



Florida Supreme Court Rules Marsy’s Law Does Not Bar Release of Police Names After Shootings

Walter Olson
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In a ruling that surprised and pleased many advocates for free speech and police accountability, the Florida Supreme Court ruled on November 30 that the state’s version of Marsy’s Law, a victim’s rights provision of the state constitution, does not shield from public disclosure the identities of police officers involved in fatal shootings.

Marsy’s Law, named after a woman murdered in 1983, refers to a set of constitutional protections for crime victims. Through the organization Marsy’s Law For All, the brother of Marsalee (Marsy) Ann Nicholas has spent decades pushing for victims’ rights amendments to all 50 state constitutions and the U.S. Constitution. To date, a version of Marsy’s Law has been enshrined in the constitutions of Florida, Georgia, Illinois, Kentucky, Nevada, North Carolina, Oklahoma, Ohio, and Wisconsin.

Florida’s version of Marsy’s Law, adopted in 2018 by popular vote as an amendment to the state constitution, bans disclosure of “information or records that could be used to locate or harass [a crime] victim or the victim’s family.” Following adoption of the amendment, police departments around the state stopped disclosing the names of alleged crime victims, to the extent they had

been doing so. (State law separately bars disclosure in some cases, as in charges of sex crimes or child abuse.)

In the case at hand, the city of Tallahassee wanted to release the names of officers involved in two fatal shootings, but not because it saw them as having acted wrongly. On the contrary, it thought the use of force had been justified and that transparency about the incidents would reassure critics and help build public confidence in the department. But the police union objected that both officers qualified as crime victims because they had been menaced by the people they shot. The union pointed out that Marsy's Law contained no language excluding public employees on duty from its coverage.

As the case proceeded, many media organizations from around Florida joined on the city's side, mirroring disputes in other states over the reach of similar provisions. In Ohio, for example, the *Columbus Dispatch* is currently battling the city of Columbus over the same question under that state's Marsy's Law. Even the Marsy's Law For All organization itself, perhaps stung by widespread criticism of the police shield effect, reversed its previous position and announced that it supported disclosure of the names of on-duty police officers who have used physical force.

Tallahassee and its press allies prevailed before a trial court but then lost at an intermediate appellate court. That court rejected the argument that the shield clashed with Florida's Sunshine Amendment, a landmark 1976 constitutional provision guaranteeing strong rights of public access to government records. It concluded instead that the newer enactment simply rolled back the old.

Some were pessimistic about the press's chances before the Florida Supreme Court, given the court's resolutely conservative makeup. All seven justices on the court were appointed by Republicans, including five by Gov. Ron DeSantis and two by former Gov. Charlie Crist. But the court ruled unanimously in favor of disclosure. (One justice didn't participate.)

As one might expect from a conservative court, the opinion is narrowly grounded in text and expresses deference to legislative authority. It gives no view as to the merits of the policy. Instead, it focuses on the law's central clause prohibiting dissemination of "information or records that could be used to locate or harass."

The union had argued that identity should be included among such information, since knowing someone's name is undoubtedly useful if your goal is to locate or harass them. Under that logic, it wasn't clear that departments could say much of anything about officers involved in shootings. After all, all kinds of information might narrow matters down for a harasser's purposes, including something as simple as disclosing how many years an officer has served or whether they are still with the force.

The court rejected this broad reading and held that Florida's Marsy's Law amendment does not grant a right for victims — police officer or otherwise — to remain anonymous. It noted that drafters of other parts of Florida's constitution and laws knew quite well how to refer explicitly to identity as a concept when they wanted to, and they hadn't done so here. It also noted that a broad reading would be hard to harmonize with the Florida constitution's sunshine provisions and its right of defendants to confront witnesses.

Having ruled that Marsy's Law did not contain a right to anonymity, the court declined to resolve other issues that had divided the parties, such as whether officers injured in the line of duty can qualify as crime victims, and whether a claimant can assert Marsy's Law rights even absent any legal process directed at ascertaining whether a crime took place.

The court's decision will have at least one far-ranging effect that could conceivably backfire on advocates. The court observed that Florida's constitution provides that the legislature can exempt public records from disclosure by a two-thirds vote, and that its ruling "neither weakens these various exemptions of certain information from public disclosure, nor prevents the Legislature — in performing the constitutional function reserved to it and not to us — from expanding them."

This court's ruling may therefore fuel action in the legislature to expand these exemptions — and the opinion makes clear that in its view the legislature would be within its powers to take such steps. As part of that legislative reaction, it's possible that police unions and their allies will seek language overtly or covertly restoring the shield for police. Legislative advocates take care.

Walter Olson is a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies.