See, e.g.*, *Friedmann v. Marshall Cty., TN*, 471 S.W.3d 427, 442 n.17 (Tenn. Ct. App. 2015).

In *Schneider*, the Tennessee Supreme Court overturned a Court of Appeals decision that rejected a request for 369 law enforcement field interview cards and financial information relating to the City of Jackson's professional baseball team. Overturning the Court of Appeals, the Supreme Court held the field interview cards were not protected from disclosure under the TPRA under a law enforcement privilege and remanded the case to the trial court to determine whether certain of these cards were otherwise exempt from disclosure under the Tennessee Rules of Criminal Procedure. *Schneider*, 226 S.W.3d at 346. Despite this remand, the Court awarded fees to the plaintiffs both for the trial work and, significantly, for the work on appeal:

> Accordingly, we hold that the record supports both the trial court's determination that Petitioners are entitled to recover their attorneys' fees and the trial court's award of attorneys' fees in the amount of $6,170. Additionally, we instruct the trial court on remand to calculate and to award Petitioners the attorneys' fees they have incurred on appeal.

Id. at 348. Similarly, the Supreme Court awarded the plaintiffs attorneys' fees and costs for both the trial and appellate work involved in the disclosure of the baseball team's financial documents, which were willfully withheld, and the award of an injunction under Tenn. Code Ann. §10-7-505(d), which was expressly upheld by the Supreme Court. *Id.* at 348–49.

Schneider foursquare supports Professor Conley's request for appellate attorneys' fees and costs. Her case is even stronger. Unlike *Schneider*, where the case was remanded for further proceedings on the merits in the trial court, Professor Conley has won a clean victory on the merits in this case. With no relevant countervailing case law, this Court's rejection of fees and its imposition of costs on the Appellee is an abuse of discretion under the governing precedent of *Schneider.*

The second case cited by the Court in support of its rejection of Professor Conley's claims for fees and costs on appeal also awarded fees on appeal to a TRPA litigant who did not fully prevail on his claims in the Court of Appeals. In *Friedmann*, the Court of Appeals found that the plaintiff, the associate editor of The Prison Legal News, was entitled to receive settlement agreements and reports from the Corrections Corporation pursuant to the TPRA. 2013 WL 784584, at *7–11. The Court then awarded Friedmann fees for his lawyer's work on the case and the appeal. The Court's language is significant:

> Friedmann also requests his reasonable attorney's fees incurred in this appeal. Although we have concluded that CCA is required to produce the settlement agreements and reports, we agree with the trial court that the issue of the settlement reports was a close call; thus, we find that Friedmann is not entitled to recover attorney's fees incurred that pertain to the settlement reports. It is within the discretion of the trial court to determine the amount of attorney's fees and expenses incurred on appeal Friedmann is entitled to recover. *See Schneider v. City of Jackson*, 226 S.W.3d 332, 348 (Tenn.2007) (finding petitioners were entitled to their reasonable attorney's fees incurred on appeal in a Public Records Act action).

Id. at *12.

As shown, the Court in *Friedmann* bifurcated the consideration of fees, including those on appeal, between a claim that was in willful violation of the TRPA and one that was a "close call." In the present case, at a minimum, the Court should remand the calculation of appellate fees to the trial court with directions similar to the ones in *Friedmann*. If the Court respects the aims of the Legislature in enacting the TPRA's attorney's fee provision, as it should, this error should be corrected on reconsideration.

<u>Fourth</u>, the opinion fails to account for the dispositive reasoning contained in analogous cases rendered under fee-shifting statutes similar to the TPRA. A case

directly on point is the Tennessee Supreme Court's decision in *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406 (Tenn. 2006). In *Killingsworth*, the issue before the Supreme Court was as follows: "We granted this appeal to determine whether a plaintiff who is successful in an action brought under the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47–18–101 [through] 125 (2001), may be awarded appellate attorney's fees." *Id.* at 407. Holding that the Tennessee Consumer Protection Act ("TCPA") should be interpreted to permit a reasonable award of fees for legal work performed on appeal, the Supreme Court engaged in an analysis that was absent from the Court's opinion here. *Id.* at 409–10.

