

**In the Supreme Court
State of Florida**

CITY OF TALLAHASSEE, FLORIDA,

Petitioner,

v.

FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., et al.

Respondents.

ON DISCRETIONARY REVIEW OF A DECISION OF
THE FIRST DISTRICT COURT OF APPEAL
L.T. CASE No. 1D20-2193

**AMICUS CURIAE BRIEF OF CITY OF MIAMI CIVILIAN
INVESTIGATIVE PANEL IN SUPPORT OF PETITIONER**

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INTRODUCTION

This proceeding reviews de novo the First District Court of Appeal's overly literal reading of Marsy's Law, codified in Article I, section 16 of the Florida Constitution. *Florida Police Ben. Ass'n, Inc. v. City of Tallahassee*, 314 So. 3d 796, 803 (Fla. 1st DCA 2021) ("FPBA"). The First District failed to interpret key provisions of Marsy's Law in context, thus distorting the constitutional balance in the text between the rights of an accused and those of the accused's victims. This Court should quash the First District's decision and conclude that an officer responding to a crime, who is threatened by an accused, is not automatically a "victim" under Marsy's Law.

STATEMENT OF IDENTITY AND INTEREST OF AMICUS

The City of Miami Civilian Investigative Panel ("CIP") provides for independent and impartial citizens' oversight of the City of Miami Police Department. The CIP provides fair and impartial assessments regarding concerns about police conduct. It provides a balanced judgment of issues and complaints and provides a safe and open environment to express grievances. To that end, the CIP conducts investigations and hearings into allegations of police misconduct, and also conducts monthly and emergency public meetings.

In performing its mandated functions, the CIP prepares documents and holds proceedings, both of which may identify police officers whose conduct is under investigation. The CIP is subject to both Florida's public records laws and Government in the Sunshine laws, and may not withhold from the public information pertaining to any officer's identity.

The primary reason the CIP is effective is because the public perceives the investigation and review process as transparent and relies on the CIP to be objective and forthcoming in ways they perceive other mechanisms, such as internal affairs investigations and litigation, are not. As it is, police officers enjoy heightened protections under the "Police Officers' Bill of Rights," codified at section 112.532, Florida Statutes, in connection with any internal affairs investigation that occurs behind proverbial closed doors. Indeed, the entire process is confidential. § 112.532, Fla. Stat. Federal law and qualified immunity, in turn, protect police officers from liability for alleged civil rights violations in all but the most egregious situations. *E.g.*, *Brosseau v. Haugen*, 543 U.S. 194, 197-98 (2004); *Adams v. Poag*, 61 F.3d 1537, 1543 (11th Cir. 1995).

Police officers enjoy these protections by virtue of exercising the authority of the State in responding to crimes and effecting arrests. The law frequently gives officers the benefit of the doubt,

and rightly so, because of the complexities associated with the performance of their duties. As such, when citizens implement additional police oversight procedures, they do so to maximize transparency in any investigation that might take place when something goes awry. Allowing police officers, whose sworn duty as public servants is to investigate and respond to crimes, to don the robe of “victim” under Marsy’s Law and prevent the public from learning of their involvement in incidents occurring while performing public duties, upends the constitutional provision. It also utterly defeats any transparency and potentially renders civilian oversight a nullity.

SUMMARY OF ARGUMENT

The First District’s interpretation of Marsy’s Law departs from the cardinal rule of constitutional interpretation that text must be interpreted *in context*, and only then does the text reveal the intent of the voters in enacting Marsy’s Law. The First District’s literal reading of isolated phrases in Article I, section 16, ignored abundant context that should have led it to conclude that the invocation of victims’ rights are (i) intended to be balanced against those of the accused, and (ii) dependent on the existence of ongoing “processes” with respect to the accused. A police officer who has

fatally shot a suspect cannot invoke Marsy's Law in order to shield his or her name from public knowledge.

ARGUMENT

I. THE FIRST DISTRICT FAILED TO INTERPRET KEY PROVISIONS OF MARSY'S LAW IN CONTEXT.

A. The standard controlling interpretation of constitutional text.

While the First District correctly articulated the proper standard for interpreting constitutional texts, it did not apply it correctly. This Court has stated that “[t]he words of a governing text are of paramount concern, and what they convey, *in their context*, is what the text means.” *Advisory Op. to the Governor Re: Implementation of Amend. 4*, 288 So. 3d 1070, 1078 (Fla. 2020) (emphasis added) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)).

