No. W2022-00514-COA-R3-CV

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN DIVISION AT JACKSON

TERRY RAINWATERS and HUNTER HOLLINGSWORTH,

Plaintiffs-Appellees,

v.

TENNESSEE WILDLIFE RESOURCES AGENCY; BOBBY WILSON, Executive Director of the Tennessee Wildlife Resources Agency, in his individual capacity; ED CARTER, former Executive Director of the Tennessee Wildlife Resources Agency, in his individual capacity; and KEVIN HOOFMAN, an officer of the Tennessee Wildlife Resources Agency, in his individual capacity,

Defendants-Appellants.

Appeal from Benton County Circuit Court
No. 20-CV-6

BRIEF OF *AMICI CURIAE* AMERICANS FOR PROSPERITY FOUNDATION-TENNESSEE & BEACON CENTER OF TENNESSEE IN SUPPORT OF PLAINTIFFS

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INTEREST OF *AMICI CURIAE*

Amicus curiae Americans for Prosperity Foundation is a 501(c)(3) nonprofit organization that operates a state chapter in Tennessee ("AFPF-TN") that advocates for long-term solutions to the country's biggest problems. One of those key ideas is that our system of federalism and dual sovereignty protects liberty.

AFPF-TN is interested in this case because it believes state constitutions, like the Tennessee Constitution, play a vital role in our system of dual sovereigns, providing additional protections for liberty and property beyond the floor guaranteed by the U.S. Constitution. As relevant here, Article I, Section 7 of the Tennessee Constitution provides greater protection against warrantless searches and seizures than the Fourth Amendment to the U.S. Constitution, as interpreted by the U.S. Supreme Court.

The Beacon Center of Tennessee ("Beacon") is an independent, nonpartisan Section § 501(c)(3) nonprofit organization dedicated to advancing individual liberty through advocating for limited, transparent government and offering innovative, free market policy solutions to challenges facing Tennesseans. Beacon works to make it possible for

every Tennessean to live out their version of the American Dream. As part of its mission, Beacon's Litigation arm advances individual liberty by holding government accountable when it violates civil and constitutional rights.

Beacon believes that each state's constitution has a vital role to play in our federalist system. Each state is free to, and indeed many do, protect certain rights to a higher degree than the United States constitution. Beacon is also interested in seeing that the Tennessee constitution is interpreted according to its text and original public meaning. In this case that means seeing that the protections of Article I, Section 7 of the Tennessee Constitution remain robust and that constructive general warrants are not allowed to take root and thrive in Tennessee.

SUMMARY OF ARGUMENT

On the surface, this case is about the authority Tennessee Code Annotated Subsections 70-1-305(1) and (7) purportedly grant to Tennessee Wildlife Resources Agency ("TWRA") to conduct repeated warrantless invasions of Plaintiffs' private property, as well as to covertly surveil Plaintiffs, their family, and friends. The question presented is

whether the statute that purports to authorize this egregious pattern of behavior, Tennessee Code Annotated Subsections 70-1-305(1) and (7), complies with Article I, Section 7 of the Tennessee Constitution. It very plainly does not, and the Circuit Court was correct to decide for Plaintiffs accordingly.

But, at bottom, this case is about our system of federalism. As Judge Jeffrey Sutton of the U.S. Court of Appeals for the Sixth Circuit recently reminded: "In our federal system, nearly every state and local law must comply with two sets of constraints, those imposed by the Federal Constitution and those imposed by their state counterparts." Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, 1 (2018). This is a feature, not a bug, of our system of dual sovereigns.

The federal Bill of Rights, made applicable against the States by the Fourteenth Amendment, provides a federal floor protecting individual liberty and property. But state constitutional provisions often provide greater protections for the same or similar liberty and property interests. As Judge Sutton has explained: "There is no reason to think, as an interpretive matter, that constitutional guarantees of independent

sovereigns, even guarantees with the same or similar words, must be construed the same way." *Id.* at 174. That matters here.

Tennessee Code Annotated Subsections 70-1-305(1) and (7), and Appellees' actions, may well pass muster under federal precedent creating an "open fields" exception to the Fourth Amendment. *See Hester v. United States*, 265 U.S. 57 (1924). Beginning in *Hester*, the U.S. Supreme Court held—in our view, erroneously—that "the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields." *Id.* at 59. In *Oliver v. United States*, 466 U.S. 170 (1984), the Court reaffirmed the "open fields" doctrine, allowing law enforcement officers to enter and search private land without a warrant. *See id.* at 177–76, (noting that "[t]he rule announced in *Hester v. United States* was founded upon the explicit language of the Fourth Amendment.").

