

IN THE SUPREME COURT OF FLORIDA

CITY OF TALLAHASSEE, FLORIDA,
et al.,

Petitioners,

Case No. SC21-651

v.

L.T. Case Nos. 1D20-2193
2020-CA-1011

FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., *et al.*,

Respondents.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONER CITY OF TALLAHASSEE, FLORIDA'S
BRIEF ON JURISDICTION

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STATEMENT OF THE ISSUES

Petitioner, the City of Tallahassee, Florida, seeks review of the decision of the First District Court of Appeal in *Florida Police Benevolent Ass’n, Inc. v. City of Tallahassee*, 314 So. 3d 796 (Fla. 1st DCA 2021). The decision presents the following interrelated issues of constitutional construction:

- I. Whether a law enforcement officer who is threatened with harm in the course and scope of official duty is a “crime victim” under article I, section 16, of the Florida Constitution, commonly known as “Marsy’s Law.”
- II. Whether article I, section 16, of the Florida Constitution requires a triggering event—the commencement of a criminal proceeding—before a “crime victim” is entitled to the constitutional protections of Marsy’s Law.
- III. Whether article I, section 16, of the Florida Constitution provides a constitutional right of anonymity to law enforcement officers who are threatened with harm in the course and scope of duty.

STATEMENT OF THE CASE AND FACTS

In 2018, Florida voters approved a constitutional amendment granting certain enumerated rights to “crime victims.” A.5; *Fla. Police Benevolent Ass’n v. City of Tallahassee*, 314 So. 3d 796, 797 n.1 (Fla. 1st DCA 2021). Derived from similar initiatives in other states, and referred to as Marsy’s Law, the amendment was codified in article I, section 16, of the Florida Constitution. *Id.* This case presents an interpretive question about Marsy’s Law that has divided the law enforcement community and municipalities throughout Florida: can police officers who are threatened with harm in the course of official duty use Marsy’s Law to shield their identities from the public?

In the decision under review, the First District Court of Appeal answered that question in the affirmative based upon its express construction of the Florida Constitution. A.8-11; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 800-04. The City of Tallahassee now asks this Court to review and quash the First District’s decision, which mistakenly grants anonymity to officers involved in on-duty shootings without any textual basis in the Constitution.

What Marsy's Law Says

Marsy's Law, formally entitled "Rights of accused and of victims," has the express textual intent to:

preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents.

Art. I, § 16(b), Fla. Const.

In terms of scope, Marsy's Law defines a "victim" as:

[A] person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.

Id. at § 16(e). "The term 'victim' does not include the accused." *Id.*

Temporally, the rights provided by Marsy's Law begin at the time of victimization. *Id.* at § 16(b).

Pursuant to its stated purpose, Marsy's Law provides victims with a panoply of legal protections, from the right to be treated with fairness and respect, to the right to be reasonably protected from the accused, to the right to notice and an opportunity to participate in the judicial process. *Id.* at §§ 16(b)(1)-(10). With few exceptions,

these rights can be exercised and protected only during a criminal proceeding; if a victim's rights are not honored, Marsy's Law provides that the method of enforcement is generally to seek relief in the criminal case against the accused. *Id.* at § 16(c).

Among the rights set forth in Marsy's Law is the right for victims "to prevent disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim." *Id.* at § 16(b)(5). Marsy's Law does not expressly provide that a victim's "name" or "identity" is confidential, nor does it provide a textual right for victims to remain anonymous.

What Happened in This Case

Respondents are City of Tallahassee police officers, organized and represented by their labor union, who were involved in separate deadly shootings while on duty. A.5; *Fla. Police Benevolent Ass'n*, 314 So. 3d at 798. In one incident, an officer responding to an aggravated battery fatally shot a person who was brandishing a knife at him in a threatening manner. *Id.* In another incident, a second officer responding to a report of a stabbing fatally shot a person who was pointing a gun at him. *Id.*

Following the incidents, Respondents declared themselves victims and sought to invoke Marsy's Law, independent of any criminal proceeding, to prevent public disclosure of their names. *Id.* Without offering any evidence that this disclosure would subject them to harassment, Respondents filed a declaratory judgment lawsuit in the circuit court and sought an injunction to prevent the City from releasing any information that could be used to identify them. A.6; *Fla. Police Benevolent Ass'n*, 314 So. 3d at 798.

