

THE CITY OF CENTERVILLE, APPELLANT, v. KNAB, APPELLEE.

[Cite as *Centerville v. Knab*, 162 Ohio St.3d 623, 2020-Ohio-5219.]

Criminal law—R.C. 2929.28(A)(1)—Restitution to a victim—Marsy’s Law—Article I, Section 10a of the Ohio Constitution—Marsy’s Law focuses on private rights that are incongruent with an understanding of “victim” that includes a public corporation—A municipality is not a victim and has no right to restitution under Marsy’s Law.

(No. 2019-0873—Submitted June 2, 2020—Decided November 12, 2020.)

APPEAL from the Court of Appeals for Montgomery County, No. 28081,
2019-Ohio-1903.

FRENCH, J.

{¶ 1} In this appeal, we are asked to determine whether a municipal corporation is a “victim” as that word is used in Article I, Section 10a of the Ohio Constitution, a provision known as Marsy’s Law. We hold that a municipality is not a victim and has no right to restitution under Marsy’s Law. We therefore affirm the judgment of the Second District Court of Appeals, which reversed the trial court’s judgment ordering appellee, Michael P. Knab, to make restitution to appellant, the city of Centerville.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On April 3, 2018, Knab called 9-1-1 and reported to a Centerville Police Department dispatcher that someone was “shooting up the place.” The call disconnected, but the dispatcher called back. Knab answered and told the dispatcher that someone had been shot. Several officers from the Centerville Police Department and the fire department responded to the call. Mr. Carter, Knab’s friend, was outside Knab’s house when the officers arrived. Carter, who had been

in the house, told the officers that there was no active shooter and that no one had been shot. He told the officers that Knab was inside and that Knab believed people were trying to shoot him.

{¶ 3} Knab's mother and father and a female guest were also at the residence when officers arrived. Knab's mother also told the officers that Knab believed people were trying to shoot him. Knab eventually came out of the house calmly.

{¶ 4} The officers searched the residence and confirmed that there were no active shooters and that no one had been shot or otherwise injured. The officers obtained a warrant to search the property further. They found drug paraphernalia but did not find any firearms.

{¶ 5} The officers took Knab to the Centerville Police Department for questioning. Knab claimed that he believed that Carter had a gun and was a threat to Knab and his family. Knab told the officer that he got Carter out of the house and then called 9-1-1 to report the threat.

{¶ 6} Knab was charged with making a false report to law enforcement, in violation of R.C. 2917.32(A)(3), a first-degree misdemeanor, and improper use of the 9-1-1 emergency system, in violation of R.C. 128.32, a fourth-degree misdemeanor. Following a bench trial, the trial court found him guilty on both counts.

{¶ 7} The city asked the trial court to order Knab to pay restitution to Centerville for the costs it had incurred responding to Knab's 9-1-1 call. At a hearing on the issue, Knab argued that Ohio law prohibited the trial court from ordering him to pay restitution. He also argued that there was no economic loss because the officers were already on duty and would have received their wages anyway. The city presented testimony from a police detective to support its request for restitution. The detective calculated Centerville's economic loss based on the labor costs paid by the city to the personnel who had responded to the call. He

testified that the dispatcher and 11 officers, all of whom were already on duty, responded to Knab's 9-1-1 call because of the severity of the report. He calculated the time that the dispatcher and each responding officer spent responding to Knab's call and multiplied that figure by each person's regular hourly wage rate. He concluded that the police department's labor costs to respond to Knab's 9-1-1 call were \$1,375.56. The trial court ordered Knab to pay that amount to Centerville. The trial court also sentenced Knab to jail, ordered him to pay a fine and to complete a drug-and-alcohol assessment, and placed him on supervised probation.

{¶ 8} Knab appealed his convictions and sentence, including the restitution order, to the Second District Court of Appeals. Knab argued that the trial court erred in ordering restitution because Centerville is not a victim to which restitution can be ordered under Ohio's restitution statute, R.C. 2929.28(A)(1), and because Centerville did not suffer economic loss when its public-safety agencies responded to his emergency call. Centerville argued that it was entitled to restitution because Marsy's Law expanded the definition of a "victim" to include a municipality.

{¶ 9} The court of appeals affirmed Knab's convictions while remanding on one count for resentencing, but it vacated the restitution order. The court held that Centerville was not a victim for the purposes of restitution when it was carrying out its official duties. In addition, the court held that Centerville did not experience "economic loss," as that term is used in R.C. 2929.28(A)(1), because all of the officers who responded to the emergency call were on duty and would have been paid regardless of Knab's actions.

{¶ 10} Centerville appealed the judgment of the Second District. We accepted jurisdiction to consider whether a municipality is a victim under Marsy's Law, such that it is entitled to restitution when it is directly and proximately harmed by the commission of a criminal offense.

