IN THE SUPREME COURT OF FLORIDA

CASE NO. SC21-651
District Court Case No. 1D20-2193

CITY OF TALLAHASSEE, FLORIDA, et al.,

Petitioners,

v.

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

Respondents.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONER NEWS MEDIA COALITION'S INITIAL MERITS BRIEF

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INTRODUCTION

This appeal presents this Court with a choice. It is a choice between upholding Florida's long-standing constitutional mandate of transparency and public accountability through broad public record access rights, or undermining those rights through the perversion of a recently adopted crime victim rights amendment (a constitutional provision commonly known as "Marsy's Law"). Two people died in May of 2020, the same month George Floyd died. Both were killed by law enforcement officers. Who shot them? What is known of their work histories and current duty assignments? To this day, the public does not know.

When Marsy's Law was put to the voters in 2018, it was promoted with what most would find laudable intentions: give crime victims a greater voice and participatory role alongside government as the criminal prosecution and incarceration of their victimizers proceeds. But four years later it has been usurped by government itself—in this case, law enforcement personnel—to forever secrete the names of officers involved in on-duty shootings resulting in civilian deaths. These government agents are now routinely self-identifying as crime "victims" when they use deadly force, claiming they themselves were "victims" threatened by the individuals

they killed (or even bystander witnesses to the killing). This is not what Floridians voted for, and it is not what Marsy's Law was designed to do.

How did this come to be? The answer lies in relatively unique language found in Florida's version of Marsy's Law. It is language that gives crime "victims" (a defined term) "the right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victims' family…." Art. I, § 16(b)(5), Fla. Const. In concluding that the term "victim" broadly encompasses law enforcement officers acting in the line of duty, the appellate court applied an overly simplistic analysis. First, it held that there was no conflict between public record access rights found in Article I, Section 24 of the Florida Constitution and the records "confidentiality" provision found in Marsy's Law. This was error. Second, while recognizing that context matters when interpreting legal text, the appellate court failed to consider Marsy's Law's greater context, whom it is designed to protect, and how it is designed to operate. This too was error.

Finally, the appellate court held that the mere *identity* of a crime victim is protected from public disclosure by Marsy's Law. This latter holding is not only illogical given an accused's constitutional right to confront their accuser but also stretches beyond the kind of information crime victims can prevent from public disclosure under Article I, Section

16(b)(5) (particularly law enforcement officers whose names are displayed on their uniforms).

Were this Court to affirm the appellate court's decision, law enforcement officers who face on-duty threats they perceive as life threatening are empowered to respond with deadly force knowing they may do so without having to reveal their identity to the communities they serve. Shielding core public accountability information would be a perverse distortion of Marsy's Law.

In this case, two Tallahassee police officers engaged in the ultimate deprivation of liberty while on-duty and in response to separate calls for service. Both resulted in the deaths of two citizens. The officers' "victimizers" are dead, there will be no criminal prosecution, and, therefore, there is no "victimizer" for which Marsy's Law contemplates protection against. In arguing for secrecy related to their actions taken in the name of government, these officers count themselves among the ever more common number of Florida law enforcement claiming Marsy's Law "victim" status while performing their jobs and employing deadly force.

Whether the officers' actions were justified—and the News Media Coalition[1] does not approach this case with any predetermination on that point—is immaterial to the legal issue raised by this appeal. Keeping the officers' identities secret is simply incompatible with the public's broad constitutional and statutory rights to—for themselves—engage in oversight and debate, and to inspect public records related to the shootings that include officer names. *See* Art. I, § 24(a), Fla. Const.; Ch. 119, Fla. Stat. (2021). Anonymity would also conflict with well-established case law acknowledging that law enforcement officers have no cognizable privacy interest in on-duty activity, and that the public has a First Amendment right to freely document those actions. As discussed below, because of their unique role in society and daily interaction with citizens, the law frequently treats law enforcement officers differently than the average person. Marsy's Law is no different.

This Court should reverse the appellate court's decision and hold that law enforcement officers cannot seek "victim" status refuge under Marsy's Law to hide their identities as it relates to deadly conduct taken in the name

[1] The News Media Coalition consists of: (1) the First Amendment Foundation; (2) the Florida Press Association; (3) Gannett Co., Inc. (whose Florida properties include the *Tallahassee Democrat*); (4) The McClatchy Company, LLC d/b/a *Miami Herald* (f/k/a Miami Herald Media Company); and (5) The New York Times Company.

of government. This Court should further hold—as the trial court did—that the mere identity (*i.e.*, the name) of a Marsy's Law crime "victim" is never protected.

STATEMENT OF THE CASE AND OF THE FACTS

The facts of this case are relatively straightforward. In short, two Tallahassee Police Department ("TPD") officers were involved in separate on-duty incidents that ended in each shooting and killing a civilian. Each officer claimed the shootings were in response to deadly threats made by the decedents and were, therefore, justified.

Both then also claimed protection under Marsy's Law, deeming themselves "victims" of assaults. As the City of Tallahassee ("City") was prepared to release public records about the shootings containing their names, the Doe Officers sued to block disclosure. The News Media parties made related public records requests and intervened in this lawsuit to assert their access rights.

Officer Doe 1 Incident

Officer Doe 1 is a TPD officer who responded to a call for service on May 19, 2020, by a civilian who claimed to have been beaten by a white male. (R. 73; R. 84, ¶ 64). Upon arriving at the suspect's location, the officer found him hiding in the bushes, told him to raise his hands, and saw

him holding a knife. (*Id.* at ¶ 65). The suspect then allegedly rushed toward the officer brandishing the knife, and the officer shot and killed the suspect in response. (R. 84-85, ¶ 65; R. 255). As noted above, Officer Doe 1 claims he was a "victim" of aggravated assault with a deadly weapon and is entitled to anonymity under Marsy's Law. (*Id.* ¶ 66).

