

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC21-651
DCA 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 APPEAL FROM THE DISTRICT
COURT OF APPEAL, FIRST DISTRICT
OF FLORIDA

**BRIEF OF *AMICUS CURIAE* PALM
BEACH COUNTY SHERIFF'S OFFICE
IN SUPPORT OF RESPONDENTS**

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STATEMENT OF IDENTITY AND INTEREST

The Palm Beach County Sheriff's Office ("PBSO") is the sheriff's office for the third largest county in Florida. It employs over 4,200 staff members, including over 1,600 sworn law enforcement officers. As a law enforcement organization, the PBSO is tasked with serving and protecting the citizens of Palm Beach County, including those who are victims of crime. However, far too often, law enforcement officers become victims themselves in the course of protecting society at large. Their willingness to bear this burden should not be used as an excuse to deny them the same rights afforded to other citizens.

The issue in this case is whether law enforcement officers are entitled to the protections granted to crime victims under the Florida Crime Victims' Bill of Rights or "Marsy's Law." Specifically, this case must resolve the question of whether law enforcement officers are considered "people" who can be victims of a crime under Florida law, or whether they are merely agents of the state who surrender their humanity when they put on a uniform. The PBSO believes that while it may take superhuman courage to wear a badge, the heroes who do so are just as human as any other citizen of our great state. As such, any law that is expressly designed to preserve

the safety of “persons” who are crime victims should equally apply to a law enforcement officers who are victims of a crime.

SUMMARY OF THE ARGUMENT

The Court should approve the First District’s ruling that Marsy’s Law applies to on-duty law enforcement officers who are the victims of crime, including John Doe 1 and John Doe 2. First, the plain language of Marsy’s Law states that it applies to **every** victim of a crime. There is no language in the provision limiting who can be a victim of a crime or excluding any class of crime victim. As such, on its face, Marsy’s Law applies to law enforcement officers who are the victims of a crime.

Additionally, Marsy’s Law defines the term “victim” as a “person” against whom a crime is committed. As with the term “victim,” there is no language in Marsy’s Law limiting the definition of the word “person,” and no victims of crime are excluded from being classified as a “person” under Marsy’s Law. Therefore, on its face, Marsy’s Law applies to law enforcement officers who are victims of crime, as they are “people” under the plain language of the provision. Crucially, this interpretation of Marsy’s Law is reinforced by a recent Florida Supreme Court decision, which held that if a law says it applies to a “person,” this “plainly includes” law

enforcement officers, “whether on duty or off,” as the term “person” refers to all human beings and is not occupation specific.

Second, Marsy’s Law applies even if the accused is deceased and not subject to criminal proceedings. The plain language of Marsy’s Law does not limit the term “victim” or condition it upon an accused’s life or death. A “victim” is anyone against whom a crime has been committed, regardless of the accused’s physical status. Furthermore, the plain language of Marsy’s Law states that its protections attach at the time of a victim’s victimization, not when criminal proceedings are initiated against an accused.

Third, Marsy’s Law includes the right to keep a victim’s name confidential. The plain language of Marsy’s Law states that crime victims have 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. A victim’s name is obviously information that could be used in such a manner. Additionally, even if it were somehow not self-evident that a victim’s name can be used to locate and harass them, the rules of constitutional construction state that a constitutional provision should be liberally and

broadly construed. Thus, in the absence of a limiting definition, “information or records” would include a victim’s name.

ARGUMENT

I. MARSY’S LAW APPLIES TO LAW ENFORCEMENT OFFICERS

A. Marsy’s Law Applies to Law Enforcement Officers Under the Plain Language of the Provision

1. Marsy’s Law states it applies to every victim of a crime

In their initial briefs on the merits, the City of Tallahassee and News Media Coalition’s arguments attempt to complicate the simple, twist the straightforward, and distract the reader from the one source that clearly answers the question of whether Marsy’s Law applies to law enforcement officers. That source is the plain language of Marsy’s Law itself. Indeed, the Petitioners selectively quote Marsy’s Law and ignore key text in the law that is dispositive of the entire issue. There is a reason that the Petitioners focus on luring the reader away from the plain language of the text – the plain language unequivocally states that Marsy’s Law applies to *every* crime victim. This includes law enforcement officers.