II. MARSY'S LAW

{¶ 11} Article I of Ohio's Constitution is commonly known as Ohio's Bill of Rights. Section 10a of that article was amended in 2017, effective February 5, 2018. Because the circumstances surrounding the national movement and the Marsy's Law initiative in Ohio further support our determination that a municipality is not a victim under Marsy's Law, it is helpful to review the context in which the law was adopted.

{¶ 12} Known as Marsy's Law, the provision arose from a national victims'-rights movement. The website for the movement explains that it was started by an individual whose sister, Marsy, was killed by her ex-boyfriend. https://www.marsyslaw.us/about_marsys_law (accessed July 9, 2020) [<https://perma.cc/NT9H-QZLK>]. Marsy's mother encountered the killer on the way home from Marsy's funeral service after he had been released on bail. The family was not notified of the ex-boyfriend's release because no law required that the court or law enforcement keep Marsy's family informed. The movement seeks to give crime victims constitutional rights that are equal to the rights of individuals accused of committing crimes.

{¶ 13} Consistent with this national movement, the Ohio amendment initiative sought to give crime victims and their families meaningful and enforceable rights.

{¶ 14} Before Marsy's Law was adopted in Ohio, Article I, Section 10a of the Ohio Constitution established some general rights for crime victims. But it gave the General Assembly primary authority to define and provide those rights. Former Article 1, Section 10a of the Ohio Constitution (effective Nov. 8, 1994).

{¶ 15} When the Marsy's Law initiative was placed on the 2017 general-election ballot, the language informed voters that the proposed amendment would expand the rights of victims and require that those rights be protected as vigorously as the rights of the accused. It indicated that the purpose of the amendment was to

ensure “due process, respect, fairness, and justice for crime victims and their families.” The ballot language then listed the rights the proposed amendment would provide to victims:

- the right to privacy and to be treated with respect, fairness, and dignity;
- the right to information about the rights and services available to crime victims;
- the right to notification in a timely manner of all proceedings in the case;
- the right to be present and heard at all court proceedings, including the right to petition the court to protect the victim's rights;
- the right to a prompt conclusion of the case;
- to refuse discovery requests made by the accused, except as authorized by Article I, Section 10 of the Ohio constitution;
- the right to reasonable protection from the accused;
- the right to notice of the release or escape of the accused; and
- the right to restitution.

The ballot language did not include a definition for “victim.”

{¶ 16} As adopted, Marsy’s Law states that its express purpose is to secure justice and due process for victims and provide rights to victims that must be protected with the same vigor as an accused’s rights. Article I, Section 10a(A), Ohio Constitution. It provides rights that mirror those outlined in the amendment’s ballot language. At issue here is the provision that gives a victim the right “to full

and timely restitution from the person who committed the criminal offense or delinquent act against the victim.” Article I, Section 10a(A)(7).

{¶ 17} Marsy’s Law defines a victim as “a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.” Article I, Section 10a(D). It excludes from the definition any “person whom the court finds would not act in the best interest of a deceased, incompetent, minor, or incapacitated victim.” *Id.* It does not define “person” or specify the type of harm that qualifies for restitution.

{¶ 18} Marsy’s Law also does not provide a procedural mechanism for ordering restitution. It merely states that a victim may assert his or her constitutional rights in any proceeding involving the underlying criminal act. Article I, Section 10a(B). The provisions of the amendment are self-executing and “supersede all conflicting state laws.” Article I, Section 10a(E).

III. R.C. 2929.28

{¶ 19} R.C. 2929.28(A)(1) provides a statutory mechanism for ordering restitution in misdemeanor cases. The statute predates the adoption of Marsy’s Law. It allows a court to impose financial sanctions on a criminal offender that include “restitution by the offender to the victim of the offender’s crime * * * in an amount based on the victim’s economic loss.” *Id.* The amount of restitution ordered cannot “exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.” *Id.* Neither R.C. 2929.28 nor the definition statute for the chapter, R.C. 2929.01, defines “victim.”

{¶ 20} Although we have not considered the issue, several Ohio courts of appeals have considered the meaning of the word “victim” in R.C. 2929.28(A)(1) or in the parallel statute for restitution in felony cases, R.C. 2929.18(A)(1). The Fourth District Court of Appeals held that a sheriff’s office was not entitled to restitution for money it had paid in an undercover drug purchase because it was not a victim when it was not the object of the crime. *State v. Samuels*, 4th Dist.