Citing the TCPA's allowance for an award of reasonable attorney's fees and costs to a plaintiff who proves a violation of the law, the Court looked to the statute's purposes and to the TCPA's command that "its provisions should be liberally construed to promote" those statutory purposes. *Id.* at 409. This is an identical command to the one contained in §505(d) of the TPRA. Similar to the remedial purposes of the TCPA, the TPRA is a remedial scheme designed to ensure that informed citizens have the ability to hold government agencies accountable. Attorney's fees, including those on appeal, are an integral component of each statute's enforcement scheme. As the Court observed:

> A plaintiff successful at trial [on the merits] is therefore at risk of being "de-remedied" if unable to collect his or her reasonable appellate legal fees. Given the broad remedial goals our legislature determined to pursue with the TCPA, we do not think the General Assembly intended that result. As this Court has previously recognized, a potential award of attorney's fees under the TCPA is intended to make the prosecution of such claims economically viable to a plaintiff.

Killingsworth, 205 S.W.3d at 410. The same holds true in the instant appeal. By denying all fees for the work done on appeal defending the judgment on the merits below and establishing an entitlement to fees at least for claims that were willfully

denied, the opinion flies in the face of the express legislative intent to promote suits such as the one brought by Professor Conley. If allowed to stand, the result here would permit law-breaking government entities, who have ample legal and financial resources to devote to extending a case on appeal, to file an appeal in the hope that the appellate court would rule in its favor on at least one of its issues, thus leading to the denial of *all* appellate fees. Based on the Supreme Court's analysis in *Killingsworth*, this is a misreading of the language of 505(d) and (g) and effectively guts the enforcement of the TPRA by citizens, disincentivizing lawyers from agreeing to represent aggrieved citizens and discouraging them from raising claims in their initial petitions that may not pass the test of "willfulness," but that nevertheless constitute violations of the TPRA deserving of remedy.

Killingsworth also cited another Tennessee Supreme Court case closely relevant to the appeal at bar. In *Forbes v. Wilson County*, 966 S.W.2d 417 (Tenn. 1998), the plaintiff was awarded relief under the Tennessee Human Rights Act ("THRA"), which contained a provision awarding a successful plaintiff reasonable attorney's fees. *See* Tenn. Code Ann. § 4-21-306(a)(7). In the face of an argument that appellate fees were not contemplated by the THRA, the Court found: "The THRA does not require that the plaintiff prevail on all appellate issues before attorney's fees may be awarded . . . Accordingly, the plaintiff's attorneys are entitled to reasonable compensation for their time spent in pursuing this appeal." *Forbes*, 966 S.W.2d at 422. The case was remanded to the trial court for a determination of a reasonable fee for the work performed on the appeal. *Id.*; *see also New v. Dumitrache*, 604 S.W.3d 1 (Tenn. 2020) (Attorney's fees, including legal work for

the appeal, were awarded to a victim of domestic violence in recognition of the remedial purposes of the statute and the General Assembly's determination that victims of domestic violence should not be required to bear the financial burdens of holding the perpetrator accountable.).

B. BY IMPOSING ONE-HALF OF THE COURT COSTS OF THE APPEAL ON PROFESSOR CONLEY, THE OPINION VIOLATES TENN. R. APP. P. 40(a), EFFECTIVELY PUNISHES A SUCCESSFUL LITIGANT FOR BRINGING SUIT UNDER THE TPRA, AND WILL DETER CITIZENS FROM FULFILLING THE GENERAL ASSEMBLY'S EXPRESS OBJECTIVE OF AFFORDING ACCESS TO JUSTICE TO CITIZENS WHO ARE COMPELLED TO ENFORCE THE ACT.

The imposition of court costs on appeal against a litigant who succeeds on the merits of her case and receives the relief that she sought in filing this litigation improperly conflates the award of attorneys' fees, and the "willfulness" issue, with the ancillary issue of costs on appeal. Virtually all the same arguments that were made above in support of the award of appellate attorneys' fees (e.g., the Legislature's intention to encourage citizens to hold agencies accountable under the TPRA) apply in the context of appellate costs.

Case law, moreover, holds that violations of the TPRA, separate and apart from a finding of "willfulness," support the imposition of one hundred percent of appellate costs on the government offender, not the citizen who vindicates her rights under the Act. In *Memphis Publishing Co. v. Cherokee Children & Family Services, Inc.*, 87 S.W.3d 67 (Tenn. 2002), the Tennessee Supreme Court ruled against an agency subject to the TPRA and ordered disclosure of the agency's records. The Court, however, refused to make a finding of willfulness necessary to support an award of attorney's fees. *Id.* at 80 n.15. Nevertheless, the Supreme Court taxed the *full* costs of the appeal against the agency. *Id.* at 80.