Relying largely on that precedent, a federal district court dismissed Mr. Hollingsworth's related Section 1983 and *Bivens* claims against the TWRA, Mr. Hoofman, the U.S. Fish and Wildlife Service ("FWS"), and a FWS official. *Hollingsworth v. Tenn. Wildlife Res. Agency*, 423 F. Supp. 3d 521, 528–31 (W.D. Tenn. 2019). The court found that "Defendants'

warrantless installation of a camera on . . . [Mr. Hollingsworth's] property" did not violate the Fourth Amendment under the "open fields" doctrine. *Id.*

Not so under Article I, Section 7 of the Tennessee Constitution, which, unlike current Fourth Amendment jurisprudence, expressly protects "possessions," including private property such as farms. It further specifically denounces "general warrants, [which] are dangerous to liberty and ought not to be granted." Tenn. Const. Art. I, § 7. Based on its text and history, the Tennessee Supreme Court has rejected the federal "open fields" doctrine, holding that Article I, Section 7's protections apply beyond the curtilage, extending to privately owned farms, fields, gardens, and the like.

The structure of Tennessee's constitution, and the plain text of Article I, Section 7, read against the backdrop of the state's history and traditions, confirm that the provision provides substantially broader protection against government intrusions of private property than its federal Fourth Amendment counterpart. This case showcases the importance of our system of dual sovereignty. And it provides an opportunity for this Court to reaffirm the Tennessee Constitution's vital

role securing liberty and protecting property, independent of the United States Constitution.

As Plaintiffs-Appellees explain, Tennessee Code Annotated Subsections 70-1-305(1) and (7) violate Article I, Section 7 of the Tennessee Constitution both facially and as applied. This Court should therefore affirm the trial court.

ARGUMENT

I. Under Our System of Federalism, State Constitutions Play a Vital Role in Safeguarding Liberty.

"For many years, prior to the decisions of the United States Supreme Court holding the principal provisions of the Federal Bill of Rights to be applicable to the states through the Fourteenth Amendment, state constitutions functioned as significant sources of protection for individual rights and liberties." Richard S. Wirtz, *Forward: Interpreting the Tennessee Constitution*, 61 Tenn. L. Rev. 405, 405–06 (1994). "State constitutions provide a forum for protecting and promoting the values of a state." Jeffrey Omar Usman, *The Game is Afoot: Constitutionalizing the Right to Hunt and Fish in the Tennessee Constitution*, 77 Tenn. L. Rev. 57, 101 (2009) (citations omitted). And "[o]ur federal system gives state

courts the final say over the meaning of their own constitutions." Sutton, *51 Imperfect Solutions*, *supra*,16.

As Judge Sutton has explained:

> State courts have authority to construe their own constitutional provisions however they wish. Nothing compels the state courts to imitate federal interpretations of the liberty and property guarantees in the U.S. Constitution when it comes to the rights guarantees found in their own constitutions, even guarantees that match the federal ones letter for letter.

Id. "Within our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution." *Mills v. Rogers*, 457 U.S. 291, 300 (1982); *see also Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2094 (2019) (Kavanaugh, J., concurring) ("[T]he Constitution sets a floor for the protection of individual rights. The constitutional floor is sturdy and often high, but it is a floor. Other federal, state, and local government entities generally possess authority to safeguard individual rights above and beyond the rights secured by the U.S. Constitution." (citing J. Sutton, *51 Imperfect Solutions*; Brennan, *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977))).

