
IN THE SUPREME COURT OF FLORIDA

CASE NO. SC21-651
District Court Case No. 1D20-2193

CITY OF TALLAHASSEE, FLORIDA, et al.,

Petitioners,

v.

FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., JOHN DOE 1,
and JOHN DOE 2,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

**PETITIONER NEWS MEDIA COALITION'S
BRIEF ON JURISDICTION**

THOMAS & LOCICERO PL

Carol Jean LoCicero
Mark R. Caramanica
601 South Boulevard
Tampa, FL 33606
Phone: (813) 984-3060
Fax: (813) 984-3070
clocicero@tlolawfirm.com
mcaramanica@tlolawfirm.com

Daniela B. Abratt
915 Middle River Drive, Suite 309
Fort Lauderdale, FL 33304
Phone: (954) 703-3416
Fax: (954) 400-5415
dabratt@tlolawfirm.com

RECEIVED, 06/14/2021 05:16:27 PM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CITATIONS ii

STATEMENT OF THE ISSUES iv

STATEMENT OF THE CASE AND FACTS 1

ARGUMENT 3

 I. The First District’s Opinion Expressly Construes
 Constitutional Provisions. 4

 II. The First District’s Opinion Affects Constitutional Officers
 Including State Attorneys, Court Clerks, and Sheriffs. 5

 III. Why this Case Matters..... 7

CONCLUSION 10

CERTIFICATE OF SERVICE 12

CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210..... 13

TABLE OF CITATIONS

CASES

<i>Lightbourne v. McCollum</i> , 969 So. 2d 326 (Fla. 2007).	7
<i>Pardo v. State</i> , 596 So. 2d 665 (Fla. 1992).	5
<i>Spradley v. State</i> , 293 So. 2d 697 (Fla. 1974).	6

FLORIDA CONSTITUTION

Art. I, § 16, Fla. Const.	1,4,5
Art. I, § 24, Fla. Const.	4,5,7
Art. I, § 16(b)(5), Fla. Const	1
Art. V, § 3(b)(3), Fla. Const.	3, 6
Art. V, § 3(b), Fla. Const.	4

FLORIDA STATUTES

Ch. 119, Fla. Stat.	7
-----------------------------	---

RULES

Fla. R. App. P. 9.030(a)(2)(A)(ii)	3
Fla. R. App. P. 9.030(a)(2)(A)(iii)	3,4,6
Fla. R. Jud. Admin. 2.420	7

OTHER AUTHORITIES

Anne Schindler, FIRST COAST NEWS, “ <i>JSO begins stripping names of officers in police shootings from its ‘transparency’ page, citing Marsy’s Law,</i> ” https://www.jacksonville.com/story/news/2021/05/06/jso-strips-names-officers-police-shootings-its-transparency-page/4977203001/	9
--	---

Editorial Board, SOUTH FLORIDA SUN SENTINEL, “*Under Marsy’s Law, darkness descends on the ‘Sunshine State’*”, Editorial”, May 27, 2021, <https://www.sun-sentinel.com/opinion/editorials/fl-op-edit-marsys-law-victims-names-florida-highway-patrol-20210527-2mr24nj4wrgwlof6dqcks53l5e-story.html> 9,10

Eliot Kleinberg, THE PALM BEACH POST, “*Former Boca Raton officer, 58, killed in motorcycle crash*,” <https://www.palmbeachpost.com/story/news/local/2020/08/05/former-boca-raton-officer-58-killed-in-motorcycle-crash/112822078/> 9

Eliot Kleinberg, THE PALM BEACH POST, “*PBSO deputies who shot, killed a man invoke crime-victims law to bar release of their names*,” <https://www.palmbeachpost.com/story/news/crime/2020/10/30/pbso-deputies-who-killed-man-use-crime-victims-law-bar-release-their-names/6076712002/> 8,9

HERALD-TRIBUNE, “*Venice daycare worker accused of child abuse*,” Feb. 1, 2019, <https://www.heraldtribune.com/news/20190201/venice-daycare-worker-accused-of-child-abuse> 9