In the present case, Professor Conley prevailed in obtaining: (1) relief that allowed her to have access to records in the possession of the Sheriff; (2) two

findings of willful violations of the TPRA; (3) an award of attorneys' fees; and (4) a remedial package of corrective measures ordered by the trial court that are designed to ensure future compliance by the Sheriff with the TPRA. The relief won by Professor Conley exceeded the relief awarded to the plaintiffs by the Supreme Court in *Memphis Publishing*, yet she is now saddled with paying what could amount to a substantial sum of money.

If this were not a TPRA action, this Court could tax costs as it saw fit: when "a judgment is affirmed or reversed in part, or is vacated," Tennessee Rule of Appellate Procedure 40(a) provides that "costs shall be allowed only as ordered by the appellate court." Rule 40(a), however, bows to legislative directives by barring appellate court discretion over costs when "otherwise provided by statute." Here, the trial court taxed all costs to the Sheriff, and this Court did not disturb that part of ruling. Because the issue of costs on appeal was neither raised nor argued before this Court, full consideration of this question requires a rehearing.

C. UNDER RULE 39(a)(1), (3), (4), BY OMITTING THE FACTUAL STANDARD OF REVIEW IN HIS SECOND ISSUE AND FAILING TO PROVIDE SUPPORTING CITATIONS AS REQUIRED BY TENN. R. APP. P. 27(a)(7)(B), APPELLANT WAIVED THE ISSUE OF WHETHER CHANCELLOR WEAVER IMPROPERLY AWARDED FEES BASED ON REQUESTS THAT WERE NOT WILLFULLY DENIED; THIS COURT SHOULD NOT USE THIS FACTUALLY MISTAKEN ASSERTION AS THE BASIS FOR DENYING TRIAL ATTORNEY FEES.

This Court vacated and remanded trial attorney fees, denied appellate fees, and taxed costs to Professor Conley on the grounds that the trial court had impermissibly awarded fees for requests that were not willfully denied. Without any citation to the record or a factual standard of review, the Sheriff's Brief repeatedly made that claim, alleging that "[t]he Chancery Court opined that Tenn. Code. Ann. § 10-7-505(g) allows for attorneys' fees for the entirety of the case, including fees involved in

litigating records that were not 'willfully refused,' as well as 'fees on fees.'" [Brief of Appellant, p. 33; 37-39 (asserting without any citation to the record that "the Chancery Court awarded Dr. Conley attorneys' fees for the entirety of the case.")].[2]

This claim is not only factually incorrect but was also procedurally waived and never argued. As noted in Professor Conley's Brief, the Sheriff argued numerous improperly raised issues. [Brief of Appellee at p. 38]. This Court agreed that the Sheriff's failure to obey appellate procedural rules waived many of his argued issues. *Conley*, slip op. at 4–5.

Tennessee Rule of Appellate Procedure 27(a)(7) requires that arguments include "citations to the authorities and appropriate references to the record" and also that each issue presented state the appropriate standard of review. The Sheriff failed both requirements. The Sheriff waived this matter by failing to provide any citation, supporting argument, or the proper standard of review. *See Taylor v. Taylor*, No. W2020–00520–COA–R3–CV, 2021 WL 1158153, at *4 (Tenn. Ct. App. Mar. 26, 2021) (dismissing Appellant's issues as waived when its brief's Rule 27 deficiencies "unfairly disadvantage[d]" Appellee).

Just as the Sheriff's argument on the merits "fails to provide any legal justification," *Conley*, slip op. at 13, the Sheriff asserted without argument or citation that Chancellor Weaver awarded fees based on requests that were not willfully denied. [Brief of Appellant, p. 37–39]. Plainly put, nothing in the record shows that Chancellor Weaver awarded fees based on requests that were not willfully denied. Indeed, in his Memorandum Opinion, Chancellor Weaver expressly rejected Professor Conley's lodestar approach. [T.R., Vol. 7, p. 981-82]. He instead stated

[2] As discussed *supra*, Chancellor Weaver did not grant Professor Conley attorney fees for her entire case but instead reduced her requested sum by 24.6%, an award proportionate to the amount of labor required to obtain the records and defend recovery of costs and fees.

that the factual basis for his award was the previous finding "that Petitioner was entitled to an award of costs, including attorney's fees, in obtaining the relief given in paragraphs 2 and 4 of its order entered April [9], 2020." [*Id.* at p. 980]. Proof on the issues required to resolve those claims permeated the trial court proceedings.