"As long as a state court's interpretation of its own constitution does not violate a federal requirement, it will stand[.]" Sutton, *51 Imperfect Solutions*, *supra*, 16. As the Supreme Court has explained: "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions." *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940). Accordingly, "individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution." *California v. Greenwood*, 486 U.S. 35, 43 (1988) (White, J.). For "state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution. They also are free to serve as experimental laboratories, in the sense that Justice Brandeis used that term[.]" *Arizona v. Evans*, 514 U.S. 1, 8 (1995) (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

Tennessee courts are "free to interpret the provisions of … [the Tennessee] state constitution to afford greater protection than the federal constitution." *State v. Cox*, 171 S.W.3d 174, 183 (Tenn. 2005); *see also Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn. 1988) ("In the interpretation of

the Tennessee Constitution, this Court is always free to expand the minimum level of protection mandated by the federal constitution."); *see generally* Otis H. Stephens Jr., *The Tennessee Constitution and the Dynamics of American Federalism*, 61 Tenn. L. Rev. 707 (1994) (providing illustrations of instances in which Tennessee courts have interpreted provisions of Tennessee Constitution as providing greater protections to liberty than the federal Constitution). This Court should "decide for . . . [itself] the meaning of" the Tennessee state Constitution, "with its own independent traditions and words." Sutton, *supra*, 189.

II. Article 1, Section 7 Protects Against Warrantless Searches of Privately Owned Land.

Article I, Section 7 should be interpreted according to its ordinary public meaning, ascertained from its text, structure, and history, without deference to precedent interpreting the Fourth Amendment to the United States Constitution. *See Welch v. State*, 154 Tenn. 60, 62 (1926); *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983) ("When construing a constitutional provision we must give 'to its terms their ordinary and inherent meaning.'" (quoting *State v. Phillips*, 159 Tenn. 546, 21 S.W.2d 4 (1929))); *Shelby Cnty. v. Hale*, 200 Tenn. 503, 510–11, 292 S.W.2d 745, 748 (1956) ("The Court, in construing the Constitution must give effect

to the intent of the people that are adopting it, as found in the instrument itself[.]").

Article 1, Section 7 of the Tennessee Constitution states in no uncertain terms:

> That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

Tenn. Const. Art. I, § 7. This is Tennessee's Fourth Amendment analog. "This same provision of the [Tennessee] Constitution was contained in the Constitutions of 1834 and 1796," *Welch*, 154 Tenn. at 62, long before the U.S. Supreme Court first held so-called "open fields" outside the scope of Fourth Amendment protection. *See Hester*, 265 U.S. at 59.

Like its federal counterpart, Article I, Section 7 of the Tennessee Constitution acts as a vital safeguard of liberty:

> At the very foundation of our State is the right of the people to be secure in their persons, houses, papers, and possessions. Infringement of such individual rights cannot be tolerated until we tire of democracy and are ready for communism or a despotism. The enforcement of no statute is of sufficient importance to justify indifference to the basic principles of our government.

Craven v. State, 148 Tenn. 517, 519–20, 256 S.W. 431, 432 (1923).

But "the fact remains that there are pronounced linguistic differences in the two provisions."[1] *State v. Berry*, 592 S.W.2d 553, 563 (Tenn. 1980) (Henry, J., concurring). The Fourth Amendment was ratified in 1791. Had the drafters of Tennessee's original 1796 Constitution intended for Article I, Section 7 to be a mirror image of the Fourth Amendment, they could have copied its text verbatim. The drafters conspicuously chose not to do so.

Those textual differences, carefully selected and ratified only five years after the Fourth Amendment, are significant. For example, unlike the U.S. Constitution, the Tennessee Constitution "specifically denounces 'general warrants' permitting searches 'without evidence of the fact committed' and personal seizures where 'offenses are not particularly described and supported by evidence.'" *Id.* (Henry, J., concurring); *see also* Stephens, 61 Tenn. L. Rev. at 719 n.118 (noting additional textual differences between Article I, Section 7 and the Fourth

[1] "In a great number of instances, the drafters of the Declaration of Rights in the Tennessee Constitution chose different words from those in the Federal Bill of Rights." Wirtz, 61 Tenn. L. Rev. at 406–07.

Amendment). Likewise, "the word 'possessions' was added [to Tenn. Const. Art. I, § 7] for a purpose and means more than houses or mansions; something in addition thereto."[2] *Welch*, 154 Tenn. at 62. Indeed, the Tennessee Supreme Court has found "possessions" "refers to property, real or personal, actually possessed or occupied." *Id.*; *see also id.* ("The word 'possession' is thus defined in Webster's Unabridged Dictionary: 'The having, holding, or detention of property in one's power or command.'"). "[T]he word 'possessions,' as used in . . . [the Tennessee] Constitution, includes more than the 'curtilage.'" *Peters v. State*, 187 Tenn. 455, 457, 215 S.W.2d 822, 823 (1948) (citing Tenn. Const. Art. I, § 7; *Welch*, 154 Tenn. 60, 289 S. W. 510).