The First District, however, focused inordinately on an isolated phrase—the definition of “victim”—without considering the broader context, namely, the remainder of Article I, section 16. In fact, the court readily set aside context in favor of a more literal reading divorced from the overall structure of section. *FPBA*, 314 So. 3d at 803 (setting aside that many of the rights a victim enjoys under section 16 are tied to a criminal prosecution and favoring an isolated phrase).

For the reasons argued herein, the First District’s reliance on isolated phrases and excerpting of certain provisions do not support its ultimate conclusion that police officers are entitled to invoke Marsy’s Law as “victims.”

B. The textually articulated purpose of Marsy’s Law.

The First District describes the “express purpose” of Marsy’s Law, as “to preserve and protect’ certain rights of crime victims.” *Id.* at 801. This articulation is incomplete, and what’s missing from the First District’s paraphrase is significant in providing the context for understanding who can be a “victim.”

Section 16(b) provides that every “victim” is entitled to certain “rights” for *specific* purposes:

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. (emphasis added). The rights of “victims,” therefore, do not arise in a vacuum. They arise with respect to three

specific purposes, and *all* of them arise in the context of a prosecution.¹

The ability of crime victims “to achieve justice” is a direct reference to the process by which a charged suspect is made to answer for his or her crime against the victim. It is implausible to think that this articulated “purpose” of Marsy’s Law is some vague reference to broad societal justice. This is confirmed by the second articulated purpose, which unambiguously gives the “victim” “a meaningful role throughout the criminal and juvenile justice systems.” What role does a crime victim have in the criminal justice “system” if there is no prosecution of a defendant because the accused is dead? And the third articulated purpose further elaborates that a “victim’s” rights are of comparable dignity to those of the defendant. What rights does a deceased potential defendant have? A defendant’s rights are associated with the State’s prosecution of him or her. *See* Art. I, § 16(a), Fla. Const. (stating, “[i]n all criminal *prosecutions* the accused shall” have certain enumerated rights) (emphasis added).

¹ By way of reminder, the individuals who would have been the two accused in this instance did not survive the encounter with the officers, and as a result, the State could not prosecute a case. *FPBA*, 314 So. 3d at 797 (noting both interactions resulted in fatalities).

Indeed, the entire structure of section 16 juxtaposes the rights of the accused against the rights of a victim. Even the title, “Rights of accused and of victims,” suggests that a victim’s rights are measured against those of the accused and come into play only when there is an “accused.” The State creates the “accused” only when it decides to prosecute a suspect.

Notwithstanding the three legislatively expressed purposes of Marsy’s Law and the overall structure of section 16 that balances the rights of victims against those of an accused, the First District set aside that context and concluded a prosecution was not necessary because of an isolated, explanatory phrase: “beginning at the time of his or her victimization.” The First District reasoned that because the enumerated rights *arise* at the time of victimization, they may be *asserted* outside the context of a prosecution. *FPBA*, 314 So. 3d at 803. The point in time a right arises and when it may be asserted are self-evidently not the same thing.

The First District asserted, in conclusory fashion, that the rights enumerated in section 16(b)(1)-(5) may be asserted in any context, but that interpretation deletes the three legislative purposes set forth before the enumeration. The court’s analysis ignores that a victim’s “entitle[ment] to the following rights” is preceded by specific purposes, all tied to the State’s prosecution of

an accused. Were this not the case, the constitutional text could have omitted the prefatory statements of purpose and merely stated, “Every victim is entitled to the following rights....”²

Florida courts are not permitted to re-write constitutional or statutory texts in order to interpret them. *Brown v. State*, 358 So. 2d 16, 20 (Fla. 1978); *Endsley v. Broward County*, 189 So. 3d 938 941 (Fla. 4th DCA 2016); *Smith v. Crawford*, 645 So. 2d 513, 525 (Fla. 1st DCA 1994) (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). Neither are they permitted to interpret constitutional texts by rendering portions of the texts meaningless or superfluous. *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgm’t Dist.*, 48 So. 3d 811, 832 (Fla. 2010) (“It is a fundamental rule of construction of our Constitution that a construction which renders superfluous, meaningless or inoperative any of its provisions should not be adopted....”) (quoting *Burnsed v. Seaboard Coastline R.R.*,

