

---

**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., et al.,

Respondents.

---

On Review from the First District Court of Appeal

---

**Brief of Amicus Curiae Volusia Sheriff  
Michael J. Chitwood in Support of Petitioners**

Peter A.D. McGlashan  
GENERAL COUNSEL  
VOLUSIA SHERIFF'S OFFICE  
Florida Bar No.: 0990477  
123 West Indiana Avenue  
DeLand, FL 32720-4613  
Telephone (386) 736-5961  
Facsimile (386) 822-5074  
pmcglashan@vcso.us  
mcarlin@vcso.us  
*Attorney for Volusia County  
Sheriff Michael J. Chitwood*

RECEIVED, 03/18/2022 05:05:20 PM, Clerk, Supreme Court

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....ii

TABLE OF CITATIONS .....iii

STATEMENT OF IDENTITY AND INTEREST IN THE CASE .....1-3

SUMMARY OF THE ARGUMENT .....3-4

ARGUMENT .....4-10

    I.    Marsy’s Law never intended a law enforcement officer  
          who uses deadly force while performing official duties  
          to be a “victim” .....4

    II.   Florida open records law, accountability and  
          Transparency require the release of the name and  
          identity of the involved law enforcement officer .....7

CONCLUSION .....10

CERTIFICATE OF SERVICE .....11-13

CERTIFICATE OF COMPLIANCE .....13

**TABLE OF CITATIONS**

**CASES**

Dep't. of State v. Hollander,  
256 So.3d 1300 (Fla. 2018).....5

Fla. Police Benevolent Ass'n., Inc. v. City of Tallahassee,  
314 So. 3d 796 (Fla. 1st DCA 2021) .....8

**STATUTE**

Chapter 119 .....7

**CONSTITUTIONAL PROVISIONS**

Art. § 24, Fla. Const. ....4

Art. § 16, Fla. Const. ....4

Art. § 24(a), Fla. Const. ....7, 9

## **STATEMENT OF IDENTITY AND INTEREST IN THE CASE**

This brief is submitted by Michael J. Chitwood, in his official capacity as Sheriff of Volusia County. Sheriff Michael J. Chitwood was elected Volusia County's sheriff in 2016, and re-elected without opposition in 2020. Prior to 2016, Sheriff Chitwood served 10 years as chief of the Daytona Beach Police Department and 1 year as chief of the Shawnee, Oklahoma, Police Department. He has been a law enforcement officer for more than 30 years, dating back to his time with the Philadelphia, Pennsylvania Police Department, where he achieved the rank of lieutenant.

Sheriff Chitwood is a graduate of the 204th session of the FBI National Academy in Quantico, Va. and the Northwestern University School of Police Staff and Command. He serves on the board of directors of the Police Executive Research Forum (PERF), an independent research organization that focuses on critical issues in policing such as reducing police use of force, developing community policing and problem-oriented policing, using technologies to deliver police services to the community, and evaluating crime reduction strategies.

Volusia Sheriff's Office ("VSO") is the independent constitutional sheriff's office of Volusia County, Florida. VSO is accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), and employs more than 800 personnel, including approximately 400 sworn deputies. Under the leadership of Sheriff Chitwood, VSO makes a concerted effort to be transparent and accountable to the citizens that it provides law enforcement services to, especially as it relates to de-escalation, deputy-involved shootings, and the use of body worn cameras (BWC). VSO has in the past, at the earliest opportune time, disclosed the names of deputies involved in shootings in their official capacity.

VSO is interested in this appeal because it believes that the citizens should know the names of deputies who are involved in the use of deadly force while carrying out their official duties.

This disclosure of the deputies' names not only promotes transparency and accountability but helps to rebuild the eroding public trust in law enforcement.

VSO desires to continue disclosing the names of deputies who are involved in the use of deadly force while in the execution of their

official duties in order to continue promoting transparency and accountability.

### **SUMMARY OF ARGUMENT**

Modern policing, even more so in the aftermath of highly publicized police shootings throughout the country, requires transparency and accountability from law enforcement and its leaders. A law enforcement officer who uses deadly force while performing official duties was never contemplated and should never be considered a “victim” under Marsy’s Law. The Petitioners have fully briefed the interpretations that the Court should take in resolving this issue of great public importance. Sheriff Chitwood, a proponent of Marsy’s Law, agrees with those legal arguments about how Marsy’s Law should be interpreted.

What he adds for the Court’s consideration is a law enforcement perspective that transparency and accountability are imperative in rebuilding public trust in law enforcement. Extending the protections of Marsy’s Law to law enforcement officers performing their official duties would further erode, rather than rebuild, that trust. Marsy’s Law was designed to further public trust in the criminal justice system, not to erode it.

Timely, open, and honest disclosure of information, including the names of the officers involved in use of force incidents, conveys a sense of transparency and accountability which engenders public trust. This timely release of information also furthers the public's constitutional right to access any public record, not confidential or exempt, which is connected to any official government business as guaranteed by Article I, section 24, of the Florida Constitution.

### **ARGUMENT**

#### **I. Marsy's Law never intended a law enforcement officer who uses deadly force while performing official duties to be a "victim."**

Article I, section 16, Florida Constitution (Marsy's Law) guarantees a panoply of rights to victims of the commission or attempted commission of a crime or delinquent act. Within Marsy's Law, Article I, section 16(e) 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. The term "victim" includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or

potential conflict with the interests of the victim.  
The term “victim” does not include the accused.

A law enforcement officer is not specifically included or excluded from the definition of victim. At best, the definition is ambiguous and subject to judicial interpretation. This Court has previously commented that the definition of victim might have ambiguous legal effect regarding whether corporations were included in the definition. Dep’t. of State v. Hollander, 256 So-3d 1300, 1311 (Fla. 2018). In interpreting the definition in the context of this case, the Court should consider that the deputy who uses deadly force while performing official duties was never contemplated and should never be contemplated as a “victim” under Marsy’s Law. Deputies are fully aware before and after they become deputies that, although relatively rare, they may face circumstances that dictate that they use deadly force. This is a risk that deputies accept when they take the oath to serve and to protect.

Law enforcement officers are paid by the taxpaying public to protect and serve the community. Law enforcement officers are assigned a law enforcement vehicle, issued uniforms with their names prominently displayed, and equipped with all requisite law

enforcement gear, to go out each day to perform the increasingly challenging job of serving and protecting the community. A law enforcement officer's job is and has always been one of the most difficult and challenging jobs. Law enforcement officers understand and appreciate the risks and challenges of carrying out the duties to protect and serve. A necessary part of protecting and serving is being accountable to the community that the officer serves. A law enforcement officer, knowing the risks of the job, should not be able to shield his or her identity from the public when there is a use-of-force incident while performing official public duties.

Marsy's Law was intended to apply to victims of crimes, attempted crimes, or delinquent acts. These are the very same crimes, attempted crimes, or delinquent acts that law enforcement officers are authorized and sworn to investigate, apprehend suspects, and file charges where appropriate. Marsy's Law was never intended to apply to law enforcement officers in the execution of their official duties as law enforcement officers. Law enforcement officers who use deadly force in the execution of their lawful duties stand in the position of the "accused."

The law enforcement officer does not suffer a direct physical harm under Marsy's Law, even if force is used against the deputy. The person/suspect who the deadly force is used against would be the "victim" of the deputy's use of force.

Law enforcement officers involved in a use-of-force incident are entitled to due process. Sheriff Chitwood supports any deputy who lawfully uses force according to law and policy and ensures that they receive due process protections. They simply are not entitled to additional protections from Marsy's Law.

**II. Florida open records law, accountability, and transparency require the release of the name and identity of the involved law enforcement officer.**

Critical incidents like a law enforcement officer's use of deadly force during the execution of official duties require law enforcement leaders to be transparent and accountable. A community's response to a law enforcement officer's use-of-force is largely determined by the timely, open and honest disclosure of information, including the name(s) of the officer(s) involved in the use of force incident.

