SUPREME COURT OF FLORIDA

CITY OF TALLAHASSEE, FLORIDA, et al.,

Petitioner,

v.

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

Respondents.

Case No.:
SC21-651

Lower Tribunal No(s).:
D20-2193;
37 2020 CA 001011

ACLU OF FLORIDA'S AMICUS CURIAE BRIEF

SUPPORTING PETITIONER CITY OF TALLAHASSEE AND INTERVENORS NEWS MEDIA COALITION

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ACLU'S IDENTITY & INTEREST

American Civil Liberties Union of Florida, Inc. (ACLU) is a statewide, nonprofit, and nonpartisan organization dedicated to defending the principles embodied in the State and Federal Constitutions and our nation's civil rights laws. For decades, the ACLU has been at the forefront of efforts to ensure the public may access records and information necessary for government accountability. The ACLU has a significant interest in ensuring the public may access records of possible police misconduct and learn the identity of individual officers involved. As part of its mission, the ACLU seeks to hold public officials, including police officers, accountable for misconduct.

INTRODUCTION & SUMMARY OF ARGUMENT

The decision below held that Article 1, Section 16(b)(5), a provision of the victim's rights amendment approved by Florida voters in 2018, vested a subset of law enforcement officers with a perpetual "privacy" right, entitling them to compel their employing agencies to keep secret basic, vitally important information about their exercise of governmentally conferred powers to use violence and lethal force against citizens. *Florida Police Benevolent Ass'n, Inc. v. City of Tallahassee*, 314 So. 3d 796 (Fla. 1st DCA 2021). That ruling is startling in many ways, and it must be overturned because it imposes an interpretation that the Constitution's text plainly forecloses.

The legal right the First District held Marsy's Law to have enacted is vast in its sweep. It applies irrespective of the claimed injury, if any, without any actual or claimed threat of disclosure-based harm, let alone one based on "victim status," and it works a dramatic break from the law that would otherwise govern (and foreclose) respondents' claim. For three decades, Article I, Section 24(a) has made such information available, as of right, to every Floridian, and decades of earlier case law established that individual public employees—and police officers specifically—have no personal "privacy" interest in their official acts, rules reflecting the social reality that

officers do not perform their job duties secretly or anonymously, but rather in public places, wearing name-badges that are readily observed and recorded, as of right, by citizens.

The departure from legal tradition the First District imputed to Marsy's Law was unexplained. No one in the deliberations before the Constitution Revision Commission, the ensuing litigation, or the public debate said that these rules would or should be modified, let alone jettisoned. (The Amendment's original sponsor, Commissioner and Pasco Sheriff Chris Nocco, explained that protections were needed because crime victims' role in the criminal justice system—in contrast to "cops [like himself]," who "wear a uniform [and] go to work every day"—is unchosen; their victimization "thrust[s them] into [a] system" that itself subjects them to unwelcome attention and disrespect, Transcript., Fla. Const. Rev. Comm'n Meeting, March 20, 2018, pp. 326) ("CRC Tr."). And the regime announced is *inexplicable*: Under the First District's decision, the same ostensibly "private" identifying information will regularly be *disclosed* in *the same* criminal cases, through operation of provisions guaranteeing rights to conduct depositions and compel in-court testimony. But it will *remain secret* in cases where the person with whom an officer interacted was a juvenile or is not put on trial (including, because, as here, that person was killed).

And it would be strange to not take note of the societal context in which the case arises. The District Court announced this rule of extreme government secrecy on matters of police behavior at a historic moment when citizens and communities across Florida and the Nation have been confronted with unprecedented evidence of conscience-shocking police lawlessness and of abject failures of accountability. These documented abuses are an affront to justice and of the rule of law; and the strains they have caused between communities and police departments, and their corrosive effect on law enforcement's ability to discharge its public safety responsibilities, surely account for the unusually broad spectrum of parties before the Court here.