Washington No. 03CA8, 2003-Ohio-6106, ¶ 5, citing *Black's Law Dictionary* 1405 (5th Ed.1979); see also *State v. Williams*, 6th Dist. Sandusky No. S-13-007, 2013-Ohio-4838, ¶ 8 (applying the definition of “victim” found in *Black's Law Dictionary* 1703 (9th Ed.2009) and holding that the Bureau of Criminal Investigation was not a victim and was not entitled to reimbursement for money it had used in a drug buy). In *State v. Pietrangelo*, 11th Dist. Lake No. 2003-L-125, 2005-Ohio-1686, ¶ 17, the court reviewed decisions from federal courts and another state appellate court and concluded that a governmental body—there, the county’s narcotics agency—is not a victim for the purpose of restitution when it seeks to recover normal operating costs that it expends solving crimes. The Eleventh District in *Pietrangelo* refused to require a defendant to pay restitution to a law-enforcement agency for money spent on a drug buy without express authorization from the legislature to do so. *Id.* These decisions are consistent with those of other district courts that have also declined to define a governmental body as a victim. See *State v. Jones*, 7th Dist. Jefferson Nos. 08 JE 20 and 08 JE 29, 2010-Ohio-2704, ¶ 47 (“the government is not a victim under the restitution statute merely because it expended funds in some manner as a result of the defendant’s offense”); *State v. Toler*, 174 Ohio App.3d 335, 2007-Ohio-6967, 882 N.E.2d 28, ¶ 11-12 (3d Dist.) (a sheriff’s office cannot receive restitution for extradition expenses, because a governmental entity is not a victim when it expends public funds to fight crime); *State v. Wolf*, 176 Ohio App.3d 165, 2008-Ohio-1483, 891 N.E.2d 358 (3d Dist.) (a fire department was not the victim of an arson and could not receive restitution for the cost of fighting a fire); *State v. Hewitt*, 2015-Ohio-5489, 55 N.E.3d 627, ¶ 9 (2d Dist.) (“law-enforcement agencies are not entitled to restitution for funds spent in the performance of their investigative or other duties”). The Second District Court of Appeals also held that a defendant could not be ordered to pay restitution to a sheriff’s department for its costs when responding to a false alarm, because the statutory framework—particularly the term “victim”—does not express a

legislative intent “to make law enforcement or other governmental agencies, whose only involvement in the reported crime is their response to it in their official capacities, eligible for restitution.” *State v. Christian*, 2d Dist. Montgomery No. 25256, 2014-Ohio-2672, ¶ 128, *vacated on other grounds*, 143 Ohio St.3d 417, 2015-Ohio-3374, 38 N.E.3d 888. Courts have suggested that there may be some limited situations in which a governmental agency may be a victim entitled to restitution, such as when public funds have been embezzled from that agency or government property has been vandalized or destroyed. *See State v. Turner*, 2d Dist. Champaign No. 2017-CA-15, 2018-Ohio-2860, ¶ 14. But the general rule in Ohio has been that governmental agencies are not victims of crimes to which they respond in their official capacities. *Id.* at ¶ 15.

{¶ 21} We recently considered the term “victim” in Ohio’s restitution statutes in a matter that did not involve a governmental agency. In *State v. Allen*, 159 Ohio St.3d 75, 2019-Ohio-4757, 147 N.E.3d 618, we held that a bank was a victim for the purposes of restitution under R.C. 2929.18(A)(1) when it cashed a forged check and then recredited the depositor’s account for the stolen amount. *Id.* at ¶ 1. In so holding, we first considered how to define the term “victim” and said that a victim is “a person or entity ‘harmed by a crime, tort, or other wrong.’ ” *Id.* at ¶ 5, quoting *Black’s Law Dictionary* 1798 (10th Ed.2014). Based on that definition, three considerations supported a conclusion that the bank was a victim. First, the bank had a property interest in the money it held for an account holder, and it suffered a loss of that property interest at the moment the crime was committed. *Id.* at ¶ 6-7. Second, a bank has a statutory obligation to bear the loss and correct an erroneous deduction from an account. *Id.* at ¶ 8. And third, the bank itself was the target of the crime because the offender defrauded and tricked the bank when he presented a forged check to the bank. *Id.* at ¶ 6-7. In *Allen*, we were not asked to consider the definition of a “victim” under Marsy’s Law.