Officer Doe 2 Incident

On the morning of May 27, 2020, TPD Officer Doe 2 responded to a call for service relating to a stabbing in which the suspect fled the scene. (R. 73; R. 87, ¶¶ 79, 83). The officer found the suspect in a public roadway outside an apartment complex, and according to the Petition below, the suspect "aggressed towards Doe 2 and punched his arms out in a shooting stance." (R. 87, ¶¶ 81-82, 85; R. 88, ¶ 92). Fearing the suspect was pointing a firearm at him, Officer Doe 2 "partially exit[ed] his patrol vehicle and discharged his firearm," killing the suspect. (R. 88, ¶ 93; R. 89, ¶ 96; R. 313). Like Officer Doe 1, Officer Doe 2 asserts he/she was a "victim" of an aggravated assault with a deadly weapon under the general criminal statute, Florida Statute Section 784.021. (R. 88, ¶ 95). Officer Doe 2 also claims that after the shooting, "bystanders" began to "threaten" him/her and another officer who was on the scene (whose name is not at issue here). (R. 89, ¶ 101).

The Public Records Requests

On June 12, 2020, counsel for the News Media Coalition made a public records request on its behalf for records containing the name of Officer Doe 2. (R. 331-332, 336). On June 16, 2020, TPD released certain police reports regarding the shootings but, due to this litigation, redacted the officers' names. (R. 190-191). The redacted reports reference an "officer involved shooting" and do not list the officers as "victims." (*See, e.g.*, R. 201, ¶¶ 4-5; R. 202, ¶¶ 10-11; R. 229, 236, 275).

Procedural History

This litigation commenced on June 1, 2020, when Respondents filed a Verified Motion for Emergency Injunction to prevent the City's disclosure of Officer Doe 2's name only. (R. 6). After a hearing, the trial court denied the emergency motion on June 4, 2020. (R. 65-66, 173-174). The City then gave Respondents five days to seek additional relief before releasing the name. (R. 91, ¶¶ 116-117).

In anticipation of the Respondents seeking such additional relief, on June 10, 2020, the News Media filed a motion to intervene (R. 67), which the trial court granted on June 24, 2020. (R. 177). Two days later, on June 12, Respondents filed a Petition seeking declaratory, mandamus, and

injunctive relief that law enforcement officers qualify as crime "victims" under Marsy's Law, prohibiting the release of their names. (R. 72).

On June 25, 2020, the City, as custodian of the subject records, filed an Answer and Response to the Petition, asserting that Marsy's Law does not apply to on-duty law enforcement officers and, thus, the identities of the Doe Officers as contained within the records are public information. (R. 178, 195-196). The News Media filed a memorandum of law on June 29, 2020, also arguing that Marsy's Law was not intended to protect the identities of law enforcement officers acting within the scope of their employment. (R. 198-200, 210).

The trial court entered an order on July 24, 2020, denying the relief sought in the Petition and holding that, in order to harmonize both the Marsy's Law provision as well as the constitutional right to access public records, on-duty police officers cannot be "victims" under Marsy's Law. This ruling was made after close examination of the text, context, and intent of the subject provisions. (R. 351, 355). The trial court's order was limited to "law enforcement officers when acting in their official capacity." (R. 355). It also held that Section 16(b)(5) of Marsy's Law does not prohibit the release of crime victims' names. (R. 355).

Disposition in First District Court of Appeal

The Respondents immediately appealed to the First District Court of Appeal, and also sought an automatic stay of the trial court's order (which the trial court granted). (R. 356). On April 6, 2021, the appellate court reversed the trial court's ruling, finding that the plain language of Marsy's Law did not limit the class of victims entitled to seek protection. *See Fla. Police Benevolent Ass'n, Inc. v. City of Tallahassee*, 314 So. 3d 796, 802 (Fla. 1st DCA 2021).

The appellate court first determined that Marsy's Law (Article I, Section 16) and the constitutional right of access to public records (Article I, Section 24) do not conflict and did not need to be construed in a manner that gave effect to both. *Id.* at 801-02. The appellate court held that because Section 24(a) expressly includes a carve-out for records "specifically made confidential by this Constitution," the Section does not conflict with Section 16, which provides a victim the right to prevent the release of certain information. *Id.* The appellate court thus determined that the trial court had improperly added an exception to the definition of "victim" that would exclude, not only law enforcement, but presumably any government employee. *Id.* at 801.

The appellate court went on to rule that maintaining anonymity of on-duty law enforcement officers does not thwart the intent of Article I, Section 24 because internal affairs investigations and grand jury proceedings may still proceed against an officer whose conduct is determined (by a law enforcement agency or state attorney) to be worthy of review or criminal investigation. *Id.* at 802.

Finally, the appellate court held that because Marsy's Law states that crime victims' rights incept at the time of their victimization, a criminal prosecution is not necessarily required in order for the Marsy's Law rights to apply. *Id.* at 803. It concluded its ruling by holding that the records provision of Section 16(b)(5) regarding the right to prevent disclosure of information that could be used to locate or harass a victim includes a victim's name. *Id.* at 804.

SUMMARY OF THE ARGUMENT

The decision below results in an ironic outcome. In cases where government is responsible for a civilian death, Marsy's Law works to erect perpetual anonymity for law enforcement officers. The alleged suspects are dead. Naturally, there will be no criminal proceedings where victims exercise rights, and no victim will ever need to come forward. The Doe Officers need no protection from their alleged, deceased victimizers.

The decision below should be reversed for three primary reasons. First, the protections afforded under Marsy's Law can and must be harmonized with the constitutional right of access to public records. Marsy's Law was passed to provide true crime victims comparable protection throughout the criminal justice process to that of their accused. It was not designed to anonymize government killings. Conversely, Section 24(a) of the Florida Constitution and its implementing statutes (Chapter 119, Florida Statutes) grant the public broad rights to access public records with the goal of promoting governmental transparency. Because this serves a different purpose from Marsy's Law, the two can be read in a manner that serves their respective interests.

Second, the appellate court's conclusion that the term "victim" includes on-duty law enforcement officers ignores the express intent of Marsy's Law, the surrounding context of Marsy's Law, and the unique role law enforcement holds in society—one that the law routinely treats differently. The appellate court relatedly oversimplified the definition of a "victim" and failed to engage in any interpretation of that term, despite this Court's previous recognition of its ambiguity.