The District Court did not deny or minimize any of this. Rather, it held that its rule followed from the constitutional text; from this Court's precedents directing courts to give effect to unambiguous plain meaning of constitutional language, not policy-based "carve[] out[s]"; and from the principles of popular sovereignty these rules implement. On the First District's account, the unlimited right it recognized followed inexorably from the plain—and unqualified—language of the operative provisions. The court held respondents are "crime victim[s]" under the constitutional definition in Section 16(e), and the anonymity they seek comes within the broad language

of the privacy-impingement right, Section 16(b)(5), that crime victim "status" confers. *FPBA*, 314 So. 3d at 801.

The ACLU does not contend that the District Court erred in holding that the case must be decided based on the meaning of constitutional text and does not ask the Court to overturn the decision because of its consequences and social import, or the anomalies in its operation. Rather, reversal is warranted because the decision rests on a serious misunderstanding of the principles of textual supremacy that the court recognized to govern. These errors caused the First District to impose a construction of Marsy's Law's nondisclosure right that the constitutional text does not permit.

This brief proceeds in two parts. *First*, it explains that Section 16(b)(5) cannot be read as the District Court did, as enacting a regime where every person who achieves "victim status" under the Section 16(e) definition has an unqualified, perpetual Section 16(b)(5) right to prevent disclosure (by anyone) of any information, including their identity, that might enable an unwelcome intrusion on seclusion, for any reason—including reasons unrelated to the claimant's role as a victim in the criminal justice system.

The First District's error follows from its failure to perceive and enforce a limitation clearly expressed in the text of Marsy's Law and applicable to *all*

its right-granting provisions and to *anyone*, private-citizen victim or public-employee, who *satisfies* the definition: The Amendment's protections extend *only to harms based on the person's role as a crime victim in the criminal justice system*. This nexus requirement explains why no crime victim has a Marsy's Law right to demand "fair treatment" from *an employer*, despite the absence of limiting language in Section 16(b)(1). And it controls this case. The potential incursion on privacy from which respondents and others in their position seek protection is based not on their asserted *role* as crime victims in the criminal justice system or on any "crime victim status" conferred by Section 16(e), but rather on their fundamentally distinct role as law enforcers.

When a constitutional provision's words do not address the fundamentals of its scope and operation, the plain-meaning rules do not support reading the provision as unbounded, and they forbid courts from ignoring text in other integrally related provisions that speak clearly to those matters.

Second, this brief shows that the principles for answering questions that arise from the interaction of multiple constitutional provisions, which require that courts adopt harmonizing constructions—ones that most logically and coherently effectuate the provisions' textually expressed

purposes—also strongly condemn the First District's rule. Strictly speaking, the rules governing such conflicts, though much ventilated here, are not necessary to this case's resolution, because the City of Tallahassee would release the information, irrespective of its Section 24 duty, once it is settled that Section 16(b)(5) does not compel secrecy. But those principles help put the errors of the District Court's interpretation in sharp relief. The rule the court announced does not "fit comfortably" in the legal tradition and *corpus juris*. Nor could it possibly be called a harmonization. The regime it yields for determining whether facts about a use of force are public or secret is not logical and consistent; but dependent on circumstances wholly unrelated (in some instances, inversely related) to any victim's rights *or* public accountability or even police-officer privacy interest.

ARGUMENT

I. The Constitutional Text Cannot Be Read to Confer the Strange and Unrestrained Right of Official-Anonymity Recognized Below.

The District Court held that Marsy's Law grants police officers an individual, personal right to prevent the public from knowing who used force against citizens whenever the officer faced any threat of any harm in performing their law enforcement duties. Under this Court's rules governing constitutional interpretation, that conclusion is untenable. It is plain from the

text of Marsy's Law that it is not and cannot fairly be read as establishing a regime where "victim status" itself carries an absolute right, good for all time, to prevent every unwelcome revelation of identifying information. Accordingly, this Court is bound to conclude that "[t]he people of Florida" ***did not*** "grant[] [respondents] *this type* of protection ... when they approved Marsy's Law," 314 So. 3d at 804 (emphasis added).