IV. ANALYSIS

{¶ 22} In construing constitutional text that was ratified by direct vote, we consider how the language would have been understood by the voters who adopted the amendment. *Castleberry v. Evatt*, 147 Ohio St. 30, 33, 67 N.E.2d 861 (1946); *see also State ex rel. Sylvania Home Tel. Co. v. Richards*, 94 Ohio St. 287, 294, 114 N.E. 263 (1916) (when interpreting the Ohio Constitution, “[i]t is the duty of the court to ascertain and give effect to the intent of the people”). The court generally applies the same rules when construing the Constitution as it does when it construes a statutory provision, beginning with the plain language of the text, *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, 811 N.E.2d 68, ¶ 14, and considering how the words and phrases would be understood by the voters in their normal and ordinary usage, *District of Columbia v. Heller*, 554 U.S. 570, 576-577, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). But in ascertaining the intent of the voters who approved the amendment, our inquiry must often include more than a mere analysis of the words found in the amendment. *State ex rel. Swetland v. Kinney*, 69 Ohio St.2d 567, 570, 433 N.E.2d 217 (1982). The purpose of the amendment and the history of its adoption may be pertinent in determining the meaning of the language used. *Id.* When the language is unclear or of doubtful meaning, the court may review the history of the amendment and the circumstances surrounding its adoption, the reason and necessity of the amendment, the goal the amendment seeks to achieve, and the remedy it seeks to provide to assist the court in its analysis. *Id.*, citing *Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 103, 91 N.E.2d 480 (1950), *overruled in part on other grounds, Denison Univ. v. Bd. of Tax Appeals*, 2 Ohio St.2d 17, 205 N.E.2d 896 (1965), paragraph two of the syllabus; *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 17 (lead opinion).

{¶ 23} Using this framework, we start by considering whether the language of Marsy’s Law evinces an intent to include a municipal corporation in the definition of “victim.” Marsy’s Law defines a victim as “a person against whom

the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.” Article I, Section 10a(D), Ohio Constitution. The language does not include corporate entities or governmental bodies in its definition of “victim” and does not define the term “person.”

{¶ 24} We give undefined words in the Constitution their common, everyday meaning, often relying on dictionary definitions to do so. *Cleveland* at ¶ 17, 21 (lead opinion); *State v. Wells*, 91 Ohio St.3d 32, 34, 740 N.E.2d 1097 (2001). *Black’s Law Dictionary* 1378 (11th Ed.2019) defines “person” as: (1) “A human being—Also termed *natural person*,” (2) “The living body of a human being,” and (3) “An entity (such as a corporation) that is recognized by law as having most of the rights and duties of a human being. In this sense, the term includes partnerships and other associations, whether incorporated or unincorporated.” *Webster’s Third New International Dictionary* 1686 (2002) defines “person” as “an individual human being” or “a human being, a body of persons, or a corporation, partnership, or other legal entity that is recognized by law as the subject of rights and duties.” These definitions show that the ordinary meaning of “person,” as voters would have understood that term in 2017, may be only a natural person or it may include a partnership or corporate entity.

{¶ 25} A municipal corporation, in contrast to a private corporation, is a political subdivision that has authority to “exercise all powers of local self-government and to adopt and enforce within [its] limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Constitution, Article XVIII, Section 3. It is a dual-bodied public corporation. On one hand, it is a corporate body, capable of performing the same proprietary functions as any private corporation. *Owen v. Independence*, 445 U.S. 622, 645-646, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). On the other hand, it is “an arm of the State” because it acts in a governmental or public capacity. *Id.* For example, a

municipal corporation acts in a governmental capacity in the establishment and maintenance of a police department. *Aldrich v. Youngstown*, 106 Ohio St. 342, 140 N.E. 164 (1922), syllabus. As such, a municipal corporation acts in its governmental capacity when, like here, its public-safety agencies respond to a reported crime.

{¶ 26} With this understanding of a municipal corporation, none of the various dictionary definitions above suggest that the common, ordinary meaning of the word “person” includes a political subdivision or municipal corporation. In its narrowest form, the term encompasses only natural persons. But even an understanding that allows the term to include a corporation appears to contemplate that the corporation is private, not public. The type of corporation that could fairly be described as a “person” is one that has most of the rights and duties of a human being. Although a municipal corporation has some rights and duties that are similar to individuals and private corporations, it is often treated differently than such persons. *See, e.g., Kelley v. Metro. Cty. Bd. of Edn.*, 836 F.2d 986, 998 (6th Cir.1987) (municipal corporation cannot invoke the protection of the Fourteenth Amendment against its own state); *S. Macomb Disposal Auth. v. Washington Twp.*, 790 F.2d 500, 504-506 (6th Cir.1986) (outlining various rights that a municipal corporation lacks); *Owen* at 622 (reviewing common-law tort-liability distinctions that apply to municipal corporations before deciding that a municipality is not immune from liability under 42 U.S.C. 1983 for certain conduct); Ohio Constitution, Article XVIII, Section 4 (municipal corporation has the right to acquire a public utility through condemnation). The normal and ordinary use of the word “person” suggests that Ohio voters would not have understood that term to include a public corporation.

{¶ 27} Similarly, nothing in the text of Marsy’s Law suggests that the voters intended that a municipal corporation could qualify as a victim under that section. Marsy’s Law focuses on private rights, such as a victim’s right “to be treated with

fairness and respect for the victim’s safety, dignity and privacy,” Ohio Constitution, Article I, Section 10a(A)(1), and the right to “reasonable protection from the accused,” *id.* at 10a(A)(4). These enumerated rights are incongruent with an understanding of “victim” that includes a public corporation.

