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' ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

This case is before this Court on review from the District Court of Appeal, First District's decision: *Fla. Police Benevolent Ass'n v. City*

of Tallahassee, 314 So. 3d 796 (Fla. 1st DCA 2021). The Petitioners and various amici raise multiple issues, all of which are contested.

The record on appeal consists of three (3) volumes. The certified copies of appellate documents will be referenced using the abbreviation "CC". The original record on appeal will be referenced using the abbreviation "ROA". The supplemental record will be referenced using the abbreviation "SR".

"City" will designate the City of Tallahassee's Initial Brief on the Merits. "Media" will designate the News Media Coalition's Initial Merits Brief. "Gualtieri" will designate Sheriff Gualteri's Amicus Curiae brief. "Chitwood" will designate Sheriff Chitwood's Amicus Curiae brief. "MCIP" will designate the Miami Civilian Investigative Panel's Amicus Curiae brief. "Reporters" will designate the omnibus media Amicus Curiae brief. "ACLU" will designate the ACLU of Florida's Amicus Curiae brief. All of the above abbreviations/designations will be followed by a colon and any appropriate page number(s).

STATEMENT OF THE CASE AND OF THE FACTS

In 2018 a supermajority of Florida voters approved an amendment to the Florida Constitution which created express recognition that crime victims were entitled to certain rights and protections. (ROA: 75; 180). Over 4.8 million Florida voters voted in favor of the amendment. This represented over 61% of the vote.[1] The amendment was placed on the ballot by referral from Florida's Constitution Revision Commission. *See generally* Art. XI, § 2, Fla. Const. Prior to the measure appearing on the ballot, this Court held that the ballot title and summary were informative and not misleading. *Dept. of State v. Hollander*, 256 So. 3d 1300, 1308 (Fla. 2018). The amendment's language is found at Article I, Section 16(b), of the Florida Constitution. It is colloquially referred to as "Marsy's Law".

The adopted language provides victims of criminal offenses with, among other rights, the right to be free from intimidation, harassment, and abuse as well as the right to prevent the disclosure

[1] Election results are maintained by The Florida Department of State, Division of Elections and are available at: https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=

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)(2) and (5), Fla. Const.

In the months leading up to the 2018 election, intervenor News Media's member publications published numerous opinion pieces and letters which supported the amendment's adoption and addition to the Florida Constitution.[2] [3] [4] [5] Marsy's Law efforts had passed in several other jurisdictions. Prior to the 2018 election, news

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[2] Sadie Darnell, Support Victims' Rights by Voting for Amdt 6, Marsy's Law for Florida, Says Sheriff, TALLAHASSEE.COM (Oct. 8, 2018, 2:32PM), https://www.tallahassee.com/story/sponsor-story/marsys-law-for-florida/2018/10/08/support-victims-rights-voting-amdt-6-marsys-law-florida-says-sheriff/1568053002/

[3] Patricia Leqsque, Marsy's Law Gives Victims Their Rights, TALLAHASSEE.COM (Oct. 4, 2017, 9:32AM), https://www.tallahassee.com/story/opinion/2017/10/04/opinion-marsys-law-gives-victims-their-rights/730697001/

[4] Greg Ungru, Amendment 6 Brings Balance to the Criminal Justice System, TALLAHASSEE.COM (Oct. 31, 2018, 1:29PM), https://www.tallahassee.com/story/opinion/2018/10/31/amendment-6-brings-balance-criminal-justice-system-opinion/1833655002/

[5] Jeb Bush, Support the Constitutional Amendment That Would Ensure Victims and Their Families A Voice, MIAMIHERALD.COM (Mar. 16, 2018, 10:40PM), https://www.miamiherald.com/opinion/op-ed/article205645364.html

associations in some other jurisdictions were aware that police officers occasionally invoked victim rights protections found within the various Marsy's Law measures.[6]

In applying the 2018 language of revised Article I, Section 16, the City of Tallahassee and the Tallahassee Police Department took the position that, upon request, "any and all victim information that could be used to locate or harass the victim or the victim's family will be redacted[]" from publicly released information. This development was acknowledged and published by intervenor News Media's Tallahassee Democrat.[7] As it related to city police officers: the Tallahassee Police Department took the position that a city police officer who became the victim of a criminal offense and who invoked confidentiality through Marsy's Law would be afforded the requested confidentiality and that his or her name would not be publicly released. (ROA: 346; 349-350). The elected State Attorney agreed

[6] Arielle Zionts, Citing Marsy's Law, State Won't Release Name of Trooper Who Shot Man, RAPIDCITYJOURNAL.COM (Oct. 19, 2018), https://rapidcityjournal.com/news/local/crime-and-courts/citing-marsy-s-law-state-won-t-release-name-of/article_910cf964-28f6-5328-bae7-554d67e1e999.html

[7] Jeff Burlew, Marsy's Law Prompts TPD to Clamp Down on Crime Victim Information, TALLAHASSEE.COM (Jan. 16, 2019, 5:20PM), https://www.tallahassee.com/story/news/2019/01/16/marsys-law-prompts-tpd-clamp-down-crime-victim-information/2594945002/

with this interpretation. (ROA: 350). The City published news releases reflecting this "established practice" on its "TALGOV.COM" website. (ROA: 98) contra (City: 1).

In the early morning hours of May 19, 2020, Respondent John Doe 1 was working as a uniformed Tallahassee Police Department officer. He responded to a call for service at a Tallahassee gas station. John Doe 1 interacted with a citizen at the gas station who reported that he had been physically beaten by an unidentified male at a nearby, abandoned restaurant. In addition to other injuries, the complaining citizen was bleeding from his eyes. The complainant explained that his attacker had attempted to gouge out his eyes. The complainant explained that, while being attacked, he had dropped his cellular telephone. He requested that John Doe 1 retrieve his phone. A witness warned John Doe 1 that the unidentified male who had beaten the complainant was armed with knives. According to the witness, the suspect had openly brandished knives during an earlier encounter. (ROA: 84, 183).