For example, even if "information that could be used to locate..." unambiguously meant a person's "name," no one could fairly conclude that "victim status" conferred based on a 2019 car theft granted a person a right of anonymity, enforceable three years later, against anyone (or all government agencies). Or that the Constitution would oblige a court to bar a school district from naming a bus driver involved in a collision, if she had been victimized by internet fraud three *hours* earlier. Nor would the anti-disclosure protection entitle someone with "victim status" to suppress information based on an assertion that its release would be useful in an ex-spouse's efforts "to locate" him to recover delinquent child-support payments.

These manifest difficulties are not particular to Section 16(b)(5). Consider the provisions that endow "every victim" (from "the time of ...

victimization") with rights to be "free of intimidation," § 16(b)(3) and "be treated with fairness," § 16(b)(2). On the District Court's understanding, that "unambiguous plain language" means that a mugging victim in a prior event would have a right to sue *her employer*, §16(c)), to contest unrelated, unfair treatment or intimidation on the job. Likewise, a court would be obliged to give Section 16(b)(1) a "plain meaning" interpretation, such that a person who "suffer[ed] psychological harm as a result of [witnessing an attempted bank robbery]," *id.* § 16(e), would enjoy a perpetual, judicially enforceable right to be treated with "respect" by everyone (or at least in future encounters with law enforcement). No. A person's rights under Marsy's Law depends on a victim-role nexus.

These examples spotlight the central error in the District Court's understanding of Marsy's Law—and its understanding of the controlling interpretive principles. Constitutional language "must be enforced as written," 314 So. 3d at 800 (quoting *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (citation omitted)), when it is clear, unambiguous, *and* it "addresses the matter in issue," *id.* But fidelity to plain meaning does not mean that, when fundamental matters about a legal provision's scope—what harms it guards against, from what sources, under what circumstances, for how long, and for what reason—are unmentioned, the proper, "fair reading" is one that

gives it limitless reach. *See Gustafson v. Alloyd Co., Inc.,* 513 U.S. 561, 575 (1995) (courts must "avoid[] giving [texts] unintended breadth"). Rather, when matters like these are not addressed within the four corners of the provision, nothing forbids a court from looking elsewhere in the Constitution.

That is what this Court's textual supremacy precedents *require*, both because those other provisions *also* codify the people's "policy judgments," 314 So. So. 3d at 803, and because meaning is, necessarily, a function of context, *see Advisory Op. to the Governor Re: Implementation of Amend.* 4, 288 So. 3d 1070, 1078 (Fla. 2020), as well as "place[ment] in the overall [constitutional] scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). Thus, language stating that protections are effective "at the time of ... victimization," § 16(b), can plainly settle when particular rights attach—though not necessarily others, *see, e.g.* § 16(c) (right to seek enforcement "in any ... appellate court"). But no fair reading treats the provision's silence as to endpoints as establishing that rights are perpetual. *See Ex parte Littlefield,* 540 S.E.2d 81, 85 (S.C. 2000) (concluding that victims' rights protections cease "once a criminal case has been resolved"); *see also L.T. v. State*, 296 So. 3d 490, 494 (Fla. 1st DCA 2020) (interpreting various Marsy's Law provisions to be "directory").

Examining constitutional text beyond the two provisions the decision below considered discloses the principle the District Court disregarded—one applicable *across* Marsy's Law varied provisions, to claims by persons who *satisfy* the Section 16(e) definition: Marsy's Law requires that those persons be provided special solicitude in the criminal justice process and confers protections against harm *based on their role as crime victims*. This nexus requirement is apparent from the first sentence, which sets out *the reasons* why the various rights are afforded: to alter the "role" of crime victims "throughout the criminal and juvenile justice systems," both by ensuring judicial proceedings protect their rights "as vigorously as those [of] criminal defendants" and obliging other actors within "the criminal justice system[]" to inform them of their rights and treat them "fair[ly]" and "respectfully," honoring their "dignity." *See L.T.*, 296 So. 3d at 494 (describing Section 16 as "address[ing] a concern that the criminal justice system is overtly defendant-focused and that victims and their families are being alienated").

Indeed, confirmation that Section 16(b)(5) cannot be read as limitless is found in the text of the two immediately preceding subsections, the only other two in Marsy's Law that address harms inflicted by persons not part of the criminal justice system: Subsections 16(b)(3) and (4), which concern threats to a crime victim's physical safety. *State ex rel. Price v. Stone*, 175

So. 229, 231 (Fla. 1937) (applying *noscitur a sociis* canon). These *operate* only against government actors and address only a small subset of third-party threats, ones posed by individuals most likely to compound an initial victimization, *i.e.*, the "accused" and persons "acting on [their] behalf," *id.* And their requirements are far from absolute. Subsection (4) directs that the victim's safety be "considered" in pre-trial release decisions, and Subsection (3) offers only "reasonable [safety] protection" (and disclaims a special duty on "law enforcement['s]" part to provide that). Under these circumstances, it would be highly strange to read a provision concerned not with violence, but potential "locat[ion] or "harass[ment]," as operating against every possible "location" by any person for any reason and for all time.[1]

[1] That inference becomes overpowering—and the District Court's assumption of boundless reach, untenable—when Marsy's Law's enactment history is considered. When Section 16(b) was introduced in the CRC, it contained an *additional* privacy provision, immediately following Subsection (5), affording another pre-trial right—to refuse to be deposed. That provision has been adopted elsewhere. *E.g.*, Wis. Const. art. I, § 9m(2)(f). Like Subsection (3) and (4), it would have provided protection from the accused, denying an opportunity to obtain from the victim much information that could lead to harassment. There was testimony before the Constitution Review Commission that depositions had been used in that way, including in sexual assault cases, CRC Tr. 225. That privacy protection, alone among all those introduced, was withdrawn. *Id.* 226-27.

These fundamental nexus requirements control here. As the Circuit Court stressed, the disclosure-related harms that police officers like respondents seek to prevent will almost never have anything to do with their basis for claiming "crime victim status," let alone the "role" of "crime victims" in the criminal justice system. Rather, the adverse consequences feared will be based on officers' distinct, fundamentally different "role" in that system, their official responsibilities to prevent crime and "enforce the penal ... laws," § 943.10, Fla. Stat., and exercise of powers to use force inhering in that role. Whether or not police officers satisfy the literal wording of the Section 16(e) definition is beside the point. The kind of potential disclosure-based "loca[tion] or harass[ment]" an officer who has used force might expect will not depend on whether or not she suffered some injury in the process. One would expect that an officer who used deadly force to repel a violent predator would have less reason to fear harassment than one who had no basis for claiming to be a victim.

Equally important, there is a world of difference *with respect to privacy* between the crime-victim and police-officer roles in the criminal justice system. As noted above, Sheriff Nocco explained the need for Marsy's Law by contrasting "crime victims" the amendment would protect—persons "thrust into the criminal justice process," CRC Tr. 224, who, "100% of the

time," are "the only [people]" in "the criminal justice system [who do] not want to be there," *id.* 326— with "cops" like himself, who "wear a uniform [and] go to work every day." *Id*. In view of the victimization experiences that put these citizens into the system—and the importance of not deterring them from playing their unique, essentially voluntary role in bringing the guilty to justice—he reasoned, it was "critical" that their privacy and dignity be respected and protected throughout the process. *Id.*

None of this applies to police officers, including those who have been threatened with some harm when some criminal law is violated—which is to say almost every officer who "show[s] up [for] work."[2] When officers patrol public streets and make arrests, moreover, they are not anonymous. In many jurisdictions, they are required, "pursuant to [their] official responsibilities," *Garcetti v. Ceballos*, 547 U.S. 410, 424 (2006), to display badges bearing