Article I, section 24(a) authorizes the public's access to information connected with government activity. The Public Records Act, Chapter 119, Florida Statutes, also declares Florida's policy to

have all government records open for personal inspection and copying by the public and makes it every agency's duty to ensure access to public records. Nothing is more fundamental in a citizen's access to government records, especially when a law enforcement officer uses deadly force while performing official duties, than being able to obtain, in a timely manner, all the information that allows the community to engage in the process of holding the agency and the officer involved accountable. Part of the accountability process for the officer involves the due process protections afforded so that a finding can be ultimately made as to whether the use of deadly force was authorized, justified, or excessive.

The First District indicated that the public still gets an opportunity to hold the law enforcement officers accountable even if their identity is shielded under Marsy's Law because internal affairs investigations continues, grand jury proceedings are not impeded, and a prosecutor is not prevented from determining if the officer should be charged. Fla. Police Benevolent Ass'n., Inc. v. City of Tallahassee, 314 So. 3d 796, 802 (Fla. 1st DCA 2021). This may be true but it does not address the bedrock issue of public accountability; that is, the public's ability to independently evaluate

the facts and circumstances surrounding the law enforcement officer's use of deadly force. This independent evaluation allows public oversight of the agency's internal affairs investigation findings, any findings by a grand jury, and any determination by a prosecutor. The public's ability to access timely disclosed information including the law enforcement officer's name is in keeping with the guarantees of Article I, section 24(a) and Florida's open records law under the Public Records Act.

To shield the identity, including the name of a law enforcement officer involved in an on-duty use of deadly force incident, would be inconsistent with the guarantees of open access to government records and would exclude the public from conducting its own independent evaluation of the facts and circumstances. It would also deny law enforcement leaders the opportunity to engage in the timely, open and honest disclosure of information which conveys a sense of transparency and engenders public trust. This is a key part of the accountability process for a law enforcement agency. The law enforcement leader, must be timely, open, and honest with the disclosures after a law enforcement officer is involved in the use of deadly force. To do otherwise would further erode the public's trust

in its law enforcement agency, thereby making it all the more difficult for law enforcement officers to do their job of protecting public safety.

## **CONCLUSION**

A law enforcement officer who uses deadly force while performing official duties was never contemplated as a “victim” under Marsy’s Law. Marsy’s Law was never intended to shield the name and identity of a law enforcement officer involved in a use of deadly force incident.

Likewise, the public has a constitutional right to access government records. This access is critical when a law enforcement officer uses deadly force during the performance of official duties. It is imperative in the accountability process for the law enforcement officer and the law enforcement agency. The law enforcement leader, to prevent further erosion of public trust in law enforcement, must timely, openly, and honestly disclose information, including the law enforcement officer’s name.

To let the First District ruling stand is to shroud in secrecy a law enforcement officer’s most critical action, the use of deadly force, deny law enforcement leaders the opportunity to be transparent and

accountable to the public, and further erode public trust in law enforcement.

**CERTIFICATE OF SERVICE**

I certify that on March 18, 2022, I electronically filed this motion with the Clerk of the Court by using the Florida Courts E-Filing Portal and that a true and correct copy of this brief was served by E-Mail on below listed counsel:

**CASSANDRA K. JACKSON**

Florida Bar No. 650757  
**HANNAH D. MONROE**  
Florida Bar No. 102762  
CITY ATTORNEY'S OFFICE  
300 S. Adams Street  
Box A-5 Tallahassee, FL 32301  
Tel.: (850) 891-8554  
cassandra.jackson@talgov.com  
hannah.monroe@talgov.com  
*Counsel for Petitioner*

**PHILIP J. PADOVANO**

Florida Bar No. 157473  
**JOSEPH T. EAGLETON**  
Florida Bar No. 98492  
BRANNOCK HUMPHRIES &  
BERMAN  
131 N. Gadsden Street  
Tallahassee, FL 32301  
Tel. (813) 223-4300  
ppadovano@bhappeals.com  
jeagleton@bhappeals.com  
*Counsel for Petitioner*