John Doe 1 crossed the street to the location of the abandoned restaurant. He began to look for the citizen's cellular phone. John Doe 1 saw the suspect partially concealed in some bushes. The

suspect's name, it was later learned, was Wilbon Woodard. John Doe 1 repeatedly ordered Woodard to step out of the bushes. Woodard eventually stood up. Woodard continued to conceal his right hand behind some brush. Respondent John Doe 1 ordered Woodard to show his hands. Woodard rushed towards John Doe 1 while revealing a large, hunting-style knife which he held in his right hand. Woodard rushed at John Doe 1 with the knife in a threatening manner. At the same time, Woodard verbally threatened to kill John Doe 1. Woodard yelled: "Ima kill ya". Respondent John Doe 1 shot at Woodard while attempting to retreat from Woodard's charge. At least one of John Doe 1's bullets struck Woodard. Woodard later died from the gunshot wounds. (ROA: 84-85, 183). The interactions were captured on Tallahassee Police Department body worn camera. This included video of the charge, the verbal threat and shooting.

When Woodard was shot, he was approximately 10-15 feet away from John Doe 1. Woodard was rushing towards John Doe 1 while holding a hunting style knife. Woodard had verbally threatened to kill John Doe 1. (ROA: 85, 184). Following the shooting, after backup had arrived and the scene was secure, John Doe 1 requested that his identity be protected as confidential pursuant to Marsy's Law. This

request drew no objection from the Tallahassee Police Department or the City of Tallahassee. (ROA: 85, 184). A grand jury was empaneled to examine John Doe 1's actions. In the summer months of 2020, the grand jury process was delayed by the COVID pandemic. This delay was explained to the public in intervenor News Media's Tallahassee Democrat.[8] After the grand jury returned its findings, the City of Tallahassee released the video depicting the shooting in full. The video was released to the public both with an explanation and in its plain format.[9] The grand jury unanimously found that John Doe 1 was justified in using force against Woodard and that Woodard's actions put John Doe 1 in imminent danger of death or great bodily harm. The presentment was released to the public and was posted by News Media Intervenors' Tallahassee Democrat.[10]

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[8] Karl Etters, Grand Jury May Not Be Seated Until August Due to Coronavirus, TALLAHASSEE.COM (Jul. 8, 2020, 1:38PM), https://www.tallahassee.com/story/news/2020/07/08/grand-jury-may-not-seated-until-august/5398585002/

[9] Response to Grand Jury Findings in Three Officer Involved Shootings, TALGOV.COM (Sep. 4, 2020), https://www.talgov.com/cotnews/News/4882.aspx

[10] Read the Grand Jury Findings From the Three TPD-Involved Shootings, Tallahassee.com (Sep. 4, 2020, 4:11PM),

John Doe 1 shot and killed Woodard in Tallahassee on May 20, 2020. Five days later, on May 25, 2020, a police officer in Minneapolis killed a black man named George Floyd. George Floyd was killed while he was handcuffed and pinned to the ground. Bystanders video recorded the killing.[11] In cities across the United States, tens of thousands of people swarmed the streets to express their outrage and sorrow. Those protests then descended into nights of unrest, with reports of shootings, looting and vandalism.[12] Protests, sometimes devolving into violence and property destruction,

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https://www.tallahassee.com/story/news/2020/09/04/grand-jury-tony-mcdade-mychael-johnson-findings-tallahassee-police-department-shootings/5709205002/

[11] Christine Hauser, Derrick Bryson Taylor and Neil Vigdor, 'I Can't Breathe': 4 Minneapolis Officers Fired After Black Man Dies in Custody, NYTimes.com (May 26, 2020), https://www.nytimes.com/2020/05/26/us/minneapolis-police-man-died.html

[12] Derrick BrysonTaylor, George Floyd Protests: A Timeline, NYTIMES.COM (Jul. 10, 2020), https://www.nytimes.com/article/george-floyd-protests-timeline.html

occurred in Tallahassee.[13, 14, 15] County officials, at the behest of the Leon County Sheriff's Office, the City of Tallahassee, and the State Attorney's Office, implemented a curfew.[16] While ebbing and flowing, this dynamic continued throughout the summer of 2020.[17]

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[13] Nada Hassanein, Jeff Burlew, James Call, Peaceful Tallahassee Protests Marred After Truck Hits Demonstrators; No Serious Injuries, TALLAHASSEE.COM (May 30, 2020, 3:35PM), https://www.tallahassee.com/story/news/2020/05/30/protests-erupt-tallahassee-after-minneapolis-local-police-involved-shootings/5291951002/

[14] James Call, 'If it was me, I'd Still be Alive': Tallahassee Sees Ninth Straight Day of Protest, TALLAHASSEE.COM (Jun. 6, 2020, 4:28PM), https://www.tallahassee.com/story/news/politics/2020/06/06/if-me-id-still-alive-tallahassee-sees-ninth-straight-day-protest/3163005001/

[15] Karl Etters, Whispers of Violence and Calls for Peace and Justice: How Rumors Raced Through Tallahassee, TALLAHASSEE.COM (Jun. 4, 2020, 10:49AM), https://www.tallahassee.com/story/news/2020/06/04/protest-protesters-north-florida-u-s-attorney-violent-instigators-not-hijack-protests-tallahassee/3142954001/

[16] Jeff Burlew, Curfew Declared in Tallahassee, Leon County from 11 p.m. to 6 a.m After Day of Protests, TALLAHASSEE.COM (May 30, 2020, 10:21PM), https://www.tallahassee.com/story/news/2020/05/30/curfew-declared-in-tallahassee-leon-county-from-11-p-m-to-6-a-m-after-day-of-protests/5296413002/

[17] Karl Etters, 'Civil Unrest': Leon County Enacts Curfew to Curb Violence at Protests, TALLAHASSEE.COM (Sep. 1, 2020, 4:42PM),

In Tallahassee the day after George Floyd was killed: Natosha "Tony" McDade was involved in a physical confrontation with five individuals.[18] McDade was seriously beaten. A video of the beating was uploaded to social media. (ROA: 85). Following that beating, McDade posted a video wherein he promised to murder the five people involved. (ROA: 101). McDade, on video, informed his five adversaries that "*Ya'll ain't going to look the same when them bullets touch your dome.*" (ROA: 104). McDade added that he was "*…telling you five mother fuckers that you are going to die if I ever see* [you]." (ROA: 104). Throughout the video, McDade repeated his intent to murder those whom he blamed for beating him. (ROA: 107; 108; 120).