The rules governing statutory construction are also generally applicable to the construction of constitutional provisions. *Florida Police Benev. Ass'n, Inc. v. Williams*, 838 So. 2d 543, 548 (2003). See also *State ex rel. McKay v. Keller*, 191 So. 542, 545 (1939); and *Ford v. Browning*, 992 So. 2d 132, 136 (Fla. 2008). A basic rule of statutory construction is that the intent of the framers and adopters of a statute must be given effect by courts. *Williams*, 838 So. 2d at 548; see also *State ex rel. Dade County v. Dickenson*, 230 So. 2d 130, 135 (Fla. 1969). As such, construction of constitutional provisions must likewise give effect to the intent of the framers and adopters of that provision. *Id.* In order to determine this intent, the Florida Supreme Court has consistently held that it must implement the plain meaning of the words actually used in the Constitution:

Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.

Williams, 838 So. 2d at 548. Thus, any examination of the application of Marsy's Law must begin with a look at the language of the law itself.

Marsy's Law is codified in Article I, § 16 of the Florida Constitution. It expressly states to whom it applies:

(b) 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, **every victim** is entitled to the following rights, beginning at the time of his or her victimization ...

Art. I, § 16(b), Fla. Const. (emphasis added). Consequently, under the plain language of the provision, Marsy's Law applies to **every victim** of a crime. In Marsy's Law, there is absolutely no limiting language concerning who a victim of a crime can be. It does not contain exclusions. As such, on its face, Marsy's Law applies to every victim of a crime, which would include law enforcement officers.

2. Law enforcement officers are people

As if the plain language were not clear enough, Marsy's Law helpfully defines the term "victim." It provides, in relevant part:

(e) As used in this section, 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. Thus, under the plain language of the provision, Marsy's Law applies to every victim that is a person. There is no limiting language in this definition either. Rather, a victim is *a person* against whom a crime is committed. As such, on its face, Marsy's Law says it applies to every person who is a victim. This would include law enforcement officers.

For further clarification, the term "person" is defined in the Florida Statutes. Section 1.01(3) of the Florida Statutes states that the word person "includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Thus, under the plain language of Florida Statutes, the word "person" includes any individual. There is no exception to the term "individual." As such, an individual is a person. This includes individual law enforcement officers.

Crucially, the Florida Statutes also specifically provide that a law enforcement officer is a person. Pursuant to Fla. Stat. § 943.10(1), law enforcement officer is defined as:

[A]ny **person** who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with the 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.

Consequently, for the purposes of the Florida Constitution, including Marsy's Law, and Florida Statutes, a law enforcement officer is a person.

A well-settled rule of statutory construction is that the legislature is presumed to know the existing law when a statute is enacted. *Crescent Miami Center, LLC, v. Florida Dept. of Revenue*, 903 So. 2d 913, 918 (Fla. 2005). As stated *supra*, the rules of statutory construction apply to the construction of constitutional provisions. See *Florida Police Benev. Ass'n, Inc. v. Williams*, 838 So. 2d 543, 548 (2003). Therefore, it must be presumed that the drafters of and voters for Marsy's Law knew that the term "person" included law enforcement officers and specifically intended for Marsy's Law to apply to them.

B. Marsy's Law Applies to Law Enforcement Officers Under Florida Case Law

1. The Florida Supreme Court has held that law enforcement officers are people

Florida Supreme Court precedent which, like the plain language of Marsy's Law, was ignored by the City of Tallahassee and the News Media Coalition, also specifically holds that law enforcement officers are "persons." See *State of Florida v. Peraza*, 259 So. 3d 728 (Fla. 2018). In *Peraza*, a Broward County Sheriff's Deputy, Peter Peraza, responded to a call that an individual was acting in an aggressive manner in public with a firearm. *Id.* at 729. When Deputy Peraza arrived, he encountered the suspect, who was carrying what appeared to be a shotgun or rifle. *Id.* After refusing all commands to stop, the suspect turned toward Deputy Peraza and pointed the weapon directly at him. *Id.* at 730. The deputy fired his gun and killed the suspect. *Id.*