[2] It in no way denies the bravery that officers display protecting the public from extreme dangers to note what no one disputes: The words of the Section 16(e) offer no basis for including "victimized" persons threatened with minor harms in non-dangerous situations. *See* Jacoby & Gabrielson, *How Cops Who Use Force and Even Kill Can Hide Their Names From the Public*, USA Today/ProPublica, https://bit.ly/3qGy47J (Oct. 29, 2020) (reporting that harms like knee scrapes and "soreness" have been invoked, successfully, by officers seeking secrecy). *Cf. Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 487 (1999) (rejecting interpretation of disability definition that would entitle 160 million Americans to statutory protections).

their names, Media Petrs. Br 41, and they must allow the public to observe and record their interactions, 547 U.S. at 424, obligations for which there is no "[private]-citizen analogue," *id.* And unlike citizen complainants, police officers' continued involvement is not elective. They have legal and professional obligations to assist prosecutors in convicting the guilty, subjecting themselves to public cross-examination, where their integrity and professional records are cast in the worst possible light.

Nor is the officers' "role" in the "the criminal justice system" understood to entail any of the *hardships* against which Marsy's Law's seeks to shelter crime victims. No one believes that the rights of officers who use force (especially those injured while apprehending suspects) are "less vigorous[ly]" protected than criminal defendants' rights or that such officers are treated disrespectfully by law enforcement, *i.e.*, the fellow officers and prosecutors who look to them for back-up and to make cases. And police officers already enjoy robust, judicially enforceable "due process" rights, Art. I, § 16(b)(1), not to mention zealous union advocacy. While "intimidation," *id.* § 16(b)(2), of citizen complainants is a troubling problem in the criminal justice system, criminal defendants (and their associates) know that attempting to silence a peace officer reliably results in more charges and punishment.

Enforcing the Constitution's distinction between harms that are and are not based on a person's role as a victim in the criminal justice process does not, as the District Court supposed, entail any "carve[] out" based on public-employment status. 314 So. 3d at 801. School bus drivers and state-employed CPAs who are victimized have no role in the criminal justice system *other than* the involuntary one of "crime victim"—and their experiences and need for protections within that system are indistinguishable from drivers and accountants who are privately employed. But like police officers, such individuals would have no rights of privacy as to actions taken "in [their] official capacit[ies]," *id.* at 801, simply because something had happened to them that meets the Section 16(e) definition.[3]

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[3] Nor should this brief's argument that respondents' suit fails for reasons independent of the Section 16(e) definition be understood to suggest the ACLU agrees with the District Court's interpretation of that provision. It does not. The same interpretive principles that require reading Section 16(b)(5) in light of Marsy's Law's nexus requirement apply fully when interpreting Section 16(e). Indeed, there is no substantive difference between applying that requirement to each right individually or as part of the threshold determination Section 16(e) contemplates. More importantly, giving Section 16(e) its proper meaning requires considering its operation in situations distinct from this case. It is hard to imagine, as a matter of judicial administration and separation of powers, how criminal trials could proceed with arresting officers separately represented and actively litigating against the prosecution.

II. Rules Requiring Coherent Interpretations Further Condemn the District Court's Interpretation.

The principles underlying the plain-meaning rules governing the interpretation of provisions *within* an amendment give rise to a substantially similar set of rules for resolving claims involving the interplay of *different* amendments. In such cases, courts should seek out a "harmonizing" construction, *i.e.*, the "permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law." *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991)), while "giving consistent and logical effect to each." *Thompson v. DeSantis*, 301 So. 3d 180, 185 (Fla. 2020). *See also Jackson v. Consol. Gov. of Jacksonville*, 225 So.2d 497, 501 (Fla. 1969) ("Unless [a] later amendment expressly repeals ... an existing provision, the old [one] should stand ... unless the clear intent of the later provision is thereby defeated."). Like other rules requiring fair-meaning constructions of constitutional text, this one minimizes the risk of the judiciary's erroneously denying the popular will. *See State v. Div. of Bond Fin.*, 278 So. 2d 614, 617 (Fla. 1973). While recourse to these interpretive rules is not strictly necessary to decide this case, they too condemn the District Court's interpretation and bring its demerits into sharper focus.