In the video, McDade eventually referenced his post-killing plans regarding law enforcement: "*after I get to killing you bitches, I am going to get back on live[19], if I have the opportunity, because I will*

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https://www.tallahassee.com/story/news/2020/09/01/civil-unrest-leon-county-enacts-curfew-curb-violence-protests-black-lives-matter-tallahassee/5684965002/

[18] McDade identified as a male. McDade will be referred to in this brief as "Tony" and using male pronouns.

[19] This seems to be a reference to the online streaming platform Facebook Live.

not be going back to prison. Me and the law will have a standoff after I end you bitches' lives." (ROA: 105). McDade stated that he was suicidal and that he intended to die instead of returning to prison. (ROA: 108; 109). McDade brandished a pistol on the video and stated that he planned to hold court in the streets. (ROA: 110). McDade identified his firearm by its caliber and requested his audience provide him with more bullets. If he did not receive additional bullets, McDade stated that he already had enough for the shootings he had planned the following day. (ROA: 126).

McDade specifically predicted that he would be killed by a law enforcement officer. He predicted to his audience: "*just know before I kill myself through a shootout, because that's what's going to happen, because I am going to pull it out, and you know officers nowadays, they see a gun, they just want to shoot. So that's what I am pushing for, because I don't want to be here on earth.*" (ROA: 137).

The following morning of May 27, 2020, Respondent John Doe 2 was working as a uniformed Tallahassee Police Department officer. He was driving a marked Tallahassee Police Department vehicle. He responded to a radio call related to a stabbing. The stabbing suspect had reportedly fled with a gun and a knife. (ROA: 87, 185). John Doe

2 did not know McDade and had no information about the video which McDade had made the prior evening. (ROA: 87; 185).

John Doe 2 drove his Tallahassee Police Department vehicle to the area in which the suspect had reportedly fled. John Doe 2 encountered a SUV parked in the roadway facing his direction of travel. (ROA: 87, 185). An unknown person, later learned to be McDade, was leaning into the passenger window of the parked SUV. (ROA: 87; 185). A second Tallahassee Police Department vehicle approached the parked SUV from the rear. (ROA: 88, 186). As the second police vehicle approached, a woman leapt from the parked SUV and rushed rearward towards the second police vehicle. The officer driving the second police vehicle exited his patrol vehicle and began speaking with the woman who had exited the parked SUV. That woman was frantically pleading for help, she was largely incoherent, but she mentioned that someone was suicidal. It was eventually established that the woman interacting with the second officer was McDade's mother. (ROA: 88, 186).

While McDade's mother spoke with the officer closer to the rear of her SUV, McDade began to advance towards that officer. McDade then pivoted back towards Respondent John Doe 2 when his mother

stepped in between McDade and the second officer. Respondent John Doe 2 was still sitting in his police vehicle. McDade then aggressed towards John Doe 2 and, while holding a handgun, punched his arms out in a shooting stance. Respondent John Doe 2 immediately recognized that McDade, who was unknown to him, was pointing a firearm at him. The realization that this unknown individual was pointing a firearm at him placed Respondent John Doe 2, who was searching for a stabbing suspect in possession of a firearm, in fear for his life. (ROA: 88, 186). Respondent John Doe 2 managed to partially exit his patrol vehicle and fire his department-issued firearm.

McDade was struck by Respondent John Doe 2's bullets. McDade fell to the ground but continued to reach for his firearm. (ROA: 89, 186). The second officer, who had been positioned closer to the rear of the SUV, quickly approached McDade while John Doe 2 provided cover. The second officer retrieved McDade's firearm to ensure that McDade did not reacquire possession of the weapon. (ROA: 89; 186-187). Backup arrived within minutes. Medical aid was rendered to McDade.

Multiple bystanders from the neighborhood arrived immediately after the shooting and began to threaten the officers. (ROA: 89, 187). The interactions were captured on Tallahassee Police Department body worn camera. The camera footage included video of the aggravated assault, the shooting, and the immediate threats/taunts from onlookers. Following the shooting, after backup had arrived and the scene was secure, John Doe 2 requested that his identity be protected as confidential pursuant to Marsy's Law.

A grand jury was empaneled to examine John Doe 2's actions. In the Summer of 2020, the grand jury process was delayed by the COVID pandemic. This delay was explained to the public in intervenor News Media's Tallahassee Democrat.[20] After the grand jury returned its findings, the City of Tallahassee released a video that compiled available camera footage and provided a summary of the shooting. The City of Tallahassee also released the full-length

[20] Karl Etters, Grand Jury May Not Be Seated Until August Due to Coronavirus, TALLAHASSEE.COM (Jul. 8, 2020, 1:38PM), https://www.tallahassee.com/story/news/2020/07/08/grand-jury-may-not-seated-until-august/5398585002/

videos that captured the shooting and its aftermath.[21] The grand jury found that McDade had committed the (fatal) stabbing to which John Doe 2 had originally responded. The grand jury also unanimously found that John Doe 2 was justified in using force against McDade and that McDade's actions put John Doe 2 in imminent danger of death or great bodily harm – specifically constituting the crime of aggravated assault on a law enforcement officer with a firearm. The presentment was released to the public and was posted by News Media Intervenor's Tallahassee Democrat.[22]

Respondent John Doe 2's shooting of McDade occurred only two days after the killing of George Floyd in Minneapolis. The City of Tallahassee, for the first time, announced an intention to publicly reveal the names of the Respondent officers. (ROA: 90; 187). Respondent PBA filed a Verified Motion for Emergency Injunction on behalf of John Doe 2. (ROA: 6). The City Attorney refused to disclose

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[21] Response to Grand Jury Findings in Three Officer Involved Shootings, TALGOV.COM (Sep. 4, 2020), https://www.talgov.com/cotnews/News/4882.aspx

[22] Read the Grand Jury Findings From the Three TPD-Involved Shootings, Tallahassee.com (Sep. 4, 2020, 4:11PM), https://www.tallahassee.com/story/news/2020/09/04/grand-jury-tony-mcdade-mychael-johnson-findings-tallahassee-police-department-shootings/5709205002/

a position on the motion's merits. (ROA: 142-144). The City Attorney's Office responded to the motion without taking any position and merely asked for an expeditious ruling. (ROA: 63).

A hearing was held. (ROA: 145). The Office of the City Attorney stated it could see both sides of the legal argument and refused to oppose the motion. (ROA: 169). Because there was no true case or controversy, the Circuit Court denied the motion. (ROA: 170; 174). That same day, within hours of refusing to take a position on the matter in court, after the close of business, the Office of the City Attorney informed counsel for Respondent PBA that it was taking the position that Marsy's Law did not apply to Respondents John Doe 1 and John Doe 2. (ROA: 96).