Professor Conley addressed the Sheriff's legal arguments but not his factual arguments because, again, the Sheriff made no factual arguments to rebut—he never said *why* he thinks his conclusion is correct—and omitted the factual standard of review. [Brief of Appellant, p. 33 (framing the issue as a matter of statutory interpretation and providing only the legal standard of review)]. The Sheriff should not be allowed to profit through procedural ambush. If the Sheriff wants this Court to second guess the trial court's factual finding as to the basis of its fee award, that issue must be properly raised. The trial court's fee award should be affirmed in full or, at minimum, this issue should be reheard because it was never raised or argued.

D. UNDER RULE 39(a)(2), THIS COURT'S NOVEL TPRA FEES FRAMEWORK CONFLICTS WITH TENNESSEE SUPREME COURT DECISIONS, RPC 1.5, AND PRIOR TPRA PRECEDENTS.

This Court's decision has effectively rewritten the TPRA fees framework by denying appellate fees to a victorious plaintiff, taxing costs to the plaintiff for the privilege of successfully defending the trial court order, and rejecting RPC 1.5 as the basis for determining the amount of reasonable attorneys' fees.

To the extent allowed by precedent, Chancellor Weaver has already satisfied this Court's "instruct[ion to] the trial court to consider the hearings on LURR A1 and LURR B11" *Conley*, slip op. at 17. Based on the two willful denial of records, Chancellor Weaver analyzed and apportioned this case's TPRA attorney fee award under the RPC 1.5 factors, as this Court's decisions require. *See Little v. Chattanooga*, No. E2013-00838-COA-R3CV, 2014 WL 605430 (Tenn. Ct. App. Feb. 14, 2014), at *5–8 (reviewing TPRA trial court application of RPC 1.5);

Contemp. Media, Inc. v. Memphis, No. 02A01-9807-CH00211, 1999 WL 292264, at *7 (Tenn. Ct. App. May 11, 1999)

Yet without any mention or consideration of RPC 1.5, this Court rejected Chancellor Weaver's efforts and, instead, adopted a methodology that disregards Tennessee Supreme Court precedent outlining the proper methodology for determining reasonable fees. *Little*, 2014 WL 605430, at *5 (quoting *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011)) ("Our Supreme Court has generally instructed that 'a trial court should apply the factors set forth in RPC 1.5(a)(1)–(10) when determining a reasonable attorney's fee.'").

The Court's opinion appears to contemplate that Professor Conley's trial attorney will be compensated based only on the time he spent in in-court hearings, a mechanistic approach that fails to account for the interwoven issues permeating each TPRA request. In the proceedings below, the two willfully denied requests required addressing a host of crosscutting issues that were also argued under other requests, including mandatory redactions; payment for redactions; statutorily required specificity; and the 10-7-503 compilation exception, as well as common factual issues such as the mechanics of KCSO's record inspection system; KCSO's archiving and organizing of public records; KCSO's email archiving program and its search capabilities; the contents of arrest reports; and how KCSO redacts private information. Indeed, far from being tried at a separate hearing, the LURR B11 hearing necessarily relied upon the earlier hearings that explored the issues at the heart of this claim. *See* [Transcript of Proceedings, "T.P.", Vol. 13, pp. 59–87] (all testimony on LURR B11); *see, e.g.*, [pp. 82–83] (specificity); [p. 70] (compilation); [p. 61] (redaction); [p. 69] (email archiving); [p. 71] (limitations of KCSO email system search capabilities).

Mr. Fels offered his services to assist Professor Conley in her research and in penetrating a system that was designed to shield the Sheriff's office from

accountability for his immigrant detention practices, a major subject of Professor Conley's research and book project. *See* [T.R., Vol. 7, p. 986]. The Sheriff's litigation tactics managed to delay this case and require many hundreds of hours of work over the course of four years. *See* [T.P., Vol. 17, p. 131]. The consequence of the Court's opinion on attorney's fees will embolden errant government entities to resist their obligations under the TPRA. This is contrary to the express goals of the Tennessee Legislature, as recognized in the relevant case law.

III. CONCLUSION

For the reasons stated in this Petition, this Court should grant a rehearing and: (1) affirm the trial court's attorneys' fee award; (2) remand with directions to calculate appellate attorneys' fees, and (3) and order the Sheriff to pay one hundred percent of the costs on appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 11th day of February, 2022, a true and correct copy of the foregoing was filed electronically on the Court's electronic filing system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may then access this filing through the Court's electronic filing system.

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Andrew C. Fels, Esq.