On-duty government agents cannot be "victims" under Marsy's Law as they are part of the very criminal justice process that serves to

investigate crimes, apprehend suspects, and assist victims of the crimes they investigate in pursuing their own Marsy's Law rights. Moreover, with respect to the Doe Officers, as previously noted, their alleged aggressors are deceased, and thus no purpose of Marsy's Law is fulfilled by concealing their names.

Finally, mere identity information such as a name is not specifically mentioned in Section 16(b)(5). This of course makes sense because our criminal justice system does not operate in secret. With respect to law enforcement officers specifically, this would be consistent with public records law exemptions elsewhere that exempt certain information about them such as home addresses, but not the names worn on their uniforms. They lack any right of privacy in on-duty actions, which the public has a right to document. All told, beyond the reality that victim names are not something the criminal justice system would ever broadly sanction as something secret, protecting law enforcement identities would contravene established law promoting police transparency.

Overall, Marsy's Law was designed with a legitimate purpose: to put crime victim rights on more equal footing with those of their criminal defendant victimizers. But it should not be warped into a vehicle to shield government actors, imbued with the authority to wield lethal force, from

public scrutiny, particularly when the "victimizer" is killed by the "victim." The appellate court's decision should be reversed in all respects.

ARGUMENT

I. Standard of Review is *de novo*.

This Court reviews interpretations of constitutional provisions *de novo*. *See Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008); *Zingale v. Powell*, 885 So. 2d 277, 280 (Fla. 2004).

II. The Appellate Court Failed to Recognize the Conflict Presented Between Marsy's Law and Constitutional Public Access Rights.

As noted, this appeal primarily implicates two Florida constitutional provisions: the public's right to access government records in Article I, Section 24(a) and the "victim" rights afforded under Marsy's Law in Article I, Section 16(b). The appellate court misconstrued Section 16(b)(5) as an explicit exemption to Section 24(a), and thus found these provisions do not conflict. When both are read in context and applicable rules of constitutional interpretation applied, only one interpretation of Marsy's Law permits both provisions to co-exist.

Overwhelmingly approved by voters in 1992, Article I, Section 24[2] provides the public the right to inspect and copy the records of any state or local agency. Buttressing our state's constitutional commitment to open government is the Public Records Act, Chapter 119 of the Florida Statutes. It declares that "[i]t is the policy in this state that all state, county and municipal records are open for personal inspection and copying by any person" and that "[p]roviding access to public records is a duty of each agency." § 119.01(1), Fla. Stat. (2021).

Laws fostering government transparency are liberally construed in favor of public access, and any exemptions to that right are narrowly construed and limited to their designated purpose. *Lightbourne v. McCollum*, 969 So. 2d 326, 332-33 (Fla. 2007); *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 779 n.1 (Fla. 4th DCA 1985). Indeed, if there is any doubt about the application of the law to a particular case, "doubt is resolved in favor of disclosing the documents." *Nat'l Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1206 (Fla. 1st DCA

[2] This provision grants "[e]very person . . . 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." Art. I, § 24, Fla. Const.

2009); *see also Dade Cty. Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 304 (Fla. 3d DCA 2001).

Accordingly, Florida's constitutional right to privacy makes plain that privacy rights are subordinate to the public's constitutional right of access: "This section shall not be construed to limit the public's right of access to public records." Art. I, § 23, Fla. Const. Thus, absent a specific, applicable exemption, public employees—including law enforcement officers—generally lack privacy rights in records about their public actions. *See Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 940 n.4 (Fla. 2002); *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985); *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 639-40 (Fla. 1980); *Mills v. Doyle*, 407 So. 2d 348, 352 (Fla. 4th DCA 1981).

This Court has previously declared the right of access to public records as a "cornerstone of our political culture." *Bd. of Trs., Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016) (citation omitted). Thus, elevating access above privacy reflects the recognition that "Florida's public records law . . . promote[s] a state interest of the highest order." *Byron, Harless, Schaffer, Reid & Ass'n v. State*, 360 So. 2d 83, 97 (Fla. 1st DCA 1978), *reversed on other grounds*, 379 So. 2d 633 (Fla. 1980). That interest is "to promote public awareness and

knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people." *Cent. Fla. Reg'l Transp. Auth. v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401, 404 (Fla. 5th DCA 2015).

Florida's version of Marsy's Law was approved in November 2018. It provides certain rights to crime "victims" contemplated in the context of a criminal prosecution and conviction. Its purpose is clearly outlined in its text:

> To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents….

Art. I, § 16(b), Fla. Const.

It, for example, provides "victims"[3] the "right to due process and to be treated with fairness and respect for the victim's dignity," the right "within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused" and the right "to have the safety and welfare of the victim and the victim's family considered when setting

[3] In relevant part, Marsy's Law defines a "victim" as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime…." Art. I, § 16(e), Fla. Const.

bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family." Art. I, § 16(b)(1), (3), (4), Fla. Const.

As this Court has held, a new constitutional provision prevails over prior provisions of the Constitution only if it specifically repeals the former provision or if the two provisions simply cannot be harmonized. *Jackson v. Consol. Gov't of City of Jacksonville*, 225 So. 2d 497, 500 (Fla. 1969); *Wilson v. Crews*, 34 So. 2d 114, 118 (Fla. 1948); *State v. Butler*, 69 So. 771, 779 (Fla. 1915) (same). In this case, the two constitutional provisions address entirely different subjects (*i.e.*, citizen access to public records, on the one hand, and crime victims' rights and safeguards, on the other) and were by no means adopted for the same purpose. They, therefore, can and should be harmonized. *See Wilson*, 34 So. 2d at 118 (distinct constitutional provisions cannot be harmonized "only when they relate to the same subject, are adopted for the same purpose, and cannot be enforced without material and substantial conflict."); *Butler*, 69 So. at 779 (same).