Respondent PBA along with John Doe 1 and John Doe 2 then filed a Petition for Declaratory Judgment, Mandamus Relief and Injunctive Relief. (ROA: 72). The Petition contained exhibits from the City of Tallahassee establishing that the city government had interpreted Marsy's Law as applying to law enforcement officers who had become crime victims. This occurred after a Tallahassee Police Department officer shooting earlier in 2020, as well as following the May, 2020 shooting undertaken by John Doe 1. (ROA: 89; 98). The

Office of the City Attorney changed its position only after the killing of George Floyd. (ROA: 90). The Petition generally argued that the Circuit Court was bound to follow the plain language of the Florida Constitution and that, if the constitutional language conflicted with a statutory provision; that the constitutional language was legally controlling. (ROA: 92).

The City of Tallahassee possessed the real-time video of the two shootings. As to John Doe 1 being threatened with a knife: the City admitted that this had occurred. (ROA: 84-85; 183-184). Regarding John Doe 2 being threatened with a firearm: the City likewise admitted that this had occurred. (ROA: 88; 186). The City's admissions were specific and, in some instances, particularly limited. The City made a point to take issue with certain, particular pled details of the two incidents. (ROA: 183-186).

Without objection, the News Media, specifically The Tallahassee Democrat, The Miami Herald, and The New York Times, moved to intervene. (ROA: 67-71). The court intervention took place days prior to the public records requests on which the Petitioners now rely. (ROA: 331; 336).

A hearing was held. (ROA: 145). The City of Tallahassee stipulated to the facts presented in the Respondent's pleadings. This stipulation applied to both of the separate shootings. The City confirmed that there were no factual disputes for the purposes of the case and that the issue was purely legal. (ROA: 403-404). The Circuit Court had earlier acknowledged the existence of grand jury proceedings. (ROA: 390). The Circuit Court asked about conducting an *ex parte*, confidential evidentiary hearing in which that court could make its own victimization findings. (ROA: 390). Neither the City nor the intervening News Media requested that the Circuit Court take such action. If John Doe 1 and John Doe 2 had not been police officers: the City agreed that they had both been victims of separate crimes. (ROA: 405).

Respondents also relied on and cited *State v. Peraza*, 259 So. 3d 728 (Fla. 2018), in which this Court held that police officers are persons who can become crime victims while on duty. (ROA: 391).

The Circuit Court eventually rendered a final order which denied all requested relief. (ROA: 351). Respondents appealed to the District Court of Appeal, First District. (ROA: 356). A unanimous

panel of the First District reversed on all points. *Fla. Police Benevolent Ass'n v. City of Tallahassee*, 314 So. 3d 796 (Fla. 1st DCA 2021).

The First District's decision accepts what was stipulated and what the videos establish: that both individual respondents were threatened with deadly force. Both individual respondents were faced with "imminent threat[s]" of harm. Id. at 797. Both the Circuit Court and the District Court acknowledged that the facts were "undisputed". The District Court decision acknowledged that the parties had stipulated that the suspects in the two encounters threatened the officers with deadly weapons. Additionally, the District Court decision notes that the Petitioners did not object to the assertion that the individual officers had a well-founded fear that violence against their persons was imminent. Id. at 799.

The First District's decision also notes that the City of Tallahassee had changed its position regarding Marsy's Law. Following John Doe 2 shooting Tony McDade, the City for the first time asserted that law enforcement officers were excluded from Marsy's Law protections. Id. at 797.

SUMMARY OF THE ARGUMENT

Supremacy-of-the-text principles handily dispose of all the Petitioners' arguments. The controlling text says what it says. Petitioners essentially ask this Court to re-open the constitutional revision process and re-argue *Hollander*. They simply ignore *Peraza*. Ultimately, Petitioners and Amici are requesting a nonspecific re-write of the Florida Constitution. This Court should decline all such invitations.

ARGUMENT

STANDARD OF REVIEW

Respondents agree with the Petitioners that the standard of review is de novo. (City: 16); (Media: 13).

POLICE OFFICERS ARE PERSONS

Initially the City argues that Respondents John Doe 1 and John Doe 2 are not "victims" within the meaning of Art. I, Sec. 16 of the Florida Constitution. (City: 17-28).

The constitutional language gives us a definition. The document defines the term "victim" for purposes of this dispute. A

"victim" is "*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 words of the governing text are the paramount concern. The words are to be understood in their everyday meaning. *Israel v. Desantis*, 269 So. 3d 491, 495 (Fla. 2019); see also *Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009). General terms are to be given their general meaning. This is the meaning which proper grammar and usage would assign them. This is our oldest and most commonsensical interpretative principle. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 15 (2012)[23]. The City eventually comes out and says what is obvious: "A police officer is, literally, a person." (City: 19). This ongoing legal argument should, literally, end there.

This Court is tasked with assigning the plain and obvious meaning to the words in a legal text, which any court may discern from a dictionary. *Rollins v. Pizzarelli*, 761 So. 2d 294, 297–98 (Fla.

[23] For ease of reference this book will hereafter be referred to simply as "Reading Law"

2000). A "victim" is a person against whom a crime is committed. The John Doe respondents are persons. Violent crimes were committed against both of them. (ROA: 403-404; 405). Resultingly, absent any other language, the protections afforded in the law apply to the two Respondents. The Florida Constitution's language plainly and unambiguously answers the question presented. *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021)(overt recognition of supremacy-of-the-text principle and citation to *Reading Law*.). The analysis is appropriately that simple. All the remaining argument in both Petitioners' and Amici briefs is simply non-textual policy suggestion. Those policy suggestions are more appropriately directed to other forums.

The City and the Media suggest there should be a carve-out for on-duty police officers. But a matter not covered in the text is to be treated as not covered. This principle is so obvious that it "seems absurd to recite it." *Reading Law*, 93. This Court should not give any effect to the law-makers' claimed, unenacted desires. *Reading Law*, 29. Purpose, even "purpose" as most narrowly defined, cannot be used to contradict the text or to supplement it. What a text chooses not to do is as much a part of its purpose as its affirmative

dispositions. *Reading Law*, 57; see also *Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009).