Kenny Jacoby and Ryan Gabrielson, USA TODAY & PROPUBLICA, “*Marsy’s Law was meant to protect crime victims. It now hides the identities of cops who use force.*”, Oct. 29, 2020, <https://www.usatoday.com/in-depth/news/investigations/2020/10/29/police-hide-their-identities-using-victims-rights-bill-marsys-law/3734042001/> 8

Tony Marrero, TAMPA BAY TIMES, “*Florida cops who use force keep names secret with Marsy’s Law*,” June 25, 2020, <https://www.tampabay.com/news/2020/02/06/florida-cops-who-use-force-keep-names-secret-with-marsys-law/> 10

STATEMENT OF THE ISSUES

“Marsy’s Law” is a 2018 state constitutional amendment designed to provide certain rights to crime “victims.” The provision at issue in this case permits “victims” to exercise a “right to prevent” certain information about them from being publicly disclosed. Because this case involves a state constitutional provision, the district court construed its meaning and how it should be reconciled with the state constitutional provision guaranteeing the public’s right of access to government records.

This constitutional interpretation directly affects the public records disclosure and maintenance obligations of records custodians statewide—including constitutional officers like sheriffs, state attorneys, and clerks of court—whose records contain the very type of information at issue here: the names of law enforcement officers involved in on-duty shootings. The restrictions placed on such custodians naturally flow to the public, impeding their constitutional right to observe the workings of government through the examination of public records.

The News Media Coalition¹ submits that this case therefore raises two issues for the Court should it grant review:

¹ The News Media Coalition consists of: (1) the First Amendment Foundation; (2) the Florida Press Association; (3) Gannett Co., Inc. (whose Florida properties include the *Tallahassee Democrat*); (4) The McClatchy

1) The first issue is whether law enforcement officers acting in their official capacity as government agents can ever invoke crime “victim” status under Marsy’s Law to shield their names as contained in public records documenting on-duty actions, particularly in cases where they use deadly force. The News Media Coalition maintains that the First District Court of Appeal erred when it interpreted the law as providing such protection in this case.

2) The second issue is whether crime victim *name* information can be protected under Marsy’s Law. That basic information inevitably becomes public during the course of a criminal proceeding when, for example, defendants assert their Sixth Amendment confrontation rights and victims testify at public trials. Of course, none of this will happen here because the would-be accused/”victimizers” were killed by their “victim” police officers. The News Media Coalition maintains that Marsy’s Law does not provide for such confidentiality, and it would be illogical to hold so. Again, the News Media Coalition submits that the First District Court of Appeal erred when it found that victim names are protected under Marsy’s Law, at least under the circumstances of this case.

Company, LLC d/b/a *Miami Herald* (f/k/a Miami Herald Media Company); and (5) The New York Times Company.

STATEMENT OF THE CASE AND FACTS

This petition for review reaches this Court at an apt moment—ongoing societal debate on the proper role of community policing and public accountability for law enforcement. The ruling below impacted that larger debate when it held that police officers who employ deadly force in the course of their official duties can cloak their names—within the public records where this information resides—with complete anonymity under Florida’s version of Marsy’s Law. Marsy’s Law, a 2018 Florida constitutional amendment, is ostensibly a crime victims’ rights law that provides “victims,” as specifically defined, with greater input and protections as a criminal case proceeds and as the convicted become eligible for release. *See generally* Art. I, § 16, Fla. Const. But its “privacy” provision² is now being invoked to keep vital information about community crime and policing activity from the public. That same provision also remains a source of interpretive and administrative confusion across Florida. This case is an opportunity to provide needed statewide clarity to Marsy’s Law’s scope and application, clarity that impacts multiple constitutional officers’ transparency obligations.

² The relevant section of Marsy’s Law that the Doe Officers claim allows them to keep their identities secret provides that crime “victims” have “the right to prevent the 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.” *See* Art. I, § 16(b)(5), Fla. Const.