While the appellate court found that the two constitutional provisions at issue can coexist and be construed in harmony, its reading of Marsy's Law does the opposite and fails to give effect to the intent of both. *See Fla. Police Benevolent Ass'n*, 314 So. 3d at 801-02; *see also Zingale*, 885 So.

2d at 283; *Benjamin*, 998 So. 2d at 570 ("we must give effect to every provision and every part thereof."); *Jackson*, 225 So. 2d at 500-01 (when constitutional provisions conflict, every reasonable effort must be made to give effect to and reconcile both provisions).

Moreover, the appellate court improperly determined that the Marsy's Law records disclosure provision essentially operates as an automatic exemption, untethered to context and purpose, which provides the right to inspect or copy public records "except with respect to records exempted under this section or specifically made confidential by this Constitution." Art. I, § 24(a), Fla. Const.; *see also Fla. Police Benevolent Ass'n*, 314 So. 3d at 801. But Section 16(b)(5) does not include the requisite specificity required of a public records exemption and in fact does not necessarily make any information or record confidential. Rather, it grants crime "victims" the "right to prevent"[4] the disclosure of records. *See* Art. I, § 16(b)(5), Fla. Const. It is also a right that can evolve over time, or as in this case, simply

[4] In adopting Rule of Judicial Administration 2.423, this Court observed that the "right to prevent the disclosure of information or records…" under Marsy's Law "indicates that action must be taken by the victim to assert that right." *See In re Amend. to Fla. R. of Gen. Practice & Jud. Admin. 2.423*, No. SC20-1128, 2021 WL 5366033, at *2 (Fla. Nov. 18, 2021) (Canady, J., concurring in part, dissenting in part). This contrasts with an opposing (errant) construction maintaining that such rights automatically incept upon victimization, rather than being an "opt-in" provision.

not apply. In those extremely rare instances when the Florida Constitution makes records exempt from public disclosure mandates, it does so with clear, specific intention. *See* Art. X, § 29(d)(4), Fla. Const. (requiring Department of Health to protect confidentiality of medical marijuana patients: "All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes." This appears to be the only specific public records exemption contained within the Florida Constitution).

Accordingly, the holding that the two provisions need not be considered is misplaced. Both provisions' respective purposes must be considered in determining Marsy's Law's scope.

III. Marsy's Law Does Not Reach Law Enforcement On-Duty Action.

The appellate court additionally erred when it determined that law enforcement officers can obtain anonymity under Marsy's Law by identifying as a "victim" for actions taken on-duty. This conclusion ignores the blatant ambiguity in the term "victim" and the context surrounding the disclosure provision, which makes clear that the right to prevent the release of certain information is to protect the victim from the victimizer during the criminal process. The appellate court below also failed to recognize the unique role law enforcement officers play in society and their inherent role

in the criminal justice process. This results in law enforcement being treated differently than the general citizenry.

A. Context Must Inform the Interpretation of Marsy's Law's Disclosure Provision.

When interpreting a constitutional provision, courts follow principles parallel to those of statutory interpretation, beginning first with an examination of the actual language used. *Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc.*, 978 So. 2d 134, 139-40 (Fla. 2008). "If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." *Id.* at 140 (quoting *Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1119 (Fla. 1986)). However, even if language is unambiguous, any clear meaning will not control if it "leads to a result that is either unreasonable or clearly contrary to legislative intent." *Fla. Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 819 (Fla. 2007) (internal citation omitted).

Further, a court endeavors to construe constitutional language "consistent with the intent of the framers and the voters." *Crist*, 978 So. 2d at 140 (quoting *Zingale*, 885 So. 2d at 282). The Court is "obligated to give effect to [the] language [of a Constitutional amendment] according to its meaning and what the people must have understood it to mean when they approved it." *Benjamin*, 998 So. 2d at 570 (internal citations omitted).

In this case, who can constitute a "victim" under Marsy's Law is not straightforward and is in reality ambiguous. Thus, context becomes important in order to understand its meaning. Further, the stated purpose of Marsy's Law makes clear it was never intended to apply in a manner that shields government actions.

1. "Victim" is Ambiguous and Requires Interpretation.

In additional to the "opt-in" vs. "automatic" disagreement, Marsy's Law is rife with other construction issues, including ones that are actual ambiguities. For example, this Court previously acknowledged that the word "victim" as used in Marsy's Law is ambiguous when it rejected a challenge to the amendment's ballot language arguing that it was misleading because it did not specifically inform voters whether "victims" could include corporations. *See Dep't of State v. Hollander*, 256 So. 3d 1300, 1311 (Fla. 2018) (recognizing "an ambiguity of the text" and stating that "[n]othing in Amendment 6 states whether or not crime victims includes corporations").

"Victim" is ambiguous in the context of this matter as well. The appellate court failed to consider this ambiguity and in turn failed to meaningfully examine the definition. *See Fla. Benevolent Ass'n*, 314 So. 3d at 801. Rather, the court below simply determined that because a law

enforcement officer is a person—albeit an agent of government—they meet the definition of a crime victim "when a crime suspect threatens the officer with deadly force, placing the officer in fear for his life." *Id.* But as this Court has already noted, the definition of "victim" is not so simple. It does in fact require interpretation because it does not confront the myriad kinds of persons or entities, including governmental bodies and their agents, that could attempt to claim victim status under the law. Just like corporations, government acts through individuals. And just like this Court found "victim" to be ambiguous when applied to corporations so too is it ambiguous when a person acts on behalf of government.

This Court has routinely reiterated that a word "cannot be read in isolation" and should be "expounded in its plain, obvious, and common sense, *unless the context* furnishes some ground to control, qualify, or enlarge it." *Advisory Op. to Gov. re: Implementation of Amend. 4, The Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020) ("The words of a governing text are of paramount concern, and what they convey, ***in their context***, is what the text means.") (emphasis added); *Lee*, 189 So. 3d at 125 (in reviewing an ambiguity a court must "consider the statute as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence on the statute.").