Interpreters of constitutional text should not be required to divine arcane nuances or to discover hidden meanings. *Reading Law*, 69. contra (ACLU: 12). General words are to be accorded their full and fair scope. They are not to be arbitrarily limited. The presumed point of using general words is to produce general coverage. This is opposed to using general words to leave room for courts to later recognize ad hoc exceptions. *Reading Law*, 101.

Both Petitioners' briefs omit any mention of this Court's decision in *State v. Peraza*, 259 So. 3d 728 (Fla. 2018). In 2018, this Court held that law enforcement officers were eligible to assert "Stand Your Ground" immunity under sections 776.012(1), and 776.032, Florida Statutes. The State had argued that Mr. Peraza was an on-duty law enforcement officer and that he was therefore unable to assert pre-trial "Stand Your Ground" immunity. He was, according to the State, confined to seeking immunity only at a jury trial under section 776.05, Florida Statutes. Section 776.05, the State's preferred section of Florida Statutes, applied to law enforcement officers. These arguments should sound familiar to readers of the

Petitioners' briefs. Both "Stand Your Ground" sections of statute: sections 776.012(1), and 776.032, applied to "a person". Neither section of statutory text contained a definition of "person".

This Court, approximately four years ago, succinctly and unanimously held that the two statutes plainly and unambiguously applied to police officers who were "a person". This Court wrote that there was no reason for any further analysis. The *Peraza* decision drills down to the heart of this legal dispute: "[p]ut simply, a law enforcement officer is a "person" whether on duty or off, and irrespective of whether the officer is making an arrest." This Court recognized that, in common understanding, "person" refers to a human being. This Court recognized the term "person" is not occupation-specific. This Court recognized the term "person," plainly includes human beings serving as law enforcement officers. *Peraza*, 259 So. 3d at 731.

Petitioners here argue to this Court that police officers are excluded from the plain and ordinary meaning of the term "person". These arguments come in briefs filed not four years after this Court's release of the *Peraza* decision. There is no citation in either of the Petitioners' merits briefs to *Peraza*. This is so despite the *Peraza*

decision's repeated reference/citation in lower court briefing and argument. (CC: 297; 349; 452); (ROA: 76-77; 391; 407-08). This court has held the term "person," plainly includes human beings serving as law enforcement officers. *Peraza*, 259 So. 3d at 731. The Petitioners offer nothing which would even address overturning that holding.

It is notable that the *Peraza* decision was released in 2018. That was the same year as Marsy's Law's adoption. Under the fixed-meaning canon, words must be given the meaning they had when the text was adopted. *Reading Law*, 78. The term "person," applied to an on-duty law enforcement officer. This was the decision of this Court based on "common understanding". This was the decision of this Court in 2018. This decision was released within weeks of the vote through which Marsy's Law was adopted.

This Court has held that a law enforcement officer is a "person" whether on duty or off and irrespective of whether he or she is making an arrest. In addressing common understanding: this Court has previously held that "person" refers to human being and that the term is not occupation-specific and plainly includes human beings serving as law enforcement officers. If the plain language of the Florida

Constitution was not enough, all of the Petitioners' and various amici arguments must necessarily end with *Peraza*.

The Media's brief reminds us that courts frequently look to other statutes defining the same terms for guidance. (Media: 27). But both Petitioners omit Florida's longstanding statutory definition of "person." This statutory language is found in section 1.01(3), Florida Statutes. According to Florida Statutes, the word "person" includes "individuals" as well as "children". The statutory language also goes further and defines "person" as including a series of ten, different business entities. The types of business entities are then left open-ended to include "all other groups or combinations."

An individual is a person. A child is a person. The definition of "person" then goes even further. The definition is, on its face, unchained from whatever form of business is practiced.

A corporation or firm/association/estate/trust may be a victim for Marsy's Law purposes. This may present an interesting legal issue in some future Marsy's Law dispute. This was the only point in *Hollander* in which this Court acknowledged there may be some future ambiguity. *Dept. of State v. Hollander*, 256 So. 3d 1300, 1311 (Fla. 2018). The decision in *Hollander* describes the artificial person

canon argument as a complaint about the text. The decision never says that the term "victim" was inherently ambiguous. As it relates to the issues here: those hypothetical issues are not even before this Court. See generally, *C.N. v. I.G.C.*, 316 So. 3d 287, 292 (Fla. 2022)("We think it better to address these questions in a case involving a challenge to an actual order, where our answers to the questions would matter to the outcome.").

Respondents agree that the term "person" does not include the sovereign. (City: 20). Tony McDade did not pull out his firearm on the sovereign. He did pull it out on John Doe 2. Wilbon Woodard did not charge the sovereign with a hunting knife. He did charge John Doe 1 with one. The sovereign exception to the term "person" may look appealing to the Petitioners in Justice Scalia and Professor Garner's book. *Reading Law,* 273. However, this exception has no application here. Non-inclusion of the sovereign means non-inclusion of agencies of the sovereign as well. Id. at 274. The violent and unprovoked crimes committed against the John Doe respondents were committed against them individually. Accordingly, the information the John Doe respondents prevented from being disclosed was intensely personal: their names. There was no

confusion that both Woodard and McDade were killed by officers of the Tallahassee Police Department. The Doe respondents do not seek to make the agency's actions confidential.

The artificial person canon is not a "presumption" and it does not apply to individual police officers. Such a claim completely fails to deal with *Peraza's* unmistakable holding otherwise. *Peraza*, 259 So. 3d at 731. Secondly, the City's brief offers no single example of any such "presumption" which might be found in Florida law. (City: 21-23). The City's reliance on *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), is misplaced. In that opinion Justice White wrote: "Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." Justice White and the majority noted that such a civil suit was no different from a suit against the State itself. To hold otherwise, in a 42 U.S.C. § 1983 context, would allow future plaintiffs to circumvent congressional intent via a pleading device. Id. at 71.

The Petitioners point to no binding authority which might overturn the First District's decision. This Court should consider how any such hypothetical authority might shift Florida's legal

landscape. News that on-duty police officers cannot be crime victims would surely shake the earth beneath Florida's jails and prisons. Those jails and prisons contain a presumably large number of inmates serving time for the innumerable statutory offenses which exist only for, or are enhanced by, the victim's status as an on-duty police officer.

The Petitioners ignore the canons of textual interpretation. Petitioners simply ignore the binding decision of this Court. The John Doe respondents are each, individually persons per the protections of Marsy's Law. The Respondents rely on the plain language of the constitutional text. The Respondents rely on this Court's prior decision in *State v. Peraza*, 259 So. 3d 728 (Fla. 2018). The Respondents rely on section 1.01, Florida Statutes. The Petitioners rely on an Ohio restitution case. (City: 27); (Media: 29); (Reporters: 10).[24]

Florida courts are not free to ignore plain language of the State's constitution. Florida courts are not free to ignore this Court's

[24] The Petitioners' favored Ohio restitution decision seems to be based on the artificial person canon and not the concept that individual police officers are not "persons".

decisions. There may be some argument for overturning *State v. Peraza*, 259 So. 3d 728 (Fla. 2018). If such an argument does exist; a reader would have expected to encounter it in the Petitioners' Initial Briefs. Florida courts are certainly not compelled to re-write laws simply because some other jurisdiction has approached a similar issue in a different manner. (Reporters: 9).

This Court may want to get into "context" or "intent" of the Marsy's Law enactment. The only outside source of intent found in the record was provided by Respondents and it completely undermines the Petitioners' arguments. The Respondents provided the Circuit Court with a statement released by the spokesperson for Marsy's Law for Florida which unequivocally states that "Police officers who have become victims of crime deserve the same constitutional rights as everyone else." (ROA: 344). The statement goes further to announce that: "The Florida Constitution does not distinguish victim status between members of the public and police officers so any citizen can be a victim of a crime, even if they are a public employee." (ROA: 344). The framers of Marsy's Law, to the extent their intent should be weighed, intended that the broad language apply to on-duty police officers.

The Petitioners' issue is disingenuous. This issue is legally untenable. This issue ignores Florida's long history of re-classifying and enhancing offenses based on the victim's status as an on-duty police officer. This argument simply ignores this Court's own, recent precedent. This argument ignores the ordinary, everyday meaning of the words in the controlling text. Ultimately, this issue is demeaning to the John Doe respondents. This issue should be soundly rejected.

THE NEED FOR A TRIGGERING EVENT

The City next claims that Marsy's Law recognizes the need for a triggering event. (City: 29). The constitutional language provides the triggering event. The constitutional language facially tells us that the triggering event is the victimization itself.

The plain language of Article I, Section 16(b), reads that: "*every victim is entitled to the following rights, beginning at the time of his or her victimization[.]*" While some of the Marsy's Law protections are specific to a criminal prosecution; nothing in Article I, Section 16(b)(2) or (5), is dependent on an active criminal prosecution of the wrongdoer.

Furthermore, reading the language with the limitations suggested by the Petitioners would yield absurd results. Using the Petitioners' suggested reading: victims of crimes committed by living defendants would receive the law's protections while victims under other circumstances would not. (Media: 25-26). Some of the most egregious victimization occurs by wrongdoers who commit suicide or are killed during apprehension. Excluding these victims from the broad protections of Section 16(b) is unwarranted, arbitrary and inappropriate. Possibly even more absurdly, the Petitioners' suggested interpretation of Marsy's Law would deny the law's protections to crime victims where the suspect had not yet been identified. This would be especially problematic where the victim could be the only available witness to identify the perpetrator. (MCIP: 6).

The City and Media's proffered interpretation is not textually appropriate. If it were: it would obstruct instead of further the document's purpose. *Reading Law*, 63. The words "at the time of his or her victimization" are clear-cut. What those words convey is what the text means. Marsy's Law provides numerous rights and protections that are not contingent upon an arrest being made, and

those protections should not be written out of the law by any Article V court.

A First District decision has previously recognized what the text plainly says. Crime victims are afforded the protections found in Section 16(b)(5) at the time of victimization. *L. T. v. State*, 296 So. 3d 490, 494 (Fla. 1st DCA 2020). The *L.T.* opinion establishes that Section 16(b)'s other protections, those related to notice, presence and conferral, may be exercised upon request. Id.

The City's argument then branches in another direction. (City: 35). The City now raises the possibility that John Doe 1 and John Doe 2 are not actually crime victims because there was no neutral determination as such. In making this argument, the City goes behind its own admissions below. Additionally, the City asks this Court to ignore the real time video evidence. Finally, the City asks this Court to ignore two separate grand jury presentments.

At the trial level, the City admitted that John Doe 1 had been threatened with a knife. (ROA: 84-85; 183-184). At the trial level, the City admitted that John Doe 2 had been threatened with a firearm. (ROA: 88; 186). Both of these separate incidents were captured on real time video footage. The City has released that footage to the

public. There is absolutely no dispute that either: a) criminal acts occurred nor that b) John Doe 1 and John Doe 2 were, respectively, victims of those criminal acts. Separate grand jury investigations addressed the facts of both incidents. A grand jury found that Wilbon Woodard's actions, with a hunting-style knife, put John Doe 1 in imminent danger of death or great bodily harm. A grand jury found that Tony McDade's actions, with a firearm, put John Doe 2 in imminent danger of death or great bodily harm – specifically constituting the crime of aggravated assault on a law enforcement officer with a firearm.

John Doe 1 and John Doe 2 were victimized. It was recorded on video. It was admitted in the pleadings. It was stipulated at hearing. It was confirmed by two, separate grand jury presentments. Pretending that John Doe 1 and John Doe 2 just walked into a police station somewhere and claimed to have been victims is inappropriately unfair with the record. Pretending that John Doe 1 and John Doe 2 are feigning their status as victims seeks to turn back on earlier admissions and in-court stipulations. Again, this argument by the City of Tallahassee is demeaning to the two individual respondents. The City was in possession of the real time

videos when it pled its admissions. These admissions are contained in the record. (ROA: 84-85; 183-184). The hearing stipulation is contained in the record. (ROA: 403-404; 405). Arguing now that there was no "mechanism for independent verification" and that the Doe claims are "based on no evidence other than their own assertions" is unscrupulous. (City: 35). The Circuit Court provided the City with a forum in the event the City disputed the facts. (ROA: 390). After making its admissions, the City declined to challenge the officers' accounts in any manner. (ROA: 405).