The Tennessee Supreme Court has repeatedly held that Article I, Section 7 protects privately owned farmland and fields.[3] The trial court

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[2] By contrast, the Fourth Amendment does not specifically reference "possessions," instead expressly protecting "[t]he right of the people to be secure in their *persons, houses, papers, and effects*[.]" U.S. Const. amend. IV (emphasis added); *see also Oliver*, 466 U.S. at 184 (White, J., concurring in part and concurring in the judgment) ("However reasonable a landowner's expectations of privacy may be, those expectations cannot convert a field into a 'house' or an 'effect.'").

[3] *See, e.g., Welch*, 289 S.W. at 510–11 (fenced hog lot near barn); *Allison v. State*, 222 S.W.2d 366, 366–67 (Tenn. 1949) ("woodlot . . . [that] was a fenced enclosure used for pasture"); *State v. Lakin*, 588 S.W.2d 544, 545–

was correct that "[t]he protections of Article 1, Section 7 . . . extend to all 'property, real or personal, actually possessed or occupied.'" (XI, 16) (citing Tenn. Const. art. I, § 7). The properties at issue here "consist primarily of farms. Some of these properties are fenced, and those that are not have chained gates marked with No Trespassing signs accessible only by private, gravel paths." (XI, 2) (Parish, J., concurring in part, dissenting in part). Plaintiffs' properties are indisputably protected by Article I, Section 7.

III. This Court Should Reject the Lockstep Approach to Interpreting the Tennessee Constitution.

To avoid this straightforward conclusion, Defendants appear to seek refuge in federal precedent interpreting the Fourth Amendment's distinct language in different contexts, suggesting that most of their warrantless intrusions were federal in nature and thus outside the scope of Article I, Section 7's protections. (*See* Defendants-Appellants' Br. 22–26 & nn. 10–11. *But cf.* XI, 8–9 nn.6–13 (noting factual dispute).) And the

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56, 549 (Tenn. 1979) (gardens and fields near barn); *State v. Harris*, 919 S.W.2d 619, 621–22, 624–25 (Tenn. Crim. App. 1995) (hog pen on land with No Trespassing signs); *State v. Casteel*, No. E1999-00076-CCA-R3-CD, 2001 Tenn. Crim. App. LEXIS 248, at *54–56 (Crim. App. Apr. 5, 2001) (campsite on land with No Trespassing signs).

Tennessee Supreme Court has said that "[t]he search and seizure provisions of the federal and state constitutions are identical in intent and purpose." *State v. Hamm*, 589 S.W.3d 765, 771 (Tenn. 2019) (citations and internal quotation marks omitted). But this does not mean that Article I, Section 7 of the Tennessee Constitution should be interpreted *in para materia* with the Fourth Amendment in every case.[4]

This Court should reject any invitation to adopt a lockstep approach.[5] Judge Sutton explained where that approach can lead:

> A grave threat to independent state constitutions, and a key impediment to the role of state courts in contributing to the dialogue of American constitutional law, is lockstepping: the tendency of some state courts to diminish their constitutions by interpreting them in reflexive imitation of the federal courts' interpretation of the Federal Constitution.

Sutton, *51 Imperfect Solutions*, *supra*, 174. As he further states: "There is no reason to think, as an interpretive matter, that constitutional

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[4] This perhaps explains why a federal district court dismissed Plaintiff Hollingsworth's federal Fourth Amendment claims in a related *Bivens* action with prejudice while declining to pass on the merits of the state constitutional claim. *See Hollingsworth,* 423 F. Supp. 3d at 532–33.

[5] As the Georgia Supreme Court articulated: "[T]o allow decisions of the United States Supreme Court interpreting the federal Constitution to change the meaning of the Georgia Constitution is to abandon any pretense of having an independent state Constitution at all." *State v. Turnquest*, 305 Ga. 758, 767 n.6, 827 S.E.2d 865, 874 (Ga. 2019).

guarantees of independent sovereigns, even guarantees with the same or similar words, must be construed the same way." *Id.* Moreover, "[s]tate courts . . . have a freer hand in doing something the Supreme Court cannot: allowing local conditions and traditions to affect their interpretation of a constitutional guarantee and the remedies imposed to implement that guarantee." *Id.* at 17.