{¶ 28} As an additional tool to ascertain voters’ intent, we presume that the voters who approved an amendment were aware of existing Ohio law. *State v. Carswell*, 114 Ohio St.3d 210, 2007-Ohio-3723, 871 N.E.2d 547, ¶ 6. Here, though, existing Ohio law on whether a municipal corporation is a person is unclear and inconsistent. Ohio statutory law has varying definitions of “person.” R.C. 1.59, which defines terms used in the Revised Code that are not defined in a particular statute, defines a “person” as “an individual, corporation, business trust, estate, trust, partnership, and association,” R.C. 1.59(C). The Tenth District Court of Appeals has held that the definition of “person” in R.C. 1.59(C) does not include a political subdivision. *See Akron v. Ohio Dept. of Ins.*, 2014-Ohio-96, 9 N.E.3d 371, ¶ 36 (10th Dist.) (neither the city of Akron, which is a political subdivision, nor the Ohio Police and Fire Pension Fund qualify as a “person” under R.C. 1.59(C)); *but see Adams Cty./Ohio Valley School Dist. Bd. of Edn. v. S. Cent. Ohio Educational Serv. Ctr. Governing Bd.*, 158 Ohio App.3d 253, 2004-Ohio-4256, 814 N.E.2d 1239, ¶ 11 (4th Dist.) (a board of education is a “person” under R.C. 1.59(C)). When a political subdivision is included in the definition of “person,” the legislature has often made that clear. *See, e.g.*, R.C. 6111.01(I) (defining “person” to include “the state, any municipal corporation, any other political subdivision of the state, any person as defined in section 1.59 of the Revised Code, [or] any interstate body created by compact”); R.C. 3745.04(A) (“person” includes “any individual, any partnership, corporation, association, or other legal entity, or any political subdivision, instrumentality, or agency of a state”); R.C. 3737.01(E) (“‘Person,’ in addition to the meaning in section 1.59 of the Revised Code, means the state and any political subdivision of the state, and any other entity, public or

private”). But when the term “political subdivision” is not specifically included, this court has reached conflicting conclusions. See *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 149-150, 545 N.E.2d 1260 (1989) (a county board is a “person” under R.C. 119.01(F)); *Thaxton v. Medina City Bd. of Edn.*, 21 Ohio St.3d 56, 488 N.E.2d 136 (1986), syllabus (a public board of education is not a “person” under R.C. 1331.01(A)).

{¶ 29} The United States Supreme Court has explained that whether the word “person” includes a governmental entity “depends on the connection in which the word is found.” *Ohio v. Helvering*, 292 U.S. 360, 370, 54 S.Ct. 725, 78 L.Ed 1307 (1934); see also *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities* at 149-150, citing *Helvering*. Here, the word comes in the context of an amendment to the Ohio Constitution. A constitution serves, in part, as a guarantor of private rights, and Marsy’s Law engrains into our Constitution protections for victims of crime. It seems incongruent in this context to interpret the word “person” in the amendment in a way that would give the government rights enforceable against its own citizens. Rather, we conclude, based on the common and ordinary usage of the word “person” and the context within which that term is used in Marsy’s Law, that the voters did not intend for a municipal corporation to qualify as a victim under that section.

{¶ 30} If any doubt remains about the voters’ intent in enacting Marsy’s Law, a review of the context surrounding its proposal and enactment resolves that doubt. As we have already explained, Marsy’s Law was proposed as part of a national victims’-rights movement that seeks to give crime victims constitutional rights equal to those held by the accused. The movement seeks to correct a perceived disparity in which “those accused of crimes have more than 20 individual rights spelled out in the U.S. Constitution, [while] the surviving family members of victims have none.” https://www.marsyslaw.us/about_marsys_law (accessed July

9, 2020) [<https://perma.cc/NT9H-QZLK>]. Ohio voters were told that Marsy’s Law would ensure that victims and their families receive due process, respect, fairness, and justice. The ballot language for Marsy’s Law includes a list of rights that are primarily private and individual in nature. There is simply nothing surrounding the national Marsy’s Law movement or the Ohio Marsy’s Law initiative that suggests that the voters understood and intended that a public corporation would be a victim.

{¶ 31} We determine, based on both the text and context, that the voters who approved the constitutional amendment did not intend that a municipal corporation—a governmental entity—would qualify as a victim under the amendment. We therefore hold that a municipal corporation does not qualify as a victim under Article I, Section 10a of the Ohio Constitution and that it is not entitled to restitution under that section. Our decision today does not foreclose, and we expressly decline to address, the possibility that a municipality may receive restitution under other provisions of Ohio law.

{¶ 32} We affirm the judgment of the Second District Court of Appeals.

Judgment affirmed.

O’CONNOR, C.J., and FISCHER, DEWINE, and STEWART, JJ., concur.

KENNEDY, J., concurs in judgment only, with an opinion.

DONNELLY, J., concurs in judgment only.

KENNEDY, J., concurring in judgment only.

{¶ 33} Because I agree with the majority that Marsy’s Law, Article I, Section 10a of the Ohio Constitution, does not give a municipal corporation a right to restitution to recover expenses incurred in responding to an emergency call, I concur in today’s judgment affirming the Second District Court of Appeals. When a municipal corporation is engaged in a governmental function, it is exercising its sovereign powers and therefore is not a “person” with the rights of a “victim” under Marsy’s Law. I write separately, however, because the majority goes further than

the facts of this case support when it decides that “a municipal corporation does not qualify as a victim under Article I, Section 10a of the Ohio Constitution and that it is not entitled to restitution under that section.” Majority opinion at ¶ 31. Although the majority categorically excludes municipal corporations from protection under Section 10a, this case does not present the question whether a municipal corporation is a “person” within the meaning of Marsy’s Law when it is harmed by crime in relation to its nongovernmental, proprietary functions. In my view, that is an issue for another day.

Constitutional Construction

{¶ 34} “The purpose of our written Constitution is to define and limit the powers of government and secure the rights of the people. It controls as written unless changed by the people themselves through the amendment procedures established by Article XVI of the Ohio Constitution.” *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 16 (lead opinion).

{¶ 35} In discerning the meaning of a constitutional provision, we give undefined words their usual, normal, or customary meaning. *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16. “[W]e may go beyond the text to consider other sources of meaning, such as the purpose of an amendment, the history of its adoption, or its attending circumstances, only ‘when the language being construed is “obscure or of doubtful meaning.” ’ ” *Cleveland* at ¶ 17 (lead opinion), quoting *State ex rel. Wallace v. Celina*, 29 Ohio St.2d 109, 112, 279 N.E.2d 866 (1972), quoting *Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 103, 91 N.E.2d 480 (1950).

Marsy’s Law

{¶ 36} Article I, Section 10a of the Ohio Constitution creates and protects rights of victims of crime. Relevant here, Section 10a provides:

SUPREME COURT OF OHIO

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

* * *

(7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim.

Section 10a(D) defines “victim” to mean “a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.” Section 10a(D) does not define the word “person,” and it neither specifically includes nor excludes municipal corporations from the definition of “victim.”

{¶ 37} In giving undefined words in the Constitution their usual, normal, or customary meaning, we rely on their dictionary definitions. *E.g.*, *State v. Carswell*, 114 Ohio St.3d 210, 2007-Ohio-3723, 871 N.E.2d 547, ¶ 12; *State ex rel. King v. Summit Cty. Council*, 99 Ohio St.3d 172, 2003-Ohio-3050, 789 N.E.2d 1108, ¶ 35-36; *State ex rel. Lake Cty. Bd. of Commrs. v. Zupancic*, 62 Ohio St.3d 297, 300-301, 581 N.E.2d 1086 (1991); *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 46-47, 197 N.E.2d 328 (1964); *accord People v. Rea*, 500 Mich. 422, 428, 902 N.W.2d 362 (2017); *Venice HMA, L.L.C. v. Sarasota Cty.*, 228 So.3d 76, 81 (Fla.2017); *Noffke ex rel. Swenson v. Bakke*, 315 Wis.2d 350, 2009 WI 10, 760 N.W.2d 156, ¶ 10.

{¶ 38} “Person” means “a human being, a body of persons, or a corporation, partnership, or other legal entity that is recognized by law as the subject of rights and duties.” *Webster’s Third New International Dictionary* 1686 (2002). It can also refer only to “an individual human being.” *Id.* Therefore, the definition of

“person” is broad enough to include both a natural person and an artificial one, such as a corporation.

{¶ 39} The majority suggests that the definition of “person” could include private corporations, but it concludes that a municipal corporation does not fit within either definition. It therefore categorically excludes municipal corporations from constitutional protection as a “person” and “victim.”