The text of the provision itself is the "most reliable and authoritative expression" of intent. *Cox*, 967 So. 2d at 820.[5]

For example, in *Benjamin*, this Court analyzed the definitions of "health care facility" and "health care provider" within a constitutional amendment to determine whether nursing homes were included within those definitions. *Benjamin*, 998 So. 2d at 570. In conducting its analysis, the Court specifically looked to language in the statement of purpose accompanying the amendment, as well as other statutes that included a definition of "health care facility," "nursing home," and "patient" to inform its interpretation. *Id.* at 570-71.

Below, the appellate court recited case law recognizing that context factors but then conducted no contextual analysis. An examination of the prefatory text and surrounding provisions of Marsy's Law directly informs

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[5] The appellate court recognized this principle, noting that meaning is duly shaped by context. *See Fla. Police Benevolent Ass'n*, 314 So. 3d at 800 (citing Antonin Scalia & Bryan Garner, *Reading the Law: The Interpretation of Legal Texts* 56 (2012), "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."). That same publication goes on to observe, however, that "purpose" matters too: "The difference between textualist interpretation and so-called purposive interpretation is not that the former never considers purpose. It almost always does….it can be said more generally that the resolution of an ambiguity or vagueness that achieves a statute's purpose should be favored over the resolution that frustrates its purpose." *See* Antonin Scalia & Bryan Garner, *Reading the Law: The Interpretation of Legal Texts* 56 (2012).

the definition of "victim." Moreover, a review of the definition must be read *in pari materia* with the remaining provisions as well as Florida's constitutional right to access, the First Amendment, and the Public Records Act.

2. Marsy's Law Operates to Balance Victim Rights with Defendant Rights During the Criminal Process, and Those Rights Naturally Evolve.

As noted above, the intent of Marsy's Law is apparent from the text itself. First, the prefatory text states:

> To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents….

Art. I, § 16(b), Fla. Const. Section 16(d) also states that the "provisions of this section apply throughout criminal and juvenile justice processes." *Id.* § 16(d). This makes plain that the rights afforded "victims" under Subsection 16(b) are intended to be exercised with an anticipation that the criminal justice process proceeds, including, for example, the "right to due process and to be treated with fairness and respect for the victim's dignity," the right "within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused," and the right "to have the safety and welfare of the victim and the victim's family considered when

setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family." Art. I, § 16(b)(1), (3), (4), Fla. Const.

And this Court reiterated that this is the "chief purpose" of the amendment, and that is what the ballot summary reflected to voters:

> The portion of the ballot summary addressing crime victims' rights stated: "RIGHTS OF CRIME VICTIMS; JUDGES. Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes."

See Hollander, 256 So. 3d at 1308.

Accordingly, the term "victim" then must be interpreted based on what it is understood to have meant, which is, victims' rights should be on equal footing with those of the accused. Notably, the appellate court limited its review of the purpose of Marsy's Law to a subset of the text: "to preserve and protect" certain rights. *See Fla. Police Benevolent Ass'n*, 314 So. 3d at 801. But this narrow review removes critical context.

Moreover, when, as here, the alleged aggressor is deceased, Marsy's Law cannot be invoked because there will be no criminal process brought against the victimizer and no person against whom the victim would need

protection.[6] Yet in such cases, the names of those "victims" will remain anonymous potentially forever, unlike what would occur if a criminal prosecution actually incepted. What becomes clear then is that, while certain Marsy's Law rights might be triggered at the time of victimization, *see id.* § 16(b), they do not last in perpetuity.

Courts have concluded that, even though the law does not explicitly state if or when these rights end, victims do indeed lose their rights at the conclusion of a criminal proceeding or when charges against the accused are dropped. This makes sense, as when an alleged victimizer survives and charges are filed, the victimizer is constitutionally entitled to know the identity of his alleged victim. For example, the South Carolina Supreme Court in *Ex parte Littlefield* explained that some victims' rights under Marsy's Law change as a criminal proceeding progresses, with some rights attaching prior to indictment (such as the right to be informed of the accused's arrest), and the remainder attaching post-indictment. 540 S.E. 2d 81, 85 (S.C. 2000). But "[o]nce a criminal case has been resolved and the defendant is sentenced, the alleged victim loses his victim status under

[6] It again should be emphasized that while the Doe Officers cast themselves as victims, it is the officers' own actions in shooting two individuals for which they now seek anonymity. Indeed, Doe 2 has specifically made clear that what he/she allegedly fears are unspecified threats from the community, not a victimizer. (R. 89, ¶ 101).

the Victims' Bill of Rights." *Id.*; *see also Ross Yordy Constr. Co. v. Naylor*, 55 F.3d 285, 288 (7th Cir. 1995) (finding an individual lost status as a "victim" when the State Attorney dropped the charges against the defendant).[7]

Inclusion of the word "person" in the definition of "victim" renders it vague and ambiguous. Where a definition is unclear, courts frequently look to other statutes defining the same term for guidance. *See Benjamin*, 998 So. 2d at 570; *People v. Carter*, No. C078010, 2018 WL 5603161, at *2 (Cal. App. 3d Dist. Oct. 30, 2018) (unpublished) (looking to statute that defined "victim" with more specificity than that in Marsy's Law provision to determine that husband did not qualify as a "victim" for purposes of receiving restitution because he was not engaged or married to his wife at the time the crime against her was committed); *Eicherly v. Comm'n on Jud. Performance*, No. A151723, 2019 WL 1552856, at *5 (Cal. App. 1st Dist. Apr. 10, 2019) (unpublished) (looking to penal code definition of "prosecuting attorney" to determine the meaning of "prosecuting agency" in

[7] Similarly, the Ohio Supreme Court ruled that application of its version of Marsy's Law to a civil public records action was inappropriate once a criminal case was no longer active, noting that Marsy's Law seeks to "secure for victims justice and due process throughout the criminal and juvenile justice systems." *State ex rel Summers v. Fox*, 169 N.E. 3d 625, 638 (Ohio 2020) (emphasis added).

Marsy's Law provision); *State v. Kostelecky*, 906 N.W.2d 77, 79 (N.D. 2018) (reviewing definition of "restitution" in Marsy's Law versus that in other criminal and civil tort statutes).