The Tennessee Supreme Court has recognized that it has "departed from federal interpretations of similar constitutional provisions where appropriate interpretive grounds support a different interpretation." *State v. Watkins*, 362 S.W.3d 530, 555 (Tenn. 2012); *see, e.g., Lakin,* 588 S.W.2d at 549 n.2. Where, for example, "textual differences between federal and state constitutional provisions may support doing so." *State v. Tuttle*, 515 S.W.3d 282, 307 (Tenn. 2017). That is the case here.

IV. Tennessee Code Annotated Subsections 70-1-305(1) and (7) Are Functionally Equivalent to General Warrants, Which Are Expressly Barred by Article 1, Section 7 of the Tennessee Constitution.

The Tennessee Constitution is particularly hostile to general warrants: "general warrants . . . are dangerous to liberty and ought not to be granted." Tenn. Const. Art. I, § 7; *see also Craven*, 148 Tenn. at 519–20, 256 S.W. at 432. But creating a general warrant is exactly what

Tennessee Code Annotated Subsections 70-1-305(1) and (7) purport to do. *See* Tenn. Code Ann. § 70-1-305(1), (7).[6] In the words of the trial court: "As written, the contested statute allows for the TWRA's executive director, a designated TWRA employee, or any 'full-time wildlife enforcement personnel' employed by another state or the federal government to enter *any* property except 'buildings,' in the performance of the executive director's duties." (XI, 16.) "[B]y eschewing only buildings, that language undoubtedly reaches property that *is* constitutionally protected from unreasonable searches. Tennessee Code Annotated subsection 70-1-305(1) reaches 'any property, outside of buildings.'" (XI, 17 (emphasis in original).) On its face, the statute operates as a general warrant, granting carte blanche to wildlife enforcement personnel to enter private land, without a warrant or consent, to surreptitiously surveil private land and landowners.

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[6] Ironically, "[t]he Crown also used general warrants and searches to regulate . . . hunting[.]" *United States v. Beaudion*, 979 F.3d 1092, 1095 (5th Cir. 2020) (citing William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning* 44 (2009)). *Cf. Craven,* 148 Tenn. at 520, 256 S.W. at 432 ("These lessons from the past, as well as the Constitution which rules us all, admonish that this court should set itself unfalteringly against any disturbance of the security of the people in 'their persons, houses, papers and possessions' by unreasonable searches and seizures.").

Defendants took full advantage of the statute's blank check authorization to conduct warrantless searches. "Defendant Hoofman believes that a landowner's mere possession of a hunting license authorizes him to enter that person's property without a warrant or consent in order to enforce Tennessee's hunting laws. As he told Mr. Hollingsworth on one occasion, 'When you bought your hunting license, you invited me.'" (XI, 13.) Consistent with that belief, Defendant Hoofman repeatedly "entered Mr. Rainwater's farm" and other properties to covertly take photos, including of Mr. Rainwater's son and nephew. (XI, 5.) He has also repeatedly "entered Mr. Hollingsworth's farm" to take photos and record video. (XI, 7–8.)

In late 2017 "Defendant Hoofman installed 'a camera . . . on a tree at Mr. Hollingsworth's property.' To do so, Defendant Hoofman removed or [] cut a branch from a tree." (XI, 8.) On another occasion, Defendant Hoofman and another TWRA employee entered Mr. Hollingsworth's farm to question him about duck hunting and Defendant Hoofman went so far as to "search[] the inside of Mr. Hollingsworth's parked vehicle—entering the back seat, picking up a coat, examining a shotgun, and opening an ammo box in the process—despite Mr. Hollingsworth's statements that

Defendant Hoofman did not have permission to do so." (XI, 9.)