To begin, although the opinion and briefs give substantial attention to whether and how to harmonize Sections 16 and 24, no actual need for harmonization is present. As explained above, denying respondents' claimed power to deny the public information about their on-duty conduct does not *impair* Section 16(b)(5) at all, because that provision, like all Marsy's Law protections, does not extend to harms not based on the individual's role as a crime victim in the criminal justice system. *See* pp. 6-15, *supra*. And *Section 24* need not be effectuated here, because the City of Tallahassee would, for its own reasons, release the facts about its employees' on-duty killings of citizens, so long as Section 16(b)(5) does not prevent that.

This does not mean that conflicts between the two provisions could never arise. In a case where the Marsy's Law nexus is present, *e.g.*, where a robbery victim has substantial concern that releasing information (say, her work address) contained in a public record not exempted under Section 24 or the Public Records Act will enable her victimizer to further harass her, a claim for non-disclosure under Section 16(b)(5) would seem compelling. But an effort to suppress information on matters of broad public interest, on the ground it "could be used to locate [her]"—without any suggestion that it *would be* used for improper purposes—would be less so. (In the "online [age]," 314 So. 3d at 804, almost any information "could be use[ful]" for locating

someone.) Many situations where both provisions arguably might apply will not become conflicts, *e.g.*, when no one seeks information, meaning there is no disclosure to prevent, or a person within the Section 16(e) language has no reason to stop disclosure. (A person interviewed on television will not sue to remain anonymous, even if Section 16(b)(5) "information" included names.) Harmonization is unlikely to entail a single, universally applicable rule, but it would not be necessary or wise to seek one in the abstract here.

If the basic rules for reconciling amendments did control, however, no one could call the District Court's interpretation of Section 16(b)(5) a "harmonization." Its rule does not fit "logically and comfortably" within Florida's legal tradition. The information at issue has never been treated as confidential or even private—indeed, privacy rights like those have been rejected based on the nature of officers' job duties and the uniquely compelling public interests in learning about police abuses. *See, e.g., Ford v. City of Boynton Beach*, 323 So. 3d 215 (Fla. 4th DCA 2021). It is doubtful Florida *could* endow officers with a personal right of privacy in their law enforcement activities "on public property." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). The construction the District Court overturned, in contrast, is logical and consistent, fully effectuating every one of Marsy's Law's stated reasons for providing protection and affording every

person (including public employees) “thrust into the criminal justice system” by a perpetrator full Section 16(b)(5) rights.[4]

Given the force and clarity of this contrast, there is not much that could be said on this subject in the District Court rule’s defense. The court’s assurances that there is “no[] conflict” and that its Section 16(b)(5) reading did not “revise or repeal *any portion* of [S]ection 24,” 314 So.3d at 801 (emphasis added), make no sense. To be sure, it was already true that “[not] all public records [were] subject to disclosure” before the court’s decision. But the construction of Section 16(b)(5) rendered inoperative Section 24(a) obligations that would otherwise control. For example, the Fourth Amendment’s text recognizes that some searches are constitutional; but that would not mean a future amendment authorizing the government to conduct general, warrantless searches was not a “revision.”

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[4] When Paul Cassell, the foremost academic proponent of Marsy’s Law and active participant in Florida’s Amendment process, surveyed the Amendment in 2020, he described Section 16(b)(5)’s protection as “[un]develop[ed]” but foresaw that would largely track “shared societal understanding of expected privacy interests,” Cassell & Garvin, *Protecting Crime Victims In State Constitutions: The Example Of The New Marsy's Law For* Florida, 110 J. Crim. L. & Criminology 99, 139—which no one could say the First District’s interpretation does.