Peraza was indicted for manslaughter. *Peraza*, 259 So. 3d at 730. He moved to dismiss, citing immunity from prosecution under Fla. Stat. § 776.012(1) and § 776.032(1), commonly known as Florida's "Stand Your Ground" law. *Id.* The trial court granted the motion to dismiss based upon Stand Your Ground immunity. *Id.* The State appealed, arguing that law

enforcement officers are not entitled to Stand Your Ground immunity, as they are already provided a defense in any criminal prosecution under Fla. Stat. § 776.05(1), which permits law enforcement officers to use justifiable force in self-defense. *Id.* The Fourth District Court of Appeal affirmed the trial court's ruling, and then certified the question of whether Stand Your Ground immunity applied to law enforcement officers to the Florida Supreme Court. *Id.*

The Florida Supreme Court stated that whether Stand Your Ground applied to law enforcement officers was a question of statutory construction. *Peraza*, 259 So. 3d at 730. The starting point for any statutory construction issue, the Court said, is the language of the statute itself, and a determination of whether the language plainly and unambiguously answers the questions presented. *Id.* It noted that Fla. Stat. § 776.012 provided, in pertinent part, that “**a person** is justified in the use of deadly force ... if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another ...” *Id.* at 730-3. (emphasis added). A second part of the Stand Your Ground law provided, in relevant part, that “**a person** who uses force permitted in § 776.012 ... is justified in using such force and is immune

from criminal prosecution and civil action for the use of such force ..." *Id.* (emphasis added.)

The Florida Supreme Court held that since these statutes "plainly and unambiguously" afforded Stand Your Ground immunity to any "person" who acts in self-defense, there should be no further analysis. *Peraza*, 259 So. 3d at 731. "Put simply," the court said, "a law enforcement officer is a 'person' whether on duty or off, and irrespective of whether the officer is making an arrest." *Id.* While the Stand Your Ground statute did not define "person," the Court held that "it must be given its plain and ordinary meaning." *Id.* In common understanding, the term "person" refers to a "human being," which "is not occupation-specific and plainly includes human beings serving as law enforcement officers." *Id.* Thus, the Florida Supreme Court held that the Stand Your Ground law applies to law enforcement officers.

Under the holding in *Peraza*, Marsy's Law plainly and unambiguously applies to law enforcement officers. As stated *supra*, Marsy's Law applies to **every** victim of a crime. It then defines the term "victim" as a "person." The Florida Supreme Court has expressly held that a law enforcement officer is a person, whether on duty or off, and irrespective of whether the

officer is making an arrest. As such, Marsy's Law applies to John Doe 1 and John Doe 2 under Florida Supreme Court precedent.

2. Definitions of terms in the Florida Constitution must be construed liberally to include law enforcement officers

Peraza is not the only case where the Florida Supreme Court has included law enforcement officers in construing a statutory or constitutional term. See *Coastal Florida Police Benevolent Ass'n, Inc. v. Williams*, 838 So. 2d 543 (2003). *Coastal Florida* presented a situation where a police union sought to represent deputy sheriffs for the purpose of collective bargaining. *Id.* at 545. Article I, § 6 of the Florida Constitution stated that “[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The police union argued that deputy sheriffs were “employees” under the Florida Constitution, despite the fact that they are appointed by sheriffs, not technically hired by the state. 838 So. 2d at 546.

As in all other cases, the Florida Supreme Court said that in construing a constitutional provision, the same rules used in statutory construction generally apply. *Id.* at 548. The basic rule in statutory construction is to “give effect to the intent of the framers and adopters.” *Id.*

This is done, the Court said, by “giving effect to the plain meaning of the words actually used in the Constitution.” *Id.* Constitutional language, the Court noted, “must be allowed to speak for itself.” *Id.*

The Court opined that Constitutions are “living documents” that are not easily amended. 838 So. 2d at 549. As such, constitutional provisions demand “greater flexibility in interpretation than that required by legislatively enacted statutes.” *Id.* Thus, courts “have an obligation to provide a broader and more liberal construction of constitutional provisions ...” *Id.*

In reviewing the relevant provision of the Florida Constitution, the Court highlighted that collective bargaining was said to be the “right of employees.” *Id.* at 549. There was no limitation of that term written into the Constitution provision. *Id.* The plain meaning and use of the term “employees,” the Court said, indicated that the framers intended that term to be applied in its broadest sense, “to include all employees, public and private, as recipients of the right to bargain collectively.” 838 So. 2d 549. Consequently, it held that deputy sheriffs were employees who had a right to collective bargaining.