The facts of this case are relatively simple. In two separate 2020 response incidents, Tallahassee Police Department officers (Doe 1 and Doe 2) shot and killed two citizens while on duty. See Appendix, Opinion at 2. Both officers claimed they employed deadly force to answer perceived threats from the deceased individuals, thus rendering each officer assault “victims.” *Id.* at 3. The City ultimately determined the names of those officers were not protected under Marsy’s Law, but the Police Benevolent Association (“PBA”) and the Doe Officers filed suit to block the release of their names in public records. *Id.* The News Media Coalition intervened in the matter because, due to the open litigation, the City would not release any public records identifying officer names in response to their public records requests. *Id.*

The trial court found that Marsy’s Law was not intended to apply to law enforcement officers while acting as government agents and, further, that it would be illogical to do so when the purported “victimizers” were killed by the law enforcement “victims,” so no criminal process would incept. *Id.* at 4. Further, that court found that mere identity information, *i.e.*, one’s name, is not the kind of information protected under the law. *Id.* at 5.

On appeal, the district court wholly reversed. Its opinion failed to reconcile the inherent ambiguities within Marsy’s Law and ignored

construction rules that counsel consideration of the broader context of what the law was designed to achieve. Custodians of the public records containing information on deadly force incidents are now restrained from providing key information to the public when police officers seek shelter under Marsy's Law.

More than a year has passed since these shootings occurred and the public still does not know which officers fired the fatal shots that killed two civilians in Tallahassee. If the district court's ruling stands, this will likely remain so. And so it will be for future shootings (or when an officer reacts with any force) if law enforcement can self-identify as assault victims in the course of their official duties.

ARGUMENT

This Court should exercise its discretionary jurisdiction in this case because the opinion below "expressly construes a provision of the state or federal constitution." See Article V, § 3(b)(3), Fla Const.; Fla. R. App. P. 9.030(a)(2)(A)(ii). Moreover, in so doing it also directly impacts numerous constitutional officers, who along with city police agencies, are the unique custodial entities of the kinds of information at issue here. While the News Media Coalition does not herein specifically raise that latter point as a distinct jurisdictional basis (see Article V, § 3(b)(3), Fla Const.; Fla. R. App.

P. 9.030(a)(2)(A)(iii)), its effect on such officers and implications on public records access is important for this Court to consider when exercising its discretionary jurisdiction on constitutional interpretation grounds.

Indeed, various stakeholders, including constitutional officers like Pinellas County Sheriff Bob Gualtieri, disagree about Marsy's Law's application in circumstances like these. See, e.g., the Notices of Intent to File Amicus Briefs in this case by: (1) the City of Miami Civilian Investigative Panel; (2) media/open government groups the Brechner Center for FOI, RCFP, and SPJ; and (3) Sheriff Gualtieri.

I. The First District's Opinion Expressly Construes Constitutional Provisions.

There can be no real debate that the district court's decision below rests on a rejection of the trial court's interpretation of Marsy's Law, and that court's view on: (1) the interplay between it and Article I, Section 24 (the constitutional right of access to government records); (2) the construction of key phrases and definitions within Marsy's Law; and (3) the scope of information protected.³

As the district court notes, the PBA and Doe Officers sought a declaration that "they were entitled to the protections granted crime victims

³ This jurisdictional basis has been more fully addressed within the City of Tallahassee, Florida's Brief on Jurisdiction. The News Media Coalition adopts and incorporates those arguments here.

under Article I, section 16 of the Florida Constitution” and that the trial court determined, after balancing crime victim rights under Marsy’s Law with the public constitutional access rights under Article 1, Section 24 that “the protections afforded crime victims under article I, section 16 were unavailable to law enforcement officers” as it would be inconsistent with the purpose of Marsy’s Law to find so. See Appendix, Opinion at 1-2, 4.

In analyzing the text of both Marsy’s Law and Article I, Section 24, the district court held that these competing constitutional provisions were not in conflict, and that the Doe Officers met the definition of a “victim” under Marsy’s Law. See *id.* at 6-9. It also rejected the trial court’s finding that a criminal case must incept for Marsy’s Law to apply and that names alone were not within the class of information protected under the law. See *id.* at 11-12.