As several intervening news organizations argued, there is no dispute that the officers' names are otherwise subject to disclosure under Florida's broad Public Records Law. *Id.* However, personal details that could be used to locate or contact the officers, such as their home addresses and phone numbers, are specifically exempt from public records disclosure. *See* §§ 119.071(4)(d) & 914.15, Fla. Stat.

The circuit court ruled that Marsy's Law does not apply to law enforcement officers acting in their official capacities. A.6-7; *Fla. Police Benevolent Ass'n*, 314 So. 3d at 799. The circuit court further held that victims' names are not specifically protected or even mentioned in Marsy's Law, and that the Florida Legislature, through

the Public Records Law, has already made the public policy determinations about what information concerning law enforcement conduct must be protected for officer safety and what information is important to disclose for accountability and transparency in government. *Id.*

Respondents appealed, teeing up the issue of constitutional construction as follows: “[T]he trial court misconstrued article I, section 16 and article I, section 24(a) when it determined that the officers were not entitled to the protections granted crime victims under article I, section 16.” A.7; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 799.

What the First District Decided

The First District reversed. A.11; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 804. The First District held “that the trial court misconstrued article I, section 16 by ignoring its plain language and then limiting the class of victims entitled to protection under the law.” A.7; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 800. Much of the First District’s analysis focused on “constru[ing]” Marsy’s Law “in harmony with” the public records constitutional provision. A.8; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 801. The First District

stated that “[n]othing in article I, section 16 excludes law enforcement officers...from the protections granted crime victims,” and “no language in either article I, section 16 or article I, section 24(a) suggests that public records related to government employees ordinarily subject to disclosure are not entitled to confidential treatment under article I, section 16 when a government employee becomes a crime victim.” A.9; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 801-02.

The First District also rejected the circuit court’s other rationales, including the need for a criminal proceeding to commence as a trigger for Marsy’s Law. A.10; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 803-04 (“Applying the plain language of the text, we hold that a criminal prosecution need not begin before a victim may assert his rights under article I, section 16(e).”). And, citing to statutes that specifically exempt “names” and “identities” from disclosure, the First District decided that Marsy’s Law—which includes no such language—protects “records that could reveal the victim’s identity” because, in the First District’s view, “a crime victim’s name is the key that opens the door to locating the victim.” A.11; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 804.

This discretionary review proceeding followed.

ARGUMENT

This Court has jurisdiction to review the First District’s decision because that decision expressly construes the Florida Constitution. Given the importance and novelty of the issues presented, along with the need for statewide clarity and uniformity in applying the constitutional text, this Court should exercise its discretion and accept jurisdiction.

I. This Court has jurisdiction to review the First District’s decision.

Article V, section 3(b)(3), of the Florida Constitution authorizes this Court to review a decision of a district court of appeal that “expressly construes a provision of the state or federal constitution.” Historically, this jurisdictional basis has always required the district court’s decision to “explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision.” *Armstrong v. City of Tampa*, 106 So. 2d 407, 409 (Fla. 1958). The addition of the word “expressly” during the 1980 constitutional reform “codified prior case law,” meaning that “pre-1980 case law on this type of jurisdiction remains persuasive.”

Anstead et al., *The Operation & Jurisdiction of the Supreme Court of Florida*, 29 *Nova L. Rev.* 431, 504 (2005).

