IN THE SUPREME COURT OF FLORIDA

CITY OF TALLAHASSEE, FLORIDA,
et. al.,

Petitioners,

vs.

Case No.: SC21-651
DCA Case No.: 1D20-2193

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

Respondents.
_____/

RESPONDENTS' BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The lengthy decision of the First District Court of Appeal contains the relevant facts necessary to examine this Court's jurisdiction. That decision is attached to both Petitioners' briefs on jurisdiction. For purposes of determining jurisdiction, this Court has historically stayed within the four corners of the District Court decision. *Jones v. Fla. Ins. Guar. Ass'n, Inc.*, 908 So. 2d 435, 458 (Fla. 2005)(Cantero, J., dissenting) *citing Hardee v. State*, 534 So. 2d 706, 708 n. * (Fla. 1988). This jurisdictional brief will therefore decline to address the Petitioners' statements of fact and record. That declination will not extend to any future briefing.

SUMMARY OF THE ARGUMENT

This Court should decline to accept discretionary jurisdiction under all claimed authority. The First District's decision does not "construe" the Florida Constitution in the manner envisioned by Article V, Section 3. The constitutional language at issue is precise and must be enforced by all Article V courts. The First District's decision applied, as opposed to construed, the Florida Constitution's language. That language is plain, obvious and exact. Applying

language is not synonymous with construing language. Merely applying or enforcing plain language is not a basis for this Court's jurisdiction.

Nor does the decision expressly affect duties, powers, validity, formation, termination or regulation of any particular class of constitutional officer. The First District's decision therefore separately stands outside the parameters of Article V, Section 3.

As discussed more thoroughly below, Respondents do not believe the First District's decision provides any legitimate basis for this Court to exercise jurisdiction. If this Court were to disagree, the Respondents argue separately that jurisdiction should not be exercised. Petitioners request relief which is simply unobtainable in an Article V court. The Petitioners openly ask this Court to quash the First District's application or enforcement of the plain language found in the Florida Constitution. The Petitioners request this Court take away, through subsequent decision, what the people have provided in the body of their constitution. No Article V court has the power to do what the Petitioners seek.

ARGUMENT

1. This Court is without "expressly construes" jurisdiction to review the First District's decision.

This Court may review any decision of a district court of appeal that expressly construes a provision of the state or federal constitution. Art. V, § 3(b)(3), Fla. Const.

The City's Jurisdictional Brief opens with a "Statement of the Issues". (Jxdn Brief for City of Tallahassee, pp. v). The City's Jurisdictional Brief frames the issues as follows:

> 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.
>
> (Jxdn Brief for City of Tallahassee, pp. v).

In its subsequent three pages, the City's Jurisdictional Brief answers all three questions with plain, straightforward language from the face of the Florida Constitution. As to argued Issue I, the

City's Jurisdictional Brief cites and acknowledges the constitutional text which 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…". Art. I, § 16(e), Fla. Const. (Jxdn Brief for City of Tallahassee, pp. 2).

As to argued Issue II, the City's Jurisdictional Brief cites and acknowledges the constitutional text which sets forth that "…every victim is entitled to the following rights, beginning at the time of his or her victimization…". Art. I, § 16(b), Fla. Const. (Jxdn Brief for City of Tallahassee, pp. 2).

As to argued Issue III, the City's Jurisdictional Brief cites and acknowledges the constitutional texts which grants a victim "[t]he 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 of the victim." Art. I, § 16(b)(5), Fla. Const. (Jxdn Brief for City of Tallahassee, pp. 3).