² The rights enumerated in Article I, section 16(b)(6), available “upon request,” *all* expressly relate to a criminal prosecution of the accused. Art. I, § 16(b)(6) (listing rights associated with notice of and appearance at hearings, being heard at hearings relating to pre-trial release, conferring with the prosecutor, providing information to be considered in sentencing recommendations, receiving presentencing reports, being informed of conviction, sentence or other disposition, and being informed of post-conviction processes and clemency).

290 So. 2d 13, 16 (Fla. 1974); *Strand v. Escambia Cnty.*, 992 So. 2d 150, 163 (Fla. 2008) (same holding).

The First District’s interpretation of the phrase “beginning at the time of his or her victimization,” divorced as it was from the explicit legislative purposes that precede it, runs afoul of the foregoing tenets of constitutional interpretation. Such an interpretation fails to consider what the plain words convey *in their context*. *Advisory Op. to the Governor Re: Implementation of Amend. 4*, 288 So. 3d at 1078.

Other provisions within Article I, section 16 similarly provide context and support the conclusion that a victim’s rights under Marsy’s Law are tied to a criminal prosecution. For example, Article I, section 16(c), indicates that the victim or his or her attorney “may assert and seek enforcement of the rights enumerated in this section ... in any trial or appellate court ... with *jurisdiction over the case*, as a matter of right.” Art. I, § 16(c), Fla. Const. (emphasis added). The only reasonable interpretation of the use of the definitive article “the” before “case” is as a reference to the State’s prosecution of the accused. Absent the existence of “the case,” a

trial court has no jurisdiction to rule upon a victim's claimed rights under Marsy's Law.³

Similarly, section 16(d) states, "The provisions of this section *apply throughout criminal and juvenile justice **processes**...*" Art. I, § 16(d), Fla. Const. The reference to "this section" is a reference to section 16. Therefore, the provisions relating to victims' rights "apply" in criminal justice processes, *i.e.*, the proceedings leading to the charging, prosecution and sentencing of the accused. If those processes are never commenced, because, for example, the suspect is killed, then the rights may not be asserted.

The CIP does not dispute that, taken literally, the definition of "victim" in section 16(e) is exceedingly broad and *would*, divorced of the context of the other provisions in section 16, encompass an officer who "suffers direct or threatened physical ... harm" from a suspect that is being pursued or apprehended. And, from a textual perspective, the conclusion regarding proper interpretation in this case *might* be different if the suspects had survived the encounters

³ It does not appear that the parties raised this jurisdictional concern in the trial court, but it remains a concern even now. *Page v. Deutsche Bank Trust Co. Americas*, 308 So. 2d 953, 960 (Fla. 2020) ("Subject-matter jurisdiction is universally acknowledged to be never waivable."). No other provision in Article I, section 16, allows a victim to enforce his or her rights except section 16(c).

and had actually been charged (for example, with battery on a law enforcement officer), at which point the suspects would be the “accused” and the officers the victims of the battery. But that is not what occurred here. The deaths of the suspects and the absence of any prosecution terminated all “processes” in which any victim might assert the rights afforded by Marsy’s Law.

II. THE ADVERSE IMPLICATIONS OF THE FIRST DISTRICT’S INTERPRETATION FURTHER MILITATE AGAINST ITS ENDORSEMENT BY THIS COURT.

The implications of the First District’s decision are far more dire and extend considerably beyond merely withholding from the press the name of a police officer involved in a deadly shooting. Most conspicuously, nothing in the First District’s decision suggests *any* boundaries to an officer’s right to insist that his or her name be withheld. Under the First District’s literal interpretation analysis, untethered as it was from an ongoing prosecution, an officer would have the right *in perpetuity* and under all circumstances to refuse to have his or her information disclosed to anyone. Nothing under the First District’s reasoning would ever create the possibility (or opportunity) for family members of the deceased suspects to learn the names of the police officers who shot and killed their family members. As long as the officers insisted, their identities could be withheld.