These are not isolated incidents unique to Defendant Hoofman but rather emblematic of conditions created and behaviors incentivized by the statute. As the trial court found:

- "In order to enforce state wildlife laws, TWRA officers patrol private land across the state, 'basically all year,' and as with Plaintiffs' properties, do so without consent or warrants." (XI, 11.)
- "Since this case was filed, TWRA wildlife officers have entered private land without the owner's consent or a warrant multiple times to enforce Tennessee's hunting laws." (XI, 11.)
- "When asked by landowners to obtain a warrant before entering their land, TWRA officers sometimes respond that they do not need a warrant and enter the property anyway." (XI, 11.)
- "When denied consent to enter land by its owner, the TWRA allows its officers to enter the land anyway." (XI, 11.)
- "TWRA officers do not typically provide notice to landowners they are about to enter private land." (XI, 12.)
- "TWRA officers sometimes enter private land, hide in close proximity to hunters who are actively shooting at game, and record video footage of the hunters." (XI, 12.)

This behavior is a constitutional problem. And the pattern by TWRA officials confirms what the text of Tennessee Code Annotated Subsections 70-1-305(1) and (7) makes clear: the statute is the functional

equivalent of a general warrant. It blatantly violates Article I, Section 7 of the Tennessee Constitution.

If the constitutional text of Article I, Section 7 means anything, these statutory provisions facilitating constitutional violations cannot stand. For "[t]he enforcement of no statute is of sufficient importance to justify indifference to the basic principles of our government." *Craven*, 148 Tenn. at 520, 256 S.W. at 432; *see also Anthony v. Carter*, 541 S.W.2d 157, 161 (Tenn. 1976) (holding unconstitutional a statute allowing law enforcement to seize materials a district attorney general or designee has deemed as unlawful).

V. Article XI, Section 13 of the Tennessee Constitution Does Not Abrogate Plaintiffs' Private Property Rights.

Bizarrely, Defendants suggested below that their warrantless "entries onto private property pursuant to Tennessee Code Annotated Subsections 70-1-305(1) and (7) do not constitute searches because Article XI, Section 13 of the Tennessee Constitution (recognizing a personal right—subject to reasonable regulation and restriction—to hunt and fish) provides sufficient constitutional authority for those entries." (XI, 20.) That's just wrong. (XI, 20.) Article XI, Section 13 expressly states: "The recognition of this right does not abrogate any private or

public property rights[.]"[7] Tenn. Const. Art. XI, § 13; *see* Usman, 77 Tenn. L. Rev. at 91 ("The amendment does not alter existing property rights on either public or private lands.").

And in any event, "[n]o constitutional provision should be construed to impair or destroy another provision." *Estate of Bell v. Shelby Cnty. Health Care Corp.*, 318 S.W.3d 823, 835 (Tenn. 2010) (citing *Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (Tenn. 1990); *Patterson v. Washington County*, 188 S.W. 613, 614 (1916)). Application of that principle here confirms that Article XI, Section 13 does not abrogate sub silentio Article I, Section 7's fundamental protections against warrantless, nonconsensual intrusions onto private property. Article XI, Section 13 was designed to enshrine the personal right to hunt and fish in the Tennessee Constitution, not to vitiate core rights guaranteed by Article I, Section 7. If Article XI, Section 1 provided constitutional

[7] As the U.S. Supreme Court recently explained in the Takings context: "The right to exclude is 'one of the most treasured' rights of property ownership. According to Blackstone, the very idea of property entails 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.'" *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021) (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982); 2 W. Blackstone, Commentaries on the Laws of England 2 (1766)).

authority for Tennessee Code Annotated Subsections 70-1-305(1) and (7), it would destroy Article I, Section 7's proscription against general warrants. That cannot be, and is not, the law in Tennessee.

Instead, both provisions mean what they say. Article I, Section 7 states that "the people shall be secure in their . . . possessions," expressly extending the Tennessee Constitution's protection "from unreasonable searches and seizures" to the type of privately owned land at issue in this case, further stating that "general warrants . . . are dangerous to liberty and ought not to be granted." Tenn. Const. Art. I, § 7. And Article XI, Section 13's plain text makes clear that it does "not abrogate any private . . . property rights," Tenn. Const. Art. XI, § 13. Those property rights include the rights protected by Article I, Section 7, dating back to the Tennessee Constitution of 1796. *See Welch*, 154 Tenn. at 62.

CONCLUSION

This Court should affirm the trial court and hold that Tennessee Code Annotated Subsections 70-1-305(1) and (7) violate Article I, Section 7 of the Tennessee Constitution, both facially and as-applied, and enter appropriate injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2023, I filed the foregoing with the Court's electronic filing system and caused it to be served on all registered users participating in the case. I also sent copies of the foregoing via email:

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