{¶ 40} However, at common law, “municipal corporations and private ones were simply two species of ‘body politic and corporate,’ treated alike in terms of their legal status as persons capable of suing and being sued.” *Cook Cty. v. United States ex rel. Chandler*, 538 U.S. 119, 126, 123 S.Ct. 1239, 155 L.Ed.2d 247 (2003). As the Supreme Court explained in *Chandler*, “‘[t]he archetypal American corporation of the eighteenth century [was] the municipality’; only in the early 19th century did private corporations become widespread.” (Brackets sic.) *Id.*, quoting Horwitz, *The Transformation of American Law, 1780-1860*, 112 (1977). For this reason, the Supreme Court had long recognized that “municipal corporations, like private ones, ‘should be treated as natural persons for virtually all purposes of constitutional and statutory analysis.’ ” *Id.* at 127, quoting *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 687, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

{¶ 41} The shared roots of private and municipal corporations are evident in the Ohio Constitution. Article XIII, Section 2 provides that “[c]orporations may be formed under general laws.” Article XIII, Section 6 empowers the General Assembly to provide for the organization of municipal corporations formed by general laws. The General Assembly therefore has the authority to define the legal status of corporations for purposes of Ohio law, and it has defined “person” as “an individual, corporation, business trust, estate, trust, partnership, and association.” R.C. 1.59(C). Further, the General Assembly has given corporations many of the attributes of a natural person, including the capacity to sue and be sued, R.C. 1701.13(A), as well as the power to own property, make contracts, borrow money,

and “[d]o all things permitted by law and exercise all authority within the purposes stated in its articles or incidental to its articles,” R.C. 1701.13(F)(8).

{¶ 42} In contrast to a private corporation, a municipal corporation has governmental functions in addition to proprietary functions. *E.g.*, *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 558, 733 N.E.2d 1141 (2000); *Schenkolewski v. Cleveland Metroparks Sys.*, 67 Ohio St.2d 31, 36-37, 426 N.E.2d 784 (1981); *W. College of Homeopathic Medicine v. Cleveland*, 12 Ohio St. 375, 377 (1861); *see also* R.C. 2744.01(C) and (G) (retaining a distinction between governmental and proprietary functions); R.C. 715.01 (“Each municipal corporation is a body politic and corporate”).

{¶ 43} In *Schenkolewski*, we noted that “municipal corporations have been regarded as having a dual character”:

“On the one hand they are subdivisions of the state, endowed with governmental powers and charged with governmental functions and responsibilities. On the other they are corporate bodies, capable of much the same acts as private corporations, and having the same special and local interests and relations, not shared by the state at large. They are at one and the same time a corporate entity and a government.”

Id. at 33, quoting Prosser, *Handbook of the Law of Torts*, Section 131, 977 (4th Ed.1971).

{¶ 44} For example, at common law, municipal tort liability turned on the distinction between governmental and proprietary functions. A municipal corporation was not liable for injury caused in performing a governmental function, because it was exercising its sovereignty. *Id.* at 36-37. However, a municipality could be held liable for injury resulting from the performance of proprietary

functions, that is, “acts performed in the pursuit of private or corporate duties for the particular benefit of the corporation and its inhabitants.” *Id.* at 37.

{¶ 45} We have explained that when a political subdivision acts in a proprietary nature, there is less justification for affording it immunity; “ ‘[h]aving entered into activities ordinarily reserved to the field of private enterprise, a [political subdivision] should be held to the same responsibilities and liabilities as are private citizens.’ ” (Second brackets added in *Liming*.) *Liming*, 89 Ohio St.3d at 559, 733 N.E.2d 1141, quoting *Schenkolewski*, 67 Ohio St.2d at 37, 426 N.E.2d 784. When a municipal corporation engages in a proprietary function, it has no different footing than any other person, natural or artificial.

{¶ 46} Although the Political Subdivision Tort Liability Act, R.C. 2744.01 et seq., has modified these categories somewhat, the distinction between a municipal corporation’s governmental and proprietary functions informs the question whether a municipality is a “person” for purposes of Marsy’s Law, Article I, Section 10a of the Ohio Constitution.

{¶ 47} Marsy’s Law is contained in Ohio’s Bill of Rights, and the purpose of a bill of rights is “to protect people from the state.” *Walker v. Rowe*, 791 F.2d 507, 510 (7th Cir.1986); *see also West Virginia State Bd. of Edn. v. Barnette*, 319 U.S. 624, 638, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts”).

{¶ 48} Marsy’s Law therefore creates rights that victims of crime may wield against the government; it does not grant the government rights against the people or itself. *See Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 105 (landowners are protected from takings for an improper purpose by municipalities by the Takings Clause in the Ohio Bill of Rights, Article I, Section 19, Ohio Constitution).

{¶ 49} Moreover, we have explained that “[t]he state is not a person but a sovereign abstract entity.” *Boulger v. Evans*, 54 Ohio St.2d 371, 374, 377 N.E.2d 753 (1978). And there is a “ ‘longstanding interpretive presumption that “person” does not include the sovereign’ ” in the absence of an express definition, *Return Mail, Inc. v. United States Postal Serv.*, ___ U.S. ___, 139 S.Ct. 1853, 1861-1862, 204 L.Ed.2d 179 (2019), quoting *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 780, 120 S.Ct. 1858, 146 L.Ed.2d 836 (2000).