Perhaps sensing this and other societal concerns, the First District sought to reassure the parties and the world at large: “This does not mean that the public cannot hold law enforcement officers accountable for any misconduct.” *FPBA*, 314 So. 3d at 802. It then concluded that internal affairs and grand jury investigations would not be impeded by an officer’s invocation of his or her rights under Marsy’s Law. *Id.* The court, however, failed to ground its conclusion on any constitutional text. In fact, reading the text literally, as the First District did, there are *no exceptions* to an officer’s ability to have the identifying information withheld. There is no internal affairs “carve out” or grand jury exception.⁴

If a grand jury were impaneled to investigate the shooting incidents (or if the state attorney sought to learn the identity of the officers to investigate and potentially issue an indictment), and the officers filed suit to prevent their department’s disclosure of their names, nothing in the First District’s decision would warrant a different conclusion from the one it reached with respect to the

⁴ The ostensible availability of the internal affairs “remedy” ignores that whether an internal affairs investigation is commenced in the first place is a decision that is completely screened from the public.

media's request for the information.⁵ Based on the First District's reasoning, there is no basis to conclude that Florida's voters intended to create an exception for internal affairs and grand jury investigations.

Marsy's Law was intended to create a balance between the rights of an "accused" and the victims of the accused. Art I, § 16(b) (indicating a purpose of Marsy's Law as "ensur[ing] that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants"). A police officer threatened by a now-deceased suspect lacks an "accused" against whom his or her rights may be balanced. The contemporaneous public literature advocating for adoption of Marsy's Law in Florida further elucidated that the adoption was intended to protect crime victims within the criminal justice *process*. For example, the proponents of the constitutional amendment stated:

We can all agree that no rapist should have more rights than the victim. No murderer should be afforded more rights than the victim's family. Marsy's Law would ensure

⁵ The First District's observation that an "accused" cannot invoke victim's rights under Marsy's Law, 314 So. 3d at 802, becomes relevant only if, at some point in the process, the officers' names are disclosed over the officers' invocation of section 16(b)(5) and they are charged.

that victims have the same co-equal rights as the accused and convicted—*nothing more, nothing less*. ... The pain and suffering Marsy’s family endured after her death is typical for family members of murder victims. They were not informed Marsy’s murderer had been released because the courts and law enforcement, though well-meaning, had no obligation to keep them informed. While criminals have more than 20 individual rights spelled out in the U.S. Constitution, the surviving family members of murder victims have none.

See https://www.marsyslawforfl.com/about_marsys_law (emphasis added), last accessed March 11, 2022.

Nothing about the foregoing description of concerns about victims’ rights—and the careful balancing of the victims’ and accused’s rights, which is unquestionably reflected in the text of section 16—would remotely suggest that the identity of an officer involved in the shooting death of a suspect should be shielded by Marsy’s Law.⁶

CONCLUSION

If the definition of “victim” in Article I, section 16(e), existed in a vacuum, this case would be remarkably simple to decide. But, it

⁶ While it is ultimately irrelevant to the textual argument set forth herein, the CIP has been unable to find a single contemporaneous article, report, or piece of advocacy relating to the proposed adoption of Marsy’s Law in 2018 suggesting that the constitutional amendment was needed (or intended) to allow police officers involved in deadly, on-duty shootings to hide their names (and involvement in those incidents) from the public.

doesn't. That definition, which drove the First District's reasoning, exists in an elaborate context that involves the rights of both the accused and the accused's victims; and that context reflects that the primary concern of Marsy's Law is to protect victims' rights in the context of the State's *process* of arresting, charging, prosecuting, convicting, sentencing and incarcerating the accused. The constitutional provision should not be read to encompass a police officer's efforts to shield his or her name from the public after being involved in an on-duty, deadly shooting.

The CIP respectfully requests that the Court quash the First District's decision below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limitation requirements of Florida Rule of Appellate Procedure 9.210(a)(2)(B). This brief contains 3,094 words.

/s/ Edward G. Guedes

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