The novel constitutional interpretation issues raised in this case are patent and provide a clear basis for this Court to exercise its discretionary jurisdiction. Additionally, if left undisturbed, they will bind every jurisdiction in this state. See *Pardo v. State*, 596 So. 2d 665, 666-67 (Fla. 1992).

II. The First District’s Opinion Affects Constitutional Officers Including State Attorneys, Court Clerks, and Sheriffs.

In determining whether to exercise discretionary review on constitutional interpretation grounds, this Court should also consider how

the decision below impacts multiple classes of constitutional officers. Decisions that impact such key government officials' duties are important enough that they can at times themselves be an independent basis for exercising discretionary jurisdiction. See Article V, § 3(b)(3), Fla Const.; Fla. R. App. P. 9.030(a)(2)(A)(iii); *Spradley v. State*, 293 So. 2d 697, 701 (Fla. 1974) (discretionary jurisdiction may lie when no class of constitutional officers is a party "if the decision generally affects the entire class in some way unrelated to the specific facts of that case"). In this case, the district court's decision directly affects multiple classes of constitutional officers such as sheriffs, state attorneys, and clerks of court. All fall within the very limited set of custodians that would maintain records containing the names of law enforcement officers involved in on-duty shootings.

Not only are these custodians now forbidden from providing such records, they also must engage in additional search and redaction duties to excise that information from otherwise public documents. Sheriffs maintain a variety of records that identify deputies who respond to calls for service, including offense incident and arrest reports, personnel files, accident/crash reports, criminal investigation files, body camera footage, and internal affairs investigations records. Similarly, state attorneys are custodians of criminal investigatory files, search and arrest warrant information, and

criminal discovery that can include references to law enforcement officers. Finally, clerks maintain court records filed in criminal cases that reference responding officers by name. All of these records are subject to Article I, Section 24 of the Florida Constitution, Chapter 119 of the Florida Statutes, and/or Rule 2.420 of the Rules of Judicial Administration.

Relatedly, the decision also impacts policy decisions: for example, a Sheriff's desire to be transparent with their community in the aftermath of a deputy-involved shooting.

The News Media Coalition, as surrogates for the public, depend on timely and open access to these critical records about the most severe exercise of government power. The limitations now imposed on custodians not only block the release of this information but also delay access to non-exempt portions of public records.

III. Why this Case Matters.

As this Court has explained, government transparency laws are liberally construed in favor of public access and any exemptions to them are narrowly construed and limited to their specific purpose. See *Lightbourne v. McCollum*, 969 So. 2d 326, 332-33 (Fla. 2007).

As such, this case is an important opportunity to reaffirm the proper balancing between core government accountability information with the

rights afforded under Marsy's Law. If the district court's decision stands, whenever faced with a threat of *any* kind while on duty law enforcement officers will be emboldened to claim "victim" status to shield their actions from public review. The public will be deprived of its own constitutional right to independently evaluate and debate use-of-force incidents and the officer, including the officer's history (or lack thereof) of prior uses of force or complaints. The public similarly will never know whether and how an agency disciplines such officers. And unless officers are themselves charged with a crime (historically rare) no prosecution occurs. Names are forever secreted.

And this is already occurring. Marsy's Law is now being cited by select law enforcement agencies across Florida to shield officer names from public scrutiny.⁴ This view, however, is not universally shared among

⁴ For example, it has been used to shield officer names when: (1) an officer claimed battery when a hospitalized suspect who was cuffed with one hand to his bed swung with his free arm causing the wire of his pulse monitor to hit the officer's shoulder; and (2) an officer fired a gun at a drunken driver attempting to flee, asserting that the driver sped in the direction of the officer. See Kenny Jacoby and Ryan Gabrielson, USA TODAY & PROPUBLICA, "*Marsy's Law was meant to protect crime victims. It now hides the identities of cops who use force.*", Oct. 29, 2020, <https://www.usatoday.com/in-depth/news/investigations/2020/10/29/police-hide-their-identities-using-victims-rights-bill-marsys-law/3734042001/>. The same USA Today/ProPublica investigation even found police treating minor movements, like walking aggressively, to be threatening and a "battery." Moreover, officers sustained no injuries in at least half of the incidents in

law enforcement, which is why Pinellas County Sheriff Bob Gualtieri seeks to participate as an *amicus* in this case, arguing against application of Marsy's Law in cases like this.