{¶ 50} A municipal corporation exercising the police power exerts the sovereignty of the state of Ohio against the people, *see State v. Mutter*, 150 Ohio St.3d 429, 2017-Ohio-2928, 82 N.E.3d 1141, ¶ 16, and is therefore “ ‘an arm of sovereignty and a governmental agency,’ ” *Liming*, 89 Ohio St.3d at 558, 733 N.E.2d 1141, quoting *Wooster v. Arbenz*, 116 Ohio St. 281, 284, 156 N.E. 210 (1927). When acting as the sovereign in performing a governmental function, a municipal corporation is not a “person” protected by Article I, Section 10a of the Ohio Constitution. Rather, it is an arm of the state and therefore precluded from violating the rights of victims established by Section 10a. It is the vindicator of the victim’s rights and cannot itself be a victim.

{¶ 51} In this case, in responding to an emergency call, the Centerville first responders were performing a governmental function and exercising sovereignty. In seeking restitution under Section 10a, Centerville is seeking protection from and asserting rights against itself and the state. In these circumstances, Centerville is not a person protected by Section 10a, and Marsy’s Law does not give it the right to restitution. *See E. Liverpool v. Columbiana Cty. Budget Comm.*, 114 Ohio St.3d 133, 2007-Ohio-3759, 870 N.E.2d 705, ¶ 20 (municipal corporations are not entitled to due process or equal protection against the state); *Ysursa v. Pocatelto Edn. Assn.*, 555 U.S. 353, 363, 129 S.Ct. 1093, 172 L.Ed.2d 770 (2009) (explaining that the federal Constitution does not create any rights enforceable against a state by its political subdivisions); *In re World Trade Ctr. Lower Manhattan Disaster*

Site Litigation, 30 N.Y.3d 377, 386, 67 N.Y.S.3d 547, 89 N.E.3d 1227 (2017) (municipal corporation cannot sue to invalidate a statute as unconstitutional—with an exception for certain circumstances, such as violations of municipal home rule); *New Orleans v. Louisiana Assessors’ Retirement & Relief Fund*, 986 So.2d 1, 23 (La.2007) (“the City, as a political subdivision of the state rather than a person, is not protected by the Declaration of Rights article of the Louisiana Constitution”).

{¶ 52} It is beyond the scope of this case to determine whether a municipal corporation is a “person” protected by Marsy’s Law in relation to its proprietary functions. When engaged in a proprietary function, the municipal corporation is not exercising the sovereignty of the state but rather is acting in its corporate capacity on behalf of itself and its residents. Whether a municipal corporation should be considered a “person” under Marsy’s Law in those circumstances is a question for another day. It is enough to say that unlike the majority, I would not foreclose the possibility that a municipal corporation can be considered a victim of crime under Article I, Section 10a of the Ohio Constitution.

{¶ 53} Accordingly, I would hold that a municipal corporation is not a victim of crime protected by Marsy’s Law when it suffers economic loss in responding to an emergency call. Because the majority opinion goes beyond the narrow holding needed to decide this case, I concur in judgment only.

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Timothy Young, Ohio Public Defender, and Patrick T. Clark, Assistant Public Defender, for appellee.

American Civil Liberties Union of Ohio Foundation, Elizabeth Bonham, Freda J. Levenson, and David J. Carey, urging affirmance for amicus curiae American Civil Liberties Union of Ohio Foundation.

SUPREME COURT OF OHIO

Southeastern Ohio Legal Services, Natasha A. Plumly, Ann M. Roche, and Adam D. Vincent, urging affirmance for amicus curiae Southeastern Ohio Legal Services.

Legal Aid Society of Columbus and Tabitha M. Woodruff, urging affirmance for amicus curiae Legal Aid Society of Columbus.

Community Legal Aid Services, Inc., and Susan M. Fitch, urging affirmance for amicus curiae Community Legal Aid Services, Inc.

Legal Aid Society of Cleveland, Alexandria Ruden, Thomas Mlakar, and Tonya Whitsett, urging affirmance for amicus curiae Legal Aid Society of Cleveland.

Legal Aid Society of Southwest Ohio, L.L.C., and John E. Schrider Jr., urging affirmance for amicus curiae Legal Aid Society of Southwest Ohio, L.L.C.

Advocates for Basic Legal Equality, Inc., and Heather L. Hall, urging affirmance for amicus curiae Advocates for Basic Legal Equality, Inc.

Legal Aid of Western Ohio, Inc., and LaTanya R. Wilson, urging affirmance for amicus curiae Legal Aid of Western Ohio, Inc.

Micaela C. Deming, urging affirmance for amicus curiae Ohio Domestic Violence Network.