The respondents were violently victimized. Fla. Stat. § 784.021. The aggravated assaults, as opposed to the resulting uses of force, are what "triggered" the Respondents' entitlement to Marsy's Law protections. (Gualtieri: 2; 4). The Respondents' rights began to apply at the time of the aggravated assaults. The "triggering event" is found in the everyday and ordinary meaning of the words in the governing text. This Court should decline the City and Media's invitation to simply ignore those words. This Court should decline the City and Media's invitation to re-write the Florida Constitution.

ANONYMITY

The City finally claims that Marsy's Law stops short of allowing a crime victim to prevent the disclosure of his or her name. (City: 37). The constitutional language tells us what the victims may prevent from being disclosed. The language dictates that a victim may "*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, Sec. 16(b)(5), Fla. Const.

Initially, in the information age, with an abundance of electronic search resources available to the public, releasing the officers' names would be the first and most necessary step in locating information that could be used to locate or harass the officers and/or their families.

The City previously admitted that Petitioner John Doe 2 received threats immediately after the shooting. (ROA: 89, 187). Internal documents produced in discovery revealed that John Doe 2's home was under active police guard. (ROA: 349-350). The City's notion that there was "no factual showing of any kind" is again contradicted by its admissions below. (City: 40). After admitting to

these facts in the trial court: making these arguments here is plainly underhanded.

It should be noted that the City claims, without any basis in the text, that the Does were required to make some type of showing. The Does did make that showing and the City has apparently forgotten about its admission to same. The Media then, without any basis in the text, claims that the Does are impeding the public right to access records and the transparency of law enforcement action. The Does are not required to address either of these extrinsic, non-textual considerations. Throughout, the Does have pointed to the City and Media's own publications establishing that these claimed concerns, these anticipated consequences, are imaginary. *Reading Law*, xxvii. John Doe 1 and John Doe 2 prevail in the arena of the governing text. They prevail outside the text as well.

Section 16(b) does not specifically mention crime victims' names because it does not have to. The language of the section is much broader. The language allows a crime victim to prevent release 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, Sec. 16(b)(5), Fla. Const.

(emphasis added). The terminology "could" used in the context of the provision refers to the notion of possibility. Unless a scenario presents itself in which disclosing a victim's name could not assist in locating the victim or victim's family, the plain language of Marsy's Law requires that the victim's name be, upon request, kept confidential. There is no text-based requirement that a crime victim establish that a disclosure would cause them to be located or harassed. The Respondents both individually requested to opt-in to Marsy's Law protections. The Respondents have never argued that the law required a victim to opt-out. (Reporters: 22) contra *In re Amends. to Fla. Rule of Gen. Prac. & Jud. Admin. 2.423*, 334 So. 3d 292, 293 (Fla. 2021)(Canady, C.J., concurring and dissenting).

The law's language is expansive and dispenses with any requirement it specify pieces or categories of information such as "name". The language includes general categories of information that "could be used" or "could disclose." Just as the law did not identify one group of employees that it protected (police officers) it did not identify one specific piece of information it protected (names). On both fronts, the law is more expansive and protects more than what is argued.

In both realms, this argument is akin to an argument claiming that no constitutional search and seizure protections exist in one's phone calls or vehicle because the term "telephone" and "vehicle" are missing from the United States Constitution. In both scenarios, the relevant constitutional language covers the subjects because it is sprawling. Reading the constitutions in the City's suggested manner would require the documents become lists of inclusion in which protections are afforded to different classes of employees to acknowledge those persons who could become crime victims. Must the Florida Constitution facially list police officers, bus drivers, toll booth attendants, pilots and so forth? Instead, the law simply protects each "person". Utilizing the City's suggested reading, constitutions would also have to be re-written to acknowledge each different piece of protected information such as: name, family member's name(s), home address, business address, phone number, email address, license plate number(s), etcetera, to specifically classify the protected information. What would Florida do when future identifying information categories such as Tik-Tok account names are developed? Dispensing with all of this: the law simply says information that could be used to locate or harass.

The presumed point of using general words is to produce general coverage. This is opposed to using general words to leave room for courts to later recognize ad hoc exceptions. *Reading Law*, 101.

The constitutional language is appropriately general and cannot be narrowed by any Article V court because it fails to include specifics. The language in the governing text must be allowed to speak for itself. *Israel v. Desantis*, 269 So. 3d 491, 495 (Fla. 2019). A member of this Court may wish to address drafter intent. Drafter intent supports the Respondents' legal position. Months prior to either of the shootings at issue in this appeal, intervenor News Media's Tallahassee Democrat reported that: "The group that successfully pushed for Marsy's Law, a constitutional amendment approved by voters last November giving new rights to crime victims, rolled out a legal opinion saying the names of crime victims can't be released without their consent." [25] The framers of Marsy's Law, to

[25] Jeff Burlew, Marsy's Law and First Amendment Advocates Differ on Victim Confidentiality, TALLAHASSEE.COM, (Mar. 17, 2020, 4:59PM), https://www.tallahassee.com/story/news/2019/03/17/marsys-law-first-amendment-advocates-differ-victim-confidentiality/3161164002/

the extent their intent should be weighed, intended that the broad language afford crime victims anonymity.

There is no way to square the City's suggested reading of Article I, Section 16, which would exclude names, with the actual text. The actual text says: "*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.*" Resultingly, the City's argument must fail. The Petitioners present a novel approach for future constitutional drafting or amendment. This Court and all Florida litigants must operate within the boundaries of the language as it actually exists. That language precludes the Petitioners' policy suggestions. Resultingly: those policy suggestions must fail.

PUBLIC ACCESS RIGHTS

Despite the media's claims, the Respondents do not agree that Article I, Section 24, is necessarily implicated by the First District's decision. The First District's decision actually holds that the Article I, Section 16(b) and Section 24 provisions do not conflict. *Fla. Police*

Benevolent Ass'n, Inc. v. City of Tallahassee, 314 So. 3d 796, 800 (Fla. 1st DCA 2021).

The media argues that the two sections of Article I must be harmonized. (Media: 17). The Media relies on Section 24. However, the Media ignores the operative language of that section. That section allows that "*[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.*" The Section 24 language itself contains a significant exception making it subservient to and inapplicable to records made confidential by the other provisions of the Florida Constitution.

The later adoption of Article I, Section 16(b), thereafter broadly allowed for crime victims to prevent the disclosure of information that *could be used* to locate or harass a crime victim or the crime victim's family or which *could disclose* confidential or privileged information Art. I, Sec. 16(b), Fla. Const.(emphasis added). The constitutional provision relied upon by the Media contains an applicable, facial exception. The provision relied upon by the Respondents does not.