Under the ruling in *Coastal Florida*, the terms “victim” and “person” in Marsy’s Law should be construed liberally to include law enforcement officers. The express purpose of Marsy’s Law is to give certain rights to “every victim” of a crime. Thus, it was intended to apply to all people, not just some. As such, the terms “victim” and “person” in Marsy’s Law must be broadly and liberally construed so as to apply to John Doe 1 and John Doe 2.

C. Law Enforcement Officers Are Not Just Victims in a Legal Sense, They Are Actual Victims

It is clear not only from the plain language of Marsy’s Law that law enforcement officers can be victims, but also from Florida Supreme Court case law. However, these arguments aside, what can get lost in analyzing legal codes and cases is the fact that law enforcement officers are real people. And these real people are frequently the target of real criminals.

Indeed, this is a time of increasing peril for law enforcement officers in the United States. According to statistics reported to the Federal Bureau of Investigation, 59 law enforcement officers were killed in the line of duty

from January 1, 2021, to September 30, 2021.¹ This marks a 51 percent increase in the number of law enforcement officers killed when compared to the same period in 2020.² Additionally, ambush-style attacks against law enforcement officers, which are designed solely to kill or injure officers without warning, more than doubled from 2020 to 2021 according to the National Fraternal Order of Police.³ In those ambushes, 130 officers were shot, and 30 were killed.⁴

The City of Tallahassee and the News Media Coalition both hold the position that law enforcement officers cannot be the victims of a crime. As such, if an officer is parked in his car and shot in an ambush-style attack without warning by a criminal, the Petitioners argue that officer is not a victim. Logically, this is an untenable position. Additionally, it is a legally untenable position, as Florida statutes already exist that describe crimes

¹ Press Release, Federal Bureau of Investigation, *FBI Releases Statistics for Law Enforcement Officers Assaulted and Killed in the Line of Duty* (October 22, 2021). <https://www.fbi.gov/contact-us/field-offices/dallas/news/press-releases/fbi-releases-statistics-for-law-enforcement-officers-assaulted-and-killed-in-the-line-of-duty>

² *Id.* It should be noted that in compiling its statistics, the FBI calls law enforcement officers who are assaulted or killed “victims.”

³ Monthly Update, National Fraternal Order of Police, *Law Enforcement Officers Shot and Killed in the Line of Duty* (January 3, 2022).

<https://fop.net/2022/01/fop-monthly-update-officers-shot-and-killed-6/>

⁴ *Id.*

against on-duty law enforcement officers. See Fla. Stat. § 784.07. Furthermore, Fla. Stat. § 782.065(2) expressly states that on-duty law enforcement officers can be “victims” of crime.

II. MARSY’S LAW APPLIES EVEN IF THE ACCUSED IS DECEASED AND NOT SUBJECT TO CRIMINAL PROCEEDINGS

The News Media Coalition makes an argument that Marsy’s Law does not apply if the accused is deceased. In other words, it asserts that if the perpetrator of a crime is no longer alive, the target of that crime cannot be a victim, as there can be no active criminal proceeding against the decedent. There is absolutely no support for this limitation of Marsy’s Law.

Using the rules of statutory construction, the plain language of Marsy’s Law must first be examined to determine if its protections are limited to situations where an accused is alive. As discussed *supra*, 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.” Thus, the term “victim” is not limited to situations where an accused is alive.

Without any express limitations on their application, constitutional provisions should be liberally and broadly construed. In this case, the term “victim” should include any person against whom a crime has been committed. The status of “victim” is not dependent upon the accused’s life or death. This makes perfect sense. If a person is shot, and the shooter is later killed while fleeing from police, the shooting is not erased. The person who was shot is still the victim of a crime.

Furthermore, the plain language of Marsy’s Law states that every victim of a crime is entitled to certain rights, “beginning at the time of his or her victimization.” Art. I, § 16(b)(5), Fla. Const. There is no limiting language in this provision stating that victim’s rights are dependent upon the physical condition of the accused, or any criminal proceedings against them. Thus, the plain language of Marsy’s Law reveals that it applies at the moment of victimization, regardless of the accused’s status. This provision should be liberally and broadly construed, as well, which means that Marsy’s Law’s rights apply at the time a person is a victim of a crime without any qualification or limitation.