Here, the definition of "victim" in Florida Statute Section 960.03, which covers Victim Assistance laws, is instructive as it too uses the term "person." Section 960.03(14) defines "victim" in one of five ways:

> (a) A **person** who suffers personal physical injury or death as a direct result of a crime;
>
> (b) A **person** younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime but who was not physically injured;
>
> (c) A **person** younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured;
>
> (d) A **person** against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death; **or**
>
> (e) An **emergency responder**, as defined in and solely for the purposes of s. 960.194, who is **killed** answering a call for service **in the line of duty**.

(emphasis added). By separately setting out "emergency responder"—which includes law enforcement[8]—as a type of victim, it is clear that "emergency responder" was not intended to be the same as "person." If it were, subsection (e) would be redundant and serve no purpose. Rather, the statute lays out one specific situation in which a law enforcement officer can be considered a "victim," and that is when that officer is killed in the line of duty, and for the limited purpose of receiving death benefits under the statute. By extension, the use of "person" in the Marsy's Law definition of "victim" should not be read to include law enforcement officers.[9]

An Ohio appellate court ruled just that in *City of Centerville v. Knab*, where it referred to other definitions of "victim" to inform its decision regarding whether a law enforcement agency could be classified as a "victim" under Ohio's Marsy's Law. 136 N.E. 3d 808, 814-15 (Ohio Ct. App. 2019). The court ultimately held that, even though Marsy's Law expanded

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[8] Section 960.194(1)(b) defines "emergency responder" as including law enforcement officers. Section 960.194(e) defines "law enforcement officer" based on Section 943.10(1), which defines "law enforcement officer" as a person who is "elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state."

[9] TPD's own disclosed public records bear out this truth as they do not characterize the Doe Officers as victims.

the meaning of the term "victim" to include those who are directly or proximately harmed by the crime, it did not "expressly authoriz[e] sentencing courts to characterize law enforcement agencies as victims who are entitled to restitution due to their efforts in carrying out their official duties." *Id.* at 815-16. The individuals through which government agencies operate should fare no better.

At bottom, given Marsy's Law's purpose and the context in which it is designed to operate, law enforcement officers simply cannot be Marsy's Law "victims" as a result of actions occurring while on-duty that wholly eviscerate any need for "victim" rights protections.

B. Law Enforcement Officers are Routinely Treated Differently Under the Law.

Excluding on-duty law enforcement action from Marsy's Law protection is also entirely consistent with other laws differentiating civilians and law enforcement officers. The appellate court did not consider that law enforcement officers are uniquely positioned within the criminal justice system, with government-sanctioned authority to use lethal weapons in furtherance of their statutory duties to "make arrests" and "preven[t] and detec[t] crime." *See* § 943.10(1), Fla. Stat. (2021). As the law in many areas recognizes, this justifies special treatment—both in ways that provide

additional rights and ways that subordinate rights to greater societal interests.

Unlike civilians or ordinary government employees, wearing a badge vests law enforcement with the authority not only "to make an arrest or investigatory stop" but also "to use some degree of physical coercion or threat thereof to effect it." *Penley v. Eslinger*, 605 F.3d 843, 849 (11th Cir. 2010); *G.M. v. State*, 19 So. 3d 973, 981 (Fla. 2009) (the "seizure" of a civilian requires the "display of police authority" which causes or produces the person's submission and halts his freedom to walk away).[10]

Accordingly, courts routinely require higher standards of behavior from law enforcement officers than ordinary people. *See, e.g.*, *Lewis v. City of New Orleans*, 415 U.S. 130, 135 (1974) (Powell, J., concurring) (noting that police officers are expected to react differently to verbal heckling and "exercise a higher degree of restraint than the average citizen"); *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462 (1987) (finding that narrower

[10] The appellate court asserted that the trial court's ruling would extend to all government employees. *See Fla. Police Benevolent Ass'n*, 314 So. 3d at 801. This is not what the trial court held, nor what the News Media Coalition herein seeks. From the onset, the News Media Coalition has stressed two points: (1) Marsy's Law cannot be used to shield core information about the actions of law enforcement—particularly lethal actions—from the public; and (2) crime victim names are not, in any event, protected under Marsy's Law. The facts of this case require this Court to go no further in reversing the appellate court.

application of a statute criminalizing verbal criticism should apply when police officers are involved).

The law, too, routinely treats officers differently, frequently providing for additional protection to law enforcement. For example, Florida's Public Records Act specifically exempts from disclosure officer information, namely phone numbers, home addresses, and dates of birth, a right not afforded to general civilians. *See, e.g.*, Fla. Stat. §§ 119.071(4)(d) and 914.15; Fla. Att'y Gen. Op. 2010-37.

Law enforcement are also entitled to qualified immunity protections when sued under 42 U.S.C. § 1983 for actions undertaken while on duty. Such protection is "necessary to preserve [police officers'] ability to serve the public good or to ensure that talented candidates were not deterred by the threat of damages suits from entering public service." *Wyatt v. Cole*, 504 U.S. 158, 167 (1992). Private citizens cannot avail themselves of this immunity because "private parties hold no office requiring them to exercise discretion; nor are they principally concerned with enhancing the public good." *Id.* at 168; *Bretherick v. State*, 170 So. 3d 766, 778 (Fla. 2015), *superceded by statute*, (noting that "considerations involved in determining immunity from suit in the context of § 1983 for law enforcement officials are different from those involved in evaluating claims of immunity from

prosecution under the Stand Your Ground law" because each involves "different actors operating in completely different capacities" with "different policy rationales").

Conversely, because of the authority law enforcement wields, they are held to different standards of accountability, ones designed to ensure the public can meaningfully review the actions of police officers and if need be hold them responsible for the actions they take in government's name. Jurisdictions around the country have uniformly held that police officers lack a right to privacy in their public, on-duty actions. *See, e.g.*, *Jean v. Mass. State Police*, 492 F.3d 24, 30 (1st Cir. 2007) (police officers' privacy interests "virtually irrelevant" where they were recorded searching a private home); *Ford v. City of Boynton Beach*, 323 So. 3d 215, 221 (Fla. 4th DCA 2021) (Warner, J., concurring specially) ("A law enforcement officer has no reasonable subjective expectation of privacy in conversations he or she has with the public or the arrestee in the performance of the officer's duties in public places.").

Courts have further held that the public has a First Amendment right to record police actions in public.[11] *See Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (plaintiff had a First Amendment right to record police officers making traffic stops because the "First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest."); *Bowens v. Superintendent of Miami S. Beach Police Dep't*, 557 F. App'x 857, 863 (11th Cir. 2014) (freelance photographer had a First Amendment to photograph alleged police misconduct); *see also Turner v. Lieutenant Driver*, 848 F.3d 678, 689 (5th Cir. 2017); *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011); *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 600-01 (7th Cir. 2012); *Alford v. Haner*, 333 F.3d 972, 976 (9th Cir. 2003), *rev'd on other grounds*, 543 U.S. 146 (2004).

[11] In fact, a Florida statute that purported to criminalize the publication of names, addresses, and phone numbers of police officers was ruled unconstitutional as a violation of the First Amendment. *See Brayshaw v. City of Tallahassee, Fla.*, 709 F. Supp. 2d 1244, 1250 (N.D. Fla. 2010). The court recognized that while police officer safety was a compelling interest, publishing such information was not in itself threatening. *Id.* at 1248-49. The court also noted that the "publication of truthful personal information about police officers is linked to the issue of police accountability through aiding in achieving service of process, researching criminal history of officers, organizing lawful pickets, and other peaceful and lawful forms of civic involvement that publicize the issue." *Id.* at 1249.

For this same reason, this Court has previously held that police officers cannot shield unfavorable information about their official conduct in grand jury findings, even if they ultimately are not indicted. *See Miami Herald Publ'g Co. v. Marko*, 352 So. 2d 518, 522-23 (Fla. 1977). In *Marko*, a grand jury determined an officer was justified in his use of deadly force when he shot a man who threatened him during an investigation. *Id.* at 519. But, despite not indicting him, the grand jury presentment described other acts of misconduct and offered critical recommendations, including dismissal. *Id.* The Court, in recognizing the police officers as governmental actors, found that their right to privacy did not outweigh the public's right to evaluate their actions: "A society governed by representative officials concomitantly requires citizen review of public action....the legislature has ensured that any potential harm to public officeholders will be the product of their own conduct, and not the consequence of an unrestrained body of misguided citizens." *Id.* at 523.

Similarly, the Florida wiretap statute, which criminalizes the unauthorized recording of another person, cannot be invoked by law enforcement officers acting in the line of duty. *See Bacon v. McKeithen*, No. 5:14-cv-37-RS-CJK, 2014 WL 12479640, at *3 (N.D. Fla. Aug. 28, 2014) ("[T]here is little societal expectation of privacy for police officers

acting in the line of duty in public places; an expectation of privacy in these circumstances would undercut societal expectations of police accountability.").

Finding that law enforcement cannot avail themselves records provisions of Section 16(b) is consistent with established legal precedent acknowledging that generally applicable laws in fact yield if they work to frustrate transparency and the public's ability to oversee law enforcement activity.

The appellate court dismissed the *public's* oversight role in this process, stating that transparency is not diminished because internal government investigations can still go forward and the state attorney could file charges if warranted (*see Fla. Police Benevolent Ass'n*, 314 So. 3d at 802). But Section 24(a) grants a constitutional right to the *public* to review the actions of government, and the information at stake in this case lies at the core of why we have open records laws. Prohibiting the release of these records forecloses the *public's* ability to independently evaluate, not only the conduct of law enforcement and the individual personnel histories of those involved in on-duty shootings, but also the decisions of government charged with determining whether or not to sanction an officer or even prosecute. And if the state attorney chooses not to prosecute an

officer,[12] the name will be forever secreted. This is not what Marsy's Law intended nor what Section 24(a) requires. The appellate court must be reversed.

IV. Names Alone Are Not Protected Under Marsy's Law.

Finally, *names* of victims alone are not made confidential by nor protected under Article I, Section 16(b)(5), which, again, gives qualifying victims the "right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family…."

The appellate court inappropriately injected "identification" language into the provision that is plainly absent, despite its own recognition that courts are not permitted to read into constitutional text words that are not there. *See Fla. Police Benevolent Ass'n*, 314 So. 3d at 804; *see also Israel v. DeSantis*, 269 So. 3d 491, 496 (Fla. 2019) ("[I]n construing a constitutional provision, we are not at liberty to add words that were not

[12] According to data from researcher Philip Stinton, less than 2 percent of police officers involved in an on-duty shooting are arrested. German Lopez, *Police officers are prosecuted for murder in less than 2 percent of fatal shootings*, VOX (Apr. 2, 2021), https://www.vox.com/21497089/derek-chauvin-george-floyd-trial-police-prosecutions-black-lives-matter. Since 2005, only 135 officers have been arrested for murder or manslaughter. *Id.* One such reason is the political and social pressure on prosecutors, who frequently have to consider damaging their working relationship with police agencies from whom they rely upon to obtain evidence in their everyday cases. *Id.*

placed there originally or to ignore words that were expressly placed there at the time of adoption of the provision.") (quoting *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009)).

The appellate court justified its insertion of "names" and "identity" into the text by stating that such is consistent with other Florida laws that treat a victim's "identity" as confidential. *See Fla. Police Benevolent Ass'n*, 314 So. 3d at 804. But in every example cited, the word "identity" or "name" is expressly included in the text. *See id.*, *citing* Fla. Stat. § 119.071(2)(h) (exempting "[a]ny information that reveals the **identity** of the victim of the crime of" child abuse, human trafficking, and sexual offenses); Fla. Stat. § 119.071(2)(j) ("any document that reveals the **identity**, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and **identifies** that person as the victim of a crime…"); Ch. 95-207, § 2, Laws of Fla., Crime Victims Protection Act, ("Legislature finds that it is a public necessity that disclosure to the public of victims' **identities** be limited as provided for in this act) (emphasis added).