Marsy's Law's overbroad application to protecting names and liberally imparting "victim" status has also crippled the public's right to know basic information about local crime events.⁵ It has also caused mass confusion

which they characterized themselves as victims. In other cases, officer injuries were minor, such as a scraped knee or bruised finger. See *also* Eliot Kleinberg, THE PALM BEACH POST, "PBSO deputies who shot, killed a man invoke crime-victims law to bar release of their names," <https://www.palmbeachpost.com/story/news/crime/2020/10/30/pbso-deputies-who-killed-man-use-crime-victims-law-bar-release-their-names/6076712002/>. In that case, the names of two deputies who shot and killed a 20-year-old man were kept secret after officers claimed he refused to drop a knife and lunged at them.

⁵ For example, the Sarasota County Sheriff's Office withheld the name and location of a daycare where an employee was charged with abuse, alleging that naming the facility could have identified children to the public. See HERALD-TRIBUNE, "*Venice daycare worker accused of child abuse*," Feb. 1, 2019, <https://www.heraldtribune.com/news/20190201/venice-daycare-worker-accused-of-child-abuse>. Marsy's Law has also been used to withhold the name of a school where a sexual assault was reported. See Anne Schindler, FIRST COAST NEWS, "*JSO begins stripping names of officers in police shootings from its 'transparency' page, citing Marsy's Law*," <https://www.jacksonville.com/story/news/2021/05/06/jso-strips-names-officers-police-shootings-its-transparency-page/4977203001/>. The Florida Highway Patrol has also withheld names of all individuals involved in a vehicle accident in press releases. See Eliot Kleinberg, THE PALM BEACH POST, "*Former Boca Raton officer, 58, killed in motorcycle crash*," <https://www.palmbeachpost.com/story/news/local/2020/08/05/former-boca-raton-officer-58-killed-in-motorcycle-crash/112822078/>; Editorial Board, SOUTH FLORIDA SUN SENTINEL, "*Under Marsy's Law, darkness descends on*

as to its application,⁶ resulting in different agency legal interpretations. Agencies and courts have revamped records disclosure policies with little or no judicial guidance. This case is a prime opportunity for this Court to begin to provide some clarity to this controversial law. As Florida Police Benevolent Association's Executive Director Matt Puckett was quoted as saying in the above-cited USA Today/ProPublica article, "We need to have the [state] Supreme Court issue a ruling on it, because it's always going to be very subjective ... as to what would be worthy of a shield from victim's information...It's not hard to see a circumstance where you would go, 'OK, that probably seems like not a fair use of the of the law.'"

CONCLUSION

For the foregoing reasons, the News Media Coalition respectfully request this Court accept jurisdiction of this matter.

the 'Sunshine State', Editorial", May 27, 2021, <https://www.sun-sentinel.com/opinion/editorials/fl-op-edit-marsys-law-victims-names-florida-highway-patrol-20210527-2mr24nj4wrgwlof6dqcks53l5e-story.html> (FHP withheld name of 17-year-old who electrocuted herself after running over a power line).

⁶ Agencies such as the Hillsborough, Hernando, and Pasco Sheriff's Offices are automatically withholding the names of victims of any crime, while others, including the Pinellas County Sheriff's Office and St. Petersburg Police Department, require victims or their families to affirmatively invoke Marsy's Law. See Tony Marrero, TAMPA BAY TIMES, "Florida cops who use force keep names secret with Marsy's Law," June 25, 2020, <https://www.tampabay.com/news/2020/02/06/florida-cops-who-use-force-keep-names-secret-with-marsys-law/>.