III. MARSY'S LAW INCLUDES THE RIGHT TO KEEP A VICTIM'S NAME CONFIDENTIAL

A. A Victim's Name Can Be Used to Locate or Harass the Victim

The plain language of Marsy's Law states crime victims have: "[t]he right to 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. 1, § 16(b)(5), Fla. Const. Using the tools of statutory construction discussed *supra*, the plain language of this provision must first be examined to determine if a victim has the right to keep his or her name from public disclosure.

Looking at the plain language of the provision, a victim's name would obviously be information that could be used to locate or harass the victim. Indeed, even prior to the advent of computer technology, a name could be searched in a phone book to find a street address and telephone number of a victim. Neighbors could even be asked in person if they know where a victim lives. In the current age, a name can be "Googled" or searched on social media sites to find out a variety of information to locate not only

where a victim lives, but where they work, eat, visit, exercise, or frequent, along with the identities of their family, friends, and associates.

Additionally, even if it were somehow not self-evident that a victim's name could be used to locate and harass them, the rules of constitutional construction state that a constitutional provision should be construed liberally and broadly. In the instant case, Marsy's Law does not limit what kind of information or records that can be prevented from being disclosed by a victim. As such, a broad reading of the term "information or records" would include a victim's name. Thus, the names of John Doe 1 and John Doe 2 are information that cannot be disclosed under Marsy's Law.

B. Justice Can Be Served and News Can Still Be Reported Without Knowing the Victim's Name

In asking the Court to ignore the plain meaning of Marsy's Law, the Petitioners make some staggering claims. The City of Tallahassee and News Media Coalition state that not releasing the names of law enforcement officers who are the victims of crime will:

- "create a secret state police force." (City IB, p. 15); and
- "anonymize government killings." (News Media IB, p. 11).

These are absolutely untenable propositions.

The application of Marsy's Law's to law enforcement officers does not create some kind of pseudo-KGB secret police force that can anonymously act without accountability. Marsy's Law does not grant law enforcement officers immunity from investigation, discipline, or prosecution, nor does it prevent the journalists from reporting on a law enforcement officer's conduct. Rather, it will simply give effect to a constitutional provision, passed by the voters of Florida, that protects the identity of **every** victim of a crime.

Furthermore, in the vast majority of situations, it will be abundantly clear which party is the "victim" of a crime. However, in the rare circumstance where there may be uncertainty as to whether any person in a given set of circumstances – law enforcement officer or not – is a victim, this issue can be resolved through existing legal means. One mechanism could be filing a declaratory judgment to have a court declare whether a person qualifies as a victim under Marsy's Law. This is certainly preferable to a judicial re-writing of the Florida Constitution to exclude an entire category of persons from the definition of "victim."

It must be noted that withholding the names of victims from public disclosure has been a part of Florida practice for decades. The names of

minors and sexual violence survivors were routinely kept confidential by courts and the news media prior to the passage of Marsy's Law. Keeping the names of those victims confidential has not inhibited either the investigation of the crimes against those victims, or the ability of the news media to write stories about them. Those incidents are still being prosecuted in the courts and reported in the news.

In short, both the City of Tallahassee and the News Media Coalition are asking the judiciary to alter a constitutional provision that was duly voted on and adopted by the voters of the State of Florida. That constitutional provision, Marsy's Law, expressly applies to **every** victim of a crime in Florida, including law enforcement officers. If the City of Tallahassee and News Media Coalition are unhappy with the language of Marsy's Law, their remedy lies in attempting to amend the Florida Constitution, not in asking the judiciary to impermissibly override the will of the people.

CONCLUSION

For the reasons stated, the Court should approve the First District's decision.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via E-Service to all counsel listed on the Florida ePortal system (including all alternate email addresses) on this 23rd day of May 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this computer-generated brief complies with the font requirements of Fla. R. App. P. 9.045(b), and the word limitation requirements of Fla. R. App. P. 9.370(b). It has been typed in Arial 14-point font and contains 4,238 words.

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