Accordingly, crime victims' names alone are not confidential or exempt from disclosure unless a specific statutory exemption makes them so. *See, e.g.*, Fla. Stat. § 119.011(3)(c)2 ("The **name**, sex, age, and address of a person arrested or of the **victim of a crime**" is not exempt as

criminal investigative or intelligence information) (emphasis added). Such language is blatantly absent from the Marsy's Law disclosure provision, and thus it should be regarded as intentionally excluded. *See generally Beach v. Great W. Bank*, 692 So. 2d 146, 152 (Fla. 1997) ("[w]hen the legislature has used a term ... in one section of the statute but omits it in another section of the same statute, [the court] will not imply it where it has been excluded.").

And this makes sense, as names generally are not protected as private under the constitution. *See, e.g.*, *Post-Newsweek Stations, Fla. Inc. v. Doe*, 612 So. 2d 549, 552 (Fla. 1992) ("Any right of privacy that the Does might have is limited by the circumstances under which they assert that right…Because the Does' privacy rights are not implicated when they participate in a crime, we find that closure is not justified"). This is particularly important with respect to police officers because they can be criminally charged, disciplined, and terminated for the use of excessive or deadly force during the line of duty, even if they allege they acted in self-defense. Indeed, the Doe Officers here were investigated by the grand jury. (*See* Sup. Ct. R. 288, 294).

Accordingly, in interpreting a Marsy's Law's definition of "victims" that mirrors Florida's, the Attorney General of North Dakota has determined that names are not protected at all. *See* N.D. Att'y Gen., "Guidance On Marsy's Law," at 4 (Aug. 1, 2017), *available at* https://attorneygeneral.nd.gov/sites/ag/files/documents/MarsysLaw-Guideance.pdf (stating that names cannot be withheld under North Dakota's open records law *unless* the victim falls into an enumerated category of crime, such as human trafficking or domestic violence). Similarly, the Attorney General of South Dakota has also concluded that agencies can release the names of victims without violating Marsy's Law. *See* S.D. Att'y Gen. Op. No. 16-02, 2016 WL 7209783 (Dec. 5, 2016). Thus, when the *name* of an individual is deemed important enough to be kept secret, exemptions address those particular concerns. *See, e.g.*, Fla. Stat. § 119.071(2)(n) (protecting names of victims of sexual harassment).

With respect to police officers' names, no statutory exemptions exist to prohibit their release because they are vital for transparency. No doubt the safety and protection of law enforcement is an important concern, which is why public records exemptions already exist to prohibit the release of former and active law enforcement officer home addresses, telephone numbers, dates of birth, and phone numbers, specifically to "ensure the

safety of these officers and their families." *See* Fla. Stat. §§ 119.071(4)(d) and 914.15; Fla. Att'y Gen. Op. 2010-37. Additionally, undercover officers are protected through the exemption of "[a]ny information revealing undercover personnel." *See* Fla. Stat. § 119.071(4)(c).

Law enforcement of course display their names on their uniforms, wear unique badge numbers, and their images are frequently viewable on body camera and dash camera footage.[13] In addition, the Doe Officers responded to the scene on public streets, in plain view of passersby, and fired their weapons in plain sight. As discussed in Section III *supra*, the officers lacked an expectation of privacy in these public, on-duty shootings, and anyone could have lawfully filmed them. It stands to reason then that their *identities* are not private.

Names are critical for the public's ability to evaluate, not only the officer's history of the use of force, if any, but also the agency's treatment and discipline of its officers. *See Brayshaw*, 709 F. Supp. 2d at 1250. Without a name, the public cannot access personnel files, which are essential for the public's meaningful review of the "conduct of its police

[13] Indeed, TPD policy requires that its law enforcement officers "wear the Department-issued nameplate centered above the right uniform shirt pocket." TPD Gen. Order 4 at 12, *available at* https://www.talgov.com/uploads/public/documents/tpd/policies/go-04.pdf.

officers in order to determine whether these officers of government are appropriately discharging their assigned duties and responsibilities." *Tribune Co. v. Cannella*, 438 So. 2d 516, 521 (Fla. 2d DCA 1983).[14] Although the withholding of the officers' names in *Cannella* was not at issue, it is clear that knowing those names facilitated access to the officers' personnel files. Without a name, the public is unable to examine the officer's credentials and employment history to determine whether that officer has a sterling record or perhaps a pattern of using force, the type of force used, the demographics of the civilians against whom force is used, and any discipline imposed.

In addition, as discussed above, names are also necessary to evaluate police agencies and state attorneys and their treatment of officers in use-of-force incidents, their decision-making with respect to discipline or termination, and their choice whether to prosecute. Because police officers are routinely not prosecuted, the public's right to review the officer's record will be forever impinged.

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[14] This Court quashed the district court's opinion to the extent it permitted an agency an automatic delay in producing records. *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1078-79 (Fla. 1984). The Supreme Court held that agencies cannot delay producing records in order to permit a government employee to raise a constitutional right of privacy to prevent the release. *See id.*

Again, the News Media make no prejudgments of the Doe Officers here. They may in fact be exemplary officers for which the community should be proud. Nevertheless, the public has a right to know who the officers are and to evaluate the incidents and officers for themselves. They should not have to depend on police agency investigations to inform their opinion of whether an officer acted appropriately under the law. The appellate court's opinion mangles Marsy's Law's purpose and provides an opportunity for its abuse by law enforcement officers who use lethal force under the color of law.

CONCLUSION

For the foregoing reasons, the appellate court should be reversed in all respects.

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I HEREBY CERTIFY that on this **10th** day of **March**, **2022**, I caused a true and correct copy of the foregoing to be served electronically upon counsel of record by e-mail via the Florida Courts E-Filing Portal to:

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The undersigned hereby certifies that this brief complies with the requirements of Fla. R. of App. P. 9.045(b). It also complies with the word limitation requirements of Fla. R. of App. P. 9.210(a)(2) as it contains 9,476 words.

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