Under this case law, “it is necessary that the final decree under assault actually construe, as distinguished from apply, a controlling provision of the Constitution.” *Armstrong*, 106 So. 2d at 409. “The word ‘construction’...contemplates an interpretation of the meaning of the language of some constitutional provision[.]” *Id.* at 410; see also *Ogle v. Pepin*, 273 So. 2d 391, 392 (Fla. 1973).

The First District’s decision here easily satisfies the constitutional standard. The entire decision revolves around explaining, defining, and resolving doubt about Marsy’s Law and the definition of a “victim.” The construction could hardly be more explicit: the First District framed the issue on appeal as whether the circuit court “misconstrued” Marsy’s Law and the public records constitutional provision. A.7; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 799. Similarly, the First District’s holding was that the circuit court “misconstrued article I, section 16.” A.7; *Fla. Police Benevolent Ass’n*, 314 So. 3d at 800. Indeed, the key word “construe” appears six times in the First District’s opinion, which also refers seven times to “reading” the Constitution and eleven times to “interpreting” it.

Simply put, if this decision does not expressly construe the Constitution, no decision does. *See Edwards v. Thomas*, 229 So. 3d 277, 279 (Fla. 2017) (granting jurisdiction under analogous circumstances to analyze the language of a 2004 constitutional amendment); *Treacy v. Lamberti*, 141 So. 3d 174, 175 (Fla. 2013) (granting jurisdiction to review a decision interpreting the plain language of article I, section 14, of the Florida Constitution).

II. This Court should exercise its jurisdiction.

This is exactly the kind of case this Court should review. Since the enactment of Marsy’s Law, interpretive questions about its application to law enforcement have divided Florida agencies and municipalities. These interpretive questions turn on the language, meaning, and significance of the Florida Constitution—a subject over which this Court is the final arbiter. *See State v. Horwitz*, 191 So. 3d 429, 438 (Fla. 2016) (describing this Court as “the ultimate arbiter of the meaning and extent of the safeguards and fundamental rights provided by the Florida Constitution”).¹

¹ As an example of the decision’s impact, one highly prominent sheriff, who previously served as president of the Florida Sheriffs Association and currently serves on the board of the Major County Sheriffs of America, has indicated his intent to file an amicus brief if

This case is also of public interest and statewide impact. It has generated headlines in major newspapers, editorials spanning the ideological spectrum, and discussion among public officials. It is, in addition, contrary to how other jurisdictions have interpreted Marsy’s Law. *See City of Centerville v. Knab*, 136 N.E.3d 808, 815-16 (Ohio Ct. App. 2019); *Santos v. Brown*, 238 Cal. App. 4th 398, 420-21 (Ct. App. 3d Dist. 2015). And it involves core values of our democratic system, including transparency and the proper roles of the judicial and legislative branches. In fact, the First District’s atextual decision to engraft a right of anonymity onto the Constitution, based on nothing more than a judicial sense about what information might “open[] the door to locating the victim,” runs headlong into the Legislature’s policymaking function.

Perhaps most importantly, absent intervention by this Court, the decision of one appellate panel from one jurisdiction about the meaning of the Florida Constitution will bind every city, county, government agency, sheriff’s office, police department, and state

this Court accepts review. *See Pinellas Cty. Sheriff Bob Gualtieri’s Notice of Intent*, No. SC21-651 (filed May 12, 2021). Other individuals and entities have likewise expressed interest in the case through the filing of similar notices of intent.

attorney in Florida. *See generally Pardo v. State*, 596 So. 2d 665, 666-67 (Fla. 1992). This is particularly problematic because the First District got the textual analysis wrong: “words are given meaning by their context, and context includes the purpose of the text.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012); *see also Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (interpreting “person” in federal civil rights law to *exclude* state officials acting in an official capacity). Either way, though, if the Florida Constitution now *sub silentio* provides police officers involved in deadly on-duty shootings with the self-declared right to remain anonymous, shouldn’t that right at least be tested by this Court?

CONCLUSION

This Court should grant jurisdiction and set the case for oral argument.

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CERTIFICATE OF SERVICE

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