Respectfully submitted,

/s/ Carol Jean LoCicero

Carol Jean LoCicero

Florida Bar No. 603030

Mark R. Caramanica

Florida Bar No. 110581

601 South Boulevard

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

Primary e-mail: clocicero@tlolawfirm.com

Secondary e-mail: tgilley@tlolawfirm.com

Primary e-mail: mcaramanica@tlolawfirm.com

Secondary e-mail: dlake@tlolawfirm.com

- and -

Daniela B. Abratt

Florida Bar No. 118053

915 Middle River Drive, Suite 309

Fort Lauderdale, FL 33304

Telephone: (954) 703-3418

Facsimile: (954) 400-5415

Primary e-mail: dabratt@tlolawfirm.com

Secondary e-mail: bbrennan@tlolawfirm.com

Attorneys for the News Media Coalition parties

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **14th day of June, 2021**, I electronically filed the foregoing document with the Clerk of the Court via the E-Portal. I also certify that the foregoing document is being served this day via transmission of Notices of Electronic Filing generated by the E-Portal to:

Luke Newman
Luke Newman, P.A.
908 Thomasville Road
Tallahassee, FL 32303
luke@lukenewmanlaw.com

Louis J. Baptiste
The Law Offices of Stephen G.
Webster LLC
1615 Village Square Blvd., Suite 5
Tallahassee, FL 32309
lb@swebsterlaw.net

Stephanie Dobson Webster
Florida Police Benevolent
Association, Inc.
300 E. Brevard Street
Tallahassee, Florida 32301
stephanie@flpba.org

***Counsel for Respondents, Florida
Police Benevolent Association, Inc.,
John Doe 1 and John Doe 2***

Edward L. Birk
Marks Gray, P.A.
1220 Riverplace Blvd., Ste. 800

Philip J. Padovano
Joseph T. Eagleton
Brannock Humphries & Berman
1111 W. Cass Street, Suite 200
Tampa, FL 33606
ppadovano@bhappeals.com
jeagleton@bhappeals.com
eservice@bhappeals.com

Cassandra K. Jackson,
City Attorney
Hannah D. Monroe,
Asst. City Attorney
City Attorney's Office
300 South Adams Street,
Box A-5
Tallahassee, FL 32301
cassandra.jackson@talgov.com
hannah.monroe@talgov.com

***Counsel for Petitioner, the
City of Tallahassee, Florida***

Shannon K. Lockheart
Paul G. Rozelle
Pinellas County Sheriff
General Counsel's Office

Jacksonville, FL 32207
ebirk@marksgray.com
sstrong@marksgray.com

Amicus Counsel for the Brechner Center, the Reporters' Committee for Freedom of the Press, and the Society of Professional Journalists Florida Pro Chapter.

Edward G. Guedes
John J. Quick
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Ste. 700
Coral Gables, FL 33134
eguedes@wsh-law.com
szavala@wsh-law.com
jquick@wsh-law.com
lmartineze@wsh-law.com

Amicus Counsel for City of Miami Investigative Panel

10750 Ulmerton Road
Largo, FL 33778
slockheart@pcsonet.com
prozelle@psconet.com
rreuss@pcsonet.com

Amicus Counsel for Bob Gualtieri in his Official Capacity as Sheriff of Pinellas County, FL

Richard A. Harrison
Richard A. Harrison, P.A.
400 N. Ashley Drive, Ste. 2600
Tampa, FL 33602
rah@harrisonpa.com
lisa@harrisonpa.com

Amicus Counsel for Richard A. Harrison

/s/ Carol Jean LoCicero
Attorney for the News Media
Coalition parties

CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210

Undersigned counsel hereby certifies that this brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210 and 9.045 inasmuch as the brief is printed in Arial, 14-point font and otherwise meets the requirements of the rules.

/s/ Carol Jean LoCicero
Attorney for the News Media
Coalition parties