This Court recently explained the appropriate statutory construction process in *Edwards v. Thomas*, 229 So. 3d 277, 283

(Fla. 2017). The language of the document and a dictionary are the starting points in discerning intent. This Court looks first to the plain and obvious meaning of the words in the statute, which any court may discern from a dictionary. *Rollins v. Pizzarelli*, 761 So. 2d 294, 297–98 (Fla. 2000). If that language is clear and unambiguous and conveys a clear and definite meaning, Florida courts should apply the unequivocal meanings and refrain from examining the various rules of statutory interpretation and construction. *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). If, however, an ambiguity exists, Florida courts are to look to the rules of statutory construction to help interpret legislative intent, which may include the examination of a statute's legislative history and the purpose behind its enactment. *Gulfstream Park Racing Ass'n v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 606–07 (Fla. 2006).

Similarly, when this Court construes a constitutional provision, it will follow construction principles that parallel those of statutory interpretation. *Ford v. Browning*, 992 So. 2d 132, 136 (Fla. 2008) (quoting *Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004)). A question with regard to the meaning of a constitutional provision must begin with the examination of that provision's explicit language.

If that language is "clear, unambiguous, and addresses the matter at issue," it must be enforced as written. Id.

"[W]hen constitutional language is precise, its exact letter must be enforced ….". *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992). Starting with the plain language and a dictionary as the guides for acknowledging intent, "a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied." *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960).

The First District's application of the constitutional provision to the facts of this case—as opposed to its express construction of the provision—does not provide this Court with jurisdiction. *See Rojas v. State*, 288 So. 2d 234, 236 (Fla. 1973). The distinction between the construction and the application of a constitutional provision for purposes of this Court's jurisdiction was well explained by Justice Thornal in *Armstrong v. City of Tampa*, 106 So. 2d 407 (Fla.1958):

> We agree with those courts which hold that in order to sustain the jurisdiction of this court there must be an actual construction of the constitutional provision. That is to say, by way of illustration, that the trial judge must undertake to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision. It is not sufficient merely that the

> trial judge examine into the facts of a particular case and then apply a recognized, clear-cut provision of the Constitution.

Armstrong v. City of Tampa, 106 So. 2d 407, 409 (Fla.1958).

The 1958 *Armstrong* decision interpreted a previous version of the Florida Constitution which allowed appeals to this Court as a matter of right from trial court orders that construed a controlling provision of the Florida or federal constitution. Id. at 408. This Court's 1958 focus on the trial court's actions should be understood in that light. This Court's 1958 examination of "construing" remains instructive to today's arguments.

This Court reaffirmed the *Armstrong* position in *Rojas v. State*, 288 So. 2d 234, 236 (Fla.1973), cert. denied, 419 U.S. 851, 95 S.Ct. 93, 42 L.Ed.2d 82 (1974), when it wrote: "Applying is not synonymous with construing; the former is NOT a basis for our jurisdiction, while the express construction of a constitutional provision is." In a 1991 concurring and dissenting opinion, Justice Grimes further emphasized this distinction. *Schutz v. Schutz*, 581 So. 2d 1290 (Fla. 1991)(Grimes, J., concurring and dissenting). Justice Grimes acknowledged the gulf between applying language and construing the Florida Constitution. He ultimately wrote: "As

tempting as it is to decide a case involving matters of broad general interest, we are limited to taking those cases specifically prescribed by our constitution." Id. at 1294.

For "express construction" jurisdiction to exist, the District Court's decision must explain or amplify some identifiable constitutional provision in a way that is an evolutionary development in the law or that expresses doubt about some legal point. *The Operation & Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 507 (2005)(citing *Ogle v. Pepin*, 273 So. 2d 391 (Fla. 1973) and *Dykman v. State*, 294 So. 2d 633, 634-35 (Fla. 1973)). The word "construction" contemplates an interpretation of the meaning of the language of some constitutional provision which is doubtful either by its own content or as the result of some decision of the Supreme Court of the state or of the United States. *Armstrong v. City of Tampa*, 106 So. 2d 407, 410 (Fla. 1958).