Nor does Section 24's acknowledgement that information *can be* exempted by constitutional amendment establish that *this* amendment "specifically made confidential" this information. Art. I, § 24(a). No word appears more often in Section 24's text than "specific[]," and, as explained, the specific type of never-private information at issue here—relating to officers' job activities and identities—is nowhere adverted to in Marsy's Law's text, nor was it discussed in the proceedings leading up to its 2018 adoption, let alone subject to the careful deliberation that Section 24 contemplates before a category of information may be withdrawn from the public's domain. *See* Art. I, § 24(c) (directing that exercises of legislative exemption power "state with specificity the public necessity justifying the exemption and ... be no broader than necessary to accomplish the stated purpose of the law"). And while Section 24(c)'s strictures may not apply of their own force here, the rule the District Court's decision enacts lacks a characteristic seen in every valid rule that draws (or re-draws) lines between secrecy and disclosure—*some* effort to distinguish claims that are stronger *in relevant respects* from weaker ones.[5]

[5] Indeed, Section 16(b)(5), as construed by the District Court, is not readily described as making identity "confidential" given that information will *(con't)*

That is why the District Court's interpretation cannot possibly be upheld, as respondents below appeared to argue, as an unintended, *de facto* "harmonization"—simply because its net result is that information about officer-involved shootings is sometimes disclosed and sometimes remains secret, or because its impairment of citizen oversight did not "halt" or "prevent," 314 So. 3d at 802, all means of investigating and addressing police misconduct.

To be sure, the regime the District Court's decision yields stands between the poles of universal anonymity and universal disclosure. But it denies the public's right to information in a swath of cases—involving exercises of governmental powers to inflict injury and take life—where Section 24's popular-sovereignty and public-accountability concerns are at their apex *and* privacy and anti-harassment interests are negligible or literally absent, *e.g.*, when the claimed basis for "victim status" is a knee scrape or the force used was manifestly disproportionate, but did not result in departmental discipline or a criminal accusation.[6]

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continue to be disclosed "throughout the criminal justice process" by operation of processes that Section 16(b) undeniably leaves undisturbed.

[6] Despite saying it was "mindful of ... the importance [of information to] accountability," 314 So. 3d at 802, the court's opinion was inattentive to what *(con't)*

The rule is the literal opposite of a "logical and consistent" reconciliation. It does not "effectuate" anything, because in any every case, the determinants of whether an officer's identity is disclosed or kept secret are circumstances—*e.g.*, whether a citizen recorded the police-citizen interaction, whether the injured civilian is prosecuted or is tried in closed juvenile proceedings—wholly unrelated to any possible victim-rights *or* public-accountability (or even officer-privacy) interest. Indeed, in a significant share of important cases, the rule's operation is not merely arbitrary but perverse, yielding permanent secrecy *because*, *e.g.*, lethal force prevented the victimizer's being tried publicly, a prosecutor wrongly failed to charge a law-breaking officer, or an officer's "victim status" claim is based on a fabricated injury or threat. *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518

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accountability demands. The alternative mechanisms the District Court cited—internal affairs investigations, grand jury proceedings, and criminal prosecutions—are not merely less effective means of holding officers accountable, they are entirely impotent against whole kinds of especially serious official law-breaking. The proffered substitutes do not provide *public* accountability, but rather depend on good faith efforts by actors—like prosecutors and departmental investigators—who operate behind closed doors and are not always impartial, even in a formal sense. The much bigger problem, however, is that denying the information sought here robs the public of the means of holding *these* officials accountable and determining whether these processes are operating fairly and these officials are fulfilling the public trust.

(Fla. 1977) (describing officers' plan to put a gun in hand of man shot and killed).

CONCLUSION

Under the plain text of the Constitution and this Court's precedents, the First District's decision should be quashed.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to all persons included in case's service list on the E-filed date of this document by filing the document with service through the e-Service system (Fla. R. Gen. Prac. & Jud. Admin. 2.516(b)(1)).

CERTIFICATE OF COMPLIANCE WITH RULE 9.045

I certify that this brief complies with the font (Arial 14-point) and word-count requirements. This filing contains 4,958 words (excluding sections permitted to be excluded), which is within the 5,000 word-limit prescribed in Fla.R.App.P. 9.370(b).

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