The Media is not truly seeking harmonization. Harmonization necessarily involves an acknowledgment that their preferred provision is subordinate. The Media seeks a re-write. The language: *"…except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution*[]" is subordinating language. *Reading Law*, 126. The language establishes that Section 24 yields to Section 16 in the event of any (claimed) clash. (Reporters: 13).

Assume that the Media did not face this language-based problem. Assume that the Media's preferred Section 24 did not contain its significant, facial exception. When two provisions on the same subject conflict with one being general and the other specific, it is well established that the specific provision must prevail. *Dept. of Revenue v. Daly*, 74 So. 3d 165 (Fla. 2011). The open records provision in the Florida Constitution applies in general to all government-held records. This includes records of matters both interesting and those of matters which are mind-numbingly mundane. It applies to matters both involving criminal acts and those involving waste water. On the other hand, Marsy's Law, Section 16(b), is appropriately limited to particular *crime victim*

records. It is therefore the more specific provision. The more specific provision must prevail.

TRANSPARENCY

Throughout the litigation of this matter the Media has claimed that shielding the names of the crime victim officers would impact transparency. This argument again appears in the Media's brief. (Media: 36). These claims by the Media simply cannot coexist with the actual record as published/broadcast by its own, identified member publications. Both of the aggravated assaults and the shootings were captured on real time video. The video has been released to the public for public review and debate. The incidents have also independently been the subject of grand jury investigations. Both grand jury presentiments have been released to the public and reported on by the identified member publications.

Either of the Petitioners may complain that the releases of this information occurred after the Circuit Court hearing and/or that these releases are not part of the formal record. The Media has interjected itself into the case. (ROA: 67-71; 177). The Media arguments are based on the public's right to know, the concept of

public scrutiny and the concept of voter intent. Petitioners must then fairly address the indications of voter intent and mechanisms for independent verification or oversight that their own clients have published. Citing to non-record newspaper articles would be inappropriate in a different appeal. But counsel for Petitioners cannot seriously argue they should prevail based on the public's understanding and its need to review information and then object to the information their own clients have publicly distributed.

While knowing the grand jury was attempting to proceed and was delayed by the COVID pandemic, the Petitioners unilaterally set the final hearing. (SR: 478-479). Petitioners then sought to expedite the District Court appeal. (CC: 20). Ignoring the Petitioners' clients' statements would reward them for pushing their case to resolution prior to the public evaluation they alternatively claim was hindered.

The Media's claim that failure to release the names of the officers has somehow shielded officer actions from public review is simply false. The public has had an opportunity to independently evaluate the conduct of the law enforcement Respondents. If the voting public feels that the elected decision makers were wrong and

should be held accountable at the ballot box: they have video evidence on which to make such a determination.

The Media's real insistence on the release of names is contained later in its brief. (Media: 42). The Media seeks access to report the Respondents' work histories. The Media wants to dig through anything it finds interesting which the officers have done in the past. This would include the officer's credentials and their employment histories. Crucially, this would necessarily entail some lines about the demographics of the "civilians" against whom the officers may have used force in the past. (Media: 42).

It bears repeating that both officers in this case were attacked with deadly weapons. Further, both attacks were relatively, as they relate to the Respondents, spontaneous. John Doe 1 did order Woodard to step out of the brush and to show him (Doe 1) his hands. Otherwise, both attacks were unprovoked. Tony McDade, the day before he died, predicted that he would pull out a gun on a police officer and receive mortal return fire. To the extent the Media feels a need to publish a story about the "demographics of the civilians against whom force [was] used" in the past: the language of the law and the facts of these cases frustrate that intent.

John Doe 1 and John Doe 2 were forced to make split-second, life-or-death decisions. Both men ultimately used handguns to end the lives of their respective attackers. Both men have to live with the psychic impact of ending the life of another *person* with a firearm, at relatively close range. The Media claims to have some legal right to run an article which may or may not insinuate that the Respondents were racist. No portion of the Media's Initial Brief asserts there is a First Amendment right to obtain access to the information.

Florida law has evolved. Florida law now protects the dignity and privacy of crime victims. *Fla. Police Benevolent Ass'n, Inc. v. City of Tallahassee*, 314 So. 3d 796, 804 (Fla. 1st DCA 2021). There will be no criminal trials here. There is apparently no privately-held source through which to reveal the officers' identities. The Media's intent, based on the law and the facts of this case, is frustrated. When considering the stated aim, it is difficult to feel sympathetic.

Perhaps a member of this Court feels that such a media endeavor is necessary or appropriate. Justice Scalia and Professor Garner taught us to give the text its fair reading and to reject the desirability of the fair reading's anticipated consequences. *Reading Law*, xxvii. contra (MCIP: 11);(Chitwood: 3; 7). The answer to

misapplication of the governing text is better training, employee education or separate, fully-briefed litigation. (Reporters: 22-23). It is not the requested ad hoc judicial alteration of the law.

If the Media feels like its opportunity to claim that the Respondents were racist has been frustrated it should first find a case in which that's actually happened. It should find a case in which examination of the officer's actions was actually frustrated as opposed to a case in which the video has been released. If such a case is located, the media arguments may be appropriate. They are not appropriate here. They are an imagination of circumstances which do not exist. They are unbecoming of this Court's docket.

CONCLUSION

In our adversarial system, the side with the bad argument has the incentive to urge departure from, or distortion of, the governing text. *Reading Law*, 10. Departure from and distortion of the governing text is all the Petitioners bring. Petitioners' arguments are legally meritless. Petitioners' arguments are factually meritless. Oral argument cannot save this. Petitioners' arguments must be rejected. The First District's decision should be adopted and approved.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed using the Florida ePortal system and **electronic** service has been directed to: all counsel listed on the Florida ePortal system (including all alternate email addresses) on this eleventh (11th) day of May, 2022.

/s/ Luke Newman

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CERTIFICATE OF COMPLIANCE

This brief is filed in compliance with the font requirements of Fla. R. App. P. 9.045(b). In compliance with Fla. R. App. P. 9.210(a)(2)(B), this computer-generated brief contains, according to Microsoft Word, fewer than 13,000 words.

Respectfully submitted;

/s/ Luke Newman

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