The First District's decision at issue applied the language from the face of the Florida Constitution to the facts of the underlying dispute. The decision did not construe constitutional language. There was no evolutionary development. The only expressions of doubt are the Petitioners' partisan, policy arguments. The decision

does not explain, define or eliminate any valid doubts about what the Florida constitution says. Where the First District's analysis addresses "construe[ing]" the constitutional text: it addresses the construction undertaken by the Circuit Court. The First District's decision does not revolve around explaining, defining or resolving any doubts about constitutional language. The decision merely dispenses with the Petitioner's arguments and the Circuit Court's position.

There is no good faith, text-based argument that the Doe Respondents are not persons. There is no good faith, text-based argument that the Doe Respondents did not suffer threatened physical harm as a result of the commission of recognized felony offenses. There is no good faith, text-based argument that Doe Respondents needed to wait for a criminal prosecution to effect rights that began at the (necessarily earlier) time of their victimization. There is no good faith, text-based argument that the Doe Respondents were subject to having their names disclosed when the Florida Constitution allowed them to prevent the disclosure of information or records that could be used to locate or harass them or their family members, or which could disclose confidential or

privileged information. The language is the language. The language appropriately controls no matter how many times the Petitioners argue that "context" or "intent" would authorize an Article V court to ignore or change it.

Applying the plain, precise language from the operative document to the facts of a given case is a settled legal principle. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). No resolution of constitutional doubt is served by this Court hearing a case, such as the one at bar, that has merely reiterated settled principles. *The Operation & Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 505 (2005). Jurisdiction of the courts of appeal is not to be denied or ignored merely because a case involves the application of unambiguous provisions of the Constitution to a given state of facts. *Armstrong v. City of Tampa*, 106 So. 2d 407, 410 (Fla. 1958).

The Petitioners generally argue that this Court should accept jurisdiction in order to ensure statewide uniformity of decisions. But the Florida District Courts are intended to be courts of last resort. See generally *Pardo v. State*, 596 So. 2d 665, 666-67 (Fla. 1992). The number of news headlines (in the context of a case in which the media

has intervened) has no text-based bearing on this Court's limited jurisdiction. This also holds true in examining the proffered prominence and exuberance of potential amici filers. As held in *Armstrong*:

> We realize the importance of the cause to the particular litigants and can appreciate their desire to have it determined by this court. We are not, however, permitted to indulge ourselves the luxury of being accommodating. We have no discretion in the matter in view of the explicit language of the organic law.
>
> *Armstrong v. City of Tampa*, 106 So. 2d 407, 410 (Fla. 1958).

2. This Court is without "constitutional officer" jurisdiction to review the First District's decision.

This Court may review any decision of a district court of appeal that expressly affects a class of constitutional or state officers. Art. V, § 3(b)(3), Fla. Const.

In order to vest this Court with jurisdiction because the District Court decision affects a class of constitutional or state officers, the decision must directly and, in some way, exclusively affect duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state offices, and the decision must be one that does more than simply modify or construe or add to case law.

Spradley v. State, 293 So. 2d 697 (Fla. 1974).

The First District's decision does not explain any impact on any class of constitutional officers. The argument in the Media's Jurisdictional Brief is that the opinion could somehow inherently affect a class of officers without expressing any intention to do so. Such an outcome is not express and is not subject to review by this Court. Each of the provisions in Article V, Section (b)(3) requires that the basis for jurisdiction be "expressed" in the District Court decision. *Wheeler v. State*, 296 So. 3d 895, 896 (Fla. 2020). Inherent or possible effect simply does not rise to the level of invoking this Court's jurisdiction.

3. Even if this Court were to find that it has a basis to accept discretionary jurisdiction: this Court should decline to so exercise.

What the Petitioners attempt to do is invite this Court to re-write the Florida Constitution. The Florida Constitution defines crime victims 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.". Art. I, § 16(e), Fla. Const. The Petitioners want this Court to re-write that language to include a carve-out for on-duty police officers. In the alternative, Petitioners may desire a carve-out for any on-duty public employee.

The Florida Constitution allows that "…every victim is entitled to the following rights, beginning at the time of his or her victimization…". Art. I, § 16(b), Fla. Const. The Petitioners want this Court to completely re-write that language and move the starting point to the (necessarily later) point at which a criminal prosecution is commenced. This re-write could potentially imperil certain victims in providing victims of dead or un-apprehended criminals with less protection than those who are victimized by living criminals who are swiftly apprehended. Such a re-write would also preclude the constitutional protections of the relevant section if intervenor news media members have already published and made public information that could only be prevented from disclosure at their suggested, later point. When a prosecution would "commence" is also left unsaid. The Petitioners fail to propose whether, under their re-write, a criminal prosecution would "commence" upon investigation, arrest, formal charging or at some other point. All that is certain is that the

point would be later than what is set out in the language of the document.

The Florida Constitution allows victims "[t]he 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 of the victim." Art. I, § 16(b)(5), Fla. Const. The Petitioners want this Court to re-write that language to exclude the first and necessary piece of information which could disclose confidential or privileged information: the crime victims' names.

This Court is obliged to interpret and apply constitutional amendments in accord with the intention of the people of this state who enacted them. This Court has historically done so. See generally *Edwards v. Thomas*, 229 So. 3d 277, 282 (Fla. 2017).

> Hence, what the Legislature has given through its enactments and the courts have enforced through their decisions, the people can take away through the amendment process to our state constitution. Moreover, what the people provide in their constitution, the Legislature and the courts may not take away through subsequent legislation or decision.
>
> *Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008) (*quoting Florida Hosp. Waterman, Inc. v. Buster*, 932 So. 2d 344 (Fla. 2006)).

The underlying purpose of the Petitioners' quest for jurisdiction is to achieve a re-write of the relevant constitutional language. This is constitutional language which Florida voters recently passed via a supermajority. The remedy sought is one which this Court is without authority to provide. This Court long ago held that "a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied." *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960). Frustrating the will of the voters by seeking a judicial re-write is an improper aim and an improper use of this Court's docket. This Court may come to disagree with Respondents on this brief's jurisdictional arguments. Even in such a scenario: this Court should exercise its discretion and decline jurisdiction. Petitioners' remedies lie in an amendment to the Florida Constitution. A roadmap for a possible amendment is set forth in the text of the First District's decision.

CONCLUSION

It is improper to seek herein a judicial re-write of the Florida Constitution in an attempt to frustrate the will of Florida voters. For

the reasons set forth above, this Court should deny and/or decline to exercise discretionary jurisdiction.

Respectfully submitted;

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CERTIFICATE OF SERVICE AND COMPLIANCE STATEMENT

I HEREBY CERTIFY that a copy of the foregoing has been filed using the Florida ePortal system and **electronic** service has been directed to:

Stephanie Dobson Webster, stephanie@flpba.org; Louis J. Baptiste, lb@swebsterlaw.net; Stephen Webster, sw@swebsterlaw.net; Carol Jean LoCicero, clocicero@tlolawfirm.com; Mark R. Caramanica, mcaramanica@tlolawfirm.com; Phillip J. Padovano, ppadovano@bhappeals.com; Hannah Monroe, hannah.monroe@talgov.com; Cassandra Jackson, cassandra.jackson@talgov.com and Daniela Abratt, dabratt@tlolawfirm.com.

…as well as all other counsel listed on the Florida ePortal system (including all alternate email addresses) on this fourteenth (14th) day of July, 2021.

This brief is filed in compliance with the font requirements of Fla. R. App. P. 9.045(b). However, this brief is filed in noncompliance with Fla. R. App. P. 9.210(a)(2)(A), this computer-generated brief contains according to Microsoft Word, **3,002** words. This brief is submitted with a contemporaneous Motion to File Jurisdictional Brief in Excess of Word Limit.

Respectfully submitted;

/s/ Luke Newman

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