**STEPHEN G. WEBSTER**

**LOUIS J. BAPTISTE**  
THE LAW OFFICES OF  
STEPHEN G. WEBSTER LLC  
1615 Village Square Blvd.  
Suite 5  
Tallahassee, FL 32309  
sw@swebsterlaw.net  
lb@swebsterlaw.net  
*Counsel for Respondents*

**LUKE NEWMAN**

LUKE NEWMAN, P.A.  
908 Thomasville Road  
Tallahassee, FL 32303  
luke@lukenewmanlaw.com  
*Counsel for Respondents*

**STEPHANIE DOBSON  
WEBSTER**

FLORIDA POLICE  
BENEVOLENT  
ASSOCIATION  
300 E. Brevard Street

Tallahassee, FL 32301  
stephanie@flpba.org  
*Counsel for Respondents*

**CAROL JEAN LOCICERO**  
MARK R. CARAMANICA  
THOMAS & LOCICERO PL.  
601 South Boulevard  
Tampa, FL 33606  
clocicero@tlolawfirm.com  
tgilley@tlolawfirm.com  
mcaramanica@tlolawfirm.com  
dlake@tlolawfirm.com

**DANIELA B. ABRATT**  
THOMAS & LOCICERO PL.  
915 Middle River Drive, Ste. 309  
Fort Lauderdale, FL 33304  
dabratt@tlolawfirm.com  
*Counsel for Intervenors,  
News Media*

**EDWARD L. BIRK**  
MARKS GRAY, P.A.  
1200 Riverplace Blvd., Ste. 800  
Jacksonville, FL 32201  
Tel: (904) 398-0900  
ebirk@marksgray.com  
sstrong@marksgray.com  
*Counsel for Amici Curiae  
Reporters Committee for  
Freedom of the Press, Radio  
Television Digital News  
Association, Poynter Institute,  
Society of Professional Journalists  
Florida Chapter, Florida Center  
for Government Accountability,  
and Asian American Journalists  
Association Florida Chapter*

**EDWARD G. GUEDES**  
Florida Bar No. 768103  
**JOHN J. QUICK**  
Florida Bar No. 648418  
WEISS, SEROTA, HELFMAN,  
COLE & BIERMAN, P.L.  
2525 Ponce de Leon Blvd.,  
Ste. 700  
Coral Gables, FL 33134  
Tel: (305) 854-0800  
eguedes@wsh-law.com  
szavala@wsh-law.com  
jquick@wsh-law.com  
lmartinex@wsh-law.com  
*Counsel for City of Miami  
Civilian Investigative Panel*

**SHANNON K. LOCKHEART**  
**PAUL G. ROZELLE**  
PINELLAS COUNTY SHERIFF  
General Counsel's Office  
10750 Ulmerton Road  
Largo, FL 33778  
Tel: (727) 582-6274  
slockheart@pcsonet.com  
prozelle@pcsonet.com  
rreuss@pcsonet.com  
*Attorneys for Bob Gualtieri  
in his Official Capacity as  
Sheriff of Pinellas County,  
Florida*

**RICHARD A. HARRISON**

RICHARD A. HARRISON, P.A.  
400 N. Ashley Drive  
Suite 2600  
Tampa, FL 33602  
rah@harrisonpa.com  
lisa@harrisonpa.com  
sstrong@marksgray.com  
*Counsel for Amicus Curiae*  
*Richard A. Harrison*

**CARRI S. LEININGER**

Florida Bar No.: 0861022  
**JAYME S. SELLARDS**  
Florida Bar No.: 60066  
Williams, Leininger &  
Cosby, P.A.  
11300 US Highway One  
Suite 300  
North Palm Beach, FL 33408  
(561) 615-5666  
eService@wlclaw.com  
*Counsel for Amicus Curiae*  
*Palm Beach County*  
*Sheriff's Office*

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this computer generated brief complies with the font requirements of Rule 9.045(b) and the word limitation requirements of Rule 9.270(b), of the Florida Rules of Appellate Procedure. This brief uses Bookman Old Style 14-point font and contains 2,625 words.

/s/ Peter A.D. McGlashan  
Peter A.D. McGlashan  
Florida Bar No. 0990477

